THE RECONSIDERATION OF CONTINGENT AND DISPUTED CLAIMS UNDER BANKRUPTCY CODE SECTION 502(j)

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I. INTRODUCTION

In many chapter 11 reorganization proceedings, the reduction of claims through the claims objection and estimation pro-

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cess[1] is an essential element in creating a confirmable plan of reorganization. Claims are allowed unless an objection is filed. If an objection is filed, the bankruptcy court, after notice and hearing, determines the amount of the claim and may allow or disallow it.[2] For the purposes of allowing such claim, the court, under § 502(c) of the Bankruptcy Code, may estimate any contin-

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[1] The claims objection process is governed by § 502 of the Bankruptcy Code and Bankruptcy Rule 3007. Bankruptcy Rule 3007 provides:

> An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

FED. R. BANKR. P. 3007. For text of relevant provisions of § 502, see *infra* notes 2-4.

[2] Section 502(b) of the Bankruptcy Code provides:

> (b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that —
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> (1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;
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> (2) such claim is for unmatured interest;
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> (3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;
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> (4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;
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> (5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;
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> (6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds —
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> (A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of —
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> (i) the date of the filing of the petition; and
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> (ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
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> (B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;
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> (7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds —
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> (A) the compensation provided by such contract, without acceleration, for one year following the earlier of —
>
> (i) the date of the filing of the petition; or
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> (ii) the date on which the employer directed the employee to

gent or unliquidated claim, where liquidating the amount of such claim would otherwise unduly delay the administration of the case.[3] In addition, under § 502(e)(1)(B), the court possesses the authority to disallow a contingent claim or unliquidated claim in its entirety.[4]

Once the contingent or unliquidated claim has become non-contingent by reason of judgment or settlement, however, the claimant may obtain reconsideration of the disallowed or estimated claim pursuant to § 502(j) and Bankruptcy Rule 3008.[5] Thus, potentially significant claims that were sharply reduced or vanished entirely through estimation or disallowance may suddenly reappear. A potential claimant with a contingent and unliquidated claim is not clearly subject to any statute of limitations and neither the statutory language, legislative history nor case law provide any express time limit within which a subsequently liquidated claim may be reconsidered.[6] Consequently, a confirmed plan of reorganization and disclosure statement may not adequately reveal the distributions to be made to creditors, par-

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terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates; or

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor.

11 U.S.C. § 502(b) (1988).

[3] Section 502(c) states:

(c) There shall be estimated for purposes of allowance under this section —

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

Id. § 502(c).

[4] Section 502(e)(1) provides in pertinent part:

[T]he court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured, the claim of a creditor, to the extent that —

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution . . . .

Id. § 502(e)(1)(B).

[5] *See id.* § 502(j); FED. R. BANKR. P. 3008.

[6] A claimant holding a contingent or unliquidated claim may be subject to a five-year limitation under § 1143, however. *See infra* notes 77-78 and accompanying text (discussing § 1143).

ticularly where a subsequent liquidated and allowed contingent claim is large in amount.[7] In short, the circularity inherent in § 502(j) may seriously imperil the finality of the plan voting process.

Part II of this Article analyzes the historical development and scope of § 502(j). Part III describes the time frame within which a § 502(j) motion must be brought and delineates potential problems inherent in the time frame. Part IV sets forth the factors that a court examines in determining whether a § 502(j) motion should be granted and, lastly, Part V concludes by suggesting improvements to the current statutory language.

II. THE GENESIS AND SCOPE OF SECTION 502(J)

A. Derivation of Statutory Language

Currently, § 502(j), as amended by the Bankruptcy Amendments and Federal Judgeship Act of 1984[8] (the 1984 Amendment), provides:

> A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.[9]

Section 502(j) is supported by Bankruptcy Rule 3008, which states:

> A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.[10]

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[7] There exist a few inherent time restrictions within which a § 502(j) motion for reconsideration must be brought. For a complete analysis, see *infra* notes 47-78 and accompanying text.

[8] Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 95-353, 98 Stat. 333 (1984) (codified as amended at 11 U.S.C. §§ 101-1330 (1984)).

[9] 11 U.S.C. § 502(j).

[10] FED. R. BANKR. P. 3008.

The current statutory language is more expansive than the original language set forth in § 502(j) of the Bankruptcy Reform Act of 1978[11] (former Code § 502(j)). Former Code § 502(j) provided that "[b]efore a case is closed, a claim that has been allowed may be reconsidered for cause, and reallowed or disallowed according to the equities of the case."[12] On its face, former Code § 502(j) did not provide for the reconsideration of disallowed claims.

Section 502(j) was derived from sections 2a(2)[13] and 57k[14] of the former Bankruptcy Act of 1898[15] (the Bankruptcy Act), as amended, which, in turn, were derived from "the ancient and elementary power of a Bankruptcy Court to reconsider any of its orders notwithstanding that an appeal also lies from some of its orders."[16] Section 57k of the Bankruptcy Act provided: "Claims which have

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[11] The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified at 11 U.S.C. §§ 101-151302 (1988 & Supp. II 1990)) *amended by* Pub. L. No. 98-249, 98 Stat. 116 (1984); Pub. L. No. 98-271, 98 Stat. 163 (1984); Pub. L. No. 98-299, 98 Stat. 214 (1984); Pub. L. No. 98-325, 98 Stat. 268 (1984); Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (1984); Pub. L. No. 98-454, 98 Stat. 1745 (1984); Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-254, 100 Stat. 3088 (1984).

[12] 11 U.S.C. § 502(j), *amended by* 11 U.S.C. § 502(j) (1984).

[13] 11 U.S.C. § 11 (repealed 1978).

[14] 11 U.S.C. § 93(k) (repealed 1978).

[15] Bankruptcy Act of 1898, July 1, 1898, c. 541, § 70(a), 30 Stat. 565, U.S. Comp. Stat. 1901.

[16] *In re* Republic Fabricators, Inc., 104 B.R. 933, 940 (Bankr. N.D. Ind. 1989). Judge Learned Hand, referring to these "ancient and elementary powers," commented:

> On the other hand, if a referee is a court at all, there is no warrant for saying because an appeal lies from his orders, that he has not the ancient and elementary power to reconsider those orders, nor the faintest reason why he should not do so. That power is of course limited in duration when there are terms of court, but in bankruptcy there are none. As to a referee's being a court, not only "may" he be the "court of bankruptcy," he is affirmatively "invested . . . with jurisdiction to . . . perform such part of the duties . . . as are by this act [title] conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts."

In re Pottasch Bros. Co., 79 F.2d 613, 616 (2d Cir. 1935) (citations omitted). *See also* Wayne United Gas Co. v. Owens-Illinois Glass Co., 300 U.S. 131, 137 (1937) (stating that "the bankruptcy court, in the exercise of a sound discretion, if no intervening rights will be prejudiced by its action, may grant a rehearing upon application diligently made and rehear the case upon the merits . . ."); *In re* Met-L-Wood Corp., 861 F.2d 1012, 1018 (7th Cir. 1988) (observing that "the old inherent power to reconsider bankruptcy orders has been merged into [Rule 60(b)]"), *cert. denied*, 490 U.S. 1006 (1989); Brielle Assoc. v. Graziano, 685 F.2d 109, 111 (3d Cir. 1982) (discussing cases that have mentioned the " 'ancient and elementary power' of a bankruptcy court to reconsider any of its orders").

been allowed may be reconsidered for cause and reallowed or rejected in whole or in part according to the equities of the case, before but not after the estate has been closed."[17]

Section 2a(2) of the Bankruptcy Act provided in pertinent part:

> The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested, within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to — (2) Allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates . . . .[18]

Although § 57k solely referred to the reconsideration of allowed claims, § 2a(2) vested the court with jurisdiction to reconsider allowed or disallowed claims.

Similarly, Bankruptcy Rule 3008 was derived from former Bankruptcy Rule 307, which provided that "[a] party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. If the motion is granted, the court may after hearing on notice make such further order as may be appropriate."[19]

B. Whether a Disallowed Claim may be Reheard

Although former Code § 57k provided for reconsideration of allowed claims only, Bankruptcy Rule 307 also provided for the reconsideration of disallowed claims. The Rule's advisory committee note explained that Rule 307 was intended to prevent the language of § 57k from being interpreted as preventing reconsideration of a disallowed claim.[20] Despite the language of § 57k, Rule 307 did not conflict with the Bankruptcy Act, given the language of § 2a(2) that provided the bankruptcy court with jurisdiction to reconsider allowed or disallowed claims: "Rule 3008 and former Rule 307 expanded, respectively, on preamendment section 502(j) of the Code and Section 57k of the former Act by permitting reconsideration of disallowed as well as allowed claims."[21]

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17 11 U.S.C. § 93(k) (repealed 1978).
18 *Id.* § 11(a)(2).
19 FED. R. BANKR. P. 307 (1976).
20 *Id.* (advisory committee's note).
21 8 COLLIER ON BANKRUPTCY ¶ 3008.02 (15th ed. 1993).

When enacting former Code § 502(j), Congress carried over the language of § 57k, yet failed to appropriate the language of § 2a(2) that vested bankruptcy courts with the power to reconsider a disallowed as well as an allowed claim. Thus, in drafting former Code § 502(j), Congress created an ambiguity between Bankruptcy Rule 307 and the new statute — while former Code § 502(j) provided only that an allowed claim could be reconsidered, Rule 307 provided for "reconsideration of an order allowing or disallowing a claim against the estate."[22] The statutory omission made it unclear whether the bankruptcy court could reconsider an order disallowing a claim.

Commentators and several courts concluded that Congress intended to eliminate the courts' power to rehear a disallowed claim.[23] Indeed, it has been observed that:

> The express legislative intent to recodify § 57k of the 1898 Act might be construed as a rejection of the view taken in Bankruptcy Rule 307, and an adoption of the view that "the purpose of [former § 57k] is to protect the estate against claims which have been erroneously allowed; not to protect the creditor against partial disallowance. He needs no such protection. If he is aggrieved by the referee's order of allowance, he may petition for review . . . and, if necessary, appeal from the court's order. But the remedy by review and appeal would not be adequate protection for the estate. Claims are usually allowed before the trustee or other creditors have had any opportunity to get sufficient information to oppose them or to determine whether the allowance is correct."[24]

This view was buttressed by the well-settled principle that "rules and regulations which are . . . executive or administrative . . . are not controlling on the courts, and cannot alter or extend the plain meaning of a statute."[25]

Despite this reasoning and the omission of a provision similar to § 2a(2) from former Code § 502(j), the Third Circuit Court of Appeals and the Ninth Circuit Bankruptcy Appellate Panel reached the opposite conclusion and held that a bankruptcy court possesses

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22 FED. R. BANKR. P. 307 (1976).

23 *See In re* Sapienza, 27 B.R. 526, 528 (Bankr. W.D.N.Y. 1983) (quoting 1 BANKRUPTCY SERVICE LAWYER'S EDITION § 628(1), at 535).

24 *Id.*

25 82 C.J.S. *Statutes to Stipulation* § 359 (1953). *See* Koshland v. Helvering, 298 U.S. 441, 447 (1936) (declaring that "where . . . the provisions of [an] act are ambiguous, and its directions specific, there is no power to amend it by regulation"). *See also* 28 U.S.C. § 2075 (1988) (providing that "the Bankruptcy Rules shall not abridge, enlarge, or modify any substantive right").

the power to reconsider a disallowed claim.[26] These courts noted that Bankruptcy Rule 307 was based upon the ancient and elementary power of a referee to reconsider any of his orders.[27] Accordingly, in the absence of any legislative history indicating disapproval of Rule 307, a previously disallowed claim was eligible for reconsideration.[28]

On August 1, 1983, new Bankruptcy Rules became effective, and Rule 3008 supplanted former Rule 307.[29] Rule 3008 provided, in part, that "[a] party in interest may move for . . . an order allowing *or disallowing* a claim against the estate."[30] The advisory committee comments to Rule 3008 noted that in enacting the rule, Congress adopted the reasoning behind former Rule 307: "[The] rule recognizes, as did former Bankruptcy Rule 307, the power of the court to reconsider an order of disallowance on appropriate motion."[31] As with Rule 307, however, Rule 3008 was inconsistent with the more restrictive language of the statute, former Code § 502(j), which referred solely to allowed claims.

A 1984 Amendment to § 502(j) finally put the issue to rest by expressly providing for the reconsideration of disallowed as well as allowed claims. Thus, it is presently undisputed that bankruptcy courts have jurisdiction to reconsider orders disallowing claims.

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26 *See* Brielle Assoc. v. Graziano, 685 F.2d 109, 111-12 (3d Cir. 1982); *In re* Resources Reclamation Corp. of America, 34 B.R. 771, 772 (BAP 9th Cir. 1983). *See also In re* Miles, 39 B.R. 494, 497 (Bankr. W.D.N.Y. 1984) (holding that bankruptcy court is empowered to reconsider disallowed claim); *In re* Washington County Broadcasting, Inc., 39 B.R. 77, 78-79 (Bankr. D. Me. 1984) (same) (citations omitted).

It should be noted that § 502(j) may not be used to extend a creditor's time limit to file a claim. *In re* Government Sec. Corp., 107 B.R. 1012, 1022-23 (S.D. Fla. 1989). Section 502(j) only applies "to reconsideration of an *order* allowing or disallowing a claim," and where no order has previously been entered with respect to the allowance or disallowance of a late-filed claim, the section does not apply. *In re* Government Sec. Corp., 95 B.R. 829, 833 (S.D. Fla. 1988). *See also In re* McLean Indus., Inc., 121 B.R. 704, 707 n.6 (Bankr. S.D.N.Y. 1990) (stressing that § 502(j) only applies where there has been a court order allowing or disallowing the claim); *In re* Padget, 119 B.R. 793, 799 (Bankr. D. Colo. 1990) (stating that § 502(j) cannot be used by a creditor to object to the treatment of the undersecured portion of its claim where the creditor failed to properly amend its secured proof of claim to include its undersecured portion as an unsecured claim).

27 *Brielle Assoc.*, 685 F.2d at 111. *See Resources Reclamation*, 34 B.R. at 772-73 (adopting the Third Circuit's reasoning in *Brielle*).

28 *Brielle Assoc.*, 685 F.2d at 111-12; *Resources Reclamation*, 34 B.R. at 773.

29 The Bankruptcy Rules were superseded in 1991 by the new Federal Rules of Bankruptcy Procedure. *See* FED. R. BANKR. P. 1001-9035 (1991). Nevertheless, the text of Bankruptcy Rule 3008 remains unchanged.

30 FED. R. BANKR. P. 3008 (emphasis added).

31 *Id.* (advisory committee's note).

C. *Whether Section 502(j) may be Used to Recover Distributions*

One concern arising from § 502(j) is whether the section can lead to disgorgement of distributions already made under a confirmed plan. The general rule derived from the plain meaning of § 502(j) and case law is that dividends already paid to other creditors may not be recovered where a claim previously disallowed has been reconsidered and allowed. Instead, future dividend payments will be dedicated first as "catch-up" payments to the holder of the newly allowed claim. In accordance with the current statutory language, the Sixth Circuit, in *In re Chattanooga Wholesale Antiques, Inc.*,[32] which was decided under former Code § 502(j), held that a court's authority to reconsider a claim did not grant the trustee power to recover dividends already paid under a confirmed plan.[33] The Sixth Circuit remarked:

> The [bankruptcy] court did not balance the equities because it concluded, as a matter of law, that § 502(j), both as it stood in 1982 and as it was amended in 1984, did not permit recovery of post-confirmation payments in the present case. The bankruptcy court relied upon the fact that the confirmation of a plan revests the property of the estate in the debtor and that § 549(a) limits the right of a trustee's recovery to transfers of estate property. When property revests in the debtor, the binding effect of the confirmation order as provided in § 1141(a) would be rendered meaningless if a trustee could recapture payments made pursuant to the order. Section 502(j) was not intended to provide an avenue of attack on the finality of a binding order of confirmation.[34]

Contrary authority exists, however. Applying former Code § 502(j), the bankruptcy court in *In re Kelderman*,[35] vacated its prior "order for payment of dividends" and further ordered the trustee, if necessary, to "commence an adversary proceeding pursuant to Bankruptcy Rule 7001(l) to recover excess dividends paid to creditors."[36] In *Kelderman*, a creditor's proof of claim, date-stamped by the court clerk, inexplicably failed to reach the court file or the claims register. Consequently, the chapter 7 trustee omitted the creditor from the final petition for allowance, distribution and dis-

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32 930 F.2d 458 (6th Cir. 1991).

33 *Id.* at 463-64.

34 *Id.* at 464.

35 75 B.R. 69 (Bankr. S.D. Iowa 1987). Even though the reconsideration motion was brought in 1984, the debtor in *Kelderman* had filed its bankruptcy petition in 1983, and, as a result, the court looked to former Code § 502(j) rather than the version enacted by the 1984 Amendment. *Id.* at 70.

36 *Id.* at 71.

charge, as well as the order for the payment of dividends. The creditor did not receive notice of the final report or dividend payment. Five months after the order for payment of dividends was issued, the creditor sought reconsideration under § 502(j) as well as the recovery of dividends already distributed to other creditors. The *Kelderman* court determined that it had an "implied grant of authority to reconsider an order of payment and to authorize recovery of excess payments."[37]

The importance of *Kelderman* may be diminished in that the case was decided under former Code § 502(j), which did not include the current statutory language that "[r]econsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim that is not reconsidered."[38] The *Kelderman* court, in dictum, apparently disregarded this express language, however, stating that the trustee could recover any excess dividends under the last sentence of the 1984 Amendment to Code § 502(j), which provided that "[t]his subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor."[39]

Kelderman appears to be an anomalous case, most likely limited to the situation where the court attempts to correct its clerk's own mistake, rather than any error caused by negligence or inadvertence of the movant. Moreover, *Kelderman* probably is not authoritative in light of the language contained in § 502(j) of the current Code and other case law.

D. Whether Section 502(j) may be Used to Alter a Prior Vote

Another issue that has arisen under § 502(j) is whether the section may be used to alter a prior vote. Section 502(j) permits the reconsideration of an allowed or disallowed claim. Case law, however, limits such reconsideration to determining a creditor's right to share in distributions and does not extend to permitting a creditor to vote after a plan has been confirmed.[40] Although no

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[37] *Id.* at 70. *See also In re* Jules Meyers Pontiac, Inc., 779 F.2d 480, 482 (9th Cir. 1985) (concluding that § 57(l) of the Bankruptcy Act provided the bankruptcy court with the power to order recovery of erroneously paid dividends pursuant to an amended order upon weighing the equities of the case).

[38] 11 U.S.C. § 502(j).

[39] *See id.*; *Kelderman*, 75 B.R. at 70.

[40] *See, e.g., In re* Graco, Inc., 267 F. Supp. 952, 955 (D. Conn. 1967) (stating that "claims allowed and voting at the time of the conclusion of the creditors' meeting will not be nullified . . . because subsequently disallowed pursuant to the action of

legislative guidance exists as to whether § 502(j) may be used to alter the voting rights of creditors, the bankruptcy court, in *In re Spring Gardens Foliage, Inc.*,[41] reasoned:

> A binding and final determination of the acceptances prior to the confirmation of a plan is . . . not only sensible, but self-evident and dictated by the economic realities of business life. . . . [If § 502(j) could be used to determine and change voting rights,] objections interposed to claims under § 502(j) could change the result of the vote at any time so long as the case is open and even after confirmation. There is nothing in the Code which indicates that Congress intended to change the scheme of determination of the vote on a plan by enacting § 502(j).[42]

The approach taken by the court in *Spring Gardens* is quite sensible. Any other approach would severely threaten the finality of the confirmation process.

E. Section 502(j) may not be Used to Reconsider Valuation Dates

Furthermore, § 502(j) may not be employed to change the valuation date of collateral. In *In re McAteer*,[43] the debtors filed a joint chapter 13 petition. Prior to their filing, the debtors obtained a purchase money loan with which to purchase a motor vehicle. In connection with this loan, the debtors purchased credit life insurance. After the filing, the court confirmed the debtors' plan, which proposed to pay the secured creditor the value of its vehicle, as well as ten percent of the unsecured balance. Eight months after confirmation, one of the debtors died and the insurance company paid the secured creditor the full amount due on the purchase money loan, an amount that exceeded the payments to the secured creditor under the plan. The court granted the surviving debtor's motion to compel the turnover of the insurance funds and denied the secured creditor's cross-motion for reconsideration of its claim.[44]

The *McAteer* court held that the value of the bank's secured

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the referee or court under § 2(2) [sic] and § 57(k)"); *In re* Spring Garden Foliage, Inc., 17 B.R. 882, 885 (Bankr. M.D. Fla. 1982) (concluding that "§ 502(j) indeed permits the reconsideration of an allowed claim, but only for the purpose of determination of the creditor's right whose claim is subject to reconsideration to share in the distribution and not for the purpose of voting after the plan has been confirmed").

41 17 B.R. 882 (Bankr. M.D. Fla. 1982).

42 *Id.* at 885.

43 130 B.R. 726 (Bankr. D.N.J. 1991).

44 *Id.* at 729.

claim was fixed at the time of the petition's filing and did not change merely because it was paid with insurance proceeds.[45] Section 502(j) could not be used to re-evaluate the creditor's secured claim and thereby increase the amount it would receive under the confirmed plan of reorganization. The court explained that "the value of . . . [the secured creditor's collateral] is established and fixed by § 506(a). The amount of a claim is not impacted by the nature of the proceeds used to pay that claim, rather it is dependent solely upon the value of the collateral at the time of the filing."[46]

III. TIME LIMITATIONS

A. Prior Statutory Language

Section 57k of the Bankruptcy Act and former Code § 502(j) plainly stated that a claim could be reconsidered before, but not after, an estate was closed.[47] Several courts have interpreted the time limitations associated with sections 57k and 2a(2) flexibly:

> [T]he primary objective of the allowance [of a claim] . . . is to ensure that the ultimate distribution of the bankrupt estate comports with the requirements of the Bankruptcy Act. Since a strict time limitation upon the filing of objections would be inconsistent with the attainment of that goal, these sections support the conclusion that [other sections of the Bankruptcy Act] . . . should not operate as a bar to the consideration of the trustee's objections to the allowance of a claim.[48]

Former Code § 502(j), however, only spoke to the reconsideration of an allowed claim, and made no mention of a disallowed claim. Thus, prior to the 1984 Amendment, former Bankruptcy Rule 307 and Bankruptcy Rule 3008 failed to specify whether, in addition to an allowed claim, a disallowed claim could be reconsid-

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[45] *Id.*

[46] *Id.* The *McAteer* approach, which uses the petition date as the valuation date for the purpose of determining whether a secured creditor is entitled to adequate protection, is not universally accepted. For example, several courts have held that for purposes of determining whether a creditor is entitled to adequate protection for the decline in value of its collateral, the collateral should be valued as of the date that the secured creditor filed its motion for adequate protection. *See, e.g.*, *In re* Continental Airlines, Inc., 146 B.R. 536, 540 (Bankr. D. Del. 1992) (on appeal); *In re* Best Products Co., 138 B.R. 155, 156-57 (Bankr. S.D.N.Y. 1992).

[47] 3 COLLIER ON BANKRUPTCY ¶ 502.10 (15th ed. 1993). *Cf. In re* Cote, 313 F. Supp. 509, 512 n.6 (D. Me. 1970).

[48] *In re* Cushman Bakery, 526 F.2d 23, 36 (1st Cir. 1975), *cert. denied sub nom.* Agger v. Seaboard Allied Milling Corp., 425 U.S. 937 (1976). *See In re* Supreme Synthetic Dyers, Inc., 3 B.R. 189, 191-92 (Bankr. E.D.N.Y. 1980) (citing *Cushman*).

ered because, among other factors, these Rules provided no time limit within which a motion to reconsider an order disallowing a claim had to be brought.[49] Nevertheless, most courts held that a motion to reconsider a disallowed claim also had to be brought before the case was closed.[50]

The 1984 Amendment specifically eliminated the language "before a case is closed" from § 502(j).[51] Several commentators and courts have interpreted this change to mean that there is no longer any clear time limit within which to bring reconsideration motions.[52]

B. Case Law

Although there appears to be no case directly on point, dicta

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[49] *See In re* Baldwin-United Corp., 55 B.R. 885, 898 (Bankr. S.D. Ohio 1985) (noting that under the former § 502(j) "creditors may seek to have any allowed or disallowed claim reconsidered for cause, so long as the case has not been closed"). *Cf. In re* Int'l Home Design, Inc., 28 B.R. 584, 586 (Bankr. W.D. Mo. 1983) (noting the absence of time limits in Rule 307). For a discussion of whether a motion to reconsider may be denied due to the prejudicial effect of the resulting delay, see *infra* notes 79-103 and accompanying text.

[50] *See In re* Gurwitch, 37 B.R. 513, 515 (Bankr. S.D. Fla. 1984) (requiring a motion to reconsider a disallowed claim to be brought before a case is closed), *rev'd on other grounds*, 54 B.R. 927 (S.D. Fla. 1985), *aff'd*, 794 F.2d 584 (11th Cir. 1986); *In re* Resources Reclamation Corp. of America, 34 B.R. 771, 773 (BAP 9th Cir. 1983) (asserting that "the only time limitation on a motion for reconsideration of an order allowing or disallowing a claim is that the motion must be made before the case is closed").

[51] Where final distributions have been made, the better view is that no purpose would be served by reopening the case to reconsider a previously disallowed claim, in that the plain language of § 502(j) prohibits recovery of dividends already distributed. As noted, however, *Kelderman* appears to preserve a court's authority to recapture dividends already distributed. *See In re* Kelderman, 75 B.R. 69, 70 (Bankr. S.D. Iowa 1987). *See supra* text accompanying notes 35-39 (discussing *Kelderman*). Based on *Kelderman*, a creditor may seek to reopen a case for the reconsideration of a claim even where all of the estate's property has been distributed. *See In re* MCorp Fin., Inc., 137 B.R. 219 (Bankr. S.D. Tex.), *appeal dismissed and remanded*, 139 B.R. 820 (S.D. Tex. 1992).

[52] *See* 3 COLLIER ON BANKRUPTCY ¶ 502.10 (15th ed. 1993) (contending that the deletion of the language "before a case is closed" "makes section 502(j) more consistent with Bankruptcy Rule 3008, which permits reconsideration to be granted once a case is reopened") (footnote omitted); FED. R. BANKR. P. 3008 advisory committee's note (stating that "if a case is reopened . . . reconsideration of the allowance or disallowance of a claim may be sought and granted in accordance with [Rule 3008]"); *In re* Int'l Yacht and Tennis, Inc., 922 F.2d 659, 662 n.5 (11th Cir. 1991) (positing that the effect of the deletion of the language "most likely is to permit reconsideration of claims once a case is reopened") (citations omitted); *In re* Associated Air Servs., Inc., 100 B.R. 106, 107 (S.D. Fla. 1988) (finding no clear time limit for motions for reconsideration); *In re* Turchon, 62 B.R. 461, 464 n.3 (Bankr. E.D.N.Y. 1986) (stating that motion for reconsideration may be made upon reopening of case).

in several cases suggest that there may be no time limitation for the reconsideration of a claim that was disallowed as contingent but later liquidated in amount. In *United States v. Rowe*,[53] for example, the district court affirmed the bankruptcy court's order disallowing a proof of claim filed by the Internal Revenue Service (IRS).[54] The IRS asserted a claim against an individual debtor as a secondary obligor for withholding taxes owed by a corporate debtor of which the individual was the president and majority stockholder. The corporate debtor's plan of reorganization provided for full payment of this tax claim. The *Rowe* court held that disallowing the contingent claim against the debtor's estate would not cause irreparable injury to the IRS because the debtor's case could be reopened to allow the claim should the corporate debtor fail to pay.[55] Because the *Rowe* court imposed no time limitation, the IRS could have moved for reconsideration of the claim at any time after confirmation, thereby threatening the finality of the chapter 11 process.

In *In re MCorp Financial, Inc.*,[56] a bankruptcy court in the Southern District of Texas held that a plan of reorganization may not be used to limit the time in which a claim may be reconsidered, nor the amount that a contested claimant may receive under the plan.[57] The *MCorp Financial* court denied confirmation of the debtor's plan of reorganization, which provided for the estimation of contested claims. The purpose of such estimation was to establish an aggregate cap on the amount that could be distributed on account of such claims. Pursuant to the plan, the amount of the claims could be reduced below, but could never exceed, the estimated cap.[58] In effect, over $2 billion in contested claims were to be capped, for distribution purposes, at $120 million unless liquidated in amount by a certain date. The

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53 1989 WL 163860 (N.D. Ga. Sept. 23, 1989).

54 *Id.* at *1.

55 *Id.* at *4. *See also In re* Costello, 136 B.R. 296, 298 (Bankr. M.D. Fla. 1992) (recognizing that § 502(j) "technically permits reconsideration of the allowance or disallowance of any claim so long as the case is open for 'cause' "); *In re* Lane, 68 B.R. 609, 613 (Bankr. D. Haw. 1986) (noting in dictum that a claim that was estimated at a certain amount may be reconsidered at a later date after the claim had become liquidated in another forum); *In re* Baldwin-United Corp., 55 B.R. 885, 898 (Bankr. S.D. Ohio 1985) (asserting that "the estimation of a claim conclusively sets the outer limits of a claimant's right to recover either from the debtor or the estate . . . subject only to a § 502(j) motion for reconsideration at a later time").

56 137 B.R. 219 (Bankr. S.D. Tex.), *appeal dismissed and remanded*, 139 B.R. 820 (S.D. Tex. 1992).

57 *Id.* at 226.

58 *Id.* at 224.

court denied confirmation, finding that the plan violated § 502(j), which allows for the adjustment of claims previously estimated under § 502(c) after such claims become liquidated in amount or their contingency is removed.[59] The *MCorp Financial* court maintained:

> It is clear that the estimation procedure is not complete without the claimant's right to a § 502(j) reconsideration. If a plan proponent could cut off a claimant's right to a § 502(j) reconsideration, Congress' passage of that provision would be meaningless, and the result would be in contravention of the legislative history on the estimation procedure. . . . In essence, the plan provisions terminate contested claimants' rights to any § 502(j) reconsideration upward as a result of the cap on the contested claims . . . [and the] deadline for establishing the cap . . . .[60]

In the decision, the court attempted to balance the interests of preserving the disputed claimants' rights to an effective appeal against the interests of the debtor and creditors in a viable plan.

Nevertheless, the holding of *MCorp. Financial* may be limited to extraordinary facts. The plan contemplated the reduction of contested claims in the amount of $2 billion to $120 million. In addition, the three-month period during which the claimants would have been able to liquidate their claims under the plan may also be considered unreasonable. Lastly, the estimation procedure contemplated by the plan was also found to discriminate against the class of contingent claimants vis-a-vis uncontested claimants. Under the plan, although some money was set aside for contested claims, that amount was most likely insufficient to pay all contested claims after estimation by the bankruptcy court. In short, the plan was discriminatory because its provisions regarding the capped reserve and the estimation process limited the debtor's liability for contested claims "to a pro rata amount that may be based on less than the full allowed amount of such claim[s], while providing holders of uncontested claims their pro rata distribution based on the full allowed amount of their claims."[61]

C. *Current Bankruptcy and Procedure Rules*

Bankruptcy Rule 3008 provides similar guidance on the time

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[59] *Id.* at 226.

[60] *Id.*

[61] *Id.* at 227-28.

constraints for filing a motion for reconsideration.[62] The advisory committee note to Rule 3008, referring to former Code § 502(j), states that "[t]he rule expands § 502(j) which provides for reconsideration of an allowance only before the case is closed . . . . If a case is reopened as provided in § 350(b) of the Code, reconsideration of the allowance or disallowance of a claim may be sought and granted in accordance with this rule."[63]

Although § 502(j) and Rule 3008 provide no express time limit within which a motion for reconsideration must be brought, Bankruptcy Rule 9024 creates a one-year time limitation where a claim was allowed or disallowed after a "contest" and where the grounds for reconsideration are: (i) "mistake, inadvertence, surprise, or excusable neglect;"[64] (ii) "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;"[65] or (iii) "fraud . . ., misrepresentation, or an adverse party's other misconduct."[66] Rule 9024 was derived from former Bankruptcy Rule 924 and expressly applies Federal Rule of Civil Procedure 60(b) to bankruptcy cases.[67] Rule 9024 provides in relevant part:

> Rule 60 F.R. Civ. P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim

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62 *See In re* Associated Air Services, Inc., 100 B.R. 106, 107 (S.D. Fla. 1988) (discussing and interpreting Rule 3008).

63 FED. R. BANKR. P. 3008 advisory committee's note. Former Rule 307 was silent as to the time within which reconsideration must be requested. The advisory committee's note to Rule 307 and case law, however, supported reconsideration of a claim at any time as long as the bankruptcy court retained control of the case.

64 FED. R. CIV. P. 60(b)(1). The Supreme Court recently defined the standard for "excusable neglect" in connection with the failure to timely file a proof of claim. In *Pioneer Investment Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, the Court resolved a conflict in the court of appeals and refused to limit excusable neglect to circumstances beyond the control of the flier. Pioneer Investment Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 113 S. Ct. 1489 (1993). The Court found excusable neglect to be a more "elastic concept" which, under certain circumstances, encompassed negligence. *Id.* at 1491. The Court held that the determination as to whether the negligence was "excusable" was an "equitable one" and should be based on consideration "of all relevant circumstances surrounding the party's omission," including "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Id.* at 1498 (footnotes omitted). Thus, where a party moves for reconsideration of his claim on the grounds of excusable neglect, the factors set forth in *Pioneer Investment* should be given due regard.

65 FED. R. CIV. P. 60(b)(2).

66 FED. R. CIV. P. 60(b)(3); FED. R. BANKR. P. 9024

67 *See* Karen-Richard Beauty Salon, Inc. v. Fontainebleau Hotel Corp., 36 B.R. 896, 898 (S.D. Fla. 1983).

> against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b) . . . .[68]

Therefore, where a claim is allowed or disallowed after a "contest," the right to seek reconsideration under § 502(j) on one of the enumerated grounds is subject to the one-year time limitation set forth in Rule 60(b).[69] As explained in Collier:

> An order of allowance or disallowance, whether contested or not, may be the subject of a motion for reconsideration. The only difference is that, in the absence of a contest, the motion for reconsideration must be made within a reasonable time, and is not precluded by the expiration of one year from the entry of the order.[70]

The one-year time limitation was applied in *In re Costello*,[71] where the bankruptcy court denied the debtor's request for reconsideration. The *Costello* debtor objected to the allowance of an attorney's claim. By order granted upon a motion filed by the attorney and opposed by the debtor, the attorney's claim was allowed. The debtor's motion for a rehearing was denied and no notice of appeal was filed.[72] More than a year after entry of the order allowing the claim, the debtor filed a motion for reconsideration of the claim, maintaining that she had discovered new evidence that the fee contract entered into with the claimant had been forged. The court determined:

> [N]otwithstanding the provisions of § 502(j) and of Bankruptcy Rule 3008, when the allowance of a claim has in fact, been litigated, the litigants cannot seek reconsideration of the Bankruptcy Court's determination pursuant to the recognized standard of Rule 60, if they elect not to pursue a timely appeal of the original Order allowing or disallowing the claim.[73]

Agreeing with the *Costello* interpretation of Rule 9024, the bankruptcy court in *In re Excello Press, Inc.*[74] approved of an earlier Fifth Circuit decision that stated:

> We interpret Rule 9024 to provide that when a proof of claim has in fact been litigated between parties to a bankruptcy proceeding the litigants *must seek reconsideration of the bankruptcy*

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68 FED. R. BANKR. P. 9024. For the relevant text of Rule 60(b), see *infra* text accompanying note 83.

69 *See* FED. R. CIV. P. 60(b).

70 12 COLLIER ON BANKRUPTCY ¶ 307.04[1] (14th ed. 1978).

71 136 B.R. 296 (Bankr. M.D. Fla. 1992).

72 *Id.* at 297-98.

73 *Id.* at 299 (citation omitted).

74 83 B.R. 539 (Bankr. N.D. Ill.), *aff'd*, 90 B.R. 335 (N.D. Ill. 1988), *rev'd on other grounds*, 890 F.2d 896 (7th Cir. 1989).

> *court's determination pursuant to the usual Rule 60 standards if they elect not to pursue a timely appeal of the original order allowing or disallowing the claim.*[75]

Accordingly, where the order allowing or disallowing a claim was entered after a contest, Rule 9024 is fully applicable and the timeliness of a § 502(j) motion is subject to the Rule's one-year time limitation.[76]

D. Section 1143 may Provide a Five-Year Limitation

An additional time limitation on a claim's reconsideration may be presented by § 1143 of the Bankruptcy Code.[77] The provision establishes a five-year limitation on the surrender or presentment of securities or the performance of any act that constitutes a prerequisite for participation in distribution under the plan.[78] The five-year limitation runs from the entry date of a confirmation order of a reorganization plan. Assuming that "any other act as a condition to participation in distributions under the plan" includes a motion for reconsideration under § 502(j), § 1143 may provide a statutory time limitation within which such a motion must be brought. In short, where a claimant wishes to have its previously disallowed claim reconsidered and to receive the concomitant distributions under a plan of reorganization, it

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[75] *Id.* at 541 (quoting *In re* Colley, 814 F.2d 1008, 1009 (5th Cir.), *cert. denied sub nom.*, Colley v. Nat'l Bank of Texas, 484 U.S. 898 (1987)). *See* 9 COLLIER ON BANKRUPTCY ¶ 9024.04 n.7 (15th ed. 1993) (citing *Colley*).

[76] There appears to be no authority defining or circumscribing the term "contest," nor determining a dispute's extent or nature, if any, that may not rise to the level of a "contest."

Even where the order was entered after a contest, the one year limitation may not be absolute. Rule 60(b)(6) empowers the court to reopen a judgment even after one year has passed for "any other reason justifying relief from the operation of the judgment." FED. R. CIV. P. 60(b)(6). *See* Pioneer Investment Servs. Co. v. Brunswick Assocs. Ltd. Partnership, 113 S. Ct. 1489, 1497 (1993) (asserting that relief under 60(b)(6) will only be required upon a showing of " 'extraordinary circumstances' suggesting that the party is faultless in the delay").

[77] Section 1143 reads:

> If a plan requires presentment or surrender of a security or the performance of any other act as a condition to participation in distribution under the plan, such action shall be taken not later than five years after the date of the entry of the order of confirmation. Any entity that has not within such time presented or surrendered such entity's security or taken any such other action that the plan requires may not participate in distribution under the plan.

11 U.S.C. § 1143 (1979).

[78] H.R. REP. No. 595, 95th Cong., 1st Sess. 419 (1977); S. REP. No. 989, 95th Cong., 2d Sess. 130 (1978).

must seek relief within five years of the confirmation order's entry.

IV. STANDARDS FOR DETERMINING WHETHER A CLAIM SHOULD BE RECONSIDERED

A. Statutory Language

Section 57k provided that "[c]laims which have been allowed may be reconsidered for cause."[79] Currently, § 502(j) likewise declares that "[a] claim that has been allowed or disallowed may be reconsidered for cause."[80] Consequently, a court will only reconsider a previously allowed or disallowed claim where "cause" is shown. It has been further established that "the reconsideration of a claim under § 502(j) and Bankruptcy Rule 3008 is discretionary and the court may decline to reconsider a claim without a hearing or notice to parties involved."[81] Pursuant to Bankruptcy Rule 9024, the bounds of such discretion are dictated by Rule 60(b) of the Federal Rules of Civil Procedure.[82] The relevant part of Rule 60(b) states:

> On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud . . ., misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.[83]

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79 11 U.S.C. § 57k (repealed 1978) (emphasis added).

80 11 U.S.C. § 502(j) (emphasis added).

81 *In re* Bicoastal Corp., 126 B.R. 613, 614-15 (Bankr. M.D. Fla. 1991) (citing *In re* Colley, 814 F.2d 1008, 1010 (5th Cir.), *cert. denied sub nom.*, Colley v. Nat'l Bank of Texas, 484 U.S. 898 (1987)). *See In re* Commodore Corp., 70 B.R. 543, 545 (Bankr. N.D. Ind. 1987) (stating that reconsideration is within the court's sound discretion); *In re* Fox, 64 B.R. 148, 152 (Bankr. N.D. Ohio 1986) (same); *In re* Flagstaff Foodservice Corp., 56 B.R. 910, 913 (Bankr. S.D.N.Y. 1986) (same).

82 *Bicoastal Corp.*, 126 B.R. at 615; *In re* Cleanmaster Indus., Inc., 106 B.R. 628, 630 (BAP 9th Cir. 1989); *In re* Motor Freight Express, 91 B.R. 705, 710 (Bankr. E.D. Pa. 1988); *In re* Excello Press, Inc., 83 B.R. 539, 541 (Bankr. N.D. Ill.), *aff'd*, 90 B.R. 335 (N.D. Ill. 1988), *rev'd on other grounds*, 890 F.2d 896 (7th Cir. 1989); *In re* Kelderman, 75 B.R. 69, 70 (Bankr. S.D. Iowa 1987).

83 FED. R. CIV. P. 60(b).

B. Case Law

There exists limited authority suggesting that § 502(j) and Bankruptcy Rule 3008 should be liberally construed.[84] The majority of courts have maintained, however, that § 502(j) and Rule 3008 should "be applied in light of the strong . . . policy of encouraging prompt, final dispositions of objections to proofs of claims."[85] As observed by the court in *In re W.F. Hurley, Inc.*,[86] "[i]f reconsideration were a matter of right, the finality sought to be established by the strict time limits of Rule 802 [the earlier version of Rule 8002] would be illusory."[87]

In *In re Resources Reclamation Corp. of America*,[88] an unsecured claim was disallowed when the creditor failed to attend the hearing at which the trustee objected to the claim.[89] The bankruptcy court denied the creditor's motion to reconsider its claim due to the prejudice to other creditors that would result from allowing the creditor's claim, in that the other creditors' prospective dividend would be decreased.[90] Reversing the bankruptcy court, the Bankruptcy Appellate Panel for the Ninth Circuit declared that "the mere fact that allowance of a claim would dilute dividends which would otherwise be paid is not the type of injury that should result in disallowance of the claim."[91] Instead, in deciding whether to reconsider a claim, the appellate panel considered the following factors: (1) whether granting reconsideration would delay the proceeding, thereby prejudicing the debtor or other creditors; (2) the delay's length and its effect on efficient court administration; (3) "whether the delay was beyond the rea-

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84 *See In re* Washington County Broadcasting, Inc., 39 B.R. 77, 79 (Bankr. D. Me. 1984); *Bicoastal Corp.*, 126 B.R. at 615.

85 *See, e.g., Motor Freight Express*, 91 B.R. at 711; *Bicoastal Corp.*, 126 B.R. at 615 (citing *Motor Freight Express*).

86 612 F.2d 392 (8th Cir. 1980).

87 *Id.* at 395. Current Bankruptcy Rule 8002(a) was derived from former Rule 802(a) of the Rules of Bankruptcy Procedure. Both rules require an appellant to file a notice of appeal with the clerk of the court within ten days from the date of entry of the judgment, order or decree from which an appeal is taken. FED. R. BANKR. P. 8002(a); FED. R. BANKR. P. 802(a) (1976). *See In re* Costello, 136 B.R. 296, 298 (Bankr. M.D. Fla. 1992) (acknowledging that "while a Bankruptcy Court has the power to reconsider the allowance or disallowance of a claim for cause by virtue of § 502(j) and Bankruptcy Rule 3008, the court's discretion should not encourage parties to avoid the usual rules for finality of contested matters").

88 34 B.R. 771 (BAP 9th Cir. 1983).

89 *Id.* at 772 (discussing the proceedings before the bankruptcy court).

90 *Id.*

91 *Id.* at 773. *Cf. In re* Gibraltor Amusements Ltd., 315 F.2d 210, 216 (2d Cir. 1963).

sonable control of the person whose duty it was to perform;" (4) whether the creditor's actions were in good faith; (5) "whether clients should be penalized for their counsel's mistake or neglect;" and (6) whether the claimant had a meritorious claim.[92] Thus, if a long period of time has elapsed since disallowance of a creditor's claim, and if other creditors or parties in interest relied on such disallowance, or would be prejudiced by allowance at such a late date, the claim should not be reconsidered.

Important concerns in determining the appropriateness of reconsideration include the stage in the plan confirmation or bankruptcy process and the extent to which dividends have already been distributed. For example, in *In re Bicoastal Corp.*,[93] the bankruptcy court suggested that the imminence of confirmation of a reorganization plan might be one circumstance weighing towards refusal to reconsider a claim, because reconsideration at that time might impede the progress of the chapter 11 case.[94]

Furthermore, courts generally do not reconsider prior orders allowing or disallowing a claim where no new evidence is presented. In *In re Excello Press, Inc.*,[95] the bankruptcy court refused to reconsider its prior order disallowing a claim where the creditor failed to offer any novel evidence.[96] The creditor sought reconsideration based on allegations of its excusable neglect in failing to present certain evidence and errors of law by the court. The *Excello Press* court found that the creditor should have been aware that such evidence was necessary and that the creditor had an opportunity to present such evidence at the time of the disallowance.[97] Determining further that Rule 60(b) does not provide relief for purported errors of law, the court denied the creditor's

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92 *Id.* at 773-74. *See In re* H.R.P. Auto Center, Inc., 130 B.R. 247, 255 (Bankr. N.D. Ohio 1991) (refusing to reconsider order allowing a claim where debtor waited seventeen months to request reconsideration); *In re* Motor Freight Express, 91 B.R. 705, 711 (Bankr. E.D. Pa. 1988) (stressing the importance of resolving claims expeditiously to ensure prompt distributions to creditors); Karen-Richard Beauty Salon, Inc. v. Fontainebleau Hotel Corp., 36 B.R. 896, 900 (S.D. Fla. 1983) (granting reconsideration where "the record shows no evidence that any intervening rights have attached in reliance upon the earlier judgment and the court is satisfied that no actual injustice has ensued").

93 126 B.R. 613 (Bankr. M.D. Fla. 1991).

94 *Id.* at 615. *But see In re* Fox, 64 B.R. 148, 152 (Bankr. N.D. Ohio 1986) (stating that where plan was not yet confirmed, no great prejudice to other creditors was likely to result from reconsideration).

95 83 B.R. 539 (Bankr. N.D. Ill.), *aff'd* 90 B.R. 335 (N.D. Ill. 1988), *rev'd on other grounds*, 890 F.2d 896 (7th Cir. 1989).

96 *Id.* at 541.

97 *Id.* *See In re* Costello, 136 B.R. 296, 299 (Bankr. M.D. Fla. 1992) (noting in dicta that court would not reconsider an order allowing a claim based on newly

motion to reconsider.[98]

In *In re Flagstaff Foodservice Corp.*,[99] the bankruptcy court adopted a more discretionary standard for determining whether to grant a § 502(j) motion. *Flagstaff* involved a motion by a secured creditor, who provided financing to the debtor in possession, for reconsideration of the allowance of certain reclamation claims. The court directed that proceeds of the debtor's receivables be used to make weekly payments of $25,000 to a fund created to pay reclamation claims. Upon realizing that it would not be paid in full, the secured lender refused to allow the debtor to continue to make the weekly payments to the fund and instituted its reconsideration motion.[100] Noting that "the determination of whether or not to reconsider falls upon the equitable judgment of the court and is within the sound discretion of the court," the court granted the motion to reconsider in part.[101] The court did not reconsider certain of the reclamation claims, however, because the secured creditor "did not advance any new allegation of fact which would indicate manifest injustice or clear error."[102]

While *Flagstaff* may appear to favor a more liberal construc-

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discovered evidence where debtor failed to establish that evidence could not have been obtained at the time of the order).

98 *Excello Press*, 83 B.R. at 542. *See In re* Carib-Inn of San Juan Corp., 130 B.R. 6, 7 (Bankr. D.P.R. 1991) (refusing to apply Bankruptcy Rule 3008 "to 'bring the same issue before the consideration of the Court' " in order "to circumvent the expiration of the appeal period"); *In re* Motor Freight Express, 91 B.R. 705, 711 (Bankr. E.D. Pa. 1988) (maintaining that a court will not consider a claim based on "errors of omission by counsel which are not justified by some allegations of extraordinary causation factors"); *In re* Monument Record Corp., 71 B.R. 853, 865 (Bankr. M.D. Tenn. 1987) (refusing to reconsider an allowed claim where the moving trustee was simply requesting that the court relitigate issues already decided by the court); *In re* Commodore Corp., 70 B.R. 543, 544-45 (Bankr. N.D. Ind. 1987) (refusing to grant motion to reconsider where movant failed to present new evidence); *In re* F/S Communications Corp., 59 B.R. 824, 827 (Bankr. N.D. Ga. 1986) (denying reconsideration to avoid prejudice to creditors and to promote "efficient administration of the estate"); *In re* Uiterwyk Corp., 57 B.R. 166, 166 (Bankr. M.D. Fla. 1986) (refusing reconsideration because "[c]arelesness is not synonymous with excusable neglect"). *But see In re* Cadillac Wildwood Dev. Corp., 138 B.R. 854 (Bankr. W.D. Mich. 1992) (reconsidering allowed secured claim where debtor alleged that the interest charged in the loan that formed the claim's basis was usurious, and failure to reconsider and disallow the claim in part would result in windfall to the debtor's estate); *Motor Freight Express*, 91 B.R. at 710 (holding that bankruptcy courts possess the power to correct errors of law); *In re* Yagow, 62 B.R. 73, 78 (Bankr. D. N.D. 1986) (suggesting that reconsideration is available even where doctrines of res judicata and collateral estoppel are applicable to prior order).

99 56 B.R. 910 (Bankr. S.D.N.Y. 1986).

100 *Id.* at 913.

101 *Id.*

102 *Id.* at 917.

tion, and, in particular, a more purely discretionary interpretation of § 502(j) and Bankruptcy Rule 3008, the vast majority of the cases look to the grounds set forth in Federal Rule of Civil Procedure 60(b) and factors similar to those espoused in *Resources Reclamation* in determining whether reconsideration is warranted. Applying such standards, a court would most likely not reconsider its prior decision either allowing or disallowing a claim.[103]

V. Conclusions and Recommendations

In general, a § 502(j) motion is not subject to a specific statute of limitations except to the extent that the five-year time limitation under § 1143 is applicable or where the claim was initially allowed or disallowed after a "contest" and the grounds for reconsideration are excusable neglect, newly discovered evidence or fraud. In the latter, rather limited, circumstances, a motion for reconsideration is subject to the one-year time limitation set forth in Federal Rule of Civil Procedure 60(b). Rule 60(b) also provides the standards that a court will most likely apply in determining whether "cause" has been demonstrated for the granting of reconsideration. Often, in applying these standards, the court will deny reconsideration.

Where a claimant establishes cause, and is entitled to reconsideration, however, the plan confirmation process may be bereft of finality. On the other hand, without a reasonable period for the reconsideration of a subsequently liquidated claim, a holder of a contingent claim may be left without any practical recourse.

To balance the respective hardships on all parties involved in the confirmation process, an express time limit should be incorporated into § 502(j). The time limit already provided under

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103 *See In re* Colley, 814 F.2d 1008, 1010 (5th Cir.), *cert. denied sub nom.*, Colley v. Nat'l Bank of Texas, 484 U.S. 898 (1987) (denying reconsideration request because insufficient "cause" set forth pursuant to Rule 60(b)); *In re* H.R.P. Auto Center, Inc., 130 B.R. 247, 255 (Bankr. N.D. Ohio 1991) (holding that debtor's allegation that claim should be reconsidered because the debtor's counsel lacked authority to enter into the stipulation that allowed the claim did not constitute grounds for reconsideration because debtor failed to present credible evidence that counsel did not possess such authority); *In re* F/S Communications Corp., 59 B.R. 824, 827-28 (Bankr. N.D. Ga. 1986) (concluding that failure to note objection to claim among bulk of papers received in case is not a justified "cause" for reconsideration of disallowed claim); *In re* Uiterwyk Corp., 57 B.R. 166, 166 (Bankr. M.D. Fla. 1986) (refusing reconsideration because counsel's failure to attend hearing regarding objection to claim because of distraction by another case did not comprise "excusable neglect").

Federal Rule of Civil Procedure 60(b) for claims that are subject to a "contest" comprises one possible limit. In other words, a claimant holding a contingent or unliquidated claim would be obligated to liquidate the claim and to move for reconsideration by the later of the confirmation date of the reorganization plan, or one year after the initial allowance or disallowance of the claim. This requirement would provide creditors with a reasonable period of time within which to litigate and settle the claim, while limiting the time that other creditors must wait before the amount of their distributions under the plan can become fixed. Thus, a one-year time limitation would permit a chapter 11 case to conclude without unduly interfering with a contingent claimant's right to participate in the distributions from the chapter 11 estate.

Regardless of whether it is one year, six months or some other period of time, some express time limitation to § 502(j) is necessary. Without any such limitation, the finality that all creditors and parties in interest seek and expect from confirmation and consummation of a plan of reorganization may prove illusory.