

Jevic Trustee Floats Ch. 7 Deal With Sun Capital, CIT Group

By **Jeff Montgomery**

Law360 (March 28, 2022, 5:56 PM EDT) -- The Chapter 7 trustee in a 14-year-old Delaware bankruptcy known for a Supreme Court ruling that barred some types of structured dismissals has sought court approval for a final, case-resolving series of deals, releases and \$431,000 in payments to the estate's liquidation.

George L. Miller, trustee in the case of *In re Jevic Holding Corp.*, said in a **motion** filed Friday in U.S. Bankruptcy Judge Brendan L. Shannon's court that the agreement may offer the only sure route to avoiding another potentially precedent-setting battle — this time over the trustee's effort to press clawback actions against lenders in place of an unsecured creditor committee that lost standing when the case converted from Chapter 11 to Chapter 7 liquidation.

Miller last year appealed Judge Shannon's rejection of a proposal to have the trustee replace the committee, which was dissolved as a result of the Chapter 7 conversion. That conversion followed the U.S. Supreme Court's 2017 ruling in *Czyzewski v. Jevic Holding Corp.*, rejecting a Chapter 11 settlement — approved by Judge Shannon — that would have put some creditors ahead of laid-off employee payments under the Worker Adjustment and Retraining Notification Act in violation of the Bankruptcy Code's absolute priority rule.

The trustee proposal calls for a \$208,750 payment from Jevic's original secured lender CIT Group and \$222,250 from Jevic's private equity owner, Sun Capital Partners. It also calls for dismissal of pending actions, including Miller's appeal to the U.S. District Court for Delaware from Judge Shannon's refusal to allow the trustee to pick up the creditor committee claims.

"Although the trustee is confident in his claims, the appeal includes issues of first impression in this district regarding whether the trustee can be substituted for the committee in the committee proceeding," the settlement motion said.

Appeal preparation and litigation would require claims based on events that occurred more than 15 years ago, the motion said, and a loss on appeal would leave no party to carry forward the committee's claims.

"The issues are therefore exceedingly complex and sprawling, and would entail a significant amount of time and resources to prosecute," the motion said. "The paramount interest of creditors is also served by the settlement agreement because it will resolve claims that have been pending since 2008 and bring over \$400,000 into the estates."

Representatives for the parties did not immediately respond to requests for comment

Jevic, a trucking business, filed for bankruptcy in 2008 and sought approval of a settlement with lenders and creditors that led to the case's proposed dismissal in 2012.

Judge Shannon approved the settlement with Jevic's private equity owner, Sun Capital, secured creditor CIT Group and the official committee of unsecured creditors. But the deal didn't leave a recovery for the truckers who had an \$8.3 million priority WARN Act claim.

The trucker employees argued that the deal violated bankruptcy rules setting the order in which creditors should be paid, and appealed to the Third Circuit, which held in a split decision that

structured dismissals that obviate the priority payment scheme in the code could be allowed in rare circumstances.

On appeal to the Supreme Court, however, the truckers won a 6-2 decision in their favor, with the justices agreeing that the bankruptcy court should not be allowed to violate the priority payment scheme outlined in the federal bankruptcy code.

Miller said in his motion that the court "need not be convinced that the settlement is the best possible compromise in order to approve it," so long as the deal is fair, reasonable, and equitable.

Also proposed in the settlement are mutual releases all around for everything from claims or counterclaims, causes of action, remedies, damages, liabilities, to "expenses, fees or controversies related to debtors or their estates."

Judge Shannon's decision last year noted that a Chapter 7 trustee can pursue claims or causes that were the debtor's property, but not the claims of an unsecured creditor committee. Jevic's causes of action were waived under debtor in possession loan agreements that helped to finance the case, cutting off the trustee's access to the non-waived, non-debtor committee claims.

Chapter 7 Trustee George L. Miller is represented by Michael J. Barrie, Jennifer R. Hoover, Kevin M. Capuzzi and Matthew D. Beebe of Benesch Friedlander Coplan & Aronoff.

The Chapter 7 case is *In re Jevic Holding Corp.*, case number 1-08-bk-11006, in the U.S. Bankruptcy Court for the District of Delaware.

The bankruptcy adversary proceeding under appeal is the Official Committee of Unsecured Creditors v. The CIT Group/Business Credit Inc., case number 1-08-bk-51903, in the U.S. Bankruptcy Court for the District of Delaware.

The appeal is *George L. Miller v. CIT Group/Business Credit Inc.*, case number 1:21-cv--00811, in the U.S. District Court for the District of Delaware.

--Editing by Michael Watanabe.