

## **Failing to list a claim in bankruptcy judicially estops the claimant from proceeding on that claim in another court.**

By Greg Presmanes October 23, 2017

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*D'Antignac v. Deere & Co. dba John Deere Commercial Products*, case number A17A0910, Georgia Court of Appeals, 8/16/17

Although this case does not involve a Worker's Compensation issue, it does involve judicial estoppel arising from failure to list a claim in a pending Chapter 13 bankruptcy.

The plaintiff filed a tort claim against John Deere Commercial Products. She alleged intentional infliction of emotional distress and negligent retention of coemployees. Her claim was based upon her allegation that a coemployee had showed her a noose and tried to place it around her neck, and shortly thereafter, another noose rope was sent down the assembly line to the plaintiff's workstation. She stopped work for the next 2 years. She had previously filed a chapter 13 bankruptcy. She did not list her claim against John Deere Commercial Products as an asset in her bankruptcy proceeding, even though she had a lawyer to pursue her claim against John Deere, and filed an EEOC complaint. She had offered to settle her employment claim John Deere for \$2 million. The bankruptcy proceeding concluded with a final decree discharging the plaintiff from bankruptcy. John Deere Commercial Products moved for, and was granted summary judgment, which was affirmed by the Georgia Court of Appeals, based on judicial estoppel.

When investigating a claim or deposing a claimant in a workers' compensation case, always ask about bankruptcies to see if the workers' compensation claim was listed. If the workers' compensation claim was not listed as an asset in the bankruptcy proceeding, the claimant could potentially be judicially estopped from asserting her workers' compensation claim.