



Unknown claims are not necessarily excluded upon confirmation of an insolvency plan - Insolvency Law

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Bremen, Dusseldorf, Essen, Frankfurt, Hamburg, Hanover, Munich, Nuremberg, Stuttgart and London - www.grprainer.com/en conclude: The Federal Labour Court [Bundesarbeitsgericht / BAG], in its ruling (File number: AZR 907/11) dealt with the question whether claims by "latecomers" that were not yet registered when the insolvency court confirmed the insolvency plan, are to be excluded. In the present case, insolvency proceedings regarding the defendant's assets were started in 2009 and discontinued in the same year. The finally confirmed insolvency plan excluded unregistered claims. The plaintiff, who had been employed by the defendant from 2007 to 2008 as a subcontract worker, filed a law suit in early 2011 for a higher settlement.

After the previous instances had already dismissed the action, an appeal to the Federal Labour Court was unsuccessful as well. Since the claim by the plaintiff had not been included in the table, the creditor can only set an effective deadline when the trial court has finally confirmed the plan. However, in this case, the plaintiff's claims were not found to be legally valid, and deadline set so far are held to be without effect.

Nevertheless, in its reasons, the BAG also mentioned that the insolvency code does not state that unregistered claims cannot be filed after the insolvency plan has been finally confirmed and the action has been discontinued. The claims of "latecomers" are therefore not excluded on principle. However, to be able to file their claims via legal action, creditors must have them finally confirmed beforehand.

When insolvency is threatening or if it has already happened, immediate and careful action is necessary. A successfully implemented insolvency can be the last resort for the companies involved. Creditors as well as debtors should consult a lawyer with experience in insolvency law who can help them with legal advice and who can review any claims.

Not only debtors must observe certain things in case of insolvency, but debtors, too, should be aware of the difficult situation. Claims must be registered on time and in writing with the trustee in bankruptcy. To ensure that the registration is complete and to avoid extra costs, a lawyer should be authorized to file the claim.

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Anlage: Bild

