



### **Insurers' Tangible Disadvantage Is Sufficient Injury for Article III Standing**

*In re Global Indus. Techs., Inc.*, 2011 WL 1662792 (3d Cir. May 4, 2011).

The Third Circuit held that two liability insurance carriers have standing to object to their insured's plan of reorganization because "when a federal court gives its approval to a plan that allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed."

Debtor Global Industrial Technologies, Inc. (GIT) was the holding company for a collection of companies that manufactured and sold heat shielding and other products. As a part of its business, GIT acquired A.P. Green Industries, Inc. (APG), a company that produced asbestos and/or silica containing products. APG later experienced significant asbestos-related liabilities—approaching \$500 million—but its silica-related liabilities were substantially less. The debtors filed their bankruptcy cases in substantial measure to address their asbestos-related liabilities.

The Debtors' plan included a channeling injunction that would require both asbestos and silica-related claimants to seek satisfaction of their claims from trusts to be funded by proceeds of the policies of the appellant insurers (the Insurers). The plan provided for a separate trust for each of the asbestos and silica claimants. Prior to soliciting votes on the plan, the Debtors obtained a list of potential, but not yet filed, silica claimants and contacted those claimants' counsel. "An explosion of silica claims ensued" in the Debtors' proceedings and many of the newly filed silica claimants were represented by counsel who also represented existing asbestos claimants.

The Insurers objected to plan confirmation on the grounds that the injunction and silica-related trust (the Trust) were unnecessary and the explosion of silica-related claims resulted from collusion between the Debtors' counsel and the silica claimants' counsel. According to the Insurers, the Debtors "sold out . . . insurers by setting up a system in which they would pay for newly ginned-up silica claims in exchange for the asbestos claimants casting their votes in favor of the GIT Plan." The Bankruptcy Court heard substantial evidence from the Insurers but confirmed the plan. The Bankruptcy Court, however, also held that the Insurers lacked standing to object to the plan including because they had not suffered an injury through the speculative obligation to contribute funds to the Trust. The district court affirmed the Bankruptcy Court's decision.

The Third Circuit first considered the relationship between constitutional standing under Article III and statutory standing under section 1109(b) of the Bankruptcy Code. The Third Circuit noted that persuasive authority counseled that the contours of statutory "party-in-interest" standing under the Bankruptcy Code were effectively co-extensive with the contours of constitutional "injury-in-fact" standing. It further noted that a narrow construction of section 1109(b), which would limit participation in bankruptcy



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proceedings, does not comport with that section's intended purpose of "promoting greater participation in reorganization cases." The Third Circuit, therefore, held that the Insurers were only required to demonstrate some specific identifiable trifle of injury (i.e., injury-in-fact) that was fairly traceable to the plan to merit standing as a party-in-interest.

The Third Circuit then determined that the Insurers' administrative costs and potential liability resulting from the plan were specific identifiable "trifles of injury" that were fairly traceable to the plan. Relying on *In re Combustion Eng'g, Inc.*, 391 F.3d 190 (3d Cir. 1994), the Debtors had argued that the plan did not change the Insurers' pre-petition contractual rights or obligations and was, therefore, insurance neutral. The Third Circuit, however, held that the insurance neutrality concept did not apply where, as here, the quantum of the insurers' liability has been materially altered by a plan of reorganization. In this case, the plan's establishment of the Trust drastically increased the number of potential claimants from 169 to 5,125, and thus the quantum of the Insurers' potential liability and the costs to the Insurers of managing and responding to such potential liability.

The Third Circuit also rejected the argument that any harm to the Insurers was too speculative to merit standing. Relying on *Clinton v. City of New York*, 424 U.S. 417, 430–31 (1998), the Third Circuit held that a contingent liability that results in a tangible disadvantage to the affected party can support Article III standing. Here, the plan resulted in a marked increase in the number of silica claims. Those claims, in turn, created a probability of greater liability for the Insurers as well as an increase in the administrative costs of responding to and investigating the claims. Accordingly, the Insurers suffered a cognizable injury for the purposes of Article III standing.

Finally, the Third Circuit noted that the apparent collusion between the Debtors' counsel and counsel to the silica claimants would also support granting standing to the Insurers. The Third Circuit discussed certain of the collusion related evidence submitted to the Bankruptcy Court, including the broad overlap of claimants and counsel with both asbestos and silica-related claims and noted that the Insurers likely were the only parties with the potential economic or other interest to actually litigate the matters related to the alleged collusion. Previously, in *In re Congoleum Corp.*, 426 F.3d 675 (3d Cir. 2005), the Third Circuit granted an insurer appellate standing to challenge the qualification of the Debtors' counsel when it appeared that the integrity of the bankruptcy process was in jeopardy. Here, the allegations that the Debtors' counsel conspired with the silica claimants' counsel were sufficient to implicate the integrity of the bankruptcy process and favor standing for the Insurers.

**Keywords:** standing, Article III, injury, 11 U.S.C. §1109



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