

AMERICAN BANKRUPTCY INSTITUTE JOURNAL

The Essential Resource for Today's Busy Insolvency Professional

ADA Employment Discrimination Claims Addressed in *Rederford v. US Airways*

Written by:

Pamela Foohey
Dorsey & Whitney LLP; Minneapolis
foohey.pamela@dorsey.com

Eric Lopez Schnabel
Dorsey & Whitney LLP
New York and Wilmington, Del.
schnabel.eric@dorsey.com

On Dec. 14, 2009, in *Rederford v. US Airways Inc.*, 589 F.3d 30 (1st Cir. 2009), a case of first impression, the U.S. Court of Appeals for the First Circuit ruled that the remedy of reinstatement for employment discrimination under title I of the Americans with Disabilities Act (ADA)¹ against a company in bankruptcy is a dischargeable prepetition bankruptcy claim. Its decision reaffirmed the Bankruptcy Code's broad policies of affording debtors a fresh start and ensuring that creditors are treated evenhandedly. In advancing these broad principles, the First Circuit faced the ADA's conflicting and equally expansive policies—policies that it was forced to devalue in order to render a decision that promoted the purposes of the Code.²



Pamela Foohey

The decision demonstrates the First Circuit's willingness to preserve the power of the bankruptcy discharge and priority scheme even when such a safeguarding adversely impacts the efficacy of other federal policies. Its holding should provide comfort to

About the Authors

Pamela Foohey is an associate in the Financial Restructuring and Bankruptcy Group in Dorsey & Whitney LLP's Minneapolis office and also is a post-graduate research fellow at Harvard Law School. Eric Lopez Schnabel is a partner in the Financial Restructuring and Bankruptcy Group in the firm's New York and Delaware offices.

debtors as well as lenders and other creditors of companies preparing to file for bankruptcy.

Facts and Procedural Posture of *Rederford v. US Airways*

Janelle Rederford worked for US Airways as a customer service representative for approximately 24

When the supervisor did not receive an amended certification by the deadline, Rederford was fired.



Eric Lopez Schnabel

On April 25, 2002, Rederford filed a charge of discrimination under the ADA with the Equal Employment Opportunity Commission (EEOC) and cross-filed her complaint along with an official charge of discrimination against US Airways with the Rhode Island Human Rights Commission (RIHRC). On Aug. 11, 2002, US Airways filed a voluntary petition for chapter 11 relief and soon thereafter notified Rederford of its bankruptcy proceeding. Enclosed in the notification was a proof of claim form

Feature

years before US Airways abruptly terminated her employment on Jan. 31, 2002. Throughout most of these 24 years, Rederford suffered from lupus, a chronic autoimmune disease that attacks and destroys healthy body tissue, causing disabling inflammation and severe pain. She was absent from work for four days because of a lupus-related illness during the month before her termination. Upon her return to work, Rederford's supervisor requested that she submit a doctor's certification attesting to her illness. Though Rederford timely provided her supervisor with the requested certification, the supervisor rejected what she submitted as inadequate and directed her to present an amended certification by a certain date.

and a warning that if Rederford did not submit a proof of claim by the stipulated bar date, she would be "forever barred, estopped and enjoined from" asserting her alleged ADA claim against US Airways.³ Rederford timely submitted her claim.

US Airways subsequently filed an objection to a number of claims, including Rederford's ADA employment discrimination claim. Though US Airways served notice of its objection on Rederford and informed her that unless she requested a hearing as to the objection, the claim would be disallowed, Rederford failed to respond, believing that her claim was covered by US Airways' insurance policies. The bankruptcy court sustained US Airways' objection and confirmed its plan of reorganization,

¹ Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§12101-12213 and scattered sections of titles 2, 29 and 47 U.S.C.).

² See Robert L. Burgdorf, Jr., "The Americans With Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute," 26 *Harv. C.R.-C.L. L. Rev.* 413, 413-14 (1991); Joanne Gelfand, "The Treatment of Employment Discrimination Claims in Bankruptcy: Priority Status, Stay Relief, Dischargeability and Exemptions," 56 *U. Miami L. Rev.* 601, 601-06 (2002), per *Bluebook* R3, 2(a).

³ *Rederford*, 589 F.3d at 33.

thereby disallowing Rederford's claim and permanently enjoining suit pursuant to it. Only later did Rederford realize that US Airways' insurance policies did not cover her claim.

More than a year after the bankruptcy court confirmed US Airways' plan, the RIHRC found that there was probable cause to believe that US Airways had discriminated against Rederford. US Airways filed a motion to dismiss with the RIHRC, arguing that its confirmed plan acted to discharge Rederford's claim. The RIHRC granted the motion, and Rederford missed the deadline to appeal the dismissal.

Soon after the RIHRC determined that US Airways may have discriminated against Rederford, the EEOC issued Rederford a notice of right to sue. With her RIHRC proceeding dismissed, in accordance with the EEOC's notice, Rederford filed a complaint in the U.S. District Court for the District of Rhode Island, alleging that her termination violated title I of the ADA and asking for reinstatement, compensatory, special and punitive damages, and attorney's fees. Specifically, Rederford asserted "that US Airways failed to grant [her] reasonable accommodation for her disability, made prohibited inquiries... regarding the...disability, failed to interact in good faith with [her] to reach a reasonable accommodation," and instead illegally retaliated by terminating her.⁴ As with the RIHRC proceeding, US Airways filed a motion to dismiss on the basis that the bankruptcy court's confirmation of its plan and issuance of an injunction barred Rederford's claim.

In response, Rederford argued that her request for reinstatement did not constitute a claim under the Bankruptcy Code, and thus could not be disallowed or discharged.⁵ The district court rejected her argument and granted US Airways' motion, whereupon Rederford appealed to the First Circuit. On appeal, Rederford conceded that the bankruptcy court's injunction barred her request for monetary damages, but maintained that the confirmed plan and injunction did not encompass her request for reinstatement, an equitable remedy specifically provided for by the ADA, again grounding her argument in the Code's definition of "claim."

ADA vs. the Bankruptcy Code

At its signing ceremony, then-President George H.W. Bush described

the ADA as "the world's first comprehensive declaration of equality for people with disabilities."⁶ Prior to its official implementation, Sen. Edward M. Kennedy referred to the ADA as an "emancipation proclamation" for the disabled, and observed that it was "difficult to believe that [the current] Congress will enact a more far-reaching or more important bill."⁷ Commenting on the ADA, one individual with a disability remarked that "[e]ach disabled person has a story, often including pain, impairment, disorientation and loss of control. Each disabled person lives always on the threshold of separation, exile and involuntarily otherness... [The ADA] articulated in great detail the requirements for making the world available to disabled people."⁸

The First Circuit's decision is an important reaffirmation of the power of discharge and the priority scheme in bankruptcy. In the course of its discussion of what constitutes a "claim," the First Circuit outlines and then reiterates the broad policies underlying the Bankruptcy Code at length, while dealing cursorily with the ADA and its underlying policies.

In order to fulfill the ADA's sweeping promise to remove disabled individuals from isolation and integrate them into all aspects of society, the statute is comprised of five titles spanning more than 52 pages of written text.⁹ Speaking directly to the ADA's introductory statement that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation...and economic self-sufficiency for such individuals," title I prohibits employment discrimination "against a qualified individual with a disability because of the disability of such individual," specifically providing that employers must make "reasonable accommodations" for qualified individuals

and granting individuals discriminated against the ability to demand that they be hired or reinstated in addition to requesting monetary damages.¹⁰

The inclusion of these injunctive remedies along with the requirement that employers make reasonable accommodations demonstrates the ADA's commitment to ensuring that disabled individuals are able to enter and remain in the workplace. Indeed, a careful reading of the statute, legislative history and studies prompting the ADA reveal that title I is designed to force employers to overcome deeply embedded stereotypical beliefs about the capabilities of disabled individuals by accepting them in the workplace and not merely paying a fine in order to continue to discriminate.¹¹

Like the ADA, the Bankruptcy Code also can be described as a sweeping statutory scheme. From a debtor's perspective, bankruptcy serves to wipe the slate clean so that the debtor may emerge able to start over and successfully fulfill obligations going forward; from a creditor's perspective, bankruptcy provides an orderly repayment of debts owed to it by an unaccountable debtor. Additionally, in the context of reorganization of a corporate debtor, chapter 11 aims to preserve going-concern value and encourage creditors to work with a failing company so that the company has an opportunity to survive.¹²

As identified by the First Circuit, the operative purposes of the Bankruptcy Code in *Rederford* were its attempt to preclude artificially distinguishing among creditors based on whether their right to payment originated from an equitable or legal source, to ensure that all creditors with claims reducible to payment would be treated evenhandedly and to provide finality for the debtor. Faced with Rederford's request for reinstatement under the ADA, a request that necessarily would not provide US Airways with finality and would place Rederford ahead of creditors whose monetary claims were discharged if the request survived the confirmation of US Airways' reorganization plan, but a request that was integral to the primary purposes of the ADA, the First Circuit

¹⁰ 42 U.S.C. §§12101(a)(8), 12112(a), 12112(b)(5)(A) and 12117(a). See also Burgdorf, *supra* note 2, at 460-64.

¹¹ See, e.g., Burgdorf, *supra* note 2, at 420-23 (discussing studies regarding widespread effects of discrimination on disabled individuals' ability to find and retain jobs); Carlos A. Ball, "Preferential Treatment and Reasonable Accommodation under the Americans with Disabilities Act," 55 *Ala. L. Rev.* 951 (2004) (discussing innovative "model of equality" under which ADA operates).

¹² See Elizabeth Warren and Jay Lawrence Westbrook, *The Law of Debtors and Creditors*, 873-87 (5th ed. 2006).

⁴ *Id.* at 34.

⁵ Rederford also put forth arguments regarding judicial estoppel and the doctrine of unclean hands, both of which the district court rejected, and which the First Circuit similarly dismissed.

⁶ See Burgdorf, *supra* note 2, at 413-14.

⁷ See *id.* at 414.

⁸ Andrea Dworkin, "Through The Pain Barrier," *The Guardian*, April 23, 2005, available at www.guardian.co.uk/books/2005/apr/23/features.weekend.

⁹ See Burgdorf, *supra* note 2, at 453.

was forced to decide which federal policy to promote.

The Decision

The First Circuit began its analysis by evaluating the definition of “claim” in conjunction with legislative history. Section 101(5) of the Bankruptcy Code defines a “claim” as including any “right to payment” or any “right to an equitable remedy for breach of performance if such breach gives rise to a right to payment.” In writing this definition, Congress intended to afford the term “claim” the “broadest possible definition.”¹³ Accordingly, several courts have held that a right to an equitable remedy is a “claim” under the Code if “a monetary payment is an alternative for the equitable remedy.”¹⁴

After outlining the operative purposes of the Bankruptcy Code that this broad definition comports with, the First Circuit observed that if an equitable remedy is not reducible to payment, it likely requires some future action by the debtor and while it does not fit into the Code’s priority scheme, it “does not threaten the finality of the proceedings.”¹⁵ In contrast, if an equitable remedy is reducible to payment, but a bankruptcy court declines to discharge it, the debtor will emerge from bankruptcy uncertain about the status of the claim and less able to reorganize into a successful business going forward. Further, if such a remedy is not reduced to a monetary payment, creditors with similar monetary claims will be disadvantaged to the benefit of the holder of the equitable remedy, contravening the priority scheme.

With this distinction in mind, the First Circuit turned to the ADA. It started by noting that the remedies available under title I of the ADA mirror those available for employment discrimination suits under title VII of the Civil Rights Act of 1964, as to which courts have held that monetary damages, though disfavored, are an alternative remedy to reinstatement. The First Circuit then commented that it had not been presented with any circuit case directly on point regarding the ADA. However, it found a useful analogy in *Air Line Pilots Ass’n v. Cont’l Airlines*,¹⁶ a Third Circuit case that held that an airline pilot’s right to seniority integration in the event of a merger

pursuant to a collective-bargaining agreement was a “claim” as defined by the Bankruptcy Code. In reaching its decision, the Third Circuit compared the right provided by the collective bargaining agreement to the right to reinstatement following termination because of employment discrimination.

Working off the holding in *Air Line Pilots*, the First Circuit concluded that because title I of the ADA provides that monetary damages are an alternative remedy to reinstatement, even if that remedy is not a perfect substitute, it is a sufficiently adequate substitute in the context of the Bankruptcy Code’s definition of “claim.” The First Circuit reiterated that permitting Rederford to pursue reinstatement, even if she was to limit her requested relief solely to reinstatement, “would grant her the equivalent of a preference over other creditors” and “thwart the finality of [the bankruptcy] proceeding and US Airways’ reorganization plan.”¹⁷ As US Airways had provided Rederford proper notice of how to pursue her ADA employment discrimination claim, and she had failed to do so, the First Circuit upheld the district court’s order granting US Airways’ motion to dismiss on the basis that the bankruptcy court’s confirmation of its plan and issuance of an injunction barred Rederford’s claim.

Implications and Takeaways

The First Circuit’s decision is an important reaffirmation of the power of discharge and the priority scheme in bankruptcy. In the course of its discussion of what constitutes a “claim,” the First Circuit outlines and then reiterates the broad policies underlying the Bankruptcy Code at length, while dealing cursorily with the ADA and its underlying policies. The decision can be viewed as the latest step in a line of cases elevating the purposes of the Code to the detriment of individuals holding legitimate claims for discrimination.¹⁸ It also can be taken as a strong message that similar claims held by creditors will not be elevated within the priority scheme merely because a creditor interacts differently with and is more dependent on a debtor—for example, as an employee rather than as a supplier of goods and services who views the debtor as one of many obligors and can write off the debt. Indeed, when faced with discrimination claims in the context

of corporate succession outside of the bankruptcy scheme, courts specifically have cited the purposes of federal statutes prohibiting discrimination as reason to saddle the successor with the liability. Where a predecessor company is guilty of discrimination against an employee, courts have explained that the Civil Rights Act and similar federal statutes mandate that the successor company take responsibility for remedying the discrimination, provided that several conditions are met exactly, because these statutes seek to eradicate workplace discrimination, and this goal will not be achieved if a company can simply sell its assets and escape the consequences of its discriminatory acts.¹⁹ This stark contrast further demonstrates the power of the First Circuit’s affirmation of the policies of the Code.

Of immediate significance to debtors and creditors of companies preparing to file for bankruptcy, the decision concretely holds that claims for employment discrimination under title I of the ADA constitute “claims” under the Bankruptcy Code regardless of whether the requested relief is for monetary damages or reinstatement. If the debtor properly notices its bankruptcy filing to those individuals with pending claims and provides them with an opportunity to file proofs of claim, the confirmation of its plan of reorganization should discharge the claims and preclude those individuals from requesting that the reorganized company pay money based on the resolution of those claims, or, if applicable, reinstate the individuals. Senior creditors and debtors should take comfort that prepetition claims under title I of the ADA are not entitled to some higher priority than other general unsecured claims, even when such a claim is for the equitable remedy of reinstatement. Overall, the decision provides some certainty in attempting to plan the possible outcomes of restructuring the debt of a troubled company through the chapter 11 bankruptcy process. ■

Reprinted with permission from the ABI Journal, Vol. XXIX, No. 2, March 2010.

The American Bankruptcy Institute is a multi-disciplinary, nonpartisan organization devoted to bankruptcy issues. ABI has more than 12,500 members, representing all facets of the insolvency field. For more information, visit ABI World at www.abiworld.org.

¹³ *Rederford*, 589 F.3d 35-36 (quoting *F.C.C. v. NextWave Pers. Commc’ns*, 537 U.S. 293, 302 (2003)).

¹⁴ *Id.* at 36 (quoting *Air Line Pilots Ass’n v. Cont’l Airlines*, 125 F.3d 120, 133 (3d Cir. 1997)).

¹⁵ *Id.* at 36-37.

¹⁶ 725 F.3d 120, 136 (3d Cir. 1997).

¹⁷ *Rederford*, 589 F.3d at 37.

¹⁸ See Gelfand, *supra* note 2, at 628-38 (discussing case law interpreting specific discharge exemption contained in §523(a)(6) as to title VII employment discrimination and sexual harassment claims).

¹⁹ See Michael T. Kafka, “Corporate Successor Liability in Minnesota and Other Jurisdictions: A Legal Landscape Where Even Purchasers of Assets Should Tread with Caution,” 26 *Hamline L. Rev.* 1, 31-34 (2002).