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Bankruptcy Court Permits Environmental Indemnity Claims to Proceed in State Court

In *In Re G-I Holdings, Inc.*, 564 B.R. 217 (Bankr. D.N.J. Dec. 21, 2016), the Bankruptcy Court was asked to consider whether the confirmed chapter 11 plan discharged liability under an assumed Indemnification Agreement. Plaintiffs filed a complaint in state court, asserting that, pursuant to the Indemnification Agreement, two companies who had emerged from bankruptcy were required to indemnify Plaintiffs for any costs or liabilities incurred in connection with the investigation and remediation of a superfund site.

The controversy raised questions regarding the interpretation of the plan under bankruptcy law. The defendants asserted that the discharge provisions of the plan included discharge of liability under the Indemnity Agreement if no claim was filed in the bankruptcy. The plaintiffs asserted that the assumption of the Indemnity Agreement carried with it the ongoing liability, even though the plan stated that any assertion of amounts due had to be filed in the bankruptcy. The Debtors removed the action from the state court to the bankruptcy court for determination, and the plaintiffs requested that the matter be remanded back to the state court.

The bankruptcy court engaged in a thorough analysis of whether the bankruptcy court's limited post-confirmation jurisdiction even reached the dispute, noting that the underlying liability was not directly related to the bankruptcy. However, the fact that the controversy implicated interpretation of the plan and the discharge of the debtors was held to provide sufficient "related to" jurisdiction to bring the case within the jurisdictional reach of the bankruptcy court. However, the bankruptcy court concluded that abstention was **mandatory** and that the controversy should be determined by the state court.

The bankruptcy court is required to abstain from determining a "non-core" matter if: (1) a timely motion is made; (2) the proceeding is based upon a state law claim or state law cause of action; (3) the claim or cause of action is "related to" a case under title 11 but does not "arise under" title 11 or "arise in" a case under title 11; (4) federal courts would not have jurisdiction absent its relation to a bankruptcy case; (5) an action is "commenced" in a state forum of appropriate jurisdiction; and (6) the action can be timely adjudicated in the state forum. *G-I Holdings, Inc.*, 564 B.R. at 248. Often the point of controversy in such a determination is the final factor—whether the action can be timely adjudicated in the state forum. Bankruptcy courts often hold that they are able to bring a matter to trial much more quickly than state courts. Indeed, many bankruptcy adversary proceedings are resolved in less than one year, while state court matters often take 2-5 years to come to trial. However, the *G-I Holdings* court, citing to the Third Circuit's decision in *In re Exide Techs.*, 544 F.3d 196, 218 (3d Cir. 2008), reasoned that, "[t]he question is not whether the action would be *more quickly* adjudicated in the bankruptcy court than in state court,

but rather, whether the action can be *timely adjudicated* in the state court." *G-I Holdings, Inc.*, 564 B.R. at 248.

In addition, the bankruptcy court expressed confidence in the state court's ability to interpret the bankruptcy plan. "The Superior Court is fully capable to look to the Plan's discharge provisions to determine whether G-I's affirmative defense applies. Indeed, "discharge in bankruptcy" is an expressly enumerated affirmative defense under the New Jersey Rules of Court." *Id.* at 253-54.

Practice tip: Abstention as a means to escape determination of environmental liability by bankruptcy courts should be considered as soon as possible. Even where all other elements of abstention are met, the motion will be denied unless a timely motion is made.