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MAY 1 1992

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

THE PRESENT CO., INC. — Case No. 91-23618 K

Debtor

Jointly Administered with

In re

DANIELS TOBACCO CO., INC. — Case No. 92-20372 K

Debtor

The urgency of the need for a decision in the current matter precludes an elaborate recitation of the pertinent facts. It suffices to say that on May 11, 1992, there will be heard the debtors' proposal to compromise all possible claims against certain entities for $280,000 to be received by debtors. The entities are known as the "Institutional Investors" or as the "Funds." They own ~~eighty-one (81%) percent of~~ approximately more than 90% of the stock of a corporation which is the sole owner of debtor Present Company, Inc. Debtor Daniels Tobacco Co., Inc. is wholly owned by debtor Present Company, Inc. This decision will assume for the sake of argument only, that the Funds may be termed "insiders" of the debtors; this is simply for ease of reference and does not constitute a holding of the Court.

The official creditors' committee in the case of the Present Company (there currently is no creditors' committee in the case of Daniels Tobacco) has moved to compel discovery by the Institutional Investors, and the Institutional Investors have moved

to quash subpoenas and to otherwise obtain relief from the creditors' committee's discovery request. Since the discovery sought purportedly relates to the hearing to be heard on May 11, 1992, the parties have requested expedited decision on these motions. They have briefed the matter thoroughly.

The crux of the dispute is the extent, if any, to which the creditors' committee is entitled to information from the Funds with regard to transactions and events that might form the basis of the underlying claims that the debtors now seek to compromise. It is clear that the creditors' committee's discovery requests do seek discovery of the same scope and depth as would be sought if the creditors' committee were the plaintiff in an action actually prosecuting the claims that are now sought to be compromised. The principal position of the Funds is that the creditors' committee, as a potential objector to the compromise, is entitled to discover from the funds only such information as pertains to the process by which the debtors determined to compromise the claims, and does not extend to matters underlying the claims themselves beyond the extent to which the debtors inquired into those matters in reaching their decision to seek to compromise them. Alternatively, the Funds argue that if the committee is entitled to a very broad scope of discovery in this connection, the demands are onerous, cumulative, and otherwise demanding of quash.

It is contended by the committee that a great deal is at issue in regards to the $280,000 compromise, because in its view,

a successful prosecution of the underlying claims would result in a multi-million dollar recovery that would provide full payment to all non-insider creditors, whereas creditors otherwise will receive payment of less than fifty ($.50) cents on the dollar. (This is a non-operating, liquidating case, in which the plan will be strictly a plan of distribution.)

The briefs thoroughly examine cases articulating the duty of the Court with regard to the upcoming hearing on the compromise. But I am cited to little, if any, authority addressing the issue at hand. When the issue at hand is examined carefully, this absence of authority is not surprising, for I am asked to decide the extent to which I may compel the Funds to undergo effort and incur expense in order to convince the creditors' committee and the Court that the debtors should accept from the Funds the $280,000 which the Funds feel it is willing to pay precisely to avoid incurring such effort and expense.

So long as this matter is before the Court in the context of the Funds' offer to compromise, and the debtors' proposed acceptance of that offer, I will not compel the Funds to produce anything at all. If I were to compel the Funds to produce information which they do not wish to produce concerning their business decision to offer $280,000, they would be free to withdraw their $280,000 offer. It is for the Funds, and the Funds alone, to determine the point in the discovery process at which a compromise simply is not worth the effort.

Hence, the creditors' committee's motion to compel is denied. The Funds' motion to quash is granted. There shall be voluntary discovery only, as to the Funds.

In assisting the parties with regard to the matter of voluntary discovery, I note the following.

A. The same dispute could arise outside the context of a compromise. For example, if the pending compromise is disapproved by the Court it is possible that such disapproval would be without prejudice to offering the same or similar compromise as a provision in a plan of reorganization. In that context, the dispute could relate to a requisite element of confirmation, such as whether the plan meets the requirements of the Chapter 7 test. In such a context, the Court might well compel the full scope of discovery available not only under the Federal Rules of Civil Procedure, but under Bankruptcy Rule 2004 as well.

B. As to the Court's role in considering the pending compromise, it will be of benefit to all parties for the Court to correct some misconceptions apparent in the briefs:

C. An active official committee of unsecured creditors indeed is the watchdog of many aspects of a reorganization case, including the process of reaching a reasonable Rule 9019 compromise of any issue. Such a committee is not a "mere objector."

D. The Court cannot "assess the unresolved factual issues" without knowing what issues of fact exist or might exist.

E. It is not true that the same standards apply when a

settlement is reached with an insider as opposed to a third party, at least when the creditors' committee was not involved in the negotiations and opposes the settlement.

F. When the settlement is with an insider, the creditors' committee's view of the merits may well be the only view that bears objectively on the reasonableness of the settlement.

G. At hearing, the Court will hear the committee as to whether sufficient information has been made available to it in order that it may reach an informed conclusion regarding the compromise.

The above is so ordered.

Dated: Buffalo, New York
~~April 30, 1992~~
May 1, 1992

U.S.B.J.