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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
		Case No. 04-15739 (SMB)
QUIGLEY COMPANY, INC.,	:	
		Civil Action No. 1:06-CV-03077 (KMW)
Debtor.	:	

REPLY OF QUIGLEY COMPANY, INC. AND PFIZER INC. IN SUPPORT OF MOTION FOR AN ORDER PARTIALLY WITHDRAWING THE REFERENCE

Quigley Company, Inc., debtor and debtor in possession ("Quigley"), and Pfizer Inc. ("Pfizer") reply to the objection, dated May 3, 2006 (the "Objection"), of the ACE Insurers[1] to the motion (the "Motion") of Quigley and Pfizer, dated April 19, 2006, for entry of an order under section 157(d) of title 28 of the United States Code (the "Judiciary Code") and sections

[1] The "ACE Insurers" are 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.

105(a), 524(g), 1129 and 1142 of title 11 of the United States Code (the "Bankruptcy Code"): (i) partially withdrawing the reference of Quigley's chapter 11 case; and (ii) requesting that this Court simultaneously preside with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") over the hearing on confirmation of Quigley's plan of reorganization (the "Plan") as follows:

PRELIMINARY STATEMENT

1. The Court should overrule the Objection and grant the Motion. The Objection is devoid of any legal support for the ACE Insurers' position that a joint confirmation hearing conducted by this Court and the Bankruptcy Court is improper. In fact, case law and procedures previously adopted by the United States District Court for the Southern District of New York in other cases support the process that Quigley and Pfizer have proposed.

2. The ACE Insurers argue unconvincingly that the Court should refuse to partially withdraw the reference and should not preside over Quigley's confirmation hearing concurrently with the Bankruptcy Court. The ACE Insurers claim that the Motion should be denied because: (i) no statute expressly permits this Court to preside jointly with the Bankruptcy Court at the confirmation hearing; (ii) the proposed procedure would prolong Quigley's chapter 11 case and be costly to its estate; and (ii) judicial confusion would result from administering a joint hearing. These assertions are baseless. The procedure proposed by Quigley and Pfizer is a streamlined and efficient way for this Court and the Bankruptcy Court to hear argument, take evidence, and, ultimately, make the necessary findings under section 524(g) with respect to the Plan. Moreover, there is ample precedent for the procedure that Quigley and Pfizer have proposed.

ARGUMENT

A. Bankruptcy Code Section 524(g) Invites a Joint Confirmation Hearing.

3. The ACE Insurers assert that "the Judicial Code does not authorize bankruptcy judges and district judges to sit jointly at a single confirmation hearing." Objection, at 6. They cite no provision of the Judiciary Code to support this statement, however; rather, they argue that the absence of an express provision permitting a joint confirmation hearing leads to this conclusion. As they must, however, the ACE Insurers acknowledge that the Judiciary Code expressly contemplates partial withdrawal of the reference. See Objection, at 3 (quoting 28 U.S.C. § 157(d)) ("The district court may withdraw, in whole or in part, any case or proceeding under this section . . . for cause shown.") (emphasis added).

4. The absence of an express statutory provision hardly prohibits courts from devising procedures for the administration of cases that promote judicial economy and efficiency, which is particularly appropriate in the context of reorganization cases. Indeed, district and bankruptcy courts often have presided jointly over hearings when judicial economy will be served. See, e.g., SEC v. Worldcom, Inc., No. 02 Civ. 4963 (JSR), 2002 U.S. Dist. LEXIS 23668 (S.D.N.Y. Dec. 10, 2002) (district and bankruptcy court scheduled joint hearing "to help expedite th[e] process" of considering approval of appropriate compensation for debtor's proposed CEO); Conley v. Sears, Roebuck and Co., 222 B.R. 181, 185 (D. Mass. 1998) (district and bankruptcy court presided jointly over settlement hearing); Lakes Region Legal Defense Fund, Inc. v. Slater, 986 F. Supp. 1169, 1176 (N. D. Iowa 1997) (district and bankruptcy court presided jointly over preliminary injunction hearing). In fact, in this district, the district and bankruptcy courts jointly presided over certain post-confirmation matters in the Johns-Manville Corporation's asbestos-related chapter 11 case for this very reason. See In re Joint E. & S. Dist. Asbestos Litig., 129

B.R. 710 (S.D.N.Y., E.D.N.Y., and Bankr. S.D.N.Y. 1991) (describing post-confirmation procedural history).

5. The ACE Insurers further assert that, under the Judiciary Code, if the reference is withdrawn, "then the bankruptcy court has no role to play in the hearing," but if the reference is not withdrawn, this Court is limited to acting solely in an appellate capacity. Objection, at 6. The ACE Insurers, however, mischaracterize the relief requested by Quigley and Pfizer, based on the language of Bankruptcy Code section 524(g), in the Motion. Quigley and Pfizer do not request a complete withdrawal of the reference. Rather, they request that the reference be partially withdrawn solely to permit this Court to issue or affirm an order confirming Quigley's Plan under section 542(g)(3)(A). Quigley and Pfizer have specifically requested that the reference remain with the Bankruptcy Court with respect to all other aspects of Quigley's case and the confirmation hearing, such as making findings of fact and determining whether the Plan satisfies Bankruptcy Code section 1129(a). Accordingly, both Courts would have distinct and independent roles in presiding over the hearing.

6. For this very reason, as noted in the Motion, other courts (including courts in this district) have withdrawn the reference for the purpose of having both the district court and bankruptcy court preside over a confirmation hearing involving a plan of reorganization seeking a section 524(g) injunction. See In re Keene Corp., Case No. 93-46090 (S.D.N.Y. June 12, 1996) (Order Withdrawing the Reference); Rutland Fire Clay Co., Case No. 99-11390 (D. Vt. September 7, 2000) (Order Withdrawing the Reference); In re J.T. Thorpe Co., Case No. 02-41487-H5-11, 2003 WL 23354129, at *1 (Bankr. S.D. Tex. January 30, 2003) (stating that the bankruptcy court

orally withdrew the reference).[2] This Court too should partially withdraw the reference and preside over the confirmation hearing concurrently with the Bankruptcy Court.

B. Proposed Confirmation Procedure is Efficient and Cost-Effective.

7. The ACE Insurers contend that the procedure proposed by Quigley and Pfizer "virtually ensures that the confirmation hearing would be conducted twice -- once now, and a second time after any resulting confirmation order is reversed on appeal for failure to comply with the requirements of the Judicial Code." Objection, at 9. The ACE Insurers further assert that because the confirmation hearing likely will be contested,[3] Quigley and Pfizer should not "needlessly create appellate issues." Id.

8. In support of their assertion that partial withdrawal of the reference will result in a procedural "mishmash," the ACE Insurers cite In re J.T. Thorpe Co., No. 02-41487 (Bankr. S.D. Tex.). The ACE Insurers' reliance on J.T. Thorpe Co. is misplaced. In J. T. Thorpe Co., the district court partially withdrew the bankruptcy reference for the purposes of considering whether to (i) issue an injunction under Bankruptcy Code section 524(g), and (ii) issue or affirm any order confirming the debtor's reorganization plan. See In re J. T. Thorpe Co., Case No. 02–41487–H5–11 (Bankr. S.D. Tex. Dec. 13, 2002) (order recommending partial withdrawal of reference, attached to Objection as Exh. B). The district court and the bankruptcy court jointly presided over the confirmation hearing. The bankruptcy court entered an order making certain

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[2] In other chapter 11 cases involving section 524(g), the district court did not withdraw the reference but nonetheless conducted a joint confirmation hearing with the bankruptcy court and entered a joint confirmation order. See In re Eagle-Picher Industries, Inc., 203 B.R. 256, 259 (D. Ohio 1996); In re M.H. Detrick Co., Case No. 02-00301 (N.D. Ill. 1998) (Confirmation Order, dated August 21, 2002).

[3] The ACE Insurers correctly state that "more than 10 separate parties…have objected to Quigley's plan," but they conveniently overlook the fact that the Plan has received overwhelming creditor acceptance. According to the certification of votes filed with the Bankruptcy Court by Quigley's balloting agent on May 3, 2006, approximately 84% of holders of asbestos personal injury claims against Quigley accepted the Plan. Quigley continues to explore ways to resolve the objections of those who voted against the Plan. Thus, contrary to the ACE Insurers' assertions, there is no certainty of an appeal of any confirmation order.

findings and confirming the plan. The district court then entered a separate order affirming certain of the bankruptcy court's rulings and confirming the debtor's plan. See J. T. Thorpe Co., Case No. 02–41487–H5–11, 2003 WL 23354129 (S.D. Tex. Jan. 30, 2003) (amended order adopting, affirming or approving bankruptcy court's ruling and confirming debtor's plan). What followed was not a "mishmash" of appeals, but rather the normal appellate process: an appeal of the bankruptcy court's order to the district court; an appeal of the district court's order to the court of appeals; and a petition to the court of appeals for a writ of mandamus. The Fifth Circuit consolidated the two appeals with the mandamus petition. See Docket sheet, In re Am. Motorists Ins. Co., Case No. 03–20112 (5th Cir. 2003).

9. Although the ACE Insurers assert that the Fifth Circuit had to "exercise its extraordinary mandamus power to try to bring some order to the confusion" (Objection, at 11), the court of appeals never issued a writ. Rather, it relinquished jurisdiction and remanded the case after the parties announced that they had settled their dispute. The appealing insurers withdrew their plan objections and their appeals, and the court of appeals remanded the proceedings to the bankruptcy and district courts. See In re Am. Motorists Ins. Co., Case No. 03–20112 (5th Cir. 2003). The record of the post-confirmation appeals in that case shows that, rather than judicial disorder, the parties employed the appropriate appellate channels, and the Fifth Circuit used its judicial authority to devise the most efficient means of dealing with the proceedings (i.e., consolidation of the various appeals). Just as the Fifth Circuit sought to promote judicial economy and efficiency by consolidating the proceedings, so too should this Court use its discretion to partially withdraw the reference of Quigley's chapter 11 case only for purposes of approving Quigley's Plan under section 524(g)(3)(A) of the Bankruptcy Code. This will

streamline the confirmation process and foster judicial economy by eliminating unnecessary proceedings.

10. Notably, the form of order proposed by Quigley and Pfizer with respect to partial withdrawal of the reference eliminates much of the jurisdictional ambiguity that existed in the J.T. Thorpe Co. order. There, the order was silent regarding the extent to which the reference remained with the bankruptcy court. In contrast, the order proposed by Quigley and Pfizer partially withdraws the reference only to permit this Court to issue or affirm an order confirming Quigley's Plan under section 542(g)(3)(A), and the reference will "remain with the Bankruptcy Court with respect to all other matters relating to the Plan and Quigley's case." Proposed Order, at ¶ 4. Accordingly, the roles of this Court and the Bankruptcy Court with respect to confirmation and all other aspects of Quigley's case are well-defined in the proposed order.

C. No Judicial Confusion Will Result.

11. The ACE Insurers further contend that the proposed procedures would be "unworkable as a practical matter." Objection, at 2. They imply that judges of this Court and the Bankruptcy Court -- two experienced federal judges -- would be unable to devise an appropriate and functional division of responsibility at the confirmation hearing with respect to matters such as ruling on objections and determining the appropriate procedure for appellate review of any confirmation order. Objection, at 9. This is simply absurd. [4]

12. Quigley and Pfizer are confident in the Courts' abilities to devise a manageable and practical means of presiding concurrently over the confirmation hearing, even if the hearing is contested as the ACE Insurers predict (Objection, at 9). Indeed, federal judges regularly sit in panels when presiding over hearings (i.e., District Judges in certain cases, Courts of Appeal,

[4] Significantly, Chief Bankruptcy Judge Stuart M. Bernstein, who presides over Quigley's chapter 11 case, has actual experience in this regard, as he also presided over In re Keene Corp. and sat jointly with this Court at the confirmation hearing in that case.

Bankruptcy Appellate Panels, and the Supreme Court). Moreover, as shown above, there is ample precedent for a bankruptcy judge and district judge to preside jointly over a hearing.

13. A joint hearing would promote judicial economy and would eliminate, rather than result in, judicial "confusion." In accordance with Bankruptcy Code section 524(g), both Courts are required to participate in the confirmation process, and thus would be present to hear argument, consider evidence, conduct inquiry, and make the numerous findings necessary to confirm Quigley's Plan. Efficiency and economy will be best served by having a joint confirmation hearing, rather than requiring the Bankruptcy Court to conduct the confirmation hearing, only to repeat the process, in whole or in part, before this Court in order to affirm the Bankruptcy Court's confirmation order, as 11 U.S.C. § 524(g)(3)(A) requires.

14. Finally, as stated in the Motion, no party in interest can or will be prejudiced by a partial withdrawal of the reference. Indeed, the ACE Insurers themselves tellingly do not and cannot contend that they will be prejudiced by the requested relief.

15. Conducting confirmation in the most efficient manner possible is in the best interests of Quigley, its estate, and its creditors. Accordingly, this Court should overrule the ACE Insurers' Objection, partially withdraw the reference, and preside over the confirmation hearing concurrently with the Bankruptcy Court.

CONCLUSION

For all of the foregoing reasons, Quigley and Pfizer request that this Court: (i) overrule the ACE Insurers' Objection; (ii) enter an order partially withdrawing the reference of Quigley's chapter 11 case for consideration of Quigley's Plan under section 524(g)(3)(A) of the Bankruptcy Code, (iii) preside over Quigley's confirmation hearing concurrently with the Bankruptcy Court, and (iv) grant them such other and further relief as is just.

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