2025

Reconsideration of a Previously Allowed or Disallowed Claim Under Section 502(j) of the Bankruptcy Code in New York and Delaware.

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2025 Volume XVII No. 8

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Cite as: *Reconsideration of a Previously Allowed or Disallowed Claim Under Section 502(j) of the Bankruptcy Code in New York and Delaware*, 17 ST. JOHN'S BANKR. RESEARCH LIBR. NO. 8 (2025).

I. Introduction

Section 502(j) of title 11 of the United States Code (the "Bankruptcy Code") states that "[a] claim that has been allowed or disallowed may be reconsidered for cause" in a bankruptcy case. 11 U.S.C.S. §502(j). Section 502(j) further states that "a reconsidered claim may be allowed or disallowed according to the equities of the case." *Id.* There is no definition of "for cause" or "according to the equities of the case," but the courts have generally held that reconsideration ultimately "lies within the discretion of the court."[1] This article will analyze the scenarios under which a bankruptcy court in New York and Delaware may reconsider previously allowed or disallowed claims under Section 502(j). First, the memorandum will discuss the governing law applicable to this issue. Subsequently, the article is divided into two sections; the first will highlight situations in which courts have historically granted motions to reconsider claims, while the second will discuss the rationale adopted by courts that deny reconsideration of claims.

[1] *In re* AMR Corp., No. 11-15463 2016 Bankr. LEXIS 515, at *6 (Bankr. S.D.N.Y. Feb. 18, 2016).

II. Rules and Tests for Reconsideration of Claims

Many courts view the reconsideration analysis as a two-step process.[2] A court must initially "decide whether there is cause."[3] Assuming cause exists, a court must then "decide whether the 'equities of the case' dictate allowance or disallowance of the claim."[4] In determining cause, courts use the Bankruptcy Rules of Procedure as guidance, specifically rules 3008 and 9024.[5] Rule 3008 specifically recognizes the power of the court to "reconsider an order allowing or disallowing a claim", and governs "motion[s] to reconsider allowance or disallowance of claims."[6] Rule 9024 makes Fed. R. Civ. P. 60(b) applicable to a bankruptcy case.[7] Thus, courts deciding on reconsideration "adopt the standards that apply to a motion for new trial or amendment of a judgment" pursuant to the Federal Rules of Civil Procedure 60(b).[8] In particular, a court will consider whether there is "excusable neglect" to support reconsideration of the allowed or disallowed claim.[9]

Excusable neglect requires a showing that the creditor's failure to respond was "neglectful," but that the neglect was "excusable."[10] In analyzing excusable neglect, courts rely

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[2] *In re* Pier 1 Imps., Inc., No. 20-30805-KRH, 2024 Bankr. LEXIS 591, at *9 (Bankr. E.D. Va. Mar. 11, 2024).
[3] *Id.*
[4] Dorula v. Flanders (*In re* Starlight Group, LLC), 515 B.R. 290, 293 (Bankr. E.D. Va. 2014).
[5] U.S.C.S Bankruptcy R 3008; U.S.C.S. Bankruptcy R 9024.
[6] U.S.C.S Bankruptcy R 3008 (emphasis added); *In re* Salander, 450 B.R. 37, 53 (Bankr. S.D.N.Y. 2011).
[7] U.S.C.S. Bankruptcy R 9024.
[8] *In re* Bennett, 590 B.R. 156, 160 (Bankr. E.D. Mich. 2018).
[9] Fed. R. Civ. P. 60.
[10] *In re* Pier 1 Imps., Inc., 2024 Bankr. LEXIS 591, at *12.

on guidance from the factors set forth in the Supreme Court case *Pioneer Investment Services*, which are: (1) whether there is danger of prejudice to the debtor (2) length of delay (3) reason for the delay and (4) whether the movant acted in good faith.[11] However, excusable neglect is an "elastic concept."[12] As any determination of the court when deciding to reconsider a claim, whether neglect is "excusable" is "at bottom line an equitable one."[13]

When analyzing excusable neglect within the context of default judgments, which would be akin to an unopposed objection to claim, courts apply the *three* factor test that comes from the 2nd Circuit Court of Appeals case, *American Alliance Ins. Co. v. Eagle Ins. Co*.[14] The court stated that in the "default judgment context", excusable neglect is determined on whether "(1) the default was willful; (2) whether defendant has a meritorious defense; and (3) the level of prejudice that may occur to the non-defaulting party."[15] This standard is more "lenient", as it omits the *Pioneer* test's inquiry into the reason for delay, which is oftentimes the factor that leads to denial of reconsideration.[16]

III. Discussion

A. Situations where courts have reconsidered claims under Section 502(j).

i. Excusable Neglect

In *In re* Bluestem Brands, the Delaware Bankruptcy Court applied the Supreme Court's test from *Pioneer* to determine whether there was excusable neglect that would provide cause for

[11] *In re* JWP Info. Servs., 231 B.R. 209, 211 (quoting Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380).
[12] *In re* Coxeter, No. 05-19146, 2009 Bankr. LEXIS 4053, at *11 (December 10, 2009).
[13] *Id.* (quoting Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380).
[14] *See In re* Meggitt, No. 17-30029, 2018 Bankr. LEXIS 73, at *7 (Bankr. N.D. Ohio Jan. 12, 2018); *see generally* American Alliance Ins. Co. v. Eagle Ins. Co., 92 F.3d 57 (August 7, 1996).
[15] *Id.* at 59.
[16] *In re* Jwp Info. Servs., Inc., 231 B.R. at 209; *see In re* Coxeter., 2009 Bankr. Lexis 4053, at *9.

reconsideration of the debtor's claim.[17] In this Chapter 11 bankruptcy proceeding, the debtors placed an order with foreign vendors which was delivered post-petition; one of the vendors' claims was reclassified as unsecured, to which they filed a motion to reconsider.[18] Here, the court first found that there would be no prejudice to the estate if they reconsidered the claim, because the vendors filed proofs of claims containing their administrative expenses which provided sufficient notice to the debtors.[19] Next, the length of delay was not unduly, and noted that a delay between two and five months does not warrant denying reconsideration altogether.[20] The foreign vendors' lack of knowledge regarding U.S. bankruptcy law was a justified reason for the delay in responding to the claim objection, and they ultimately were found to have acted in good faith by filing their proofs of claims, despite their slight delay. *Id.* at *9-10. Thus, the court found that the movant met the *Pioneer* factors for "excusable neglect", constituting cause for reconsideration under 502(j). *Id.* at *10.

In *In re* Enron Creditors' Recovery Corp., the court considered the movant's arguments under the excusable neglect analysis of FRCP 60 and the *American Alliance* test to decide whether reconsideration was appropriate.[21] Here, the assignee of a claim in the debtor's bankruptcy moved for reconsideration of an order which disallowed their claim.[22] The Court stated that the assignee's failure to respond to an objection did not rise to the "level of willfulness" because they never received notice of the objection.[23] Additionally, the court found the movant to have a "meritorious defense", as it seemed the assignee would have priority over

[17] *In re* Bluestem Brands, Inc., No. 20-10566, 2021 Bankr. LEXIS 1980, at *5 (July 27, 2021).
[18] *Id.* at *3.
[19] *Id.* at *6.
[20] *Id.* at *7.
[21] *In re* Enron Creditors' Recovery Corp., No. 01-16034, 2007 Bankr. LEXIS 2969, at *11.
[22] *Id.* at *1.
[23] *Id.* at *15.

other parties, and the Court deemed this sufficient at this stage of the reconsideration analysis.[24] Lastly, the debtors' mere citing to the "passage of time" was not significant enough of a prejudice to the non-movant.[25] Thus, the court held that the factors for "excusable neglect" were met, and the claim could be reconsidered under 502(j).[26]

The court in *In re* Coxeter similarly applied the *American Alliance* test in determining whether the creditor's disallowed claim could be reconsidered under §502(j).[27] Willfulness, which the court pointed out has to be "something more than mere negligence", was not fulfilled because the creditor's lack of response to the claim objection was due to issues between counsel, not a result of a deliberate action.[28] Additionally, the creditor's subsequent swift motion for reconsideration, filed 30 days after receiving notice of the disallowance, corroborates that there was no 'willfulness' in their failure to respond to the original claim.[29] The creditor had a seemingly uncontested claim in the debtor's case, regardless of whether the amount was disputed, which constituted a 'meritorious defense.'[30] Lastly, although Rule 9024 allows one year to bring the motion for reconsideration, it was brought by the creditor a "mere" thirty-six days after service of the order.[31] Ultimately, the creditor fulfilled the excusable neglect factors and reconsideration was granted.[32]

The courts in these various cases found similar reasoning to fulfill the standards of excusable neglect and find cause for reconsideration. Non-receipt or miscommunications

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[24] *Id.* at *19.
[25] *Id.* at *19-20.
[26] *Id.* at *21.
[27] *In re* Coxeter., 2009 Bankr. Lexis 4053, at *11.
[28] *Id.* at *13.
[29] *Id.* at *16.
[30] *Id.*
[31] *Id.* at *17.
[32] *Id.*

amongst lawyers which led to a lack of response to objections was not willful, but rather neglectful action.[33] A meritorious defense was often found because it need not be persuasive at this stage, but rather merely give the factfinder "some determination to make" in the case.[34] Lastly, the courts analyzed the passage of time as potential prejudice to non-movants, but held that delays of a few months were typically not egregious enough since proceedings and distribution processes were still "ongoing".[35]

B. Situations where courts denied reconsideration of claims under 502(j).

i. Lack of excusable neglect.

Courts deny motions to reconsider claims where there is no excusable neglect that constitutes cause. In *Gonzalez v. Green,* the court applied the *Pioneer* factors and found that there would be immense prejudice to allowed claim holders as the administration of the case was "nearing its end" and continued delay of legal proceedings would risk the distribution of claims already approved.[36] The court easily determined that the approximate three year delay in bringing the reconsideration motion was much more significant than a few months' delay in *In re* Bluestem Brands, which ultimately warranted denial.[37] The applicant additionally failed to provide any reasoning for this lengthy delay.[38] Lastly, the Court made no finding of good faith, and thus held the standard for excusable neglect was not met and reconsideration was denied.[39]

In *Nations First Capital, LLC v. Decembre,* the Bankruptcy Appellate Panel for the 9th Circuit reviewed the Bankruptcy Court's decision which denied the debtor's motion to

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[33] *In re* Coxeter*,* 2009 Bankr. Lexis 4053, at *13.
[34] *In re* Enron Recovery Corp., 2007 Bankr. LEXIS 2969, at *18.
[35] *In re* Bluestem Brands, Inc., 2021 Bankr. LEXIS 1980, at *8.
[36] Gonzalez v. Green (*In re* TK holdings Inc.), No. CIV.23-738-RGA, 2024 U.S. Dist. LEXIS 39770, at *26 (March 6, 2024).
[37] *Id.* at *27
[38] *Id.* at *28.
[39] *Id.*

reconsider the disallowance of the appellee's claim.[40] The Court ultimately held that the creditor's reason for not responding to the debtor's objection, which was not seeing the notice, did not rise up to "excusable neglect".[41] Properly mailed notice, as the one in this case, is presumed to have been received by the creditor; the movant merely claimed they did not see the objection without providing any evidence of non-receipt.[42] Thus, their failure to ensure its receipt was not 'neglectful' so as to provide cause for reconsideration.[43]

The court in *In re* JWP Information Services found that the debtor's actions were not a result of excusable neglect to constitute cause for reconsideration under the *American Alliance* test.[44] In this case, the debtor company's vice president became aware of the Trustee's motion to expunge a claim 16 days after the order was docketed, which alone may have been excusable neglect; but after learning of the motion, he took no action to determine the motion's status for two whole months.[45] Under the *AA* test, the court stated this action was willful rather than neglectful.[46] The debtor had no meritorious defense because the company provided "no documentation" regarding the calculation of the amount they claim was owed.[47] Finally, the prejudice to the non-movant was a "knowing" delay by the debtor and would threaten the "finality" of decided claims in the case, similar to the threat posed to approved distributions in *In re* TKE Holdings Inc.[48] Thus, the court denied reconsideration under 502(j).[49]

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[40] Nations First Capital, LLC v. Decembre, BAP No. EC-19-1201-GLB, 2020 Bankr. LEXIS 1541, at *2.
[41] *Id.* at *14.
[42] *Id.* at *13.
[43] *Id.*
[44] *In re* JWP Info Servs., 231 B.R. at 209.
[45] *Id* at. 212.
[46] *Id.*
[47] *Id.* at 213.
[48] *Id.*
[49] *Id.* at 213.

The debtor's motion for reconsideration was likewise denied in *In re* Spiegel, Inc.[50] Here, the debtor claimed that her failure to receive a copy of the judgment until two weeks after the disallowance of her claim amounted to excusable neglect.[51] The New York Bankruptcy Court for the Southern District of New York did not engage in a lengthy analysis, but nonetheless stated that receiving a copy of the judgment is the party's own duty, and did not constitute excusable neglect that would justify reconsideration of a claim.[52]

In sum, the courts noted that the burden of ensuring receipt of properly sent objections is ultimately on the movant, and mere claims of non-receipt do not rise up to neglectful action that is excusable.[53] Lengthy delays in bringing a motion for reconsideration, following receipt of notice or objections, is willful and a sign of bad faith.[54] Finally, not only were lengthy delays prejudicial to non-movants, but the threat of altering decided or nearly-decided claims was too large and thus justified the denial of reconsideration.[55]

ii. A lack of clear errors, injustice, new evidence, or change in controlling law.

A lack of new evidence is often a basis for courts' denial of a motion to reconsider claims under Section 502(j). Rule 60(b) states that a party can be relieved of a judgment only if it is undermined by "newly available evidence, have been previously satisfied or result of from mistake, fraud, or misconduct."[56] In *In re* Dana, the New York Southern Bankruptcy Court held that the debtor's resubmission of his previous affidavit was not new evidence that warranted

[50] *In re* Spiegel, Inc., No. 03-11540, 2007 Bankr. LEXIS 1279, at *9.
[51] *Id.* at *7.
[52] *Id.* at *11.
[53] Nations First Capital, LLC., 2020 Bankr. LEXIS 1541, at *6.
[54] *In re* JWP Info Servs., 231 B.R. at 212.
[55] *In re* TKE Holdings Inc., 2024 U.S. Dist. LEXIS 39770, at *26.
[56] Rule 60(b) F. R. Civ. P.

reconsideration of their claim in the bankruptcy.[57] The debtor's reliance on Rule 60(b) as a basis for reconsideration, absent physical new evidence in the case, was not sufficient for the court to grant him a motion to reconsider under Section 502(j).[58] Similarly in *In re* Palmer, where the debtor agreed to retain a vehicle in their chapter 13 plan, the debtor sought reconsideration absent any changes or new evidence pertaining to the car, its collateral, or their possession of it.[59] Thus, the court denied reconsideration of their claim because there was no new evidence.[60]

iii. Timeliness pursuant to Federal Rule of Bankruptcy Procedure 9024.

Rule 9024, subsection (a)(1), states that Rule 60(b) applies, except "the one-year limitation in Fed. R. Civ. P. 60(c) does not apply to a motion to reopen a case or to reconsider an *uncontested* order allowing or disallowing a claim against the estate."[61] In other words, if an order was entered *with* a contest, meaning a party objected in some capacity, then the one year limitation *would* apply.[62] In *Pleasant v. TLC Liquidation Trust*, the 2nd Circuit Court of Appeals held that the lower court erred in rendering Rule 9024's one year limitation inapplicable for purposes of reconsideration under Section 502(j).[63] The lower court held that because there was a settlement negotiated between the parties regarding the claim, which was approved by the Bankruptcy Court, the creditor's claim had been entered "without a contest" and was excluded from Rule 9024's one year limitation.[64] However, the 2nd Circuit stated that regardless of whether the parties settled their dispute without "additional court proceedings", the Debtor

[57] *In re* Dana, No. 06-1-354, 2008 WL 724220, at *7.
[58] *Id.*
[59] *In re* Palmer, 419 B.R. 162, 167 (2009).
[60] *Id.* at 168.
[61] U.S.C.S. Bankruptcy R 9024(a)(1). (emphasis added).
[62] *See In re* Wyatt, 368 B.R. 99 (2007).
[63] Pleasant v. TLC Liquidation Trust (*In re* Tender Loving Care Health Servs.), 562 F.3d. 158, 163.
[64] *Id.* at 161.

initially objected to the claim and thus it was not "entered without contest" under Rule 9024.[65] Ultimately, the one year limitation in 9024(a)(1) applied, rendering the creditor's motion to reconsider untimely.

IV. Conclusion

A court's decision to reconsider the allowance or disallowance of a claim under Section 502(j) will depend on the facts of the case. A bankruptcy court is a court of equity and thus, there is not a clear cut deciding factor dictating whether reconsideration will be granted. The general analysis for courts is the two-step process requiring "cause" and "equity."[66] Excusable neglect provides possible grounds for cause; but as illustrated, whether there is excusable neglect is a fact-specific analysis in which courts determine if a party was truly neglectful and whether the level of prejudice towards the non-movant bars reconsideration.[67] Similarly, an introduction of new evidence can provide a basis to grant reconsideration—however, similar to claims of prejudice or unduly delay, the court will look to whether there is physical evidence introduced rather than mere claims made by the movant.[68] Ultimately, courts consider the totality of circumstances whilst using guidance from bankruptcy and Federal Rules of Civil Procedure to determine whether there is cause for reconsideration and if it is necessary to achieve equity in a given bankruptcy case.

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[65] *Id.* at 163.
[66] *In re* Jwp Info. Servs., Inc., 231 B.R. at 213.
[67] *Id.*
[68] *In re* Dana, 2008 WL 724220, at *7.