

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HOMERIA**

In re:)
) **Chapter 11**
KrustyCo, Inc.,)
) **Case No. 09-45679**
Debtor)
)
)
)

KANOK JULLAMON, Bankruptcy Judge.

Mrs. Marge Simpson challenges the confirmation of the plan on behalf of herself, her three children (Lisa, Bart, and Maggie), and all other potential future asbestos victims on the basis that it does not adequately protect the interests of future asbestos victims. Lisa, Bart, and Maggie, by and through Mrs. Simpson assert that they have proper standing to represent the interests of future tort claimants. Mrs. Simpson also challenges the channeling injunction, claiming that the bankruptcy court does not have the jurisdiction or power to enjoin asbestos victims' state court negligence claims against the debtor.

The debtor files an objection motion to deny Mrs. Simpson's claims stating that Mrs. Simpson lacks standing to object to the proposed reorganization plan. Additionally, the proposed channeling injunction meets the conditions set forth in 11 U.S.C. § 524(g).

I. Background

1. The debtor is a large corporation based in Springfield.
2. The debtor is composed of several divisions, including a television and movie production division, a toy manufacturing division, a fast food restaurant division, and an industrial products division.
3. Starting in the mid 1970s until the 1980s, the debtor's executives decided to use asbestos in a wide array of products. The use of asbestos in the production of these products

was discontinued by the early 1990s, but some debtor's products containing asbestos were still on the market well into the late 1990s because of poor sales.

4. Exposure to asbestos has been scientifically linked to an increased risk of contracting mesothelioma (a rare cancer of that afflicts the thin membrane lining of the chest and abdomen), lung and other cancers, as well as other lung ailments such as asbestosis (an inflammatory condition that afflicts the victim's lungs and causes shortness of breath, coughing, and lung damage), and other nonmalignant lung disorders. Depending on the exposure rate and other factors, asbestos related injuries will typically manifest within 10-40 years after initial exposure, with lung cancer and asbestosis cases more likely to manifest after 10-15 years and mesothelioma cases typically manifesting 30 years after exposure.

5. There was an abrupt increase in the number of mesothelioma and asbestosis cases during the 1980s and 1990s in Homeria. The debtor, Krusty the Clown (the company's founder), several other top executives, and the debtor's products liability insurer, Mutual of Homeria, have been named as defendants in a number of asbestos related suits.

6. Realizing the enormity of its problem, the debtor's executives decided to file for Chapter 11 bankruptcy as a way to defend against all of the tort claims brought, and expected to be brought, against the debtor, and to try to keep the company afloat.

II. Issues

Considering the motion filed by Mrs. Marge Simpson and the objection motion of the debtor, the undisputed facts are as follows.

1. Mrs. Marge Simpson on behalf of herself lacks standing to object to confirmation of a plan because the plan would provide immediate payout of her entire claim according to 11 U.S.C. §§ 1109(b), 1126(f), and 1128(b).

2. Lisa, Bart, Maggie, and all other potential future asbestos victims have claims against the debtor within the meaning of 11 U.S.C. § 101(5) at least under the application of

“the conduct test”. The test can be summarized as following: “To constitute claim for automatic stay purposes, there is no requirement that there be a right to immediate payment of money in the case of a tort or allied breach of warranty or like claim, so long as acts constituting tort or breach of warranty have occurred prior to filing of bankruptcy petition. *Grady v. A.H. Robins Co., Inc.*, 839 F.2d 198.

The remaining disputed issues are as follows.

1. Whether the plan adequately protects the interests of future asbestos victims or not.
2. Whether the court has the power to enjoin asbestos victims’ state court negligence claims against the debtor under 11 U.S.C. § 524 (g) or not.

I now turn to analyze each matter accordingly.

III. Discussion

A. Whether the plan adequately protects the interests of future asbestos victims or not

1. Classification of claims under 11 U.S.C. § 1122 and “the Best Interest Test” under 11 U.S.C. § 1129 (a)(7).

First, Mrs. Simpson argues that under 11 U.S.C. § 1122(a) current victims and future victims should be treated as separate classes because they have different interests. Secondly, the plan fails the “Best Interest Test” under 11 U.S.C. § 1129 (a)(7) because the plan did not preserve right to receive payment for future victims more than they would receive if the debtor were liquidated under Chapter 7.

One of the requirements that the court has to check before confirming any plan is that the plan complies with the applicable provisions of title 11 of the United States Code. 11 U.S.C. § 1129(a)(1). Regarding the first argument, under 11 U.S.C. § 1122(a), a plan may place a claim or interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Code does not address, however, whether all substantially similar claims must be placed in the same class. As a consequence,

courts have been called upon to determine whether section 1122(a) requires all claims of a particular type to be included within a single class or whether the subsection merely requires that claims included within a class be of the same type. Generally speaking, all unsecured claims outstanding as of the commencement of the case may be classified together as general unsecured claims. 7-1122 COLLIER ON BANKRUPTCY ¶¶ 1122.03[1][a], 1122.03[3][a] (Alan N. Resnick & Henry J. Sommer eds., available at http://www.lexisnexis.com/lawschool/research/default.aspx?ORIGINATOR_CODE=00092&signoff=off (last visited Apr. 9, 2011)). In this case, the nature of claims of all present and future asbestos related claimholders shares the same legal character. These present and future tort victims are unsecured creditors whose claims arise from the injuries as a result of exposing to the debtor's products. Therefore, classifying these two groups of claimants as Class 4 of the debtor's reorganization plan complies with 11 U.S.C. § 1122(a).

Concerning the second contention, the court shall confirm the plan only if with respect to each impaired class of claim, each holder of a claim of such class will receive under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive if the debtor were liquidated under Chapter 7 of this title on such date. 11 U.S.C. § 1129(a)(7). The debtor has proposed that a trust be created for all present and future asbestos related personal injury claims ("Trust"). Future claimholders will get benefits from the Trust on an ongoing basis. The Trust would be funded with the \$10 billion from the Mutual of Homeria settlement, \$5,000,000 from Krusty the Clown, and \$1,000,000 a piece from the five other senior executives of the debtor, as well as the accounts receivable from the debtor, a majority share of stock in the reorganized debtor, and the rights to receive up to 20% of the debtor's profits for as long as it takes to satisfy all of the asbestos-related personal injury claims brought against the debtor. The amount of the Trust's asset after creation would amount to \$50

billion, with an expected \$50 million a year from the reorganized debtor's profit stream. If the future tort claimants, who had no right to the immediate payment of money at the time of the filing of the petition, were participants in a Chapter 7 proceeding, the chances are that they would receive nothing, for no compensable result had manifested itself prior to the filing of the petition. *Grady v. A.H. Robins Co., Inc.*, 839 F.2d 198, 203. With the proposed operation of the Trust regarding the payment to the future tort claimants, it is evident that the plan provides these impaired claimholders more than the amount that these holders would receive in case the debtor has to go through liquidation procedure under Chapter 7. Thus, the plan satisfies the condition in 11 U.S.C. § 1129 (a)(7).

2. Due Process

Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution. FED. R. BANKR. P. 3003(c)(2). The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed. Notwithstanding the expiration of such time, a proof of claim may be filed to the extent and under the conditions stated in Rule 3002(c)(2), (c)(3), (c)(4), and (c)(6). FED. R. BANKR. P. 3003(c)(3).

In this case, notice was published in the Springfield News-Gazette asking for any person who had been exposed to asbestos and had medical proof of some type of asbestos related injury to step forward for the bankruptcy proceedings. These future claimants were given six months to show before the class was closed and voting on the plan commenced. A personal injury lawyer, Lionel Hutz, was appointed and paid by the debtor to represent any unknown future asbestos victims' interests with no objections. Mrs. Simpson argues that "based on § 102 and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950),

which says that court should [give more] weigh[] [to] the individual interest in case of considering notices, future victims [did] not receive enough notice[s] because they [] receive[d] only public disclosure on newspaper..., not any [individual] notice...” I find Mrs. Simpson misread § 102(1) and the cited case. Section 102(1) states that notice must be appropriate in the particular circumstances. In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, the Supreme Court held that statutory notice by newspaper publication setting forth merely the name and address of the trust company, name and date of establishment of the common trust fund, and a list of all participating estates, trusts or funds was sufficient as to beneficiaries whose interests or whereabouts could not with due diligence be ascertained and as to those whose interests were conjectural or future or did not in the due course of business come to the knowledge of the trustee. Therefore, by publishing the notice informing creditors to file a proof of claim in the Springfield News-Gazette, the debtor properly noticed its creditors.

Moreover, the third parties including Mrs. Simpson’s three children and future asbestos claimants whose rights Mrs. Simpson seeks to assert are already represented by a personal injury lawyer, Lionel Hutz. He has been appointed without any objections. Therefore, it is not necessary to allow Mrs. Simpson to raise the future claimants’ right on the theory that these rights will be otherwise ignored. It does not matter that Mr. Hutz was paid by the debtor. Regardless of who gets appointed as a representative of the future claimants, he or she has to take care of future claimholders according to details stipulated in the Trust anyway. *See Kane v. Johns-Manville Corp.*, 8434 F.2d 636, 643-44. As a result, the debtor has already comported with the due process requirement. Mrs. Simpson thereby does not have any standing to argue on behalf of her three children and holders of any future asbestos claim.

B. Whether the court has the power to enjoin asbestos victims' state court negligence claims against the debtor under 11 U.S.C. § 524 (g) or not.

Under 11 U.S.C. § 524(g), a court that enters an order confirming a plan of reorganization under Chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section. In this case, for the court to issue the channeling injunction to enjoin future asbestos victims against the debtor, there are nine requirements to be met according to 11 U.S.C. § 524(g)(2)(B)(i)(I)-(IV) and 524(g)(2)(B)(ii)(I)-(V). Mrs. Simpsons challenges only on two conditions. First, pursuit of future claimants' demands outside the procedures prescribed by the debtor's plan is not likely to threaten the plan's purpose to deal equitably with claims and future demands under 11 U.S.C. §524(2)(B)(ii)(III). Secondly, the Trust's mechanisms do not provide reasonable assurance that the Trust will value present and future asbestos claimants in substantially the same manner under 11 U.S.C. §524(2)(B)(ii)(V). Thus, the Court deems that this channeling injunction meets other seven criteria under 11 U.S.C. § 524(g)(2)(B)(i)(I)-(IV) and 524(2)(B)(ii)(I),(II),(IV). Regarding both arguments by Mrs. Simpson, allowing the future claimants to pursue separate procedure to recover payment would do more harm than good to the future claimants. There are always attorneys' and courts' fees involved in court procedure, thus reducing the total compensations for each victim. There is also a possibility that future claimants may lose the case, leaving them with no gain. Under the proposed Trust, future tort claimholders are assured of payments without any additional court procedure. Present tort victims receive payment in full because the harm has already incurred and the medical bills are available as proofs. For future asbestos claimants, as soon as their asbestos-related symptoms show up, money in the Trust is likely to available to the future claimants in substantially the same manner as the present claimants.

Therefore the channel injunction complies with all the requirements under 11 U.S.C. § 524(g)(2)(B)(i)(I)-(IV) and 524(2)(B)(ii)(I)-(V).

IV. Conclusion

1. The proposed plan by the debtor adequately protects the interests of future asbestos victims including Mrs. Marge Simpson's three children (Lisa, Bart, and Maggie) and future asbestos victims. As a result, Mrs. Simpson does not have any proper standing to represent interests of these future tort claimants.

2. The requirements to issue an injunction under 11 U.S.C. § 524 (g) have been met.

Since the proposed plan is consistent with the requirements in 11 U.S.C. § 1129, the Court thus issues an order confirming this plan and an injunction to enjoin asbestos victims' state court negligence claims against the debtor under 11 U.S.C. § 524(g).

It is so ordered.