

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
NORTHWESTERN CORPORATION,)	
)	Case No. 03-12872 (CGC)
Debtor.)	
_____)	

MEMORANDUM DECISION

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CASE, J.

Richard R. Hylland (“Hylland”) seeks relief from stay against Debtor NorthWestern Corporation (“Debtor”) to proceed with a pending arbitration proceeding alleging that prepetition Debtor breached Hylland’s employment contract as Debtor’s President and Chief Operating Officer. Debtor objects. For the following reasons, the Court denies Hylland relief.

BACKGROUND

On April 30, 2003, Hylland initiated an arbitration proceeding against Debtor seeking, among other things, the determination of certain benefits and compensation due under his Employment Agreement as a result of his resignation or termination of employment. In addition, Hylland alleged Debtor engaged in tortious conduct, including defamation and infliction of emotional distress. The parties agreed to arbitrate in Minneapolis and have selected an arbitrator. A mediation was tentatively scheduled for mid-September, to be followed by a arbitration hearings in November, 2003, and February, 2004.

Debtor petitioned for relief under Chapter 11 on September 14, 2003. It continues to operate its business and manage its properties as debtor-in-possession pursuant to 11 U.S.C. section 1107(a) and 1108. As a result of Debtor’s bankruptcy, Hylland seeks stay relief to continue the arbitration proceedings against Debtor.

JURISDICTION

This Court has jurisdiction over this matter, as a core proceeding, pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(B) and (G).

DISCUSSION

Hylland argues that this Court lacks discretion to deny his motion because his claim is non-core. See Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 885 F.2d 1149 (3d Cir. 1989). In Hays, the Third Circuit held that a claim by an estate against a third party based entirely on state law arising out of a contract with a binding arbitration clause was a non-core claim. Hays, 885 F.2d at 1155-57; 28 U.S.C. § 157. Finding no conflict between the policies of the Federal Arbitration Act and the Bankruptcy Code, the Court concluded that the federal policy in favor of arbitration mandated enforcement of the arbitration clause. Hayes, 885 F.2d at 1156.

Hays is not determinative of this motion. Courts have generally read Hays to apply only to non-core claims; for a recent example, see Matter of Mintze, 2003 WL 22701020, *2 (D.C. E.D. Pa.). In this case, resolution of Hylland's claim is a core proceeding. Unlike Hays, where it was *the estate* seeking affirmative recovery against a *non-debtor third party* (a situation identical to Northern Pipeline Constr. Co. v. Marathon Pipeline Co., 458 U.S. 50 (1982)), here it is the *third party* Hylland asserting a claim against *the estate*. This falls squarely within the concept of core proceeding as interpreted under applicable Third Circuit law.

In Halper v. Halper, 164 F.3d 830, 836-38 (3d Cir. 1999), the Third Circuit engaged in a claim-by-claim analysis of various claims to determine their core or non-core status. The two-step analysis involves, first, an examination of 28 U.S.C. § 157(b) to determine if the asserted action falls

within the congressional definition and, second, whether it “invokes a substantive right provided by title 11” Id. at 836. Most relevant here, the Third Circuit determined that a claim against the estate that implicates 11 U.S.C. § 502(b)(7) is core, which is precisely the situation in this case. Id. at 838. Hylland’s claim under the employment contract falls squarely within the language of 28 U.S.C. § 157(b)(2)(B) – “allowance or disallowance of claims against the estate” – and directly implicates not only the general allowance standards of 11 U.S.C. § 502(b)(1) relating to contracts, but also the specific provisions of 11 U.S.C. § 502(b)(7) relating to employment contracts.

Therefore, the Court has discretion to determine how best to resolve this pre-petition unsecured claim. In this case, there is a bar date set for January 15, 2004. A plan of reorganization has yet to be filed; no distribution on any unsecured claim will occur until after the bar date and after the effective date of a confirmed plan, if any. Hylland has made no credible argument why his claim should to be resolved under a schedule materially different from all other unsecured claims. This is particularly true where the nature and extent of any dividend to unsecured creditors may be a significant factor, both for Hylland and for Debtor, in determining how best to proceed with the liquidation and allowance of his claim. In such circumstances, there is no pressing need for the arbitration to continue immediately, at a time when the energy and focus of management should be direct to formulation and confirmation of a plan.

CONCLUSION

For the foregoing reasons, the Court denies the Motion for Relief from Stay without prejudice. At a later, more appropriate, time, Hylland is free to seek relief from stay on a renewed basis to urge that the appropriate vehicle for resolution of his claim is through arbitration. That time is the earlier of

the confirmation of a plan or Debtor's first objection to unsecured claims generally.

Debtor's counsel is to submit a form of order for the Court's signature.

Charles G. Case, II
United States Bankruptcy Judge