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A Lesson from *Quigley*: Don't Put the § 524(g) Cart Before the § 105(a) Horse

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By conditioning preliminary injunctive relief on the more exacting standards that traditionally have applied only to the issuance of a permanent injunction, a recent Second Circuit decision casts doubt on a debtor's ability to protect assets shared with related third parties during the pendency of a reorganization under 11 U.S.C. § 524(g). In *In re Quigley Company Inc.,*[1] the court held that certain claims against nondebtor Pfizer Inc., the parent of debtor Quigley Company Inc., were not barred by a preliminary injunction issued under §§ 105(a) and 362(a) that mirrored the language of § 524(g)(4)(A)(ii).

Preliminary injunctions are typically issued at the outset of a bankruptcy case to broadly protect the debtor's and, often, related third parties' assets during the pendency of the case. But § 524(g) injunctions are entered in connection with confirmation of a plan only after the debtor and other applicable parties have demonstrated they meet the statutory requirements for protection. The *Quigley* court, however, limited the preliminary injunction's scope to the scope of a § 524(g) injunction well before plan confirmation (which has yet to occur). The outcome in *Quigley* ultimately may undermine the goals of § 524(g) and illustrates the utility of maintaining, in appropriate circumstances, a broad § 105(a) preliminary injunction from the outset of an

asbestos debtor's bankruptcy case.

Section 524(g) serves the dual purposes of enabling a debtor plagued with asbestos liability to reorganize and emerge as a viable business entity while providing adequate funding to equitably pay claims of current and future victims of asbestos-related diseases.[2] A § 524(g) reorganization results in a permanent injunction that channels the debtor's asbestos liability to a settlement trust for resolution and payment. The statute conditions issuance of the injunction on multiple requirements, such as certain findings about the debtor's liability and adequate protections for future claimants.[3] The injunction may protect nondebtor parties that are alleged to have liability "by reason of" four types of relationships with the debtor:

1. ownership of a financial interest;
2. involvement in management;
3. provision of insurance; or
4. involvement in certain corporate or financial transactions.[4]

Quigley sought to reorganize under § 524(g), using insurance policies and an insurance trust that it shared with Pfizer to fund its settlement trust.[5] To prevent depletion of the shared assets, which would "'cause immediate and irreparable injury to Quigley's estate and impair Quigley's ability to implement its prenegotiated chapter 11 plan and successfully reorganize,'" the bankruptcy court issued a preliminary injunction under §§ 105(a) and 362(a) that enjoined all asbestos-related claims against Pfizer during Quigley's chapter 11 case (the "original injunction").[6] In response to a motion filed by the *ad hoc* committee of tort victims, the bankruptcy court modified the original injunction to track § 524(g)(4)'s language (the "amended injunction"), limiting Pfizer's protection to claims alleging liability "by reason of" the four enumerated relationships.[7]

Prior to Quigley's bankruptcy, the Law Offices of Peter G. Angelos had sued Pfizer, alleging liability as an "apparent manufacturer" because Pfizer's logos appeared on Quigley's asbestos-containing products and advertising.[8] After the bankruptcy filing, Pfizer argued that the Angelos lawsuits were enjoined by the preconfirmation § 105 injunction because the alleged liability arose "by reason of" its ownership or management of Quigley.[9] Angelos argued that Pfizer's ownership or management of Quigley was legally irrelevant under the statute because the "apparent manufacturer" theory asserted liability based on Pfizer's own conduct independent of that relationship.[10]

The Second Circuit agreed with Angelos, holding that the phrase "by reason of" referred to legal —rather than factual—causation.[11] The court "deem[ed] it significant that each of th[e] four relationships" listed in § 524(g)(4)(A)(ii) were legal bases for liability prior to § 524(g)'s enactment.[12] Moreover, enjoining the Angelos lawsuits, "claims bearing only an accidental nexus to an asbestos bankruptcy," would not further § 524(g)'s goals of facilitating the reorganized debtor's economic viability and ensuring that current and future claimants receive similar treatment.[13] Because the relationship was legally irrelevant to the claims, Pfizer's liability did not arise "by reason of" its ownership of Quigley and the Angelos lawsuits were not barred by the amended injunction.[14]

Effectively, *Quigley* permits the pursuit of lawsuits that may deplete shared insurance and may

undermine the willingness or ability of the debtor's parent to participate in and contribute to the reorganization. That result frustrates the purposes of § 524(g) (despite the Second Circuit's statement to the contrary) and stems from the bankruptcy court's premature narrowing of the preliminary injunction to track § 524(g)'s language.

The *Quigley* decision highlights the distinct roles of a preliminary injunction issued under § 105(a) and a permanent injunction under § 524(g). A § 105(a) preliminary injunction supplements the breathing spell imposed by the automatic stay under § 362 by enabling the debtor to garner its assets and develop its reorganization strategy,[15] which, in a § 524(g) case, includes identifying potential nondebtors to fund the trust. Because a preliminary injunction issued at the outset of a case under § 105(a) generally is temporary in nature,[16] it can be broader than a permanent injunction issued in connection with confirmation of a plan.[17]

In contrast, § 524(g) contemplates issuance of a permanent injunction, which raises more significant due-process rights[18] and accordingly, has exacting requirements for the issuance of such an injunction.[19] *Quigley*, in effect, conflates the two types of injunctions and applies the more rigorous requirements of § 524(g) to § 105(a). Perhaps the case's contentious nature and allegations of impropriety against Pfizer were factors.[20] Perhaps the bankruptcy court determined that narrowing the § 105(a) injunction would assist in bringing the parties to the table to negotiate in earnest a viable plan of reorganization, or perhaps then-developing case law regarding the scope of protection available under § 524(g)(4) was an influence.[21] While the terms of § 524(g)(4) govern the protection Pfizer may ultimately obtain, the narrowing of the preliminary injunction eroded the protection available to help facilitate Quigley's reorganization.

1. *In re Quigley Co. Inc.*, 676 F.3d 45 (2d Cir. 2012).

2. *In re Federal-Mogul Global Inc.*, 684 F.3d 355, 359 (3d Cir. 2012).

3. *Id.*; 11 U.S.C. § 524(g)(2)(B)(ii).

4. *See* 11 U.S.C. § 524(g)(4)(A)(ii).

5. *Quigley*, 676 F.3d at 47.

6. *Id.* at 48.

7. *See id.*

8. *Id.* at 49.

9. *Id.*

10. *Id.*

11. *Id.* at 60.

12. *Id.*

13. *Id.* at 61-62.

14. *Id.* at 62.

15. *See Union Trust Phila. LLC v. Singer Equip. Co. (In re Union Trust Phila. LLC)*,460 B.R. 644, 661 (E.D. Pa. 2011) (citing *McCartney v. Integra Nat'l Bank North*, 106 F.3d 506, 512 (3d Cir. 1997)).

16. *See Official Comm. of Unsecured Creditors of Artra Grp. Inc. v. Artra Grp. Inc. (In re Artra Grp. Inc.)*, 300 B.R. 699, 703-04 (Bankr. N.D. Ill. 2003); *In re Digital Impact*, 223 B.R. 1, 13 (Bankr. N.D. Okla. 1998).

17. *Digital Impact*, 223 B.R. at 13 n. 6; *In re Western Real Estate Fund Inc.*, 922 F.2d 592, 600 (10th Cir. 1990).

18. *See In re Combustion Eng'g Inc.*, 391 F.3d 190, 234, n. 45 (3d Cir. 2004); *Digital Impact*, 223 B.R. at 13.

19. *Combustion Eng'g*, 391 F.3d at 234.

20. Filed in 2004, Quigley's case has been contentious and protracted. In 2010, following a 15-day trial, the bankruptcy court denied confirmation of Quigley's fourth amended and restated reorganization plan on various grounds, including a finding that the plan was proposed in bad faith based on Pfizer's pre-petition conduct that "tainted" the voting process. *See In re Quigley Co.*, 437 B.R. 102, 129 (Bankr. S.D.N.Y. 2010).

21. *See Combustion Eng'g*, 391 F.3d at 234-38.