UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

CORSON MANUFACTURING COMPANY — Case No. 99-16855 K

Debtor

The question is whether an April, 2000 Order of this Court would be violated if the Gioia Insurance Trust disburses $150,000 toward a settlement, in U.S. District Court for this district, of a typical three-party personal injury lawsuit arising from a workplace injury. This Court finds that the April 2000 Order would not be violated by that contribution from the insurance trust.

BACKGROUND

In 1991, the Debtor and certain of its affiliates set up a statutorily-approved trust fund by which they could self-insure $300,000 (per incident) of their state-required worker's compensation coverage. The trust became the means of self-insurance. The trust would maintain the $300,000 cash per incident, collecting contributions as needed. The trust also would purchase additional coverage at the expense of the trust, on contributions from the Debtor and its participating affiliates.

The trust did indeed purchase additional coverage and the coverage that it purchased did not merely assure payment to the injured worker, but rather indemnified the participating employers against all losses arising from an eligible workplace injury. Thus the

additional coverage protected any injured worker - as was at the heart of the creation of the insurance trust - - but also protected the Debtor and its participating affiliates against third-party claims - - meaning claims against the employer by an entity sued by the injured worker.

Of course, under New York Law, an injured worker usually may not sue her employer, but instead is limited to "Workers Compensation" under the employer's state-required coverage. She may, however, sue any third party who should be liable, such as the manufacturer of the machine she was operating when injured - and that third party may implead the employer.

Thus the statutory inability of an insured employee to sue the employer (in general) results in a potential liability of the employer to whomever the employee is permitted to sue, and settlement would typically necessitate the involvement of all parties.

In this case, this highly common scenario bumps head-on into the bankruptcy process. The employer is now a Chapter 7 Debtor. The April 2000 Order of this Court permitted a machine manufacturer who had been sued by this Debtor's former employee to commence the routine third-party action against this Debtor "to the extent of available insurance coverage."

At the time that motion was made and granted, neither the moving party nor the Court was aware that "available insurance coverage" would be through the affiliated insurance trust, or that the insurance trust would have to expend $300,000 on this incident before the "extra insurance" would "kick-in."

Settlement discussions are occurring in the District Court that would necessitate the payment, by the trust fund, of $150,000, triggering the extra coverage from an insurance company, and it is expected that the extra coverage would result in settlement of the injured

party's claim against the machine manufacturer, and the machine manufacturer's claim against this Chapter 7 Debtor's estate.

But the Chapter 7 Trustee argues that the trust was established for worker's compensation coverage only. Third-party liability coverage is not required by state law, and was not within the purposes for which the trust was established. He argues that the Debtor's estate should be entitled to a return of a portion of the trust fund, and that the creditors of this Debtor would be injured by a depletion of the fund by an additional $150,000 for purposes other than "workers compensation."

In other words, argues the Trustee, the injured worker has no claim against this Debtor's estate. The machine manufacturer's claims against the Debtor's estate is a pre-petition claim. The right, title and interest of the Chapter 7 Debtor to any portion of the fund not devoted to payment of workers compensation would result in money being returned to the Debtor's estate for the benefit of all creditors, and the machine manufacturer should accept a pro rata distribution of the Debtor's estate along with all other pre-petition claims.

DISCUSSION

No argument has been made that any funds in the trust could be reached by creditors of this Debtor; consequently, the Trustee offers no arguments under any of the "avoiding powers." Rather, in a separate adversary proceeding, the Trustee has sought an accounting and a turnover of whatever portion of the insurance trust might be attributable to the trust's having provided coverage that was not within the purpose of the trust. Such an argument

may rest only upon 11 U.S.C. § 541; in other words, the Trustee cannot achieve, in this regard, what this Debtor could not have achieved outside bankruptcy. Whatever interest Corson had to obtain monies from the trust is all that Corson brought into this § 541 estate, and is the only basis upon which the Trustee may make the present assertion.

Corson, in 1991, bound itself to fund an insurance trust, and did so in a way that cuts off any claim against the funds in the trust except upon "termination" of the fund. Under the terms of the plan, termination may occur only upon a written election of a majority of the participants. The Trustee offers no proof that that has been undertaken, and counsel for the trust has represented to the Court that the trust has not been terminated.

It may be that the trustees of the trust acted *ultra vires* in obtaining the coverage that was obtained. Perhaps coverage solely for payment of workers compensation would have been less expensive to the trust and to its participants. But Corson ratified this conduct by the trustees steadily from 1991 until and after its filing here for relief under the Bankruptcy Code.

The Court is satisfied that the trust plan was well written and clear, and that Corson would have no right to compel a refund of any monies in the trust, whether Corson were still operating or not operating outside bankruptcy. The bankruptcy Trustee suffers the same incapacity.

The possibility that some future termination, and future distribution of funds from the trust to the Corson estate, will be meaningfully diminished by the proposed contribution of $150,000 to a settlement, is too speculative to credit.

Finally, the Trustee's argument that permitting use of the $150,000 to benefit the

machine manufacturer elevates that pre-petition claim to administrative expense status is incorrect, so long a settlement is achieved by which the machine manufacturer waives its $3.25 million claim against this Chapter 7 estate. Subject to this proviso, the Trustee's Motion is denied and payment may be made.

SO ORDERED.

Dated: Buffalo, New York
December 9, 2002

/s/ Michael J. Kaplan

Michael J. Kaplan, U.S.B.J.