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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:	Chapter 11
	:	
QUIGLEY COMPANY, INC.,	:	Case No. 04-15739 (SMB)
	:	
Debtors.	:	
---X		

MOTION OF THE AD HOC COMMITTEE OF TORT VICTIMS FOR AN ORDER PARTIALLY WITHDRAWING THE REFERENCE FOR PURPOSES OF THE CONFIRMATION HEARING ON QUIGLEY COMPANY INC.'S FOURTH AMENDED AND RESTATED PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (AS MODIFIED AS OF MARCH 28, 2008)

Pursuant to Rule 5011 of the Federal Rules of Bankruptcy Procedure and Rule 5011-1 of the Local Bankruptcy Rules for the Southern District of New York, the Ad Hoc Committee of Tort Victims[1] (the "Ad Hoc Committee") hereby moves (the "Motion") for entry of an order under section 157(d) of title 28 of the United States Code, sections 105(a), 524(g), 1129, and 1142 of title 11 of the United States Code (the "Bankruptcy Code" or "Code"), partially withdrawing the reference of this Chapter 11 proceeding to allow the District Court for the

[1] The current members of the Ad Hoc Committee are Weitz & Luxenberg, PC, Cooney & Conway and the Law Offices of Peter G. Angelos, PC, who collectively represent tens of thousands of individual asbestos claimants who have been sickened by asbestos-containing products produced, manufactured, marketed and/or sold by Pfizer and Quigley.

Southern District of New York (the "District Court") to concurrently preside with the Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") over the confirmation hearing regarding Quigley Company Inc.'s Fourth Amended and Restated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as Modified as of March 28, 2008) (the "Proposed Plan").[2]

PRELIMINARY STATEMENT[3]

At the confirmation hearing on the Proposed Plan, Quigley Company, Inc. ("Quigley") and its parent company and co-plan proponent Pfizer, Inc. ("Pfizer") will seek judicial imprimatur on a bankruptcy scheme hatched by Pfizer in early 2004 to obtain for itself all of the protections of bankruptcy without the stigma of filing in its own name. A central element of this scheme is a § 524(g) channeling injunction with respect to asbestos personal injury claims against both Quigley and Pfizer – an injunction which must be "issued or affirmed" by the District Court. See 11 U.S.C. § 524(g)(3)(A). Due to its unique protections, Section 524(g) requires numerous specific findings to be made before a channeling injunction may issue. In light of the broad, far-reaching scheme implemented by Pfizer, it is imperative that the court which ultimately must decide whether a 524(g) channeling injunction is proper – the District Court – be able to fully and completely assess the extensive testimony, cross-examination, and documentary evidence concerning each of the requirements of Section 524(g).

Given the fact-intensive nature of the key issues that will have to be addressed, the interests of judicial economy and efficiency will be best served by a partial withdrawal of the

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[2] By this Motion, the Ad Hoc Committee seeks a withdrawal of the reference only with respect to the confirmation hearing on the Proposed Plan and not with respect to any other matter.

[3] All capitalized terms herein not otherwise defined shall have the meaning defined in the Ad Hoc Committee's objection to the Proposed Plan (the "AHC Confirmation Objection") or the Proposed Plan, as applicable.

reference and a single confirmation hearing at which both the Bankruptcy Court and the District Court preside.

FACTUAL BACKGROUND

The bankruptcy scheme devised by Pfizer has as its centerpiece the issuance of a Section 524(g) channeling injunction with respect to claims against both Quigley and Pfizer. The entire scheme was undertaken and carried out to protect a single beneficiary – *Pfizer* – to the grave detriment of the interests of Quigley and Quigley's tort creditors. In brief, Pfizer has utterly perverted the bankruptcy process through its disingenuous attempt to use the bankruptcy laws to avoid responding in court to the claims of countless dying cancer victims.

A. The concoction of Pfizer's impermissible bankruptcy scheme

Both Pfizer and Quigley faced numerous lawsuits throughout the 1980s and 1990s from cancer victims who were exposed to asbestos-containing products manufactured, produced, sold and/or distributed by each of them. See Fifth Amended and Restated Disclosure Statement, dated March 28, 2008 (the "Disclosure Statement"), pp. 20-22. Seeking to avoid paying its fair share of its asbestos liability, Pfizer looked to Section 524(g) of the Bankruptcy Code, which is designed to afford related companies an opportunity to fairly and equitably deal with asbestos liability which arises from the actions of one particular company within the corporate structure. In a scheme which perverts the rationale behind 524(g), bends (and in many cases breaks) the safeguards contained within Section 524(g), and tramples upon the rights of those most seriously impacted by its actions, Pfizer engaged in a calculated process to gain protections that it is simply not entitled to.

1. The "resurrection" of Quigley Company, Inc.

An "ongoing business" is, along with the requirement that the majority of shares in the surviving company be contributed to the asbestos trust, one of the safeguards built into Section

524(g). The importance of this requirement is evident from the legislative history of Section 524(g), wherein it was noted that the purpose of ensuring an ongoing concern was to afford profitable companies the opportunity to come out of bankruptcy and thus serve as a source of continued funds for the trust. See 140 Cong. Rec. S4521, S4522-23 (Remarks of Senator Brown that the surviving company served as "the goose that lays the golden egg by remaining a viable operation and maximizing trust assets to pay claims"). Quigley was by its own admission operationally defunct as of 1992, when all of its business operations were sold. See Disclosure Statement, p. 21; Deposition of Paul A. Street, attached in relevant part hereto as Exhibit A ("Street Depo."), 284:19-22; 285:20-286:13 (Quigley's President acknowledging that from 1992-2004 Quigley was a shell corporation with no operations whatsoever). All that remained of Quigley following the sale was the process of handling asbestos claims and managing the insurance coverage available to pay these claims. Between 1992 and 2004, all of the claims-handling was done within Pfizer. Only in 2004, once the 524(g) scheme was hatched, was the so-called claims handling unit transferred to the defunct Quigley as its sole business, in a transparent attempt to try and satisfy 524(g)'s "ongoing business" requirement.

Recognizing that Quigley would need an 'independent' Board to fulfill Pfizer's goal, Pfizer's bankruptcy counsel set about to identify candidates for the role (although experience in the claims handling business was not a prerequisite for the position). See Street Depo., pp. 102-106; Deposition of Charles Raeburn, attached in relevant part hereto as Exhibit B ("Raeburn Depo."), 11:17 – 12:18. Eventually, Pfizer's bankruptcy counsel selected Paul A. Street, a founder of Impala Partners, which focuses on distressed financial companies, who was named President and Chairman of the Board in the Spring of 2003. See Disclosure Statement, p. 21.[4]

[4] Concurrent with the selection of Quigley's new President, Pfizer's bankruptcy counsel also sought out and interviewed a Futures Claimants' Representative. See Street Depo., 99:8 – 100:22; Raeburn Depo., 61:21 – 62:10.

Mr. Street recommended Kevin Altit, a Brazilian lawyer whom he knew from prior deals, for another seat on the Board, see Street Depo., 126:16 – 128:9, and they, along with Pfizer's Assistant General Counsel, Charles Raeburn, comprised the Board of Quigley until March of 2008, when Mr. Street left Quigley and was replaced by Kim Jenkins. Id.; Raeburn Depo., 15:24 – 16:20, 18:19 – 19:10; Deposition of Kim Jenkins, attached in relevant part hereto as Exhibit C ("Jenkins Depo."), 153:15-16.

Despite its 'resurrection' as a purportedly independent company, discovery has revealed that there has never been anyone minding the store at Quigley. All significant decisions have been made by Pfizer and its counsel at virtually every turn. See, e.g., Jenkins Depo., 262:1 – 263:23 (Quigley's current President and Chairman of the Board admitting she does not know, and has little interest in finding out, whether the contributions being made by Pfizer under the Plan bear some relation to the value of the protection that Pfizer is to receive from a 524(g) channeling injunction, stating that this is Pfizer's call); Street Depo., 216:7 – 219:12 (Quigley's former President admitting that he is wholly unaware of the financial impact of Pfizer's actions on the Plan and its impact on Quigley creditors). The Board holds occasional meetings which largely consist of updates from counsel, who are essentially handling every aspect of the bankruptcy filing. See Deposition of Kevin Altit, attached in relevant part hereto as Exhibit D ("Altit Depo."), 11:21 – 14:9 (all draft Board agendas circuited by counsel and he does not recall any Board member ever adding anything to an agenda); Jenkins Depo. 74:7-20, 75:13-15 (current President and Chair of the Board not even sure when the last Board Meeting occurred).

Mr. Street, Quigley's new President, was not involved in the identification and selection of Al Togut for this role. Id. Indeed, despite earning $900,000 per year, Mr. Street was a "part-time" President who spent much of his time working on unrelated matters until his recent departure from Quigley. See Street Depo, 54:18-21.

2. Restructuring of insurance policies to afford a cash windfall to Pfizer

Quigley's only asset after the 1992 sale was its rights in various insurance policies that were issued to Pfizer and under which Quigley was also covered. See Disclosure Statement, p. 23. The biggest block of insurance available was issued by the AIG Companies ("AIG"), which became the subject to a settlement agreement in August of 2004. Under that settlement, AIG agreed to pay Pfizer and Quigley $405,746,856 over a period of ten years. Id. at 26. Immediately thereafter, Pfizer caused Quigley to assign all of its rights in the AIG payment stream over to Pfizer in exchange for a $450,000,000 note payable in forty annual installments of $10,125,000 ("the AIG Scheme"). Id. at 26, 66-67. As a result of the extended payment stream, the AIG Scheme results in a cash windfall to Pfizer of approximately $176 million (more than covering the entire 'cash contribution' being made by Pfizer under the Plan). See AHC Confirmation Objection at pp. 10-13.

3. Departing from historical practices and settling Pfizer's asbestos exposure *without* simultaneously resolving Quigley's asbestos exposure

With Quigley now 'up and running' and enough cash siphoned away from Quigley's insurance assets to off-set any contributions that Pfizer would have to make, Pfizer set about incentivizing enough claimants to vote in favor of the Plan in order to receive the protections of a 524(g) injunction. Historically, Pfizer and Quigley had always defended and settled asbestos claims jointly (indeed, it was typical to have one set of lawyers acting on behalf of both companies). See Street Depo., 198:5 – 204:11; Deposition of Sandford N. Berland, attached in relevant part hereto as Exhibit E ("Berland Depo."), 24:6 – 25:15. However, in order to carry out its scheme, Pfizer departed from prior precedent and in the Summer of 2004 sought to settle only its own asbestos exposure (even though, as Pfizer has repeatedly claimed, the bulk of such exposure arises from 'derivative claims' based on Quigley's actions). See Street Depo., 198:5 –

204:11; Berland Depo., 25:16 – 27:20; 34:12-17; Deposition of Deborah Greenspan, attached in relevant part hereto as Exhibit F ("Greenspan Depo."), 38:12-19; cf. Raeburn Depo. 31:25 – 32:12, 40:13 – 41:23 (Mr. Raeburn unaware that Pfizer had undertaken this strategy). During the course of these negotiations, Pfizer specifically avoided obtaining concomitant releases for Quigley, see Berland Depo., 42:4 – 43:6, because doing so would have been counter to Pfizer's goal (*i.e.,* Pfizer was paying substantial cash specifically to influence the votes that would be cast on the Plan; however, if a release was obtained for Quigley, the claimants whose interests Pfizer was paying for would no longer be able to vote on the Plan).

Pfizer ultimately paid (or committed to pay) $450 million to settle claims held by ~175,000 claimants. See Disclosure Statement, pp. 39-40. This viscerally substantial payment pales when compared with the multi-billion dollar exposure Pfizer has to asbestos victims. See, e.g., Id. at 67-68 (discussing future predicted liability for asbestos claims to be $4.43 billion undiscounted and $2.66 billion discounted). The key provisions of the pre-petition settlement agreements were: (a) Settling Plaintiffs fully released Pfizer; (b) Settling Plaintiffs did not release Quigley, but agreed to reduce by a factor of 90% any distribution they may be entitled to under a 524(g) trust; and (c) one-half of the settlement payment would be made by December 1, 2005, with the remainder being due after confirmation. Id. In essence, the Settling Plaintiffs had been paid for their claims, yet retained a small 10% "stub claim" to be asserted against Quigley, thereby enabling these Settling Plaintiffs to vote on the Plan – a vote which would have to be in favor of the Plan if they wanted to receive the second half of their settlement payment. Id.

The tying of the second installment payment to Quigley's plan confirmation is powerful evidence of Pfizer's unabashed vote buying and overall lack of good faith. See In re Featherworks Corp., 25 B.R. 634, 641 (Bankr. E.D.N.Y. 1982); In re Applegate Property, Ltd.,

133 B.R. 827, 836 (Bankr. W.D. Tex. 1991). The requirement that a debtor obtain affirmative votes of 75% of all asbestos claimants is another safeguard built in to Section 524(g). See 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb). Pfizer used the pre-petition settlements as a means to ensure that it had the requisite vote (75% in number and 2/3 in amount) to obtain approval of its Quigley plan. Moreover, it has become increasingly clear during the Ad Hoc Committee's continuing investigation that Pfizer and Quigley went to extreme lengths to ensure that they had the requisite number of votes at as little cost to Pfizer as possible — including, possibly manufacturing Pfizer claims to settle for the sole purpose of buying Quigley votes.

A crucial part of Pfizer's scheme was its decision to purchase large blocks of votes from individuals whom Pfizer knew, from years of dealing with plaintiffs' counsel, would be the cheapest to buy. To this end, Pfizer largely targeted individuals whom it suspected would take almost anything to resolve their claims because (a) historically these claims were not recovering much of anything from Pfizer and Quigley in the tort system due to lack of sufficient medical and/or exposure evidence; (b) these claims could not be prosecuted in state court (under tort reform statutes);[5] and/or (c) these "claims" had not even been filed against Pfizer (and in some cases may have been time-barred). To date, only a single deposition has been taken which focused on the manner in which Pfizer approached the pre-petition settlement process and which examined the types of claims that Pfizer purchased – and the information revealed is shocking.

On November 12, 2008, the Ad Hoc Committee deposed Alan Kellman, a partner at The Jaques Admiralty Law Firm (the "Jaques Firm"), which has been involved in asbestos-related personal injury work since at least the 1980s. See Deposition of Alan Kellman, attached in

[5] The Court has intimated that these claims were entitled to vote on the Proposed Plan despite the presence of various tort reform statutes that bar the pursuit of such claims in state court. See In re Quigley Co., Inc., 383 B.R. 19 (Bankr. S.D.N.Y. 2008) ("Quigley III"). However, the fact remains that Pfizer faced little to no actual risk of liability in the tort system from these claims at the time they were settled.

relevant part hereto as Exhibit G (the "Kellman Depo."), at 7:10-23.[6] The overwhelming majority (~90%) of the Jaques Firm's 30,000 clients are former merchant mariners – men and women who worked on private ships – with the remainder being largely comprised of military veterans who served aboard ships. Id. at 7:23 – 8:8; 10:2-15. Virtually all of these clients filed asbestos-related lawsuits before 1998, naming individual defendants in their actions (and not naming "John Doe" defendants). Id. at 12:7-15. Beginning around 1993, the Jaques Firm had begun naming Quigley as a defendant in its cases and as of 2004, approximately 27,000 of its clients had specifically named Quigley as a defendant in their lawsuits. Id. at 19:4-24. By contrast, out of approximately 30,000 total clients of the Jaques Firm, *only a single plaintiff* had named Pfizer as a defendant (and that case had been filed at some point in the 1980s). Id. In other words, by the Summer of 2004 (when Pfizer elected to set out 'on its own' to resolve its asbestos liability), almost all of the Jaques Firm's clients would have been "out of statute" concerning claims against Pfizer based on exposure to a Quigley asbestos-containing product and thus unable to pursue Pfizer under any basis of liability.

During the Summer of 2004, Mr. Kellman was contacted by another plaintiff's attorney who suggested that he contact Ron Rubin about his Quigley claims because there was the potential for settlement. Id. at 24:23 – 25:16. Mr. Kellman contacted Mr. Rubin to inquire about settling his 27,000 pending Quigley claims; however, Mr. Rubin and his associate Mike Rozen informed Mr. Kellman that "Pfizer had some responsibility for Quigley claims" and indicated a desire to settle those claims for a substantial sum of money – if the individuals would vote in

[6] During the course of the Kellman deposition, a document that had been produced subject to a "confidential" designation was marked as an exhibit and discussed. Counsel for Pfizer indicated that they would preliminary designate that portion of the transcript as confidential, pending a subsequent review to determine if that designation was required. The Ad Hoc Committee does not believe that any of the testimony summarized herein can properly be designated as "confidential" by Pfizer; however, in an abundance of caution, the Kellman transcript is not being attached to the papers being filed in the public docket. A complete copy of the transcript will be sent to Chambers for the Court's review if it deems such review necessary to ruling on the issues presented.

favor of a Quigley bankruptcy plan. Id. at 25:17 – 28:10. There was no discussion of any Pfizer asbestos-containing products and neither Rozen nor Rubin ever indicated that they were discussing non-Quigley-related asbestos exposure. Id. Mr. Kellman assumed that the Pfizer claims being settled were derivative of exposure to a Quigley product. Id. When asked to describe the claims he had settled, Mr. Kellman responded "[t]he claims that had been filed against Quigley, and probably any claims that were still within statute, if there were some that hadn't been filed against Quigley, which would not have been many, if any." Id. 41:5-11. In the end, they negotiated a lump sum payment for the whole group of 27,000+ claimants. Id. at 50:22 – 52:23.

The foregoing evidences Pfizer's efforts to manufacture and settle claims against Pfizer in connection with the pre-petition settlements in order to buy enough votes to confirm its Quigley 524(g) plan. Pfizer needed to settle only claims against it and not against Quigley in order to be able to have such claimants vote in favor of a Quigley 524(g) plan. Pfizer's settlement decisions were not based on the particular 'merits' of the pending claims against it, but rather on the simple goal of securing enough votes (preferably from 'low value' claimants who had little or no prior settlement history) to achieve the magical "75% in number" requirement of 524(g). See, e.g., Greenspan Depo., 34:13-25. The fact that tens of thousands of the claimants whom Pfizer paid – and the corresponding votes that Pfizer needs – had not even named Pfizer as a defendant and were barred by the statute of limitations from doing so in the Summer of 2004 was of no consequence to Pfizer. See Kellman Depo., 19:4-24; 41:5-11.

B. The filing of Pfizer's bankruptcy scheme

Armed with what it believed to be 75% of the votes, and having secured a cash windfall for itself through the AIG Scheme, this bankruptcy case was filed on September 3, 2004. Commensurate with the filing of the case, the bankruptcy court (Beatty, J.) issued a Temporary

Restraining Order on September 7, 2004. See Disclosure Statement, p. 43-44. After hearings were held, and based largely upon Quigley and Pfizer's promises of a quick confirmation, Judge Beatty issued a preliminary injunction on December 17, 2004 (the "Preliminary Injunction") which barred the prosecution of any and all asbestos-related claims against both Quigley and Pfizer. Id.[7]

1. The first iteration of the plan gets rejected

Central to Quigley and Pfizer's promise of a quick confirmation was their assumption that they could force through a Plan on the basis of a simple "$1/1 vote" methodology (thereby ignoring clear differences in the value of mesothelioma claimants as compared to non-malignant claimants) while simultaneously ignoring the fact that the Settling Plaintiffs had a significantly reduced financial interest in the Plan. See Disclosure Statement, p. 48. The original plan was put out to vote in the Spring of 2006, although the issue of a proper voting methodology was still subject to dispute. Id.

On August 9, 2006, the Bankruptcy Court issued an Order on Voting Methodology, in which it concluded that the financial impact of the pre-petition settlements had to be taken into account and that it was more proper to assign disease-values for the purposes of determining whether the plan met the "acceptance by two-thirds of value" requirement of Section 1126(c). See Memorandum Decision and Order Estimating Asbestos PI Claims for Voting Purposes Only, August 9, 2006 (Docket No. 897), 346 B.R. 647 (Bankr. S.D.N.Y. 2006); see also Disclosure

[7] One of the problems associated with this Preliminary Injunction was the simple fact that it afforded Pfizer more protection that it could ever hope to permissibly obtain under an ultimate 524(g) injunction, as it clearly covered claims involving products bearing no relation to Quigley at all, as well as direct claims against Pfizer for products that did bear some relationship to Quigley. However, Judge Beatty dismissed the impact of this sweeping protection, noting that Quigley and Pfizer represented, in September 2004, that the case would be over within six months.

Statement, p. 49. When the voting was computed under this methodology (as opposed to the methodology Pfizer and Quigley were hoping for), the Plan failed to garner sufficient votes. Id.

2. Pfizer "fixes" the Plan in order to "win the vote"

Once it became clear that Pfizer had lost the vote, Pfizer decided to "waive" the requirement in the Pfizer Claimant Settlement Agreements that called for the Settling Plaintiffs to reduce their claim against Quigley by a factor of 90% – a change which was done to enable Pfizer to "get the vote." See Greenspan Depo., 62:10-64:16.[8] As a result, Pfizer's bankruptcy scheme now affords two payments to those claimants whom Pfizer targeted for a pre-petition settlement (mainly represented by law firms with historically low settlement averages), while limiting all other claimants (*i.e.,* claimants represented by law firms with historically high settlement averages) to a single payment. See, Memorandum Decision Concerning Classification and Treatment of Asbestos Personal Injury Claims, dated October 23, 2007 (Docket No. 1245), 377 B.R. 110 (Bankr. S.D.N.Y. 2007). The Bankruptcy Court found that while the Plan structure raised several confirmation issues, the proposed classification and treatment scheme did not warrant refusing to approve the Disclosure Statement. Id. (finding equal treatment 'under the plan' by ignoring the $450 million pre-petition payments, despite finding that "the plan was a central feature of the prepetition settlement negotiations"); but see In re Combustion Eng'g, Inc., 391 F.3d 190, 242 (3d Cir. 2004) (when assessing equality among creditors, entire bankruptcy scheme must be considered); In re Congoleum Corp., 362 B.R. 167, 185 (D.N.J. 2007) (same).

[8] Incredibly, Quigley's Board was at a loss to explain the financial impact of this decision on "its" Plan. See, e.g., Street Depo., 207:19 – 208:17 (Mr. Street was unable to say whether the financial impact was more or less than $100 million); Raeburn Deposition, 20:23 – 22:19, 34:22 – 35:6. Indeed, Mr. Street testified that he believed the decision to eliminate the 90% reduction had been made by the Settling Plaintiffs. See Street Depo., 204:12 – 207:18. However, it is worth noting that Quigley originally took the absurd position that the total impact was approximately $18 million. See Fifth Amended Disclosure Statement, filed May 18, 2007. Of course, this lack of concern over a vital element of the Plan is not at all surprising given the testimony of Quigley's President that he is willing to confirm a plan "over the objection of anybody." See Street Depo., 313:4 – 314:7.

C. The modification of the Preliminary Injunction

As all of this was transpiring, it became clear that the Preliminary Injunction that had issued in December of 2004 amidst promises of a quick resolution needed to be re-examined, particularly as it related to the scope of protection being offered to Pfizer and an Amended Injunction was issued which, in defining its reach, simply tracked the language from 524(g) itself. See Disclosure Statement, p. 51.[9] Soon after the issuance of the Amended Injunction, the Angelos Firm re-filed a number of cases against Pfizer that had been previously withdrawn. These claims alleged that Pfizer was a manufacturer and/or distributor of Insulag, an asbestos-containing product (the "Direct Pfizer Insulag Claims"), which resulted in Pfizer owing an independent duty to the individuals who used and, in many cases, were harmed by the product – such as those mesothelioma victims who have been suffering and dying while Pfizer avoids answering for its conduct. Id.

Pfizer sought relief from the Bankruptcy Court, arguing that the Amended Injunction barred any claims against it for Insulag exposure. See Disclosure Statement, p. 51. The Bankruptcy Court subsequently issued a Clarifying Order, holding that Direct Pfizer Insulag Claims based on Section 400 of the Restatement were within the scope of the Amended Injunction and, thus, enjoined. See In re Quigley Co., Inc., 2008 Bankr. LEXIS 1565, at *8 n. 2 (Bankr. S.D.N.Y. May 15, 2008).[10]

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[9] It is important to keep in mind the types of claims that can be and/or have been asserted against Pfizer. Some claims have been asserted against Pfizer based upon the actions of Quigley simply because Pfizer was the corporate parent, or alleged alter-ego, of Quigley ("Derivative Pfizer Claims"), while others are based upon Pfizer's own actions and/or conduct in the manufacture, sale and/or distribution of asbestos-related products and materials ("Direct Pfizer Claims"). Some of these claims relate to asbestos products Pfizer was involved with that have no connection to Quigley, such as Kilnoise and Firex. Pfizer has conceded that claims relating to these products cannot be channeled into any proposed 524(g) trust and that the Amended Injunction does not extend to such claims.

[10] This decision is subject to appellate papers presently pending in the District Court.

D. Prior proceedings relating to withdrawal of the reference

On April 19 2006, Quigley and Pfizer filed a motion (the "Quigley/Pfizer Withdrawal Motion"), requesting that the District Court partially withdraw the reference of the case from the Bankruptcy Court to the District Court and proposing that the Bankruptcy Court and the District Court preside jointly over the confirmation hearing on Quigley's plan of reorganization. See Disclosure Statement, p. 51. On May 3, 2006, certain insurance companies filed an objection to the Quigley/Pfizer Withdrawal Motion. See id.

On August 10, 2006, the District Court ordered the parties to the Quigley/Pfizer Withdrawal Motion to confer and advise the District Court on the status of the proceeding. See id. Quigley advised the District Court that the proceedings on the Asbestos PI Claims Estimation Decision, the Estimation Reconsideration Motion, and later the proceedings to determine whether holders of Class 4 Asbestos PI Claims accepted the Third Amended Plan under the Estimation Decision were still pending. See id. Quigley requested that the District Court hold the Motion to Partially Withdraw the Reference in abeyance pending the outcome of those proceedings, and the District Court approved Quigley's request. See id. Quigley and Pfizer later advised the District Court on January 16, 2007, that Quigley intended to submit a modified plan to the Bankruptcy Court, and requested that the District Court continue to hold the motion in abeyance pending that submission. See id. The District Court ordered on January 22, 2007, that the Quigley/Pfizer Withdrawal Motion would be deemed withdrawn, subject to reinstatement at the appropriate time. See id.

ARGUMENT

The District Court should partially withdraw the reference of Quigley's Chapter 11 case and concurrently preside with the Bankruptcy Court over the confirmation hearing. The Ad Hoc Committee does not lightly request that the District Court use its limited and valuable time and

resources to co-preside over this confirmation hearing; however, the myriad of detailed factual issues that will need to be assessed in determining whether Pfizer's scheme can pass judicial muster can best be done in the context of viewing live witnesses. Given the thousands of sick and dying victims who will be impacted by any final determination made in this case and the extraordinary judicial relief being sought by non-debtor (and fully solvent) Pfizer, a partial withdrawal of the reference is not only the best, but also the most efficient, manner of assessing the appropriateness of the proposed § 524(g) injunction.

Section 157(d) allows for the district court to "withdraw, in whole or in part, any case or proceeding referred under this section … for cause shown." Although "cause" is not defined, "district courts consider whether the claim is core or non-core, whether it is legal or equitable, and considerations of efficiency, prevention of forum shopping, and uniformity in the administration of bankruptcy law." See In re Northwest Airlines Corp., 384 B.R. 51, 56 (S.D.N.Y. 2008) (citing In re Orion Pictures Corp., 4 F.3d 1095, 1101 (2d Cir. 1993)). In the Second Circuit, the determination of whether a proceeding should be withdrawn principally turns on issues of judicial efficiency and economy. See Orion Pictures, 4 F.3d at 1101 (2d Cir. 1993); Enron Power Mktg., Inc. v. City of Santa Clara (In re Enron Power Mktg., Inc.), 2003 U.S. Dist. LEXIS 189, at *20 (S.D.N.Y. Jan. 8, 2003).

The District Court should grant this Motion because: (1) a district court must "issue or affirm" the confirmation of a Section 524(g) injunction (2) that decision requires a heightened understanding of the myriad of factual issues that will be raised at confirmation; and (3) considerations of efficiency and judicial economy warrant such a partial withdrawal of reference.

A. Partial Withdrawal Of The Reference Is Warranted Because The District Court Must Issue Or Affirm An Order Confirming A Plan Of Reorganization Containing A § 524(g) Injunction.

Section 524(g) states, in relevant part:

> If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization **was issued or affirmed by the district court that has jurisdiction over the reorganization case**, then after the time for appeal of the order that issues or affirms the plan—
>
> (i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6).

11 U.S.C. § 524(g)(3)(A) (emphasis added).

Here, the Proposed Plan seeks to implement an (overbroad) injunction pursuant to Bankruptcy Code Section 524(g), mandating that all present holders of asbestos personal injury claims and all future holders of asbestos personal injury demands look only to a newly created trust for relief. Because of Section 524(g)(3)(A)'s requirement, courts in other cases have withdrawn the reference where the plan of reorganization sought to implement a Section 524(g) injunction. See In re Keene Corp., Case No. 96-3492 (S.D.N.Y. 1996) (Order Withdrawing the Reference, dated June 12, 1996); In re Burns & Roe Enters., Inc., 2008 WL 4280099, at *1 (D. N.J. Sept. 15, 2008) (partially withdrawing the reference where plan sought to impose a Section 524(g) injunction); In re JT Thorpe Co., 2003 WL 23354129, at *1 (Bankr. S.D. Tex. Jan. 30, 2003) (partially withdrawing the reference because proposed plan requested relief under § 524(g)); In re Rutland Fire Clay Co., Case No. 99-11390 (Bankr. D. Vt. 2000) (Order Withdrawing the Reference, dated Sept. 7, 2000).

As those courts did, and in the interests of judicial economy, the District Court here should partially withdraw the reference in order to conduct a joint hearing with the Bankruptcy Court on the Proposed Plan.

B. The Interests of Judicial Economy And Efficiency Require That The District Court Preside Jointly With The Bankruptcy Court Over The Confirmation Hearing On The Proposed Plan.

Not only is withdrawal of the reference warranted in light of Section 524(g)(3)(A)'s "issue or affirm" requirement, the interests of judicial efficiency and asset preservation weigh

heavily in favor of a partial withdrawal of the reference to permit the District Court and Bankruptcy Court to jointly preside over the confirmation hearing.

Several courts addressing this situation have partially withdrawn the reference in order to jointly preside over a confirmation hearing with the bankruptcy court where the case involves a proposed § 524(g) injunction.[11] See, e.g., In re Keene Corp., Case No. 96-3492 (S.D.N.Y. 1996); In re JT Thorpe Co., 2003 WL 23354129, at *1 (Bankr. S.D. Tex. Jan. 30, 2003); In re Rutland Fire Clay Co., Case No. 99-11390 (Bankr. D. Vt. 2000). Recently, the court in In re Burns & Roe Enters., Inc. granted the debtors' motion to partially withdraw the reference and ordered that the bankruptcy court sit with the district court at the confirmation hearing "due to the Bankruptcy Judge's prior experience and knowledge of this matter" and because withdrawal of the reference would "promote the efficient administration of the matter." See 2008 WL 4280099, at *1 (D.N.J. Sept. 15, 2008). In so holding, the court expressly rejected the argument raised by two insurance companies that the joint confirmation hearing would amount to an inappropriate "shared jurisdiction" by the two courts, concluding that the insurers had failed to point to any authority for their argument. See id.

Significantly, Section 524(g) requires the Bankruptcy Court and District Court to make numerous findings in regards to the trust and Quigley itself in order to confirm the Proposed Plan, including the following:

> (1) the trust must assume Quigley's personal injury, wrongful death, or property damage liabilities caused by the presence of, or exposure to, asbestos products;
>
> (2) the trust is funded by Quigley's securities and by its obligation to make future payments;

[11] In addition, some courts not withdrawing the reference have nevertheless conducted a joint confirmation hearing with the bankruptcy court where the proposed plan of reorganization includes a § 524(g) injunction. See In re M.H. Detrick Co., Case No. 02-00301 (N.D. Ill. 2002) (Confirmation Order, dated Aug. 21, 2002); In re Eagle-Picher Industries, Inc., 203 B.R. 256, 259 (S.D. Ohio 1996).

> (3) the trust owns, or is entitled to own if specified contingencies occur, a majority of the voting shares of Quigley;
>
> (4) the trust is to use its assets or income to pay claims and demands;
>
> (5) Quigley is likely to be subject to substantial future demands for payment, which are unknown as to amount, number, and timing, and which threaten the plan's purpose to deal equitably with claims and future demands;
>
> (6) the terms of the Section 524(g) injunction are set forth in the plan of reorganization and disclosure statement;
>
> (7) at least 75% of the class of asbestos personal injury claimants casting votes elect to approve the plan;
>
> (8) reasonable assurance exists that the trust will value and pay present claims and future demands that involve similar claims in substantially the same manner; and
>
> (9) a legal representative has been appointed to protect the holders of future demands; and
>
> (10) the protections of the 524(g) injunction are fair and equitable to holders of future demands in light of the benefits to be provided to the trust.

See §§ 524(g)(2)(B)(i)(I)-(IV), (ii)(I)-(V); 524(g)(4)(B)(i)-(ii).

The foregoing findings, among others required by Section 1129, will require extensive judicial time as well as the expenditure of time by all parties in interest. It would be unnecessarily time-consuming, duplicative, and expensive to hold a confirmation hearing in front of the Bankruptcy Court only to then repeat the process to allow the District Court to draw its own conclusions as required by Section 524(g)(3)(A). Especially under the circumstances of this case – where the Ad Hoc Committee has raised myriad objections to the channeling injunction contemplated by the Proposed Plan – it is a waste of judicial resources to comprehensively litigate the same issues on two separate occasions. Therefore, the Ad Hoc Committee submits that a joint confirmation hearing would be in the best interest of the estate and all parties in interest.

RESERVATION OF RIGHTS

The Ad Hoc Committee respectfully reserves all rights, including the right to supplement or modify this Motion.

WHEREFORE, the Ad Hoc Committee respectfully requests that the District Court grant the Motion, partially withdraw the reference and concurrently preside over the confirmation hearing with the Bankruptcy Court, and grant the Ad Hoc Committee such other and further relief as is just and proper.

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