

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

Case No. 84-319-BK-J-GP

CHARTER INTERNATIONAL OIL
COMPANY,

Debtor

CHARTER INTERNATIONAL OIL
COMPANY AND CHARTER OIL
COMPANY,

Plaintiffs,

v.

Adversary No. 3:06-ap-00179-GLP

EDWARD YOUNG AND LOIS YOUNG,

Defendants.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This Proceeding is before the Court upon cross-motions for summary judgment filed by Plaintiffs, Charter International Oil Company (“CIOC”) and Charter Oil Company (“Charter Oil”) (collectively, “Charter”), and Edward Young and Lois Young (the “Defendants”). After a hearing held on January 3, 2007, the Court enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On March 24, 2006, Defendants filed an amended complaint in the Circuit Court for Madison County, Illinois against Charter Oil and other unrelated defendants relating to alleged injuries resulting from exposure to benzene. On April 21, 2006, Charter Oil removed the State Court Action as to Charter Oil to the United States District Court for the Southern District of Illinois and thereafter transferred the case to the United States Bankruptcy Court for the Southern District of Illinois.

2. On April 26, 2006, Charter filed the instant adversary proceeding to determine dischargeability of Defendants’ claim in the

Bankruptcy Court for the Middle District of Florida, Jacksonville Division. On May 26, 2006, Defendants filed an answer and counterclaim for award of sanctions. On November 27, 2006, the parties filed a stipulation of facts, for use in connection with the instant cross-motions for summary judgment.

3. Charter Oil is a stockholding company. CIOC, a wholly owned subsidiary of Charter Oil, owned and operated a refinery in Houston, Texas from January 1971 until March 1986. Certain benzene-containing petroleum products such as gasoline were manufactured and produced by CIOC at the Houston refinery.

4. On April 20, 1984, CIOC filed a petition under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court for the Middle District of Florida.¹ On May 23, 1984, Charter filed its schedules, including its schedule of known creditors. Defendants were not known by Charter to be creditors as of April 20, 1984, and therefore were not listed on Charter’s schedules as known creditors.

5. On July 19, 1984, Charter filed a motion for order extending the last day for filing claims (the “Motion”). That Motion requested the court, *inter alia*, to enter an order:

- A. extending the bar date for the filing of proofs of claims by creditors;
- B. requiring that notice of the proposed extended claims bar date be given by mail to all known creditors; and
- C. providing that notice of the proposed extended claims bar date be provided to unknown creditors by publication.

The Motion attached as an exhibit the form notice to unknown creditors that Charter requested the bankruptcy court to approve.

6. On July 19, 1984, Charter served its notice of hearing to consider the Motion and for

¹ CIOC filed its petition with petitions filed by its ultimate parent company, The Charter Company, and forty-two other subsidiaries of The Charter Company. The cases were jointly administered but not consolidated. All bankruptcy court filings and orders referenced herein were made or entered in the jointly administered cases.

approval of its proposed notices to creditors. Pursuant to the notice of hearing, the Bankruptcy Court held a hearing on the Motion on August 3, 1984.

7. On August 3, 1984, the Bankruptcy Court signed an "Order Extending Date for the Filing of Proofs of Claim," which was filed on August 8, 1984 (the "August 8 Order"), and which:

- A. found that due notice of the debtor's Motion had been given;
- B. acknowledged that the Motion was heard as noticed by the Bankruptcy Court on August 3, 1984;
- C. found that the notice of the bar date to be given as required by the order was "reasonably calculated, under all the circumstances herein present, to apprise all those entities, whether known or unknown, which may assert claims against the Debtors . . . of the necessity to file proofs of claim on or before the Bar Date and to provide them with ample opportunity to file their proofs of claim against the Debtors . . .";
- D. extended the claims bar date to November 19, 1984;
- E. required that notice be sent in the form approved by the Court to all known creditors; and
- F. required that a copy of the notice be published in accordance with the publication schedule attached to the Motion as Exhibit B.

8. The August 8, 1984 Order required the debtor to publish the bar date notice as follows:

- A. New York Times (national edition). One time no later than August 18, 1984;
- B. Wall Street Journal (national edition). One time no later than August 18, 1984;

- C. Florida Times-Union (Jacksonville, FL). One time no later than August 18, 1984;
- D. Houston Chronicle. One time no later than August 18, 1984;
- E. St. Louis Post-Dispatch. One time no later than August 18, 1984;
- F. Oil Daily. One time no later than August 30, 1984.

Notice was published by Charter in accordance with the August 8, 1984 Order as shown by the proof of publication filed with the Court.

9. In March 1986, Charter sold its Houston refinery and all related assets to a third party at a bankruptcy court auction and pursuant to an order and agreement approved by the Bankruptcy Court.

10. On December 18, 1986, Charter's Plan of Reorganization was approved by this Court and Charter was discharged from all of its debts arising out of or related to claims that existed on or before the date of confirmation of the plan.² The order confirming the plan also permanently enjoined all parties and persons from asserting or taking any action against Charter with respect to or in furtherance of any claim that had been discharged.

11. From 1971 to 1982, Edward Young was employed as a fuel tanker truck driver by Petro-Chemical Transport, Inc. and Young Transport, Inc. During the course of this employment, he was allegedly exposed to benzene-containing products processed, produced, manufactured, sold, distributed, marketed or otherwise used by Charter when he picked up products containing benzene at CIOC's Houston, Texas refinery. Any and all exposure Mr. Young had to benzene or benzene-containing products processed, produced, manufactured, sold, distributed, marketed or otherwise used by Charter occurred before April 20, 1984.

12. In April 2005, Mr. Young was allegedly diagnosed with chronic lymphocytic

² This Plan of Reorganization was a joint plan covering The Charter Company, Charter Oil, CIOC and two related Charter companies. Separate plans were also approved at or about that time for all other Charter companies that had filed for bankruptcy protection.

leukemia and has alleged that such illness was proximately caused by his exposure to benzene or benzene-containing products.

13. On March 24, 2006, Charter Oil was served with an amended complaint filed by the Defendants against Charter Oil and over 50 other unrelated defendants in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois (the “State Court Action”).³ That service was the first notice CIOC or Charter Oil had received of Defendants’ claim.

Conclusions of Law

The issues before the Court for its determination are (i) whether Defendants’ claim is a dischargeable prepetition claim as defined under 11 U.S.C. § 101(5)(A), and (ii) whether the publication notice of the bar date for filing proofs of claim in Charter’s Chapter 11 case provided the Defendants with due process.

I. Defendants’ Claim was dischargeable under 11 U.S.C. § 101(5)(A).

Charter contends that, because Mr. Young’s alleged exposure to benzene took place prepetition, any claim arising from such exposure constitute a prepetition claim. Conversely, Defendants argue that, because the alleged injury did not manifest until after the petition date in the Charter Chapter 11 case, the claim cannot constitute a prepetition claim. For the reasons set forth below, the Court finds that Defendants’ claim was a prepetition claim under the Bankruptcy Code.

A. The Bankruptcy Code definition of “Claim”

The debt allegedly owed by Charter to Defendants fits within the Bankruptcy Code’s definition of claim. The Bankruptcy Code defines “claim” as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. 11 U.S.C. § 101(5)(A). Congress intended this definition to be broadly interpreted:

The definition [of claim] is a significant departure from present law. . . . [The new Bankruptcy Code,] [b]y this ***broadest possible definition*** . . . contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case. It permits the broadest possible relief in the bankruptcy court.

H.R. Rep. No. 595, 95th Cong., 2d Sess. 309 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5963, 6266 (emphasis added).

The Eleventh Circuit and numerous other courts have acknowledged the significance of this language. See e.g. Epstein v. Official Comm. of Unsecured Creditors of the Estate of Piper Aircraft Corp. (In re Piper Aircraft Corp.), 58 F.3d 1573, 1576 (11th Cir. 1995)(“The legislative history of the Code suggests that Congress intended to define the term claim very broadly under § 101(5)...”); In re Johns-Manville Corp., 36 B.R. 743, 756, n.6 (Bankr. S.D.N.Y. 1984), aff’d 52 B.R. 940 (S.D.N.Y. 1985)(“In enacting the Bankruptcy Code, Congress specifically intended to afford the broadest possible scope to the definition of ‘claim’ so as to enable Chapter 11 to provide pervasive and comprehensive relief to debtors”).

Defendants point to the language and legislative history of § 524(g) of the Bankruptcy Code in support of a narrow interpretation of the definition of claim. This reliance is misplaced. By its express terms § 524(g) applies only to claims arising from exposure to asbestos, and therefore is not applicable to this case.

B. The “Piper Pre-Confirmation Relationship Test”

Under the test set forth by the Eleventh Circuit in Piper, Mr. Young was a creditor with a claim at the time of Charter’s Chapter 11 petition. According to the “Piper Test,” where there is an established pre-confirmation relationship between a claimant and a debtor, a debtor’s prepetition conduct may give rise to a prepetition claim:

An individual has a § 101(5) claim against a debtor manufacturer if (i) ***events occurring before confirmation create a relationship, such as contact, exposure, impact or privity***, between the claimant and the debtor’s product; and (ii) the basis

³ Although the civil action filed by the Youngs names Charter Oil as a defendant, the parties stipulated and agreed that the correct defendant should be Charter International Oil Company.

for liability is the debtor's prepetition conduct in designing, manufacturing and selling the allegedly defective or dangerous product. The debtor's prepetition conduct gives rise to a claim to be administered in a case only if there is a relationship established before confirmation between an identifiable claimant or group of claimants and that prepetition conduct.

Piper, 58 F.3d at 1577 (emphasis added).

In the instant case, Mr. Young stipulated that his alleged exposure to Charter's products occurred exclusively prepetition. He had a pre-confirmation relationship with Charter by way of both his presence at Charter's Houston refinery (i.e., picking up and transporting petroleum products at and from Charter's refinery during the period 1971 to 1982) and his alleged exposure to Charter's Houston products. The Court finds that Mr. Young's exposure to Charter's products and his pre-confirmation relationship with Charter satisfies the "Piper Test" and is, therefore, sufficient to establish that he held a pre-confirmation claim against Charter under Section 101(5)(A).

C. The Manifestation of Injury

Charter also argues that established case law supports the conclusion that Mr. Young had a claim at the time of Charter's confirmation, even if his illness did not manifest itself until after confirmation. A claim comes into existence for bankruptcy purposes on the date of exposure to the allegedly harmful product giving rise to the claim, not on the date of the manifestation of the injury allegedly caused by the product:

Accordingly, in case of pre-petition exposure to harmful chemicals, drugs, materials or interuterine devices, the bankruptcy courts will presume that a bodily injury was sustained at the time of the exposure to the defective product. For bankruptcy purposes, the claim will be deemed to arise at that time. regardless of whether the injury remains latent and does not manifest itself until after a case is commenced.

In re Pettibone Corp., 90 B.R. 918, 932 (Bankr. N.D. Ill. 1988)(emphasis added).

See also, In re A.H. Robins Co., Inc., 63 B.R. 986 (Bankr. E.D. Va. 1986) aff'd Grady v. A.H. Robins Co., Inc., 839 F.2d 198 (4th Cir. 1988)(A plaintiff's claim arises at the time when the acts giving rise to the alleged liability are performed not when the harm caused by those acts manifests.); In re Waterman S.S. Corp., 141 B.R. 552, 556 (Bankr. S.D.N.Y. 1992), vacated on other grounds, 157 B.R. 220 (S.D.N.Y. 1993)("[T]he claims arose at the moment the Asbestosis Claimants came into contact with the asbestos."); In re Johns-Manville Corp., 57 B.R. 680, 690 (Bankr. S.D.N.Y. 1986) ("[T]he focus should be on the time when the acts giving rise to the alleged liability were performed").

In support of their position, Defendants cite to a case from the Third Circuit, which examined when a cause of action accrues for purposes of a suit for statute of limitations purposes. In re M. Frenville Co., 744 F. 2d 332 (3d Cir. 1984), cert den'd, 469 U.S. 1160 (1985). Charter, however, maintains that the Frenville case ignored the pivotal distinction between the accrual of a cause of action under state or federal law and the definition of "claim" under the Bankruptcy Code that specifically includes contingent and immaterial claims. More importantly, the Eleventh Circuit has refused to employ the Frenville "accrued claim" test for determining whether a claim exists for bankruptcy purposes:

The accrued state law claim theory states there is no claim for bankruptcy purposes until a claim has accrued under state law. . . . This test since has been rejected by a majority of courts as imposing too narrow an interpretation on the term claim. . . . We agree with these courts and ***decline to employ the state law claim theory***

Piper, 58 F.3d 1573, 1576, n.2. (emphasis added).

In this instant case, the parties stipulated that Mr. Young was not diagnosed until 2005, with the disease allegedly caused by exposure to benzene, including benzene contained in Charter products. Although Mr. Young's disease was not diagnosed prepetition, Charter's conduct (i.e., manufacturing and distributing products) and Mr. Young's alleged impact and exposure to such products both occurred prepetition. Accordingly, the Court finds that Mr.

Young held a prepetition claim against Charter under Section 101(5)(A).

II. The publication notice of the bar date provided unknown creditors, like the Defendants, with due process.

Defendants argue that, as the injuries were unknown prior to the confirmation of Charter’s Chapter 11 Plan, the discharge of their claim would violate their right to due process. Charter contends that Defendants were unknown creditors and, therefore, publication notice was sufficient to satisfy due process.

A. Known vs. Unknown Creditors

For bankruptcy notice purposes, creditors are divided into two categories: known and unknown. A known creditor is one whose identity is either known or reasonably ascertainable by the debtor. See Chemetron Corp. v. Jones, 72 F.3d 341, 346 (3rd Cir. 1995). An unknown creditor is one whose identity or claim is not reasonably ascertainable or is merely conceivable, conjectural, or speculative. Id.; Charter Crude Oil Co. v. Petroleos Mexicanos (In re Charter Co.), 125 B.R. 650, 655 (M.D. Fla. 1991)

In the instant case, the parties stipulated that Defendants were unknown creditors to Charter:

Young was not known by Charter to be one of its creditors as of April 20, 1984, and was therefore not listed on Charter’s schedules as a known creditor.

Stipulations, ¶ 7.

On March 24, 2006, Charter Oil was served with an amended complaint filed by Young against Charter Oil and over 50 other unrelated defendants in the Circuit Court of the Third Judicial Circuit, Madison County, Illinois, being Case No. 06-L-186.

That service was the first notice Charter or Charter Oil had received of a claim on the part of Young.

Stipulations, ¶¶ 23, 24.

Therefore, for bankruptcy notice purposes, Defendants were creditors unknown to Charter.

B. Notice by publication

As Defendants were unknown creditors, the publication notice provided unknown creditors, in accordance with this Court’s August 8, 1984, Order satisfied due process. In bankruptcy proceedings, publication notice is legally adequate notice to unknown creditors. Matter of GAC Corp., 681 F.2d 1295, 1300 (11th Cir. 1982).

The United States Supreme Court in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950), set forth and defined the notice that is adequate to satisfy due process requirements:

[W]hen notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, . . . or where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.

Id. at 315.

Notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Id. at 314. In cases where persons are missing or unknown, employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing the rights of such persons. Id. at 317.

This Court has previously held that in bankruptcy proceedings, constructive notice by publication is adequate for unknown tort claimants. Charter Int’l Oil Co. v. Ziegler (In re Charter Co.), 113 B.R. 725 (M.D. Fla. 1990). Where publication notice is “reasonably calculated, under all the circumstances, to apprise all those entities, whether known or unknown, which may assert claims against the Debtors,” such notice satisfies due process:

Publication notice to unknown creditors, of course, does not violate due process. . . . The type of notice required by the

bankruptcy court's bar date order is exactly the kind of notice required by the Supreme Court

Id. at 728.

In Ziegler, this Court found that Charter's publication notice of the bar date was "reasonably calculated, under all the circumstances herein present, to apprise all those entities, whether known or unknown, which may assert claims against debtors . . . of the necessity to file proofs of claim on or before the Bar Date" and to provide them with ample opportunity to file their proofs of claim against the debtors. Id. at 726-27.

In the instant case, as in Ziegler, Charter's publication of notice of the bar date for filing proofs of claim is sufficient to satisfy Defendants' due process rights. Thus, the appropriate inquiry in evaluating Charter's notice to unknown creditors is not whether Defendants actually read or understood the notice, but whether Charter selected the best means to inform such individuals of the bar date.

As the notice provided to Defendants in the instant case is the same notice this Court found sufficient to satisfy due process in Ziegler, the Court finds the Defendants received due process.

III. Charter's order of confirmation discharged Mr. Young's claim.

Confirmation of a Chapter 11 plan discharges the debtor from any debt that arose before the date of such confirmation as provided by § 1141(d) of the Bankruptcy Code. Shure v. State of Vermont (In re Sure-Snap Corp.), 983 F.2d 1015, 1019 (11th Cir. 1993); see also In re U.S. Airways, Inc., No. 04-13819-SSM, 2005 WL 3676186, at *2 (Bankr. E.D. Va. Nov. 21, 2005). Mr. Young had a prepetition claim as defined in the Bankruptcy Code and received adequate notice of the claims bar date. Accordingly, because Mr. Young did not file a proof of claim before the bar date, the claim was discharged pursuant to Section 1141(d) of the Bankruptcy Code.

Conclusion

Based upon the evidence presented, the Court finds that Defendants' claim constitutes a prepetition claim discharged by Charter's Chapter 11 Plan. Defendants' claim was unknown to Charter and therefore the notice provided by means of publication, in accordance with this Court's August

8, 1984, Order satisfied due process. Mr. Young did not file a proof of claim before the claims bar date of November 19, 1984 and, therefore, the Order of Confirmation of December 18, 1986, discharged the claim pursuant to Section 1141(d) of the Bankruptcy Code.

Accordingly, Charter is entitled to judgment in its favor as a matter of law. The Court will enter a separate judgment consistent with these Findings of Fact and Conclusions of Law.

DATED: This 14 day of March, 2007, at Jacksonville, Florida.

/s/George L. Proctor
George L. Proctor
United States Bankruptcy Judge

Copies to:

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