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1st Circuit deems appeal in mass tort case untimely

Bankruptcy rules apply to 'related to' dispute

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The Federal Rules of Bankruptcy Procedure governed mass tort claims aggregated in U.S. District Court as "related to" a pending bankruptcy proceeding, the 1st U.S. Circuit Court of Appeals has ruled.

As a result, the plaintiffs' appeal of the dismissal of their claims — which stemmed from a deadly railroad derailment and oil spill in Quebec — that would have been timely under the Federal Rules of Civil Procedure's notice requirements was barred as untimely.

The full text of the ruling in *Roy, et al. v. Canadian Pacific Railway Company, et al.* can be found at masslawyersweekly.com.

After the key defendant in the case filed for bankruptcy in the district of Maine, the plaintiffs' claims were centralized under an omnibus docket in the district pursuant to §157(b)(5) of the U.S. Bankruptcy Code, which gives a District Court overseeing a bankruptcy to take jurisdiction over related "non-core" cases.

After other parties, including the party that had filed for bankruptcy, settled, only defendant Canadian Pacific remained in the case.


"There will be more fights about the interpretation of the federal rules versus the bankruptcy rules in a particular situation and whether there's a conflict between the two,"
— Vince Pisegna

A judge denied the plaintiffs' subsequent motion to add the railway's U.S. subsidiaries, including Soo Line Railroad Co., as defendants and dismissed the claim on jurisdictional grounds.

Twenty-eight days later, the plaintiffs moved for reconsideration and requested to substitute Soo Line as the party defendant. However, a U.S. District Court judge ruled that the motion was untimely under the bankruptcy rules, which — unlike the rules of federal procedure — require such a motion to be filed within 14 days.

Canadian Pacific then opposed the plaintiffs' appeal, arguing that the untimely motion for reconsideration lacked tolling effect, which rendered the appeal untimely.

The 1st Circuit agreed.

"'Related to' jurisdiction is designed to put everything in the same place and, thus, facilitates the efficient disposition of claims," Judge Bruce M. Selya wrote for the court, quoting the 3rd Circuit's 1994 decision in *Phar-Mor, Inc. v. Coopers & Lybrand*. "It seems obvious to us that the best way to effectuate this goal is for 'both the bankruptcy judges and the district court judges [to] apply the same set of procedural rules in all proceedings having a nexus to a bankruptcy case.'"

The 27-page decision is *Roy, et al. v. Canadian Pacific Railway Company, et al.*, Lawyers Weekly No. 01-159-21. The full text of the ruling can be found at masslawyersweekly.com.

'Time to hit the books'

Neither Matthew W.H. Wessler of Washington, D.C., who argued on behalf of the plaintiffs, nor defense counsel Paul J. Hemming of Chicago could be reached for comment prior to deadline.

But bankruptcy attorney Ryan F. Kelley said the ruling avoids the "quagmire" that would result if a District Court had to apply two sets of rules simultaneously in the same proceeding.

"The 1st Circuit's decision provides a bright-line rule that should provide comfort to parties litigating in federal court by virtue of the court's 'related to' jurisdiction," said Kelley, a member of the Massachusetts bar who practices in Portland, Maine.

Kevin T. Peters of Boston, who handles complex litigation in federal court, said he found himself "nodding along" with the opinion while thinking, "There but for the grace of God go I."

Peters noted that Rule 1 of the Federal Rules of Civil Procedure states that the rules govern procedure in all civil proceedings in the federal District courts except as stated in Rule 81, which says that the Federal Rules of Civil Procedure apply to bankruptcy proceedings "to the extent provided by the Federal Rules of Bankruptcy Procedure."

"The poor plaintiffs navigated into a grey area the 1st Circuit has now bleached," Peters said, adding that the takeaway for practitioners is that it is "time to hit the books."

Providence attorney Nicole J. Benjamin agreed.

"[The decision] serves as a good reminder that a party that avails itself of the right to request transfer of a case as 'related to' a pending bankruptcy proceeding must be familiar with the narrow universe of law addressing procedure in such cases," she said. "It's not enough that counsel know the rules; it is incumbent on counsel to know *which* rules."

Boston civil litigator Vincent J. Pisegna said the decision will make it more challenging to try a "noncore" proceeding related to a bankruptcy in U.S. District Court because, unlike the bankruptcy rules, the federal rules are very comprehensive when it comes to litigating and trying civil cases.

"There will be more fights about the interpretation of the federal rules versus the bankruptcy rules in a particular situation and whether there's a conflict between the two," Pisegna said, emphasizing that the bankruptcy rules would apply when there indeed is a conflict.

Roy, et al. v. Canadian Pacific Railway Company, et al.

THE ISSUE	Did the Federal Rules of Bankruptcy Procedure govern mass tort claims aggregated in U.S. District Court as "related to" a pending bankruptcy proceeding?
DECISION	Yes (1st U.S. Circuit Court of Appeals)
LAWYERS	Matthew W.H. Wessler of Gupta Wessler, Washington, D.C. (plaintiffs) Paul J. Hemming of Taft, Stettinius & Hollister, Chicago (defense)

Providence bankruptcy attorney Matthew J. McGowan said while the decision was correct, he sympathized with the plaintiffs.

"I feel badly for them and their attorneys because it is easy to see how they would have perhaps relied on what their sense and instincts told them," he said.

McGowan also noted that the only reason the procedural dispute arose in the first place was because of the disconnect on a significant point between the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure, both of which were enacted by Congress.

To avoid such a harsh result in the future, McGowan suggested that Congress amend the relevant bankruptcy rule to provide that its 14-day period for filing a motion for reconsideration applies except as to District Court orders entered in "related to" matters, in which case the 28-day period provided by the federal rules should govern.

28 days

On July 6, 2013, a train transporting crude oil from North Dakota to Canada derailed in Lac-Megantic, Quebec, resulting in a major fuel spill and explosion that caused many deaths, as well as large-scale property damage and extensive personal injuries.

Numerous negligence and wrongful death suits were filed in several jurisdictions against the Montreal, Maine and Atlantic Railway, which operated the train. Alleged connecting carrier, Canadian Pacific, was added later.

In February 2016, after MMA sought bankruptcy protection in Maine, the U.S. District Court there transferred all cases to the district as a matter "related to" a bankruptcy proceeding, doing so at the behest of the plaintiffs and MMA's bankruptcy trustee.

MMA and other defendants eventually settled the claims against them, leaving Canadian Pacific as sole remaining named defendant.

Canadian Pacific moved to dismiss for lack of personal jurisdiction. In response, the plaintiffs moved to amend their complaint to add several U.S. subsidiaries, including Soo Line.

On Sept. 28, 2016, U.S. District Court Judge Jon D. Levy granted the motion to dismiss and denied the plaintiffs' motion to amend, entering final judgment in Canadian Pacific's favor.

On Oct. 26, 2016, 28 days after entry of final judgment, the plaintiffs moved for reconsideration and sought to substitute Soo Line as party defendant.

Canadian Pacific opposed on timeliness grounds, arguing that the bankruptcy rules and their 14-day notice period for moving for reconsideration controlled. Levy denied the motion.

In January 2017, the plaintiffs filed a notice of appeal, challenging the denial of leave to amend.

Canadian Pacific moved for summary disposition under 1st Circuit local rules, arguing that the untimely motion for reconsideration lacked tolling effect and rendered the appeal untimely.

Controlling rules

The 1st Circuit found that the bankruptcy rules controlled and thus the plaintiffs' notice of appeal indeed was untimely.

For one thing, Selya said, "[p]recedent favors the Bankruptcy Rules: all three of the courts of appeals to have considered the issue have concluded that the Bankruptcy Rules apply to a non-core, 'related to' case pending in a federal forum."

Additionally, Selya said, applying civil rules to non-core "related to" cases would result in a District Court adjudicating core and non-core cases in a bankruptcy proceeding having to apply two sets of rules simultaneously, undermining efficient operation of the bankruptcy system.

Meanwhile, the 1st Circuit rejected the plaintiffs' argument that a District Court presiding over a non-core "related to" case can choose which set of rules to apply.

"We are not convinced," Selya said. "[S]uch a pick-and-choose approach cannot be gleaned from the statutory text, the Bankruptcy Rules, the Civil Rules, or any combination of those sources. To cinch the matter, the plaintiffs' position finds no purchase in the case law."

Ultimately, the court concluded, to apply anything other than the bankruptcy rules to non-core "related to" cases in federal District courts "would not only create a split in the circuits and leave district courts in a procedural labyrinth but also would severely undermine Congress's efficiency-oriented goals."