

Caplin & Drysdale Helps Dismiss Improperly Filed Mass Tort Bankruptcy

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Excerpt taken from Bloomberg Law's website.

3M Co. subsidiary Aearo Technologies LLC, the bankrupt maker of allegedly defective combat earplugs, is ineligible for bankruptcy relief, a judge ruled.

Aearo's Chapter 11 proceedings, filed by the company last year to resolve about 230,000 claims over hearing loss by combat veterans, don't appear to serve a "valid reorganization purpose," Judge Jeffrey J. Graham of the US Bankruptcy Court for the Southern District of Indiana ruled Friday.

"In this Court's view, allowing an otherwise financially healthy debtor with no impending solvency issues to remain in bankruptcy, much less one whose liability for most of its debts is supported by an even more financially healthy, Fortune 500 multinational conglomerate, exceeds the boundaries of the Court's limited jurisdiction," Graham said.

3M said in a statement Friday that Aearo is assessing options for an appeal.

"3M and Aearo will continue to pursue appeals raising evidentiary and legal issues from previous multi-district litigation (MDL) bellwether trials," the company said. The companies believe that resolving the lawsuits in bankruptcy is the quickest and most equitable path for the parties, but they will continue to engage in negotiations, 3M said.

Graham's decision carries considerable heft as otherwise healthy corporations have increasingly engineered ways to isolate mass tort liabilities and attempt to settle them for good in bankruptcy. Johnson & Johnson's creation of a special-purpose entity to hold and settle claims that the company's talc-based baby powder caused various forms of cancer is a notable example.

The US Court of Appeals for the Third Circuit dismissed the J&J unit's first bankruptcy case in late January, finding the company wasn't in financial distress. That decision "casts a particularly prominent shadow over Aearo's bankruptcy," said Graham.

For the full article, please visit *Bloomberg Law's website*.

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