

## Alert

### **SRZ Client Quigley Company Inc. Emerges from Heavily Litigated Chapter 11 Asbestos Reorganization**

*Cramdown Plan Stays Suits Against Corporate Parent*

**June 28, 2013**

United States Bankruptcy Judge Stuart M. Bernstein held, on June 26, 2013, after a contested hearing, that SRZ client Quigley Company Inc., a wholly owned subsidiary of Pfizer Inc., could emerge from its Chapter 11 reorganization despite a dissenting creditor class and an objecting group of asbestos personal injury claimants. The Quigley reorganization plan discharged at least \$5.6 billion of current and future asbestos liability, provided Pfizer with an injunction barring further Quigley-related asbestos claims and crammed down a rejecting class of silica personal injury claimants.

#### **Background**

Quigley, a former manufacturer of industrial refractory products used mostly in the steel industry, had been besieged, since 1980, with massive asbestos litigation arising out of its manufacture and sale of three asbestos-containing products. When it filed its Chapter 11 petition, approximately 212,000 asbestos personal injury claims totaling \$1.2 billion, were pending against it and its corporate parent, Pfizer. Uncontradicted expert testimony during the case estimated about 260,000 future asbestos claims against Quigley, extending until 2058, with “an undiscounted value” of \$4.4 billion. When Quigley sought Chapter 11 relief, Pfizer was also a defendant with respect to 280,000 claims, based on the claimants’ asserted exposure to Quigley’s products. The growing number of asbestos claims forced Quigley to file a Chapter 11 petition when its remaining insurance coverage, shared with and bought by Pfizer, began to erode.

#### **Pfizer’s Contribution to the Plan and Other Settlements**

Pfizer contributed a total of \$964 million in value to implement the Quigley reorganization plan. That contribution consisted of approximately \$500 million of shared insurance assets, \$260 million of cash, \$126 million of secured debt forgiveness and a \$44 million dollar commercial building occupied under a long-term lease generating at least \$2.5 million a year through 2026. In addition to its plan contribution, Pfizer had paid another \$1.25 billion to other large groups of claimants who had asserted claims against it. The details of these non-plan settlements were disclosed during the Chapter 11 case.

#### **Bankruptcy Litigation**

The federal courts issued no less than 18 decisions during the contentious Quigley case. Most recently, the United States Supreme Court denied Pfizer’s petition for a writ of certiorari regarding a 2012 decision by the Court of Appeals for the Second Circuit holding that the injunction obtained by Quigley for the benefit of Pfizer had certain limits. In that decision, the Court of Appeals also held that Quigley had properly obtained the injunction, reaffirming the bankruptcy court’s broad jurisdiction to protect Quigley’s critically important insurance assets.

Other decisions by the Southern District of New York and the Bankruptcy Court during the case affirmed the validity of Quigley’s preliminary injunction staying suits against Pfizer, Quigley’s classification of its creditors, and denied an effort to have a trustee or examiner appointed to investigate Quigley’s affairs.

Critically important to the courts, Quigley had an independent board of directors and counsel with no ties to Pfizer. The court had denied confirmation of Quigley’s earlier reorganization plan because of what it viewed as Pfizer’s improper settlements with certain claimants and inadequate contribution to the plan. After further negotiations with Quigley, the creditors’ committee and future claims representative, Pfizer increased its plan contribution by at least \$750 million. Pfizer also settled with a key group of litigants and their counsel for another \$820 million to cover its separate liability.

### **Cramdown of Silica Claimants**

An entire class of silica personal injury claimants had voted against the Quigley plan. Because Quigley proved, without contradiction, that: (a) it had reasonably and properly placed the silica claimants in a separate class; (b) the silica claimants would receive less in a Chapter 7 liquidation than they would get under the Plan; and (c) no class of creditors or shareholders junior to the class would receive anything, the court crammed down the silica class — i.e., held that its acceptance was unnecessary.

### **Objection to the Plan**

One group of asbestos claimants objected to the Quigley plan, arguing that it had been proposed in bad faith because Pfizer had settled its own liabilities with other claimants, but not with this group. The objectors also challenged Quigley’s classification of creditor claims, Pfizer’s payments to other settlers and the court’s allocation of Pfizer’s derivative liability (23 percent) for Quigley’s direct asbestos liability. After receiving undisputed evidence from Quigley and Pfizer going to the parties’ good faith, Quigley’s independence from Pfizer and the future viability of Quigley’s reorganized business, the court rendered its decision from the bench after hearing arguments. It found that: Quigley’s plan had been proposed in good faith; Quigley had properly classified the different categories of creditors; Quigley was entitled to “cram down” the class of silica claimants despite their rejection of the plan; its prior allocation of Pfizer’s derivative liability remained valid; and that Quigley’s plan was in the best interests of Quigley’s creditors.

The Quigley team was led by business reorganization partners [Michael L. Cook](#) and [Lawrence V. Gelber](#), and consisted of litigation partner [Robert J. Ward](#), tax partner [Kurt F. Rosell](#) and real estate partner [Robert S. Nash](#), supported by associates [Victoria A. Lepore](#), [Aaron B. Wernick](#), and Brian C. Tong. Paralegal Donna Angiulo ably managed all of the logistics for the case.

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