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ASBESTOS BANKRUPTCY DEBTORS QUESTION VALIDITY OF CLAIMS

by
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Thanks to the laudable efforts of U.S. District Court Judge Janis Graham Jack in a recent case involving silica lawsuits, the public has become more aware of how some plaintiffs' lawyers manufacture clients and "injuries" in mass tort litigation. See *In Re: Silica Products Liability Litig.*, 2005 WL 1593936 (S.D.Tex.). Another area of litigation rife with allegations of claim manufacturing and unimpaired plaintiffs is asbestos litigation. See, e.g., Lester Brickman, *Ethical Issues in Asbestos Litigation*, 33 HOFSTRA L. R. 833 (Spring 2005). Regrettably, when asbestos litigation drives companies into the federal bankruptcy process, those defendants still can't escape questionable claims.

While such issues arise most prominently in so-called "pre-packaged" bankruptcies, see Roger Parloff, *Welcome to the New Asbestos Scandal*, FORTUNE, Sept. 6, 2004, at 186, a notable, but overlooked, legal battle is playing out in a Delaware federal bankruptcy involving asbestos property damage. The Debtors in *In Re: W.R. Grace & Co.*, No. 01-01139, have recently filed motions to have all 2,938 property damage claims brought by one law firm, Speights & Runyan, disallowed. The Debtors argue that the firm lacked the authorization of actual clients to file the claims, pointing out as an initial matter that not a single proof of claim that the firm filed was signed by an individual claimant, but rather by a Speights & Runyan attorney. See *Motion of Debtors for Limited Waiver of Del. Bank. L.R. 3007-1*, July 18, 2005, at 3. The Debtors discovered through minimal investigation that several purported Speights & Runyan plaintiffs never authorized the firm to represent them. *Id.* at 1. When the Debtors challenged the firm's authorization for ten selected claims, the firm moved to withdraw not only those, but also 170 more between June and July.

Debtors' motion points out that in three other recent asbestos bankruptcies, Speights & Runyan withdrew nearly 2,000 claims when debtors challenged their validity. *Id.* at 6. Among the 2,938 claims in the *W.R. Grace* case are several hundred claims that never appeared on the firm's formal statement of clients when it initially filed them. *Id.* at 3. Several hundred more claims were also filed on behalf of "job sites" and "buildings" such as "Sheep Shelters," "Onion Shed," and "Fish Hatchery," which have no legal status or standing to file bankruptcy claims. *Debtors' Reply in Support of Their Motion for Limited Waiver of Del. Bankr. L.R. 3007-1*, Aug. 19, 2005, at 3. The Debtors sought subpoena authority from the court to probe the nature of each questioned claims which Speights & Runyan opposed, and also sought an order from the court to waive a Delaware rule limiting the number of claims that could be challenged at once, so that it could oppose them in one omnibus filing.

At an August 30 hearing, the judge granted the Debtors limited discovery, ordering Speights & Runyan to respond to document requests. The Debtors will also be allowed to present their objections to all the claims in one omnibus motion, which the court will consider in October.

The judge's decision to allow the Debtors to challenge all 2,938 allegedly unauthorized claims at once upholds the interests of judicial economy and will help move W.R. Grace's Chapter 11 process forward more quickly, to the benefit of its creditors and employees. Unauthorized or manufactured mass tort claims also undermine the ability of genuinely harmed plaintiffs to recover damages, and erode public confidence in the civil justice system. Those who share such concerns and interest should follow the continuing developments in *In Re: W.R. Grace*.

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