



Case Alert: Wright v. Owens Corning

In 2010, the Third Circuit Court of Appeals issued its decision in Grossman's and overturned its much-criticized decision in Frenville, holding that "a 'claim' arises when an individual is exposed pre-petition to a product or other conduct giving rise to an injury, which underlies a 'right to payment' under the Bankruptcy Code." Grossman's, 607 F.3d 114, 125 (3d Cir. 2010). What remained an open issue was the impact this reversal would have going-forward (both for pending cases and those to follow). In Wright v. Owens Corning, the United States District Court for the Western District of Pennsylvania (the "Court") took a bold step in deciding how Grossman's would apply in the wake of Frenville's downfall.

In Wright v. Owens Corning, one of the plaintiffs purchased roof shingles manufactured by Owens Corning years before the chapter 11 filing and another purchased roof shingles after the chapter 11 filing but well before confirmation of the chapter 11 plan. The plaintiffs sought to proceed with litigation against Owens Corning, after Owens Corning had confirmed its chapter 11 plan, on the basis that their claims had not been discharged by Owens Corning's plan. In support, the plaintiffs argued that Grossman's should be limited to asbestos claims (and, hence, not applicable to product liability claims) and should not be applicable to cases that pre-date the decision. The plaintiffs asserted further that their claims could not be discharged because they did not receive actual notice of the bankruptcy proceedings.

The Court summarily rejected the plaintiffs' argument that Grossman's be limited to asbestos-related claims, recognizing that the Third Circuit expressly acknowledged that its decision to overrule Frenville would fill an overall void in its jurisprudence about when a claim arises. As such, the Court noted that to limit that holding as requested by the plaintiffs "would undoubtedly fall short of filling that void." The Court similarly overruled the plaintiffs' argument regarding retroactive application of Grossman's. Relying upon the decisions of the Supreme Court in Harper v. Virginia Department of Taxation, 509 U.S. 86 (1993) and James B. Beam Distilling Co. v. Georgia, 501 U.S. 529 (1991), the Court determined that it was not only permitted but required to apply the Grossman's decision retroactively.

Applying the ruling in Grossman's to the facts of Wright v. Owens Corning, the Court held that since the plaintiffs' claims arose when they purchased the defective products, such claims were dischargeable under both the plan and the confirmation order, which unequivocally provided that all claims arising before the confirmation date were discharged. The Court stressed, however, that its finding regarding dischargeability did not complete the inquiry. Rather, the Court also needed to determine whether discharging the claims of the plaintiffs, who had not received actual notice of the bankruptcy proceedings, violated the plaintiffs' due process rights.

With respect to notice, since neither plaintiff received actual notice and neither plaintiff could have been reasonably known by the debtors (as the product in each case had been obtained through a third-party contractor), the Court focused on whether publication notice was sufficient to effect the discharge of the plaintiffs' claims. Since Owens Corning had published notice of every important aspect of the bankruptcy proceedings in *The New York Times*, *The Wall Street Journal*, *USA Today* and several other regional and local publications, the Court concluded that "the published notice in this case satisfied Owens Corning's duty to unknown creditors ..." As the published notices were sufficient

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Opinion

Wright v. Owens Corning, Case No. 09-cv-01567-JFC (W.D.Pa. Mar. 21, 2011)

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to satisfy due process requirements, the Court entered judgment in favor of Owens Corning.

While this decision will likely be appealed to the Third Circuit, it merits consideration as the first significant case to interpret the impact of Grossman's upon claims and claimants in chapter 11 cases and provides guidance regarding a debtor's ability to effectively discharge claims of unknown claimants.

If you have any questions or would like to discuss the decision further, please contact any of the Bankruptcy and Corporate Restructuring partners at Young Conaway. The Firm is also available for complimentary Delaware Update CLE programs to address any aspects of Delaware law that are of interest to our friends and colleagues around the country.