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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re QUIGLEY COMPANY, INC., Debtor.	Chapter 11 Case No. 04-15739 (SMB) Civil Action No. 1:09-cv-00117 (CM) (DFE)

RESPONSE OF QUIGLEY COMPANY, INC. OPPOSING MOTION OF AD HOC COMMITTEE OF TORT LAWYERS FOR ORDER PARTIALLY WITHDRAWING REFERENCE

Quigley Company, Inc. ("Quigley"), debtor and debtor in possession, submits this response (the "Objection") opposing the motion of the Ad Hoc Committee of Tort Lawyers (the "AHC"), filed in the bankruptcy court on January 6, 2009 (Docket No. 1),[1] seeking to withdraw the reference in the above-captioned bankruptcy case (the "Bankruptcy Case") to allow this Court to preside simultaneously with the bankruptcy court over the hearing to confirm Quigley's Fourth Amended and Restated Plan of Reorganization (Bankr. Docket No. 1380) (the "Plan").[2]

[1] Unless noted otherwise, references to the docket are to the district court's docket. The bankruptcy court's docket will be referenced "Bankr. Docket No. __."

[2] This Objection relies on the Affidavit of Michael L. Cook, sworn to January 21, 2008 (the "Cook Aff."), a copy of which is attached to this Objection as Exhibit A.

PRELIMINARY STATEMENT

1. Quigley and its parent, Pfizer Inc. ("Pfizer"), previously moved on April 19, 2006, seeking partial withdrawal of the reference of the Bankruptcy Case to allow the district court to preside over Quigley's plan confirmation hearing concurrently with the bankruptcy court and issue an order confirming Quigley's Plan (the "Original Motion"). The Original Motion was assigned to U.S. District Court Judge Loretta A. Preska (Case No. 06 CV 03077 (LAP)) in 2006. The AHC took no position on the issue. After several of Quigley's insurers objected in response, Judge Preska consulted with the bankruptcy court (Bernstein, C.J.) in April 2008, and referred the Original Motion to Judge Bernstein for a conference with all parties. As Judge Preska directed, Quigley, the objecting insurers, and the AHC participated in a hearing in open court with Judge Bernstein on May 23, 2008. By this time, the insurers had convinced Quigley and Pfizer. The bankruptcy court determined, on the basis of comments by all concerned, to proceed with the confirmation hearing alone and allow the parties to argue all other issues in the district court on appeal. The AHC's counsel never challenged the bankruptcy court's ultimate determination at the May 23rd hearing. The matter resolved, Quigley and Pfizer formally withdrew the Original Motion, although Judge Preska had deemed it withdrawn on January 22, 2007.

2. Despite this apparent resolution, the AHC inexplicably moved in the bankruptcy court on January 6, 2009, again seeking to withdraw the reference in the Bankruptcy Case to allow this Court to preside simultaneously with the bankruptcy court at the confirmation hearing (the "Second Motion"). The Second Motion thus seeks identical relief to the Original Motion, and its timing is significant. Creditors have now overwhelmingly accepted Quigley's Plan (86% in number, and 81% in amount) despite the AHC's 120 page objection to the Plan.

The bankruptcy court entered a scheduling order providing for a confirmation hearing late in March, 2008, and has denied the AHC's motions to derail and delay confirmation of the Plan.

Quigley's Bankruptcy Case

3. Quigley commenced its chapter 11 case under title 11 of the United States Code (the "Code") on September 3, 2004 (the "Petition Date"). The huge costs and expenses associated with the defense of hundreds of thousands of asbestos personal injury claims drove Quigley's seeking bankruptcy relief.

4. Quigley filed the Plan and its fifth amended and restated disclosure statement with respect to the Plan (Bankr. Docket No. 1379) (the "Disclosure Statement") on March 28, 2008. Quigley's creditors overwhelmingly voted to accept the Plan in June 2008 (over 86% (220,129) representing about 81% ($3,023,208,500) in dollar amount). A confirmation hearing on the Plan is scheduled to commence in the bankruptcy court after March 16, 2009.[3]

5. The Plan provides for, among other things, prompt cash distributions to claimants and a permanent channeling injunction under Code § 524(g), enjoining all present and future asbestos personal injury claimants from suing, on account of Quigley-related asbestos claims, Quigley, Pfizer, various settling insurance companies, and certain other entities identified in the Plan. Any order confirming a reorganization plan with a Code § 524(g) injunction must be either "issued or affirmed by the district court." 11 U.S.C. § 524(g)(3)(A) (emphasis added).

Neither the Law Nor the Facts Require this Court to Preside at the Confirmation Hearing.

6. Quigley objects to the Second Motion because the relief the AHC belatedly requests has already been raised, litigated, and resolved. Moreover, neither the law nor

[3] See Amended Scheduling Order, dated January 7, 2009 (Bankr. Docket No. 1671).

the facts of this Bankruptcy Case require the district court to preside at the confirmation hearing. Specifically, Code § 524(g) does not require the district court to issue the confirmation order. The district court need only "affirm" the confirmation order under Code § 524(g) for the channeling injunction to be valid and enforceable. Affirming the order does not require the district court to participate in the confirmation hearing. A second judge's presiding at the confirmation hearing is inefficient and a waste of valuable judicial resources.

The AHC's Litigious Tactics

7. The AHC's Second Motion is yet another of its vexatious litigation tactics.[4] At a December 2, 2008 hearing, Judge Bernstein noted: "This is one of the most litigious bankruptcy cases I've ever seen in fifteen years. You can fight for an [hour] over an adjournment." Cook Aff, at ¶ 13. No other explanation exists for why the AHC would ask this Court to indulge a motion that has already been disposed of by two other judges (Judges Preska and Bernstein). Indeed, the AHC never mentions in the Second Motion, Judge Preska's recommendation of the May 23, 2008 conference, or the resolution obtained there. The AHC also neglects to mention in the Civil Cover Sheet filed with the Second Motion that a similar matter had been filed in this district and that Judge Preska had been previously assigned to hear it. The result: this Court is asked to consider an issue that has already been resolved. The AHC is thus wasting the time and resources of this Court, Quigley, and other interested parties. For these reasons, the Court should deny the Second Motion.

[4] The AHC has generated waves of litigation, including repeated requests for document production; three motions to compel discovery filed in a two-month period; repeat deposition notices of every Quigley officer and director; an unprosecuted motion to appoint a chapter 11 trustee; an unsuccessful motion to appoint a second future claims representative; an unsuccessful objection to Quigley's exclusive right to file and solicit a plan; multiple unsuccessful objections to voting procedures; and an unsuccessful objection to Quigley's extension of its office lease. Cook Aff., at ¶ 13.

FACTUAL BACKGROUND

Pre-Bankruptcy Quigley Asbestos Personal Injury Liability

8. Quigley had been engaged in the refractories business prior to 1992. Disclosure Statement, at 20. It developed, produced and marketed a broad range of refractories and related products to various industries, including the iron, steel and glass industries. Id. Certain of the products manufactured and sold by Quigley contained asbestos. Id. Quigley became a wholly-owned subsidiary of Pfizer on August 25, 1968, and remains so today. Id.

9. In September 1992, Quigley exited the refractories business, and sold its business to Minteq International, Inc., which acquired substantially all of Quigley's assets and assumed certain of Quigley's liabilities. Id. Quigley, however, retained all of its liabilities stemming from products it sold prior to the sale of the business, including its liabilities for present personal injury claims and future personal injury demands allegedly arising from exposure to asbestos, asbestos-containing products, silica or silica-containing products formerly made, used or sold by Quigley. Id.

10. Quigley was first named as a defendant in asbestos-related personal injury claims in 1979 or 1980. Id. at 21. Although Quigley ceased manufacturing any products containing asbestos in the 1970s and closed its refractories business in 1992, 411,100 asbestos personal injury claims in approximately 131,500 civil actions have been brought in federal and state courts throughout the United States. Id. As of the Petition Date, there were approximately 212,000 asbestos bodily injury claims pending against Quigley. Id. At the time of Quigley's chapter 11 filing, Quigley's principal business included (i) managing the defense and resolution of these claims, and (ii) realizing on the various insurance policies available to satisfy these claims. Id.

11. Quigley commenced the Bankruptcy Case to conserve its remaining insurance assets and to afford it the opportunity to formulate a chapter 11 reorganization plan that would satisfy the requirements of Code § 524(g), treating all present and future claimants fairly and equitably. Id. at 41.

Quigley's Bankruptcy Case

12. Quigley commenced the Bankruptcy Case on the Petition Date. Id. Quigley continues to operate its business and manage its properties as a debtor in possession pursuant to Code §§ 1107(a) and 1108. Id.

13. The United States Trustee appointed a creditors' committee in the Bankruptcy Case on September 21, 2004. Id. at 42. No trustee or examiner has been appointed.

14. The bankruptcy court entered an order on September 27, 2004, appointing Albert Togut to serve in the Bankruptcy Case as the representative of holders of future asbestos personal injury demands against Quigley. Id.

The Plan and Code § 524(g) Channeling Injunction

15. Quigley filed the Plan on March 28, 2008 (Bankr. Docket No. 1380). The Plan resolves all of Quigley's liability for past, present and future Asbestos PI Claims (as defined in the Plan). Under the Plan, Asbestos PI Claims will be channeled to a trust that will be established on the Plan effective date. Code § 524(g)(3)(A) requires the district court either to "issue or affirm" the channeling injunction.

16. The bankruptcy court approved Quigley's disclosure statement and proposed solicitation materials on March 28, 2008. Quigley commenced solicitation of votes on the Plan on April 7, 2008. The deadline for creditors to accept or reject the Plan was June 10, 2008, and Quigley's creditors overwhelmingly accepted the Plan in June 2008 (over 86%

(220,129) representing about 81% ($3,023,208,500) in dollar amount). See Declaration of Brad Daniel on Behalf of BMC Group, Inc., as Tabulation Agent, Regarding Quigley's Plan, at 4-5 (Bankr. Docket No. 1525).

Original Motion to Withdraw the Reference

17. The AHC's request to withdraw the reference has already been raised, litigated, and resolved. Quigley and Pfizer filed the Original Motion long before the AHC filed the Second Motion, and the Original Motion was assigned to District Judge Preska. Cook Aff., at ¶ 2. The Original Motion sought the same relief as the AHC now seeks in the Second Motion: it wants the district court to preside over Quigley's plan confirmation hearing concurrently with the bankruptcy court. Cook Aff., at ¶¶ 2, 10.

18. Quigley's insurers objected to the Original Motion. Century Indemnity Company, Insurance Company of North America, Highlands Insurance Company, Westchester Fire Insurance Company, Central National Insurance Company of Omaha, through its managing general agent Cravens Dargan & Co., Pacific Coast, and Motor Vehicle Casualty Company through its managing general agent Cravens Dargan & Co., Pacific Coast (collectively, the "ACE Insurers") objected to Quigley's motion to withdraw the reference on May 3, 2006. Cook Aff., at ¶ 3. Quigley and Pfizer responded to the ACE Insurers' objection on May 10 and, on May 11, 2006 the ACE Insurers requested oral argument. Id. First State Insurance Company, Hartford Accident and Indemnity Company, New England Insurance Company, and Twin City Fire Insurance Company (collectively, the "Hartford Insurers") joined in the ACE Insurers' objection on July 10, 2006, and Continental Casualty Company and the Continental Insurance Company (together, "CNA") joined in the ACE Insurers' objection on July 19, 2006. Id. OneBeacon America Insurance Company joined in the other parties' objections on March 27, 2008. Id.

19. Despite having been served with the Original Motion, the AHC never joined or otherwise responded to the Original Motion. Cook Aff., at ¶ 4.

20. While Quigley and other parties in interest worked to modify Quigley's previously filed plan of reorganization and to resolve issues over that plan, Quigley and Pfizer asked Judge Preska to hold the Original Motion in abeyance pending Quigley's submission of the modified plan to the bankruptcy court. Cook Aff., at ¶ 5. Judge Preska, by letter endorsement, dated January 22, 2007, granted Quigley and Pfizer's request: "The April 19, 2006 motion of Quigley seeking partial withdrawal of the reference [dkt. No 1] is deemed withdrawn, subject to reinstatement by letter at the appropriate time." Id.

21. Because of other developments in the Bankruptcy Case, no further action was taken by Quigley or Pfizer as to the Original Motion until March 27, 2008, when in response to a March 11, 2008 district court order requesting a status report, Quigley asked the district court for a chambers conference to discuss the appropriate procedure for resolving the motion. Cook Aff., at ¶ 6. A chambers conference was scheduled for April 30, 2008 with Judge Preska, but she later referred the matter to Judge Bernstein. Cook Aff., at ¶ 7. By order dated April 28, 2008, Judge Preska cancelled the April 30th conference "after conferring with Judge Bernstein" and ordered Judge Bernstein to "schedule a conference with the parties to receive their proposals as to the most efficient way to resolve these proceedings." Id.

22. Quigley and Pfizer conferred with counsel for the ACE Insurers, the Hartford Insurers, CNA, and OneBeacon. As directed, Judge Bernstein held a hearing in open court on May 23, 2008 (the "May 23rd Hearing") to resolve how the confirmation hearing would proceed. Cook Aff., at ¶ 8. The AHC appeared at the May 23rd Hearing by its counsel, who actively participated. Id.

23. Quigley told the bankruptcy court on May 23 that Quigley and Pfizer, after discussions with other parties in interest, were willing to have the bankruptcy court conduct the entire plan confirmation hearing, with any party having the right to appeal from an adverse ruling. Cook Aff., at ¶ 9. The Court agreed that this would be an efficient method for proceeding with confirmation: "It just sounds like the easiest thing may be for me to try everything and then you can argue about what's subject [to the] clearly erroneous [rule] and what's de novo . . . up in the district court." Id. Counsel for the AHC (Mr. Weisfelner) even agreed that this procedure would be the most efficient:

> MR. WEISFELNER: . . . I think Your Honor's expertise and knowledge of the case and its background would probably be very useful to the district court. In that regard, I sort of see, . . . the benefit of having Your Honor and Judge Presca [sic] presiding, but --
>
> THE COURT: Yea, but in a multi-day trial, it's just -- it's really not a very efficient way. I mean, another possibility is for me to simply do it and then you can argue before the district court what's a recommendation and what's, you know, what I heard and determined and what I reported and recommended.
>
> MR. WEISFELNER: Right.
>
> THE COURT: Which has been done, I know, in other cases.

Id. The matter resolved, Judge Preska signed an order on October 16, 2008, acknowledging Quigley's withdrawal of the Original Motion. Id.

Second Motion to Withdraw the Reference

24. Despite consensual resolution, the AHC, while pursuing other vexatious litigation tactics in the Bankruptcy Case, filed the Second Motion, seeking the same relief Quigley requested in the Original Motion more than two years ago. Cook Aff., at ¶ 2, 10. In short, the AHC seeks to renew resolved issues in order to derail the confirmation hearing.

25. Further, the Motion is merely an attempt to re-litigate the matter before a different judge, a tactic also known as "forum shopping." The AHC renewed the request to withdraw the reference at a hearing before the bankruptcy court on October 21, 2008 -- five months after the May 23rd Hearing -- and raised the issue of a separate U.S. district judge hearing the issue:

> MR. WEISFELNER: . . . on the issue of how this case ultimately gets tried, Your Honor will recall that once upon a time the debtor filed a motion for partial withdrawal of the reference.
>
> THE COURT: At my urging.
>
> MR. WEISFELNER: . . . As we consider the sort of issues that may be tried if we get to a confirmation hearing in March, we become more and more convinced that maybe the thing ought to be tried the way the Keane (phonetic) case was tried and the way the debtor originally suggested.
> We will consult with the debtor on this issue before we move forward.
>
> THE COURT: Okay. I -- actually, I got an inquiry from Judge Preska in terms of what was happening because that motion had not been closed or whatever in the district court. It turns out she had endorsed a memo I think back in January of 2007 or endorsed a letter deeming the motion withdrawn.
> So my understanding is there is no motion pending. If you think that the reference should be withdrawn, I think you're going to have to make a motion.
>
> MR. WEISFELNER: . . . And then the concern is whether or not we would refer it to the same judge that's got the appeal, or whether it goes into the wheel or --
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> THE COURT: That's up to the district court.
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> MR. WEISFELNER: Understood. . . .

Cook Aff., at ¶ 11. The AHC was thus concerned whether the Second Motion would be heard by Judge Preska.

26. In a further attempt to have a different judge hear the Motion, the AHC hid from this Court the fact that the relief the AHC requests in the Motion had already been before Judge Preska and resolved by the bankruptcy court at Judge Preska's direction. On the Civil Cover Sheet filed with the Second Motion, the AHC misrepresents that this or a similar case has not previously been filed in the district court at any time. Cook Aff., at ¶ 12. The AHC also failed to mention that Judge Preska had previously been assigned to hear the issue. Id.

27. Nowhere in the Second Motion does the AHC mention Judge Preska's referral of the Original Motion to the bankruptcy court for a hearing or the resolution of the issue at the May 23rd Hearing. Instead, the AHC devotes eleven pages of the Second Motion to describing issues having nothing to do with whether this Court should partially withdraw the reference to address Code § 524(g)(3)(A) and concurrently preside with the bankruptcy court over the confirmation hearing. The AHC has raised and argued these issues on numerous occasions in the history of the Bankruptcy Case and is merely seeking to involve any tribunal that will listen.

OBJECTION

I. Partial Withdrawal of the Reference for the Confirmation Hearing Has Already Been Resolved.

28. As described above, the bankruptcy court, Quigley, and the insurers objecting to the Original Motion all agreed that the bankruptcy court could conduct the entire confirmation hearing without the district court's simultaneous participation. The AHC actively participated in the May 23rd Hearing and acquiesced on the record that in a multi-day, contested confirmation hearing, concurrent participation by the bankruptcy and district courts is not an efficient way to conduct the confirmation hearing. Cook Aff., at ¶ 9. When the bankruptcy court suggested that it could conduct the confirmation hearing and then the AHC could "argue before

the district court . . . what [the bankruptcy court] heard and determined and what [the bankruptcy court] reported and recommended," the AHC's attorney did not challenge the proposal. Id. Instead, he merely acknowledged the bankruptcy court's suggestion. Id. Moreover, the AHC was served with the Original Motion, but it never responded. Cook Aff., at ¶ 4.

29. Absent any filing by the AHC and with its counsel's acquiescence, the bankruptcy court stated at the May 23rd Hearing that "the easiest thing may be for me to try everything and then [the parties] can argue about what's subject [to the] clearly erroneous [rule] and what's de novo up in the district court." Cook Aff., at ¶ 9. The bankruptcy court held the May 23rd Hearing after consulting with Judge Preska. Id., at ¶ 7. Following the bankruptcy court's stated willingness to conduct the confirmation hearing without the district court, Judge Preska signed an order on October 16, 2008 acknowledging Quigley's withdrawal of the Original Motion. Id., at ¶ 9. The issue of whether the district court would partially withdraw the reference as to the confirmation hearing was thus resolved.

30. Despite this resolution, the AHC unilaterally filed the Second Motion renewing the request to withdraw the reference for the confirmation hearing. In doing so, the AHC failed to disclose on the Civil Cover Sheet that the issue had previously been before Judge Preska. Cook Aff., at ¶ 12. This disclosure failure, coupled with the AHC's explicit concern at the October 21st hearing before Judge Bernstein as to which district court judge would hear the Second Motion, shows that the AHC is trying to have another judge consider partially withdrawing the reference and presiding over confirmation. This tactic undermines judicial economy, wastes judicial resources, and needlessly imposes additional litigation expense on Quigley, its estate, its creditors, and other interested parties.

II. Neither the Law nor the Facts Require the District Court to Preside at the Confirmation Hearing.

A. Code § 524(g) Allows the District Court to "Issue or Affirm" a Channeling Injunction.

31. Code § 524(g)(3)(A) provides:

> 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 . . .

11 U.S.C. § 524(g)(3)(A) (emphasis added). The statute is plain: if the district court either issues or affirms the order confirming a plan with a 524(g) channeling injunction, the injunction will be valid and enforceable. Section 524(g)(3)(A) does not require the district court to consider confirmation of the Plan simultaneously with the bankruptcy court or that the district court even issue the confirmation order. Simply affirming the confirmation order meets the statute's requirements.

32. The AHC failed to show why the district court must hear live testimony simultaneously with the bankruptcy court at the confirmation hearing. Instead, it cites cases in which other courts have withdrawn the reference for confirmation of plans seeking to implement a section 524(g) injunction, but withdrawing the reference is not mandatory. In other cases, bankruptcy courts have conducted the confirmation hearing alone with the district court merely affirming the 524(g) injunction. E.g., In re Western Asbestos Company, No. CV 03-00989, 2003 WL 23741861, at *1 (N.D. Cal. Sept. 25, 2003) (reorganization plan provided for § 524(g) injunction; bankruptcy court issued report to district court recommending that bankruptcy and district courts concurrently hear issues of law in connection with confirmation; held, district court declined to withdraw reference); In re Mid-Valley, Inc., No. 03-35592 (Bankr. W.D. Pa.)

(bankruptcy court alone issued and approved channeling injunction in confirmation order; district court subsequently issued order affirming confirmation order pursuant to 11 U.S.C. § 524(g)(3)(A) (Docket No. 1736)). The bankruptcy court even acknowledged at the May 23rd Hearing that this method for confirming a plan with a section 524(g) injunction "has been done . . . in other cases." Cook Aff., at ¶ 9. Two judges sitting simultaneously are thus unnecessary and not required.

B. Judicial Economy Requires the Bankruptcy Court to Conduct the Confirmation Hearing.

33. Judicial economy is a primary reason for the bankruptcy court's conducting the confirmation hearing by itself. 28 U.S.C. § 157(d) directs district courts to evaluate whether cause exists to withdraw the reference. 28 U.S.C. § 157(d) ("The district court may withdraw, in whole or in part, any case or proceeding referred to it under this section . . . for cause shown."). The Second Circuit has held that "a district court considering whether to withdraw the reference should first evaluate whether the claim is core or non-core, since it is upon this issue that questions of efficiency and uniformity will turn." Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4.F.3d 1095, 1101 (2d Cir. 1993). The Orion court observed that "hearing core matters in a district court could be an inefficient allocation of judicial resources given that the bankruptcy court generally will be more familiar with the facts and issues." Id. The hearing on confirmation of Quigley's Plan is a core matter. 28 U.S.C. § 157(b)(2)(L) ("Core matters include . . . confirmations of plans"). The bankruptcy court is thus the best forum for the confirmation hearing.

34. Once the district court determines that a matter is core, among the criteria it should consider are the efficient use of judicial resources, delays and costs to the parties. Id. Judicial economy mandates the bankruptcy court's conducting the confirmation hearing alone.

Given the amount of litigation in the Bankruptcy Case to date and the objections parties have made to confirmation, Quigley expects that the confirmation hearing will be heavily contested and lengthy. Many issues will be presented at confirmation, including, among others, Quigley and Pfizer's good faith in proposing the Plan; the Plan's feasibility; and whether the Plan is in best interest of Quigley's creditors.[5] These issues are irrelevant to issues under Code § 524(g), and must be resolved in Quigley's favor before any consideration of § 524(g) issues. 11 U.S.C. § 524(g)(1)(A) (" . . . a court that enters an order confirming a plan . . . may issue, in connection with such order, an injunction . . . "). Litigation of these confirmation issues, however, will take time. The bankruptcy court is competent to hear and adjudicate them -- without the district court. See 28 U.S.C. § 157(b)(2)(L) ("Bankruptcy judges may hear and determine . . . all core proceedings arising under title 11, or arising in a case under title 11, and may enter appropriate orders and judgments . . . Core proceedings include . . . confirmations of plans"). Because many issues will be presented at confirmation having nothing to do with the injunction under Code § 524(g), the district court will not need to preside over these proceedings simultaneously with the bankruptcy court. Indeed, nothing in the Code requires the district court to preside over the confirmation hearing in the first place.

35. Reviewing the alternatives in the context of judicial economy shows that the bankruptcy court presiding over the confirmation hearing alone is the most efficient way to proceed. If the bankruptcy court confirms the Plan, Quigley intends to ask the district court to affirm the confirmation order pursuant Code § 524(g)(3)(A). See In re Mid-Valley, Inc., No. 03-35592 (Bankr. W.D. Pa. Jul. 27, 2004) (district court issued two-page order pursuant to 11

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[5] Parties have already made motions and objections regarding these issues, unrelated to Code § 524(g). E.g., Motion of the AHC, dated May 2, 2007, for appointment of a trustee (Bankr. Docket No. 1075); Motion of the United States Trustee (the "UST"), dated May 11, 2007, to convert case to Chapter 7 or dismissing the case (Bankr.

U.S.C. § 524(g)(3)(A) affirming confirmation order issued by bankruptcy court alone (Docket No. 1736)). If, however, a party appeals from the confirmation order, the district court will only need to consider the issues presented on appeal. In either case, the district court will not need to spend time considering issues that the bankruptcy court is competent to hear and adjudicate.

C. The AHC Fails to Support its Argument About a Heightened Understanding of Factual Issues.

36. The AHC asserts that the Court should grant the Second Motion because the decision to "issue or affirm" the confirmation of a section 524(g) injunction "requires a heightened understanding of the myriad of factual issues that will be raised at confirmation." Second Motion, at 15. Whatever this statement may mean, it hardly constitutes "cause" under 28 U.S.C. § 157(d) (discretionary withdrawal) and Orion, 4 F.3d at 1101-02 (withdrawal of non-core proceeding when defendant entitled to jury trial). The AHC, moreover, cites no legal authority to support its fuzzy argument, and fails to explain why or how the decision to issue or affirm a section 524(g) injunction requires a "heightened understanding" of factual issues by two judges sitting concurrently. The bankruptcy court has a thorough understanding of the factual issues that will be raised at confirmation and is competent to determine whether the Plan and channeling injunction meet the requirements of section 524(g). Judge Bernstein has presided over the Bankruptcy Case since January, 2006 and is thoroughly familiar with the facts and issues. This Court, on the other hand, has had no involvement to date with the Bankruptcy Case. Asking the Court to familiarize itself unnecessarily with all of the facts and issues is inefficient as well as a waste of time and resources. The AHC's convoluted argument accordingly fails.

Docket No. 1089); and Motion of the UST, dated September 22, 2008, for appointment of an examiner (Bankr. Docket No. 1559).

III. Quigley Properly Sought Chapter 11 Relief and Proposed the Plan in Good Faith.

37. The AHC devotes 11 of 18 pages in the Second Motion to allegations of questionable conduct and bad faith against Quigley and Pfizer, having previously raised these issues in numerous other filings in the bankruptcy court. These issues have no impact on whether the Court should partially withdraw the reference for the confirmation hearing. Quigley has disputed the AHC's allegations and has already addressed them in the bankruptcy court. The AHC's allegations can and will be addressed at the confirmation hearing, and Quigley will not burden the Court with addressing them here.[6] Quigley is prepared to try these and other issues at confirmation.

38. Quigley commenced and will continue to prosecute the Bankruptcy Case in good faith. The Plan meets the Code's confirmation requirements, and Quigley's creditors have overwhelmingly accepted the Plan. Nevertheless, Quigley attaches as Exhibit B the Declaration of Kevin M. Altit (the "Altit Declaration"), a member of Quigley's board, dated June 8, 2007 and previously submitted in opposition to the AHC's motion in the Bankruptcy Case to direct the appointment of a trustee. The Altit Declaration refutes many of the AHC's allegations, which are irrelevant to this Court's determination of the Second Motion.

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[6] Quigley reserves its right to contest all challenges to confirmation of the Plan at the appropriate time.

Conclusion

For all the foregoing reasons, the Court must deny the Second Motion.

Dated: New York, New York
January 21, 2009

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