Bankruptcy Stops Environmental Suit

Last year, a federal court in Maryland discussed the interplay between the Bankruptcy Code and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). As the judge noted: "[T]he Bankruptcy Code and CERCLA point toward competing objectives, the former seeking to provide debtors with a fresh start by limiting or discharging liability, and the latter casting a broad net of liability for cleanup of hazardous waste."

The 68th Street Dump Superfund Alternative Site is an aggregation of landfills in Baltimore, Maryland, which hosted waste disposal activities containing hazardous substances from the 1950s to the early 1970s. During the 1980s, the EPA and the State of Maryland engaged in emergency remediation actions at the Site. Beginning in 1999, they sought payment of the cleanup costs from various potentially responsible parties. They settled with those parties in 2017. The settling defendants sought contribution from more than 150 other entities for the costs incurred in connection with the cleanup of the Site.

Schumacher & Seiler was a firm which arranged for disposal of waste containing hazardous substances at the Site. In 1992, Schumacher filed a Chapter 11 bankruptcy case and confirmed a plan discharging its debts. The obligation for cleanup costs at the Site was not listed or treated in the bankruptcy case, because the EPA had not yet begun to seek payment from anyone.

Schumacher was among those sued by the settling defendants in 2020. Schumacher moved to dismiss the claims against it on the grounds that the CERCLA claims had been discharged in its 1992 bankruptcy. The court reviewed three approaches to whether the cleanup obligations were discharged.

1. The "right to payment" approach. Under this approach, a claim is not sufficiently tangible to be discharged in bankruptcy unless all of the elements of the claim under applicable law are satisfied. Under this approach, Schumacher could not have discharged the claim, because it had not yet been identified as a potentially responsible party in 1992.

2. The "underlying acts" approach. Under this approach, a claim is sufficiently tangible to be discharged if the underlying acts of the debtor that create liability occurred prior to the bankruptcy. Under this approach, Schumacher could discharge the claims, because its disposal of hazardous substances at the Site took place decades before the bankruptcy.

3. The "fair contemplation" approach. This approach strikes a middle position between the other two. A claim is sufficiently tangible to be discharged if the future CERCLA liability based on the prebankruptcy conduct can be fairly contemplated by the claimant. Under this approach, the CERCLA claim would be discharged, as Schumacher was within the category of potentially responsible parties.

The court opted for approach 2, and dismissed the claims against Schumacher. This makes bankruptcy a powerful tool to eliminate environmental liability. *68th Street Site Work Group v. Airgas, Inc.*, 2021 U.S. Dist. LEXIS 196178 (D. Md. 2021).

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