BANKRUPTCY—EXCUSABLE NEGLECT—CONSIDERATION OF EQUITABLE FACTORS IS PERMITTED FOR LATE CHAPTER 11 PROOF OF CLAIM FILINGS UNDER BANKRUPTCY RULE 9006(B)(1) TO DETERMINE IF FILER'S CONDUCT CONSTITUTED EXCUSABLE NEGLECT—*Pioneer Inv. Servs. v. Brunswick Assocs.*, 113 S. Ct. 1489 (1993).

A Chapter 11 bankruptcy petition grants business debtors the opportunity to overcome financial problems with court assistance.[1] Chapter 11 of the Bankruptcy Code (the Code)[2] operates under the premise that the economy is better served by rebuilding a company rather than selling off the company's components.[3] Under

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[1] Richard Lieb & Robert J. Feinstein, *LBO Litigation, Financial Projections And The Chapter 11 Plan Process*, 21 SETON HALL L. REV. 598, 600 (1991). Under Chapter 11, business debtors are rehabilitated through a reorganization of operations. *Id.* Chapter 11 reorganizations allow the debtor to continue business operations so that creditors receive optimum repayment. *Id.* at 599. Bankruptcy serves multiple purposes depending on different perspectives. Elizabeth Warren, *Bankruptcy Policy*, 54 U. CHI. L. REV. 775, 776-77 (1987). From a debtor's perspective, bankruptcy serves to organize defaults and prescribes distribution procedures. *Id.* at 777. From a creditor's perspective, however, business bankruptcies facilitate and define respective collection rights. *Id.*

[2] 11 U.S.C. §§ 101-1330 (1988 & Supp. IV 1992). The Code's present form derives from: The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified at 11 U.S.C. §§ 101-1330 (1988 & Supp. IV 1992)) *amended by* Bankruptcy Amendments and Federal Judgeship Act of 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. 99-554, 100 Stat. 3088 (1986); Retiree Benefits Bankruptcy Protection Act of 1988, Pub. L. No. 100-334, 102 Stat. 610 (1988); Criminal Victims Protection Act of 1990, Pub. L. No. 101-581, 104 Stat. 2865 (1990).

Chapter 11 of the Bankruptcy Code covers business reorganizations, as opposed to Chapter 7, where a trustee liquidates the debtor's assets and then distributes the proceeds to creditors, and Chapter 13, where individuals with regular income are granted an extended repayment schedule. RICHARD F. BROUDE, REORGANIZATIONS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE § 1.02 (1993).

The goals of bankruptcy for Chapters 7, 11, and 13 are similar and include: equal access for creditors and debtors to the bankruptcy procedure, equitable and fair treatment of creditor's claims, and rehabilitation of the debtor. *See* H.R. DOC. No. 93-137, 93d Cong., 1st Sess., pt. I, 75-82 (1973); *see also* Thomas H. Jackson & Robert E. Scott, *On The Nature Of Bankruptcy: An Essay On Bankruptcy Sharing And The Creditor's Bargain*, 75 VA. L. REV. 155, 155 (1989) (reciting the "two normative objectives of bankruptcy: rehabilitation of overburdened debtors and equality of treatment for creditors and other claimants"). *See generally* RICHARD I. AARON, BANKRUPTCY LAW FUNDAMENTALS, § 1.01 (9th ed. 1990) (discussing the history and importance of American bankruptcy jurisprudence).

[3] The Honorable Stephen A. Stripp, *Balancing of Interests in Orders Authorizing the Use of Cash Collateral in Chapter 11*, 21 SETON HALL L. REV. 562, 564 (1991). Chapter 11 assumes that the "going concern value" of a business's assets is worth more than the total that would be received from a sale of the assets. *Id.* "Going concern value" is defined as "[t]he value of the assets of a business as an operating, active concern, rather than merely as items of property (book value of assets alone) which would be the case in a liquidation sale." BLACK'S LAW DICTIONARY 691 (6th ed. 1990). Chapter

Chapter 11, a reorganization plan provides the vehicle for a debtor company's economic revitalization.[4]

Along the path to solvency, creditors are permitted to control and protect their interests.[5] Before the reorganization scheme begins, the bankruptcy filer and each creditor must define their con-

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11 prevents the unnecessary losses that are usually incurred by both debtors and creditors in a forced sale of assets. Stripp, *supra*, at 564-65. The United States legislature, in enacting the Bankruptcy Code, contemplated that assets built for a particular industry should be used for their purpose rather than sold. Michael Bradley & Michael Rosenzweig, *The Untenable Case for Chapter 11*, 101 YALE L.J. 1043, 1043 (1992). Further, because reorganizations reduce job losses and stabilize the economy, public policy favors the Chapter 11 procedure. *Id.* at 1043-44.

[4] AARON, *supra* note 2, at § 1.04. In a Chapter 11 proceeding, the debtor and a majority of the creditors agree upon an out-of-court reorganization plan. 124 CONG. REC. H32,405 (daily ed. Sept. 28, 1978) (statement of Rep. D. Edwards) [hereinafter *Edwards Statement*]. The reorganization plan may contain solutions ranging from issuing new equity claims on behalf of the creditor to arranging the debts for repayment. Christopher W. Frost, *Running the Asylum: Governance Problems in Bankruptcy Reorganizations*, 34 ARIZ. L. REV. 89, 94-95 (1992). The reorganization plan groups creditors according to their existing claims and details a repayment schedule. *Id.* at 94. Upon completion, the debtor submits the plan to the creditors for their confirmation. *Edwards Statement*, *supra*, at H32,405. Early confirmation of this plan reduces expenses by lowering administrative costs, promoting prompt distribution, and allowing businesses to operate normally. *Id.*

Aside from the submission and approval of the reorganization plan, debtors and creditors confront many decisions. Frost, *supra*, at 90. For instance, debtors and creditors may need to decide whether to finance future business operations, how to handle existing contracts that include the business, and whether any asset sales are required before reorganization. *Id.* The formulation of the plan, however, along with its confirmation, comprises the major hurdle of the entire Chapter 11 proceeding. Stefan A. Riesenfeld, *Classification of Claims and Interests in Chapter 11 and 13 Cases*, 75 CAL. L. REV. 391, 391 (1987).

[5] AARON, *supra* note 2, at § 1.04. A statutory creditors committee works with the debtor and monitors the management of the business during the reorganization. 11 U.S.C. § 1103 (1988). Section 1103 provides:

> A committee . . . may—
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> (1) consult with the trustee or debtor in possession concerning the administration of the case;
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> (2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;
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> (3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;
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> (4) request the appointment of a trustee or examiner . . . ; and
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> (5) perform such other services as are in the interest of those represented.

11 U.S.C. § 1103(c)(1)-(5). The creditors committee monitors the actions of Chapter 11 debtors and protects creditors' interests. AARON, *supra* note 2, § 1.04 at 27.

tested claims.[6] The Code requires the debtor to include a creditor listing with its bankruptcy petition.[7] Creditors may subsequently establish their interests by filing proofs of claim.[8] The court then sets a claims bar date that represents the final day for filing such proofs.[9]

Although the Code mainly assists debtors,[10] Bankruptcy Rule

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6 *See generally* Peter A. Knocke, *Filing Proofs of Claim in Bankruptcy*, FLA. B.J., Feb. 1988, at 15, 15-18 (outlining the general procedures for bankruptcy claim filings). Any creditor of a Chapter 11 debtor can file a proof of claim. *Id.* at 16. Such filing may be accomplished by providing a written notice of claim to the bankruptcy trustee. *Id.* Official forms are available to file claims, but claims may be filed in any fashion so long as the proof is in writing and substantially conforms to Official Form No. 19. *Id.* at 16-17.

Creditors' attorneys should always assume that proofs of claims need to be filed to preserve a creditor's rights to assets, even though some claims do not require proofs. *Id.* at 15. As a result, creditors' attorneys should be aware that their client usually receives the first bankruptcy notices from the court. *Id.* These initial notices set the date for creditors' meetings and may contain the final date for filing proofs of claim. *Id.*

7 11 U.S.C. § 521(1) (1988). The Code provides, in pertinent part, that a debtor shall "file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs." *Id.* Furthermore, a list of the twenty largest unsecured creditors should accompany a bankruptcy petition. 6A COLLIER ON BANKRUPTCY XI-6 (15th ed. 1993) [hereinafter COLLIER]. Unsecured creditors are those creditors holding debts that are defined as "[d]ebt obligations that are not backed by pledged collateral or security agreement." BLACK'S LAW DICTIONARY 1539 (6th ed. 1990). Official Bankruptcy Form 4 outlines the relevant information that a debtor must provide for each creditor. COLLIER, *supra*, at XI-21.

8 11 U.S.C. § 501(a) (1988). A "claim" is defined as a "[r]ight to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; . . ." 11 U.S.C. § 101(5)(A) (1988). A claim is deemed filed under § 501 unless the debtor lists it as "disputed, contingent, or unliquidated." 11 U.S.C. § 1111 (1978). Attorneys are advised to file proofs of claim to ensure participation in any reorganization scheme. Knocke, *supra* note 6, at 15.

9 FED. R. BANKR. P. 3003(c)(3). Rule 3003(c)(3) provides: "The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed." *Id.*

10 The Commission on the Bankruptcy Laws of the United States recognized that the objective of the legislation was "to relieve the honest but unfortunate debtor from the weight of oppressive indebtedness . . . ." Letter from Harold Marsh, Jr., Chairman of the Commission on the Bankruptcy Laws of the United States, to The President, The Chief Justice of the United States, and The Congress, *reprinted in* H.R. DOC. No. 93-137, 93d Cong., 1st Sess., pt. I (1973); *see also* Lieb & Feinstein, *supra* note 1, at 598 (asserting that "Congress and the courts have traditionally shaped the bankruptcy law to provide a 'fresh start' for honest debtors who suffer financial reverses in their business or personal affairs"). Two commentators declared, however, that Chapter 11, as presently constructed, has become a self-imposed tool utilized by corporate managers for profit. Bradley & Rosenzweig, *supra* note 3, at 1049-50. Bradley and Rosenzweig argued that, as a result, stockholders and bondholders lose more wealth in Chapter 11 than under the previous bankruptcy rules. *Id.* at 1049. The commentators also

9006(b)(1) (Rule 9006(b)(1)) provides creditors some latitude when filing these claims.[11] Under Rule 9006(b)(1), creditors may file proofs of claim after the claims bar date if the court determines that the delay resulted from "excusable neglect."[12] Although Rule 9006(b)(1) was intended to provide leeway for tardy creditors, the excusable neglect provision exemplifies one of the Code's vagaries.[13]

Recently, in *Pioneer Investment Services v. Brunswick Associates*,[14] the United States Supreme Court resolved a circuit court dispute concerning excusable neglect by adopting a liberal reading of the

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pointed out that bankruptcy filings no longer necessarily coincide with weak economic conditions. *Id.* Chapter 11 benefits corporate debtors to such a great extent, Bradley and Rosenzweig concluded, that the reorganization section of the Bankruptcy Code should be repealed. *Id.* at 1050.

11 FED. R. BANKR. P. 9006(b)(1). Rule 9006(b)(1) provides:

> Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of *excusable neglect.*

Id. (emphasis added). Rule 9006(b)(1) was enacted to authorize courts to utilize discretion when considering granting time extensions for acts ordered by the court or the bankruptcy rules. FED. R. BANKR. P. 9006(b)(1) advisory committee's note. Rules 9006(b)(2) and 9006(b)(3) provide the exceptions to the court's authority when granting time extensions. *Id.* Rules 9006(b)(2) and 9006(b)(3) provide:

> (2) *Enlargement Not Permitted.* The court may not enlarge the time for taking action under Rule 1007(d), 1017(b)(3), 1019(2), 2003(a) and (d), 7052, 9015(f), 9023, and 9024.
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> (3) *Enlargement Limited.* The court may enlarge the time for taking action under Rules 1006(b)(2), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

FED. R. BANKR. P. 9006(b)(2)-(3).

12 FED. R. BANKR. R. 3003(c)(3), 9006(b)(1). *See supra* note 9 (providing the text of Rule 3003(c)(3)); *supra* note 11 (detailing the excusable neglect provision of Rule 9006(b)(1)). In this Note, "excusable neglect," unless otherwise provided, refers to that which is specified in the section of 9006(b)(1) quoted above.

13 *See* AARON, *supra* note 2, at § 1.04 (asserting that "[a] reading of the statute conveys repeated opportunities for complicated litigation with vague and unknowable standards"). To alleviate confusion, the Code is supplemented by local bankruptcy rules. Howard A. Patrick & Michael L. Meyer, *An Overview Of The Bankruptcy Reform Act Of 1978*, 1 B.R. 1, 51 (West 1980). The United States Bankruptcy Court for the District of New Jersey, for example, promulgated local rules concerning bankruptcy procedure. *See* N.J. BANKR. CT. R. 1 to 13-2. These local rules include provisions concerning Admission of Attorneys (Rule 1), Discovery (Rule 5), Chapter 11 Plan of Reorganization (Rule 11-3), and Chapter 11 Claims (Rule 11-8). *Id.*

14 113 S. Ct. 1489 (1993).

term.[15] The Court also outlined the proper factual considerations for delayed proofs of claim filings.[16] In addition to the late filer's contribution to the delay, the *Pioneer* Court ruled, excusable neglect considerations should include several equitable factors.[17]

In *Pioneer*, the debtor, Pioneer Investment Services (Pioneer or debtor), filed its petition and a list of its twenty largest unsecured creditors on April 12, 1989.[18] The next day, the court mailed these creditors a letter scheduling a meeting, as required under Code § 341,[19] for May 5, of the same year.[20] The meeting notice also set

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15 *Id.* at 1494 n.3, 1496, 1498. The Court recognized that the Fourth, Seventh, Eighth, and Eleventh Circuits strictly construed the excusable neglect element of Rule 9006(b)(1). *Id.* at 1494 n.3 (citing *In re* Davis, 936 F.2d 771, 774 (4th Cir. 1991); *In re* Danielson, 981 F.2d 296, 298 (7th Cir. 1992); Hanson v. First Bank of South Dakota, N.A., 828 F.2d 1310, 1314-15 (8th Cir. 1987); *In re* Analytical Sys. Inc., 933 F.2d 939, 942 (11th Cir. 1991)). The *Pioneer* majority explained that the strict application denied relief if the reason for the delay was within the reasonable control of the party filing the motion. *Id.* at 1500; *see, e.g., In re* Davis, 936 F.2d at 774 (holding that a debtor would not be granted an excusable neglect extension because of uncertainty concerning whether a third party had already filed a proof of claim). For a discussion of *Davis*, see *infra* notes 73-78 and accompanying text.

Conversely, the *Pioneer* Court noted that the Tenth Circuit implemented a liberal construction of the term "excusable neglect." *Pioneer*, 113 S. Ct. at 1494 n.3 (citing *In re* Centric Corp., 901 F.2d 1514, 1517-18 (10th Cir.), *cert. denied sub nom.* Trustees of the Centennial State Carpenters Pension Trust Fund v. Centric Corp., 111 S. Ct. 145 (1990)). The liberal excusable neglect interpretation, the Supreme Court observed, contemplated a broad range of factors beyond the late filer's culpability. *Id.* at 1496; *see also infra* note 37 and accompanying text (detailing the Ninth Circuit's application of liberal factors in *In re* Dix, 95 B.R. 134 (Bankr. 9th Cir. 1988)).

16 *Pioneer*, 113 S. Ct. at 1498. The Court directed that a party's delay must be judged in terms of "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.* (citation omitted).

17 *Id.* The majority concluded that the excusable neglect analysis ultimately rested on these equitable principles. *Id.*

18 *Id.* at 1492. *See supra* note 7 (outlining the Code provisions regarding creditor listings in bankruptcy claim filings). Pioneer Investment Services voluntarily filed for a Chapter 11 bankruptcy reorganization on April 12, 1989. *Pioneer*, 113 S. Ct. at 1492. Four unsecured creditors filed a Rule 9006(b)(1) motion for an extension to file a proof of claim. *In re* Pioneer Inv. Servs. Co., 106 B.R. 510, 511 (Bankr. E.D. Tenn. 1989), *appeal dismissed*, 902 F.2d 32 (1990), *rev'd*, *In re* Pioneer Inv. Servs., 943 F.2d 673 (6th Cir. 1991), *aff'd*, 113 S. Ct. 1489 (1993). These creditors included Clinton Associates Limited Partnership, West Knoxville Associates Limited Partnership, Brunswick Associates Limited Partnership, and Ft. Oglethorpe Associates Limited Partnership. *Id.* Together, these associations constituted the unsecured creditors of Pioneer Investment Services. *Id.*

19 Section 341(a) provides, in pertinent part: "Within a reasonable time after the order for relief in a case under this title, [11 U.S.C.S. §§ 101 *et seq.*,] the United States trustee shall convene and preside at a meeting of the creditors." 11 U.S.C. § 341 (1988).

20 *Pioneer*, 106 B.R. at 512.

a claims bar date of August 3, 1989.[21]

Marc A. Berlin received the notice and attended the § 341 meeting on the creditors' behalf.[22] In mid-June, after Berlin became a member of the United States Trustee's unsecured creditors' committee,[23] the creditors retained attorney Marc Richards to represent them throughout the proceeding.[24] Even though Berlin forwarded Richards the entire bankruptcy file, which contained the letter denoting the claims deadline, Richards, when questioned by the creditors, responded that he was unaware of the August 3 deadline.[25] On July 31, 1989, Richards left his law firm and neglected to review the bankruptcy file until mid-August.[26] Amidst this confusion, the claims bar date passed, and the creditors failed to file proofs of claims until August 23, 1989.[27]

The creditors included a Rule 9006(b)(1) bar date extension motion along with their tardy proofs of claims.[28] Utilizing a strict excusable neglect interpretation under Rule 9006(b)(1),[29] the

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21 *Id.* The notice stated: "You must file a proof of claim if your claim is scheduled as disputed, contingent or unliquidated, is unlisted or you do not agree with the amount. *See* 11 U.S.C. Sec. 1111 & Bankruptcy Rule 3003. Bar date is August 3, 1989." *Id.* The claims bar date is the final day on which a creditor may file a proof of claim. *See* FED. R. BANKR. P. 3003(c)(1), (3); *see also supra* note 9 (detailing the provisions of Rule 3003(c)(3)).

22 *Pioneer*, 106 B.R. at 512. Berlin was president of Robriste Enterprises, Inc. and Pudding Enterprises, Inc. *Id.* He also served as the general partner for West Knoxville Associates, Clinton Associates, Ft. Oglethorpe Associates, and Brunswick Associates, the unsecured creditors in *Pioneer* who were seeking an extension for filing proofs of claim. *Id.*

23 *In re* Pioneer Inv. Servs. Co., 943 F.2d 673, 675 (6th Cir. 1991), *aff'd*, 113 S. Ct. 1489 (1993). *See supra* note 5 (detailing the responsibilities of the creditor's committee under 11 U.S.C. § 1103).

24 *Pioneer*, 106 B.R. at 513. Richards had practiced bankruptcy for over seven years and was involved in multiple bankruptcies around the country including those of Baldwin-United, LTV, Braniff Airlines, Tacoma Boat Building, Family Health Plans, DRW Realty, Wilson Foods, and Spector Red Ball. *Id.* at 513 n.5.

25 *Id.* at 513. Berlin testified that, when he gave Richards the bankruptcy file, he asked Richards whether any bar date was set, and Richards incorrectly replied that no urgency was required because no deadline existed. *Id.*

26 *Pioneer*, 113 S. Ct. at 1492-93 (citation omitted). Richards asserted that his temporary absence caused a significant and major disruption in his life throughout the month of August, 1989. *Id.* at 1492.

27 *Id.*

28 *Pioneer*, 106 B.R. at 511. The creditors also filed a motion to allow the claim filing *nunc pro tunc*. *Id.* *Nunc pro tunc* is defined as "an entry made now of something actually previously done to have effect of former date." BLACK'S LAW DICTIONARY 1069 (6th ed. 1990).

29 *Pioneer*, 106 B.R. at 516-17. Noting the absence of an excusable neglect standard in its circuit, the bankruptcy court expressed agreement with the Third, Fourth, and Eleventh Circuits' holdings on the subject. *Id.* at 516; *see supra* note 15 (summarizing the debate among the circuit courts on the applicable standard for excusable neglect

bankruptcy court denied the creditors' motion for an extension.[30] The strict standard, the court maintained, required that the circumstances producing delay be beyond the reasonable control of the responsible filer.[31] Noting Richards's and Berlin's attendance at creditors' meetings from mid-June onward and their respective legal experience, the court concluded that the delay was within the control of the creditors.[32]

On appeal, the district court remanded, questioning the bankruptcy court's strict excusable neglect interpretation.[33] The district court anticipated a more liberal approach by the Sixth Circuit[34] and instructed the bankruptcy court to re-examine the facts under the Ninth Circuit's *In re Dix*[35] analysis.[36] The *Dix* test, the court observed, considered not only whether the delay was within the filer's control, but added: (1) whether the delay prejudiced the debtor; (2) whether the delay impacted upon the court calendar; (3) whether the creditor exhibited good faith; and (4) whether the counsel's neglect should prejudice the creditors.[37] Furthermore, the district court directed the bankruptcy court to determine

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under Rule 9006(b)(1)). Accordingly, the court established that a late filer could claim excusable neglect only if "'failure to timely perform a duty was due to circumstances beyond [the filer's] reasonable control.'" *Pioneer*, 113 S. Ct. at 1493 (quotation omitted).

30 *Pioneer*, 106 B.R. at 517. The bankruptcy court disposed of this motion, refusing to consider any of the circumstances surrounding the late filing under Rule 9006(b)(1). *Id.* at 516, 517.

31 *Id.* at 514, 516. For examples of this standard's application, see *In re* Underground Utility Constr. Co., 35 B.R. 588, 588, 589 (Bankr. S.D. Fla. 1983) (finding that mailing a proof of claim to the incorrect address that caused a deadline to be missed by three days did not constitute excusable neglect); *In re* Oakton Beach & Tennis Club Real Estate Ltd., 9 B.R. 201, 202, 205 (Bankr. E.D. Wis. 1981) (holding that creditor's counsel who relied upon misinformation from a court clerk regarding a proof of claim filing failed to establish excusable neglect); *In re* Horn Constr. & Maintenance, Inc., 32 B.R. 87, 88, 89 (Bankr. S.D. Ala. 1983) (concluding that faulty communication between a creditor and its bankruptcy attorney, which caused tardy claim filing, created a situation undeserving of an excusable neglect extension).

32 *Pioneer*, 106 B.R. at 515-16.

33 *Pioneer*, 113 S. Ct. at 1493.

34 *Id.*

35 95 B.R. 134 (Bankr. 9th Cir. 1988). In *Dix*, the Ninth Circuit allowed a Rule 9006(b)(1) excusable neglect extension to a creditor who was unaware of his claim due to a business relationship between the debtor and creditor involving multiple transactions. *Id.* at 136, 139. The *Dix* court concluded that excusable neglect, for Rule 9006(b)(1) purposes, should be liberally applied to the facts of each case. *Id.* at 138. Accordingly, the *Dix* court considered the equities of the late filing, which revealed no prejudicial effects to the debtor or to court administration. *Id.* For a full discussion of *Dix*, see *infra* notes 100-04 and accompanying text.

36 *Pioneer*, 113 S. Ct. at 1493.

37 *Id.* (quoting *Dix*, 95 B.R. at 138 (quoting *In re* Magouirk, 693 F.2d 948, 951 (9th Cir. 1982))).

whether the actions of the late filing creditors or their counsel could be labelled negligent, indifferent, or culpable.[38]

Saddled with two standards, the bankruptcy court again dismissed the motion.[39] Applying the *Dix* analysis, the court concluded that the attorney's error prompted the delay, and that the attorney's mistakes should burden the creditors.[40] Accordingly, the court held that a filing extension was inappropriate.[41] The court strengthened its decision by finding that the attorney's indifference towards the deadline constituted negligence.[42] On appeal, the district court affirmed.[43]

The Court of Appeals for the Sixth Circuit reversed.[44] First, the Sixth Circuit held that the liberal *Dix* factors utilized by the bankruptcy court were not comprehensive.[45] The court of appeals remarked that the suggested considerations should be molded to the facts of each case.[46] Second, the appeals court disagreed with the bankruptcy court's assertion that the creditors deserved punishment for their counsel's mistakes.[47] Specifically, the court emphasized that when the creditors asked Richards for the claims bar

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38 *Id.* Specifically, the district court directed the bankruptcy court to consider "whether the failure to comply with the bar date 'resulted from negligence, indifference or culpable conduct on the part of a moving creditor or its counsel.'" *Id.* (quotation omitted).

39 *Id.*

40 *Id.* The bankruptcy court concluded that the cause for the delay was within the creditor's control. *Id.* Further, the court declared that it would be proper to penalize the creditors for the acts of their counsel because the creditor's initial representative, Berlin, was a sophisticated businessman and had actual knowledge of the bar date. *Id.*; *see In re* Pioneer, 106 B.R. 510, 512 n.2 (Bankr. E.D. Tenn. 1989) (noting that Berlin not only conducted business in financial management and real estate, but was admitted to practice law in New York and Florida, and was also a certified public accountant). As a result, the bankruptcy court found that two of the *Dix* factors weighed against the creditors. *Pioneer*, 113 S. Ct. at 1493. The bankruptcy court conceded, however, that the late filings would not prejudice Pioneer, that the 20-day filing delay would not hamper judicial efficiency, and that the creditors and their attorney exhibited good faith in bringing the Rule 9006(b)(1) motion. *Id.*

41 *Pioneer*, 113 S. Ct. at 1493. Referencing the two *Dix* factors that the creditors did not satisfy, the bankruptcy court directed that a ruling in the creditor's favor would "'render nugatory the fixing of the claims' bar date in this case.'" *Id.* (citation omitted).

42 *Id.* (citation omitted).

43 *Id.*

44 *In re* Pioneer Inv. Servs. Co., 943 F.2d 673, 679 (6th Cir. 1991), *aff'd*, 113 S. Ct. 1489 (1993).

45 *Id.* at 677. The Sixth Circuit explained that it would follow a textured approach in its excusable neglect analysis, and pointed out that the *Dix* factors would only assist in that analysis. *Id.* Thus, the court refused to adopt the *Dix* factors as a complete and necessary list for each case. *Id.*

46 *Id.*

47 *Id.* The Sixth Circuit reminded that, ultimately, the creditor's attorney was re-

date, Richards responded that no urgency existed.[48] Finally, the court referenced Official Bankruptcy Form 16 to show the disparity between the normal notice form and the unorthodox letter sent to the creditors.[49]

Recognizing a dispute among the circuit courts concerning the interpretation and application of the excusable neglect standard, the United States Supreme Court granted certiorari.[50] The Supreme Court affirmed the Sixth Circuit's decision and adopted the *Dix* factors.[51] The Supreme Court held that the excusable neglect standard required consideration of not only the creditor's fault, but also the present effects of allowing a late claim filing.[52] Additionally, the majority refuted the debtor's contention that excusable neglect required a strict interpretation under which late claims would be allowed only if the filer had no reasonable control over the delay.[53]

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sponsible for filing the proofs of claims. *Id.* Accordingly, the Sixth Circuit opined that the creditors should receive less blame for the delay. *Id.* at 677-78.

48 *Id.* at 677. The Sixth Circuit also pointed out that the bankruptcy court attributed no negligence, culpability, or bad faith to the creditors. *Id.*

49 *Id.* at 678. Official Bankruptcy Form 16 provides creditors with, *inter alia*, the deadlines for filing proofs of claim. *See* 11 U.S.C. app. at 316-17 (1988) (setting forth Bankruptcy Official Form Number 16). The circuit court quoted the pertinent section of Form 16, which states:

> The debtor [or trustee] has filed or will file a list of creditors and equity security holders pursuant to Rule 1007. Any creditor holding a listed claim which is not listed as disputed, contingent, or unliquidated as to amount, may, but need not, file a proof of claim in this case. Creditors whose claims are not listed or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim on or before [*Insert date*], which date is hereby fixed as the last day for filing a proof of claim . . . .

Id. The Sixth Circuit conceded that the bar date notice need not necessarily mimic this Form but stressed that the meeting letter sent to the creditors contained no reference to the significance of the claims bar date. *Pioneer*, 943 F.2d at 678. The circuit court concluded that the notice given to the creditors was, therefore, inconspicuous and peculiar. *Id.* The Sixth Circuit declared that even extensively experienced bankruptcy attorneys would not have received notice of the claims bar date in the initial meeting letter sent to the creditors. *Id.*

After the Bankruptcy Rules were amended in 1991, the provisions relating to creditors' meetings were moved from Official Form Number 16 to Official Form Number 9. *See* 11 U.S.C. app. at 1425 (Supp. IV 1992) (setting forth Bankruptcy Official Form Number 9).

50 Pioneer Inv. Servs. v. Brunswick Assocs., 112 S. Ct. 2963 (1992).

51 Pioneer Inv. Servs. v. Brunswick Assocs., 113 S. Ct. 1489, 1498, 1500 (1993). The Court explained that it substantially agreed with the Sixth Circuit's five-factor excusable neglect analysis. *Id.* *See supra* note 37 and accompanying text (detailing the initial *Dix* factors.)

52 *Pioneer*, 113 S. Ct. at 1498.

53 *Id.* at 1494. The Court explained that Chapter 11 bankruptcy reorganizations

The excusable neglect phrase of Rule 9006(b)(1) originated in Federal Rule of Civil Procedure 6(b) (Rule 6(b)).[54] Early cases involving excusable neglect under Rule 6(b) were inconsistent.[55]

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attempt to rehabilitate the debtor while avoiding forfeitures by creditors in an equitable manner. *Id.* at 1495. This premise, the Court claimed, clashed with Pioneer's strict view that the goal of bankruptcy was finality and certainty in all proceedings. *Id.* at 1494.

[54] *See* FED. R. BANKR. P. 9006(b)(1) advisory committee's notes (noting that excusable neglect was borrowed from Federal Rule of Civil Procedure 6(b)); *see also* 4A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1165 (1987) (discussing the "elastic" excusable neglect concept and its development). Federal Rule of Civil Procedure 6(b) (Rule 6(b)) provides, in pertinent part:

> When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion . . . (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect . . .

FED. R. CIV. P. 6(b). Courts utilize Rule 6(b) to provide extensions of time to parties who fail to perform an act mandated by the Federal Rules of Civil Procedure. Kleckner v. Glover Trucking Corp., 103 F.R.D. 553, 555 (M.D. Pa. 1984). If a party has failed to request an extension until after the time specified under a rule expires, courts may grant an extension under Rule 6(b)(2) if "the failure to act was the result of excusable neglect." *Id.* at 555. When considering "excusable neglect" motions under Rule 6(b), courts may exercise their sole discretion. Dominic v. Hess Oil V.I. Corp., 841 F.2d 513, 516 (3d Cir. 1988); *see also* 2 MOORE'S FEDERAL PRACTICE § 6.08 (1993) ("[T]he courts generally have given Rule 6(b) a liberal interpretation in order to work substantial justice.").

[55] WRIGHT & MILLER, *supra* note 54, at § 1165. For example, in *Staggers v. Otto Gerdau Co.*, 359 F.2d 292 (2d Cir. 1966), and *Graham v. Pennsylvania Railroad*, 342 F.2d 914 (D.C. Cir. 1964), the excusable neglect standard received opposite treatments. *Id.*

Staggers concerned a motion to substitute a party under Federal Rule of Civil Procedure 25(a)(1) after the original plaintiff died. *Staggers*, 359 F.2d at 294, 295. Rule 25(a)(1) provides, in pertinent part: "If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties." FED. R. CIV. P. 25(a)(1). Rule 25(a)(1) also allows a 90 day time limit for substitution. *Id.* In *Staggers*, the original plaintiff instituted a breach of contract claim for $380,000 concerning a sale of 19,000 tons of rice. *Staggers*, 359 F.2d at 293. Upon the plaintiff's death, no replacement was offered until two days after the 90 day deadline. *Id.* at 296. The Second Circuit, however, allowed the substitution under Rule 6(b). *Id.* The court recognized that the deceased's son-in-law had to obtain another court's permission and consult a multitude of potential parties before requesting the substitution. *Id.* at 295, 296. The crucial determination, the court of appeals stressed, however, was that the defendants would not be "prejudiced" by a two day trial delay. *Id.* at 296. The court also noted that the "requirement of finality (of a procedural rule) is to be given a practical, rather than a technical, construction." *Id.* at 295 (citation omitted).

In *Graham*, the Court of Appeals for the District of Columbia addressed a similar delayed motion for substitution of a party. *Graham*, 342 F.2d at 915. The asserted reason for the delay was ignorance of recent changes governing Rule 25(a)(1). *Id.* Rejecting this excuse, the court reasoned that the attorney had ample time to digest the new rules that the Supreme Court had approved almost six months before their implementation. *Id.* at 916.

Some courts applied a strict interpretation,[56] but others preferred a more liberal approach.[57]

When the Bankruptcy Reform Act was adopted in 1978, the excusable neglect doctrine's conflicting interpretations were maintained under Rule 9006(b)(1).[58] An example of a court's application of the strict standard[59] was evidenced in *In re Gem Rail Corp.*[60] In *Gem Rail*, the debtor neglected to file a financial affairs statement[61] in a bankruptcy proceeding while awaiting a ruling on a disputed sheriff's sale.[62] Disallowing the debtor's motion to file a late statement, the court held that debtors must adhere to judicially imposed deadlines, regardless of pending motions.[63] The

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56 *See, e.g.*, Stirling v. Chemical Bank, 511 F.2d 1030, 1031 (2d Cir. 1975) (holding that missing a deadline because of an inadvertent failure to pay filing fees did not constitute "excusable neglect"); Citizens' Protective League v. Clark, 178 F.2d 703, 704 (D.C. Cir. 1949) (declaring that a busy office schedule did not warrant deadline extension under Rule 6(b)'s "excusable neglect").

57 *See, e.g.*, Ham v. Smith, 653 F.2d 628, 629, 630 (D.C. Cir. 1981) (concluding that "excusable neglect" was shown where a party did not receive notice of deadline until thirteen days before such deadline due to an address change); Colgate-Palmolive Co. v. North Am. Chemical Corp., 238 F. Supp. 81, 82-83 (S.D.N.Y. 1964) (granting a party an "excusable neglect" extension when the docket schedule inadvertently set response date for filing an answer on a later day); Redmond v. O'Sullivan Rubber Co., 10 F.R.D. 519, 520, 521 (W.D. Va. 1943) (permitting an excusable neglect extension to a defendant who filed an answer four days late because the plaintiff was not prejudiced and the trial was still seven weeks away).

58 *See supra* note 15 (detailing the split among the circuit courts in interpreting "excusable neglect" under Rule 9006(b)(1)).

59 The strict standard provided that circumstances delaying a claims filing must be beyond the creditor's reasonable control. *In re* Pioneer Inv. Servs. Co., 106 B.R. 510, 514 (Bankr. E.D. Tenn. 1989); *see also In re* STN Enterprises Inc., 94 B.R. 329, 332, 333 (Bankr. D. Vt. 1988) (refusing to consider a late claim filing's prejudicial effect upon the debtor for Rule 9006(b)(1) excusable neglect purposes).

60 12 B.R. 929 (Bankr. E.D. Pa. 1981).

61 *Id.* at 930. In a bankruptcy proceeding, debtors are required to file a statement of financial affairs pursuant to § 521(1). 11 U.S.C. § 521(1) (1988). *See supra* note 7 and accompanying text (detailing § 521).

62 *Gem Rail*, 12 B.R. at 931. The *Gem Rail* debtor had received a time extension for filing the financial affairs statement. *Id.* The sheriff's sale of the debtor's assets occurred one day after this extension, and the debtor claimed that filing a statement became impossible because the creditor had acquired too many of the debtor's records in the sale. *Id.* Eighteen days after the final day for filing the statements passed, the debtor filed another motion to extend the time for submitting the required documents. *Id.*

63 *Id.* at 931, 932. The *Gem Rail* court maintained that allowing unnecessary time extensions would frustrate judicial efficiency. *Id.* at 932. Although the debtor claimed an inability to comply with the court's deadline for filing financial affairs statements, the court stressed that the debtor made no affirmative effort to retrieve the documents necessary for completing the statement. *Id.* at 931. As a result, the court concluded, the delay was within the debtor's control and would not be excused under Rule 9006(b)(1). *Id.* at 931-32.

court cited federal precedent, stressing that delays avoidable through a party's diligence did not warrant an excusable neglect extension.[64] Circumstances delaying a claim, the court maintained, must be beyond the creditor's reasonable control.[65]

In *In re South Atlantic Financial Corp.*,[66] the Eleventh Circuit also adopted a strict excusable neglect interpretation after examining its previous holdings under the Federal Rules of Civil Procedure.[67] In *South Atlantic*, the court affirmed a ruling that an appearance by the creditor's counsel would not substitute for a claim filing.[68] Facing a case of first impression, the Eleventh Circuit analyzed the various district court findings and concluded that strict excusable neglect guidelines comported with its previous

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64 *Id.* The *Gem Rail* court recognized the Rule 6(b) origins of excusable neglect. *Id.* at 931 (citation omitted). The court offered that excusable neglect extensions would most likely occur in cases where a party did not receive proper notice of a deadline. *Id.* (citing *In re* Loveridge, 2 B.C.D. 1597, 1598 (D. Conn. 1977)); *see also* Mars Steel Corp. v. Continental Illinois Nat. Bank and Trust Co., 120 F.R.D. 51, 51-52 (N.D. Ill. 1988) (allowing a Rule 6(b) extension under excusable neglect where movants failed to receive notice of court deadline at their current address); Anderson v. Stanco Sports Library, Inc., 52 F.R.D. 108, 109-10 (D.S.C. 1971) (holding that defendant's failure to file an answer was excusable under Rule 6(b) because both of defendant's attorneys were away for holidays when notice was mailed).

65 *Gem Rail*, 12 B.R. at 931-32; *see also In re* Jackson, 98 B.R. 738, 739, 742 (Bankr. D. Md. 1986) (denying a creditor's Rule 9006(b)(1) motion for extension of claims bar deadline). In *Jackson*, the creditor received court warning of claims bar date and knew of the bankruptcy proceeding up to five months before its commencement. *Id.* at 742. The court denied the Rule 9006(b)(1) extension motion because the creditor had no excuse for failing to check the court clerk's file for the claims bar deadline or for failing to check the creditor's own records. *Id.* The court reminded that circumstances causing a filing delay must be "unique" for an excusable neglect extension. *Id. But see In re* Wells, 87 B.R. 862, 865 (Bankr. E.D. Pa. 1988) (declaring that, in deciding excusable neglect situations, "courts . . . must recognize the possibility of human error and decline to penalize [movants] when those errors are explained").

66 767 F.2d. 814 (11th Cir. 1985).

67 *Id.* at 817-18. For example, in *McLaughlin v. City of LaGrange*, the Eleventh Circuit denied excusable neglect relief to a party under Rule 6(b) where the only asserted reason for missing a summary judgment motion deadline was an attorney's busy schedule. McLaughlin v. City of LaGrange, 662 F.2d 1385, 1387-88 (11th Cir.), *cert. denied*, 456 U.S. 979 (1982).

68 *South Atlantic*, 767 F.2d at 816, 819. Initially, the creditor attempted to obtain a Rule 9006(b)(1) extension because the two attorneys handling the bankruptcy case had apparently miscommunicated information concerning whether the claim had been filed. *Id.* at 816. The district court refused to allow an extension under Rule 9006(b)(1). *Id.* Although the creditor neglected to file his proof of claim on time, the district court recognized that the creditor's attorney had made a court appearance before the deadline to request that the court forward all future orders and pleadings. *Id.* at 815, 816. The district court allowed both sides to argue whether this counsel appearance could constitute "an informal proof of claim." *Id.* at 816. The creditor argued that this counsel appearance should constitute a claim filing, which could be amended. *Id.* Ultimately, the district court denied the motion. *Id.*

holdings concerning Rule 6(b).[69] Although the court recognized that certain lower courts favorably considered the prejudicial effect of a Rule 9006(b)(1) filing upon opposing parties,[70] the court refused to circumvent the plain meaning of excusable neglect.[71] In so holding, the *South Atlantic* court focused the excusable neglect analysis solely on whether the creditor caused the delay.[72]

After the *South Atlantic* decision, other circuit courts, including the Fourth Circuit in *In re Davis*,[73] adamantly adhered to a strict interpretation.[74] In *Davis*, a debtor sought an extension to file a

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[69] *Id.* at 817-18; *see, e.g., McLaughlin*, 662 F.2d at 1387-88 (holding that excusable neglect was inapplicable where a sole practitioner's busy schedule caused delay). For a decision rejecting an untimely motion under the Federal Rules of Civil Procedure, see Graham v. Pennsylvania R.R., 342 F.2d 914, 915-16 (D.C. Cir. 1964) (concluding that counsel's unfamiliarity with a new rule of civil procedure did not constitute excusable neglect). *But see* Algemene Bank Nederland, N.V. v. Soysen Tarim Urunleri Dis Ticaret Ve Sanayi, A.S., 748 F. Supp. 177, 180, 181 (S.D.N.Y. 1990) (allowing defendant, a foreign corporation, to respond five weeks late to an interpleader complaint under Rule 6(b) because defendant had little knowledge of the Federal Rules of Civil Procedure).

[70] *South Atlantic*, 767 F.2d at 818. (citing *In re* O.P.M. Leasing Servs., Inc., 35 B.R. 854, 866 (Bankr. S.D.N.Y. 1983); *In re* Four Seasons Securities Laws Litigation, 493 F.2d 1288, 1290-91 (10th Cir. 1974)). For example, in *In re O.P.M. Leasing Servs., Inc.*, the District Court for the Southern District of New York declared that "[t]he standard of 'excusable neglect' [under Rule 9006(b)(1)] is a flexible one which is subject to interpretation by the trier of fact in each instance." *O.P.M. Leasing*, 35 B.R. at 866 (citation omitted).

[71] *South Atlantic*, 767 F.2d at 818-19. The "plain meaning rule" is defined as "[a] rule used to interpret statutes which says that the court will interpret words in the statute according to their usual or 'plain' meaning as understood by the general public." BLACK'S LAW DICTIONARY 796 (6th ed. 1991). The *South Atlantic* court emphasized that the language of Rule 9006(b)(1) clearly focuses "on the movant's actions and the reasons for those actions, not on the effect that an extension might have on the other parties' positions." *South Atlantic*, 767 F.2d. at 819.

The court also cited the Rule 9006(b)(1) advisory committee notes, which mention that the "excusable neglect" phrase was taken from Federal Rule of Civil Procedure 6(b)(2). *Id.* at 818 (citation omitted).

[72] *South Atlantic*, 767 F.2d at 819. The court rejected the notion that the effects of a late filing should influence an excusable neglect determination. *Id.*; *see also* Chrysler Motors Corp. v. Schneiderman, 940 F.2d. 911, 915 (3d Cir. 1991) (finding that delayed filing of proof of claim could have been avoided if the creditor had used certified mail with return receipt to send the claim); *In re* Energy Resources Co., 82 B.R. 172, 173 (Bankr. D. Mass. 1987) (declaring that the unexpected absence of an attorney's clerical support the day before a deadline did not constitute a circumstance "beyond the reasonable control of [the attorney]" in terms of excusable neglect) (citation omitted); *In re* Century Brass Prods., Inc., 72 B.R. 68, 69, 70 (Bankr. D. Conn. 1987) (ruling that the United States Army's time consuming internal procedures did not justify an excusable delay).

[73] 936 F.2d 771 (4th Cir. 1991).

[74] *Id.* at 774; *see also In re* Danielson, 981 F.2d 296, 298 (7th Cir. 1992) (holding that a debtor, who neglected to review a court clerk's claims list, did not miss filing deadline due to excusable neglect); *In re* Analytical Sys., Inc., 933 F.2d 939, 940, 942

claim on behalf of the Internal Revenue Service (IRS).[75] The court ruled that the debtor's ignorance of whether the IRS had already filed a claim did not represent an excusable neglect situation.[76] The *Davis* court based its excusable neglect analysis solely upon the debtor's actions that caused the missed deadline.[77] Because the debtor had only itself to blame for the tardy filing, the court concluded that Rule 9006(b)(1) could not provide an extension.[78]

(11th Cir. 1991) (declaring that the creditor's failure to file a claim while relying upon fraudulent statements by debtor, who was also creditor's husband, did not constitute a situation beyond the creditor's control); Hanson v. First Bank of South Dakota, N.A., 828 F.2d 1310, 1315 (8th Cir. 1987) (concluding that employee turnover at a corporation that caused delay exemplified conduct within the creditor's control and, therefore, did not constitute excusable neglect).

75 *Davis*, 936 F.2d. at 773. In *Davis*, the debtors voluntarily filed a Chapter 7 petition. *Id.* The debtors listed a debt owed to the Internal Revenue Service (IRS) on their list of creditors. *Id.* When the IRS failed to file a claim by the deadline, the debtors then filed a claim for the IRS under Bankruptcy Rule 3004. *Id.*; *see* FED. R. BANKR. P. 3004. Rule 3004 provides: "If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, the debtor or trustee may do so in the name of the creditor." *Id.* Debtors choose to file proofs of claim on behalf of the IRS because, under § 523(a)(1) of the Code, tax debts are not discharged by bankruptcy. 11 U.S.C. § 523 (a)(1) (1988); *Danielson*, 981 F.2d at 297. Section 523(a)(1) states: "A discharge under . . . this title does not discharge an individual debtor from any debt—(1) for a tax or customs duty . . ." 11 U.S.C. § 523 (a)(1). The purpose of filing such claims is to ensure that no tax debt remains after the chapter 7 liquidation. *See Danielson*, 981 F.2d at 297 (noting that "[i]f . . . taxes are not paid, the debt passes through bankruptcy and remains collectible 'whether or not a claim for such tax was filed or allowed'") (citation omitted).

76 *Davis*, 936 F.2d. at 773, 774. The debtors argued that their failure to file the claim was excusable because the court did not notify them of whether the IRS had filed a proof of claim, and also because the IRS tax liability had not been assessed. *Id.* at 774. The *Davis* court first declared that the bankruptcy court owed no affirmative duty to notify creditors when claims were filed. *Id.* Instead, the court proclaimed that the court clerk must maintain only a claims docket. *Id.* Further, the court asserted that the "assessment of a tax is not a prerequisite to the imposition of tax liability." *Id.* (citing *In re* Hatchett, 31 B.R. 833, 836 (Bankr. E.D. Va. 1983)). The court further reminded that the tax became a personal liability to debtors once their corporation defaulted on its IRS payment. *Id.* at 774-75. As a result, the court recognized that because debtors had knowledge of their corporate debts, the debtors also had knowledge of their IRS obligations. *Id.* at 775-76. Accordingly, the court denied excusable neglect relief because the debtors were aware of the tax liability when proofs of claim were due under Bankruptcy Rule 3004. *Id.* at 774-75.

77 *Id.* The court reminded that a Rule 9006(b)(1) inquiry contemplates whether the failure to perform an act on time resulted from "circumstances which were beyond the reasonable control of the person whose duty it was to perform." *Id.* at 774 (citation omitted). The court stressed that the debtor's failure to file a claim under Rule 3004 did not constitute excusable neglect but rather was "the result of [a] [d]ebtor's lack of diligence in pursuing their statutory advantage." *Id.* at 775.

78 *Id.* at 774-75; *see also In re* Crawford, 135 B.R. 128, 132 (Bankr. D. Kan. 1991) (denying an extension to file a claim on behalf of the IRS where delay was solely the debtor's fault). In *Crawford*, a Chapter 7 debtor attempted to file a late proof of claim

Simultaneous with the development of the strict excusable neglect standard, a distinctly liberal interpretation evolved.[79] Because the strict precedents in bankruptcy cases were based upon Rule 6(b) interpretations in non-bankruptcy proceedings, the liberal standard also had the same roots.[80] *In re Four Seasons Securities Laws Litigation*[81] evidenced the liberal attitude some courts adopted when initially applying Rule 6(b).[82]

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on behalf of the IRS. *Id.* at 129, 130. The court explained that the excusable neglect inquiry centered on whether the party who neglected to perform could have prevented the delay through due diligence. *Id.* at 131. The court refused to allow an excusable neglect filing extension where the debtor included the IRS on its bankruptcy schedules but failed to file an IRS claim because of uncertainty of the exact amount owed to the IRS. *Id.* at 131, 132. The court reminded that the debtor could have filed a claim with an estimated amount that "would have put the burden on the IRS to determine the actual amount and file an amended proof of claim." *Id.* at 131. The court concluded, therefore, that the debtor's failure to file a claim resulted from the debtor's own inactivity. *Id.* at 132.

79 *See supra* note 15 (noting the 10th Circuit's adoption of the liberal approach in analyzing extensions under Rule 9006(b)(1)).

80 *See supra* note 55 (discussing the origins of Rule 6(b) liberal interpretations in *Staggers v. Otto Gerdau Co.*, 359 F.2d 292 (2d Cir. 1966)).

81 493 F.2d 1288 (10th Cir. 1974).

82 *See In re* Pioneer Inv. Servs. Corp., 106 B.R. 510, 516 (Bankr. E.D. Tenn. 1989) (noting that some courts, such as the Fourth Circuit in *In re Four Seasons Securities Laws Litigation*, considered the prejudicial effect of a late claims filing in determining the existence of excusable neglect); *see also* Coady v. Aguadilla Terminal Inc., 456 F.2d 677, 678-79 (1st Cir. 1972) (allowing a party to post a delayed bond under an excusable neglect extension). In *Coady*, the District Court of Puerto Rico ordered the plaintiff to post a $250 bond within 90 days as security for the costs, attorney's fees, and expenses of the defendant in a personal injury action. *Id.* at 678. The plaintiff did not file the bond until after the defendants filed a motion to dismiss for failure to file such bond. *Id.* Plaintiff moved to excuse the late posting of the bond under excusable neglect. *Id.* The *Coady* court examined the plaintiff's bond-posting delay under an "excusable neglect" analysis and declared that the inquiry depended on both the importance of the involved matter and the prejudice to the other party. *Id.* Because the personal injury case had not begun, the court declared that an excusable neglect extension would be so unprejudicial that justice required excusing the late bond filing. *Id.* at 678-79; *see also* Hammons v. International Playtex, Inc., 676 F. Supp. 1114, 1118-19 (D. Wyo. 1988) (finding that "excusable neglect" inquiries under Federal Rule of Civil Procedure 6(b)(2) require "both a demonstration of good faith and a reasonable basis for failing to comply with the specified time period") (citation omitted).

Some courts eventually adopted the liberal excusable neglect approach in bankruptcy proceedings under Rule 9006(b)(1). *See, e.g., In re* Mullins, 55 B.R. 618, 621 (Bankr. W.D. Va. 1985). In *Mullins*, the creditors in a Chapter 7 bankruptcy proceeding filed a tardy complaint objecting to a debt discharge. *Id.* at 618-19. The creditors argued that settlement meetings and their attorney's busy schedule prevented them from filing a timely objection. *Id.* at 622. Rejecting these excuses, the court pointed out that Rule 9006(b)(1) excusable neglect time extensions contemplated several factors, including adequacy of notice, sophistication of the creditor, source of the delay, and prejudice to the debtor. *Id.*; *see also In re* Frankina, 29 B.R. 983, 986 (Bankr. E.D. Mich. 1983) (holding that "excusable neglect" motions must be considered in light of

In *Four Seasons*, a potential class action plaintiff, a bank, sought exclusion from the class to pursue a private suit.[83] The bank moved pursuant to Rule 6(b) to extend the allowable time for opting out of the class action.[84] The *Four Seasons* court granted the extension, holding that the delayed withdrawal from the class resulted from excusable neglect.[85] Expanding the excusable neglect inquiry beyond an examination of the bank's part in the delay,[86] the court reasoned that the movant's good faith and the lack of a prejudicial effect upon other plaintiffs warranted a late withdrawal.[87]

The United States Court of Appeals for the Ninth Circuit created a schism among the circuits by applying the liberal *Four Seasons* excusable neglect view to the bankruptcy rules for the first time in *In re Magouirk*.[88] In *Magouirk*, the bankruptcy court denied the submission of a creditor's tardy complaint disputing the dischargeability of a debt.[89] The creditor appealed, claiming that the

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the party's good faith as well as a reasonable basis for not complying with a deadline) (citation omitted).

83 *Four Seasons*, 493 F.2d. at 1289. The class action originated from damages incurred through an investment counsellor's advice to purchase Four Seasons' securities. *Id.* Four Seasons subsequently instituted bankruptcy proceedings, thereby causing substantial losses for the investors. *Id.* All potential plaintiffs received notice of the class action, which included instructions for opting out of the class. *Id.* Although the potential litigant did not follow the exclusion instructions exactly, he notified the class action representative of his intention to withdraw from the suit. *Id.* at 1288-89.

84 *Id.* at 1290. The bank was required to opt out of the proceeding with a written request. *Id.* at 1289. To evidence its intent to be excluded, the bank relied on a letter that expressed concern over its participation in the class action. *Id.* at 1289-90. Moreover, the bank noted that this letter had been sent to the class action trustee before the deadline to opt out expired. *Id.* at 1289. The court found that although the letter was not a direct request to be excluded from the class, the potential plaintiff exhibited good faith and had a reasonable basis for relying upon its letter for exclusion. *Id.* at 1290-91.

85 *Id.* The court stressed that the would-be litigant was not seeking any advantage by leaving the class. *Id.* at 1290. The court further noted that, if the party left the class, his absence would not affect the monetary recovery of the class action plaintiffs. *Id.* at 1290-91.

86 *Id.* at 1290. The court noted that the potential plaintiff's letter evidencing apprehensiveness towards the class action received a delayed response. *Id.* Further, the court reminded that the counsel for the class action plaintiffs knew of the potential plaintiff's intent to be excluded from the class long before the exclusion deadline. *Id.*

87 *Id.* at 1290-91. The court stressed that the potential plaintiff sought no tactical advantage with the delay in withdrawing, and that the potential plaintiff was merely seeking to clarify the class action details when the letter notifying its withdrawal was sent. *Id.* at 1290.

88 693 F.2d 948, 951 (9th Cir. 1982).

89 *Id.* at 949. In *Magouirk*, the debtor filed a voluntary Chapter 7 bankruptcy petition and listed a debt to Fasson Corporation (creditor) among its liabilities. *Id.* The

bankruptcy judge's strict excusable neglect analysis of the Rule 9006(b)(1) motion was incorrect.[90]

Expressing no opinion on the merits of the motion, the court used the opportunity to formulate an excusable neglect framework.[91] The court explained that an excusable neglect motion involved different considerations depending upon its procedural context.[92] Distinguishing between appeals of a decision on the merits[93] and appeals of a motion to reopen a default judgment under Federal Rule of Civil Procedure 60(b),[94] the court declared that consideration of the latter should include equitable factors.[95]

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court sent a notice to all creditors setting the last day for filing complaints to challenge the dischargeability of individual debts. *Id.* The creditor confused this date with another court deadline and, as a result, filed its complaint late. *Id.* Refusing to accept the tardy complaint, the court rejected the creditor's argument that the scheduling confusion constituted excusable neglect. *Id.*

90 *Id.* at 949-50.

91 *Id.* at 950-52. The court explained that the excusable neglect standard had "differing interpretations, depending upon the procedural context in which it appears." *Id.* at 950.

92 *Id.* The court distinguished between former Bankruptcy Rule 802 (now 8002), which covered appeal motions, and former Bankruptcy Rule 924 (now 9024), which patterned Federal Rule of Civil Procedure 60(b). *Id.* at 950-51. Rule 8002(c) provides, in pertinent part:

> A request to extend the time for filing a notice of appeal must be made before the time for filing a notice of appeal has expired, except that a request made no more than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect . . . .

FED. R. BANKR. P. 8002(c). Conversely, Rule 9024 provides, in pertinent 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 against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b) . . . .

FED. R. BANKR. P. 9024.

93 *Magouirk*, 693 F.2d at 951. A "decision on the merits" is defined as "[a] decision . . . passing on a controversy with respect to the interpretation thereof which bars subsequent suit on the same cause of action." BLACK'S LAW DICTIONARY 407 (6th ed. 1990) (citation omitted).

94 *Magouirk*, 693 F.2d at 951. A "default judgment" is defined as a "[j]udgment entered against a party who has failed to defend against a claim that has been brought by another party." BLACK'S LAW DICTIONARY 417 (6th ed. 1990). Federal Rule of Civil Procedure 60(b) (Rule 60(b)) provides, in pertinent part: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or *excusable neglect* . . . ." FED. R. CIV. P. 60(b) (emphasis added).

95 *Magouirk*, 693 F.2d at 951. The court explained that "excusable neglect" warranted a liberal construction "in those instances where the order or judgment forecloses trial on the merits of a claim." *Id.* (citations omitted). The *Magouirk* court reiterated that motions to reopen a default judgment under Rule 60(b) "may con-

The *Magouirk* court reasoned that a motion to set aside a default judgment, like a motion to file a delayed complaint, warranted a more liberal standard because a decision on the merits never occurred.[96]

Recognizing the need for a liberal standard, the court presented the relevant considerations that included: (1) prejudice to the debtor; (2) effect upon court efficiency; (3) culpability of the movant towards the delay; (4) movant's good faith; and (5) imposition of the burden of the attorney's mistake on the late filer.[97] The court concluded that in deciding a motion to file a late discharge of debts complaint, a court should consider the equities of a situation, rather than only the movant's culpability.[98] A liberal interpretation was proper, the court reasoned, because the creditor's appeal did not challenge the merits of a decision, but rather a failure to file a complaint that would initiate a decision.[99]

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sider the merits of the untested claim and determine whether setting aside the order will prejudice the other party." *Id.* (citing Schwab v. Bullock's Inc., 508 F.2d 353, 355 (9th Cir. 1974)). In *Schwab*, the Ninth Circuit considered a defendant's motion to reopen a default judgment in a corporate antitrust action. *Schwab*, 508 F.2d at 353, 354. In Rule 60(b) motions, the court explained, a judge has discretion to decide whether to reopen a default judgment. *Id.* at 355. The court then detailed the important considerations for such motions. *Id.* Specifically, the court noted that the rule's remedial nature required a liberal application, that decisions on the merits were favored over default judgments, and that a movant's valid defense should be resolved in favor of vacating a default judgment. *Id.* (citations omitted).

96 *Magouirk*, 693 F.2d at 951. The *Magouirk* court reiterated that a liberal "excusable neglect" interpretation should have been applied because a motion to extend the time to file a complaint was most procedurally similar to a Rule 60(b) motion to set aside a default judgment. *Id.* Accordingly, the court of appeals determined that where a court has not even heard the merits, it has more flexibility in applying excusable neglect. *Id.* The court reminded that the appeal would not challenge the "correctness" of a decision, but rather whether the merits should be contested at all. *Id.*

97 *Id.* (citing *In re* Heyward, 15 B.R. 629, 636 (Bankr. E.D.N.Y. 1981); *In re* Hinote, 13 B.R. 874, 876 (Bankr. E.D. Pa. 1981); *In re* Klayer, 13 B.R. 542, 545 (Bankr. W.D. Ky. 1981); *In re* Wallace, 12 B.R. 938, 940 (Bankr. E.D. Pa. 1981); *In re* Gerber, 7 B.R. 910, 911 (Bankr. D. Minn. 1981)). These bankruptcy cases, the *Magouirk* court noted, had utilized a broad range of factors to liberally construe "excusable neglect." *Id.*

98 *Id.* The *Magouirk* court opined that a liberal excusable neglect analysis proved especially applicable to motions concerning an objection to the discharge of a debtor's debt. *Id.* Accordingly, the *Magouirk* court remanded the creditor's motion to the bankruptcy court for reconsideration under the flexible five-factor analysis. *Id.* at 951-52.

99 *Id.* at 951. The reasoning of *Magouirk* eventually became antiquated, however, because the motion was not considered under the current Code. *In re* Rhodes, 71 B.R. 206, 208 (Bankr. 9th Cir. 1986); *see also In re* Knobel, 54 B.R. 458, 460-61 (Bankr. D.C. Colo. 1985) (agreeing that excusable neglect no longer applies under Rule 4007). In *Rhodes*, the Ninth Circuit explained that Rule 9006(b)(3) lists certain rules that may not receive 9006(b)(1) excusable neglect extensions. *Rhodes*, 71 B.R. at 208. Rule 9006(b)(3) provides: "[Bankruptcy courts] may enlarge the time for taking action under [Rule] . . . 4007(c) . . . only to the extent and under the conditions stated

The scope of this preliminary standard was expanded in *In re Dix*,[100] in which the Ninth Circuit applied the *Magouirk* test to a creditor's late proof of claim filing under Rule 9006(b)(1).[101] While recognizing that both liberal and strict excusable neglect interpretations existed, the Ninth Circuit followed the *Magouirk* approach.[102] The court reasoned that because a late claim filing motion would not challenge an adjudicated issue, a more liberal excusable neglect standard applied.[103] As a result, the court adapted *Magouirk*'s multi-factored excusable neglect approach to delayed proof of claim motions.[104]

The Supreme Court ended the excusable neglect debate in

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in those rules." FED. R. BANKR. P. 9006(b)(3). Rule 4007(c) states: "A complaint to determine the dischargeability of any debt . . . shall be filed not later than 60 days following the first date set for the meeting of creditors . . . . The motion shall be made before the time has expired." FED. R. BANKR. P. 4007(c). The *Rhodes* court clarified that Rule 4007(c) governed the time for filing complaints to discharge debts. *Rhodes*, 71 B.R. at 208. Rule 4007(c), however, contrasts with Rule 404, which the *Magouirk* court utilized for its analysis of excusable neglect in discharge of debt motions. *Magouirk*, 693 F.2d at 950. Former Bankruptcy Rule 404(c) provides: "The court may for cause, on its own initiative or on application of any party in interest, extend the time for filing a complaint objecting to discharge." Bankruptcy Rule 404(c).

Although *Magouirk* concerned a bankruptcy rule that no longer utilizes Rule 9006(b)(1) excusable neglect assistance, the *Magouirk* court's reasoning was followed by future courts when examining excusable neglect. *See In re* Dix, 95 B.R. 134, 137 n.2 (Bankr. 9th Cir. 1988) ("It is well established that current Bankruptcy Rules 4007(c) and 9006(b)(3) no longer grant a court discretion to enlarge the time for filing [complaints objecting to dischargeability.] . . . However, the discussion in *Magouirk* regarding the varying standards of excusable neglect would still seem to be valid.").

100 95 B.R. 134 (Bankr. 9th Cir. 1988).

101 *Id.* at 136, 138. In *Dix*, the bankruptcy filer had various business relationships with a creditor, who was also a personal acquaintance. *Id.* at 136. Amidst many complicated financial ventures, the creditor was unaware of his claim against the debtor. *Id.* Consequently, the creditor received no notice of the proceeding and was forced to file a tardy proof of claim under Rule 9006(b)(1). *Id.*

102 *Id.* at 137-38. The *Dix* court reiterated a preference to allow the merits of each motion to be considered. *Id.* at 138. The court insinuated that disallowing a late proof of claim filing constituted the foreclosure of a trial on the merits. *Id.* The court agreed with the *Magouirk* court's analysis, and ruled that a liberally construed application of excusable neglect was applicable. *Id.*

103 *Id.* The court suggested that it disfavored rejecting procedural motions. *Id.*; *see also In re* Paul, 101 B.R. 228, 231 (Bankr. S.D. Ca. 1989) (accepting late ballots that rejected a Chapter 11 reorganization plan because no delay in judicial administration would occur, and no prejudice to the debtor would result because ballots were submitted prior to the plan confirmation hearing).

104 *Dix*, 95 B.R. at 138. The *Dix* court proceeded to analyze the motion under the factors enunciated in *Magouirk*. *Id.* at 138-39. The court allowed the late proof of claim because the debtor's reorganization plan took the creditor into account, the court faced no added delay, the evidence did not suggest that the creditor knew of the claim prior to the bar date, and the creditor evidenced no bad faith. *Id.*

Pioneer Investment Services v. Brunswick Associates.[105] While formulating its excusable neglect analysis, the Court addressed the issue of whether an attorney's erroneous advice that caused a late claim filing constituted excusable neglect under Rule 9006(b)(1).[106]

Writing for the majority, Justice White immediately dismissed Pioneer's strict interpretation as contrary to both Rule 9006(b)(1)'s[107] wording and function.[108] Initially, the Court defined "neglect" and concluded that a late claim filer could, in fact, be at fault and still receive a Rule 9006(b)(1) extension.[109] Justice White maintained that by utilizing the word neglect, Congress addressed not only situations where a filing delay was inevitable, but also circumstances where the late filer exhibited some fault towards the delay.[110]

Distinguishing Chapter 11 from the other provisions of the Bankruptcy Code, the majority then examined the legislative history of Rule 9006(b)(1).[111] Justice White argued that the application of Rule 9006(b)(1) to Chapter 11 reorganization proceedings, as opposed to Chapter 7 liquidations,[112] stemmed from the for-

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105 113 S. Ct. 1489 (1993).

106 *Id.* at 1492, 1494.

107 *Id.* at 1494. Rule 9006(b)(1) allows late claims to be filed in Chapter 11 proceedings "where the failure to act was the result of excusable neglect." FED. R. BANKR. P. 9006(b)(1).

108 *Pioneer*, 113 S. Ct. at 1494. Pioneer advocated a stringent view of the Bankruptcy Code that would lead to certainty and finality in resolving Chapter 11 bankruptcy claims. *Id.* A strict application of excusable neglect, the Court recognized, would inhibit the granting of extension requests when the creditor contributed to the delay in any fashion. *Id.* Justice White rejected Pioneer's strict excusable neglect interpretation, however, because a flexible interpretation comported with the policy of bankruptcy, and Chapter 11 in particular. *Id.* at 1495.

109 *Id.* at 1494-95. The court defined "neglect" as "'to give little attention or respect' to a matter, or . . . 'to leave undone or unattended *esp[ecially] through carelessness.*'" *Id.* (emphasis and brackets in *Pioneer*) (quoting WEBSTERS NINTH NEW COLLEGIATE DICTIONARY 791 (1983)). Justice White explicated that courts must utilize the ordinary meaning of a statute's words unless Congress indicated otherwise. *Id.* at 1495 (citing Perrin v. United States, 444 U.S. 37, 42 (1979)).

110 *Id.* Furthermore, Justice White explained that "Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the creditor's control." *Id.*

111 *Id.*

112 A liquidation is defined as a "[s]ale, ordinarily by the trustee, of the debtor's nonexempt assets and distribution of the proceeds to the creditors; the end result of a case under chapter 7 where there is no reorganization or rehabilitation of the debtor but the assets of the estate are distributed to the claimants." COLLIER ON BANKRUPTCY (Index), at GT-14 (15th ed. 1993). The majority pointed out that Rule 9006(b)(1) would not apply to Chapter 7 liquidation cases. *Pioneer*, 113 S. Ct. at 1495 (footnote omitted). The Court explained that Rule 9006(b)(3) mandates that Chapter 7 time extension motions are governed by Rule 3002(c), which has no excusable neglect

mer's goal of saving a business compared to the latter's goal of efficient asset distribution.[113] Emphasizing the role of Chapter 11 in the Bankruptcy Code, Justice White concluded that an excusable neglect determination was conditioned upon equitable considerations.[114] The Justice stressed that a court monitoring a restructuring procedure must at times use its equitable discretion to facilitate the reorganization.[115]

The majority also detailed the statutory ancestors of Rule 9006(b)(1) to explain its liberal interpretation.[116] Utilizing the Advisory Committee Notes from past bankruptcy rules, Justice White recognized that certain reorganization provisions required consideration of all equitable factors.[117] The majority built upon its his-

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provision. *Id.* at 1495 n.4. Rule 9006(b)(3) provides: "The court may enlarge the time for taking action under Rules 1006(b)(2), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules." FED. R. BANKR. P. 9006(b)(3). Furthermore, Rule 3002(c) states: "In a chapter 7 liquidation or chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, except as follows . . ." FED. R. BANKR. P. 3002(c). The majority concluded that because Bankruptcy Rule 3002(c) covers proof of claim filings in Chapter 7 exclusively, the excusable neglect provision of 9006(b)(1) applied only to Chapter 11. *Pioneer*, 113 S. Ct. at 1495 n.4.

113 *Pioneer*, 113 S. Ct. at 1495. *See supra* note 2 (describing the difference between Chapter 7 and Chapter 11 of the Bankruptcy Code).

114 *Pioneer*, 113 S. Ct. at 1495. To ensure that the debtor's reorganization succeeds, the Court stressed that bankruptcy courts must equitably balance the interests of all Chapter 11 parties. *Id.* (citation omitted).

115 *Id.* (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 527 (1984)). In *Bildisco*, a Chapter 11 filer sought to invalidate a collective bargaining agreement during its reorganization. *Bildisco*, 465 U.S. at 517, 518. Under the agreement, the debtor asserted that it could not maintain certain health and benefit payments, remittance of dues, and wage increases for its employees. *Id.* at 518. The Supreme Court held that in avoiding such an agreement a bankruptcy court must contemplate, among other things, the equities of the circumstances. *Id.* at 527.

116 *Pioneer*, 113 S. Ct. at 1495-96. Justice White explained that current Rules 9006(b) and 3003(c) were derived from former Rules 906(b) and 10-401(b) respectively. *Id.* The former rules, the majority continued, were utilized in Chapter 10 cases, the equivalent of Chapter 11 disputes before the enactment of the Bankruptcy Code in 1978. *Id.* at 1495.

117 *Id.* at 1495-96. The majority noted that the Advisory Committee's understanding of Chapter 10 policy was to "preserve rather than to forfeit rights" as exemplified under former sections 102, 204, and 224. *Id.* (quotation omitted). Specifically, Justice White noted that former § 102 rejected the absolute six month filing deadline for asset distributions. *Id.* (quotation omitted); *see* [1979-90 Transfer Binder] Bankr. L. Rep. (CCH) ¶ 3002, at 3593 (providing that in Chapter 10 corporate reorganizations, § 57(n), which states that claims must be filed within a six-month period to participate in any distribution, shall not apply unless otherwise ordered). The Justice also pointed to former § 204, which provided that claim filing rights shall not be forfeited within five years of the bankruptcy petition. *Pioneer*, 113 S. Ct. at 1496; *see* [1979-90 Transfer Binder] Bankr. L. Rep. (CCH) ¶ 3135, at 3693 (declaring that "[u]pon distri-

torical argument with a 1916 Senate Report that alluded to the equities of bankruptcy.[118] Justice White surmised that, in enacting Rule 9006(b)(1), Congress anticipated situations in which creditors deserved leniency regardless of some culpability on their part in filing delayed claims.[119]

Additionally, Justice White cited the Federal Rules of Civil Procedure to support the Court's decision.[120] The majority pointed out that Rule 9006(b)(1) borrowed the excusable neglect phrase from Rule 6(b).[121] The majority then cited various circuit court decisions that allowed procedural rule extensions after the movant exhibited inadvertence, thereby proving that Rule 6(b) was necessarily elastic.[122] Next, Justice White compared Rule 9006(b)(1) to

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bution, as provided in section 224 . . . of this Act, the judge may, upon notice to all persons affected, fix a time, to expire not sooner than five years after the final decree closing the estate, within which, as provided in the plan or final decree . . . [t]he creditors, other than holders of securities, shall file, assign, transfer, or release their claims"). Finally, Justice White referred to former § 224, which permitted non-filing creditors to participate in asset distributions. *Pioneer*, 113 S. Ct. at 1496; *see* [1979-90 Transfer Binder] Bankr. L. Rep. (CCH) ¶ 3187, at 3,708 (allowing that "[d]istribution shall be made, in accordance with the provisions of the plan, to creditors and stockholders . . . if [proofs of claim] not so filed, whose claims or stock have been listed by the trustee or scheduled by the debtor in possession").

118 *Pioneer*, 113 S. Ct. at 1496 (quotation omitted). The Senate Report stated:

> Sections 204 and 205 insure participation in the benefits of the reorganization to those who, through inadvertence or otherwise, have failed to file their claims or otherwise evidence their interests during the pendency of the proceedings.
>
> This attitude is carried forward in the rules, first by dispensing with the need to file proofs of claims and stock interests in most instances and, secondly, by permitting enlargement of the fixed bar date in a particular case with leave of court and for cause shown in accordance with the equities of the situation.

Bankruptcy Rule 10-401(b) advisory committee's note, *reprinted in* 1 COLLIER ON BANKRUPTCY pt. 4, at 80 (Supp. Nov. 1983).

119 *Pioneer*, 113 S. Ct. at 1496.

120 *Id.* Justice White referenced the Federal Rules of Civil Procedure because Rules 6(b), 13(f), and 60(b) utilized the excusable neglect phrase. *Id.* at 1496-97.

121 *Id.* at 1496. *See supra* note 54 (detailing the operation of the excusable neglect provisions under Rule 6(b)).

122 *Pioneer*, 113 S. Ct. at 1496 n.7 (citing United States v. Borromeo, 945 F.2d 750, 753-54 (4th Cir. 1991); Hill v. Marshall, No. 86-3987, 1988 WL 117163, at *2 (6th Cir. Nov. 4, 1988); Dominic v. Hess Oil V.I. Corp., 841 F.2d 513, 517 (3d Cir. 1988); Sony Corp. v. Elm State Electronics, Inc., 800 F.2d 317, 319 (2d Cir. 1986); United States *ex rel.* Robinson v. Bar Ass'n of Dist. of Columbia, 190 F.2d 664, 665 (D.C. Cir. 1951)) (further citations omitted). For example, in *United States v. Borromeo*, the former wife of a man who was involved in a pending civil forfeiture case filed a late verification claim against assets being seized in the forfeiture action. *Borromeo*, 945 F.2d at 751, 752. Because the government had frozen all of the ex-husband's assets in the forfeiture action, the wife was unable to obtain a description of her former spouse's assets, needed to settle a separate divorce suit between the two. *Id.* at 751. Concluding that

Federal Rule of Civil Procedure 13(f), which allows amended counterclaims.[123] Citing Rule 13(f) interpretations, the Court observed that, similar to the *Dix* factors, such decisions considered the equities of the movant's position.[124]

Finally, the majority examined excusable neglect under Federal Rule of Civil Procedure 60(b)(1).[125] Under this rule, the Court noted, final judgments may warrant reconsideration within one year upon a showing of excusable neglect.[126] Justice White

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the excusable neglect equities favored the wife, the court allowed the claim because "the government [did] not offer even a hint of an insinuation that it would have been unfairly prejudiced by [the former wife's] intervention." *Id.* at 754. The Fourth Circuit summarized that allowing the late motion would not defeat the United States's civil forfeiture case against the wife's ex-husband, but would simply give her an opportunity to be heard regarding her claims to the seized assets. *Id.*

Similarly, in *Hill v. Marshall*, a plaintiff appealed the decision of a court that allowed a late answer to a complaint. *Hill*, 1988 WL 117163, at *1, *2. The court noted that the defendant's only excuse for the late answer was an "administrative oversight." *Id.* at *2. The court allowed the tardy answer, however, because the plaintiff failed to show that his case would be prejudiced as a result of the delay. *Id.* Accordingly, the court determined that the delayed answer resulted from excusable neglect. *Id.*

The *Pioneer* majority admitted that characterizing a late filing as an "inadvertent delay" would not guarantee an excusable neglect filing extension, but stressed that an inadvertent act could not foreclose a Rule 9006(b) extension either. *Pioneer*, 113 S. Ct. at 1496.

123 *Pioneer*, 113 S. Ct. at 1497. Federal Rule of Civil Procedure 13(f) provides: "When a pleader fails to set up a counterclaim through oversight, inadvertence, or *excusable neglect*, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment." FED. R. CIV. P. 13(f) (emphasis added).

124 *Pioneer*, 113 S. Ct. at 1497 n.10 (citations omitted). Justice White noted that other courts facing tardy counterclaim motions examined "the good faith of the claimant, the extent of the delay, and the danger of prejudice to the opposing party." *Id.* at 1497 n.10 (citing New York Petroleum Corp. v. Ashland Oil, Inc., 757 F.2d 288, 291 (Temp. Emer. Ct. App. 1985); Gaines v. Farese, Nos. 87-5567, 87-6006, 1990 WL 153937, at *3 (6th Cir. Oct. 11, 1990); Barrett v. United States Banknote Corp., No. 7420 (RPP), 1992 WL 232055, at *2 (S.D.N.Y. Sept. 2, 1992); Technographics, Inc. v. Mercer Corp. 142 F.R.D. 429, 430 (M.D. Pa. 1992)).

In *Gaines v. Farese*, for example, the Sixth Circuit upheld a lower court decision refusing an amended counterclaim in a contract dispute. *Gaines*, 1990 WL 153937, at *1, *3. The lower court disallowed the counterclaim because it was filed six months late and only three months prior to trial. *Id.* at *3. The court asserted, however, that "[i]n making a Rule 13(f) determination, a court must balance the equities of the case." *Id.* Further, the court noted that although the delay in bringing a counterclaim should be considered, it should not be the sole factor in the decision. *Id.*

Similarly, in *Barrett v. United States Banknote Corp.*, the plaintiff brought suit for breach of warranty, contract, and misrepresentation against an auction house and currency printing company. *Barrett*, 1992 WL 232055, at *2. The court declared that where the grounds for relief were "colorable," a motion to file a late amended counterclaim, under the excusable neglect analysis, would be allowed "absent any undue delay, bad faith, or undue prejudice to the opposing party." *Id.* at *3.

125 *Pioneer*, 113 S. Ct. at 1497. *See supra* note 94 (detailing Rule 60(b)).

126 *Pioneer*, 113 S. Ct. at 1497; *see, e.g., In re* Devault Mfg. Co., 4 B.R. 382, 386, 389 (Bankr. E.D. Pa. 1980) (disallowing a motion for reconsideration under Rule 60(b)

distinguished this standard from a higher standard, used for appeals after one year,[127] to demonstrate that excusable neglect was not the most stringent analysis.[128] The majority opined that excusable neglect, at least in the context of Rule 60(b), contemplated some type of negligence.[129]

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where the debtor neglected to present evidence that was previously available). In *In re Devault Mfg. Co.*, the bankruptcy court considered a debtor's motion to reconsider an order that allowed a secured creditor to reclaim some of the debtor's possessions. *Id.* at 384. In its motion, the court recognized, the debtor presented new evidence concerning the possible treatment of the creditor's security interest as a voidable preference. *Id.* at 384-85. The court, however, denied the reconsideration motion, declaring that evidence previously known and not presented did not constitute excusable neglect under Rule 60(b). *Id.* at 386.

127 The Court noted that Rule 60(b)(6) governed a motion to reopen a judgment made after one year. *Pioneer*, 113 S. Ct. at 1497. Rule 60(b)(6) provides: "On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (6) any other reason justifying relief from the operation of the judgment." FED. R. CIV. P. 60(b)(6).

128 *Pioneer*, 113 S. Ct. at 1497. The Court explained that a party seeking relief from a judgment that occurred over a year before had to show "'extraordinary circumstances' suggesting that the party [was] faultless in the delay." *Id.* (citations omitted); *see* Ackermann v. United States, 340 U.S. 193 (1950). In *Ackermann*, the movants failed to appeal a denaturalization judgment because they received conflicting advice from their attorney and an Alien Control Officer. *Id.* at 195, 196. On appeal four years later, the Court denied relief under Rule 60(b)(6). *Id.* at 197. The Court observed that the movants had freely chosen to wait four years to file the motion. *Id.* Moreover, the Court stressed that the Alien Control Officer exerted no undue influence, fraud, deceit, misrepresentation, or duress when he advised the movants that they had to sell their home to appeal the denaturalization judgment. *Id.* at 196, 198. Accordingly, the Court declared that "free, calculated, deliberate choices [were] not to be relieved from." *Id.* at 198.

But see Klapprott v. United States, 335 U.S. 601, 603, 614, 615-16 (1949) (setting aside a default judgment under Rule 60(b)(6) four years after the denaturalization ruling). In *Klapprott*, the Court allowed Rule 60(b)(6) relief to Klapprott, a citizen who lost his citizenship without evidence, a hearing, or counsel assistance. *Id.* at 615-16. The Court explained that while Klapprott had been incarcerated on separate criminal charges, the lower court entered a default judgment for failure to answer a denaturalization complaint. *Id.* at 603. The *Klapprott* Court directed that "the 'other reason' clause of 60(b) [was] broad enough to authorize the Court to set aside the default judgment . . . ." *Id.* at 615. The Court then pointed to Klapprott's lack of counsel or a fair denaturalization trial to conclude that the absence of such procedures in denaturalizing a citizen justified the allowance of the "other reason" clause of Rule 60(b). *Id.* The Court noted, however, that Rule 60(b)(6) should be utilized only if such action was appropriate to accomplish justice. *Id.* at 609.

129 *Pioneer*, 113 S. Ct. at 1497. Because Rule 9006(b)(1) did not have different standards for late motions as the years elapsed, Justice White reasoned that the excusable neglect provision accommodated delays caused by Acts of God as well as neglect. *Id.* at 1497-98. The Court asserted that "reading Rule 9006(b)(1) inflexibly to exclude every instance of an inadvertent or negligent omission would ignore the most natural meaning of the word 'neglect' and would be at odds with the accepted meaning of the word in analogous contexts." *Id.* at 1498 (footnote omitted).

After establishing a flexible excusable neglect standard, the Court set forth the relevant factors for Rule 9006(b)(1) excusable neglect determinations.[130] Justice White explained that a lack of congressional direction had resulted in a court-developed series of equitable factors.[131] These factors, the Court declared, included: (1) whether the debtor would be unduly harmed; (2) whether the late filing would impede the progress of the court; (3) whether the late filer contributed to the delay and other facts behind the delay; and (4) whether the creditor exhibited good faith in bringing the motion.[132]

The Court then applied these factors to the creditors' situation in the case at hand.[133] The majority pointed out that the Sixth Circuit, while incorrectly distinguishing the creditors' actions from their attorney's,[134] nonetheless correctly found that the creditors' situation warranted an excusable neglect filing extension.[135] Referencing the factual findings from the Sixth Circuit, the *Pioneer* Court agreed that the debtor would engender no harm from the late proof of claim, the court schedule would be unaffected, and the creditors had demonstrated good faith in their Rule 9006(b)(1) motion.[136] Justice White, examining the creditors' culpability, dis-

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130 *Id.*

131 *Id.*

132 *Id.* (citing *In re* Pioneer Inv. Servs. Co., 943 F.2d 673, 677 (6th Cir. 1991), *aff'd*, 113 S. Ct. 1489 (1993)).

133 *Id.* at 1499.

134 *Id.* The Court noted that the Sixth Circuit focused its analysis on whether the creditors made an effort to monitor their attorney, rather than whether the creditors' attorney "did all he reasonably could to comply with the court-ordered bar date." *Id.* Justice White explained that, in many contexts, a client's fate is decided by his attorney's conduct. *Id.* (citing Link v. Wabash R.R., 370 U.S. 626, 633-34 (1962)). For example, in *Link v. Wabash R.R.*, the Court upheld a respondent's motion to dismiss a lawsuit when the petitioner's attorney missed a scheduled pretrial conference. *Link*, 370 U.S. at 627-29, 633. The Court upheld the dismissal, stressing that clients freely choose their representation and, therefore, must bear the burden of the consequences of their attorney's omissions. *Id.* at 633-34. Any other approach, the Court declared, "would be wholly inconsistent with our system of representative litigation . . . ." *Id.* (citation omitted).

See also United States v. Boyle, 469 U.S. 241, 252, 253 (1985) (emphasizing that a late tax filer would not be excused from delay because "reliance [upon an attorney] cannot function as a substitute for compliance with an unambiguous statute"). In *Boyle*, the Court stressed that engaging an attorney for ordinary business does not immunize the client from deadlines. *Id.* at 251.

135 *Pioneer*, 113 S. Ct. at 1499.

136 *Id.* at 1499. Justice White stressed that Pioneer did not contest the bankruptcy court's findings that the creditors exhibited good faith, that judicial administration would be unaffected by the late filings, and that Pioneer would not be prejudiced by the late filing. *Id.* Furthermore, the Court preferred to allow the factual findings of the bankruptcy court to stand because both the District Court and the Sixth Circuit

missed the attorney's personal woes as a factor, but declared that the bankruptcy clerk's unusual notice form outweighed any of the creditors' fault.[137] Finding that all of the equitable factors favored the creditors, the Court affirmed the decision of the Court of Appeals for the Sixth Circuit.[138]

Justice O'Connor, joined by Justices Scalia, Souter, and Thomas, dissented.[139] Justice O'Connor declared that the plain language of Rule 9006(b)(1) provided a sufficient excusable neglect definition, and that the majority's balancing test would improperly confuse future courts.[140] The dissent immediately presented a Rule 9006(b)(1) interpretation that dissected the rule's language, creating a two-tiered test.[141] A party seeking to file a delayed claim under Rule 9006(b)(1), the dissent concluded, must first demonstrate that the delay-causing actions constituted excusable neglect.[142] Only after satisfying this threshold inquiry, Justice O'Connor directed, could late claims be subjected to the court's discretion in the second tier.[143] The dissent reasoned that under this inquiry equitable considerations became a factor only after the creditors demonstrated excusable neglect.[144]

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affirmed those findings. *Id.* (citation omitted). The majority also pointed to the debtor's amended reorganization plan, which referenced the creditors' contested claims, to evidence a lack of prejudice. *Id.* (citation omitted).

137 *Id.* The majority insisted that the notice form used in this case was extraordinary in a bankruptcy proceeding. *Id.* Ordinarily, Justice White declared, the claims bar date is announced with sufficient explanation in a letter distinct from the notice announcing the creditor's meeting. *Id.* at 1499-1500 (citation omitted). Therefore, the Court agreed with the Sixth Circuit's assertion that the bar date notification in a creditor's meeting letter constituted a dramatic departure from normal bar date notification procedures. *Id.* at 1500 (citing *In re* Pioneer Inv. Servs. Co., 943 F.2d 673, 678 (6th Cir. 1991), *aff'd*, 113 S. Ct. 1489 (1993)). Accordingly, the Court found that the unusual notice form mailed to the creditors provided sufficient justification to warrant their neglect excusable. *Id. But see* Knocke, *supra* note 6, at 15 (noting that a letter for the creditors' meeting is a "mine field of bar dates" that attorneys should normally reference for claims bar dates).

138 *Pioneer*, 113 S. Ct at 1500. If there existed any bad faith by the creditors, any impact upon judicial administration, or any prejudice to Pioneer, Justice White stressed that the bankruptcy court would not have abused its discretion in finding no excusable neglect. *Id.*

139 *Id.* (O'Connor, J., dissenting).

140 *Id.* The dissenting Justice declared that the majority's opinion complicated a "straightforward analysis commended by the language of Bankruptcy Rule 9006(b)(1) with a balancing test." *Id.*

141 *Id.*

142 *Id.* The Justice stressed that the delay must be "the result of excusable neglect." *Id.* (quoting FED. R. BANKR. P. 9006(b)(1)).

143 *Id.* Again noting the rule's specific wording, the dissent emphasized that a court "'*may*' grant relief 'in its discretion.'" *Id.* (quoting FED. R. BANKR. P. 9006(b)(1)).

144 *Id.* The dissent stressed that the effect of late filings on the parties was irrelevant

After detailing the test, the dissent attacked the Court's flexible standard.[145] Justice O'Connor criticized the majority's multistep analysis that simultaneously addressed the creditor's culpability and the situation's equities.[146] The dissent referenced a Rule 6(b) case, *Lujan v. National Wildlife Federation*,[147] to establish that the majority incorrectly combined the two tiers of analysis.[148] Justice O'Connor noted that the *Lujan* Court labelled excusable neglect as the greatest of substantive obstacles.[149] Accordingly, the dissenting Justice perceived that excusable neglect merely constituted the initial step of Rule 9006(b)(1) motions.[150]

Justice O'Connor also disagreed with Justice White's assertion that Congress neglected to establish guideposts denoting the types of excusable neglect.[151] Outlining these guideposts, the dissent first referenced the wording of Rule 9006(b)(1), which indicated that the relevant inquiry ignored the equitable consequences of a late filing.[152] Second, Justice O'Connor, quoting a legal dictionary,

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until the reason for the missed deadline constituted excusable neglect. *Id.* at 1501 (O'Connor, J., dissenting) (citing *In re* Vertientes, Ltd., 845 F.2d 57, 60 (3d Cir. 1988)). In *In re Vertientes, Ltd.*, the Third Circuit concluded that a "court simply has no discretion to grant an extension simply because no prejudice would result, or for any other equitable reason." *Vertientes*, 845 F.2d at 60 (citations omitted). Justice O'Connor argued that excusable neglect is not considered "in light of all the circumstances." *Pioneer*, 113 S. Ct. at 1500 (O'Connor, J., dissenting). Instead, the Justice opined that "courts may exercise their discretion in accord with the equities *only* if the failure to meet the deadlines resulted from excusable neglect in the first place." *Id.*

145 *Pioneer*, 113 S. Ct. at 1501 (O'Connor, J., dissenting).

146 *Id.*

147 487 U.S. 871 (1990).

148 *Pioneer*, 113 S. Ct. at 1501 (O'Connor, J., dissenting).

149 *Id.* In *Lujan*, the Supreme Court considered, without reference to the equities of the situation, whether an untimely affidavit supporting a motion for summary judgment constituted a Rule 6(b) motion. *Lujan*, 497 U.S. at 894-95, 897. Attempting to decide whether the filing of affidavits after the deadline had expired constituted a motion to extend a time limitation, the *Lujan* Court declared that any request to extend a time limitation must be "for cause shown." *Id.* at 894-95, 896. Second, for a post-deadline extension, the Court articulated, a party must show that an actual motion was made to extend the deadline. *Id.* at 896. Finally, the Court noted that a party must demonstrate that the post-deadline delay resulted from excusable neglect. *Id.* Referring to excusable neglect, the Court declared that "[t]his last substantive obstacle is the greatest of all." *Id.* at 897.

The *Pioneer* majority, however, disagreed with the importance the dissent attributed to *Lujan*. *Pioneer*, 113 S.Ct at 1498 n.13. Justice White asserted that the *Lujan* court made no attempt to define excusable neglect or to examine the case's facts under the excusable neglect doctrine. *Id.*

150 *Pioneer*, 113 S. Ct. at 1501 (O'Connor, J., dissenting).

151 *Id.* Refuting the majority, the dissenting Justice declared that "Congress *has* provided 'guideposts' as to how the courts should determine whether 'neglect will be considered excusable.'" *Id.*

152 *Id.* The dissent centered its argument on the phrase "'the *failure* to act was *the*

opined that the accepted definition of excusable neglect formed a dispositive guidepost.[153] The majority's definition,[154] the Justice concluded, not only suffered from circularity,[155] but also ignored important aspects of Rule 9006(b)(1)'s language.[156]

Finally, the dissenting Justices declared that the majority unknowingly presented a third guidepost for Rule 9006(b)(1)—that the rule should deter creditors from filing frivolous late motions.[157] The dissent further maintained that Justice White erred by prematurely addressing equitable considerations because this approach would create confusion.[158]

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result'" of excusable neglect. *Id.* Therefore, Justice O'Connor concluded that the inquiry should be limited to the reasons for the late filing, rather than the effect upon other parties. *Id.* at 1501-02 (O'Connor, J., dissenting) (citation omitted). Moreover, Justice O'Connor opined that whether a party's neglect was excusable should be determined at the time of its occurrence, rather than when an untimely action is requested. *Id.* at 1502 (O'Connor, J., dissenting).

153 *Id.* The dissent quoted from BLACK'S LAW DICTIONARY which provided that excusable neglect is:

> [A] failure to take the proper steps at the proper time, not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by an adverse party. As used in rule[s] (*e.g.* Fed. R. Civ. P. 6(b)) authorizing [a] court to permit an act to be done after expiration of the time within which under the rules such act was required to be done, where failure to act was the result of 'excusable neglect', quoted phrase is ordinarily understood to be the act of a reasonably prudent person under the same circumstances.

Id. (quoting BLACK'S LAW DICTIONARY 566 (6th ed. 1990)). The dissenting Justice then declared that the definition of excusable neglect turned on the reason for or the cause of the delay and not on the consequences or results of such a failure. *Id.*

154 The majority defined excusable neglect to consider "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 (citation omitted).

155 *Id.* at 1502 (O'Connor, J., dissenting). The dissent explained that the majority's test produced an interpretation in which "excusable neglect [would become] the neglect that the court in its equitable discretion [chose] to excuse." *Id.*

156 *Id.* The Justice opined that, under Justice White's multi-factor test, excusable neglect would arise whenever courts exercised their equitable powers. *Id.* As a result, Justice O'Connor claimed, the majority's definition ignored the word "excusable" and allowed a court to decide, at its discretion, whether "neglect" alone sufficed. *Id.* Justice O'Connor also explained that the majority's interpretation of excusable neglect "afforded courts [the] discretion to give relief in cases of 'neglect' rather than 'excusable neglect[.]'" *Id.*

157 *Id.* Deterrence would not be accomplished, the dissent reminded, by allowing negligent creditors who missed a deadline to refer to an absence of prejudicial effects as part of the Rule 9006(b)(1) test. *Id.* at 1502-03 (O'Connor, J., dissenting).

158 *Id.* at 1503 (O'Connor, J., dissenting). The dissent remarked, for example, that the majority's test had produced a split among the courts below. *Id.* Specifically, Justice O'Connor referred to the decisions in which the bankruptcy court and the

Turning to the case at bar, the dissenting Justices insisted that Richards's actions could never constitute excusable neglect.[159] Justice O'Connor claimed that because Richards's actions were unexcusable, the majority's consideration of ancillary factors was unnecessary.[160] While agreeing with Justice White that creditors must inherit their attorney's errors, the dissent declared that the creditors could not attribute their delay to the irregular notice form.[161] The dissent concluded that the creditor's Rule 9006(b)(1) motion, under its standard, would not have wasted the court's valuable time.[162]

Because the record may have been indeterminative concerning the effect of the filing deadline notice upon Richards's actions, Justice O'Connor suggested that the Court should have remanded the case for a conclusive factual finding.[163] The dissent also submitted that some negligent creditor actions could rise to the level of excusable neglect.[164] Justice O'Connor reiterated, however, that under the present facts, the creditors' indifference in failing to file remained unexcusable under any standard.[165]

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district court had denied the filing extension under the *Dix* factors, while the Court of Appeals for the Sixth Circuit and the Supreme Court had granted the motion. *Id.* *See id.* at 1493-95 (discussing the procedural history of *Pioneer*).

159 *Id.* at 1503 (O'Connor, J., dissenting).

160 *Id.* Justice O'Connor remarked that Richards's business difficulties at the time were the only excuse for delay offered by the creditors. *Id.* The Justice also pointed out that the creditors had notice of and were aware of the claims bar deadline. *Id.* Contrary to the majority's opinion, the dissent maintained that the indifference shown by the attorney exceeded mere negligence. *Id.*

161 *Id.* at 1503-04 (O'Connor, J., dissenting). The dissent emphasized heavily the factual finding that indicated no clerical errors were present when the bankruptcy court sent the meeting letter that contained the claims bar date. *Id.* The dissent even reminded that Richards had stated "the foul-up I can't lay to the clients' shoes because it is really probably mine." *Id.* at 1504 (O'Connor, J., dissenting) (citation omitted). The dissent stressed that the bankruptcy court never made a factual finding that Richards missed the claims bar date as a result of the irregular meeting letter with the filing deadline. *Id.* Moreover, Justice O'Connor explained, Richards himself had never attributed the late filing to the unorthodox notice form. *Id.*

162 *Id.*

163 *Id.* Justice O'Connor suggested that if the unorthodox notice form had ultimately caused the delay, then the threshold inquiry might be satisfied. *Id.* Justice O'Connor, however, refused to accept the majority's conclusion that Richards's failure to meet the extension deadline resulted from inadequate notice of that deadline. *Id.* The dissent explained that the bankruptcy court should have determined whether the irregular meeting notice form actually caused Richards to miss the deadline. *Id.* Otherwise, the dissent directed, Richards's actions constituted indifference beyond excusable neglect. *Id.*

164 *Id.* Justice O'Connor intimated that although "excusable neglect may cover some instances of negligence, indifference [fell] outside the range of the 'excusable.'" *Id.*

165 *Id.* As a result, the dissent refused to decide whether the bankruptcy court's

Comparing their test with the majority's analysis, the dissent predicted that the Court's standard would confuse courts and inspire appeals.[166] Justice O'Connor chided that the majority's test transformed an excusable neglect motion from a routine matter to a useless litigation breeder.[167] Finally, the Justice warned that, because the majority's multi-factor test would invite appeals, creditors' claims to a debtor's limited resources would be reduced by litigation fees.[168]

Although the *Pioneer* decision continues the recent pro-creditor trend in Supreme Court decisions,[169] the advantages a debtor receives from filing a Chapter 11 petition clearly outweigh any benefits accruing to creditors as a result of this judicial trend.[170] Fortunately, the majority's analysis comports with the reorganization goal of Chapter 11.[171] Furthermore, Justice White's opinion creates a necessary barrier between the dissimilar purposes of Chapter 11 and the Federal Rules of Civil Procedure.[172] Rule 9006(b)(1)

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finding, which considered the equities of a late filing, passed an abuse of discretion standard. *Id.* Justice O'Connor stressed that the dissent's two-tiered analysis rested on factual decisions capable of review only under a clearly erroneous standard. *Id.* at 1505 (O'Connor, J., dissenting).

166 *Id.*

167 *Id.* at 1503 (O'Connor, J., dissenting). Anticipating the dissent's unfavorable comparison, Justice White criticized Justice O'Connor's reasoning. *Id.* at 1498 n.14. Justice White asserted that any litigation possibilities that the majority's multi-factor test might produce were no greater than the disputes the dissent's test would invite. *Id.* Specifically, Justice White remarked that a legal dispute arising over the difference between "ordinary negligence" and "partial indifference" would be just as likely to occur as one involving the factors of the majority's test. *Id.* The Court opined that parties involved in a bankruptcy case would discover litigable issues regardless of the number of excusable neglect factors because of the pecuniary interests involved. *Id.*

168 *Id.* at 1505 (O'Connor, J., dissenting).

169 *See* Charles J. Tabb, *The Bankruptcy Reform Act In The Supreme Court*, 49 U. PITT. L. REV. 447, 566 (1988) (noting that the Supreme Court's Bankruptcy Reform Act decisions over the first ten years of the Act's existence have favored creditor's rights more often than debtor's rights).

170 *See id.* (asserting that "[t]he bankruptcy laws have progressively become more debtor oriented").

171 *See id.* at 560 (declaring that "[t]he policy of furthering the likelihood of an effective reorganization under Chapter 11 has influenced the Court's decisions under the [Bankruptcy Reform Act] more than any other policy"). For instance, Tabb noted that in *NLRB v. Bildisco & Bildisco*, reorganization policy superseded the policy of federal labor laws and the debtor employees' interests. *Id.* at 561 (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513, 525-29 (1984)). Moreover, the commentator pointed out that in *United States v. Whiting Pools, Inc.*, Chapter 11 reorganization superseded the policy of federal tax collection. *Id.* (citing United States v. Whiting Pools, Inc., 462 U.S. 198, 209 (1983)).

172 *Compare* 11 U.S.C. § 1101-1174 (1988) historical and revision notes legislative statements (noting that Chapter 11 resulted from the need to consolidate the approach to business rehabilitation) *with* FED. R. CIV. P. (Preface) (The Foundation

excusable neglect, although derived from Federal Rule of Civil Procedure 6(b), could not logically retain interpretations stemming from a rule promoting court efficiency. Procedural court rules necessarily pertain to adversarial situations, while Chapter 11 envisions the amicable reorganization of a struggling business.[173] A Chapter 11 rule should not inherit the confrontational standards of Rule 6(b).

Although the dissent's interpretation disputes the majority's equitable formula, court discretion still remains as the second tier of the dissent's suggested formula.[174] The excusable neglect standard did not acquire newfound leniency in *Pioneer*, it merely received a refinement.[175]

An insightful and appropriate set of guidelines, however, does not guarantee uniform application. The prevalence of Chapter 11 filings ensures an abundance of future Rule 9006(b)(1) late claim motions.[176] Initial decisions utilizing the *Pioneer* standard indicate

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Press, Inc. 1989) (maintaining that the Federal Rules of Civil Procedure created a uniform procedure in civil actions that is simple, flexible, clear, and efficient).

173 *See* Frost, *supra* note 4, at 92 (noting that "[s]uccessful reorganizations are usually characterized by negotiation rather than litigation") (footnote omitted). As one scholar explained, bankrupt debtors prefer a broad discharge of obligations, liberal exemptions of their assets from proceedings, and minimal payment obligations whereas creditors strive for exactly the opposite results. Tabb, *supra* note 169, at 565-66. Frost commented that Chapter 11 rules force debtors and creditors to operate within the reorganization. Frost, *supra* note 4, at 92 (footnoted omitted). For instance, a bankruptcy petition produces an automatic stay against enforcement of judgments and collection of debts by creditors, forcing negotiations between the debtor and creditors. *Id.* at 92 n.12.

174 Pioneer Inv. Servs. v. Brunswick Assocs., 113 S. Ct. 1489, 1500 (1993) (O'Connor, J., dissenting). Justice O'Connor declared that "at the threshold [the court should] determine its authority to allow untimely action by asking whether the failure to meet the deadline resulted from excusable neglect; if the answer is yes, *then* the court should consider the equities and decide whether to excuse the error." *Id.*

175 *See id.* at 1498. The *Pioneer* Court presented a multi-factor test which included the following considerations: prejudice to the debtor, impact on court administration, reason for the delay, and good faith of the creditor. *Id.* The *Dix* test encompassed substantially the same considerations except that the Ninth Circuit also examined whether clients should be penalized for their attorney's mistake. *Id.* at 1493 (quoting *In re* Dix, 95 B.R. 134, 138 (Bankr. 9th Cir. 1988)).

176 *See* Bradley & Rosenzweig, *supra* note 3, at 1049 (noting that "[i]n the wake of the 1978 [Bankruptcy Reform] Act the frequency of corporate bankruptcy filings has increased dramatically"). For a discussion of possible problems with the *Pioneer* decision, *see* Frank W. Koger & Roy B. True, *The Final Word On Excusable Neglect?*, 98 COMMERCIAL L.J., 21, 24, 30-31 (1993) (positing that both the *Pioneer* majority and dissent failed to recognize the applicability of Rule 9006(b)(1) to Chapter 7 liquidations). Koger and True contended that Bankruptcy Rules 3004 and 3005 provided a mechanism in which debtors and third parties could file claims on behalf of creditors in a Chapter 7 proceeding. *Id.* at 31; *see also In re* Davis, 935 F.2d 771, 772 (4th Cir. 1991) (considering an excusable neglect extension where debtor attempted to file a proof

uncertainty and even reluctance towards the multi-step analysis.[177] The majority's test, therefore, could conceivably escalate the current circuit court confusion.

The recent retirement of Justice Byron R. White,[178] who wrote the 5-4 *Pioneer* opinion, further complicates excusable neglect application because the Court is deadlocked on any future interpretations of the issue until Justice Ruth Bader Ginsburg[179] presents her position. Moreover, the scope of Justice White's standard requires focusing. The *Pioneer* majority maintained that excusable neglect included situations within and beyond a creditor's control.[180] Justice White also suggested, however, that creditors must satisfy all four of the *Pioneer* test components to receive a filing extension.[181]

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of claim on behalf of the IRS). Koger and True noted, however, that Rule 9006(b)(2) and (3), the provisions governing when time extensions may or may not be permitted, did not preclude application of the excusable neglect standard to Rules 3004 and 3005. Koger & True, *supra*, at 31. *See supra* note 11 (detailing the language of Bankruptcy Rules 9006(b)(2) and 9006(b)(3)). Accordingly, the commentators concluded that the *Pioneer* decision failed to address situations where a Chapter 7 debtor will try to assert excusable neglect. Koger & True, *supra*, at 34.

177 *See, e.g., In re* Earth Rock, Inc., 153 B.R. 61, 63 (Bankr. D. Idaho 1993) ("Applying the various factors mentioned in *Pioneer Investment* to the facts of this case makes for a truly difficult decision for the [c]ourt."). Although another court recently followed the *Pioneer* excusable neglect considerations, the court declared that it was "by no means . . . limited to" these inquiries because the analysis has an equitable foundation. *In re* R.H. Macy & Co., No. 92B40477 (BRL), 1993 WL 195408, at *2 (Bankr. S.D.N.Y. May 12, 1993). Furthermore, an Oklahoma bankruptcy court, exhibiting a lack of confidence in the *Pioneer* majority, also examined a Rule 9006(b)(1) motion under the dissent's two-tiered analysis. *In re* Maps Int'l, Inc., 152 B.R. 989, 993 (Bankr. N.D. Okla. 1993).

In *In re Earth Rock*, a creditor of a Chapter 11 debtor filed a proof of claim filing extension. *Earth Rock*, 153 B.R. at 61-62. The creditor's attorney advised the creditor that the debtor's continued payments under a subcontractor's contract precluded the need to file for a proof of claim. *Id.* at 62. As the Chapter 11 proceeding progressed, the claims deadline passed, and the creditor filed its proof of claim eight months past the deadline. *Id.* at 63. Although the bankruptcy court found no prejudice to the debtor or any delay in reorganization proceedings, it declared that the eight month delay evidenced a lack of diligence by the creditors. *Id.* The court conceded that it faced a close call, but allowed the filing extension because it would have served little interest to deprive the creditor participation in the bankruptcy proceeding. *Id.* at 64.

178 Linda Greenhouse, *Court Questions Districts Drawn To Aid Minorities*, N.Y. TIMES, June 29, 1993, at A1. Justice White served his final day on the Supreme Court bench on June 28, 1993. *Id.*

179 On June 14, 1993, President Bill Clinton announced the appointment of Federal Court of Appeals Judge Ruth Bader Ginsburg to replace Justice White on the Supreme Court. Thomas L. Friedman, *The 11th Hour Scramble*, N.Y. TIMES, June 15, 1993, at A1.

180 Pioneer Inv. Servs. v. Brunswick Assocs., 113 S. Ct 1489, 1495 (1993).

181 *Id.* at 1500. Although the Court noted that the extraordinary notice of the deadline was outside of the creditor's control, Justice White intimated that "were there any evidence of prejudice to petitioner or to judicial administration of this case,

As a result, this new, flexible approach may, in reality, be stricter than before.

For example, as the test now stands, a creditor may file a tardy claim due to circumstances beyond its control.[182] Such a claim, however, may also simultaneously prejudice the debtor and delay court administration. Under the strict interpretation, which allowed an extension when the delay was beyond the creditor's control, an extension would have been granted.[183] Under *Pioneer*, however, this hypothetical would not satisfy all of the majority's factors for Rule 9006(b)(1) excusable neglect, and an extension would be denied.[184] The present court, therefore, must prescribe when a creditor's conduct deserves the test's equitable assistance and when it does not.[185] A consistently applied *Pioneer* standard will deter undeserving creditors and facilitate Chapter 11 reorganizations.

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or any indication at all of bad faith, we could not say that the Bankruptcy Court abused its discretion in declining to find the neglect excusable." *Id.* at 1499-1500.

182 *Id.* at 1494.

183 *See id.* at 1494 n.3 (citations omitted).

184 *See id.* at 1500.

185 *Cf.* David A. Riggi, *The Supreme Court, in a Bankruptcy Law Decision Stretches the "Elastic Concept" of "Excusable Neglect,"* NEVADA LAWYER, May, 1993, at 20. Riggi asserted that the Supreme Court's flexible approach may breed much litigation when applied to the facts of each case. *Id.* Although the *Pioneer* decision was well-reasoned, Riggi also argued that it may produce unwarranted appeals. *Id.* at 20, 24.