

SETTLEMENT OF CLASS ACTIONS IN CHAPTER 11 CASES

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I. THE RULES APPLICABLE TO CLASS ACTION SETTLEMENTS IN CHAPTER 11 CASES

A. Class Action Settlements Must Satisfy Rule Fed. R. Civ. P. 23(e).

1. Bankruptcy Rule 7023 makes Fed. R. Civ. P. 23 applicable in adversary proceedings. *See* 6 Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 20:6 (4th ed. 2002) (“Compliance with class notice and court approval requirements, pursuant to Rule 23 or analogous state class action rules, is necessary whether the settlement is within the jurisdiction of the bankruptcy court or the district or state court.”).
2. Bankruptcy Rule 9014 allows Rule 7023 to apply in contested matters.
 - Although Rule 9014(c) specifies that certain rules apply in contested matters, and the specified rules do not include Rule 7023, it provides that “[t]he court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply.” To apply Rule 7023 in a contested matter, the bankruptcy court “shall give the parties notice of any order issued under this paragraph to afford them a reasonable opportunity to comply with the procedures prescribed by the order.” Bankr. Rule 9014(c).
3. Fed. R. Civ. P. 23(e) provides that a class action may be settled or voluntarily dismissed “only with the court’s approval” and directs that the following procedures apply to a proposed settlement or dismissal:
 - a. Notice must be given “in a reasonable manner” to class members.
 - b. A hearing must be held and the settlement approved only if the court determines it is “fair, reasonable and adequate.”
 - c. “[A]ny agreement made in connection with” the settlement must be identified to the court.
 - d. If the class was previously certified under Rule 23(b)(3), the court

may offer class members another opportunity to opt out.

- e. Class members may object to the proposed settlement.

B. Settlements in Bankruptcy Court Must Satisfy Bankruptcy Rule 9019.

1. Under Rule 9019(a), “[o]n motion . . . and after notice and a hearing, the court may approve a compromise or settlement.”
2. Although not prescribed in Rule 9019, the standard for approval of settlements in bankruptcy court is whether the settlement is “fair and equitable and in the best interest of the estate.” *Connecticut Gen’l Life Ins. Co. v. United Companies Fin. Corp.*, 68 F.3d 914, 917 (5th Cir. 1995); see *Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 88 S.Ct. 1157, 1163 (1968) (recognizing “the duty of a bankruptcy court to determine that a proposed compromise forming part of a reorganization plan is fair and equitable.”).

C. The Court has Different Perspectives in Reviewing Settlements Under Fed. R. Civ. P. 23(e) and Bankruptcy Rule 9019.

1. Under Rule 23(e), the court’s focus is on fairness of the settlement from the standpoint of the members of the class. *Amchem Products, Inc. v. Windsor*, 117 S.Ct. 2231, 2249 (1997) (“The inquiry appropriate under Rule 23(e) . . . protects unnamed class members.”); *Piambino v. Bailey*, 610 F.2d 1306, 1327 (5th Cir.), *cert. denied*, 101 S.Ct. 568 (1980) (“Rule 23(e) requires the trial judge to review any proposed settlement of a class action. The purpose of this salutary requirement is to protect the nonparty members of the class from unjust or unfair settlements affecting their rights.”); see *In re General Motors Corp. Pick-up Truck Fuel Tank Products Liab. Lit.*, 55 F.3d 768, 785 (3d Cir.), *cert. denied*, 116 S.Ct. 88 (1995) (“Under Rule 23(e) the district court acts as a fiduciary who must serve as a guardian of the rights of absent class members.”).

Possible conflicts the court must guard against in reviewing a settlement are those between plaintiffs’ counsel and the class, between the class representatives and the absent class members, and, in cases involving subclasses, between members of different subclasses. E.g., *Piambino v. Bailey*, 610 F.2d 1306, 1327-28 (5th Cir.), *cert. denied*, 101 S.Ct. 568 (1980).

2. The bankruptcy court’s focus under Bankruptcy Rule 9019 is on fairness of the settlement from the standpoint of the debtor’s estate. *In re Refco Inc.*, 505 F.3d 109, 119 (2d Cir. 2007) (“[A] bankruptcy court’s obligation

is to determine whether a settlement is in the best interests of the estate.”) (emphasis in original); *CFB-5, Inc. v. Cunningham*, 371 B.R. 175, 181 (N.D. Tex. 2007) (“In ruling on a motion to approve a compromise, the role of the Bankruptcy Court is to determine whether the compromise reached is in the best interest of the creditors of the estate.”).

3. In *In re Worldcom, Inc.*, 347 B.R. 123, 139-40 (Bankr. S.D.N.Y. 2006), the bankruptcy court rejected the argument that the objectives of Rule 23(e) and Bankruptcy Rule 9019 could not be reconciled by one judge. In that case, objectors to a class action settlement under consideration by the bankruptcy court argued that the competing obligations under Rule 23(e) and Bankruptcy Rule 9019 required the court to “wear two hats and apply competing standards.” *Id.* The court “recognized that it faces an unusual situation here in which it must analyze the fairness of the Settlement relative to two opposing parties and from the perspective of each,” but concluded that “it is possible that the Settlement will fall within the appropriate range of reasonableness or fairness as is required for each party and therefore warrant approval under both Rule 23 and Rule 9019.” *Id.*

II. THE TESTS FOR DETERMINING WHETHER TO APPROVE A CLASS ACTION SETTLEMENT

- A. The Test Under Rule 23(e) is Whether the Settlement is Fair, Reasonable and Adequate.
 1. Courts analyze a number of factors in determining whether to approve a class action settlement. Virtually all courts assess the terms of a proposed settlement against:
 - a. the likelihood of success on the merits and the range of probable recoveries;
 - b. the stage of the proceeding at which settlement was achieved, including the amount and type of discovery concluded;
 - c. the expense, duration and likely complexity of continued litigation;
 - d. whether there are indicia of fraud or collusion in reaching the settlement; and
 - e. the number and nature of objections to the settlement by members of the class.

E.g., Churchill Village, L.L.C. v. General Electric, 361 F.3d 566, 575 (9th Cir.), *cert. denied*, 125 S.Ct. 56 (2004); *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir.), *cert. denied*, 125 S.Ct. 372 (2004); *In re General Motors Corp. Pick-up Truck Fuel Tank Products Liab. Lit.*, 55 F.3d 768, 785 (3d Cir.), *cert. denied*, 116 S.Ct. 88 (1995) (employing the nine-factors set out in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)).

2. In addition to these factors, some courts also consider:

- a. the opinion of class counsel about the settlement, even though it was class counsel who negotiated the settlement, *e.g., Strube v. American Equity Investment Life Ins. Co.*, 226 F.R.D. 688, 697 (M.D. Fla. 2005); *In re Lorazepam & Clorazepate Antitrust Lit.*, 205 F.R.D. 369, 375, 380 (D. D.C. 2002);
- b. the interest of the public in the settlement, *e.g., UAW v. General Motors Corp.*, 497 F.3d 615, 631 (6th Cir. 2007); and/or
- c. the presence and view of a governmental authority, *e.g., In re Immune Response Sec. Lit.*, 497 F.Supp.2d 1166, 1170 (S.D. Cal. 2007); *In re Lorazepam & Clorazepate Antitrust Lit.*, 205 F.R.D. at 380 (noting that the “Court may place greater weight on the opinion” of the Federal Trade Commission, a party to the case and the settlement, as an agency “committed to protecting the public interest.”)

3. A potentially important factor in assessing a class action settlement in many cases is the ability of the defendant to pay. *E.g., Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1295 (9th Cir.), *cert. denied*, 113 S.Ct. 408 (1992); *In re Lupron Marketing and Sales Practices Lit.*, 228 F.R.D. 75, 93-94 (D. Mass. 2005) (considering “ability of defendant to withstand a greater judgment”); *In re Washington Public Power Supply System Sec. Lit.*, 720 F.Supp. 1379, 1387 (D. Ariz. 1989) (considering “defendant’s ability to pay a judgment larger than the amount provided by the proposed settlement”); *see In re Worldcom, Inc.*, 347 B.R. 123, 147 (Bankr. S.D.N.Y. 2006) (noting that the defendant’s ability to pay “is of uncertain utility in the context of an ongoing bankruptcy proceeding.”).

B. The Test Under Bankruptcy Rule 9019 is Whether the Settlement is Fair and Equitable and in the Best Interest of the Estate.

1. Bankruptcy courts consider factors similar to those under Fed. R. Civ. P. 23(e) in evaluating settlements under Rule 9019, although generally there is less emphasis on the process leading up to the settlement. *See In re Worldcom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006) (noting that

settlements under Rule 23(e), unlike under Rule 9019, have “both a procedural and a substantive component). Bankruptcy courts typically consider the factors set forth in *Myers v. Martin*, 91 F.3d 389, 393 (3d Cir. 1996), which are:

- a. the probability of success in litigation;
- b. the likely difficulties in collection;
- c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- d. the paramount interest of the creditors.

E.g., *In re Nutraquest, Inc.*, 434 F.3d 639, 644 (3d Cir. 2006); *In re Winn-Dixie Stores, Inc.*, 356 B.R. 239, 249 (Bankr. M.D. Fla. 2006); *In re Etoys, Inc.*, 331 B.R. 176, 198 (Bankr. D. Del. 2005); *In re Lahijani*, 325 B.R. 282, 290 (B.A.P. 9th Cir. 2005).

2. In addition, courts in the Second Circuit also consider (a) whether other parties in interest support the settlement; (b) the competency and experience of counsel supporting the settlement; and (c) the extent to which the settlement is the product of arm’s length bargaining. *In re Iridium Operating LLC*, 478 F.3d 452, 462 (2d Cir. 2007); *In re Worldcom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006); *In re Joseph*, 340 B.R. 694, 697 (Bankr. D. Conn. 2006).

C. Under Both Fed. R. Civ. P. 23(e) and Bankruptcy Rule 9019 the court’s assessment of a proposed class action settlement is a fact intensive undertaking, which is subject to review for abuse of discretion. E.g., *In re Iridium Operating LLC*, 478 F.3d 452, 461 n. 13 (2d Cir. 2007) (bankruptcy court’s approval of settlements under Rule 9019 is reviewed for abuse of discretion, although its articulation of the legal standard is reviewed de novo); *In re Warfarin Sodium Antitrust Lit.*, 391 F.3d 516, 535 (3d Cir. 2004) (“The decision of whether to approve a proposed settlement of a class action is left to the sound discretion of the district court, and we accord great deference to the district court’s factual findings.”); *In re Lahijani*, 325 B.R. 282, 290 (B.A.P. 9th Cir. 2005) (recognizing that analysis of settlements under Rule 9019 is “inherently fact-intensive, relative and contextual”); *Blackman v. Dist. of Columbia*, 454 F.Supp.2d 1, 8 (D. D.C. 2006) (in reviewing settlements under Rule 23(e) court must “consider the facts and circumstances of the case.”).

D. Ultimately, the issue under both Rule 23(e) and Rule 9019 is whether the proposed settlement, in light of the relevant factors considered by the court, falls within the range of reasonableness. E.g., *In re Warfarin Sodium Antitrust Lit.*,

391 F.3d 516, 538-39 (3d Cir. 2004) (analyzing settlement of antitrust class action both as against potential range of recoverable damages and against settlements in other drug industry antitrust cases); *In re Cendant Corp. Lit.*, 264 F.3d 201, 241-42 (3d Cir. 2001), *cert. denied*, 122 S.Ct. 1300 (2002) (analyzing settlement of securities class action in same way and noting one study showing the range of recoveries in securities class actions is from 1.6% to 14% of claimed damages); *In re Worldcom, Inc.*, 347 B.R. 123, 137 (Bankr. S.D.N.Y. 2006) (Under Rule 9019, the court “need only ‘canvass the issues’ to determine if the ‘settlement falls below the lowest point in the range of reasonableness.” (quoting *In re Teltronics Services, Inc.*, 762 F.2d 185, 189 (2d Cir. 1985)); *In re Drexel, Burnham Lambert Group, Inc.*, 130 B.R. 910, 924 (S.D.N.Y. 1991), *aff’d*, 960 F.2d 285 (2d Cir. 1992) (“Courts should approve a class settlement if it falls within a range of reasonableness which recognizes the uncertainty of law and fact in any particular case and the concomitant risks and costs necessarily inherent in carrying any litigation to completion.”).

III. NOTICE AND OTHER REQUIREMENTS FOR CLASS ACTION SETTLEMENTS IN CHAPTER 11 CASES

A. Notice of a Proposed Class Action Settlement Under Fed. R. Civ. P. 23

1. Rule 23(e)(1) requires that “[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal.”
 - a. The means and content of the 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.” *Mullane v. Central Hanover Bank & Trust Co.*, 70 S.Ct. 652, 657 (1950). To the extent that the notice includes notice of a settlement class under Rule 23(b)(3), the notice must include those items required under Rule 23(c)(2)(B).
 - b. The general rule is that individual notice should be given to all class members who can be identified with reasonable effort. *Pigford v. Veneman*, 355 F.Supp.2d 148, 162 (D. D.C. 2005) (“If all (or most) class members can be individually identified and located, courts will require that individual notice be sent via mail or other direct means.”); *see Eisen v. Carlisle & Jacquelin*, 94 S.Ct. 2140, 2151 (1974); *DeJulius v. New England Health Care Employees Pension Fund*, 429 F.3d 935, 943 (10th Cir. 2005) (noting that individual notice in cases under Rule 23(b)(3) may be required by Rule 23(c)(2)(B)). “When all class members cannot be identified, however, practical issues of effectuating notice arise and other methods, such as publication in newspapers or periodicals,

are deemed sufficient.” *Pigford*, 355 F.Supp.2d at 162; *see Dehoyos v. Allstate Corp.*, 240 F.R.D. 269, 296 (W.D. Tex. 2007) (individual notice not required to class of African-American and Hispanic policyholders of Allstate because Allstate cannot identify them from its records); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 438 (2d Cir. 2007) (approving settlement notice in antitrust class action sent by debtor through class action claims administrator).

2. Notice must be sent sufficiently in advance of the settlement approval hearing to afford class members an opportunity to be heard. *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 2707 (1994); *In re Agent Orange Prod. Liab. Lit.*, 597 F.Supp. 740, 759 (E.D.N.Y. 1984).
 - a. Courts have approved a range of notice periods, depending upon the circumstances, although thirty days would seem to be the minimum in most cases. *E.g.*, *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374-75 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 2707 (1994) (approving notice in ERISA class action mailed 31 days before deadline for submitting objections and 45 days before settlement approval hearing); *In re BankAmerica Corp. Sec. Lit.*, 210 F.R.D. 694, 708 (E.D. Mo. 2002) (approving notice in securities class action mailed four weeks before deadline for submitting objections and seven weeks before settlement approval hearing); *Pigford v. Glickman*, 185 F.R.D. 82, 102 (D. D.C. 1999), *aff'd*, 206 F.3d 1212 (D.C. Cir. 2000) (approving notice in class action under Equal Credit Opportunity Act mailed one month before deadline for objections and six weeks before settlement approval hearing).
 - b. Under the Class Action Fairness Act (“CAFA”), in class actions filed in federal court under Rule 23 or filed in state court under state class action rules and removed to federal court, defendants must serve copies of the proposed settlement and other information upon designated state or federal officials. 28 U.S.C. § 1715(b). “An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).” 28 U.S.C. § 1715(d). Thus, in most class actions, the order giving final approval to a settlement cannot be entered until at least 90 days after the notice required by CAFA is given. The hearing to consider approval of the proposed settlement, however, may proceed at an earlier date.

B. Notice of a Proposed Settlement Under Rule 9019

·Bankruptcy Rule 2002(a)(3) provides for “at least 20 days’ notice” to creditors of the hearing on approval of a compromise or settlement. The bankruptcy court may “for cause shown” direct that notice not be sent.

C. Settlement Classes Under Fed. R. Civ. P. 23

1. Settlement classes must meet the requirements for certification under Rule 23. Many class actions are settled before a class has been certified by the court. In these cases, the court must, as part of the settlement approval process, determine that the class action satisfies the requirements of Rule 23. *Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006) (“Before certification is proper for any purpose – settlement, litigation, or otherwise – a court must ensure that the requirements of Rule 23(a) and (b) have been met.”); *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 474 (E.D. Pa. 2007) (“Settlement classes must satisfy the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy of representation, as well as the relevant 23(b) requirements.”).
2. The requirements for certification of a class under Rule 23 are:
 - a. All of the standards of Rule 23(a) are met, that is,
 - (1) “the class is so numerous that joinder of all members is impracticable;
 - (2) there are questions of law or fact common to the class;
 - (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
 - (4) the representative parties will fairly and adequately protect the interests of the class.”Fed. R. Civ. P. 23(a).
 - b. And one of the standards of Rule 23(b) is met, that is,
 - (1) prosecuting separate actions would create a risk of (A) inconsistent or varying adjudications that would create incompatible standards for the party opposing the class, or (B) adjudications for individuals that, as a practical matter, would be dispositive of the interests of others not party to the proceeding or that would substantially impair the ability of the nonparties to protect their interests; or

- (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate for the class as a whole; or
- (3) questions of law or fact common to class members predominate over questions affecting individual class members, and a class action is superior to other methods for fairly and efficiently adjudicating the controversy.

Fed. R. Civ. P. 23(b).

IV. EXAMPLES OF CLASS ACTION SETTLEMENTS IN CHAPTER 11 CASES

A. Class Action Settlement in the Course of a Chapter 11 Case

In re Worldcom, Inc., 347 B.R. 123 (Bankr. S.D.N.Y. 2006)

1. In the course of the massive bankruptcy of Worldcom, the bankruptcy court had to consider whether to approve the settlement of a pre-petition class action filed in state court in Louisiana against the debtor. The class action alleged that telecommunications companies, including a predecessor of Worldcom, had wrongfully installed fiber optic cable in railroad rights-of-way crossing class members' properties. A settlement was reached between the parties but before it could be finally approved by the state court Worldcom filed bankruptcy. After Worldcom's bankruptcy, the class filed a class proof of claim and thereafter entered into additional settlement negotiations with the debtor. A settlement was reached, and a motion was filed seeking approval of the class action settlement.
2. The bankruptcy court reviewed the settlement under both Bankruptcy Rule 9019 and Fed. R. Civ. P. 23(e). 347 B.R. at 136-38. The court rejected arguments made by two objectors to the settlement that it could not "reconcile . . . competing obligations under Rule 23 and Rule 9019." *Id.* at 139-40. The court found the settlement to be within the range of reasonableness after considering the nine factors identified by courts in the Second Circuit under Rule 23. *Id.* at 144-49. It also reviewed the criteria for approval of the settlement under Rule 9019. *Id.* at 149. Next, the bankruptcy court examined the criteria under Rule 23(a) and 23(b)(3) for certification of a settlement class. *Id.* at 141-43. Finding these criteria satisfied, the court certified the class for settlement purposes. *Id.* at 143. The motion to approve the settlement was granted. *Id.* at 156.

B. Class Action Settlement Integral to a Plan of Reorganization

In re Drexel, Burnham Lambert Group, Inc., 130 B.R. 910 (S.D.N.Y. 1991), *aff'd*, 960 F.2d 285 (2d Cir. 1992)

1. When Drexel filed for bankruptcy in 1990, it was facing numerous suits for securities fraud. Including proofs of claim filed in its bankruptcy, Drexel ultimately was named in 850 securities claims with aggregate claimed damages in excess of \$20 billion. 130 B.R. at 914. At the time, Drexel had assets of approximately \$2.5 billion and a like amount of non-securities liabilities. *Id.* at 913. While certain parties argued for the court to conduct estimation proceedings for each of the securities claims, the court issued a notice that the case would be converted to a Chapter 7 case unless the parties were able to agree on a means of resolving the claims. *Id.* at 915. The district court withdrew the reference of the securities claims to the bankruptcy court. *Id.*
2. Through a Securities Litigation Claimants Group (which included the SEC and the FDIC), the securities claimants negotiated with the debtor and representatives of Drexel's non-securities creditors. A settlement was reached, after months of negotiations, and a motion to approve the settlement was presented jointly to the bankruptcy court and the district court. The settlement required the 850 securities claims to be certified as a mandatory, non-opt out class action against Drexel. 960 F.2d at 288. Included among this class of claims were many claims that in themselves were class actions. 130 B.R. at 918. The mandatory settlement class was divided into two subclasses of claims. *Id.* The settlement allocated among the subclasses an SEC fund created through settlement with Drexel, allocated to the subclasses a percentage of Drexel's assets, and provided for the subclasses to pool their recoveries from lawsuits brought against the former officers and directors of Drexel. 960 F.2d at 288-89.
3. The settlement was conditioned upon approval of a separate plan of reorganization of Drexel. 130 B.R. at 926 ("Both the Settlement and Plan exist, and each must receive separate judicial approval."). The settlement, however, was essential to a reorganization of Drexel. *Id.* at 926-27 ("In the absence of the Settlement, there could be no Plan and indeed, no successful and prompt resolution of these Chapter 11 cases."); 960 F.2d at 293 ("The Settlement Agreement is unquestionably an essential element of Drexel's ultimate reorganization.").
4. Certification of the settlement class was reviewed under Rule 23(a) and (b)(1). A mandatory, non-opt out class under 23(b)(1) was appropriate because Drexel's assets "constitute a limited fund which is dwindling and which is insufficient to satisfy all claims of the class members." 130 B.R. at 920; *see* 960 F.2d at 292. The Second Circuit recognized that this was not a typical "limited fund" case because Drexel's bankruptcy prevented its assets from being

distributed “on the first come, first served basis that usually warrants class treatment under Rule 23(b)(1)(B).” *Id.* Nonetheless, the court of appeals agreed with certification of a mandatory, non-opt class because “some members of the putative class might attempt to maintain costly individual actions in the hope and, perhaps, the belief that their claims are more meritorious than the claims of other class members.” *Id.* A mandatory, non-opt out class was appropriate to “prevent claimants with such motivations from unfairly diminishing the eventual recovery of other class members.” *Id.*

5. Approval of the settlement was analyzed under the standards of both Fed. R. Civ. P. 23 and Bankruptcy Rule 9019. 130 B.R. at 924-27.
6. The settlement included an injunction barring members of one subclass from bring suit against the officers and directors of Drexel. 960 F.2d at 293. The Second Circuit upheld the injunction against suits against non-debtors because “[i]n bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor’s reorganization plan.” *Id.* at 293. The injunction in this case was important because by limiting the number of suits against Drexel’s officers and directors it “enable[d] the directors and officers to settle” the existing suits against them “without fear that future suits will be filed.” *Id.* These settlements, in turn, would increase the amount available to all creditors of Drexel. 130 B.R. at 928.¹

¹ See also *In re A.H. Robins Co.*, 880 F.2d 694, 701 (4th Cir.), *cert. denied*, 110 S.Ct. 376 (1989) (upholding injunction barring suits against debtor’s directors and outside counsel and debtor’s insurer and its outside counsel because such suits “would affect the bankruptcy reorganization in one way or another such as by way of indemnity or contribution.”). In a recent opinion, the Second Circuit held that the jurisdiction of the bankruptcy courts to issue injunctions against non-debtors is limited to “claims that directly affect the *res* of the bankruptcy estate.” *In re Johns-Manville Corp.*, 517 F.3d 52, 62 (2d Cir. 2008). In that case, the court held that an injunction barring asbestos claimants from suing an insurer of Johns-Manville for claims based on the insurer’s breach of its own duty to the claimants exceeded the bankruptcy court’s jurisdiction: “We conclude that the bankruptcy court erred insofar as it enjoined suits that, as a matter of state law, are predicated upon an independent duty owed by Travelers to the Appellants, that do not claim against the *res* of the Manville estate, and that seek damages in excess of and unrelated to Manville’s insurance policy proceeds.” *Id.* at 55.