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Litigation Coverage: Court Takes Under Advisement Motions to Dismiss Aldrich Pump/Murray Boiler Cases; Parties Spar Over Constitutional Limits on Bankruptcy, Financial Distress

Fri 07/14/2023 18:31 PM

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Hearing Agenda

Judge J. Craig Whitley heard arguments today and took under advisement motions to dismiss the Aldrich Pump and Murray Boiler chapter 11 cases brought by the official asbestos claimant committee, or ACC, and a group of mesothelioma victims represented by plaintiffs' law firm Maune Raichle Hartley French & Mudd LLC, or MRHFM. Judge Whitley did not give a timeline for his ruling.

Dismissal is opposed by the debtors, their nondebtor affiliates Trane Technologies Co. and Trane U.S. Inc., and the future claimant representative, or FCR. The FCR also supports the debtors' September 2021 plan of reorganization, which contemplates $545 million for a Bankruptcy Code section 524(g) asbestos trust.

Natalie Ramsey of Robinson & Cole, co-counsel for the ACC, argued that the court lacks subject matter jurisdiction over the Aldrich Pump/Murray Boiler cases under the Bankruptcy Clause of the U.S. Constitution. The argument mirrored that of the Bestwall ACC, which advanced its rationale in seeking dismissal of the Bestwall Texas two-step case, which Judge Laura Beyer took under advisement in May with a ruling expected in late July. Ramsey maintained that the Bankruptcy Clause implicitly requires financial distress for bankruptcy jurisdiction, asserting that the "historical and colloquial" understanding of bankruptcy has always been premised on a debtor's inability to pay its debts in full.

Aldrich Pump and Murray Boiler are not financially troubled or unable to pay their debts because of their funding agreements with nondebtor Trane Technologies affiliates, which Ramsey said ensure the debtors' economic viability is not threatened. She highlighted that the funding agreements require "uncapped" funding for asbestos liabilities outside of bankruptcy but are "capped" inside of bankruptcy in that funding for an asbestos trust is only available if the liabilities are fixed under a plan. Capped trust funding combined with a "forced" settlement in bankruptcy "tramples" on claimants' due process rights, she argued.

Judge Whitley asked whether uncapped or "evergreen" trust funding would address the ACC's due process concerns. Ramsey responded that "theoretically" it could solve the due process problem but would not eliminate the need for financial distress to create subject matter jurisdiction.

Ramsey and other asbestos claimant representatives referred today to testimony from the debtors' chief legal officer, Alan Tanenbaum, who they said testified at a recent deposition that prior to the Texas divisional merger that created the debtors, the company was spending approximately $100 million annually on asbestos litigation (including settlements and defense costs). According to the movants, Tanenbaum acknowledged that this annual expense was indefinitely sustainable for the company and that it pursued bankruptcy because it believed it would be "fairer" and more efficient.

Ramsey emphasized that the ACC is not attempting to impose a solvency requirement for bankruptcy jurisdiction but added that a "fully solvent" debtor cannot qualify, and some financial distress is still necessary.

Ramsey also countered the debtors' and FCR's position that her client's motion should be barred as untimely by the doctrine of laches by highlighting that the doctrine does not apply to issues of subject matter jurisdiction, which can be raised at any time.

Kevin Maclay of Caplin & Drysdale, co-counsel for the ACC, argued that even if the court decides it has subject matter jurisdiction, it should dismiss the cases under Bankruptcy Code section 1112(b), the bankruptcy dismissal statute. Maclay maintained that the Fourth Circuit's 1989 *Carolin* decision governing bad-faith dismissals is only applicable at the outset of a bankruptcy case and therefore does not apply to the ACC's motion brought about three years into the case.

As a result, Maclay focused on three separate grounds for "cause" for dismissal under section 1112(b) raised in other applicable case law. First, he argued that the debtors bear several hallmarks of "new debtor syndrome," where a debtor is created solely for the purpose of commencing a bankruptcy case, including the debtors' creation via divisional merger 49 days before the petition date, the transfer of asbestos liabilities without adequate consideration, and no ongoing business or employees of the debtors' own. Maclay further argued that the debtors commenced the bankruptcy case as a litigation tactic, asserting that the divisional merger was designed to coerce asbestos claimants into an unfavorable settlement through bankruptcy and that the debtors are running the bankruptcy for the benefit of their nondebtor affiliates.

Maclay continued that the cases should be dismissed even if *Carolin* applies, because that case's test for "objective futility" as a basis for dismissal is satisfied. As explained by the parties today, objective futility under *Carolin* focuses on whether there is a reasonable hope for a debtor's rehabilitation. The second prong, subjective bad faith, focuses on whether a debtor's true motivation for filing for bankruptcy is to take advantage of the automatic stay without any intent to reorganize.

Maclay argued that objective futility is demonstrated here by the debtors' filing of a plan approximately two years ago without a disclosure statement or any subsequent attempt to solicit votes. According to Maclay, this amounts to a "tacit admission" by the debtors that the plan is unconfirmable.

Clay Thompson of MRHFM and Jonathan Ruckdeschel of the Ruckdeschel Law Firm argued on behalf of the individual mesothelioma claimant movants. Thompson took issue with the FCR's support for the debtors, saying it is a "bizarre situation" to have current claimants pressing for more money for future claimants.

Ruckdeschel addressed the debtors' contention that neither the Bankruptcy Code nor *Carolin* contain an explicit requirement for financial distress to commence a bankruptcy case. If this position were accepted, said Ruckdeschel, bankruptcy would become a "playground for super-solvent" Texas two-step debtors. He added that this is not a "slippery slope" argument, saying, "That's what's happening here." Ruckdeschel further argued that financial distress is implicit in *Carolin*'s objective futility test, which he said contemplates the prospects for resuscitating a financially troubled debtor.

Brad Erens of Jones Day argued for the debtors. Erens maintained that the motions to dismiss are "extraordinarily late" three years into the cases and thus should be denied under the doctrine of laches. The movants knew they were late and thus "concocted" jurisdictional arguments to get around laches, said Erens, asserting that their arguments are not truly jurisdictional. He argued that merely invoking the Constitution does not make an argument jurisdictional and that the Bankruptcy Clause "has nothing to do with subject matter jurisdiction" because it is directed at Congress, not federal courts. The only relevant jurisdictional statute, according to Erens, is section 1334 of title 28, which grants bankruptcy courts jurisdiction over all cases commenced under the Bankruptcy Code.

The ACC also fails on the merits of its Bankruptcy Clause argument, Erens continued. He countered Ramsey's narrative of the "colloquial" understanding of bankruptcy - a debtor's inability to pay its debts - with his own construction of the term as referring primarily to a restructuring of the debtor-creditor relationship and the concept of a "fresh start." Both apply to the Aldrich Pump/Murray Boiler debtors, said Eren, asserting that the Bankruptcy Clause contemplates a "flexible" understanding of the term bankruptcy.

Erens asserted that contrary to the ACC's position, the dismissal motions are governed by *Carolin*, which he emphasized does not contain a financial distress requirement. The debtors' funding agreements satisfy the objective futility test, he argued, which eliminates the need to move to the subjective bad-faith prong. In any case, he continued, the company's prepetition $100 million annual spending on asbestos litigation amounts to financial distress, adding that those costs could reach $1 billion annually outside of bankruptcy.

Jonathan Guy of Orrick, counsel for the FCR, called the motions to dismiss "opportunistic" after the Third Circuit's Jan. 30 decision dismissing LTL Management's first Texas two-step bankruptcy case, which he emphasized is not binding on this court. Guy added that a company with mass tort liabilities should not be forced to wait until it "runs out of money" to be allowed to utilize bankruptcy to resolve tort claims, which he said would result in unequal treatment for claimants. Defending the FCR's support for the debtors' plan, he said that his client is opting to fight for equal treatment for claimants from a solvent debtor.
