

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**IN RE:**

**PICCADILLY RESTAURANTS, LLC,  
ET AL.,**

**DEBTORS**

\* **CASE NO. 12-51127**  
\*  
\* **(JOINT ADMINISTRATION)<sup>1</sup>**  
\*  
\* **CHAPTER 11**  
\*  
\* **JUDGE ROBERT SUMMERHAYS**

**DEBTORS' OPPOSITION TO MOTION  
TO PERMIT LATE FILING OF PROOF OF CLAIM**

**NOW IN COURT**, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"),<sup>2</sup> who submit this Opposition (the "Opposition") to the Motion to Permit Late Filing of Proof of Claim ("Motion to Permit Late Claim") which was filed by Dora Hudson ("Hudson"), through her attorney Jack O. Morse ("Morse") (Dkt. No. 965). In support of this Opposition, the Debtors state as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

**BACKGROUND**

2. On September 11, 2012 (the "Petition Date"), the Debtors filed a petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The

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<sup>1</sup> Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

<sup>2</sup> The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. No trustee or examiner has been appointed. An Official Committee of Unsecured Creditors was appointed in these Chapter 11 cases on October 23, 2012.

4. The Debtors are jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b).

5. On October 12, 2012, the Court's matrix listed the address for Dora Hudson as "Gary Andrews, 260 Peachtree St NW, Suite 502, Atlanta, GA 30303-1201."

6. On October 28, 2012, the Debtors filed their Schedules of Assets and Liabilities (collectively, the "Schedules"). Schedule F to the Schedules lists creditors holding general unsecured claims against the Debtors.

7. Schedule F incorporated by reference Exhibit 21 to the Schedules, which listed "Contingent, Unliquidated, Disputed, Unsecured, Nonpriority Claims – Potential, Future Litigation Claims."

8. The name "Dora Hudson" appears in Exhibit 21. The "general category of allegations" appearing next to that name is "slip and fall," and the address appearing next to the name is "260 Peachtree St NW Suite 502."

9. On January 31, 2013, this Court issued an order "Establishing A Bar Date For Filing Proofs of Claim, Approving the Bar Date Notice Form, and Approving Mailing Procedures." (Dkt. No. 477).

10. In that order, the court set the bar date for filing proofs of claim in the Debtors' bankruptcy cases at 5:00 p.m. (Central Standard Time), on March 15, 2013.

11. In relevant part, the Court ordered that notice of the bar date be sent to "All

holders of Pre-Petition Claims listed on the Schedules at the address stated therein,” and “[a]ll persons and entities listed on the Court’s mailing matrix.”

12. The Court stated that if the bar date notice was executed in accord with the order, it would be “deemed good, adequate and sufficient notice.”

13. The Court further stated that any holder of any pre-petition claim who is required, but fails to file a proof of claim in accordance with the bar date order on or before the bar date would not be permitted to participate in any distribution in the Chapter 11 case on account of that claim.

14. Notice of the Court’s order setting a bar date and a separate bar date notice were mailed to the following address for Dora Hudson, “Dora Hudson, Gary Andrews, 260 Peachtree St NW, Suite 502, Atlanta, GA 30303.” (Dkt. Nos. 483 and 494).

15. Dora Hudson filed one proof of claim in this case on March 18, 2013, which was the Monday following the Friday, March 15, 2013, bar date. (Claim No. 435). The amount of that filed claim is stated as \$100,000.

16. The filed proof of claim indicates that notices to Dora Hudson should be sent to “Jack O. Morse, Attorney ,191 Cleveland Ave., Atlanta, GA 30315.”

17. Four months after she filed the proof of claim, Hudson filed this “Motion to Permit Late Filing of Proof of Claim” (Dkt. No. 965).

### **LEGAL STANDARDS**

In relevant part, Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) states:

*[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the*

period originally prescribed or as extended by a previous order or  
***(2) on motion made after the expiration of the specified period  
permit the act to be done where the failure to act was the result of  
excusable neglect.***

Fed. R. Bankr. P. 9006(b)(1) (emphasis added).

The United States Supreme Court has explained that this “excusable neglect” standard is “at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.” Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship, 507 U.S. 380, 395 (1993).

While this standard is flexible, it is not porous. In *Pioneer*, the Supreme Court explained that under Bankruptcy Rule 9006(b)(1), the requirement that a party must establish that its neglect to file a timely claim was “excusable” is a “requirement that we believe will deter creditors or other parties from freely ignoring court-ordered deadlines.” Id. at 395. In *Pioneer*, the Supreme Court held that “in determining whether [a party’s] failure to file [its] proof[] of claim prior to the bar date was excusable, the proper focus is upon whether the neglect of [that party] *and their counsel* was excusable.” Id. at 397 (emphasis in original). In other words, a party may be penalized not only for their actions or omissions but for the actions or omissions of their attorney as well. Id. at 396.

The question to be answered under Bankruptcy Rule 9006(b)(1) is whether the attorney “did all he reasonably could to comply with the court-ordered bar date.” Pioneer Inv. Servs. Co., 507 U.S. at 396. Other factors a court may consider in regard to the excusable neglect standard include, but are not limited to:

- (a) the danger of prejudice to the debtor;
- (b) the length of the delay and its potential impact on judicial proceedings;
- (c) the reason for the delay; including whether it was within the reasonable control of the movant; and

(d) whether the movant acted in good faith.

Id. at 395.

Finally, the party moving to file a late proof of claim bears the burden of proof on the motion. See Bank of America v. Allen Capital Partners, L.L.C. (In re DLH Master Land Holding, L.L.C.), 464 Fed. App'x 316, 2012 WL 798755 (5th Cir. 2012).

## ARGUMENT

### **A. Hudson did not do all she reasonably could to comply with the court-ordered bar date, and thus the Motion to Permit Late Claim must be denied.**

As explained herein, even assuming that Hudson satisfies her burden of proof, and establishes that the allegations in the Motion to Permit Late Claim are true, that motion should be denied under the standards set forth in *Pioneer* because Hudson did not do all she reasonably could have done to comply with the court-ordered bar date.

Hudson's key assertion is the she first received notice of the instant bankruptcy cases on the day before the deadline for submitting proofs of claim. Hudson alleges that during the afternoon of Thursday, March 14, 2013, she rushed to prepare a proof of claim, and mailed a proof of claim that evening, by overnight mail, to this Court. Finally, Hudson asserts that this Court's clerk's office did not accept his mailing on the bar date of Friday, March 15, 2013, and, as a result, Hudson's proof of claim was not filed until Monday, March 18, 2013, rendering it untimely.

As previously noted, in *Pioneer* the Supreme Court established that in order to find that the failure to file a timely claim qualifies as "excusable neglect" under Bankruptcy Rule 9006(b)(1), a court must determine that the claimant "did all [s]he reasonably could to comply with the court-ordered bar date." Pioneer Inv. Servs. Co., 507 U.S. at 396. However, Hudson did not do all that she could to comply with the bar date. In order to ensure that the Proof of Claim

was received by the bar date as required by the order, Hudson could have used a delivery notification service. Further, nothing prevented Hudson or her attorney from submitting the Proof of Claim electronically. She could have obtained a password by calling the clerk's office and faxing a form to them.

The fact that Hudson did not take any of these actions necessarily leads to the conclusion that her neglect was not "excusable" under Bankruptcy Rule 9006(b)(1).

**B. Hudson has not satisfied her burden of proof, and thus the Motion to Permit Late Claim must be denied.**

The party moving to file a late proof of claim bears the burden of proof, and Hudson has not satisfied this burden. See In re DLH Master Land Holding, L.L.C., 464 Fed. App'x 316. Even if the Court finds that Hudson's alleged actions were "all [s]he reasonably could [do] to comply with the court-ordered bar date," Hudson has not presented sufficient proof of his actions. Pioneer Inv. Servs. Co., 507 U.S. at 396. Again, Hudson alleges that she mailed her proof of claim on March 14, 2013, to this Court's clerk's office using an overnight mail service. She then further alleges that this Court's clerk's office "did not accept his mailing on the bar date of March 15, 2013, and, as a result, Hudson's proof of claim was not filed until Monday, March 18, 2013." Hudson offers no evidence to support these allegations. There is no receipt from an overnight mail carrier indicating that overnight mail delivery service was paid for, nor is there any documentation indicating there was an attempted delivery of the proof of claim package to the Court's clerk's office on Friday, March 15, 2013.

**C. Granting the Motion to Permit Late Claim will unduly prejudice the Debtors.**

The reorganization plans for the Debtors have been the subject of debate and negotiation for months. And since March 18, 2013, it has been assumed that Hudson's claim would be

disallowed as it was untimely. Uprooting that assumption only hinders the reorganization process.

Hudson's claim of \$100,000 is not insignificant. Allowing such a claim would reduce the already limited pool of assets which are available for unsecured creditors – making the adoption and or execution of any future reorganization plan more challenging. Further, forcing a future reorganized debtor to expend funds defending Hudson's personal injury claim could prove harmful to the estate.

### CONCLUSION

**WHEREFORE**, the Debtors pray that the Court deny the Motion to Permit Late Claim.

Respectfully submitted,

/s/ Mark A. Mintz

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