A.H. Robins Co. v. Piccinin
(In re A.H. Robins Co.)
788 F.2d 994 (4th Cir. 1986)

DONALD RUSSELL, Circuit Judge:

Confronted, if not overwhelmed, with an avalanche of actions filed in various state and federal courts throughout the United States by citizens of this country as well as of foreign countries seeking damages for injuries allegedly sustained by the use of an intrauterine contraceptive device known as a Dalkon Shield, the manufacturer of the device, A.H. Robins Company, Incorporated (Robins) filed its petition under Chapter 11 of the Bankruptcy Code in August, 1985.

Background

The device, which is the subject of these suits, had been developed in the 1960's by Dr. Hugh Davis at the Johns Hopkins Hospital in Baltimore, Maryland. In mid-1970 Robins acquired all patent and marketing rights to the Dalkon Shield and engaged in the manufacture and marketing of the device from early 1971 until 1974, when it discontinued manufacture and sale of the device because of complaints and suits charging injuries arising allegedly out of the use of the device. The institution of Dalkon Shield suits did not, however, moderate with the discontinuance of manufacture of the device, since Robins did not actually recall the device until 1984. By the middle of 1985, when the Chapter 11 petition was filed the number of such suits arising out of the continued sale and use of the Dalkon Shield device earlier put into the stream of commerce by Robins had grown to 5,000. More than half of these pending cases named Robins as the sole defendant; a co-defendant or co-defendants were named in the others. Prior to the filing, a number of suits had been tried and, while Robins had prevailed in some of the actions, judgments in large and burdensome amounts had been recovered in others. Many more had been settled.[1] Moreover, the costs of defending these suits both to Robins and to its insurance carrier had risen into the millions. A large amount of the time and energies of

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[1] [O]f the approximately 7,500 Dalkon Shield cases settled from 1972 to February 1985, fewer than 40 went to a jury. A recent article in the [National Law Journal] states that by mid 1985, Robins, along with its insurer, Aetna Casualty & Surety Company, "had paid roughly $517 million for 25 trial judgments and 9,300 settlements since the first verdict in 1975."

Robins' officers and executives was also being absorbed in preparing material for trial and in attending and testifying at depositions and trials. The problems arising out of this mounting tide of claims and suits precipitated this Chapter 11 proceeding.

The filing of the Chapter 11 petition automatically stayed all suits against Robins itself under section 362(a) of the Bankruptcy Code, even though no formal order of stay was immediately entered. But a number of plaintiffs in suits where there were defendants other than Robins, sought to sever their actions against Robins and to proceed with their claims against the co-defendant or co-defendants. Robins responded to the move by filing an adversary proceeding in which it named as defendants the plaintiffs in eight such suits pending in various state and federal courts. In that proceeding, the debtor sought (1) declaratory relief adjudging that the debtor's products liability policy with Aetna Casualty and Insurance Company (Aetna) was an asset of the estate in which all the Dalkon Shield plaintiffs and claimants had an interest and (2) injunctive relief restraining the prosecution of the actions against its co-defendants. Service of the summons and complaint in that adversary proceeding, a memorandum of law in support of the motion for a preliminary injunction therein, a notice of the debtor's intention to apply for a temporary restraining order, a copy of the proposed temporary restraining order and affidavits in support were duly mailed by first-class mail and by Federal Express to all the defendants and their attorneys at their addresses.

At the hearing on the motion for a preliminary injunction, a number of defendants as well as the Committee constituted by the court to represent Dalkon Shield Claimants appeared by counsel. At the commencement of the hearing the defendant Piccinin, a plaintiff in one of the Dalkon Shield actions which Robins sought to stay, filed through her attorney a written motion to dismiss as against her. No other defendant filed a motion in response to the motion for a preliminary injunction. After receiving certain testimony, admitting various records, and hearing arguments of parties, the district court granted Robins' request for a preliminary injunction.

In his order granting the preliminary injunction, the district judge found (1) that continuation of litigation in the civil actions threatened property of Robins' estate, burdened and

impeded Robins' reorganization effort, contravened the public interest, and rendered any plan of reorganization futile; (2) that this burden on Robins' estate outweighed any burden on the Dalkon claimants caused by enjoining their civil actions; and (3) that all remaining insurance coverage in favor of the debtor under its liability policy issued by Aetna was property of the Robins' Chapter 11 estate. The district judge then held that all actions for damages that might be satisfied from proceeds of the Aetna insurance policy were subject to the stay pursuant to 11 U.S.C. § 362(a)(3) and enjoined further litigation in the eight civil actions, pursuant to 11 U.S.C. § 362(a)(1), (3) as supplemented by 11 U.S.C. § 105.

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I

*** Jurisdiction over suits involving co-defendants or third-parties may be bottomed on two statutory provisions of the Bankruptcy Act itself as well as on the general equitable powers of the court. The first of these statutory grants of jurisdiction is found in section 362. The purpose of this section by its various subsections is to protect the debtor from an uncontrollable scramble for its assets in a number of uncoordinated proceedings in different courts, to preclude one creditor from pursuing a remedy to the disadvantage of other creditors, and to provide the debtor and its executives with a reasonable respite from protracted litigation, during which they may have an opportunity to formulate a plan of reorganization for the debtor.

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(a)

[Section 362](a)(1) is generally said to be available only to the debtor, not third party defendants or co-defendants. *** However, as the Court in *Johns-Manville Sales Corp.,* 26 B.R. 405, 410 (S.D.N.Y.1983) remarked, *** "there are cases [under 362(a)(1)] where a bankruptcy court may properly stay the proceedings against non-bankrupt co-defendants" but, it adds, that in order for relief for such non-bankrupt defendants to be available under (a)(1), there must be "unusual circumstances" and certainly "'[s]omething more than the mere fact that one of the parties to the lawsuit has filed a Chapter 11 bankruptcy must be shown in order that proceedings be stayed against non-bankrupt parties.'" This "unusual situation," it would

seem, arises when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor. An illustration of such a situation would be a suit against a third-party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against them in the case. To refuse application of the statutory stay in that case would defeat the very purpose and intent of the statute. ***

(b)

But [subsection] (a)(1), which stays actions against the debtor and arguably against those whose interests are so intimately intertwined with those of the debtor that the latter may be said to be the real party in interest, is not the only part of section 362 providing for an automatic stay of proceedings. Subsection (a)(3) directs stays of any action, *whether against the debtor or third-parties,* to obtain possession or to exercise control over property of the debtor. A key phrase in the construction and application of this section is, of course, "property" as that term is used in the Act. Section 541(a)(1) of the Bankruptcy Act defines "property" in the bankruptcy context. It provides that the "estate is comprised of all the following property, wherever located ... all legal or equitable interests of the debtor in property as of the commencement of the case." The Supreme Court in construing this language in United States v. Whiting Pools, Inc., quoted this language in the legislative history of the Section:

> The scope of this paragraph [541(a)(1)] is broad. It included all kinds of property including tangible or intangible property, causes of action (see Bankruptcy Act § 70a(6)), and all other forms of property currently specified in section 70a of the Bankruptcy Act.

Under the weight of authority, insurance contracts have been said to be embraced in this statutory definition of "property." For example, even the right to cancel an insurance policy issued to the debtor has uniformly been held to be stayed under section 362(a)(3). A products liability policy of the debtor is similarly within the principle: it is a valuable property of a debtor, particularly if the debtor is confronted with substantial liability claims within the coverage of the

policy in which case the policy may well be, as one court has remarked in a case like the one under review, "the most important asset of [*i.e.,* the debtor's] estate," In re Johns Manville Corp., 40 B.R. 219, 229 (S.D.N.Y.1984). Any action in which the judgment may diminish this "important asset" is unquestionably subject to a stay under this subsection. Accordingly actions "related to" the bankruptcy proceedings against the insurer or against officers or employees of the debtor who may be entitled to indemnification under such policy or who qualify as additional insureds under the policy are to be stayed under section 362(a)(3).

(c)

The statutory power of the bankruptcy court to stay actions involving the debtor or its property is not, however, limited to section 362(a)(1) and (a)(3). It has been repeatedly held that 11 U.S.C. § 105 which provides that the bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," "empowers the bankruptcy court to enjoin parties other than the bankrupt" from commencing or continuing litigation. In re Otero Mills, Inc., 25 B.R. 1018, 1020 (D.N.M.1982). ***

Accepting that section 105 confers on the bankruptcy court power under its expanded jurisdiction *** to enjoin suits against parties in other courts, whether state or federal, it is necessary to mark out the circumstances under which the power or jurisdiction may be exercised. In *Otero Mills, supra,* the Court approved a ruling that "[t]o so enjoin a creditor's action against a third party, the court must find that failure to enjoin would effect [sic] the bankruptcy estate and would adversely or detrimentally influence and pressure the debtor through the third party." 25 B.R. at 1020. In *Johns-Manville,* the Court phrased somewhat fuller the circumstances when section 105 may support a stay:

> In the exercise of its authority under § 105, the Bankruptcy Court may use its injunctive authority to "protect the integrity of a bankrupt's estate and the Bankruptcy Court's custody thereof and to preserve to that Court the ability to exercise the authority delegated to it by Congress" [citing authority]. Pursuant to the exercise of that authority the Court may issue or extend stays to enjoin a variety of proceedings [including discovery against the debtor or its

officers and employees] which will have an adverse impact on the Debtor's ability to formulate a Chapter 11 plan.

(d)

Beyond these statutory powers under section 362 and section 105 to enjoin other actions whether against the debtor or third-parties and in whatsoever court, the bankruptcy court under its comprehensive jurisdiction as conferred by [28 U.S.C. § 1334], has the "inherent power of courts under their general equity powers and in the efficient management of the dockets to grant relief" to grant a stay. In exercising such power the court, however, must "weigh competing interests and maintain an even balance" and must justify the stay "by clear and convincing circumstances outweighing potential harm to the party against whom it is operative."

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(g)

*** In the three situations in which the defendants have challenged the injunction granted by the district judge ***, the only defendants other than the debtor, are the two Robins, Dr. Frederick A. Clark, Jr., Dr. Hugh J. Davis, and the debtor's insurer Aetna. So far as the suits against the two Robins and Dr. Clark, those defendants were entitled to indemnification by the debtor under the corporate by-laws and the statutes of Virginia, the State of debtor's incorporation, and were, in addition, additional insureds under the debtor's insurance policy. Dr. Davis was the beneficiary of an express contract of indemnification on the part of Robins and was, under a compromise agreement with Robins and Aetna, an additional insured under Robins' insurance policy. The *Manville* court had granted a preliminary injunction in favor of defendants in the same position as these defendants, as we have seen, on facts similar to those here, finding that the requirements of possible irreparable harm "had been satisfied by the showing ... [that the suits against the defendants would represent] an immediate and irreparable impact on the pool of insurance assets, of the existence of sufficiently serious questions going to the merits," and of the tipping in the defendants' favor in the hardships in a balancing of the debtor's and the plaintiffs'. That court had previously disposed of the public interest being weighted in the debtor's favor: "Indeed, this Court finds the

goal of removing all obstacles to plan formulation eminently praiseworthy and supports every lawful effort to foster this goal while protecting the due process rights of all constituencies."

II.

The district court in this case applied the test for a grant of preliminary injunctive relief[.] It found, as had the Johns-Manville courts, that irreparable harm would be suffered by the debtor and by the defendants since any of these suits against these co-defendants, if successful, would reduce and diminish the insurance fund or pool represented in Aetna's policy in favor of Robins and thereby affect the property of the debtor to the detriment of the debtor's creditors as a whole. The likelihood of success by the debtor under these circumstances appeared indisputable. The hardships which would be suffered irreparably by the debtor and by its creditors generally in permitting these plaintiffs to secure as it were a preference in the distribution of the insurance pool herein to which all creditors were entitled, together with the unquestioned public interest in promoting a viable reorganization of the debtor can be said to outweigh any contrary hardship to the plaintiffs. Such was the finding in the *Manville* cases and that finding does not appear unreasonable here.

The appellants, however, suggest that the record is insufficient to support such findings by the district judge. We disagree. The record is not extensive but it includes every fact considered by the courts in the *Manville* cases to be necessary for their decision. The rights of Dr. Davis, Dr. Clark and the two Robins to indemnity and their status as additional insureds under Robins' insurance policy are undisputed on the record. That there are thousands of Dalkon Shield actions and claims pending is a fact established in the record and the limited fund available under Robins' insurance policy is recognized in the record. It seems incontestable that, if the suits are permitted to continue and discovery allowed, any effort at reorganization of the debtor will be frustrated, if not permanently thwarted. It is obvious from the record that if suits are permitted to proceed against indemnitees on claims on which the indemnitees are entitled to indemnity by Robins, either a binding judgment against the debtor will result or, as

the court in *Metal Center* said, inconsistent judgments will result, calling for the exercise of the court's equitable powers. In our opinion, the record was thus more than adequate to support the district court's grant of injunctive relief. Certainly, the district court did not commit an abuse of discretion in granting the injunction herein.

The appellants add a final complaining note that the district judge stated in his decision that the "Conclusions of Law" made by him should apply "with equal force to all defendants similarly situated who are brought to the attention of the court." This is little different, however, from the language of the court in the *Manville* cases in which there was a broad, general injunction against all present or future suits.

In summary, we have no difficulty in sustaining the grant of a preliminary injunction herein. We are sustained in this conclusion by the fact, recognized by the district judge on the record, that any Dalkon Shield plaintiff may at any time petition for the vacation of the stay as it affects his or her suit and he or she is entitled to a hearing on such petition. Actually, there is one such petition pending and the district judge has agreed to set a hearing on that petition.

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