

# Alto Maipo Ducks Jurisdiction Battle With Del. Ch. 11 Truce

By **Jeff Montgomery**

Law360 (May 3, 2022, 5:50 PM EDT) -- Opposing groups in the contentious bankruptcy of Chilean hydropower venture Alto Maipo reported a global truce Tuesday pending confirmation of its Chapter 11 plan in Delaware, with international jurisdiction disputes to be taken up later, possibly in other venues.

Luke A. Barefoot of Cleary Gottlieb Steen & Hamilton LLP, counsel to the debtors, told U.S. Bankruptcy Judge Karen B. Owens that the move followed a finding last week that the court cannot directly resolve a dispute between Alto Maipo and its largest proposed customer over a power purchase agreement crucial to the reorganized business.

The debtor's issue with the Minera Los Pelambres copper mine could have required resolution in an adversary suit and possible trial, a potentially time-consuming case nested within and delaying the Chapter 11.

The solution was to dodge a jurisdiction showdown for now as the case steams toward a May 13 confirmation hearing.

Those involved "took to heart the court's ruling last week and started working collaboratively with lenders, the unsecured creditors' committee, the tort claimants on a way to go toward confirmation without the delay and risk occasioned by discovery and other issues," Barefoot said. "MLP's PPA is not assumed or rejected. It passes through bankruptcy with all rights reserved for all parties."

Other claims "will similarly be passing through unimpaired and may be litigated in the future in any court or tribunal or regulatory body with all rights reserved," he said.

The hydropower project's U.S. bankruptcy and restructuring effort, launched in November 2021 by way of a Delaware affiliate, is the third for Alto Maipo since 2017, and the first to reflect disastrously diminished flows from Andes Mountain snowpack that project architects said appear to be a consequence of global climate change.

Much of the work on the more-than \$2 billion project is already complete, according to the debtors. When finished, two power plants will come online, one producing 264 megawatts and the other 267, from water diverted from Andes Mountain rivers into tunnels and generating turbines.

Prospects for the enterprise have been complicated, however, by changing energy markets, increasingly competitive alternative sources, and concerns among adjacent agricultural and water-using communities that their water access will suffer.

Alto Maipo last week used a reply brief to challenge assertions by MLP — a copper mine in north-central Chile — that the court must establish personal jurisdiction to keep alive Alto Maipo's effort to assume a power purchase agreement with the mine.

MLP, one of the world's largest copper reserves, has rejected claims that the debtor can pull its deal with the unwilling mine through its reorganization despite MLP's objections, allegations of default in Chile, and assertions that the disputes are governed by Chilean law and subject to a Chilean arbitration dispute-resolution provision.

A turning point came when Judge Owens cautioned on April 26: "I simply am not empowered to do what the debtors want me to do."

Among the other water-use disputes affected by the truce is a call by Chilean water rights organization, Comunidad de Aguas Canal El Manzano, to delay court consideration of an allegedly breached water use agreement from 2008 between it and Alto Maipo.

Manzano is seeking as much as \$1 billion in damages for Alto Maipo's alleged breach and violations of Chilean water use laws.

"Any determination as to whether there is a default that is required to be cured will not be made by Your Honor," Barefoot said. "The question will be resolved in the future, if at all, by some other court."

Andrew Rosenblatt of Chadbourne & Parke LLP, counsel for senior lenders to the debtors and project, said he was optimistic that "we'll be in a position shortly to release signatures for an amended restructuring support agreement and an amended plan" The changes, he said, should resolve all remaining litigation in the U.S.

Patricia Baron Tomasco of Quinn Emanuel Urquhart & Sullivan, counsel to the ad hoc committee of tort claimants, told Judge Owens' court had not been completely ruled out as a possible "court of competent jurisdiction" for case disputes.

Sam J. Alberts of Dentons, counsel to the official committee of unsecured creditors, termed Tuesday's developments "very positive" and said "I am guardedly optimistic that we will be in full-throated support of the plan."

Alto Maipo is represented by Luke A. Barefoot, Richard J. Cooper and Jack A. Massey of Cleary Gottlieb Steen & Hamilton LLP, and S. Alexander Faris, Pauline K. Morgan and Sean T. Greecher of Young Conaway Stargatt & Taylor LLP.

MLP is represented by Christopher M. Samis and L. Katherine Good of Potter Anderson & Corroon LLP, and James L. Bromley and Benjamin S. Beller of Sullivan & Cromwell LLP.

Manzano is represented by Stanley B. Tarr and Michael B. Schaedle of Blank Rome LLP, and Patricia B. Tomasco and Joanna D. Caytas of Quinn Emanuel Urquhart & Sullivan LLP.

The senior lenders are represented by Andrew Rosenblatt and Derek Cash of Norton Rose Fulbright.

The official committee of unsecured creditors is represented by Jennifer R. Hoover, Kevin M. Capuzzi and John C. Gentile of Benesch Friedlander Coplan & Aronoff LLP, and Sam J. Alberts, David F. Cook, Lynn P. Harrison III and Geoffrey M. Miller of Dentons.

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, Leslie Pappas, Vince Sullivan. Editing by Adam LoBelia.