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Is Finality Always Worth the Wait?



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In *Blair v. Bestwall LLC (In re Bestwall)*, the Fourth Circuit majority held that a group of tort victims and their law firm could not immediately appeal an order holding them in contempt and sanctioning them in the amount of \$402,817.70.¹ Why? According to the majority, the short answer was that the sanctions order was not final and appealable. The appellants must wait until the “procedural unit,” in which the contempt sanctions arose, ends. What exactly is that “procedural unit” keeping appellate review of the contempt and sanctions orders at bay? Although not stated with clarity in the opinion, the culprit appears to be the entire *Bestwall* bankruptcy case, which has been pending since 2017.

While finality remains an important policy goal, strict adherence to technical rules about appealability could lead to significant injustice and even practical problems in some cases. Application of a more flexible approach, as advocated by the dissent, would allow for prompt review of contempt and sanctions orders, given their serious implications for the affected parties.

Bestwall's Bankruptcy

Created by a divisional merger of Georgia-Pacific LLC and thereby laden with an abundance of asbestos-related lawsuits, Bestwall LLC sought refuge from its mounting liability and legal trouble by filing a chapter 11 petition in the Western District of North Carolina in November 2017.² As Bestwall navigated the bankruptcy proceedings, it needed to understand the full extent of its liabilities,³ and thus sought permission from the bankruptcy court to cast a wide net to estimate the liabilities.

Specifically, Bestwall wanted to require that all mesothelioma claimants (in thousands of asbestos cases around the U.S.) provide information about their claims by completing a personal-injury questionnaire (PIQ).⁴ With an eye toward “the negotiation, formulation, and confirmation of a section 524(g) plan of reorganization,” the bankruptcy court found that the PIQ was “relevant to estimation of [Bestwall’s] asbestos liability.”⁵ Accordingly, after hearing and careful consideration, the bank-

ruptcy judge granted Bestwall’s motion and ordered all claimants to comply.⁶

Not everyone was happy with this order. The official committee of asbestos claimants and several individuals tried to appeal it to the district court.⁷ In a foreshadowing decision, the district court dismissed the appeal, finding that the PIQ order was not a final appealable order, and declined to accept the matter for interlocutory appellate review.⁸ The committee also sought a stay of the order, but the bankruptcy court denied the request.⁹

Notwithstanding the bankruptcy court’s decision, a group of asbestos claimants from Illinois, represented by Maune, Raichle, Hartley, French & Mudd LLC, decided to challenge the order closer to home.¹⁰ They ventured to the District Court in Illinois seeking protection from the bankruptcy judge’s PIQ order.¹¹ In response, Bestwall requested enforcement of the PIQ order in the bankruptcy court.

The bankruptcy judge found nearly all of the claimants and Maune Raichle in contempt of court; however, the bankruptcy court permitted the contemnors time to purge their contempt by dismissing the complaint in Illinois.¹² Undeterred, the Illinois plaintiffs instead continued to prosecute,¹³ which would prove to be a costly decision. Not only did the Illinois court dismiss the complaint for lack of jurisdiction, but the bankruptcy court ultimately sanctioned the plaintiffs and their law firm jointly and severally in the amount of \$402,817.70 for fees and expenses that Bestwall incurred because of the contemnors’ actions.¹⁴

Not Appealable (Again)

The tort claimants and Maune Raichle filed a notice of appeal to the district court in response to the hefty sanctions judgment,¹⁵ but the district court found that it had no power to review the sanctions decision at that juncture. Finding that the bankruptcy judge’s orders of contempt and sanctions were not final decisions, and thus could not yet be appealed, the district court dismissed

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.* Maune Raichle “serves as counsel to a Committee member and other individual claimants in the bankruptcy case, as well as special counsel to the Committee concerning medical science matters related to the estimation hearing.” *Id.*

11 *Id.*

12 *Id.* at 683-84.

13 *Id.* at 684.

14 *Id.*

15 *Id.*

1 *Blair v. Bestwall LLC (In re Bestwall LLC)*, 99 F.4th 679 (4th Cir. 2024).

2 *Bestwall LLC v. Official Comm. of Asbestos Claimants (In re Bestwall LLC)*, 71 F.4th 168, 173-75 (4th Cir. 2023).

3 See *Blair*, 99 F.4th at 683.

4 *Id.* at 683, 688.

5 *Id.* at 683.

for lack of jurisdiction.¹⁶ Unrelenting, the Illinois claimants and Maune Raichle pressed on, taking their case to the court of appeals.¹⁷

There, the three-judge panel disagreed over whether the contempt and sanctions orders were final and appealable. Two of the judges agreed with the lower courts, finding that the orders were merely part of the ongoing bankruptcy saga and could not be appealed separately.¹⁸ The majority began with the general rule that outside of bankruptcy in “normal” civil litigation, a party cannot immediately appeal a civil contempt order or sanctions but must wait for a final judgment.¹⁹ The majority highlighted that “[n]o final decree ending the case has been rendered” in *Bestwall*’s bankruptcy, which “would typically end the inquiry and an appellate court would dismiss the appeals for lack of jurisdiction.”²⁰

Bankruptcy cases and proceedings follow a slightly different procedural framework than “normal” litigation. District courts may hear appeals “from final judgments, orders, and decrees ... of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges.”²¹ Nevertheless, according to the majority, the order granting the motion for contempt and imposing the subsequent sanctions did not terminate a separate procedural unit from the remaining bankruptcy case.²² The majority rejected the appellants’ argument that the orders resolved discrete disputes about whether they violated the PIQ order and whether sanctions were warranted. According to the majority, this would define the relevant proceeding too narrowly.²³

Instead, the contempt and sanctions orders were issued to enforce a discovery order (the PIQ order) that was part of the larger process of estimating the debtor’s asbestos liability.²⁴ Since the discovery-focused PIQ order was not a final appealable order, the orders stemming from the related motion for contempt are also not final appealable orders.²⁵ According to the majority, allowing appeals from every ruling enforcing a discovery order would conflict with the finality rule’s purpose.²⁶

The majority did not find a decision from the Bankruptcy Appellate Panel in the Ninth Circuit persuasive where similar contempt orders related to Bankruptcy Rule 2004 examinations were determined to be appealable.²⁷ This decision was instead found to be inconsistent with subsequent U.S. Supreme Court precedent.²⁸ Even though it rejected the contempt and sanctions orders as not final and unappealable as a matter of right, the majority took the time to note that other mechanisms exist for interlocutory review of important questions, if needed, “includ[ing] seeking leave for interlocutory review in the district court under 28 U.S.C. § 158(a)(3), requesting certification to the court of appeals under 28 U.S.C. § 1292(b), and obtaining certification to a court of appeals under 28 U.S.C. § 158(d)(2).”²⁹

The majority viewed the contempt and sanctions orders as interlocutory rulings in an ongoing discovery process — not final appealable orders terminating a discrete proceeding within the bankruptcy case — but one judge disagreed. Hon. Robert B. King penned a dissent and argued passionately that the contempt proceedings were a separate proceeding meriting immediate review.³⁰ As the Fourth Circuit held a year before, “to be appealable, the challenged bankruptcy decision does not have to end the entire bankruptcy case; it just has to end a proceeding inside the case.”³¹

However, in the *Bestwall* case, it is unclear what proceeding needs to end for the nonparty contempt and sanctions orders to be appropriately appealable. Do the sanctioned tort claimants and their firm need to await a final decree to end the entire bankruptcy case?³² How will they know when their 14-day appeal period begins?³³ In any event, in addition to the procedural uncertainties left open in the Fourth Circuit’s decision, this enforced delay raises several concerns, many of which were highlighted by Judge King.

The Waiting Game

Potential harm looms for the Illinois claimants and their lawyers now that they have to wait potentially years for the entire bankruptcy case to conclude before challenging their sanctions. The Illinois claimants and Maune Raichle would be branded as contemnors for an indefinite period — potentially years — given the protracted nature of the bankruptcy proceedings.³⁴ As to a more practical point, they will bear a heavy financial burden, as they have to carry the \$402,817.70 sanction (plus interest) for a prolonged period of time.

They could pay the sanction, but even in that situation, there are also issues associated not only with collecting funds to pay the hefty sanction but also the risk of not being able to recover those funds once paid if the sanction is overturned (or possibly lowered) once appeal is finally made available. Even during the remainder of the *Bestwall* bankruptcy case, problems persisted. As Judge King pointed out in his dissent, there is a potential strain on the attorney/client relationship, especially in future settlement negotiations where the interests of the lawyers and clients might diverge due to contempt sanctions.³⁵

Further, there is the potential threat of an onslaught of malpractice claims for the firm’s zealous advocacy. Judge King, for example, opined that “the Illinois Claimants may pursue an untold number of malpractice claims against their own lawyers to avoid this newfound financial liability.”³⁶ In addition, Judge King highlighted the severe professional repercussions for the lawyers. The lawyers risk additional sanctions from ethics committees and the state bar. More specifically, in many jurisdictions (including Illinois), law-

16 *Id.*

17 *Id.*

18 *Id.* at 682-87.

19 *Id.* at 684.

20 *Id.*

21 28 U.S.C. § 158(a) (emphasis added).

22 *Blair*, 99 F.4th at 685.

23 *Id.*

24 *See id.* at 686.

25 *Id.*

26 *Id.*

27 *Id.* (finding unpersuasive *Stasz v. Gonzalez (In re Stasz)*, 387 B.R. 271 (B.A.P. 9th Cir. 2008)).

28 *Id.* at 686-87.

29 *Id.* at 687.

30 *Id.* at 687-91.

31 *Kiviti v. Bhatt*, 80 F.4th 520, 529 (4th Cir. 2023).

32 *See Blair*, 99 F.4th at 684.

33 *See Fed. R. Bankr. P.* 8002(a)(1).

34 *See Blair*, 99 F.4th at 691.

35 *Id.* (“These Contempt and Sanctions Orders will severely strain attorney-client relationships.”).

36 *Id.*

continued on page 72

On the Edge: Is Finality Always Worth the Wait?

from page 37

yers held in contempt of court can face serious professional consequences, potentially including disbarment. The lawyers face all of these career risks *at present*, despite the fact that they are unable to challenge the orders until an indeterminate point *in the future*.

Advantages and Disadvantages

The Fourth Circuit decision could have far-reaching effects on how bankruptcy cases are litigated and managed, potentially shifting the balance of power in these proceedings and affecting strategies for all involved parties. This case reinforces a narrow interpretation of what constitutes a “final” order in bankruptcy proceedings. It suggests that even seemingly discrete issues (*e.g.*, contempt orders) might not be immediately appealable if they are part of an ongoing bankruptcy case.

Those involved in bankruptcy proceedings may rethink their litigation strategies, knowing that certain orders cannot be immediately appealed. This could lead to more careful consideration before taking actions that might result in contempt orders. Viewed from this lens, the decision may reinforce the need “to secure the just, speedy, and inexpensive determination of every [bankruptcy] case and proceeding.”³⁷

This ruling effectively strengthens the power of bankruptcy courts to enforce their orders without immediate oversight from higher courts. This could give bankruptcy courts more authority in managing discovery without the threat of

immediate appeal, but it might also lead to more protracted disputes over discovery issues. It could make parties more hesitant to challenge bankruptcy court orders, knowing they may have to wait until the end of the case to do so. The ruling also increases the potential risks for attorneys representing clients in bankruptcy cases. Lawyers could become more cautious in challenging bankruptcy court orders, knowing that they could face unappealable sanctions.

Furthermore, the decision potentially limits the rights of nonparties (such as law firms) in bankruptcy proceedings. It suggests that even when nonparties are sanctioned, they might not have immediate recourse to appellate courts, which could affect how outside entities interact with bankruptcy cases and whether they will be willing to take on non-debtor clients.

Conclusion

The broader implications of this decision for bankruptcy law are significant and multifaceted. As evidenced by the split on the Fourth Circuit panel, the question of whether there was a right to immediate appeal was close, highlighting the complex balance that courts must strike between procedural rules and practical justice.

In the end, the Fourth Circuit has ruled, and the Illinois claimants and their lawyers are left to bear the weight of the sanctions, unable to challenge it for now as the *Bestwall* bankruptcy case trudges on. It will be interesting to see how the appellate courts view the merits of the appeal once the orders are final and appealable. For now, we wait. **abi**

37 Fed. R. Bankr. P. 1001(a).