
Hughes Hubbard & Reed

Firm Successfully Defends Delta Petroleum Against Creditors

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Hughes Hubbard & Reed successfully defended Delta Petroleum Corporation (Delta), a Denver-based oil and natural-gas explorer and developer that filed for Chapter 11 bankruptcy protection in December, against creditors who were trying to assert spurious liens for nearly \$400 thousand already paid.

On March 9, addressing an issue apparently of first impression, the U.S. Bankruptcy Court for the District of Delaware voided liens filed by two creditors. The court ruled that the liens violated the “automatic stay,” which generally protects debtors and their property from creditor actions in bankruptcy proceedings.

The ruling came four days after Hughes Hubbard sought relief for Delta and two days after the firm won a temporary restraining order preventing the creditors from filing more liens.

The creditors contended their post-petition liens to secure payments — \$240 thousand to one creditor and nearly \$140 thousand to another — made by Delta within the 90-day period prior to bankruptcy did not violate the automatic stay because those liens would be valid if they had not been paid. The creditors claimed their “contingent preference liens” presented “no harm, no foul” to Delta since the liens were contingent on pre-petition payments being avoided as preferences.

However Hughes Hubbard argued that, certain exceptions notwithstanding, the automatic stay prohibits any post-petition filing of liens against a debtor. While one exception permits post-petition liens against a debtor if such liens would arise automatically by statute under applicable non-bankruptcy law, Colorado law requires that any lien secure an outstanding indebtedness. Therefore, the creditors had no right to file liens under Colorado law and, ultimately, the Bankruptcy Code, since the creditors had already been paid in full for the amounts they sought to secure.

The Bankruptcy Court held that the “contingent preference liens” violated the automatic stay and therefore constituted per se irreparable harm that required no further showing of harm to warrant relief. Thus, the Court declared the “contingent preference liens” void, prohibited the creditors from filing additional liens and ordered

them to remove and terminate all existing “contingent preference liens.”

Katie Coleman is leading Hughes Hubbard’s representation of Delta. Chris Gartman argued the motion. George Tsougarakis, Alex Talesnick, Peter Beardsley and Ashley Laurie also assisted in securing the victory.

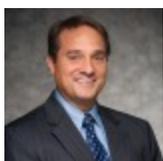
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