

# Chilean Hydropower Creditors Slam Ch. 11 Support Blueprint

By **Leslie A. Pappas**

Law360 (March 21, 2022, 5:53 PM EDT) -- Unsecured creditors of bankrupt Chilean hydroelectric power project Alto Maipo have objected to the debtors' Chapter 11 amended restructuring support agreement, saying that its terms unfairly benefit insiders and skirt regular bankruptcy creditor recovery rules.

In an **objection filed late Friday** in Delaware, the official committee of unsecured creditors of Alto Maipo SpA and Alto Maipo Delaware LLC called the agreement "improper, ill-timed, and unnecessary" and urged the bankruptcy court to reject the "impermissible attempted end-run around the Chapter 11 plan process."

Approving the restructuring support agreement, or RSA, would serve "no legitimate purpose at this late stage of the Chapter 11 cases," the objection said. "The debtors have already filed a Chapter 11 plan that contains the terms sought by this RSA."

Santiago-based Alto Maipo SpA and its Delaware affiliate **filed for Chapter 11 protection** in November 2021 with more than \$2 billion in debt and a tentative restructuring support agreement in place, **backed with \$50 million** in bankruptcy financing from parent company AES Andes SA, a subsidiary of Virginia-based global electricity supplier AES Corp.

The debtors subsequently filed amendments to the RSA in November, December, January, and February.

The newest version of the RSA is unfair, the unsecured creditors said in the Friday filing, because it dictates several critical plan-related issues, such as specific treatment, distributions, and voting rights of all creditors and parties-in-interest. The committee is asserting \$4.43 million in general unsecured claims, about 71.9% of which are environmental.

The newest version of the RSA guarantees the debtors' current owners favorable treatment, including valuable contract rights and releases, and requires 100% of the new equity in Alto Maipo to go to AES Andes SA, the filing said. AES Andes currently owns 93% of the equity, according to the filing.

The revised agreement deserves heightened scrutiny because two of the key parties — AES Andes SA and Norgener Renovables SpA — are "insiders" under the bankruptcy code, the filing says. Norgener holds power to vote 93% of the equity interests in Alto Maipo, and AES Andes holds 100% of the equity interests in Norgener, according to the filing.

The confirmation process, not the RSA, is the appropriate forum to adjudicate the relief that the debtors seek, the unsecured creditors said in their Friday filing, citing the Supreme Court's March 2017 decision in *Czyzewski et al. v. Jevic Holding Corp. et al.*

In *Jevic*, the Supreme Court ruled that bankruptcy courts cannot authorize a distribution of Chapter 11 estate assets in violation of creditor hierarchy as part of a structured dismissal without the consent of affected stakeholders.

"The debtors have filed their plan," Alto Maipo's unsecured creditors argued. "As the United States Supreme Court made clear relatively recently, it is the plan that should govern the distribution of the debtors' assets and the debtors' ultimate emergence from bankruptcy in Chapter 11."

The bankruptcy marks the third restructuring for the hydroelectric project, located in the Andes Mountains approximately 30 miles southeast of Santiago, Chile's capital. Construction on the project, which includes 42 miles of underground tunnels and two underground caverns, started in 2013 with a budget of \$2.1 billion but soon hit cost overruns that forced recapitalizations in 2017 and 2018.

The unsecured creditors' committee declined to comment Monday beyond what was written in their objection. Counsel for the debtors did not respond to a request for comment.

Alto Maipo 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, Geoffrey M. Miller, and Lynn P. Harrison III of Dentons, James R. Irving of Dentons Bingham Greenebaum LLP, Carlos Urzúa and Gonzalo Varela of Dentons Larraín Rencoret SpA and Kevin M. Capuzzi, Jennifer R. Hoover and John C. Gentile of Benesch Friedlander Coplan & Aronoff.

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

--Additional reporting by Rick Archer, Jeff Montgomery, and Isaac Monterose. Editing by Dave Trumbore.