

Reulet v. Lamokak Ins. Co.

United States District Court for the Middle District of Louisiana

October 19, 2022, Decided

CIVIL ACTION NO. 20-00404-BAJ-EWD

Reporter

2022 U.S. Dist. LEXIS 191337 *

JOANNE REULET, ET AL. VERSUS LAMOKAK INS. CO., ET AL.

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Opinion

[*1] RULING AND ORDER

This wrongful death and survival action seeks damages related to the death of

Decedent Kirk Reulet in January 2019. In broad strokes, Plaintiffs contend that

during the course of his 45-year career, Decedent-a welder-worked various marine-

economy jobs where he was exposed to asbestos, ultimately causing him to develop

terminal mesothelioma. Plaintiffs seek damages from dozens of Defendants-

including Decedents employers, owners of premises where Decedent worked,

asbestos manufacturers and distributors, and multiple insurers-but the thrust of

their claims is essentially the same as to all: Defendants dealt in asbestos and, to

some degree or another, played a role in causing Decedent s exposure to the deadly

product. (See Doc 95 at ^ 94-95).

Most relevant here, Plaintiffs Second Supplemental And

Amending Complaint

added Defendants Employers Insurance Company of Wausau (Wausau") and Liberty

Mutual Insurance Company (Liberty), on the basis that these Insurers provided

liability coverage to non-party Reilly-Benton Company, Inc. (Reilly-Benton), a now-

bankrupt company that manufactured asbestos-laden products and delivered them

to Decedent's worksites during time period at issue in [*2] this dispute. (Doc. 95 at ^ 52,

93). Plaintiffs pursue their claims against Wausau and Liberty under Louisiana's

Direct Action Statute, [La. R.S. § 22:1269](#), which "authorizes a suit directly against

the insurer when the insurance contract at issue was written or delivered ... in the

State of Louisiana or if the injury occurred within the state." *Marriner v. Talos*

[Petroleum, LLC, 576 F. Supp. 3d 412, 415 \(E.D. La. 2021\)](#) (Fallon, J.) (quotation

marks omitted).

Now before the Court is Wausau's and Liberty's Motion To Dismiss Or Stay

(Doc. 236, the Motion), which argues that Plaintiffs claims against them are

barred-or, at minimum, must be stayed-pursuant to the Bankruptcy Code's

automatic stay provision, [11 U.S.C. § 362\(a\)](#). Wausau and Liberty contend that Reilly-

Benton's Chapter 7 bankruptcy case is ongoing and

potentially involves thousands of asbestos-related claims,¹ thus triggering the "limited circumstances" under which the

United States Court of Appeals for the Fifth Circuit instructs that insurance proceeds

are property of the debtors estate, thereby subjecting related direct action claims to

the automatic stay. See [In re OGA Charters, L.L.C., 901 F.3d 599, 604 \(5th Cir. 2018\)](#)

("We now make official what our cases have long contemplated: In the limited

circumstances/ as here, where a siege of tort claimants threaten the debtor's estate

over and [*3] above the policy limits, we classify the proceeds as property of the estate.);

Sosebee v. Steadfast Ins. Co., 701 F.3d 1012, 1025 (5th Cir. 2012) ("Where a court

finds insurance proceeds to be property of the bankruptcy estate the automatic stay

will apply to direct actions against insurers, see [11 U.S.C. § 362\(a\)\(3\)](#)[.]). Plaintiffs

¹ See *In re: Reilly-Benton Company, Inc.*, No. 17-12870 (Bankr. E.D. La.).

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oppose the Motion. (Doc. 241).

Significantly, this Court is not the first to address precisely this issue. Just six

months ago, the U.S. District Court for the Eastern District of Louisiana entertained

an identical request from Wausau and Liberty to dismiss or stay separate

mesothelioma-related direct action claims against them based on insurance policies

issued to Reilly-Benton. On March 3, 2022, after hearing argument, the Eastern

District stayed the plaintiffs' direct action claims against Wausau and Liberty,

reasoning that under the Circuit's decisions in *OGA Charters* and *Sosebee*, *supra*, the

Bankruptcy Court is the best forum to decide (in the first instance) whether plaintiffs'

claims must be pursued through the ongoing Reilly-Benton bankruptcy proceedings.

See *Lorita M. Savoie, et al., v. Huntington Ingalls Incorporated*, et al. No. 15-cv-01220,

Doc. 724 (E.D. La. Mar. 23, 2022) (Barbier, J.) (staying plaintiffs' [*4] direct action claims

against Wausau and Liberty); see also *id.*, Doc. 725 at pp. 26-37 (transcript of oral

argument setting forth reasons for decision).

This Court agrees with the reasoning of its brethren in the Eastern District,

and the outcome of the proceedings therein. Accordingly, for the same reasons stated

on the record in the Savoie case,

IT IS ORDERED that Wausau's and Liberty's Motion To Dismiss Or Stay

(Doc. 236) be and is hereby GRANTED IN PART, and that Plaintiffs' direct action

claims against Wausau and Liberty be and are hereby STAYED pending resolution

of *In re: Reilly-Benton Company, Inc.*, No. 17-12870, United States Bankruptcy Court

for the Eastern District of Louisiana.

IT IS FURTHER ORDERED that, consistent with the relief set forth herein,

the telephone status conference set for October 26, 2022 at 2:00 p.m. to determine a

new motions deadline for Wausau and Liberty be and is hereby CANCELLED.

The stay set forth herein applies to Defendants Employers Insurance

Company of Wausau and Liberty Mutual Insurance Company only. As

appropriate, Plaintiffs and/or Wausau and Liberty may
move independently

or jointly to lift the stay set forth herein.

Baton Rouge, Louisiana, this 19th day of [*5] October,
2022

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JUDGE BRIAN A. JACKSON

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

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