

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Tony Lee Waters

Debtor(s).

C/A No. 99-05666-W

JUDGMENT

Chapter 13

FILED
2000 FEB -2 AM 10:30
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
ENTERED
FEB 6 2000
V.L.D.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Trustee's Objection to Claim is granted; therefore, Laboratory Corporation of America's claim in the amount of \$18,099.00 filed on November 5, 1999 is disallowed.

Columbia, South Carolina,
2/2, 2000.


UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

FEB 3 2000

Syrett for Laboratory *sgmt indep*
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE *via BNC.*

VANNA L. DANIEL

Deputy Clerk

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Tony Lee Waters

Debtor(s).

C/A No. 99-05666-W

ORDER

Chapter 13

FILED
2000 FEB -2 AM 10:32
U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

ENTERED
FEB 13 2000
U.S. D.

THIS MATTER comes before the Court upon the Trustee's Objection to Claim filed on November 18, 1999 and Reply to Trustee's Objection to Claim ("Reply") by Laboratory Corporation of America ("Labcorp") filed with the Court on December 14, 1999.

Labcorp filed a claim in the amount of \$18,009.00 on November 5, 1999. The claim was late in that it was filed more than ninety days from the date of the first meeting of creditors, as required in Bankruptcy Rule 3002(c). In its Reply, Labcorp claimed that it maintained Debtor's account under the name of Corporate Choice, the name of the business Debtor operated. Debtor filed under his individual name and did not list the name "Corporate Choice" on the cover sheet where trade names should be listed.¹ Labcorp claims that when it received notice of Debtor's filing, it was unable to match Debtor's individual name on the notice to the name in its accounts. Labcorp called Debtor and was advised of the bankruptcy case number. Labcorp also claims that despite its attempts to call the Clerk's Office to verify the filing, it was unable to verify the information due to repeated busy phone signals. On November 2, 1999, Labcorp finally verified that a bankruptcy petition had been filed in Debtor's individual name. A claim was mailed the same day; however, it was not received nor filed by the Court until after the filing deadline of November 1, 1999. The Trustee filed an Objection to Claim on the basis that the claim was not

¹ Corporate Choice was, however, listed in Debtor's answers to the Statement of Financial Affairs.

timely filed pursuant to Bankruptcy Rule 3002(c). Labcorp, however, filed a Reply arguing that because the bankruptcy case was filed under Debtor's individual name, the notice of the filing was insufficient for Labcorp to respond in a timely fashion.²

Bankruptcy Rule 3002(c) provides in pertinent part that "[i]n a chapter 7 liquidation, chapter 12 family farmer's debt adjustment, or chapter 13 individual's debt adjustment case, a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code." In this case, the first meeting of creditors was held on August 2, 1999; therefore, the deadline to file a proof of claim was November 1, 1999.³ Rule 9006(b) gives courts the authority to extend certain deadlines in the case of "excusable neglect;" however, its subpart, Rule 9006(b)(3), which governs the extension of time for filing proofs of claim pursuant to Rule 3002(c), provides that "[t]he court may enlarge the time for taking action under . . . [Rule] 3002(c) . . . , only to the extent and under the conditions stated in those rules" (emphasis added).

The Supreme Court in Pioneer Investment Serv. Co. v. Brunswick Assoc. Ltd., 507 U.S. 380 (1993) held that the "excusable neglect" standard of Rule 9006(b)(1) governs the issue of late filings of proofs of claim "in Chapter 11 cases but not in Chapter 7 cases." Id. at 388. The Supreme Court explained in a footnote that "one of the time requirements listed as excepted in Rule 9006(b)(3) is that governing the filings of proofs of claim in Chapter 7 cases. Such filings are governed exclusively by Rule 3002(c); therefore, the Court concluded that the "excusable

² In its Reply, Labcorp indicated that Debtor had no objections to the claim as filed.

³ The last day of the period so computed fell on Sunday, October 31, 1999; therefore, pursuant to Rule 9006(a), the deadline for filing a proof of claim was November 1, 1999.

neglect” standard could not be used to extend the time within which to file a proof of claim in a Chapter 7 case. *Id.* at 388 n.4. Even though Pioneer Investment did not address the applicability of Rule 9006(b)(1) in Chapter 13 cases, the argument that the “excusable neglect” standard does not apply to Chapter 7 cases can be applied to Chapter 13 cases because Rule 3002(c) and Rule 9006(b)(3) applies equally to Chapter 13 and Chapter 12 cases. *See, e.g. In re Faust*, 180 B.R. 432 (Bankr. D.S.C. 1994) (“Bankruptcy Rule 3002(c), which governs the filing of proofs of claims in Chapter 12 cases as well as in Chapter 7 cases, provides that, with [five] enumerated exceptions, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors. By the operation of Bankruptcy Rule 9006(b)(3) on Rule 3002(c), creditors in a Chapter 12 proceeding who do not file a proof of claim within 90 days after the creditors’ meetings are barred from filing such a claim, whether or not there was a good reason for the failure to timely file.”); *see also Hardgrave v. La Rock (In re Hardgrave)*, 1995 WL 371462 (4th Cir. 1995) (“Creditors in a Chapter 13 bankruptcy must file a proof of claim within 90 days after the date of the first creditors’ meeting. . . . A court will not recognize a late proof of claim, even if there was a good reason for the untimely filing.”); In re Somar Concrete, Inc., 102 B.R. 44, 46 (Bankr. D. Md. 1989) (“In Chapter 7 and Chapter 13 cases, Fed.R. Bankr. P. 9006(b)(3) limits enlargement of the time in which to file a proof of claim to the specific exceptions enumerated in Rule 3002(c). Therefore, an excusable neglect inquiry is inapplicable to Chapter 7 and 13 cases.”).

The Court further finds that Labcorp had sufficient notice of the filing and its failure to respond within the deadline should not warrant the allowance of the late proof of claim. The

facts, as presented to the Court,⁴ show that Labcorp received proper and timely notice of the filing well before the deadline pursuant to Rule 3002(c). However, Labcorp waited to verify Debtor's bankruptcy filing with the Clerk's office before attempting to file a proof of claim, even though it had already been advised by Debtor that a bankruptcy case had been filed and had been informed of the specific case number.

The Court also finds that allowing the untimely claim would prejudice the remaining unsecured creditors. In fact, allowing Labcorp's claim of \$18,099.00 would reduce the unsecured creditors' dividend accordingly. It is therefore,

ORDERED that the Trustee's Objection to Claim is granted.

AND IT IS SO ORDERED.

Columbia, South Carolina,
2/2, 2000.


UNITED STATES BANKRUPTCY JUDGE

⁴ The facts, as stated in this Order, were offered by Labcorp's counsel in the Reply and at the hearing on the Reply. However, no witnesses or testimony were presented at the hearing, and the facts as stated in the Reply were not supported by an affidavit.

CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
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FEB 3 2000

Syrett for laboratory *jgma index*
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE *VIA BNC*

VANNA L. DANIEL

Deputy Clerk