

Blog Post

Filing Bankruptcy May Not Stop EEOC Suits

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Hoping that declaring bankruptcy will stay a discrimination or retaliation lawsuit against you brought by the U.S. Equal Employment Opportunity Commission (the “EEOC”) on behalf of a current or former employee? Think again.

On October 11, 2018, a Texas federal court in *EEOC v. Tim Shepherd, M.D.* ruled that filing for bankruptcy did not automatically stay a lawsuit brought by the EEOC against the debtor. In so ruling, the Northern District of Texas joined with the Third, Fourth, and Eighth Circuits (these appeals courts cover Arkansas, Delaware, Iowa, Pennsylvania, Maryland, Minnesota, Missouri, Nebraska, New Jersey, North Carolina, North Dakota, South Carolina, South Dakota, Virginia, the Virgin Islands, and West Virginia) as well as with various other district courts, including courts in Illinois, Kentucky, Michigan, Mississippi, New York, Ohio, and Utah, which have held the same.

Normally, filing for bankruptcy will automatically stay judicial proceedings against a debtor. The court in Texas held that the lawsuit by the EEOC fell under the exception to the Bankruptcy Code’s automatic stay provision where a governmental unit brings an action to enforce its police and regulatory power. The purpose of this exception is to discourage debtors from initiating a bankruptcy proceeding in

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order to evade governmental efforts to deter the debtor from conduct which would threaten the public safety and welfare. The court reasoned that in the lawsuit, although the EEOC is seeking a money judgment on behalf of certain employees, it is primarily seeking a permanent injunction enjoining the defendant from engaging in discriminatory and retaliatory employment practices. As a result, the EEOC is looking to vindicate the public interest by seeking to prevent discrimination and retaliation in the workplace. While the EEOC's lawsuit was permitted to proceed, the EEOC will be unable to collect on any money judgment during the pendency of the bankruptcy proceeding.

Although only certain courts have found that lawsuits filed by the EEOC will not be automatically stayed pending a bankruptcy proceeding, other federal courts may follow suit. Moreover, the decision in *Shepherd* is a reminder to employers that they should not rely on being able to hold off a lawsuit filed by the EEOC simply because they have initiated a bankruptcy proceeding.

This information is intended to inform clients and friends about legal developments, including recent decisions of various courts and administrative bodies. This should not be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this email without seeking the advice of legal counsel.