

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

EXIDE TECHNOLOGIES, et al.,)
AND CREDIT SUISSE FIRST)
BOSTON,)
)
Appellants,)
)
v.) Appeal No. C.A. No. 02-1572-SLR
) Bank. Case No. 02-11125-KJC
STATE OF WISCONSIN INVESTMENT)
BOARD,)
)
Appellee,)
)
and)
)
OFFICIAL COMMITTEE OF EQUITY)
SECURITY HOLDERS OF EXIDE)
TECHNOLOGIES, et al.,)
)
Intervenor.)
)

OFFICIAL COMMITTEE OF)
UNSECURED CREDITORS OF EXIDE)
TECHNOLOGIES, et. al.,)
)
Appellant,)
)
v.) Appeal No. C.A. No. 02-1610-SLR
) Bank. Case No. 02-11125-KJC
STATE OF WISCONSIN INVESTMENT)
BOARD,)
)
Appellee,)
)
and)
)
OFFICIAL COMMITTEE OF EQUITY)
SECURITY HOLDERS OF EXIDE)
TECHNOLOGIES, et al.)

MEMORANDUM ORDER

At Wilmington this 23rd day of December, 2002, having

reviewed the papers and heard oral argument;

IT IS ORDERED that the bankruptcy court's September 23, 2002 decision in the above captioned matter is affirmed and the appeal denied, for the reasons that follow:

1. This court has jurisdiction to hear an appeal from the bankruptcy court pursuant to 28 U.S.C. § 158(a). In undertaking a review of the issues on appeal, the court applies a clearly erroneous standard to the bankruptcy court's findings of fact and a plenary standard to that court's legal conclusions. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991) (citing Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir. 1981)). The district court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a de novo basis bankruptcy court opinions. In re Hechinger, 298 F.3d 219, 224 (3d Cir. 2002); In re Telegroup, 281 F.3d 133, 136 (3d Cir. 2002).

2. The bankruptcy court decision which is the subject of this appeal involves the appointment of an equity committee¹ pursuant to 11 U.S.C. § 1102(a)(2), which provides in relevant part that,

[o]n request of a party in interest, the court may order the appointment of . . . committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.

The statute does not define the term "adequate representation;" therefore, the bankruptcy court "retains the discretion to appoint an equity committee based on the facts of each case." In re Williams Communications Group, Inc., 281 B.R. 216, 220 (Bankr. S.D.N.Y. 2002). Generally, however, the appointment of an official equity committee "should be the rare exception" and should not be appointed unless equity holders establish² that

(i) there is a substantial likelihood that they will receive a meaningful distribution in the case under a strict application of the absolute priority rule, and (ii) they are unable to represent their interests in the bankruptcy case without an official committee.

Id. at 223. In determining whether equity holders are likely to receive a distribution, courts review the costs associated with

¹See the September 23, 2002 decision of the court at D.I. 24, Ex. B at 4-15.

²The parties agree that the burden of proof is by a preponderance of the evidence.

appointing an official committee as compared to the debtor's solvency. If a debtor appears to be "hopelessly insolvent," the appointment of an official equity committee is generally regarded as unjustified. If a debtor does not appear to be "hopelessly insolvent," courts consider the following additional factors in determining whether the equity holders are adequately represented without the appointment of an official committee:

- Whether the shares are widely held and publicly traded;
- The size and complexity of the Chapter 11 case; and
- The timing of the motion relative to the status of the Chapter 11 case.

See Matter of Kalvar Microfilm, Inc., 195 B.R. 599, 600 (Bankr. D. Del. 1996).

3. The bankruptcy court employed the correct legal standard in its decision to appoint an equity committee. (D.I. 24, Ex. B at 4-11) Keeping in mind that the decision to appoint an equity committee rests within the sound discretion of the bankruptcy court, this court finds as well that the bankruptcy court's decision is based on facts of record that are not clearly erroneous.

a. First, the motion for appointment of the equity committee came early in this complex Chapter 11 proceeding. Consequently, in balancing the costs of supporting an equity committee with the admittedly speculative prospects for a

recovery for equity, the bankruptcy court did not err by finding that debtors were not hopelessly insolvent. More specifically, the bankruptcy court found that the appellee "presented credible evidence of equity value of the Debtors on a cash flow basis." (D.I. 24, Ex. B at 11) Although appellants argue that such evidence is comprised of little more than assumptions and economic speculation, nevertheless, appellee presented expert evidence consistent with the expectation that debtors intend to reorganize and not liquidate. (See D.I. 24, Ex. B at 13) Thus, although some of the bankruptcy court's apparent findings of fact may not be supported by the record,³ there is evidence of record that the debtor is not hopelessly insolvent.

b. Second, although appellee is a substantial equity holder capable of representing itself in the bankruptcy proceeding, the bankruptcy court concluded that the Chapter 11 process would benefit from having an official committee of equity holders. Although different judges would employ their discretion differently when faced with the facts of record, this court sees no clear error in the bankruptcy court's decision to be more inclusive in this complex Chapter 11 case.

4. For the reasons stated above, the September 23, 2002 decision of the bankruptcy court is affirmed and the appeal

³For instance, there is no evidence of hidden assets by way of debtors' foreign subsidiaries.

denied.

Sue L. Robinson

United States District Judge