

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 03-31932

MEDEX REGIONAL LABORATORIES, LLC

Debtor

**MEMORANDUM ON MOTION TO DETERMINE
STATUS OF CLAIM UNDER CONFIRMED PLAN**

APPEARANCES: JENKINS & JENKINS ATTYS., PLLC
Michael H. Fitzpatrick, Esq.
2121 First Tennessee Plaza
800 S. Gay Street
Knoxville, Tennessee 37929-2121
Attorneys for C. McRae Sharpe, Trustee

C. EDWIN SHOEMAKER, ESQ.
9111 Cross Park Drive
Suite D-200 Box 1990
Knoxville, Tennessee 37923
Attorney for Jane M. Robson

**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

This contested matter is before the court upon the Motion of Jane M. Robson (1) to Determine Status of, and Compel Distribution on, Allowed Priority Claim, (2) to Allow and Compel Distribution on General Unsecured Claim, or (3) Alternatively, for Order Extending Time for Movant to Amend or File Priority and General Unsecured Claims (Motion) filed by Jane M. Robson (Ms. Robson) on July 11, 2006, requesting an order determining the classification of her claim under the Second Amended Plan of Liquidation confirmed on November 21, 2005. The Chapter 11 Trustee, C. McRae Sharpe (Trustee), filed the Response of C. McRae Sharpe, Trustee, to Motion of Jane M. Robson on August 7, 2006 (Response), stating that under the confirmed plan, Ms. Robson's claim is untimely since it was filed beyond the claims bar date, and that she will not, therefore, receive any distribution.

A hearing was held on August 10, 2006, at which time the parties agreed that an evidentiary hearing was not necessary, and that all issues could be resolved on stipulations and briefs. Notwithstanding that the court requested the parties to prepare an order identifying the issues to be resolved, such an order was not submitted. As the court views it, however, the ultimate issue raised by the Motion is whether Ms. Robson's claim is entitled to payment as a Class 4 "§ 507(a)(3) Priority Claim" and a Class 6 "General Unsecured Pre-Petition Claim," or as a Class 7 "Tardy General Unsecured Pre-Petition Claim."

The parties filed Joint Stipulations of Facts and Exhibits on August 21, 2006. Ms. Robson filed a brief in support of her Motion on August 28, 2006, and the Trustee filed his brief in opposition to the Motion on September 4, 2006.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A) and (O) (West 1993).

I

The Debtor filed the Voluntary Petition commencing this case under Chapter 11 of the Bankruptcy Code on April 8, 2003. The Trustee was appointed by the United States Trustee on March 26, 2004, pursuant to an Order entered on the same date. The general bar date for filing proofs of claim in the Debtor's case was August 5, 2003. Although Ms. Robson was employed by the Debtor on the petition date, she was not listed or scheduled on the Debtor's Schedule E,¹ and there is no evidence that she was mailed or that she received notice of the August 5, 2003 claims bar date. Ms. Robson had actual notice of the filing of the Debtor's Chapter 11 case in April 2003.

Following commencement of the bankruptcy case, Ms. Robson's employment was terminated on April 18, 2003, and she was advised by the Debtor's Human Resources office, sometime after the commencement of the case, that the Debtor would file a claim on behalf of its terminated employees. On October 28, 2003, the Debtor filed two proofs of claim: (1) an unsecured priority claim in the amount of \$45,901.02 for unpaid pre-petition unearned vacation pay (Claim No. 220); and (2) a general unsecured claim in the amount of \$23,062.73 (Claim No. 219). STIP. EX. 2; 3. Ms. Robson's name was not on the list of employees appended to these claims.²

¹ Schedule E references an attached list of employees with unpaid pre-petition wages, salaries, and commissions and lists "unliquidated, disputed" claims in the amount of \$43,318.93. STIP. EX. 1.

² The attachments to the two proofs of claim list a claim for "Jane Sanders" in the amount of \$1,020.01. Ms. Robson was advised that the "Jane Sanders" claim was intended to represent her claim, and she (Ms. Robson) acknowledges receiving the \$1,020.01 disbursement amount originally designated for "Jane Sanders." See STIP. EX. 16. She also received a payment of \$66.95 for vacation hours accrued after the bankruptcy case was filed. See STIP. EX. 4.

On March 8, 2004, Ms. Robson filed a claim in the amount of \$4,806.27 “plus an amount to be calculated by [the Debtor],” which was incurred between October 2002 and April 2003.³ Although Ms. Robson did not designate whether the claim was an unsecured priority claim or a general unsecured claim, she did identify it as a claim for “[w]ages, salaries, and compensation,” and she attached a spreadsheet evidencing that her claim was based upon commissions earned during that time period. The court, therefore, considers Ms. Robson’s claim to have been filed pursuant to 11 U.S.C.A. § 507(a)(3) (West 2004) as an unsecured priority wage claim. On September 18, 2005, Ms. Robson sent a letter to the Trustee’s attorneys to, *inter alia*, “clarify” her claim, attaching a new spreadsheet evidencing an updated total commissions due of \$9,824.19. STIP. EX. 13. The Trustee has not filed an objection to Ms. Robson’s claim.

On August 31, 2005, the Trustee filed a Second Amended Plan of Liquidation (Second Amended Plan). The Third Amended Disclosure Statement, filed on September 2, 2005, was approved by the Order Approving Disclosure Statement, as Amended, Fixing Time for Filing Acceptances or Rejections of Plan, Fixing Time for Filing Objections to Confirmation, and Fixing Date for Hearing on Confirmation, Combined with Notice Thereof (Order Approving Disclosure Statement) entered on September 8, 2005. The Order Approving Disclosure Statement fixed November 10, 2005, as the last day for filing written acceptances or rejections of the Second

³ The claim states that the debt was incurred “Oct. 02 through April 02.” The correct ending date, as stated elsewhere on the claim, is April 2003.

Amended Plan and as for filing and serving written objections to confirmation of the Second Amended Plan.⁴ The confirmation hearing was scheduled for November 17, 2005.

Following the confirmation hearing, on November 21, 2005, the court entered the Order Confirming Plan of Reorganization, confirming the Second Amended Plan (Confirmed Plan). Pursuant to the Confirmed Plan, “[t]he general claim bar date for unscheduled claims or claims scheduled as disputed, contingent or unliquidated shall be August 7, 2003.” CONF. PLAN at 6. Article I of the Confirmed Plan, entitled “Classes of Claims and Interests,” provides for the following classes of creditors applicable to this contested matter:

Class 4. Class 4 consists of the pre-petition priority claims of employees or independent contractors listed in Schedule E, filed as claim No. 220 by the debtor (if timely and allowed), or filed by such claimant on their behalf up to the limit then in effect pursuant to 11 U.S.C. § 507(a)(3) of \$4,650.00 earned within 90 days prior to the case filing.

....

Class 6. Class 6 consists of pre-petition **General Unsecured Claims** listed in Schedule F, unless listed as disputed, contingent or unliquidated, by the debtor or filed by the claim holder. This class will include claims allowed for rejection of executory agreements and leases during the case. The class will also include the unsecured portion of any allowed secured claim. . . .

Class 7. Class 7 consists of the pre-petition **Tardy General Unsecured Claims** filed by the creditor after the claims bar date in this case.

CONF. PLAN at 9-10.

Article III of the Confirmed Plan, entitled “Treatment of Classes” provides the following treatment with respect to Classes 4, 6, and 7:

⁴ Ms. Robson received a Ballot for Accepting or Rejecting the Trustee’s Plan, which she returned on November 8, 2005, rejecting the Second Amended Plan. See STIP. EX. 14.

Class 4. SECTION 507(a)(3) PRIORITY CLAIMS:

Class 4 consists of the pre-petition priority claims of **employees or independent contractors** listed in Schedule E, filed as claim No. 220 by the debtor (if timely filed and allowed) or filed by such claimant on their behalf up to the limit then in effect pursuant to 11 U.S.C. § 507(a)(3) of \$4,650.00 earned within 90 [days] prior to the case filing. These claims will be paid in full on the effective date of the plan.

....

Class 6. GENERAL UNSECURED PRE-PETITION CLAIMS:

Class 6 consists of the **General Unsecured Creditors** of the estate. If a creditor's claim is disallowed, the creditor will not be entitled to vote or receive payment. The anticipated minimum dividend is 50%. No exact distribution is capable until the claim objection process is complete. . . .

Class 7. TARDY GENERAL UNSECURED PRE-PETITION CLAIMS:

Class 7 consists of the general unsecured claims allowed as tardy claims. This class will be paid on a pro-rata basis after payment in full of the prior classes. It is NOT anticipated that there will be any payment to this class.

CONF. PLAN at 12-13.

Ms. Robson received a check dated December 10, 2005, in the amount of \$1,020.01 as payment for the claim of Jane Sanders, which was reflected in the attachment to Claim No. 220. *See* STIP. EX. 16; ¶ 26; STIP. EX. 2.⁵

On July 11, 2006, Ms. Robson filed the Motion, asking the court to compel the Trustee to pay the remaining \$3,629.99 of her priority claim and to allow the \$6,194.20 balance of her total \$9,824.19 claim filed on March 8, 2004, and amended by her letter to the Trustee's attorneys on September 18, 2004, as a timely filed general unsecured claim. In the alternative, Ms. Robson asks

⁵ *See supra* n. 2.

the court to extend the time for her to amend her claims. In his Response, the Trustee argues that Ms. Robson's claim was filed after the August 5, 2003⁶ bar date, and under the Confirmed Plan, her claim is treated as a tardy claim, which will not receive a distribution.

II

The threshold issue before the court is what effect, if any, the Confirmed Plan has on the Trustee and on Ms. Robson's claim. Effects of confirmation in a Chapter 11 case are addressed at 11 U.S.C.A. § 1141 (West 2004), which provides in material part:

(a) Except as provided in subsections (d)(2) and (d)(3) of this section,^[7] the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in, the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

11 U.S.C.A. § 1141(a).

“The effect of confirmation under the plain language of § 1141(a) is to bind all parties to the terms of a plan of reorganization.” *Still v. Rossville Bank (In re Chattanooga Wholesale Antiques, Inc.)*, 930 F.2d 458, 463 (6th Cir. 1991). Accordingly, “[c]onfirmation of a plan of reorganization by the bankruptcy court has the effect of a judgment by the district court and res judicata principles bar relitigation of any issues raised or that could have been raised in the confirmation process.” *Chattanooga Wholesale Antiques*, 930 F.2d at 463; *see also In re Monclova Care Ctr., Inc.*, 254 B.R.

⁶ The parties stipulated that the general claims bar date was August 5, 2003; however, the Confirmed Plan erroneously states that the bar date is August 7, 2003.

⁷ These subsections address discharge and nondischargeability of certain debts and are not applicable here.

167, 171 (Bankr. N.D. Ohio 2000) (“A fundamental principle with regards to a confirmed Chapter 11 plan, which is really nothing more than a new contract between the parties, is that all prior obligations and rights of the parties subject to the plan are extinguished and replaced by the terms of the Plan[,] . . . and any dispute(s) between the Parties must be resolved by reference to the plan itself.”).

“The doctrine of res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the ‘parties or their privies from re-litigating issues that were or could have been raised’ in a prior action.” *Kane v. Magna Mixer Co.*, 71 F.3d 555, 560 (6th Cir. 1995) (quoting *Federated Dep’t Stores, Inc. v. Moitie*, 101 S. Ct. 2424, 2428 (1981)). Res judicata, which “promote[s] the finality of judgments,” *Sanders Confectionery Prods., Inc. v. Heller Fin., Inc.*, 973 F.2d 474, 480 (6th Cir. 1992), extinguishes “all rights of the plaintiff to remedies against the defendant with respect to all or any part or the transaction, or series of connected transactions, out of which the action arose.” *J.Z.G. Res., Inc. v. Shelby Ins. Co.*, 84 F.3d 211, 215 (6th Cir. 1996) (quoting RESTATEMENT (SECOND) JUDGMENTS § 24 (1982)). In the Sixth Circuit, res judicata is based upon the following four elements:

(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action.

J.Z.G. Res., Inc., 84 F.3d at 215 (citing *Sanders Confectionery Prods., Inc.*, 973 F.2d at 480).

In this contested matter, both the Trustee and Ms. Robson are bound by the terms of the Confirmed Plan.

III

The Trustee contends that the issue is one of classification and that because Ms. Robson's claim was filed after the August 5, 2003 claims bar date, it is, by definition, a Class 7 claim which will be paid only after "payment in full of the prior classes." The Trustee, however, ignores not only the provisions in Article III of the Confirmed Plan regarding the treatment of Classes 4, 6, and 7 claimants, but also the "Definitions" section which incorporates the Bankruptcy Code's claims allowance procedure into the Confirmed Plan.

The "Definitions" section of the Confirmed Plan provides in material part:

Terms, when used in the Plan, shall have the following meaning unless the context requires otherwise:

....

3. **Claim.** Claim shall mean as follows as may be applicable:

(i) A right to payment as finally allowed by the Court pursuant to §502 of the Bankruptcy Code, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, secured, or unsecured[.][⁸]

CONF. PLAN at 4.

Through its "Claims" definition, the Confirmed Plan incorporates into its terms the claims allowance provisions of § 502 of the Bankruptcy Code which, as material to this contested matter, provides:

⁸ This definition incorporates verbatim into the Confirmed Plan the Bankruptcy Code's definition of "claim" found at 11 U.S.C.A. § 101(5)(A) (West 2004).

(a) A claim . . . , proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) . . . [I]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

. . . .

(9) proof of such claim is not timely filed[.]

11 U.S.C.A. § 502 (West 2004).

In summary, pursuant to § 502 and the Confirmed Plan, a claim filed by a creditor in this bankruptcy case is deemed allowed unless an objection, including one grounded on timeliness of the filing of the claim, is made and the court has determined that the claim should be disallowed or allowed in some other amount.⁹

Here, Article III of the Confirmed Plan, entitled “Treatment of Classes,” provides that Class 7 “Tardy General Unsecured Pre-Petition Claims,” will “consist[] of the general unsecured claims *allowed* as tardy claims . . . [and] will be paid on a pro-rata basis after payment in full of the prior classes.” CONF. PLAN at 13 (emphasis added). The court finds this language consistent with the claims allowance process mandated by § 502 as incorporated into the Confirmed Plan because it provides that a tardy claim must be “allowed” as such. To put it another way, to be a Class 7 “tardy claim” under the Confirmed Plan, a claim must first be disallowed as a timely-filed claim. Ms.

⁹ Procedurally, “[a]n objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed to the claimant, the debtor or debtor-in-possession and the trustee at least 30 days prior to the hearing.” FED. R. BANKR. P. 3007.

Robson's claim has not been disallowed and is therefore "deemed allowed" as an unsecured priority claim which is entitled to payment as a Class 4 "Section 507(a)(3) Priority Claim[]" up to \$4,650.00, with any nonpriority general unsecured portion to spill over to and be paid as a Class 6 "General Unsecured Pre-Petition Claim[]."

The treatment of both Class 4 and Class 7 claims under the Confirmed Plan also contemplates application of the claims allowance process mandated by § 502. As it relates to Class 4, the Confirmed Plan provides that this class "consists of the pre-petition claims of **employees or independent contractors** listed in Schedule E, filed as claim No. 220 by the debtor (*if timely filed and allowed*) (emphasis added)." With regard to Class 6, this class

consists of the **General Unsecured Creditors** of the estate. If a creditor's claim is *disallowed*, the creditor will not be entitled to vote or receive payment. . . . No exact distribution is capable until the claims objection process is complete.

CONF. PLAN at 12-13 (emphasis added).

Because the Confirmed Plan requires application of the § 502 claims allowance process, and because Ms. Robson's March 8, 2004 claim is "deemed allowed" as filed, Ms. Robson's Motion will, to the extent she seeks an order requiring payment of her claim as a Class 4 priority claim, be granted. As discussed, any unsecured portion of Ms. Robson's claim will be paid as a Class 6 general unsecured claim.

An order consistent with this Memorandum will be entered.

FILED: October 3, 2006

BY THE COURT

/s/ RICHARD STAIR, JR.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE



SO ORDERED.

SIGNED this 03 day of October, 2006.

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.**

A handwritten signature in black ink, appearing to read "Richard Stair Jr.", written over a horizontal line.

**Richard Stair Jr.
UNITED STATES BANKRUPTCY JUDGE**

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 03-31932

MEDEX REGIONAL LABORATORIES, LLC

Debtor

ORDER

For the reasons stated in the Memorandum on Motion to Determine Status of Claim Under Confirmed Plan filed this date, the court directs that the Motion of Jane M. Robson (1) to Determine Status of, and Compel Distribution on, Allowed Priority Claim, (2) to Allow and Compel Distribution on General Unsecured Claim, or (3) Alternatively, for Order Extending Time for Movement to Amend or File Priority and General Unsecured Claims filed by Jane M. Robson on July 11, 2006, is, to the extent Ms. Robson seeks a determination of the status of her claim and an order compelling distribution of the same, GRANTED. Ms. Robson's claim, filed on March 8, 2004, in the amount of \$4,806.27, as amended on September 18, 2005, to \$9,824.19, shall be paid

in the amount of \$3,629.99 as a Class 4 “Section 507(a)(3) Priority Claim” with the \$6,194.20 balance to be paid as a Class 6 “General Unsecured Pre-Petition Claim.”

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