

UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:) Case No. 91-20468-_____
)
H.K. PORTER COMPANY, INC.,) Chapter 11
)
Debtor.) Doc. No. _____
)
MARK M. GLEASON, as Trustee of the)
H.K. Porter Company, Inc. Asbestos)
Settlement Trust,) Hearing Date & Time:
) TBD
Movant,)
) Responses Due:
v.) TBD
)
NO RESPONDENTS.)

MOTION TO REOPEN CHAPTER 11 CASE PURSUANT TO 11 U.S.C. §350 FOR THE LIMITED PURPOSE OF ADJUDICATING MOTION FOR DECLARATORY JUDGMENT

AND NOW, comes MARK M. GLEASON (“Trustee” or “Movant”), as Trustee of the H.K. Porter Company, Inc. Asbestos Settlement Trust (the “Asbestos Trust”), and files this Motion to Reopen Chapter 11 Case Pursuant to 11 U.S.C. § 350 (“Motion to Reopen”) for the Limited Purpose of Adjudicating Motion for Declaratory Judgment (the “Motion for Declaratory Judgment”) and, in support thereof, Movant avers as follows.

JURISDICTION

1. This Court has jurisdiction to hear this motion pursuant to 28 U.S.C. §§ 157 and 1334 and as expressly provided for in Article 9 of the Plan (defined below). Venue is proper before this Court pursuant to 28 U.S.C. § 1408.

BACKGROUND

2. On February 15, 1991 (the “Petition Date”), H.K. Porter Company, Inc. (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the Western District of Pennsylvania (the “Bankruptcy Court”), resulting in, among other things, the creation of the Asbestos Trust.

3. The Asbestos Trust was formed in 1998 to assume liability for and pay *bona fide* Asbestos Personal Injury Claims (“Asbestos PI Claims”) against the Debtor pursuant to and in accordance with: (a) the *Fourth Amended Creditors’ Committee Plan of Reorganization for H.K. Porter Company, Inc. (with modifications as of April 27, 1998)* (the “Plan”); (b) the *H.K. Porter Company, Inc. Asbestos Trust Agreement* (the “Trust Agreement”); and (c) the *H.K. Porter Company, Inc. Asbestos Claims Resolution Procedures* (the “Asbestos Claims Procedures”). The Plan, Trust Agreement, and Asbestos Claims Procedures are collectively referred to as the “Trust Documents”.

4. The Plan was confirmed pursuant to the *Order Confirming Plan* jointly entered on June 25, 1998 (the “Confirmation Order”) by the United States District Court for the Western District of Pennsylvania and the Bankruptcy Court.

5. Mark M. Gleason was appointed as the initial Trustee for the Asbestos Trust and has continuously served in that capacity through the present day.

6. Additionally, the Trust Agreement provides for the creation of a Trust Advisory Committee (“TAC”) and directs the Trustee to consult with the TAC on administration and implementation of the Asbestos Claims Procedures.

7. There is no future claims representative for the Asbestos Trust.

8. This Motion to Reopen is filed for the limited purpose of adjudicating a Motion for Declaratory Judgment to be filed by the Trustee with respect to the interpretation of the Trust Documents and the administration of the Asbestos Trust.¹

9. One of the stated purposes of the Asbestos Trust is to pay holders of valid Asbestos PI Claims in such a way that holders of similar Asbestos PI Claims are paid in substantially the same manner.

10. In order to fulfill this purpose, the Asbestos Claims Procedures provide for the Asbestos Trust to pay every claimant a set percentage (the “Payment Percentage”) of the full value of his or her claim.

11. For the reasons stated in his Motion for Declaratory Judgment, the Trustee is requesting declaratory judgment from this Court that Section 4.1 of the Asbestos Claims Procedures can be amended to provide the Trustee with the express authority not to adjust the Payment Percentage if doing so would result in *de minimis* distributions to claimants at any disease level.

RELIEF REQUESTED

15. The Movant respectfully requests entry of an Order substantially in the form attached hereto reopening this bankruptcy case for the limited purpose of adjudicating the Motion for Declaratory Judgment. Promptly following full and final adjudication of the Motion for Declaratory Judgment, Movant requests that the bankruptcy case be closed.

¹ Copies of the Trust Agreement, Asbestos Claims Procedures, and Plan are attached to the Motion for Declaratory Judgment.

BASIS FOR RELIEF REQUESTED

16. Section 350(b) of the Bankruptcy Code permits a bankruptcy case to be reopened “in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.” 11 U.S.C. §350(b).

17. Rule 5010 of the Federal Rules of Civil Procedure allows for the reopening of a chapter 11 case under Section 350(b) “on motion of the debtor or other party in interest.” Fed.R.Civ.P. 5010.

18. Bankruptcy Courts are afforded broad discretion in deciding to reopen a chapter 11 case after its assets have been administered. *See In re Lazy Days’ RV Center Inc.*, 724 F.3d 418, 423 (3d Cir. 2013) (citing *Zinchiak v. CIT Small Business Lending Corporation*, 406 F.3d 214, 223 (3d Cir. 2005)).

19. “In exercising its discretion to reopen, a bankruptcy court should consider whether similar proceedings are already pending in state court as well as make a determination as to which forum—state court or bankruptcy court—is most appropriate to adjudicate the issues raised by a motion to reopen.” *Id.*

20. This Court has jurisdiction to reopen this bankruptcy case in order to adjudicate the Motion for Declaratory Judgment.

21. Article 9 of the Plan states, in pertinent part:

**ARTICLE 9
RETENTION OF JURISDICTION**

Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court and the District Court shall retain and shall have exclusive jurisdiction over (a) any matter arising under the Bankruptcy Code, (b) any matter arising in or related to the Chapter 11 Case, the Plan, the Evans Settlement or the Asbestos Trust and its assets and the Co-Defendant qualified settlement fund, or (c) any action to:

9.1 Interpret, enforce, and administer the terms of the Asbestos Trust Agreement, the terms of the Evans Settlement, the Asbestos Permanent Channeling Injunction or the Section 105(a) Injunction (including all annexes and exhibits to the any of the foregoing)...

Plan, Article 9, § 9.1.

22. In his Motion for Declaratory Judgment, the Trustee is requesting the Bankruptcy Court to interpret the scope of the Trustee's authority to amend the Claims Resolution Procedures, which is an exhibit to the Trust Agreement. As detailed in the Motion for Declaratory Judgment, the purpose of the proposed amendment is to maximize distributions to the Trust's Beneficiaries.

23. Based upon the foregoing, the Plan provides the Bankruptcy Court with express jurisdiction to adjudicate the Motion for Declaratory Judgment.

24. Reopening this case for the limited purpose of adjudicating the Motion for Declaratory Judgment will not prejudice any parties. The reorganized Debtor and the TAC consent to the relief requested in the Motion to Reopen and in the Motion for Declaratory Judgment.

25. Further, while the Movant respectfully requests that the Asbestos Trust be excused from any post-confirmation reporting requirement relating to the brief period during which the Bankruptcy Case would be open, the Trustee understands the Asbestos Trust is obligated to pay the minimum quarterly UST fee for the brief period in which the case will be open.

26. Finally, the relief requested by the Trustee in his Motion for Declaratory Judgment is not pending in any other forum.

27. Based upon the foregoing, it is well within this Court's discretion to reopen this bankruptcy case for the limited purpose of adjudicating the Motion for Declaratory Judgment.

NOTICE

28. Notice of the Motion to Reopen and the hearing date for the Motion will be served on parties in interest (a) through the Courts CM/ECF system; and (b) by U.S. First Class Mail and electronic mail on: (i) the Office of the United States Trustee for the Western District of Pennsylvania, (ii) H.K. Porter Company, Inc., (iii) the TAC; and (iv) any law firm that has filed a claim with the Trust on behalf of a claimant within the past three years.

29. Given that the Trust's Beneficiaries, i.e., holders of Asbestos PI Claims, are numerous and many remain unknown, service on all Beneficiaries individually is not possible.

30. The Movant submits that the service of the Motion to Reopen as set forth above is sufficient and appropriate under the circumstances and that no other or further notice is required.

WHEREFORE, the Movant respectfully requests that the Court enter an order reopening the bankruptcy case for the limited purpose of adjudicating the Motion for Declaratory Judgment, and granting such other and further relief as the Court deems appropriate.

Dated: November 20, 2024

Respectfully submitted,

CAMPBELL & LEVINE, LLC

/s/ Jeanne Lofgren

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Settlement Trust*

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NO RESPONDENTS.)

ORDER OF COURT

AND NOW, on this the _____ day of _____, 202__, upon consideration of the of the Motion to Reopen Chapter 11 Case Pursuant to 11 U.S.C. § 350 for the Limited Purpose of Adjudicating Motion for Declaratory Judgment, any responses thereto, and arguments of counsel, and finding due, proper, and sufficient notice of the Motion to Reopen2 to have been provided on all necessary parties in interest, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

- 1. The Motion to Reopen is GRANTED.
2. The above-captioned bankruptcy case is hereby reopened for the limited purposes of adjudicating the Motion for Declaratory Judgment filed by the Trustee.
3. The Trust is hereby excused from any post-confirmation reporting requirement while the bankruptcy case remains open to adjudicate the Motion for Declaratory Judgment.

2 Capitalized terms not otherwise defined herein have the meaning provided to them in the Motion to Reopen.

4. The Trust is obligated to pay the minimum quarterly UST fee for the period in which the case is open.

BY THE COURT:

Dated: _____

United States Bankruptcy Judge