

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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

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CASE, J.

Before the Court is the Joint Motion of Harbert Management Corporation and Wilmington Trust Company, as Indenture Trustee, to Lift the Automatic Stay to Allow the Movants to File Pleadings and Participate in Securities and Exchange Commission Proceedings (the "Motion") (Docket No. 1172). NorthWestern Corporation ("NorthWestern" or the "Debtor") filed a response which was joined by the Official Committee of Unsecured Creditors. Upon consideration of all relevant pleadings, the parties' oral argument heard on May 17, 2004, and for the reasons set forth below, the Motion will be denied.

BACKGROUND

On September 14, 2003 (the "Petition Date"), the Debtor filed a voluntary petition for relief under title 11 of the Bankruptcy Code. Pursuant to §§ 1107 and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its properties as debtor-in-possession.

The Debtor filed its initial disclosure statement and plan of reorganization on March 11, 2004. Numerous objections were filed by various parties in interest. The Debtor filed an amended disclosure statement and a first amended plan of reorganization on May 14, 2004 and May 17, 2004, respectively. After the hearing held on May, 17, 2004, the Court entered an Order on May 26, 2004 approving the Debtor's first amended disclosure statement. The confirmation hearing is currently scheduled for August 25, 2004.

Harbert Management Corporation ("Harbert") and Wilmington Trust Company, as indenture trustee ("Wilmington") (collectively the "Movants"), seek relief from stay in order to file pleadings and participate in a proceeding in front of the Securities and Exchange

Commission ("SEC"). All parties agree that, at the present time, there is no pending proceeding in front of the SEC; therefore, the gravamen of the motion is to lift the stay in order to allow Harbert and Wilmington to attempt to commence a case in front of the SEC and, if successful, to continue to participate in it.

Wilmington is the indenture trustee for certain subordinated debt, some of which is held by Harbert. The Movants allege that the Debtor violated the Public Utility Holding Company Act of 1935 ("PUHCA") in connection with the "going flat" transaction described in this Court's Memoranda Decision denying Comanche Park's motion for relief from stay of even date, and will not be repeated here.

JURISDICTION

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

DISCUSSION

The filing of a bankruptcy petition triggers an automatic stay of "the commencement or continuation" of "action or proceeding against the debtor that was or could have been commenced before the commencement of the case . . . , or to recover a claim against the debtor that arose before the commencement of case." 11 U.S.C. § 362(a)(1). The Bankruptcy Code permits a party in interest to seek relief from the stay "for cause." 11 U.S.C. § 362(d)(1). Because, the Bankruptcy Code does not define "cause," a determination to grant a party relief from stay is made on a case by case basis. See In re Wilson, 116 F.3d 87, 90 (3d Cir. 1997).

In essence, the Movants' claim that the Debtor violated PUHCA by seeking, and obtaining, an exemption from registration based on its assertion that it was not a "holding

company” when in fact it was. According to the Movants, if PUHCA was violated, then the debt held by senior debt holders with actual knowledge of the facts and circumstances is “void.”

Because compliance with PUHCA is within the regulatory jurisdiction of the SEC, the Movants seek relief so that, to put it bluntly, they can see if they can get the SEC interested in this issue.

As pointed out by the Debtor, the case is at a critical junction in the reorganization proceedings. The disclosure statement has been approved; the Court has established the record date, the voting date, the objection date, and the date for the initial confirmation hearing. If this matter were to proceed before the SEC, and the SEC were to open an investigation, the schedule would be materially affected.

The Movants candidly acknowledge that they intend to raise these same issues in the context of confirmation of the plan, arguing that the Debtor is not proceeding in “good faith” because the Debtor’s plan of reorganization provides for a billion dollars of payments to claims that are “void.” Likewise, the Debtor acknowledges that the SEC is free under its regulatory authority (and the police power exception to the automatic stay) to open an investigation if it wishes to do so; pursuant to § 362(b) the automatic stay does not operate as a stay “of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s or organization’s police power and regulatory power.” 11 U.S.C. § 362(b)(4). Thus, these are issues that can be addressed either in the context of the plan confirmation or in the regulatory context at the SEC, should the SEC decide to do so.

Under these circumstances, the Court concludes that the Movants have not carried their burden showing cause as to why the stay should be lifted, so that they can proceed with an action before the SEC. Although these issues are specifically within the authority of the SEC, they are

not exclusively within the authority of the SEC. The Movants acknowledge that, were an investigation to be opened, they would be the primary agents for pursuing the investigation and for developing the record. The same, of course, is true here. If the plan confirmation process comes down to a contested proceeding, all interested parties will be entitled to discovery as provided by Rule 9014 of the Federal Rule of Bankruptcy Procedure. The issues can be raised and litigated here in the context that is directly relevant to this proceeding, i.e., whether the plan should be confirmed. In short, the Movants have not established why, other than to create leverage, it is either important or necessary for them to be able to open another front in order to investigate these issues where the issues are fully capable of being investigated and addressed here.

CONCLUSION

For the foregoing reasons, the Joint Motion of Harbert and Wilmington for relief from the stay will be denied. Counsel for NorthWestern is to submit a form of order.



Charles G. Casper II
United States Bankruptcy Judge