

# Class Dismissed: Fourth Circuit Affirms Denial of Class Proofs of Claim; Leaves Open Possibility for Similar Claims in the Future

February 17, 2012 by [Michael A. Stevens](#) and [David E. Kronenberg](#)

On February 2, 2010, the United States Court of Appeals for the Fourth Circuit held that certain class action claimants in the Circuit City bankruptcy cases were authorized to file class proofs of claim. However, the Fourth Circuit further held that in this case, the class action process could not proceed because the bankruptcy claims process provided certain procedural advantages over the class process. [Gentry v. Siegel](#), — F.3d —, 2012 WL 310870 (4th Cir. 2012). Although the decision theoretically permits class actions in bankruptcy cases within the Fourth Circuit, the decision suggests that Fourth Circuit bankruptcy courts will seldom allow class actions to proceed concurrent with the bankruptcy process.

The claimants sought recoveries for unpaid overtime wages, and commenced class action suits against Circuit City prior to the bankruptcy. Following the commencement of Circuit City's bankruptcy cases in November 2008, the claimants filed proofs of claim on behalf of their respective classes and, subsequent to the claims bar date, filed a joint motion to certify their claims as class actions.

On April 15, 2010, the United State Bankruptcy Court for the Eastern District of Virginia held that (i) the claimants were not permitted to file class proofs of claim, (ii) the claimants' motion was untimely, (iii) the claims process was superior to the class action process, and (iv) Circuit City had provided potential class members with adequate notice of the claims process and bar date. On appeal, the United States District Court for the Eastern District of Virginia affirmed the bankruptcy court's ruling on the basis that the bankruptcy court did not abuse its discretion in holding that the claims process was superior to the class action process and that Circuit City had provided sufficient notice to potential similarly situated claimants.

On appeal, Circuit City's liquidating trustee argued that class proofs of claim are impermissible because Bankruptcy Rule 3001, which delineates various rules governing proofs of claim, does not explicitly provide that class representatives may file proofs of claim. The Fourth Circuit was not persuaded, and found that because Bankruptcy Rule 7023 provides that the Federal Rules of Civil Procedure's class action rules may apply in bankruptcy cases, Bankruptcy Rule 3001 "should be construed to allow class proofs of claim, at least on a tentative basis, until the court rejects the class-action process." [Gentry](#), 2012 WL 310870, at \*6.

The Fourth Circuit also rejected the trustee's argument, and the bankruptcy court's ruling, that a claimant could not file a class proof of claim without first obtaining an order under Bankruptcy Rule 9014 making Bankruptcy Rule 7023 applicable. Instead, the Fourth Circuit determined that the appropriate procedure for a claimant seeking class certification is for the claimant to file a class claim first. If the claim is objected to, and the matter thus becomes contested, the claimant can then file a motion under Bankruptcy Rule 9014 requesting the application of the FRCP's class action rules. The bankruptcy court will then decide whether the class action process should proceed.

Next, the Fourth Circuit determined that the claimants' motion to certify their claims as class actions (pursuant to Rule 9014) was timely. Specifically, the Fourth Circuit found that both the Bankruptcy Code and Bankruptcy Rules place no temporal restrictions on when a claimant may file a motion to make Bankruptcy Rule 7023 applicable to contested matters, and that since Bankruptcy Rule 9014 applies only to contested matters, the claimants in this case could only have filed their motion after Circuit City objected to their claims, which is what they did.

Although the Fourth Circuit reversed the Bankruptcy Court's procedural rulings with respect to the filing and timing of class proofs of claim, it ultimately affirmed the district court's decision that the bankruptcy court properly exercised its discretion in denying the claimants' motion to make Bankruptcy Rule 7023 applicable. The Fourth Circuit found that the bankruptcy court appropriately concluded that the bankruptcy claims adjudication process was superior to the class action process, and that the class action litigations would needlessly burden Circuit City's estate and complicate its bankruptcy case. Specifically, the Fourth Circuit cited certain advantages to the claims adjudication process, including the consolidation of claims in one forum, the ability for claimants to file claims pro se and with little expense, "established mechanisms for notice . . . [and] managing large numbers of claimants, . . . proceedings centralized in a single court with nationwide service of process, and . . . protection against a race to judgment since all of the debtor's assets are under control of the bankruptcy court." *Id.* at \*8 (quoting *In re Circuit City Stores, Inc.*, No. 08-35653, 2010 WL 2208014, at \*6 (Bankr. E.D. Va. May 28, 2010)). Furthermore, the Fourth Circuit noted the bankruptcy court's conclusion that the policy concerns of "inconsistent adjudications and the deterrence of improper defendant behavior" that favor class action litigation, "were not a concern in a bankruptcy proceeding involving a single court." *Id.* (citing *Circuit City*, 2010 WL 2208014, at \*7).

The Fourth Circuit, however, took care to explain that its holding only applied to the Circuit City case, and that "[e]ach bankruptcy case must be assessed on a case-by-case basis to determine whether allowing a class action to proceed would be superior to using the bankruptcy claims process." *Id.* at \*10. Accordingly, although the bankruptcy process may provide an avenue for class actions to proceed in Fourth Circuit bankruptcy cases, the fundamental characteristics of the bankruptcy process generally make it preferable to, and nullify the need for, class actions.

The Fourth Circuit's decision to allow the filing of class proofs of claim, and suggestion that class action litigation could conceivably prove superior to the claims adjudication process in other cases, leaves open the possibility that bankruptcy courts in the Fourth Circuit may allow class actions to proceed. However, the fact that the Fourth Circuit's decisions rests, in large part, on the bankruptcy court's conclusion that certain common, procedural elements render the claims adjudication process superior to the class action process likely means that in the Fourth Circuit, class actions will only be approved in rare circumstances.