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Appellate and Constitutional Law Update

June 11, 2026

Supreme Court Holds That Courts Must Consider The “Totality Of The Circumstances” Before Applying Judicial Estoppel In The Bankruptcy Context

Thomas Keathley v. Buddy Ayers Construction, Incorporated, No. 25-6 –
Decided June 11, 2026

Today, the Supreme Court unanimously held that courts must consider the totality of the circumstances before barring a debtor from asserting a claim that the debtor failed to disclose in bankruptcy proceedings.

“To determine whether an omission was inadvertent or mistaken for purposes of judicial estoppel, courts should look to the totality of the circumstances surrounding the omission.”

JUSTICE JACKSON, WRITING FOR THE COURT

Background:

The Bankruptcy Code requires debtors to disclose their assets—including claims against third parties—so that the bankruptcy court, the trustee, and creditors can evaluate the estate and any proposed repayment plan.

When Thomas Keathley's bankruptcy case was ongoing, he was hit by a truck driven by an employee of Buddy Ayers Construction. Keathley told his bankruptcy attorney about the crash and that he planned to sue, but his attorney did not disclose Keathley's claim to the bankruptcy court. When Keathley eventually sued, the district court granted summary judgment in favor of Buddy Ayers Construction on judicial estoppel grounds, reasoning that Keathley had taken an inconsistent position in the bankruptcy proceeding by implicitly representing that he did not have a claim against Buddy Ayers Construction. The district court acknowledged an exception to the doctrine of judicial estoppel where the debtor's omission was the result of "inadvertence or mistake" but, applying Fifth Circuit precedent, held that an omission qualifies as inadvertent or a mistake only if the debtor did not know the facts underlying the claim or had no potential motive to conceal it—conditions that were not satisfied. Under this approach, the district court declined to consider Keathley's evidence that his omission was not the result of a bad-faith attempt to hide assets from the bankruptcy court and his creditors.

The Fifth Circuit affirmed, based on the same precedent. One judge concurred, doubting that the Fifth Circuit's rule was consistent with judicial estoppel's goals and noting that other circuits took a more holistic, totality-of-the-circumstances approach.

Issue:

Whether the doctrine of judicial estoppel can be invoked to bar a plaintiff who fails to disclose a civil claim in bankruptcy filings from pursuing that claim.

Court's Holding:

Yes. The doctrine of judicial estoppel requires courts to evaluate the "totality of the circumstances" surrounding the debtor's omission.

What It Means:

- Under today's decision, courts must undertake a fact-intensive assessment of a debtor's failure to disclose a claim in bankruptcy proceedings before barring the debtor from asserting that claim.
- The Court did not indicate which factors should be considered or how they should be weighed. That said, the Government, participating as *amicus curiae*, identified several potential considerations, including the debtor's sophistication, when and how the omission was corrected, whether the debtor informed his attorney or the trustee of the claim, and whether the debtor disclosed other lawsuits.
- The Court's decision is notable for what it did not decide. The Court assumed without deciding that judicial estoppel applies in the bankruptcy context and that a debtor's "inadvertence or mistake" in failing to disclose a claim can provide an exception. The Court also declined to consider whether a debtor's bad faith in failing to disclose a claim is a prerequisite to application of that exception. And the Court did not resolve a circuit split regarding a debtor's continuing obligation to disclose claims arising after a bankruptcy petition is first filed.

- Justice Thomas, joined by Justice Gorsuch, wrote a concurrence in which they questioned whether judicial estoppel is a valid judicial doctrine in *any* context, noting that it lacks historical support and improperly expands upon the doctrine of equitable estoppel. These Justices urged the Court to consider the validity of judicial estoppel in a future case.
- Justice Sotomayor also wrote a concurrence questioning judicial estoppel's application in the bankruptcy context, where the doctrine's application often provides a windfall for a potentially tortious third-party defendant at the expense of creditors who might otherwise recover if the claim ultimately succeeds.

Gibson Dunn Appellate Honors

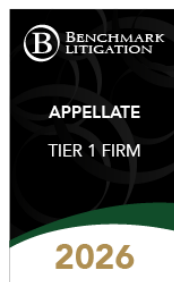


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The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice group leaders:

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