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Eighth Circuit Affirms Environmental Claims Against Peabody Barred By Confirmed Plan

EIGHTH CIRCUIT BANKRUPTCY MONITOR

In *County of San Mateo, California v. Peabody Energy Corp. (In re Peabody Energy Corp.)*, the Eighth Circuit (Judges Arnold, Gruender and Shepherd) agreed that the Bankruptcy Court (Judge Schermer) did not abuse its discretion when it held that litigation against Peabody by various California municipalities was barred by the terms of Peabody's confirmed chapter 11 plan of reorganization. In so doing, the Court placed particular weight on the presumed intent of the plan drafters in defining exceptions from discharge – a rule of interpretation that may prove significant.

Peabody's confirmed plan fixed a bar date for proofs of claim by governmental entities. After the bar date passed, three California municipalities sued dozens of energy companies, including Peabody, for contributing to the climate crisis. None of the municipalities had filed a proof of claim. The municipalities each asserted tort claims (or statutory claims resembling torts) in California state court based on conduct that occurred almost exclusively before Peabody's petition date.

Peabody asked the Bankruptcy Court to enjoin the municipalities from continuing the California cases against Peabody and requiring the municipalities to dismiss their claims against Peabody with prejudice. Peabody argued that the claims were discharged under its confirmed plan. The municipalities argued that their claims were carved out from the discharge provided under the plan. The Bankruptcy Court agreed with Peabody.

The Eighth Circuit reviewed under an abuse of discretion standard because the Bankruptcy Court's determination hinged on its interpretation of its own order. The Court held that Peabody and the municipalities advanced plausible readings of the confirmed plan and the applicable carve-out language, and the Bankruptcy Court did not abuse its discretion in agreeing with Peabody's plausible interpretation rather than the municipalities'.

The Eighth Circuit first looked at the carve-out language, which excepted from discharge claims under "any applicable Environmental Law to which any Reorganized Debtor is subject." The term "Environmental Law," in turn, was defined to mean "all federal, state and local statutes, regulations and ordinances concerning pollution or protection of the environment, or environmental impacts on human health and safety, including [certain identified federal statutes] and any state or local equivalents of the foregoing."

As noted, the municipalities primarily asserted common law tort claims. The municipalities' first argument was that because the common law claims were raised to protect the environment, they were "state or local equivalents" of "statutes, regulations and ordinances concerning pollution." The Eighth Circuit rejected this argument because it would render certain language in the plan superfluous and it was unlikely the plan drafters intended to include common law claims when they referenced "statutes, regulations and ordinances." The Eighth Circuit did not cite any authority holding that the meaning of a confirmed plan should be ascertained from the presumed intent of the drafters, but such a holding is a reasonable one provided that the presumed intent is consistent with the express language of the confirmed plan as was the case here. Practitioners should keep this canon of interpretation in mind for disputes about the meaning or scope of a confirmed plan, because it may yield a different outcome from the accepted notion that a confirmed plan should be interpreted using the principles of contract interpretation, which rests generally on giving effect to the intent not of the *drafter* but of the *parties*. *See, e.g.*, *In re Shenango Group, Inc.*, 501 F.3d 338, 344 (3d Cir. 2007); *In re Stratford of Texas, Inc.*, 635 F.2d 365, 368 (5th Cir. 1981); *In re Dow Corning Corp.*, 456 F.3d 668, 676 (6th Cir. 2006). Because the drafter of a plan most typically is the debtor, it stands to reason that a rule of interpretation that looks to the intent of the drafter is a thumb on the scale in favor of the debtor.

The municipalities next claimed that certain of their nuisance claims arose under California statute, and that at least those claims should be considered to arise under Environmental Laws. The Eighth Circuit also rejected this argument, holding that unlike the federal laws expressly called out, the nuisance claims have "their roots in the common law" and frequently are considered to be common law claims, "including in Missouri—the jurisdiction that Peabody calls home—whose laws may well have been the focus of the parties who drafted the carve-out." The Court was "not convinced that the incidental tethering of the nuisance claims here to statutes in a jurisdiction far from where Peabody's bankruptcy proceedings occurred was the kind the drafters intended to carve out." The Court further observed that while the municipalities' particular nuisance claims related to the environment, nuisance claims generally can be broader than that. For these reasons, the Court held that it was not an abuse of discretion to find that the nuisance claims fell outside the definition of "Environmental Law."

The municipalities next argued that the plan defined "including" to mean "including without limitation," so when the definition of "Environmental Law" said the term included certain federal statutes and their state or local equivalents, the definition could not be limited to those federal statutes and their state or local equivalents. The Eighth Circuit found that this rule of construction was not relevant, because at most it would mean that the drafters meant to include "environmental statutes of a similar scope," not the types of claims at issue here.

Next, the municipalities argued that their claims were spared by a separate carve-out for governmental claims brought "under any . . . applicable police or regulatory law." The Eighth Circuit held the Bankruptcy Court did not abuse its discretion in looking to Eighth Circuit authority construing section 362(b)(4) to determine the boundaries of the carve-out; it was a reasonable place to look for guidance. The Eighth Circuit holds that government activity that "would result in an economic advantage to the government or its citizens over third parties in relation to the debtor's estate" is not within the scope of government "police and regulatory power" for purposes of section 362(b)(4). The Eighth Circuit found the Bankruptcy Court did not err in applying this authority: the municipalities' success in the litigation would result in a "pecuniary advantage over other creditors because they were seeking damages and disgorgement of fifty-years-worth of profits" and therefore was not

an exercise of police or regulatory power (presumably, the possibility of disgorgement alone would not except the action from being considered exercise of "police or regulatory power," but the opinion does not reach that issue). Aside from the type of remedy sought, the Eighth Circuit held the fact the municipalities sought "money as victims of alleged torts" was an "independent reason" to find they were not exercising police or regulatory authority.

Finally, the municipalities argued that their public nuisance claims were not "claims" under the Bankruptcy Code or, if they were, that they arose post-petition. As to the former, they argued that the relief they sought would not entitle them to payment but rather an abatement order, and that any money that might be paid would be paid not to the municipalities but rather to a receiver-controlled abatement fund. The Eighth Circuit handily discarded these arguments as being inconsistent with the expansive definition of "claim." As to when the claims arose, the Eighth Circuit held that the municipalities' lawsuits alleged no actionable conduct by Peabody post-petition and, thus, the Court was able to state that the claims were discharged without having to resort to any sort of "sufficiently rooted in the pre-bankruptcy past" type analysis.

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