

# JUDICIALLY ESTOPPED - 8TH CIR. COURT OF APPEALS AFFIRMS SUMMARY JUDGMENT

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The [Eighth Circuit Court of Appeals](#) recently [affirmed a District Court's summary judgment](#) that a party who does not disclose his employment discrimination claims to a bankruptcy trustee is judicially estopped from pursuing those claims.

## ***Jones v. Bob Evans Farms, Inc.***

Jones began working for Bob Evans in June 2009. A few months later, he and his wife filed for [Chapter 13 bankruptcy](#). The bankruptcy court confirmed their Plan in January 2010; the Confirmation Order required the couple to report to the Trustee events affecting disposable income. More than two years later, Jones quit his job with Bob Evans; six months later he filed a [Charge of Employment Discrimination](#) against Bob Evans with the EEOC and the [Missouri Commission on Human Rights](#), claiming he had experienced race discrimination at work from the beginning. In due course, he received a Right to Sue Letter and filed a lawsuit in Missouri state court against Bob Evans, alleging violations of [Title VII](#) and Missouri law. He did not report the lawsuit to the Trustee, however. Bob Evans removed the discrimination case to the federal district court. The bankruptcy court terminated Jones' bankruptcy in July 2014, discharging unsecured debts of over \$146,000.00.

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Bob Evans then filed a motion for summary judgment in the discrimination case. The district court granted the motion, concluding that Jones was judicially estopped from pursuing his claims because he had not disclosed them to the bankruptcy court. Jones filed a motion with the bankruptcy court to re-open the estate, which was granted, and he amended his schedules to include his claims in the employment case. He also filed a motion in the district court, asserting he had cured his failure to disclose. The court denied Jones' motion, concluding that his "last minute candor" in re-opening the bankruptcy estate, did not prevent the application of judicial estoppel to bar his claims.

## Judicially Estopped

The appellate court mused that the circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle. The Court used three factors to inform its decision about whether the doctrine should apply and concluded all three weighed in favor of applying judicial estoppel to bar Jones' employment discrimination claims.

- First, Jones' later position was "clearly inconsistent" with his prior position (failure to amend bankruptcy schedules to include discrimination claims represented to bankruptcy court that no such claims existed, and assertion of those claims in the discrimination case was inconsistent with that prior position).
- Second, judicial acceptance of an inconsistent position in a later proceeding would have created the perception that either the first or the second court was misled.
- And, finally, the Court decided that Jones would derive an unfair advantage on the opposing party if not estopped.

Amicus, the [National Association of Consumer Bankruptcy Attorneys](#), had argued that Jones' failure to disclose his claims was not a representation that they did not exist because a Chapter 13 debtor has no obligation to disclose causes of action arising after the filing of his bankruptcy petition. The Eighth Circuit rejected that argument because it had earlier concluded that a Chapter 13 debtor who does not amend his bankruptcy schedules to reflect a post-petition cause of action, adopts inconsistent positions in the bankruptcy court and the court where that cause of action is pending.

*Jones v. Bob Evans Farms, Inc.*, No. 15-2068, 2016 WL 308650 (8th Cir. Jan. 26, 2016).

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