

Alto Maipo Lenders Object To Extra Ch. 11 Challenge Time

By **Isaac Monterose**

Law360 (February 14, 2022, 6:22 PM EST) -- Senior lenders in an affiliate of a Chilean hydroproject's Chapter 11 case objected to 60 days of extra time being given to unsecured creditors challenging the debtor's claims, arguing that the extension being granted after the previous challenge period expired would be something "no bankruptcy court has ever done."

In a 14-page objection filed on Friday, a group of prepetition bank lenders, who hold more than \$2 billion of Alto Maipo Delaware LLC's debt, told a Delaware bankruptcy court that granting the extension would result in a more than 130-day challenge period even though the challenge period expired earlier this year. The lenders said that the extension after the period's expiration wouldn't be supported by any precedent set in bankruptcy court.

The senior lenders said that while they were confident about the validity of their claims and liens in the case, they were "concerned about undue delay and increased expenses in these Chapter 11 cases."

"Any extension of the challenge period at this point inherently creates uncertainty on forward progress of these Chapter 11 cases and, at the very least, would delay the debtors' and senior lenders' efforts to implement a plan related to the consensual restructuring of over \$2 billion of debt," the lenders said.

The lenders added that it would be "unfair" to hold up the Chapter 11 proceedings due to the extension for the challenge period. In a separate objection filed Friday, Alto Maipo mostly made similar arguments about the order and the previous expired challenge period.

According to the lenders, the extension request is just a request to amend a final cash collateral order that was made before the committee of unsecured creditors had been appointed. However, even after the "belated" committee had been formed, the creditors failed to investigate or challenge the lenders' liens and claims during the order's challenge period, the lenders said.

The lenders attacked the creditors' argument that the challenge period could be extended without notice such as in the Outer Harbor Terminal LLC bankruptcy case. However, the lenders stated that the court's 2017 ruling in that case undermines the creditors' argument.

The lenders said that the court had rejected Outer Harbor Terminal's unsecured creditors' extension request for a challenge period despite the period expiring before their committee had been formed since Outer Harbor Terminal's lenders in that case "were entitled to rely on the finality of the underlying order."

"The circumstances regarding the committee's request for an extension of the challenge period in Outer Harbor are similar to the circumstances here and, therefore, the same legal analysis and conclusion should apply," the lenders said. "Just like the lenders in Outer Harbor, the senior lenders are entitled to rely on the finality of the cash collateral order. And just like the court in Outer Harbor, this court should conclude that it cannot use the committee's belated appointment to resurrect the expired challenge period."

However, the lenders said that if the court did grant the extension then the extended challenge period "should be as short as reasonably possible" so that the bankruptcy proceedings won't be "held

hostage" during the challenge period.

Alto Maipo had **begun** its Chapter 11 bankruptcy proceedings in November and laid blame on an unaccommodating electricity market and climate change that stopped glacier snowmelt from reaching the waterways that were supposed to power the hydroelectric project.

Alto Maipo Delaware LLC is represented by Luke A. Barefoot, Richard J. Cooper, Miranda Herzog, Jack A. Massey and Richard C. Minott of Cleary Gottlieb Steen & Hamilton LLP and S. Alexander Faris and Sean T. Greecher of Young Conaway Stargatt & Taylor LLP.

The unsecured creditors are represented by Sam J. Alberts, David F. Cook and Lynn P. Harrison III of Dentons US LLP, James R. Irving of Dentons Bingham Greenebaum LLP, Carlos Urzua and Gonzalo Varela of Dentons Larrain Rencourt SpA and Kevin M. Capuzzi, Jennifer R. Hoover and John C. Gentile of Benesch Friedlander Coplan & Aronoff LLP.

The senior lenders are represented by Marissa Alcala, Derek Cash, Christy Rivera, Andrew R. Rosenblatt and Eric C. Daucher of Norton Rose Fulbright US LLP, Matthew B. McGuire of Landis Rath & Cobb LLP and Andrew Rosenblatt of Chadbourne & Parke LLP.

The case is In re: Alto Maipo Delaware LLC, case number 1:21-bk-11507, in the U.S. Bankruptcy Court for the District of Delaware.

--Editing by Jay Jackson Jr.