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In re Garlock Sealing Technologies: Bankruptcy Court Accepts Legal Liability Approach to Estimation

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February 12, 2014 - On January 10, 2014, Judge George R. Hodges of the U.S. Bankruptcy Court for the Western District of North Carolina issued an order in *In re Garlock Sealing Technologies, LLC* (No. 10-31607) estimating Garlock's asbestos liability for present and future mesothelioma claims to be $125 million, the value proposed by the debtors. The Asbestos Claimants Committee ("ACC") and Future Claimants Representative ("FCR") had estimated liability at roughly ten times that amount. The decision followed a 17-day hearing that included testimony from 29 witnesses and hundreds of exhibits.

Background

Garlock, a producer of asbestos gaskets, filed a Chapter 11 petition in June 2010 after exhausting its insurance through roughly 30 years of litigating and settling asbestos liability cases. In April 2012, Judge Hodges directed the parties to estimate the aggregate amount of Garlock's asbestos liability for present and future mesothelioma claims for the purpose of formulating a plan of reorganization pursuant to 11 U.S.C. §§ 502(a) and 105(a).

The parties disagreed over the appropriate way to estimate Garlock's liability. Garlock argued for a "legal liability approach," which considered the merits of the claims against Garlock in the aggregate and applied an econometric analysis of the projected number of claimants and their likelihood of recovery. The ACC and FCR argued for a "settlement approach" based on an extrapolation from the mesothelioma claims Garlock resolved in the tort system prior to filing for bankruptcy. The two approaches yielded vastly divergent estimates: Garlock estimated liability at about $125 million, while the ACC and FCR estimated liability at around $1 billion–$1.3 billion.

Estimation Approach

While the court recognized that many prior asbestos estimation analyses, such as Owens Corning, Federal Mogul, and Specialty Products Holding Corp., used the settlement approach to estimate asbestos liability, that approach

was not appropriate for Garlock because although "claims resolution history may be an appropriate measure only if it reliably reflects the debtor's liability," the court explained, "here it does not."

The court permitted Garlock to have full discovery in 15 settled cases to pursue its theory that exposure evidence had been withheld in tort claims. Even though the sample was neither random nor representative, the fact that every case revealed demonstrable misrepresentations about the extent of the exposure was sufficiently persuasive to the court to undermine the reliability of the settlement approach.

As the court explained, Garlock's expense of litigating an asbestos injury case far exceeded the $75,000 average settlement paid to claimants. The court found that Garlock overwhelmingly settled cases in groups without regard to liability and virtually entirely to avoid the costs of litigation.

Agreeing with Garlock that manipulation of exposure evidence by plaintiffs and their lawyers and Garlock's desire to avoid litigation costs both had an impact on a number of Garlock's trials and many of its settlements, the court determined that the ACC and FCR's reliance on historical settlement data was "of no value to this proceeding."

Estimation Based on Particular Circumstances of Garlock

The relatively low estimate for Garlock's present and future mesothelioma claims liability was due to several unique characteristics of Garlock's asbestos products and the way in which they were used in industrial applications. Garlock's products almost exclusively used chrysotile, which the court agreed was a far less toxic form of asbestos than other types, with no scientifically reliable connection to mesothelioma. Further, virtually all of Garlock's gaskets were wrapped in a thick covering of thermal insulation produced by other manufacturers, which contained a much more toxic form of asbestos known as amosite. Individuals were only exposed to the asbestos in Garlock's gaskets if the gaskets were cut, shaped, or removed, which could only be accomplished by first removing the outer layer of thermal insulation. Removing the thermal insulation caused a "snowstorm" of toxic amosite asbestos dust – subsequent removal of the gaskets resulted in a comparatively small amount of chrysotile asbestos exposure.

These unique characteristics, combined with the lack of scientifically reliable evidence connecting chrysotile with mesothelioma, persuaded the court that Garlock's asbestos liability for mesothelioma claims was appropriately set at the amount that Garlock had argued, $125 million.

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