CLIENT ALERTS & INSIGHTS

Claimants at the Gate: Circuit Split Develops on Bankruptcy Court's "Gatekeeping" Role

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A recent decision by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), in the matter of In re AIO US, Inc., case no. 24-11836-CTG ("Avon"), created a split with the Fifth Circuit on the issue of whether a plan of reorganization may contain a "gatekeeping provision" granting the bankruptcy court initial authority to determine, post-confirmation, whether a claim "could reasonably be characterized" as an estate claim released or exculpated under the plan of reorganization.[1]

In the Avon Opinion, the Bankruptcy Court sustained the objection of the United States Trustee to the "gatekeeping" provision, ordered the provision to be removed from the Plan, and noted that the Avon Opinion is contrary to the Fifth Circuit's allowance of a narrow "gatekeeping" provision in *Highland Cap. Mgmt. Fund Advs., L.P. v. Highland Cap. Mgmt., L.P.* ("*Highland*")[2]

Background

Beginning in 2010, cosmetics company Avon began to face personal injury claims from customers alleging that Avon's products contained asbestos, causing mesothelioma and other chronic illnesses.[3] By 2024, Avon had incurred over $200 million in defense and settlement costs from these personal injury cases.[4] Avon took two such cases to trial and lost both, incurring over $70 million in liabilities.[5] Faced with mounting personal injury liabilities, as well as significant outstanding debt to its parent company and other creditors, Avon filed for bankruptcy in Delaware in 2024.[6] The case proceeded in the ordinary course, and the debtors filed a Chapter 11 plan of liquidation on February 28, 2025 (as modified, the "Plan").[7]

At the Plan confirmation hearing, the United States Trustee objected to the Plan's "gatekeeping" provision which, if permitted, would require that any claim that "could reasonably be characterized" as an estate claim released or exculpated under the Plan to first be heard by the Bankruptcy Court to determine both the colorability of the claim and whether the claim was released or exculpated under the Plan.[8] This power would vest exclusively in the Bankruptcy Court; no other court would be permitted to rule on these questions.[9]

Avon Opinion

In the Avon Opinion, the Bankruptcy Court sustained the objection raised by the U.S. Trustee to the "gatekeeping" provision and ordered it removed.[10] While the Bankruptcy Court noted that reorganization or liquidating plans often exculpate estate fiduciaries from estate claims arising from their duties in that capacity, and enjoin such claims from being brought, the Bankruptcy Court

expressed doubt that it could do so for claims that "could reasonably be characterized" as such, describing this as an overextension of the existing law.[11] Moreover, the Bankruptcy Court rejected the Plan's requirement that the Bankruptcy Court serve as the initial adjudicator of the merits of the underlying claim, irrespective of the Court's subject-matter jurisdiction.[12] The Bankruptcy Court reasoned that neither the Bankruptcy Code nor Third Circuit case law allowed it to approve a plan that would grant it those exclusive powers.[13]

By this ruling, the Bankruptcy Court disagreed with the Fifth Circuit, which permitted the inclusion of such a power in *Highland*. In *Highland*, the debtor company's founder attempted to frustrate the proceedings by allegedly intentionally sabotaging the legal process and interfering with the management of the debtor.[14] As a result, the *Highland* bankruptcy court permitted the inclusion of a "gatekeeping" provision in the plan to head off the founder's claims against estate administrators.[15] Per the approved *Highland* plan, the bankruptcy court has initial jurisdiction to determine whether any claim against estate administrators in their official capacity is colorable and permissible under the plan.[16] The Fifth Circuit confirmed the *Highland* plan on appeal, holding that the bankruptcy court's gatekeeping power applied even when the bankruptcy court would not normally have subject-matter jurisdiction and after the bankruptcy case concluded.[17]

Conclusion

The Bankruptcy Court for the District of Delaware and the Fifth Circuit have taken opposing sides on the propriety of gatekeeping provisions in plans of reorganization. While the Fifth Circuit allowed this broadening of the bankruptcy court's exclusive jurisdiction, the Bankruptcy Court declined to do so and appears skeptical that it even could grant itself an exclusive threshold-determination power. While, in *Stern v. Marshall,* the Supreme Court expressed similar skepticism of the expansion of bankruptcy courts' powers and subject-matter jurisdiction,[18] the Supreme Court has never squarely addressed the "gatekeeping" issue.

If the Bankruptcy Court's ruling stands on appeal to the Third Circuit, the two rulings would create a direct conflict between the circuits. Between the Delaware bankruptcy court's longstanding prominence on insolvency questions and the Southern District of Texas bankruptcy court's recent rise in influence in the area, such a split would put two of the busiest bankruptcy courts in the country on opposing sides of the issue. While only time will tell, the Bankruptcy Court appears to have set up a conflict ripe for Supreme Court adjudication on the scope of a bankruptcy court's authority to grant itself certain "gatekeeping" powers to determine whether claims asserted against released and/or exculpated parties may ultimately be brought post-plan confirmation.

Companies, fiduciaries and creditors navigating Chapter 11 proceedings should take note that the enforceability of gatekeeping provisions now depends heavily on jurisdiction. Until the Supreme Court resolves the split, parties proposing or objecting to such provisions must be prepared for increased scrutiny and possible challenges. Businesses and stakeholders considering restructurings in Delaware or Texas in particular should evaluate how this uncertainty could affect litigation risk, plan structure and negotiations with creditors.

Our team continues to monitor developments closely and is available to discuss how this evolving area of law may impact your restructuring strategy.

[1] Memorandum Opinion [D.I. 1442] (the "Avon Opinion"), at 89.

[2] 132 F.4th 353 (5th Cir. 2025).

[3] Avon Opinion, at 6-7.

[4] *Id.* at 7.

[5] *Id.*

[6] *Id.* at 7-8

[7] *Id.* at 11.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 95.

[11] *Id.*

[12] *Id.* at 90-91.

[13] *Id.* at 91.

[14] Highland, 132 F.4th at 355.

[15] *Id.* at 355-56.

[16] *Id.*

[17] *Id.*

[18] *See Stern v. Marshall*, 564 U.S. 462, 487-88 (2011) (holding that a statute allowing bankruptcy courts to make a final adjudication on a state-law counterclaim in an adversary proceeding, rather than merely making a report and recommendation to the district court, was unconstitutional).