NEW ENGLAND COMPOUNDING PHARMACY, INC.
Case No. 12-19822
(Bankr. D. Mass.)

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INTRODUCTION.

New England Compounding Pharmacy, Inc. ("NECC" or the "Debtor"), the Debtor in this Chapter 11 Case, operated as a compounding pharmacy. Beginning in September 2012, reports began to surface of several patients who contracted fungal meningitis (the "Outbreak") after receiving injections of preservative-free methylprednisolone acetate ("MPA") compounded by NECC. An investigation was initiated by the Massachusetts Department of Public Health ("MDPH") and, two days later, on September 26, 2012, NECC issued a voluntary recall of three suspect lots, containing approximately 18,000 doses of MPA that NECC had distributed to hospitals, clinics, and doctor's offices, and were administered to approximately 14,000 patients. The Centers for Disease Control and Prevention ("CDC") reported that, as of October 23, 2013, 64 people had died and 751 individuals had fallen ill.[1]

In response to the October 2, 2012 findings from the United States Food and Drug Administration ("FDA") and the MDPH, the Massachusetts Board of Registration in Pharmacy (the "Board") voted to request a voluntary surrender of NECC's pharmacy license. NECC surrendered its license effective at noon on October 3, 2012, and further instituted a voluntary recall of all of its intrathecal medications, which are designed for injection near the spinal cord or brain. The FDA and the CDC recommended that all health care providers cease using, and remove from inventory, any NECC products. At the behest of the MDPH, NECC issued an immediate recall of all of its products. There remain ongoing proceedings to revoke or otherwise take action against the licenses of NECC's pharmacists. Approximately three months prior to the Petition Date (as defined below), NECC suspended the operation of its business. NECC also

[1] Reported at http://www.cdc.gov/HAI/outbreaks/meningitis-map-large.html#casecount_table. The CDC has not updated the case counts since October 23, 2013 and indicates that further updates to the case counts are not anticipated.

surrendered its Massachusetts pharmacy license and laid off most of its employees. The MDPH has temporarily barred former pharmacists for NECC from practicing pharmacology.

THE INITIATION OF THE CHAPTER 11 PROCEEDING AND THE APPOINTMENT OF THE TRUSTEE.

On December 21, 2012 (the "Petition Date"), NECC filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts (the "Bankruptcy Court"). On January 18, 2013, the Official Committee of Unsecured Creditors (the "Committee") was appointed. On January 25, 2013, Paul D. Moore was appointed as the Chapter 11 Trustee (the "Trustee") for NECC.

At the time of the Trustee's appointment, the Debtor's situation was dire. NECC had ceased operations and there were no employees. The estate was administratively insolvent.

NECC stated that it initiated its Chapter 11 Case in response to the volume and wide geographic distribution of the lawsuits with which it was confronted. The Outbreak resulted in thousands of claims from personal injury claimants against NECC and others. As of October 13, 2014, approximately 555 separate lawsuits had been joined in a multi-district litigation proceeding (the "MDL Proceeding") pending before the Honorable Rya W. Zobel, United States District Court Judge, in the United States District Court for the District of Massachusetts (the "MDL Court"). Approximately 3,770 proofs of claims were filed in NECC's Chapter 11 Case, approximately 3,500 of which are for damages for death or personal injuries resulting from the Outbreak.

Plaintiffs had commenced civil actions against NECC and others (*e.g.*, clinics, health care service providers, third-parties which had designed or had contractually agreed to maintain NECC's compounding facility, *etc.*). After the Petition Date, plaintiffs focused their litigation against third-parties due to the constraints of the automatic stay. *See* 11 U.S.C. § 362. These

lawsuits created the real possibility that in a "rush to the courthouse," a few plaintiffs would deplete available insurance proceeds by way of settlement or judgment.

It was clear that the only way to assure that all available insurance and settlement proceeds would be available to all personal injury and wrongful death claimants was to transfer all civil actions to one forum for consolidated proceedings.

THE TRANSFER LITIGATION.

The Trustee's Motion to Transfer Personal Injury Tort and Wrongful Death Cases to the MDL Court pursuant to 28 U.S.C. §§ 157(b)(5) and 1334.

Cases filed in federal court were being transferred to the MDL Proceeding. The Trustee required a remedy which would likewise transfer state court litigation against third-parties. There were four (4) categories of cases based on personal injuries or wrongful death arising from the administration of MPA:

(a) cases pending in other courts awaiting transfer to the MDL Court;

(b) cases pending in other courts where removal had been initiated, but not completed;

(c) cases pending in state courts where NECC or its affiliates were named defendants; and

(d) cases pending in state courts where neither NECC nor its affiliates were named defendants.

The Trustee sought to have all of these cases transferred to the MDL Court, asserting jurisdiction under 28 U.S.C. § 1334[2], and citing 28 U.S.C. 157(b)(5)[3] as a basis for transfer. As the MDL Court noted:

[2] 28 U.S.C. § 1334(b), states:

> There are likely to be a large number of victim-claimants in this matter, and it appears undisputed that many of them have suffered death or serious personal injury as a result of the administration of contaminated MPA. It also appears to be undisputed that the pool of available assets to pay claims is likely to be limited; NECC was a fairly small company with relatively few assets, although it appears that there are at least some insurance policies available to cover claims. The trustee, and counsel representing parties in this litigation, essentially agree that it is highly desirable to maximize the resources available to victims and to keep expenditures reasonably low. The trustee, and most counsel, also appear to agree that centralized management of the litigation and claim process is desirable to create the largest possible pool of funds for victims and to distribute those funds fairly, equitably, and with a minimum of expense and delay.
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> . . .
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> Consolidation of all NECC litigation in this Court is greatly complicated by the existence of the parallel state-court cases. Some of those cases, particularly those filed after the bankruptcy petition and the automatic stay, name only local healthcare providers (such as pain clinics and individual physicians), and do not name NECC or any affiliates. Some of those plaintiffs object to a centralized proceeding, preferring instead to proceed against those defendants in state court. The trustee, however, contends that those cases could ultimately result in huge claims for contribution or indemnity against the bankruptcy estate, and that such claims could greatly affect or upset the fair administration of the estate, in particular preventing the treatment of all victims fairly and equitably.

> Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

[3] 28 U.S.C. § 157(b)(5) states:

> The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

In re New England Compounding Pharmacy, Inc. Prods. Liab. Litig., 496 B.R. 256, 260 (D. Mass. 2013), the district court found that there was "related to" jurisdiction as to categories (a) through (c). *In re Boston Reg'l Med. Ctr.*, 410 F.3d 100, 105 (1st Cir. 2005), "[A] civil proceeding is related to bankruptcy [if] the outcome of that proceeding could conceivably have any effect on the [bankruptcy] estate").[4]

The more difficult issue was whether there was "related to" jurisdiction over cases which did not name NECC or its affiliates as a party. The Trustee argued that the defendants in those cases had claims for indemnity (contractual or otherwise) and that these claims, even if as yet unasserted, provided a basis for jurisdiction. *See In re Dow Corning Corp.*, 86 F.3d 48, 494 (6th Cir. 1996)("[a] single possible claim for indemnification or contribution simply does not represent the same kind of threat to a debtor's reorganization plan as that posed by the thousands of potential indemnification claims at issue here."); *compare In re W.R. Grace & Co.*, 591 F.3d 164, 169 (3d Cir. 2009) (there is no "related-to" jurisdiction where there would be no impact on the estate until there was: (a) a finding adverse to a defendant in a state court action; (b) the subsequent pursuit of a claim for indemnification). In the face of a contractual right to indemnity, some courts have found "related to" jurisdiction. *Lone Star Fund V(US), LP v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010)("related to" jurisdiction arises where there is a contractual right to indemnity); *A.H. Robins Co. v. Piccinin*, 788 F.2d 994 (4th Cir.

[4] The seminal case addressing the scope of "related to" jurisdiction is *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984), *overruled on other grounds by Things Remembered v. Petrarca*, 516 U.S. 124, 116 S.Ct. 494, 133 L.Ed.2d 461 (1995), where the court held that "related to' jurisdiction over a civil action exists if outcome of that action could "could conceivably have an effect on the bankruptcy estate." Notably, in *Pacor*, the Third Circuit held that there was no "related to" jurisdiction over an employee's suit against a distributor of asbestos products, even though it was likely that, in the event of an adverse verdict, the distributor would seek indemnity against the manufacturer (such an action is "mere precursor to the potential third-party claim for indemnification by [the distributor] against [the manufacturer]"). *Id*. at 995.

1986) ("The clear implication of the [*Pacor*] decision is that, if there had been a contract to indemnify, a contrary result would have been in order.").

The MDL Court assumed that it had jurisdiction over claims in category (d). However, certain parties (the "Virginia Plaintiffs") had objected to their actions (the "Virginia Actions") being transferred and independently moved for permissive abstention under 28 U.S.C. § 1334(c)(1)[5] and mandatory abstention under 28 U.S.C. § 1334(c)(2)[6]. The court found mandatory abstention inappropriate. As to category (d) cases, the court noted that the basis for jurisdiction was "unclear at best" and found that, due to the potential harm to "federal-state comity," abstention under section 1334(c)(1) was appropriate.

The MDL Court left the door open to a possible renewal of the motion:

> [T]he essential basis of the trustee's motion: that the Court *must* transfer *all* state-court cases to foreclose that very possibility.
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> The Court is not convinced, at least at this stage, that such a step is necessary. Other possible courses of action might produce the desired consolidation and finality, without resolving difficult issues of jurisdiction and abstention and without intruding unnecessarily

[5] 28 U.S.C. § 1334(c)(1) states:

> Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

[6] 28 U.S.C. § 1334(c)(2) states:

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

> into the proceedings of state courts. For example, if the Bankruptcy Court were to set a relatively early bar date for the filing of claims against the estate, it would appear that any defendant in a state-court action would be effectively forced to decide whether it wanted to file a claim for contribution or indemnity against the estate. Such a claim, in turn, would probably permit the exercise of federal jurisdiction over the underlying matter. Any defendant who did not file a claim would be barred, and the state-court case could proceed to judgment without interference from the federal court. Either way, the desired goals would be achieved with a relatively minimal degree of risk or intrusion.
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> In any event, the Court does not need to reach the issue at this juncture. If the balance of factors shifts over time, the Court can revisit the issue, and if necessary (and appropriate) can issue further orders concerning the exercise of related-to jurisdiction.

496 B.R. at 270.

The bankruptcy court entered an order fixing January 15, 2014 as the deadline for filing proofs of claim. The defendant in the Virginia actions ("Insight") filed a proof of claim and the Trustee filed a renewed and supplemental motion seeking the transfer of the Virginia cases to the MDL Court, which the MDL Court granted. *See In re New Eng. Compounding Pharm., Inc.*, C.A. No. 13-02419-RWZ, 2014 U.S. Dist. LEXIS 67213 (D. Mass. May 15, 2014).

THE MEDIATION PROGRAM AND THE SETTLEMENTS.

The Insider Settlement.

In order to fund a plan and to build support for confirmation of a plan, the Trustee pursued settlements with all parties who faced liabilities relating to the "Outbreak." The Trustee, the official committee of unsecured creditors (the "Official Committee") and the Plaintiffs' Steering Committee (the "PSC"), which was appointed by the MDL, viewed settlements with NECC's shareholders and related parties (collectively, the "Insiders") as among their highest priorities. To establish protocols to maintain the confidentiality of information disclosed in the context of settlement negotiations with the Insiders, on April 18, 2013, the bankruptcy court

entered an *Agreed-Upon Order Establishing Protocol for Settlement Negotiations and Communication* [Adv. Pro. Dkt. No. 96, as amended by Adv. Pro. Dkt. No. 99] (the "Protocol Order"). In aid of the Protocol Order and the Trustee's settlement negotiations, the MDL Court stayed all formal discovery against the Insiders that were consolidated into the MDL Proceeding, and ordered that the discovery stay continue pending a further order. *See* Clerk's Notes for Mar. 12, 2013 Status Conference (extending discovery stay to Apr. 10, 2013); Tr. of Apr. 10, 2013 Status Conference at 28:17-24 (extending discovery stay to May 14, 2013); *MDL Order No. 6* [MDL Dkt. No. 209] ("Formal discovery of NECC and the affiliated defendants shall remain temporarily stayed as set forth in this order and the previous orders of the Court."); *MDL Order No. 7* [MDL Dkt. No. 438] (staying fact discovery of NECC and the NECC Affiliated Defendants "until further order of the Court").

As a result of the Trustee's settlement negotiations with the Insiders (undertaken with the participation of counsel to the Official Committee and Lead Counsel to the Plaintiffs' Steering Committee), and aided by the discovery stay, the Trustee and the Official Committee reached settlements in principle with the Insiders, as well as with NECC's primary and excess insurers (collectively, the "Insider and Insurer Settlements"). The bankruptcy court approved the Insider and Insurer Settlements on July 31, 2014. *See* Dkt. Nos. 712, 713, 714. Those settlements will contribute over $100 million to the NECC estate in the form of cash contributions from the Insiders, as well as proceeds from, among other things, NECC's related company's and individuals' professional liability insurance, tax refunds which will be due to the Insiders as a result of their cash settlement payments, and the sale of a related business.

Notably, in the context of settlement negotiations, the Insiders had disclosed their assets. The settlement agreement with the Insiders provides that the Insiders will turn over to the Debtor's estate all assets which they failed to disclose.

The MDL Mediation Program Settlements and Other Mediated Settlements

The Trustee and the Official Committee (the "Plan Proponents") also developed a strategy for facilitating and obtaining substantial settlement contributions for distribution through the Plan from mediations with non-NECC affiliates, such as NECC's commercial vendors and pain clinics and medical care providers that may be exposed to liability to NECC and tort victims in connection with the Outbreak. To facilitate the Trustee's securing those settlements, on August 15, 2013, the MDL Court entered an Order on Mediation [MDL Dkt. No. 394] (the "Mediation Order") establishing mediation protocols (the "Mediation Program") for non-NECC affiliates.

The Mediation Program, as well as private mediations conducted under substantially the same protocols, was an unqualified success. Through the following year and a half, the Trustee (with the material assistance and full support of the Official Committee and the Plaintiffs' Steering Committee) secured over $100 million dollars in additional settlements from, among others, (i) vendors of NECC itself (*e.g.*, ARL BioPharma, the company that provided testing services to NECC, Liberty Industries, the company that built the so-called "cleanrooms" where MPA was compounded and clinics; Victory Mechanical Services, the company that installed ventilation systems at NECC; and Unifirst Corporation, the company that provided cleaning services to NECC), and (ii) health care providers in some of the states hit hardest by the Outbreak (Virginia, New Jersey and North Carolina). As further described below, those settlements are embodied in, and their consummation dependent upon, confirmation of the Plan.

Ultimately, the Trustee entered into settlement agreements under which payments to the estate will total $211,150. Each settlement agreement was conditioned upon the entry of an order confirming a plan of reorganization which included third-party releases and injunctions shielding the non-debtor parties to these agreements from any liability relating to the Debtor and the Debtor's products, including MDPH (the "Third-Party Releases and Injunctions"). In some instances, the settlements (the "Plan Settlements") were incorporated into the Plan (as defined below) and subject to approval at the confirmation hearing.

The Plan.

On December 3, 2014, the Plan Proponents filed the Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. [Dkt. No. 1054] (the "Plan") and the Disclosure Statement for the Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. [Dkt. No. 1053] (as amended at Dkt. No. 1162, the "Disclosure Statement"). On February 22, 2015, the Plan Proponents filed the First Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. [Dkt. No. 1154]. On March 3, 2015, the bankruptcy court entered the Order (I) Approving the Adequacy of the Amended Joint Disclosure Statement; (II) Approving Solicitation and Notice Procedures with Respect to Confirmation of the Plan Proponents' First Amended Joint Plan of Reorganization; (III) Approving the Form of Various Ballots and Notices in Connection Therewith; (IV) Scheduling Certain Dates with Respect Thereto; and (V) Granting Related Relief [Dkt. No. 1181] (the "Disclosure Statement Order").

The Plan provides that, *inter alia*, holders of unsecured personal injury and wrongful death claims against NECC will receive, in exchange for their claims, shares in a "Tort Trust" funded by the proceeds of the Trustee's mediated settlements with NECC's Insiders and non-NECC affiliates (as well as their respective insurers). The Tort Trust itself will have net

proceeds of more than $160 million to $190 million in cash available for distribution to holders of allowed tort claims.

The Plan also provides that NECC's other general unsecured creditors will receive cash in the amount of ninety percent (90%) of their allowed claims, and that priority non-tax claims and miscellaneous secured claims will be paid in full.

The Third-Party Releases and Injunctions.

The Plan incorporated the Third-Party Releases and Injunctions and these plan provisions gave rise to the only objection at the confirmation hearing, an objection filed by the Office of the United States Trustee (the "UST").

Although the circuit courts are split on the permissibility of third-party releases in plans of reorganization or liquidation, the substantial majority of circuit courts that have ruled on the issue have found them to be permissible in certain exceptional circumstances where the relief is "essential" to the success and viability of the plan, primarily, as in the case here, in the mass tort context. *Compare SE Prop. Holdings, LLC v. Seaside Eng'g & Surveying (In re Seaside Eng'g & Surveying),* No. 14-11590, 2015 U.S. App. LEXIS 3831 at **13-14 (11th Cir. Mar. 12, 2015) (bankruptcy courts have the power under Section 105(a) to issue permanent injunctions or third-party releases where appropriate for the plan); *Airadigm Commc'ns, Inc. v. FCC (In re Airadigm Commc'ns Inc.)*, 519 F.3d 640, 655 (7th Cir. 2008); *Deutsche Bank AG, London Branch v. Metromedia Fiber Network, Inc. (In re Metromedia Fiber Network, Inc.),* 416 F.3d 136 (2d Cir. 2005) (same); *Class Five Nev. Claimants v. Dow Corning Corp. (In re Dow Corning Corp.),* 280 F.3d 648 (6th Cir. 2002) (same); *Gillman v. Continental Airlines (In re Continental Airlines)*¸ 203 F.3d 203 (3rd Cir. 2000) (same); *In re Drexel Burnham Lambert Grp., Inc.,* 960 F.2d 285 (2d Cir. 1992) (same); *Menard-Sanford v. Mabey (In re A.H. Robins Co.),* 880 F.2d 694 (4th Cir. 1989)(same), with *Resorts Int'l v. Lowenschuss (In re Lowenschuss),* 67 F.3d 1394, 1401 (9th

Cir. 1995) (sections 105(a) and 524(e) specifically prohibit the permanent release, discharge, or injunction of non-debtors); *In re W. Real Estate Fund, Inc.*, 922 F.2d 592, 600 (10th Cir. 1990) (same).

Courts that approve third-party releases and injunctions typically apply a multi-factor test to determine whether the releases and injunctions are appropriate. *See, e.g.*, *Dow Corning*, 280 F.3d at 658 (applying a seven-factor test); *A.H. Robins Co.*, 880 F.2d at 702 (4th Cir. 1989) (applying a three-factor test); *Metromedia Fiber Network*, 416 F.3d at 142 (applying a four-factor test). A recent decision from the Fourth Circuit Court of Appeals emphasizes that these factors are typically considered *disjunctive, and that no one factor is dispositive. See Nat'l Heritage Found., Inc. v. Highbourne Found.*, Case No. 13-1608, 2014 U.S. App. LEXIS 12144, at *19 (4th Cir. June 27, 2014) (applying the *Dow Corning* test and noting that "[a] debtor need not demonstrate that every *Dow Corning* factor weighs in its favor to obtain approval of a non-debtor release. But . . . a debtor must provide adequate factual support to show that the circumstances warrant such exceptional relief"); *see also Airadigm Comm'cns.*, 519 F.3d at 657 ("Ultimately, whether a release is 'appropriate' for the reorganization is fact intensive and depends on the nature of the reorganization"); *Metromedia Fiber Network*, 416 F.3d at 142 (2d Cir. 2005) (analyzing non-debtor releases is not "a matter of factors and prongs" but rather requires a finding of unique circumstances); *In re Washington Mut., Inc.*, 442 B.R. 314, 346 (Bankr. D. Del. 2011) (the factors relevant to determining whether a debtor's release of a non-debtor is appropriate "are neither exclusive nor conjunctive requirements") (citing *Master Mortgage*, 168 B.R. at 935 (finding that there is no "rigid test" to be applied in every circumstance and that the five factors enunciated therein are neither exclusive, nor conjunctive)).

The United States Circuit Court of Appeals for the First Circuit has recognized, but not weighed in on, the split in authority over whether non-debtor releases are permissible in a plan of reorganization. *See Monarch Life Ins. Co. v. Ropes & Gray*, 65 F.3d 973, 979-80 (1st Cir. 1995) ("In extraordinary circumstances, it has been held that a bankruptcy court can grant permanent injunctive relief essential to enable the formulation and confirmation of a reorganization plan if, for example, non-debtors who would otherwise contribute to funding the plan will not settle their mutual claims absent 'protection' from potential post-confirmation lawsuits arising from their prepetition relationship with the chapter 11 debtor."); *In re Quincy Med. Ctr., Inc.*, No. 11-16394, 2011 Bankr. LEXIS 4405, at**4-5 (Bankr. D. Mass. Nov. 16, 2011) (noting that "the First Circuit has thus far remained above the fray"). However, lower courts in the District of Massachusetts have considered the issue, and reported decisions show that courts in that District tend to follow the majority rule. *See, e.g.*, *Quincy Med. Ctr.*, 2011 Bankr. LEXIS 4405, at*6 ("I agree with the majority position that in the appropriate circumstances a Chapter 11 plan may provide for the kinds of releases, exculpation and injunctions contained in the debtors' joint plan in these cases."); *In re Mahoney Hawkes, LLP*, 289 B.R. 285, 300 (Bankr. D. Mass. 2002) ("injunctive relief protecting non-debtor third-parties may be appropriate depending upon the circumstances of the case"); *In re Salem Suede, Inc.*, 219 B.R. 922, 930–31 (Bankr. D. Mass. 1998) (finding that "under the circumstances of this case," channeling injunction was not warranted).

In determining whether a non-debtor release is appropriate, bankruptcy courts have adopted and considered the five-factor test set forth in *In re Master Mortgage Inv. Fund*, 168 B.R. 930 (Bankr. W.D. Mo. 1994). Under that test, courts consider the following criteria to determine whether to allow a given non-debtor release:

(a) There is an identity of interest between the debtor and the third-party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate;

(b) The non-debtor has contributed substantial assets to the reorganization;

(c) The injunction is essential to reorganization. Without it, there is little likelihood of success;

(d) A substantial majority of the creditors agree to such injunction. Specifically, the impacted class, or classes, has "overwhelmingly" voted to accept the proposed plan treatment; and

(e) The plan provides a mechanism for the payment of all, or substantially all, of the claims of the class or classes affected by the injunction.

See Master Mortgage, 168 B.R. at 934-35.[7]

The Confirmation Hearing.

Only the UST objected to confirmation. Prior to the confirmation hearing, the UST consented to the entry into evidence of declarations from the Trustee and non-debtor settling

[7] Circuit Court decisions have set forth substantially similar criteria for evaluating the propriety of non-debtor releases. *See Dow Corning*, 280 F.3d at 658 (factors include whether (i) there is an identity of interests between debtor and third-party, usually an indemnity relationship; (ii) the non-debtor has contributed substantial assets to the reorganization; (iii) the injunction is essential to the reorganization; (iv) the impacted classes have overwhelmingly voted to accept the plan; (v) the plan provides a mechanism to pay for all, or substantially all, of the classes affected by the injunction; (vi) the plan provides an opportunity for claimants who choose not to settle to recover in full; and (vii) the bankruptcy court has made a record of specific factual findings that support conclusions); *A.H. Robins Co.*, 880 F.2d at 702 (factors include whether (i) the plan was overwhelmingly approved; (ii) the plan provided for certain claimants who nevertheless chose to opt out of settlement; and (iii) the entire reorganization hinged on the debtor's being free from indirect claims such as indemnity or contribution claims.); *Metromedia Fiber Network*, 416 F.3d at 142 (factors include whether (i) the estate received substantial consideration; (ii) enjoined claims were "channeled" to a settlement fund rather than extinguished; (iii) enjoined claims would indirectly impact the reorganization (indemnity or contribution); and (iv) the plan provided for the full payment of enjoined claims.).

parties in support of confirmation. Prior to the confirmation hearing, twenty-seven (27) declarations were filed in support of confirmation. There were no live witnesses.

At the confirmation hearing, the bankruptcy court heard the arguments of counsel relating to the Third-Party Releases and overruled the UST's objection. The court held that approval of the Third-Party Releases was appropriate in light of the "extraordinary circumstances" of the case. The plan was confirmed on May 20, 2105 and became effective on June 4, 2015. The UST did not file a notice of appeal.