Presented:

The University of Texas School of Law
10th Annual Consumer Bankruptcy Practice

July 24-25, 2014
Galveston, Texas

RES JUDICATA (a/k/a CLAIM PRECLUSION) AND COLLATERAL ESTOPPEL (a/k/a ISSUE PRECLUSION) IN BANKRUPTCY COURTS

Behrooz P. Vida
The Vida Law Firm, PLLC
3000 Central Drive
Bedford, Texas 76021
Tel: (817) 358-9977
Fax: (817) 358-9988
behrooz@vidalawfirm.com

RES JUDICATA (a/k/a CLAIM PRECLUSION) AND COLLATERAL ESTOPPEL (a/k/a ISSUE PRECLUSION) IN BANKRUPTCY COURTS

Whether intentionally or unintentionally the term "*res judicata*" has been used as an all encompassing term to cover the barring effects that a judgment may have. The term has been used primarily for the barring effect of a judgment in situations where certain litigation matters should have been raised but were not raised and were not litigated, but should have been raised and litigated before the judgment was entered and at times in situations where the litigation matters were actually litigated and resulted in a judgment. The latter scenario is generally referred to as collateral estoppel. As a result the terms *res judicata* and collateral estoppels have created confusion as to their true meaning and scope.

To avoid confusion Professor Allan Vestal[1] proposed that the term "Claim Preclusion" be used instead of "*res judicata*" and the term "Issue Preclusion" be used for "collateral estoppel." This paper uses Professor Allan Vestal's recommended terminology.

ISSUE PRECLUSION (a/k/a Collateral Estoppel)

The concept of Issue Preclusion is best understood as where an issue of fact or law was actually litigated and a valid and final judgment was rendered and the determination with respect to the issue of fact or law was necessary for the rendition of the judgment, then, that determination is deemed conclusive in any future lawsuits between the parties with respect to the same or different claims.

Therefore, as a general rule, Issue Preclusion is triggered to prevent the litigation of an issue or cause of action that was *actually litigated* in a prior proceeding.

a. Policy behind Issue Preclusion

Issue Preclusion doctrine is a doctrine intended to conserve judicial resources and to protect a party's and sometimes a non-party from the expense and vexation of dealing with multiple lawsuits.[2]

b. Issue Preclusion in Consumer Bankruptcy Cases

In consumer bankruptcy cases, nondischargeability actions frequently involve legal issues that have already been litigated between the debtor and the creditor before the bankruptcy case is filed. To avoid the necessity of relitigating matters already subject to a judicial decision, creditors often seek to apply Issue Preclusion to bar debtors

---

[1] *See* Allan Vestal, *Rationale of Preclusion*, 9 ST. LOUIS U. L.J. 29 (1964); Allan Vetsal, *Preclusion / Res Judicata Variables: Nature of the Controversy*, 1965 WASH. U. L. Q. 158 (1965)("For the sake of clarity it is desirable to distinguish the foreclosing of further litigation on a cause of action (which may be called claim preclusion) from the preclusion of further litigation of an issue (which may properly be called issue preclusion.").

[2] *Berry v. Vollbracht (In re Vollbracht),* 276 Fed. Appx. 360, 365 (5th Cir. 2007); K.M. Lewis, Paul M. Lopez, Hon. D. Michael Lynn, RECENT DEVELOPMENTS IN ESTOPPEL AND PRECLUSION DOCTRINES IN CONSUMER BANKRUPTCY CASES, State Bar of Texas 28th Annual Advanced Consumer Bankruptcy Course at 57 (2013).

from relitigating matters already decided before the bankruptcy case is filed.

The United States Supreme Court in *Grogan v. Garner*,[3] held that Issue Preclusion applies in bankruptcy cases and can be used in nondischargeability actions to prevent relitigation of issues already decided.

Because of the holding of *Grogan v. Garner*, Issue Preclusion has been raised on many different contexts to dispose of nondischargeability actions. Even though bankruptcy courts are required to give preclusive effect to valid and final judgments rendered by a state or federal court, the bankruptcy courts retain exclusive jurisdiction to determine whether a debt is dischargeable or not.[4]

i. Federal Law

For the purpose of applying Issue Preclusion, the bankruptcy courts apply federal common law to issues which were previously litigated under federal law[5] or were entered by a federal court based on diversity.[6]

A federal judgment in bankruptcy court is preclusive if:

> (1) the federal court's decision resulted in a judgment on the merits;
>
> (2) the same fact issue was litigated in the federal court; and
>
> (3) the issue's disposition was necessary to the federal court's decision.[7]

ii. State Law

The full faith and credit principles of 28 U.S.C. § 1738 require the bankruptcy courts to give effect to the state court judgments.[8] In applying Issue Preclusion the bankruptcy courts apply the Issue Preclusion laws of the relevant state to the issues previously litigated under the state law.[9] Disputed issues

---

[3] 498 U.S. 279, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991).

[4] *Gupta v. Eastern Idaho Tumor Institute, Inc. (In re Gupta),* 394 F.3d 347, 349 (5th Cir. 2004)("A bankruptcy court may apply collateral estoppel in a dischargeability proceeding to preclude relitigation of state court findings that are relevant to dischargeability….The ultimate determination of dischargeability is, however, a federal question.").

[5] *Taylor v. Sturgell*, 553 U.S. 880, 891, 128 S. Ct. 2161, 2171, 171 L. Ed. 2d 155 (2008); *Semetek Int'l Inc. v. Lockheed Martin Corp*., 531 U.S. 497, 507-508, 121 S. Ct. 1021, 149 L. Ed. 2d 32 (2001); *Foster v. City of El Paso*, 308 Fed. Appx. 811, 811 (5th Cir. 2009); *Ball v. A.O. Smith Corp.*, 451 F.3d 66, 69 (2nd Cir. 2006); *Paramount Aviation Corp. v. Agusta*, 178 F.3d 132, 145 (3d Cir. 1999) (We "follow the federal rule that the law of the issuing court--here, federal law--determines the preclusive effects of a prior judgment."); *Purdy v. Zeldes*, 337 F.3d 253, 258 n.5 (2d Cir. 2003); 4 COLLIER ON BANKRUPTCY ¶ 523.06 (16th ed. Electronic 2014).

[6] *Smith v. Bayer Corp*., 131 S. Ct. 2368, 2376 n.6 (2011); *Semetek Int'l Inc. v. Lockheed Martin Corp.,* 531 U.S. 497, 507-508, 121 S. Ct. 1021 (2001); *Rabo Agrifinance, Inc. v. Terra XXI, Ltd.,* 583 F.3d 348, 353 (5th Cir. 2009).

[7] *Taylor v. Sturgell*, 553 U.S. 880, 891, 128 S. Ct. 2161, 2171, 171 L. Ed. 2d 155 (2008); *Ball v. A.O. Smith Corp*., 451 F.3d 66, 69 (2nd Cir. 2006); *Financial Acquisition Partners LP v. Blackwell* 440 F.3d 278, 284 (5th Cir. 2006); *Home Assur. Co. v. Chevron, USA, Inc.,* 400 F.3d 265, 272 (5th Cir. 2005);

[8] *Raju v. Rhodes,* 7 F.3d 1210, 1214 (5th Cir. 1993).

[9] *Capital City Ins. Co. v. Hurst*, 632 F.3d 898, 903 (5th Cir. 2011)(applying Mississippi law); *Plunk*

Title search: Res Judicata (a/k/a Claim Preclusion) and Collateral Estoppel (a/k/a Issue Preclusion) in Bankruptcy Courts

Also available as part of the eCourse
Tips for Effective Adversary Proceedings in Bankruptcy Court

First appeared as part of the conference materials for the
10th Annual Consumer Bankruptcy Practice session
"Tips for Effective Adversary Proceedings"