

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE

W.R. Grace & Co., et al.,
Debtors

Case No. 01-01139(JKF)
Chapter 11

W.R. Grace & Co., et al.,

Plaintiffs

v.

Adv. Proc. A-01-771
Related to Dkt. No. 72
Motion for Summary Judgment
filed on behalf of ExxonMobil
Corporation

Margaret Chakarian, Robert H. Locke,
Jackie Ellison, Marcia Ellison, Cary
Youpee, Ruppel K. Perry, The State of
Michigan, Alice Smolker, Gary Smolker,
Home Saving Termite Control, Gloria
Munoz, ExxonMobil Corporation, et al.,
and John Does 1-1000,

Defendants

MEMORANDUM OPINION¹

FACTS

ExxonMobil has filed a Motion for Summary Judgment to dismiss Debtors' claims that the *Exxon Corp. v. Samson Hydrocarbons Co.* action pending in Oklahoma state court should be stayed. See Amended Complaint, Dkt. No. 54, at ¶¶ 1, 45 referring to *Exxon Corp. v. Samson Hydrocarbons Co.*, No. CJ-99-390 (Creek County, Oklahoma) (the "Oklahoma Action"). The Oklahoma Action developed from the following history.

¹This Memorandum Opinion constitutes our findings of fact and conclusions of law. The court's jurisdiction was not at issue.

Several petroleum companies, including Grace Petroleum Company (“GPC”), have produced oil and gas at Cushing Field in Creek County, Oklahoma, since 1912. GPC held property rights to Cushing Field from 1979 through 1985. Until 1993, GPC was a wholly owned subsidiary of Debtor Grace Energy Company (“GEC”).

On January 1, 1985, ExxonMobil acquired the exploration rights to Cushing Field from GPC. Pursuant to the “Agreement to Purchase and Sell,” GPC agreed to an indemnity provision to protect ExxonMobil from damages relating to GPC’s operations at Cushing Field. *See* Declaration of Steven J. Adams in Support of Motion for Summary Judgement, Dkt. No. 73, Exhibit A, Agreement to Purchase and Sell, to at 31.

Debtor GEC sold GPC to Samson on December 30, 1992, and, pursuant to the “GPC Stock Purchase Agreement,” GEC agreed to indemnify Samson for certain environmental liabilities, including any liabilities relating to facilities that GPC had previously owned. *See* Declaration of Steven J. Adams in Support of Motion, *supra*, Exhibit B, Agreement for the Purchase and Sale of the Stock of Grace Petroleum Corporation, at 53. The indemnity provision in this agreement was limited to claims in excess of \$25,000 and applied only where aggregate claims exceed \$250,000. *Id.* at 55-56.

Several landowners came forward beginning in 1990 with claims against ExxonMobil of alleged groundwater contamination and surface damage relating to the operations at Cushing Field. These claims were subsequently settled, and ExxonMobil requested indemnity for these settlement amounts from Samson, the current owner of GPC, pursuant to the indemnity provisions contained in the “Agreement to Purchase and Sell.” Samson refused to indemnify ExxonMobil, and in June 1997, ExxonMobil commenced an action in the District Court of Creek

County, Oklahoma, against Samson for indemnity and contribution. GEC assumed the defense of this Oklahoma Action on May 9, 1994, pursuant to the GEC/Samson indemnity provisions.²

Debtors filed for relief under Chapter 11 of the Bankruptcy Code on April 2, 2001. On June 21, 2001, the Debtors filed an Amended Complaint for Declaratory and Injunctive Relief, which sought to enjoin various actions, which allegedly implicated the Debtors, their affiliates, and their officers and directors.

ExxonMobil subsequently filed this Motion for Summary Judgment asserting that there is no basis for enjoining the Oklahoma Action either under §362 or §105. Debtors' position is that there is an identity of interest inasmuch as the GPC/Exxon indemnity is the basis for the Exxon suit against Samson and Debtors are required to indemnify Samson.

ANALYSIS

Section 362(a)(1) of the Bankruptcy Code provides that filing a petition under certain sections operates as a stay of "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor. . . ." 11 U.S.C. § 362. Although the statute contains the phrase "against the debtor," the automatic stay has generally been extended to the "'unusual situation' where an action against one party is essentially an action against the bankruptcy debtor, as in the case where a third-party is entitled to indemnification by the debtor for any judgment taken against it." *Fleet Business Credit, LLC v. Wings Restaurants,*

²Until 1992 GPC was a wholly owned subsidiary of Grace Energy Company, a Debtor in these bankruptcy cases. In 1992 GEC sold GPC to Samson Hydrocarbons Company. Pursuant to the GPC Stock Purchase Agreement, GEC agreed to indemnify Samson for, *inter alia*, damages caused by certain environmental conditions at plants and treatment facilities in which GPC previously had owned an interest.

Inc., 291 B.R. 550, 553 (N.D. Okla. 2003). *See also In re Global Industrial Technologies, Inc.*, 303 B.R. 753, 762 (Bankr. W.D. Pa. 2004); *vacated in part and modified in part on other grounds* 2004 WL 555418 (Bankr.W.D.Pa., Feb. 2004); *In re Family Health Services, Inc.*, 105 B.R. 937, 942-43 (Bankr. C.D. Cal. 1989); *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir.), *cert. denied* 479 U.S. 876 (1986).

This extension of the automatic stay to actions involving nondebtors furthers Congress' intentions in enacting §362(a). The automatic stay was meant to cease creditor collection efforts of antecedent debts, to protect assets of the debtor's estate, to provide for equitable treatment of all creditors and to ensure successful reorganization efforts. *See, e.g., Matter of Frenville*, 744 F.2d 332 (3d Cir. 1984), *cert. denied* 469 U.S. 1160 (1985). The Bankruptcy Court for the Southern District of New York considered these policy reasons and extended the stay to proceedings "against non-debtors where such actions would interfere with, deplete or adversely affect property of [Johns-] Manville's estates or which would frustrate the statutory scheme of Chapter 11 or diminish Manville's ability to formulate a plan of reorganization." *In re Global Industrial Technologies*, 303 B.R. 753, 763 (Bankr. W.D. Pa. 2004), *quoting In re Johns-Manville Corp.*, 26 B.R. 420, 423 (Bankr. S.D.N.Y. 1983), *affirmed* 40 B.R. 219 (S.D.N.Y. 1984).

Although the automatic stay can be extended to situations involving nondebtors, courts are careful to reserve such power to the most extreme and "unusual circumstances." *McCartney v. Integra National Bank North*, 106 F.3d 506, 510 (3d Cir. 1997). "Unusual circumstances" are found where "there is such an 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.” *McCartney*, 106 F.3d at 510, quoting *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986).

ExxonMobil argues that there is no such identity between the parties here and contends that the present case is inherently similar to a case decided by the Court of Appeals for the Fourth Circuit. In *In re A.H. Robins Co., Inc. (Washburn & Kemp, PC v. Committee of Dalkon Shield Claimants)*, 846 F.2d 267 (4th Cir. 1988), the court rejected extension of the automatic stay to an action by a law firm seeking payment from an insurer, which had hired the law firm to defend a tort action against the debtor. 846 F.2d 267 (4th Cir. 1988). Pursuant to an agreement between the insurer and the debtor, the insurer was permitted to seek repayment of the litigation costs from the debtor. The court allowed continuation of the action to collect fees and expenses from the insurer because the law firm’s contract was solely with the insurer. The law firm was not privy to or bound by the contract between the insurer and the debtor. The insurer was required to pay the law firm for its services whether or not the insurer had the right to offset or recoup from the debtor the amounts paid to the law firm. The insurer’s liability under the policy issued to the debtor had no effect on the insurer’s liability to the law firm.

ExxonMobil makes an accurate comparison between *A.H. Robins (Washburn & Kemp)* and the present case in the sense that both cases involve a separate contractual obligation to which the debtor was not a party. In the present case, however, there is a closer identity between the Debtors and the third-party, Samson. In essence, a judgment against Samson will in effect be a judgment or finding against Debtors that will implicate Debtors’ indemnification obligation and, therefore, the automatic stay should be extended to the Oklahoma Action.

In *In re Global Industrial Technologies, Inc.*, *supra*, 303 B.R. at 760, this court explained

that the fact that the action did not name the debtor was not dispositive. The court found that the debtor's interests with respect to certain insurance policies would be "adversely affected and perhaps irreparably harmed" if the state court action at issue was permitted to go forward." *Id.*

Similarly, the fact that the Oklahoma Action does not name Debtors is not dispositive as to whether the automatic stay should be extended in this situation. In the Oklahoma Action, ExxonMobil seeks indemnity from Samson pursuant to the indemnity provisions in the "Agreement to Purchase and Sell" signed when ExxonMobil acquired exploration rights to Cushing Field from GPC in 1985. ExxonMobil has pursued its claims against Samson as the current owner of GPC. Samson, however, is entitled to indemnification from Debtors pursuant to the "GPC Stock Purchase Agreement" signed in 1992 when Samson purchased GPC. Thus, a judgment against Samson will be, in effect, a judgment against Debtors. *McCartney, supra*, 106 F.3d at 510. The facts of the matter before us show that "unusual circumstances" exist warranting the extension of the automatic stay in this case. *Id.*

It is also noted that only GPC's operations at the Cushing Field constitute the basis for ExxonMobil's claims³ and, therefore, any possibility that Samson would choose not to pursue indemnification from Debtors seems not to exist. Also, on May 9, 1994, Debtors acknowledged that the ExxonMobil action was covered by the indemnity agreement and agreed to assume the defense of the Oklahoma Action. *See* Exhibit C to Debtors' Opposition to ExxonMobil Corporation's Motion for Summary Judgment, May 4, 1994, letter from Jack A. Canon, Senior Vice President, General Counsel of Samson, to Legal Department, Grace Energy Corporation,

³The landowners notified ExxonMobil of their claims in or around 1990. ExxonMobil's Memorandum of Law in Support of Motion for Summary Judgment, Dkt. No. 71, at 5.

tendering the Oklahoma Action to GEC for defense. *See also* Debtors' Opposition to ExxonMobil Corporation's Motion for Summary Judgment, Dkt. No. 75, at 3 ("Grace Energy has already admitted that Exxon's action against Samson falls within the terms of its indemnity"). Until Debtors filed for relief under Chapter 11, they had assumed the defense of the Oklahoma Action against Samson. *Id.* *See also* Amended Complaint, Dkt. No. 54, at ¶ 45. These facts highlight the difference between *Washburn & Kemp* and the present action. The Debtors here are much more involved in the Oklahoma Action by virtue of their assumption of defense costs and their acknowledgment that the indemnity provisions in the GEC/Samson agreement are applicable.

ExxonMobil also argues that the Debtors' indemnity obligations are not absolute and, therefore, the stay should not be extended to the Oklahoma Action. It is true that the Court of Appeals for the Fourth Circuit has held that "unusual circumstances" may arise where a third party "is entitled to absolute indemnity by the debtor on account of any judgment that might arise against them in the case." *A.H. Robins v. Piccinin, supra*, 788 F.2d at 999. Although the GEC/Samson indemnity agreement places certain limitations on the Debtors' obligation to indemnify, this does not require a holding that the obligation is not absolute. The Debtors are required to indemnify Samson for claims in excess of \$25,000. *See* Exhibit B to Adams Declaration, Agreement for the Purchase and Sale of the Stock of Grace Petroleum Corporation, *supra*. Debtors concede that the Oklahoma Action falls under its indemnity obligation, Debtors' Opposition to ... Motion for Summary Judgment, Dkt. No. 75, at 8, and have also undertaken the defense of the Oklahoma Action. Accordingly, this court would be hard pressed to find that Debtors' obligations are anything but absolute.

ExxonMobil's Motion for Summary Judgment seeking to prohibit the extension of the automatic stay to the Oklahoma Action will be denied because a judgment against Samson in that action would essentially be a judgment against Debtors. Debtors indemnity obligations, including its obligation to undertake the defense of the Oklahoma Action, will impair its quest for a successful reorganization by depleting the assets currently available.

We also find that extension of a stay is warranted under §105 of the Bankruptcy Code inasmuch as the ExxonMobil action against Samson has a direct effect on the reorganization proceedings of these Debtors. Debtors are contractually obligated to defend Samson and, to the extent Samson is found liable, Debtors must indemnify Samson. Debtors do not dispute this obligation. The defense of the action alone requires that Debtors expend resources and time that are better spent in connection with the reorganization process. This case is three years old and Debtors are engaged in an attempt to negotiate a consensual plan. It is appropriate under the circumstances to stay prosecution of the Oklahoma Action.

An appropriate order will be entered.

DATE: April 29, 2004

Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

cc: David M. Bernick, Esquire
Janet S. Baer, Esquire
Kirkland & Ellis
200 east Randolph Drive
Chicago, IL 60601

David Carickhoff, Jr., Esquire
Pachulski Stand Ziehl Young Jones
& Weintraub
919 North Market Street, 16th Floor
Wilmington, DE 19899

William E. Chipman, Esquire
Greenberg Traurig, LLP
The Brandywine Building
1000 West Street, Suite 1540
Wilmington, DE

Adam D. Cole, Esquire
Greenberg Traurig, LLP
885 Third Avenue
New York, NY 10022

U.S. Trustee
844 King Street
Suite 2313
Wilmington, DE 19801

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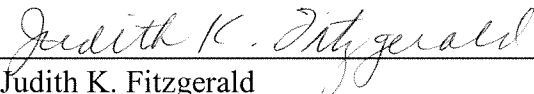
ORDER DENYING MOTION FOR SUMMARY JUDGMENT

AND NOW, this 29 day of April, 2004, for the reasons
expressed in the foregoing Memorandum Opinion, it is **ORDERED, ADJUDGED and
DECREED** that ExxonMobil Corporation's motion for summary judgment is **DENIED**.

It is **FURTHER ORDERED** that the preliminary injunction applies to the Oklahoma
Action identified *Exxon Corp. v. Samson Hydrocarbons Co.*, No. CJ-99-390 (Okla. Dist. Ct.,
Creek Cty.).

It is **FURTHER ORDERED** that, to the extent that electronic notification of the entry of
this Memorandum Opinion and Order is not sent to all parties in interest counsel for Debtor shall
immediately cause a copy of this Memorandum Opinion and Order to be served on all parties in

interest, including, but not limited to, counsel for all committees, and shall file a certificate of service forthwith.



Judith K. Fitzgerald
United States Bankruptcy Judge

cc: David M. Bernick, Esquire
Janet S. Baer, Esquire
Kirkland & Ellis
200 east Randolph Drive
Chicago, IL 60601

David Carickhoff, Jr., Esquire
Pachulski Stand Ziehl Young Jones
& Weintraub
919 North Market Street, 16th Floor
Wilmington, DE 19899

William E. Chipman, Esquire
Greenberg Traurig, LLP
The Brandywine Building
1000 West Street, Suite 1540
Wilmington, DE

Adam D. Cole, Esquire
Greenberg Traurig, LLP
885 Third Avenue
New York, NY 10022

U.S. Trustee
844 King Street
Suite 2313
Wilmington, DE 19801

**MOVANT SHALL IMMEDIATELY
SERVE A COPY OF THIS ORDER
ON ALL PARTIES IN INTEREST
AND FILE PROOF OF SERVICE
WITH THE CLERK OF THE
BANKRUPTCY COURT WITHIN
TEN (10) DAYS HEREOF.**