UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF OHIO

In re CDECO Maritime Construction Inc., Roger J. Au & Son, Inc., and Firelands Sewer & Water Construction Co., Inc.

101 B.R. 499 (N.D. Ohio 1989) · No. Bankruptcy Nos. 683-00985, 683-00986 and 684-00040 · Decided January 11, 1989

SUMMARY

The United States Bankruptcy Court for the Northern District of Ohio evaluates the adequacy of a creditor-sponsored disclosure statement accompanying a liquidating Chapter 11 plan for three debtor corporations. The court concludes that the proposed disclosure statement is generally adequate under 11 U.S.C. § 1125 but requires additional disclosures concerning administrative and government claims, mathematical corrections, litigation-related assets and claims, and the effective date of a supplemental agreement.

CASE DETAILS

COURT	United States Bankruptcy Court for the Northern District of Ohio
WRITING FOR THE COURT	James H. Williams, Chief Judge
JURISDICTION	Ohio
DECIDED	January 11, 1989
DOCKET	Bankruptcy Nos. 683-00985, 683-00986 and 684-00040
DISPOSITION	approved
PROCEDURAL POSTURE	The bankruptcy court considered objections by the debtors and Charles H. Au to a creditor-sponsored Chapter 11 liquidating plan's proposed disclosure statement.
STANDARD OF REVIEW	Adequacy of a disclosure statement under 11 U.S.C. § 1125 is determined on a case-by-case basis under flexible standards and is largely within the bankruptcy court's discretion.
PRECEDENTIAL VALUE	Published bankruptcy court memorandum decision; persuasive authority subject to applicable circuit and district court precedent.

TOPICS

bankruptcy disclosure requirements | chapter 11 | reorganization | adversary proceedings | commercial litigation

PRACTICE AREAS

Bankruptcy | Chapter 11 reorganization | Disclosure statements | Commercial litigation | Construction law

QUESTIONS PRESENTED

1. Whether Aetna's proposed disclosure statement contained adequate information under 11 U.S.C. § 1125 to permit creditors and equity security holders to make an informed judgment about the liquidating plan.
2. Whether the disclosure statement sufficiently disclosed the treatment of administrative expenses, the post-petition Army Corps of Engineers claim, contract-claim calculations, the Euthenics claim, litigation against Aetna, and the effective date of the supplemental agreement.
3. Whether the disclosure statement was required to provide detailed theories of recovery or speculate about possible outcomes of pending litigation.

HOLDINGS

1. A disclosure statement is adequate when, considering the nature and history of the debtor, the condition of its books and records, and the relevant creditor body, it provides information sufficient for a hypothetical reasonable investor to make an informed judgment about the plan. The determination is case-specific and flexible.
2. A disclosure statement need not argue the parties' theories of recovery, validate those theories, or speculate about the possible consequences of pending litigation, but it must disclose enough about material litigation and proposed treatment of litigation-related claims to permit an informed evaluation of the plan.
3. The disclosure statement could be approved for distribution only after addressing the disputed administrative expense, the post-petition Army Corps of Engineers claim, mathematical errors, the rationale for treatment of the Euthenics claim, the nature and status of the Aetna litigation and potential recovery, and the federal court's finding regarding the supplemental agreement's effective date.

KEY QUOTATIONS

> *"What constitutes adequate information [under section 1125(a)(1)] must be determined on a case-to-case basis under flexible standards."* (101 B.R. 499)

> *"The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court."* (101 B.R. 499)

> *"It is also not necessary to the adequate information standard for a disclosure statement to * * * speculate as to future uncertainties, such as the consequences of the various possible outcomes of pending litigation."* (101 B.R. 501)

FACTUAL BACKGROUND

Three corporate debtors had been in bankruptcy for approximately five years when Aetna, their major creditor, proposed a liquidating Chapter 11 plan. The debtors had a relatively small and generally sophisticated creditor body, with significant assets consisting of pending litigation against the Northeast Ohio Regional Sewer District and an adversary proceeding against Aetna. The proposed disclosure statement addressed administrative expenses, contract claims, the litigation assets, and proposed treatment of a claim asserted by Au & Son against Euthenics, but omitted or inadequately explained several material matters.

PROCEDURAL HISTORY

Aetna Casualty & Surety Company, the debtors' major creditor, filed a liquidating plan and proposed disclosure statement. The debtors and Charles H. Au objected to the adequacy of the disclosure statement, and the parties submitted written memoranda and presented oral argument. The bankruptcy court found the disclosure statement generally adequate but required specified modifications and elaborations before approving it for distribution.

DISPOSITION

approved

CASES CITED

- In re A.C. Williams Co., 25 B.R. 173, 176 (Bankr. N.D. Ohio 1982)
- In re Metrocraft Publishing Services, Inc., 39 B.R. 567 (Bankr. N.D. Ga. 1984)
- In re Texas Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988)
- In re Stanley Hotel, Inc., 13 B.R. 926, 935 (Bankr. D. Colo. 1981)
- Roger J. Au & Son, Inc. et al. v. Aetna Casualty and Surety Co., Case No. C86-1188A