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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. .
HRI HOLDING CORP., et al., . Case No. 19-12415 (MFW)
. .
. (Jointly Administered)
. .
. Courtroom No. 4
. 824 Market Street
Debtors. . Wilmington, Delaware 19801
. .
. Wednesday, July 6, 2022
. . 10:30 a.m.
.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Plan
Administrator: Michael Busenkell, Esquire
Ronald Gellert, Esquire
Amy Brown, Esquire
Bradley Lehman, Esquire
GELLERT SCALI BUSENKELL
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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.



1 APPEARANCES (CONTINUED):

2 For New York State
3 Department of
4 Taxation & Finance:

Robert Cook, Esquire
NEW YORK STATE DEPARTMENT OF
TAXATION & FINANCE
Harriman Campus Road
Albany, New York 12227

6 For Ihab Sulaiman:

Garvan McDaniel, Esquire
HOGANMCDANIEL
1311 Delaware Avenue
Wilmington, Delaware 19806

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MOTIONS:

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Agenda

Item 1: First Omnibus Objection (Non-Substantive)
of the Plan Administrator to Certain
Proofs of Claim
[D.I. 922; Filed 7/6/22]

4

Court's Ruling:

9

1 (Proceedings commenced at 10:30 a.m.)

2 THE COURT: Good morning. This is Judge Walrath.
3 We're here in the HRI case. I will turn it over
4 to the plan administrator to get us started.

5 MS. BROWN: Good morning, Your Honor. Amy Brown
6 of Gellert Scali Busenkell & Brown on behalf of the plan
7 administrator.

8 We are here today for the plan administrator's
9 first omnibus objection substantive to certain proofs of
10 claim. We had a couple of informal comments received and
11 were able to resolve some of the issues that were presented.
12 We intend to submit a revised proposed form of order under
13 certification of counsel once we get the green light from
14 both of the respondents.

15 If I could start with the informal comments before
16 I start the substantive, I would appreciate that. Going down
17 to letter (e) the informal comments received from Ace
18 American Insurance Company have been resolved. We plan on
19 putting language similar, if not identical, to the following:
20 the plan administrator's objections to Claim No. 476 filed by
21 Ace American Insurance Company on its own behalf and on
22 behalf of all Ace Companies. Two, Claim No. 478 filed by
23 Federal Insurance Company on its own behalf and behalf of all
24 the Chubb Companies are both withdrawn.

25 THE COURT: Okay.

1 MS. BROWN: For letter (d) there were informal
2 comments received from the New Jersey Department of Labor &
3 Workforce Development. We have also added language to the
4 proposed form of order stating that Claim No. 674 by the New
5 Jersey Department of Labor & Workforce Development shall be
6 reduced to \$882.05 as an allowed administrative expense
7 claim.

8 We also received informal comments from Mr. Joseph
9 Brancato by letter. I reached out to him. He provided his
10 email address, but I never heard back from him. It just --
11 his letter, basically, stated that he -- I have it right
12 here, he would like to claim any payment that is due to him
13 from a settlement. Then it had a picture of his driver's
14 license and a pay stub. So, that is where we are with that
15 one.

16 THE COURT: What tab is he on the -- which exhibit
17 is he?

18 MS. BROWN: Exhibit 3.

19 THE COURT: All right. Well, are those all the
20 informal comments that you received?

21 MS. BROWN: Yes.

22 THE COURT: All right.

23 MS. BROWN: The first formal objection was by the
24 New York State Department of Taxation & Finance in opposition
25 to the first omnibus objection. Your Honor, we are objecting

1 to the proof of claim filed by the State of New York on the
2 basis that there was absence from our books and records of
3 any liability, and also insufficient evidence supporting the
4 allowance of the claim.

5 The claim is just in the form of, it looks like,
6 an invoice and its stamped prepetition proof of claim. It's
7 our position that the claim fails to allege facts that
8 support a finding that the debtor is legally liable.

9 THE COURT: Well, what evidence do you have that
10 they're not legally liable? There is an invoice attached
11 (indiscernible) and New York believes that an assessment is
12 *prima facie* valid, doesn't it?

13 MS. BROWN: Yes. I think the problem with this
14 was the actual proof of claim that was filed itself. It
15 wasn't in a proof of claim form that was sent out with the
16 notices. Again, it's just the proof of claim -- an invoice
17 stamped proof of claim and signed at the bottom.

18 MR. COOK: Good morning, Your Honor. If I might
19 interject. This is Robert Cook from the New York State Tax
20 Department.

21 THE COURT: Yes, Mr. Cook.

22 MR. COOK: Your Honor, although our proof of claim
23 may not be in the form ordinarily submitted by many entities,
24 it does provide all the information that is required under
25 Federal Rules of Bankruptcy 3001. As indicated in our

1 papers, this proof of claim comes directly from the return
2 filed by the debtor in which they inaccurately computed their
3 tax that the State's annual minimum fixed corporate tax is
4 \$1,500. They stated tax due of 1125. So, I believe that the
5 State has provided sufficient documentation with respect to
6 this claim.

7 THE COURT: Ms. Brown.

8 MS. BROWN: That's all I had on that one.

9 THE COURT: Well, I am gonna overrule the debtor's
10 objection to that claim. I agree that the attachment does
11 contain sufficient, at least, *prima facie* evidence that the
12 tax is due and the plan administrator has not submitted any -
13 - or has the burden of proof now to submit evidence in
14 response to that. Books and records is just not enough. I
15 know that many debtors' books and records are not in the
16 greatest shape by the time they file.

17 MR. COOK: Thank you, Your Honor.

18 MS. BROWN: Next up we have the response of Ihab
19 Sulaiman to the debtor's first omnibus objection. This was a
20 -- this was also objected to on the basis that there was no
21 supporting document, the claim is unliquidated, and that
22 there is no basis upon which the claim can be ascertained. I
23 believe Mr. McDaniel has filed a response. I believe he is on
24 the line.

25 MR. MCDANIEL: Good morning, Your Honor. Garvan

1 McDaniel. Your Honor, this matter was a motion for relief
2 consent order. The matter is an active State Court
3 litigation. Mediation was just concluded, I believe, on 6/17.
4 The matter was not settled. On 6/15 the mediator filed a
5 report.

6 So, Your Honor, our position is we're liquidating
7 the claim in State Court and we simply just want to have the
8 claims objection held in abeyance until the State Court claim
9 is liquidated. Your Honor, recently I had a case, similar
10 scenario, motion for relief. The trust came in and objected.
11 A response was not filed and the insurance company took the
12 position that it *res judicata* in State Court, that since the
13 claim was dismissed in Bankruptcy Court, you know, there was
14 nothing to litigate in State Court.

15 So, we are, obviously, trying to avoid that
16 argument here in a similar scenario and just have the claim
17 held in abeyance. It would be liquidated subject to the stay
18 relief order that was entered, you know, that we're only
19 seeking money from the insurance company, but the debtor is
20 still a necessary party in the State Court action.

21 So, that is our position, Your Honor.

22 THE COURT: Ms. Brown.

23 MS. BROWN: Your Honor, to hold the claim in
24 abeyance would be not in the best interest of the plan
25 administrator. You know, litigation can take years. The

1 respondent has already waived any claim it has against the
2 estate. It's only going after insurance proceeds.

3 THE COURT: Well, can you put something in the
4 form of order that says that, that the claim is not
5 disallowed, but that the claimant will not be entitled to any
6 distribution from the estate.

7 MR. MCDANIEL: That's what we were looking for,
8 Your Honor.

9 THE COURT: All right.

10 MS. BROWN: That's all I have for today.

11 THE COURT: Well, I have some problems generally
12 with the omnibus objection. I think that, again, simply an
13 objection to both Exhibits 1 and 2 are based on the debtor's
14 books and records, and that is not sufficient to overcome the
15 *prima facie* valid proofs of claim. Most of the claims -- the
16 claim in Exhibit 1 does attach receipts. So, it is *prima*
17 *facie* valid of evidence of a claim. Exhibit 2, although the
18 plan administrator vehemently objects based on the books and
19 records, again, that is not enough.

20 I think the declaration or often times the exhibit
21 to the omnibus objection has to provide what evidence there
22 is that the claim is, in fact, not due. The majority of the
23 claims in Exhibit B have evidence attached to them, most are
24 tax claims, which may be *prima facie* valid when assessed,
25 they contain amounts. So, I think the plan administrator has

1 not met his burden to present evidence sufficient under
2 Exhibit 1 or 2 to overcome the *prima facie* validity of the
3 claims. I will give the plan administrator an opportunity to
4 submit another declaration that, you know, provides such
5 evidence.

6 With respect to Exhibit 3, the objection is that
7 they are unliquidated, but many of the claims do list an
8 amount due or no less than an amount due, and attach evidence
9 supporting their claim. So, I am going to continue this
10 omnibus objection and ask the plan administrator to submit
11 another declaration, again, with evidence of why each proof
12 of claim, to which there is an objection, is not entitled to
13 *prima facie* validity.

14 MS. BROWN: Understood. Thank you, Your Honor.

15 THE COURT: All right. That was the only thing we
16 had on for today?

17 MS. BROWN: Yes.

18 THE COURT: We will stand adjourned. Thank you.

19 MS. BROWN: Thank you.

20 (Proceedings concluded at 10:42 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Mary Zajackowski

September 19, 2023

Mary Zajackowski, CET-531
Certified Court Transcriptionist
For Reliable