

Akerman Lens

Supreme Court Narrows – and Questions – Judicial Estoppel in Bankruptcy Nondisclosure Cases

June 12, 2026

By [Michael D. Napoli](#)



Related People

[Michael D. Napoli](#)

Related Work

[Bankruptcy and Reorganization](#)

In *Keathley v. Buddy Ayers Construction, Inc.*, the Supreme Court unanimously vacated a Fifth Circuit decision that barred a debtor’s personal-injury claim based on his failure to disclose it in a pending Chapter 13 case. The Court narrowed the doctrine’s use in this context by rejecting the Fifth Circuit’s near-dispositive rule that an omission is not inadvertent if the debtor knew the facts underlying the claim and had a hypothetical motive to conceal it. The Court also questioned whether judicial estoppel should apply in bankruptcy nondisclosure cases at

all, making that broader issue potentially more significant than the holding itself.

After Keathley filed Chapter 13, he later suffered a car accident and told bankruptcy counsel about the potential claim. However, he did not amend his schedules until the tort defendant moved for summary judgment based on judicial estoppel. The district court and Fifth Circuit applied then-controlling Fifth Circuit precedent and held that Keathley's omission was not inadvertent because he knew the facts underlying the claim and had a hypothetical motive to conceal it. The Supreme Court rejected that approach, holding that courts must evaluate the totality of the circumstances when deciding whether a bankruptcy omission was inadvertent or mistaken. The Fifth Circuit's test was too rigid because it excluded other evidence bearing on the debtor's omission, and too broad because debtors will almost always know the facts and have some hypothetical benefit from nondisclosure.

While the Court's ruling is important and resolves a circuit split on this narrow issue, what is likely more important is what the Court did not do. No Justice affirmatively held that judicial estoppel applies in this context and three Justices questioned whether the doctrine should apply at all. So, the unanimous Court decided only that, if the doctrine applies, the Fifth Circuit applied it too mechanically.

Justices Thomas, Gorsuch, and Sotomayor concurred with the ruling but questioned whether judicial estoppel should apply in this context at all. All three Justices pointed out that the doctrine in this context reaches beyond traditional equity because it can benefit a litigant who never relied on the prior representation and suffered no prejudice from it. In Keathley's case, that meant an unrelated tort defendant obtained dismissal because of an omission on a form filed in a bankruptcy case to which it was a stranger. Justice Thomas, joined by Justice Gorsuch, questioned whether judicial estoppel has any legal basis at all. While Justice

Sotomayor accepted the doctrine generally, she argued that it was inequitable in this context.

So, while there is a rule as to how to apply judicial estoppel when a debtor fails to disclose an asset, there is also a strong suggestion that judicial estoppel has no place in bankruptcy, at least in the omitted-asset context. Lower courts have long treated bankruptcy nondisclosure as fertile ground for judicial-estoppel motions, often on the theory that the debtor implicitly represented in bankruptcy court that the claim did not exist.

Key Takeaways for Debtors and Creditors

What are the takeaways? For debtors, *Keathley* is not a disclosure holiday. Schedules still require disclosure of litigation claims, and prompt amendment remains critical when an omission is discovered. But debtors now may present the full factual record, including communications with counsel, lack of benefit, trustee practice, prejudice, and bankruptcy-court developments.

For creditors and trustees, the decision strengthens the argument that valuable claims should be preserved for the estate rather than forfeited to litigation opponents. That point is especially important in liquidations or conversions, where a Chapter 7 trustee may pursue the claim for creditors.

Keathley immediately changes how bankruptcy-omission estoppel motions should be litigated in the Fifth Circuit. Longer term, the Supreme Court may well do away with judicial estoppel — either entirely or in cases where a debtor fails to disclose an asset.