

APPENDIX

APPENDIX A- Decision of Court of Appeals, Third Circuit

**APPENDIX B- Decision of the United States District Court for the District
Delaware**

**APPENDIX C- Decision of the Court of Appeals, Third Circuit on timely filed
petition for rehearing.**

**APPENDIX D- Decision of the United States Bankruptcy Court, District of
Delaware**

**APPENDIX E- Notice of Appeal filed in the United States Bankruptcy Court,
District of Delaware, on June12, 2017.**

**APPENDIX E- USPS tracking report of certified mailing of Petitioner's notice
of appeal, mailed June 3, 2017,**

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 18-2640

**IN RE: ROADHOUSE HOLDING INC., ET AL.,
Debtors**

**WAYNE ENGLISH,
Appellant**

**On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Action No. 1:17-cv-00731)
District Judge: Honorable Richard G. Andrews**

**Submitted Pursuant to Third Circuit LAR 34.1(a)
February 1, 2019**

**Before: KRAUSE, SCIRICA and NYGAARD, Circuit Judges
(Opinion filed February 5, 2019)**

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

APPENDIX A

PER CURIAM

Pro se litigant Wayne English appeals from the District Court's orders dismissing his bankruptcy appeal as untimely and denying his related motion for reconsideration. For the reasons that follow, we will affirm those orders.

I.

On May 25, 2017, the United States Bankruptcy Court for the District of Delaware entered a final order in a Chapter 11 proceeding brought by Roadhouse Holding Inc. ("Roadhouse"). English, whose claim against Roadhouse had been expunged by the Bankruptcy Court, sought to appeal from the May 25, 2017 order. The deadline for filing his notice of appeal was Thursday, June 8, 2017, see Fed. R. Bankr. P. 8002(a)(1) (establishing 14-day appeal period); see also 28 U.S.C. § 158(c)(2) (providing that an appeal from a bankruptcy court must be taken in the time provided by Rule 8002), but the United States Postal Service ("USPS") did not deliver that notice to the Bankruptcy Court until Monday, June 12, 2017.¹ As a result, Roadhouse moved the District Court to dismiss English's appeal as untimely. On March 22, 2018, the District Court granted the motion to dismiss. English then timely moved the District Court to reconsider its decision. On June 27, 2018, the District Court denied English's motion. This timely appeal followed.²

¹ English mailed the notice of appeal from Texas.

² We have jurisdiction to review the District Court's orders pursuant to 28 U.S.C. §§ 158(d)(1) and 1291. We review *de novo* whether the District Court properly dismissed English's appeal as time-barred. See In re Caterbone, 640 F.3d 108, 111 (3d

II.

The 14-day time period for filing a bankruptcy appeal is mandatory and jurisdictional, see Caterbone, 640 F.3d at 110, and it is not subject to equitable tolling, see Bowles v. Russell, 551 U.S. 205, 214 (2007) (indicating that federal courts have “no authority to create equitable exceptions to jurisdictional requirements”). It is undisputed that the 14-day appeal period in this case expired on June 8, 2017. We agree with the District Court that English’s notice of appeal from the Bankruptcy Court’s decision was filed after that deadline. As the District Court explained, the notice was filed, at the earliest, in the afternoon on June 9, when the notice first arrived in the Bankruptcy Court’s “unit” at the local post office. See Caterbone, 640 F.3d at 110 (indicating that a notice of appeal is deemed filed when the court receives it, not when it is mailed).³

Although English’s notice of appeal was untimely, he had the opportunity to cure this defect by moving the Bankruptcy Court, on or before June 29, 2017, to extend the time to appeal based on a claim of excusable neglect. See Fed. R. Bankr. P. 8002(d)(1)(B). However, he did not file such a motion. Accordingly, the District Court

Cir. 2011). As for the District Court’s order denying reconsideration, we review that decision for abuse of discretion, exercising de novo review over the District Court’s legal conclusions and reviewing its factual findings for clear error. See Howard Hess Dental Labs. Inc. v. Dentsply Int’l, Inc., 602 F.3d 237, 246 (3d Cir. 2010).

³ To the extent that English argues that the “filed” date was earlier than June 9, we, like the District Court before us, find his argument unpersuasive. We also note that, because English is not a prisoner, the prison mailbox rule, see Houston v. Lack, 487 U.S. 266, 276 (1988) (indicating that a prisoner’s submission is deemed filed when he gives it to prison officials for forwarding to the court), is inapplicable in this case.

had no choice but to dismiss English's appeal as time-barred, and the District Court did not err in subsequently denying his motion for reconsideration.

In light of the above, we will affirm the District Court's March 22, 2018 and June 27, 2018 orders. English's motion to supplement the record on appeal is denied, as he has not demonstrated that this case presents the type of "exceptional circumstances" that warrant supplementation. See Acumed LLC v. Advanced Surgical Servs., Inc., 561 F.3d 199, 226 (3d Cir. 2009).⁴

⁴ The USPS tracking information for English's notice of appeal is already part of the record in this case. His motion to supplement the record appears to seek permission to submit USPS tracking information for other, unspecified mailings (which may or may not have been filed in other cases), but he has not established that this latter information would affect the timeliness analysis here.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2640

IN RE: ROADHOUSE HOLDING INC., ET AL.,
Debtors

WAYNE ENGLISH,
Appellant

On Appeal from the United States District Court
for the District of Delaware
(D.C. Civil Action No. 1:17-cv-00731)
District Judge: Honorable Richard G. Andrews

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 1, 2019

Before: KRAUSE, SCIRICA and NYGAARD, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit LAR 34.1(a) on February 1, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the orders of the District Court entered March 22, 2018, and June 27, 2018, are hereby affirmed. Costs taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Date: February 5, 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE: : Chapter 11
ROADHOUSE HOLDING INC., : Case No. 16-11819-BLS
Reorganized Debtor. : (Jointly Administered)

WAYNE ENGLISH, : Civ. No. 17-731-RGA
Appellant, :
v. :
ROADHOUSE HOLDING INC., :
Appellee. :

MEMORANDUM

Pending before this Court is the Motion to Dismiss Appeal for Lack of Jurisdiction (D.I. 16) filed by Roadhouse Holding Inc. ("Reorganized Debtor") with respect to a *pro se* appeal filed by Wayne English ("Appellant"). The Motion to Dismiss argues that the Court lacks appellate jurisdiction to consider this appeal because Appellant failed to file a notice of appeal within the 14-day period prescribed by Rule 8002(a) of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and failed to request an extension of the deadline for excusable neglect within the time frame set forth in Bankruptcy Rule 8002(d)(1). For the reasons set forth below, the Motion to Dismiss is granted, and the appeal is dismissed for lack of appellate jurisdiction.

1. **Background.** This appeal arises out of the chapter 11 cases of the now Reorganized Debtor and certain affiliates, which were filed on August 8, 2016 (the "Petition Date"). As of the Petition Date, Appellant held claims on account of the Debtors' publicly issued 10.75% Senior Secured Notes due October 2017 (the "Notes"). He timely filed a proof of

APPENDIX B

claim on account of his Notes in the chapter 11 cases (Claim No. 6099) (the “Claim”). The Debtors objected to Appellant’s claim (B.D.I. 625) (“Objection”)¹ on the basis that the Indenture Trustee for the Notes had filed proofs of claim on behalf of all individual noteholders, including Appellant, and that Appellant’s claim was therefore duplicative of the Indenture Trustee’s proofs of claim. (*See id.* at 4-5). On March 22, 2017, the Bankruptcy Court held a hearing on the Objection as it related to Appellant’s claim specifically and heard argument from Appellant. (*See* B.D.I. 799). The same day, the Bankruptcy Court entered an order sustaining the Objection with respect to Appellant’s Claim. (B.D.I. 790).

2. On April 4, 2017, Appellant filed the Motion for New Trial, Motion for Rehearing, and Motion to Modify, Correct or Reform the Judgment Granting Debtors’ Fourth Omnibus (Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007, and Local Rule 3007-1 as to Proof of Claim 6099 Filed by Wayne English (B.D.I. 806) (the “Reconsideration Motion”), which was opposed by the Reorganized Debtor (B.D.I. 815).

3. On May 25, 2017, the Bankruptcy Court entered a Memorandum Order denying the Reconsideration Motion (“Final Order”). (B.D.I. 825).

4. Appellant’s Notice of Appeal of the Final Order was filed on June 12, 2017, eighteen days after entry of the Final Order. (B.D.I. 840).

5. The Motion to Dismiss is fully briefed. (D.I. 16, 18, 19). Appellant filed a motion to strike (D.I. 20) (“Motion to Strike”) the Reorganized Debtor’s reply in support of the Motion to Dismiss (D.I. 19) (“Reply”), on the basis that the Reply was untimely, and the Reorganized Debtor filed a response thereto (D.I. 21).

¹ The docket of the Chapter 11 cases, captioned *In re Roadhouse Holding Inc., et al.*, Case No. 16-11819 (BLS) (Bankr. D. Del.), is cited herein as “B.D.I. ____.”

6. **Jurisdiction and Standard of Review.** The Court has appellate jurisdiction over all final orders and judgments from the Bankruptcy Court. *See* 28 U.S.C. § 158(a)(1). Bankruptcy Rule 8002 provides: “Except as provided in subdivisions (b) and (c), a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.” Fed. R. Bankr. P. 8002(a)(1). Where a party makes a timely motion in the bankruptcy court (i) to amend or make additional findings under Bankruptcy Rule 7052, (ii) to alter or amend the judgment pursuant to Bankruptcy Rule 9023, (iii) for a new trial under Bankruptcy Rule 9023, or (iv) for relief under Bankruptcy Rule 9024, “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.” Fed. R. Bankr. P. 8002(b). The Reconsideration Motion was disposed of by entry of the Final Order on May 25, 2017. Therefore, the time for appeal runs from May 25, 2017. Fed R. Bankr. P. 8002(b). The Third Circuit has held that the failure to appeal a bankruptcy court’s ruling to the district court within the time period established by Bankruptcy Rule 8002 deprives the district court of jurisdiction to hear an appeal. *See In re Caterbone*, 640 F.3d 108, 113 (3d Cir. 2011).

7. **Discussion.** The Final Order denying the Reconsideration Motion was entered on May 25, 2017. The deadline to file an appeal expired 14 days later, on June 8, 2017. *See* Fed. R. Bankr. P. 8002. The appeal was not filed until June 12, 2017, four days after the 14-day period under Bankruptcy Rule 8002 had expired. Although the Bankruptcy Rules alone cannot create or withdraw jurisdiction, Congress has limited the jurisdiction of this Court to hear an appeal from a final order of a Bankruptcy Court by specifically incorporating the time limits of Rule 8002 in the jurisdictional grant to the district courts to hear appeals from bankruptcy courts. Section 158(c)(2) of title 28 provides that “an appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the

courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.”

8. “[T]he taking of an appeal within the prescribed time is ‘mandatory and jurisdictional.’” *Bowles v. Russell*, 551 U.S. 205, 209 (2007) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 61 (1982)). The Third Circuit has joined other circuits in holding that the time limits of Bankruptcy Rule 8002 are jurisdictional, and the failure to file a timely notice of appeal creates a jurisdictional defect barring appellate review. *See Caterbone*, 640 F.3d at 112-13 & n.5 (citing *S'holders v. Sound Radio, Inc.*, 109 F.3d 873, 879 (3d Cir. 1997)); *see also, In re Sobczak-Slomczewski*, 826 F.3d 429, 432 (7th Cir. 2016); *In re Berman-Smith*, 737 F.3d 997, 1003 (5th Cir. 2013); *In re Lattice*, 605 F.3d 830, 836-37 (10th Cir. 2010). As the Third Circuit has explained:

[b]ecause Section 158 ... specifies the time within which an appeal must be taken – i.e., “in the time provided by Rule 8002” – that requirement is jurisdictional ... Here, even though it is a bankruptcy rule that specifies the time within which an appeal must be filed, the statutory incorporation of that rule renders its requirement statutory and, hence, jurisdictional and non-waivable.

Caterbone, 640 F.3d at 111-12.

9. The Court must reject Appellant’s argument that the Notice of Appeal was timely filed. (*See* D.I. 18 at 2). Appellant’s Opposition to the Motion to Dismiss attached as an exhibit what purports to be tracking results from the U.S. Postal Service. (*See id.*, Ex. 2). Based on this document, Appellant asserts, “After receiving [Appellant’s] notice of appeal on Thursday June 8th, 2017, the clerk did not file the notice until Monday June 12, 2017. The delay was the direct result of the clerk not filing the notice in a timely manner.” (*Id.* at 14). The evidence proffered by Appellant does not establish that he timely filed the Notice of Appeal. Under the Bankruptcy Rules, the date the Bankruptcy Court Clerk receives the notice determines whether the appeal

was timely filed. *See Fed. R. Bankr. P. 8002(a)(1)*. The Third Circuit has consistently held that “[t]he date a court receives a notice of appeal controls whether it was timely filed.” *In re Hussain*, 532 F. App’x 196, 197 (3d Cir. 2013); *see also Chicago v. U.S. Dep’t of Labor*, 737 F.2d 1466, 1471 (7th Cir. 1984) (“It is well settled that a notice of appeal or a petition for review is filed once the [court] receives actual custody of the document.”). I assume the truth of the information presented. The tracking results establish that the document was still in transit on June 8, 2017 at 7:10 p.m. – at a time after the Clerk’s Office had closed. (*See D.I. 18, Ex. 2 (“Departed USPS Regional Facility”)*). As the Reorganized Debtor correctly points out, it was not until June 9, 2017 that the document both “Arrived at Unit” and was “Available for Pickup.” (*See id.*) The document was only “Delivered” at 7:03 a.m. on June 12, 2017. (*See id.*)

10. Nor is the Court permitted at this juncture to consider whether any alleged mail delivery problems constitute “circumstances beyond a party’s control” that might satisfy the standard of excusable neglect, as Appellant did not seek relief within the timeframe permitted by the Bankruptcy Rules. *See Pioneer Investment Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380, 390-92 (1993). Under Bankruptcy Rule 8002(d)(1), a bankruptcy court “may extend the time to file a notice of appeal upon a party’s motion that is filed: (A) within the time prescribed by this rule; or (B) within 21 days after that time, if the party shows excusable neglect.” *Fed. R. Bankr. P. 8002(d)(1)*. Bankruptcy Rule 8002(d) requires that, even in cases of excusable neglect, the issue must be raised and a motion filed with the bankruptcy court within 21 days following the expiration of the 14-day appeal period provided in Bankruptcy Rule 8002(a)(1). The twenty-one day period following the June 8, 2017 deadline expired on June 29, 2017. Upon learning of the June 12, 2017 delivery, Appellant could have asked the Bankruptcy Court to extend the time to appeal by filing a motion before June 29, 2017, but Appellant did not do so. Here, no motion for

relief or showing of excusable neglect was ever made, and “[t]he rule does not allow a party to claim excusable neglect after the [time period] ha[s] expired.” *Caterbone*, 640 F.3d at 114 (quoting *S'holders*, 109 F.3d at 879). The Court is without jurisdiction to consider the appeal, regardless of whether Appellant might demonstrate excusable neglect. *Siemon v. Emigrant Savings Bank*, 421 F.3d 167, 169 (2d Cir. 2005).

11. Appellant appears to argue that, under Bankruptcy Rule 9006(f), he was afforded more time to file the appeal because he was served with the Final Order by mail. (See D.I. 18 at 7). Bankruptcy Rule 9006(f) provides: “When there is a right or requirement to act or undertake some proceedings within a prescribed period after service and that service is by mail ..., three days are added after the prescribed period would otherwise expire under Rule 9006(a).” Fed. R. Bankr. P. 9006(f). As the Reorganized Debtor correctly argues, however, Bankruptcy Rule 9006(f) does not extend the time within which to act where, as here, the time period for taking the action begins to run from an event other than service, *i.e.*, entry of the Final Order. *See* Fed. R. Bankr. P. 9006(f) (applying “when there is a right or requirement to act ... within a prescribed period after service and that service is by mail ...”); *In re Arbuckle*, 988 F.2d 29, 31-32 (5th Cir. 1993) (holding that Bankruptcy Rule 9006(f), by its terms, applies when a time period begins to run after service, and thus does not apply to the appeals period prescribed by Bankruptcy Rule 8002(a), which begins to run upon entry of the order, not its service); *In re B.J. McAdams, Inc.*, 999 F.2d 1221, 1225 (8th Cir. 1993) (discussing that, under Bankruptcy Rule 9006(f), “the time to file the ... notice of appeal runs from the entry of judgment, not from service of notice of the judgment.”) Pursuant to Bankruptcy Rule 8002, the 14-day appeal period began to run upon the entry of the Final Order, on May 25, 2017, and not upon its service. The time for appeal is not enlarged by any service by mail under Bankruptcy Rule 9006(f).

12. Appellant also appears to argue that other Bankruptcy Rules requiring service of the Final Order on Appellant provided him with three extra days to file the Notice of Appeal. (*See* D.I. 18 at 4-10). The Court must reject these arguments. Bankruptcy Rule 9022(a) by its express terms has no bearing on the time period set by Bankruptcy Rule 8002. Bankruptcy Rule 9022(a) states that lack of notice “does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.” Fed. R. Bankr. P. 9022(a). Appellant also cites Bankruptcy Rule 9033, but that rule applies to proposed findings of fact and conclusions of law made by a bankruptcy court and submitted to a district court. *See* Fed. R. Bankr. P. 9033. The Bankruptcy Court did not issue proposed findings of fact and conclusions of law. Bankruptcy Rule 9033 is inapplicable.

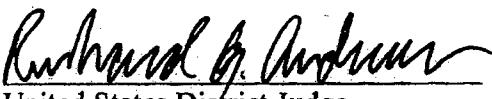
13. Finally, Appellant’s Motion to Strike the Reorganized Debtor’s Reply in further support of its Motion to Dismiss must be denied. Appellant argues that his Opposition was served by mail on September 5, 2017.² (*See* D.I. 20 at 3 & Ex. A (attaching U.S. Postal Service certified mail receipt, dated September 5, 2017)). The Reorganized Debtors’ Reply was filed eight days later, on September 13, 2017, and Appellant argues the Reply was untimely and “invalid.” (D.I. 20 at 3-4). Appellant correctly states that Bankruptcy Rule 8013(a)(3)(B) permits replies filed in support of motions in bankruptcy appeals to be filed “within 7 days after service of the response.” *See* Fed. R. Bankr. P. 8013(a)(3)(B). However, Appellant’s argument that, because “service is complete upon mailing,” the 7-day period began to run when he mailed his Opposition on September 5, 2017, is incorrect. As discussed above, Bankruptcy Rule 9006(f) provides for a three-day extension of a period prescribed under the Bankruptcy Rules that is calculated “after service and that service is by mail.” *See* Fed. R. Bankr. P. 9006(f). Here, the

² The certificate of service included with Appellant’s opposition brief does not actually indicate the date or manner of service, as required by Bankruptcy Rule 8011. (*See* D.I. 18 at 25).

deadline for filing the Reply under Bankruptcy Rule 8013 is calculated “after service of the response,” and Appellant did serve his response by mail. Fed. R. Bankr. P. 8013(a)(3)(B) (emphasis added). Thus, the Reorganized Debtor had a total of ten days to file its Reply – until September 15, 2017. The Reply filed on September 13, 2017 was therefore timely.

14. **Conclusion.** The jurisdictional defect is non-waivable. Having failed to file a timely notice of appeal and having failed to make a showing of excusable neglect for the untimely filing within the time frame set forth in Bankruptcy Rule 8002(d)(1)(B), this Court lacks jurisdiction to hear the appeal, and the appeal must be dismissed.

15. A separate order will be entered.


United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-2640

In re: Roadhouse Holding Inc., et al.,
Debtors

Wayne English,
Appellant

On Appeal from the United States District Court
for the District of Delaware
(D. Del. No. 1-17-cv-00731)
District Judge: Richard G. Andrews

SUR PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, AMBRO, CHAGARES, JORDAN, HARDIMAN,
GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER,
SCIRICA, and NYGAARD,¹ *Circuit Judges*.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

¹ Judge Scirica and Judge Nygaard's votes are limited to Panel rehearing only.

APPENDIX C

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Dated: April 4, 2019

CLW/cc: Mr. Wayne English

Edmon L. Morton, Esq.

Elizabeth S. Justison, Esq.

Robert S. Brady, Esq.

Ryan M. Bartley, Esq.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

ROADHOUSE HOLDING INC.¹

Reorganized Debtor.

Chapter 11

Case No. 16-11819 (BLS)

Jointly Administered

Re: Docket No. 625, 671, ____

**ORDER GRANTING DEBTORS' FOURTH OMNIBUS (SUBSTANTIVE) OBJECTION
TO CLAIMS PURSUANT TO SECTION 502(B) OF THE BANKRUPTCY CODE,
BANKRUPTCY RULES 3003 AND 3007, AND LOCAL RULE 3007-1 AS TO PROOF OF
CLAIM 6099 FILED BY WAYNE ENGLISH**

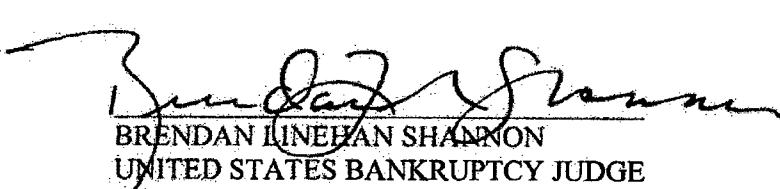
Upon the objection (the "Objection")² of the Debtors seeking entry of an order (this "Order") disallowing proof of claim 6099 (the "Claim") filed by Mr. English pursuant to section 502(b) of the Bankruptcy Code and Rule 3007 of the Bankruptcy Rules; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157; and it appearing that venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Objection and opportunity for response having been given; and it appearing that no other notice need be given; and the Court having considered the Objection, the Response, and the Reply; and this Court having determined that there exists just cause for the relief granted herein; and upon the record herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED:

¹ The last four digits of the Reorganized Debtor's federal tax identification number are 5939, and the Reorganized Debtor's mailing address is 3011 Armory Drive, Suite 300, Nashville, Tennessee 37204. The chapter 11 cases of the following affiliates of the Reorganized Debtor were closed effective as of November 23, 2016: Roadhouse Intermediate Inc. (6159); Roadhouse Midco Inc. (6337); Roadhouse Parent Inc. (5108); LRI Holdings, Inc. (4571); Logan's Roadhouse, Inc. (2074); Logan's Roadhouse of Texas, Inc. (2372); and Logan's Roadhouse of Kansas, Inc. (8716).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

1. The Objection is sustained to the extent set forth herein.
2. The Claim is disallowed and expunged in its entirety.
3. To the extent the Counterclaim asserts a claim or claims not encompassed by the Claim, the Counterclaim is untimely and is disallowed.
4. To the extent that the Counterclaim asserts a claim or claims not encompassed by the Claim, the Counterclaim is dismissed with prejudice.
5. Donlin, Recano & Company, Inc., the Reorganized Debtor's claims and noticing agent, shall update the claims register to reflect the relief granted in this Order.
6. The terms and conditions of this Order shall be immediately effective and enforceable, and the time to appeal this Order shall commence upon its entry. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).
7. The Court shall retain jurisdiction with respect to all matters related to or arising from the Objection or the implementation of this Order.

Dated: March 22, 2017
Wilmington, Delaware


BRENDAN LINEHAN SHANNON
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT

OF DELAWARE

FILED

2017 JUN 12 AM 10:39

In re:	}	Chapter 11	CLERK U.S. BANKRUPTCY COURT DISTRICT OF DELAWARE
ROADHOUSE HOLDING INC., et al,	}	Case No. 16-11819 (BLS)	
Reorganized Debtors,	}	(Jointly Administered)	

NOTICE OF APPEAL AND STATEMENT OF ELECTION

NOW COME Wayne English ("English"), creditor, appealing from the Order sustaining Debtors' Fourth Omnibus Objection denying English's claim and the Bankruptcy's Court denying English's counter claim in the above-entitled action.

Notice is hereby given that Wayne English, creditor in the above-named bankruptcy case, appeals to the District Court from the Order entered on May 25, 2017, that disallowed and expunged English's proof of claim and counterclaim. English's claim resulted from his ownership of Roadhouse Holding Inc., (the "Debtors"), publicly-issued 10.75% Senior Secured Notes due 2017 (the "Notes"), and on the grounds that he was misled by the Debtors' pre-bankruptcy financial disclosure, that the Debtors' failed to response to repeated request for financial information and explanations, and that the Debtors' refused to explain or provided documents concerning the "loss" of \$360,000,000 in company assets after filing for voluntary bankruptcy.

The following names identify the other parties to the appeal:

Roadhouse Holding Inc., et al, the Debtors and Debtors in possession that are represented by:

Young Conaway Stargatt & Taylor, LLP.,

Robert Brady

Edmon L. Morton

Ryan M. Bartley

Elizabeth S. Justison

Norah M. Roth-Moore

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nroth-moore@ycst.com

APPENDIX E

Election to have appeal heard by District Court:

Appellate elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Date: June 3, 2017

Respectfully submitted,

By: /s/ Wayne English

Wayne English, pro se

4849 Bluecap Court

Mesquite, Texas 75181

Tel: 214-460-4975 (Fax 972-222-4285)

Waynemenglish@aoi.com

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing pleading or document has been served upon Young Conaway Stargatt & Taylor, LLP., 1000 North King Street, Wilmington, Delaware, 19801.

By: /s/ Wayne English

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Tracking Number: 9507100018997154000109



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Product & Tracking Information

[See Available Actions](#)

Postal Product:
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Features:
Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
June 12, 2017, 7:03 am	Delivered	WILMINGTON, DE 19801
 Your item was delivered at 7:03 am on June 12, 2017 in WILMINGTON, DE 19801.		
June 9, 2017, 2:58 pm	Available for Pickup	WILMINGTON, DE 19801
June 9, 2017, 1:02 pm	Arrived at Unit	WILMINGTON, DE 19801
June 8, 2017, 7:10 pm	Departed USPS Regional Facility	WILMINGTON DE DISTRIBUTION CENTER

APPENDIX F

DATE & TIME	STATUS OF ITEM	LOCATION
June 8, 2017, 8:05 am	Arrived at USPS Regional Destination Facility	WILMINGTON DE DISTRIBUTION CENTER
June 6, 2017, 10:03 pm	Departed USPS Regional Facility	COPPELL TX DISTRIBUTION CENTER
June 6, 2017, 6:15 pm	Arrived at USPS Regional Origin Facility	COPPELL TX DISTRIBUTION CENTER
June 3, 2017	USPS expects item for mailing (SSK)	MESQUITE, TX 75149

See Less ▲

Available Actions

Text Updates

▼

Email Updates

▼

See Less ▲

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