UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- X

In re

CHATEAUGAY CORPORATION,
REOMAR, INC.
THE LTV CORPORATION, et al.

Chapter 11
Case Nos. 86 B 11270 (BRL)
Through 86 B 11334 (BRL)
Inclusive, 86 B 11402 (BRL)
and 86 B 11464 (BRL)

Debtors.

- X

APPEARANCES:

FULBRIGHT & JAWORSKI, L.L.P.
Attorneys for Oil States Industries, Inc.
666 Fifth Avenue
New York, N.Y. 10103
212-318-3000
By: David A. Rosenzweig
David L. Barrack
Mark C. Haut

MONTGOMERY, MCCRACKEN, WALKER & RHOADS, LLP
Attorneys for Shirley Paris, Doris Daniels, et al.
123 South Broad Street
Philadelphia, PA 19130
By: Joseph O'Neil, Jr.
Natalie D. Ramsey
Simon E. Fraser

Before: Hon. Burton R. Lifland,
United States Bankruptcy

MEMORANDUM DECISION ENFORCING CONFIRMATION ORDER AND DISCHARGE INJUNCTION

Oil States Industries, Inc., formerly known as LTV Energy Products Company ("Oil States" or the "Reorganized Debtor"), moves for an order (i) enforcing an order of confirmation and discharge injunction with respect to prepetition claims asserted against the Reorganized

Debtor in certain asbestos litigation commenced in a California state court pursuant to section 105 of title 11, United States Code (the "Bankruptcy Code"), and (ii) holding the Plaintiffs in contempt pursuant to sections 105 and 524 of the Bankruptcy Code (the "Motion"). Oil States moving and responsive papers provide compelling support for their position that the Plaintiffs are subject to and in violation of the order of confirmation and discharge injunction. I agree.

Background

On July 17, 1986 (the "Petition Date"), the LTV Corporation and more than sixty subsidiaries, including LTV Energy (collectively, the "LTV Debtors"), filed for chapter 11 protection under the Bankruptcy Code. On July 30, 1987, this Court entered an order (the "Bar Date Order") fixing November 30, 1987 as the last date for the filing of certain proofs of claim and ordering that the notice of the bar date (the "Bar Date Notice") be served on all known holders of claims and requiring the LTV Debtors to publish the Bar Date Notice. The Bar Date Notice provided that:

> Acts or omissions of the Debtors prior to July 17, 1986 (including but not limited to. . . alleged environmental liabilities arising from Debtors' operations, services provided by the Debtors and products designed, manufactured or sold by the Debtors such as . . . oil drilling and production equipment manufactured by LTV Energy Products Company and oil country tubular goods manufactured by LTV Steel Tubular Products Company . .) may give rise to claims against the Debtors notwithstanding the fact that such claims may not have matured or become fixed or liquidated prior to such date. Therefore, any creditor having a claim or potential claim against the Debtors, no matter how remote or contingent, must file a proof of claim . . . .

Bar Date Notice at p. 8.

In accordance with the Bar Date Order, the LTV Debtors published the Bar Date Notice in approximately 186 newspapers throughout the country. *See LTV Corp. v. Back (In re Chateaugay Corp.)*, 201 B.R. 48, 52-53 (Bankr. S.D.N.Y. 1996) ("[t]hrough a massive media

campaign in August 1987, notice of the First Bar Date was published in 185 newspapers and periodicals throughout the United States and internationally at a cost of more than $1 million to the Debtors."). On February 17, 1993, this Court entered an order approving the LTV Debtors' disclosure statement, scheduling the hearing on the confirmation of the LTV Debtors' plan of reorganization and approving the form of notice of hearing, as well as the methods and scope of service of such notice (the "Disclosure Statement Order"). On February 26, 1993, the LTV Debtors filed the LTV Second Modified Disclosure Statement (the "Disclosure Statement") and the LTV Second Modified Joint Plan of Reorganization (the "Plan").

Section 5.4(A) of the Plan provides that on the Effective Date, the following actions shall take place:

> Pursuant to Section 1141(d) of the Code, all Claims against the Debtors (other than the Debtors in the AM General Group) that arose before the Confirmation of this Plan, including, without limitation, all Claims and Interests provided for under this Plan, and any Claim against such Debtors of a kind specified in Section 502(d), 502(h) or 502(i) of the Code, shall be discharged, regardless of whether a proof of claim was filed, whether the Claim is an Allowed Claim or whether the holder thereof voted to accept the Plan, and under no circumstances will any additional consideration be payable by Debtors to holders of Claims. . . .

Plan, at § 5.4. Notice of the Confirmation Hearing was published in *The New York Times, The Wall Street Journal* and fifteen other newspapers, journals, and financial publications, where LTV had or previously had an operating facility. *See In re Chateaugay Corp.*, 201 B.R. at 55 ("[i]n accordance with [the Disclosure Statement Order], the Debtors caused notice of the Confirmation Hearing to be published in the national editions of *The New York Times* and *The Wall Street Journal*, 15 other periodicals in the United States and three foreign periodicals.").

On May 26, 1993, this Court entered an order (the "Confirmation Order") confirming the Plan. Paragraph 14 of the Confirmation Order provides, in part:

> [T]he occurrence of Confirmation and the issuance of this Order shall, effective on the Effective Date, operate as a discharge, pursuant to Section 1141(d) of the Code, of any and all debts (as such term is defined in Section 101(12) of the Code) or claims against one or more of the Debtors . . . that have arisen at any time before the Effective Date . . . . On the Effective Date, as to every discharged debt and claim, any holder thereof shall be permanently precluded from asserting against any of the Debtors, or against any of the Debtors' assets or properties, any other or further claim based upon any document, instrument, act, omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date.

Confirmation Order, at ¶ 14. The Confirmation Order also enjoins parties from bringing any actions based on claims that have been discharged. Specifically, Paragraph 15 of the Confirmation Order provides:

> Pursuant to Section 524 of the Code, effective on the Effective Date, all Persons who have held, hold or may hold claims or interests, shall be permanently restrained and enjoined from taking any of the following actions against or affecting the Debtors, the Debtors' Affiliates, the Aerospace Creditor Trust, or the assets of the Debtors or any of them with respect to such claims or interest (other than actions brought to enforce any right or obligations under the Plan and/or Related Agreements, or appeals, if any, from this Order or any of the Reorganization Documents): (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind against the Debtors, the Debtors' Affiliates or the assets of the Debtors or the Debtors' Affiliates or any direct or indirect successor in interest to any of the Debtors, the Aerospace Creditor Trust, or any assets of any such transferee or successor; (ii) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means whether directly or indirectly any judgment, award, decree or order against the Debtors or the Debtors' Affiliates or the assets of the Debtors or Debtors' Affiliates or any direct or indirect successor in interest to any of the Debtors, the Aerospace Creditor Trust, or any assets of any such transferee or successor; . . . and (v) proceeding in any manner in any place whatsoever that does not conform to or comply with the provisions of the Plan or any of the Reorganization Documents.

Confirmation Order, at ¶ 15 (the "Permanent Injunction"). The Court also retained jurisdiction, among other things, to:

> determine any and all disputes arising under or relating to the Plan (including, without limitation, regarding the effect of any release or discharge provided for in, or affected by the Plan or this order);
> * * *
> Enforce all orders, judgments, injunction and rulings entered in connection with the Cases;

> * * *
> Enter such orders, judgments, injunctions and rulings as may be necessary or appropriate in aid of the Plan or its confirmation and to carry out further the intentions and purposes, to facilitate implementation and to give full effect to the provisions of the Plan and this Order . . . .

Confirmation Order, at ¶ 36. The "Effective Date" occurred in June 1993, and, as provided for in the Confirmation Order, all "claims" that arose prior to that date were discharged. *In re Chateaugay Corp.*, 201 B.R. at 51. On September 11, 1996, this Court entered the Final Closing Order and Final Decree in the chapter 11 cases closing the LTV Energy case.

State Court Actions

On or about July 21, 2008, Doris Daniels, Norman Daniels, Diana Ferrante and Harold Daniels, individually and as successors in interest to the Estate of Peter Daniels (the "Daniels Plaintiffs"), filed a complaint (the "Daniels' Complaint") asserting claims for asbestos injuries allegedly suffered by Peter Daniels against various parties, including Oil States, in the Superior Court of the State of California (the "Daniels' California Asbestos Litigation"). The Daniels' Complaint identifies and sues Oil States "formerly known as Continental Emsco Company, individually and as successor in interest, parent, alter ego and equitable trustee of Fibercast Company and Fibercast Division of Youngstown Sheet & Tube Company."

On or about July 31, 2008, Shirley Paris, Eugene E. Paris, Jr., Sheryl Paris Robinson and Dale Paris, individually and as successor in interest to the Estate of Eugene E. Paris, Sr., (the "Paris Plaintiffs," together with the Daniels' Plaintiffs, the "Plaintiffs") also filed a Complaint (the "Paris Complaint," together with the Daniels Complaint, the "Complaints") asserting claims for asbestos injuries suffered by Eugene E. Paris, Sr. against various parties, including Oil States, in the Superior Court of the State of California (the "Paris' California Asbestos Litigation,"

together with the Daniels' California Asbestos Litigation, the "California Asbestos Litigations"). The Paris Complaint identifies and sues Oil States "formerly known as Continental Emsco Company, individually and as successor in interest, parent, alter ego and equitable trustee of Fibercast Company and Fibercast Division of Youngstown Sheet & Tube Company." The Plaintiffs allege that their decedents were exposed to asbestos beginning in the 1950s and 1960s, inter alia, during the course of their employment for E.I. DuPont in California.[1] The Plaintiffs thus allege that prior to the Petition Date, the decedents came into contact with asbestos that they claim allegedly was tied to products manufactured by Fibercast Company, which was a subsidiary of LTV Energy Products Company.

In 1985, Fibercast Company was sold by the LTV Debtors prior to the commencement of the LTV Debtors' bankruptcy cases. The Plaintiffs do not allege that the decedents were ever employees of LTV Energy (n/k/a Oil States) or any other LTV Debtors or had any relationship with LTV Energy, Fibercast or any of the LTV Debtors. By letters dated September 26, October 22, November 5 and November 6, 2008, Oil States informed the Plaintiffs that they were violating this Court's Confirmation Order and that failure to immediately withdraw the Complaints would result in the Oil States filing a motion in this Court to enforce the Bar Date Order, Confirmation Order and discharge injunction and for contempt.

[1] The Daniels' Complaint states that Mr. Daniels continually worked with asbestos, and worked around others who were working with asbestos during the course of his employment working as a mechanic and machinist for E.I. DuPont in Antioch, California from 1962 through 1995, and during remodel and construction at locations in California from 1961 through 1994. The Paris Complaint alleges that Mr. Paris was exposed to asbestos from approximately 1952 through 1953 while working part-time as an auto mechanic for a Ford dealership in Wilmington, Delaware and from 1956 through 1978, while employed as an electrician and instrument technician for E.I. DuPont in Antioch, California.

Discussion

Section 1141(d) of the Bankruptcy Code provides that, with certain exceptions not relevant here, the confirmation of a plan discharges the debtor from any debt that arose before the date of confirmation. Section 101(12) of the Bankruptcy Code defines "debt" as "liability on a claim." Section 101(5)(A) of the Bankruptcy Code defines "claim" as: a right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. Section 524(a) of the Bankruptcy Code provides, in pertinent part, that a "discharge in a case under this title -

> (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section . . . 1141 . . . ;
> (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor . . . ."

Consistent with these provisions, the Confirmation Order provides that the confirmation of the Plan "operate[s] as a discharge pursuant to Section 1141(d) of the Code, of any and all debts (as such term is defined in Section 101(12) of the Code) or claims against one or more of the Debtors . . . that have arisen at any time before the Effective Date . . . ." Accordingly, anyone who prior to confirmation of the Plan on May 26, 1993, had been exposed to asbestos allegedly made, sold, or used by an LTV Debtor or for which an LTV Debtor had otherwise become liable, had a "right to payment" from the LTV Debtors that was "contingent," "unmatured" and "unliquidated."

The Plaintiffs allege that the decedents' exposure to Fibercast's products occurred during the course of their employment with E.I. DuPont, commencing as far back as the 1950s and

1960s. Fibercast was sold by LTV Energy in 1985, prior to the LTV Debtors' filing their bankruptcy petitions. Thus, the decedents' alleged contact with the LTV Debtors' products and their injuries were prepetition resulting in claims against LTV Energy as of the date of the commencement of the LTV Debtors' bankruptcy cases, the Bar Date and the date of the entry of the Confirmation Order.

The Plaintiffs argue that they had no notice of their claims or the Bar Date and thus their claims cannot be discharged. However, the Plaintiffs did not work for any of the LTV Debtors and have failed to allege any connection other than using products while at E.I. DuPont. A search of the LTV Debtors' books and records could not have identified the decedents. In fact, Oil States did not become aware of Plaintiffs' claims until the July 2008 receipt of the Complaints, more than fifteen years after the Bar Date. As such, the Plaintiffs were unknown creditors. *See In re XO Communications, Inc.*, 301 B.R. 782, 783 (Bankr. S.D.N.Y. 2003) ("An unknown creditor is a claimant whose identity or claim is not reasonably ascertainable or is merely conceivable, conjectural or speculative."). To discharge claims of known creditors, due process requires that known creditors receive actual notice. However, for unknown creditors whose identities or claims are not reasonably ascertainable, and for creditors who hold only conceivable, conjectural or speculative claims, constructive notice of the bar date by publication is sufficient. *In re L.F. Rothschild Holdings, Inc.*, No. 92-cv-1129, 1992 WL 200834, at *3 (S.D.N.Y. Aug. 3, 1992); *see Castleman v. Liquidating Trustee*, No. 6:06-cv-1077, 2007 WL 2492792, at *2 (Bankr. N.D.N.Y. Aug. 28, 2007) (debtor provided unknown creditors with adequate constructive notice by publishing the bar date in both national and regional newspapers). *See also City of New York v. New York, New Haven & Hartford R.R. Co.*, 344 U.S.

293, 296 (1953) ("[W]hen the names, interests and addresses of persons are unknown, plain necessity may cause a resort to publication."); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950) ("[In] the case of persons missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights."); *Tulsa Professional Collection Services, Inc.*, 485 U.S. 478, 490 (1988) ("For creditors who are not 'reasonably ascertainable,' publication notice can suffice."); *Chemetron Corp. v. Jones*, 72 F.3d 341, 348 (3d Cir. 1995) (toxic tort claimants' due process rights were met through publication notice where "[i]t is well established that, in providing notice to unknown creditors, constructive notice of the bar claims date by publication satisfies the requirements of due process"); *Emons Industries, Inc. v. Allen (In re Emons Industries, Inc.),* 220 B.R. 182 (Bankr. S.D.N.Y. 1998).

Plaintiffs also argue that Oil States could not have discharged the Plaintiffs' or decedents' claims without the appointment of a future claims representative because Oil States was aware or reasonably should have been aware of a class of known but unidentifiable future asbestos claimants. Based upon such purported knowledge, the Plaintiffs conclude Oil States should have sought the appointment of a future claims representative. However, the LTV cases were not asbestos cases and, instead, were the result of the failures in the steel industry at that time.[2] No asbestos claims had been brought against Oil States prior to the LTV Debtors'

[2] "The Company's financial difficulties and the reasons for the Chapter 11 filings were principally attributable to a lengthy period of sustained weakness, primarily in the Company's steel and energy business, and the related adverse impact on operating and financial results, coupled with the unanticipated material adverse developments in the Company's businesses and on its future prospects during the weeks immediately preceding the Chapter 11 filings." *See* Disclosure Statement, at p. 16.

chapter 11 cases either generally or with respect to pipes manufactured by its former subsidiary, the Fibercast Company. Nor were any such claims brought against Oil States during or in the LTV cases. The only asbestos claims actually filed in the LTV case concerned claims filed by the Maritime Asbestosis Legal Clinic ("*MALC*") on behalf of seamen that allegedly were exposed to asbestos onboard ships owned or operated by LTV Steel Company, Inc. ("LTV Steel").[3] Those claims did not involve Oil States, its predecessor LTV Energy, or its former subsidiary Fibercast Company. Thus, any future claims representative would have been appointed, if at all, for the alleged class of merchant seamen on ships owned and/or operated by LTV Steel. Those claims have nothing to do with Oil States and the Plaintiffs have not pointed to a single asbestos claim in the chapter 11 case related to Oil States. In a case with similar circumstances, one court explained

> The Court is cognizant of the harsh realities of barring claims held by persons who may not reasonably have been aware of their claims on or before the bar date. Because of this harsh reality, in some instances, a future claims representative is appointed to act as a guardian for the unknown future claimants. Where, for example, a debtor knows it is facing significant tort liability resulting from asbestos exposure, it may be reasonable and appropriate to assume that future claims will arise out of that exposure and, therefore, appoint a future claims representative. While this is a desirable outcome, it is not feasible in a case such as this one where it is not known that there is a class of unknown future claimants. Based on the present record, there is insufficient evidence that Agway or the LT were aware (or reasonably should have been aware) of a class of asbestos

---

[3]Initially filed by MALC on behalf of 157 seamen, this Court expunged the claims, finding that they bordered on being "frivolous" and did "not appear to demonstrate any merit," but gave MALC an opportunity to seek reinstatement if it could provide information to substantiate the claims. S*ee In re Chateaugay Corp.*, 1991 WL 60527 at *5 (S.D.N.Y. 1991) (affirming this Court's disallowance of asbestos claims filed by the Maritime Asbestos Legal Clinic against LTV Steel Company, Inc. on behalf of several hundred merchant seamen). In the end, only one of the MALC asbestos claims ended up being allowed against LTV Steel pursuant to a settlement. *See* Stipulation and Order Amending and Allowing Claim No. 20798 "So Ordered" on October 20, 1994 (Docket No.10725).

> litigants such that they (or the Bankruptcy Court) should have concluded that a future claims representative would be useful or necessary. Accordingly, Appellants' claims are barred unless they can demonstrate excusable neglect.

Castleman v. Liquidating Trustee, 2007 WL 2492792 at *10 (N.D.N.Y. 2007); *cf. In re Waterman S.S. Corp*., 141 B.R. 552 (Bankr. S.D.N.Y. 1992), vacated on other grounds, 157 B.R. 220 (S.D.N.Y. 1993) (Debtor knew it had a class of claimants that were former employees exposed to asbestos). Here, there had been no prepetition asbestos incidents or events that would suggest an awareness of a potential class of asbestos claimants.

Moreover, since confirmation of the Plan in 1993, only 13 asbestos cases (including these two) have been filed against Oil States. *See Oil States Intern., Inc. v. LTV Corp.*, 2006 WL 3022971 at *1 n.1 (N.D. Ohio 2006) ("Eleven lawsuits have been filed against Oil States relating to asbestos exposure. All have been dismissed without Oil States paying."). As such, there has been no showing that the Oil States could have identified a class of known tort claimants. Thus, any tort claimants of Oil States were unknown claimants whose claims could be discharged by publication notice.

The Plaintiffs also argue that their wrongful death claims arose on the death of the decedents (post confirmation) and thus were not prepetition claims discharged under the LTV Debtors' plan. However, under bankruptcy law, the Plaintiffs' wrongful death claims arose prepetition when the decedents were exposed. *See In re Waterman S.S. Corp.*, 200 B.R. 770, 776 (Bankr. S.D.N.Y. 1996) (holding "because a wrongful death claim in the instant adversary proceeding is a statutory derivative of an asbestosis claim, it accrued whenever the asbestosis claim accrued"); *In re Pan American Hosp. Corp*., 364 B.R. 839 (Bankr. S.D. Fla.. 2007) (holding that postpetition wrongful death claim arose at time of prepetition injury). Accordingly,

the discharge and injunction provisions in the Plan, Confirmation Order and the Bankruptcy Code bar the Plaintiffs from asserting their prepetition claims against Oil States.

Contempt

Oil States' request for contempt sanctions is well founded based upon the extensive correspondence exchanged which demonstrated the tenuous bases for the bringing and continuation of the California Asbestos Litigations. However, in light of counsel's argument that the suits were filed in good faith and not, as Plaintiff's counsel pointed out in oral argument "to push the envelope," the Court denies the request for contempt sanctions subject to reconsideration in the event that the Complaints are not promptly withdrawn.

SETTLE AN ORDER CONSISTENT WITH THIS DECISION.

Dated: New York, New York
January 14, 2009

/s/ Burton R. Lifland
UNITED STATES BANKRUPTCY JUDGE