IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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| HOBART CORPORATION, *et al.*, Plaintiffs, | : | |
| v. | : | Case No. 3:13-cv-115 |
| THE DAYTON POWER & LIGHT CO., *et al.*, Defendants. | : | JUDGE WALTER H. RICE |

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DECISION AND ENTRY OVERRULING WITHOUT PREJUDICE DEFENDANT LA MIRADA PRODUCTS CO., INC.'S, MOTION FOR JUDGMENT ON THE PLEADINGS (DOC. #232)

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Defendant La Mirada Products Co., Inc. ("La Mirada"), filed a Motion for Judgment on the Pleadings, Doc. #232, pursuant to Federal Rule of Civil Procedure 12(c). La Mirada argues that the contribution claims asserted by Plaintiffs under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9601, *et seq.*, and Ohio common law, seeking remediation costs in connection with the South Dayton Dump and Landfill Site ("the Site"), were previously discharged in bankruptcy and, therefore, must be dismissed as a matter of law.

Plaintiffs maintain that all environmental claims were expressly excluded from discharge. In the alternative, they argue that it would be unfair to dismiss the contribution claims against La Mirada, because La Mirada's CERCLA liability was

not "fairly contemplated" at the time the reorganization plan was finalized, and because Plaintiffs had no notice of La Mirada's bankruptcy in time to file a proof of claim.

A.

A motion for judgment on the pleadings under Rule 12(c) is subject to the same standard of review as a motion to dismiss for failure to state a claim under Rule 12(b)(6). "[A]ll well-pleaded material allegations of the pleadings of the opposing party must be taken as true, and the motion may be granted only if the moving party is nevertheless clearly entitled to judgment." *JPMorgan Chase Bank, N.A. v. Winget*, 510 F.3d 577, 581 (6th Cir. 2007). At issue is whether the complaint states a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009).

B.

According to La Mirada, Plaintiffs' contribution claims were discharged on June 16, 2006, in a Chapter 11 bankruptcy case filed in the United States Bankruptcy Court for the District of Delaware, Case No. 01-2101, and jointly administered with the Chapter 11 cases of its parent company, USG. *See In re USG Corp.*, Case No. 01-2094 (Bankr. D. Del.).

Plaintiffs maintain, however, that the contribution claims are still viable because La Mirada's bankruptcy plan specifically excluded environmental claims

from discharge. Doc. #258-1, PageID#2616. The problem with this argument is that the bankruptcy plan specifically defines an "environmental claim" as "a Claim *of a governmental unit* against any Debtor relating to alleged violations of, or noncompliance with, any federal or state environmental laws or regulations. . ." *Id.* at PageID#2603 (emphasis added).[1] It is undisputed that Plaintiffs are private parties, not governmental units.

Because a bankruptcy reorganization plan is a contract between the debtor and its creditors, it is subject to traditional principles of contract interpretation. *See In re Settlement Facility Dow Corning Trust*, 628 F.3d 769, 772 (6th Cir. 2010) ("[i]n interpreting a confirmed plan, courts use contract principles."). The express inclusion of the phrase "of a governmental unit" impliedly excludes environmental claims brought by any other entity. *See Broad St. Energy Co. v. Endeavor Ohio, LLC*, 975 F. Supp. 2d 878, 890 (S.D. Ohio 2013) (interpreting the maxim "*expressio unius est exclusio alterius*").

Citing *Signature Combs*, 253 F. Supp. 2d 1028, 1032 (W.D. Tenn. 2003), Plaintiffs argue that § 113(f) CERCLA contribution claims filed by private parties are "derivative" of claims of the United States. Therefore, according to Plaintiffs, if environmental claims of a governmental unit were excluded from discharge, contribution claims filed by private parties should be deemed excluded as well.

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[1] La Mirada also argues that, because Plaintiffs' contribution claims do not allege "violations of, or noncompliance with, any federal or state environmental laws or regulations," they do not constitute "environmental claims," as defined in the bankruptcy plan. The Court disagrees. The contribution claims clearly "relat[e] to alleged violations" of CERCLA. That is all that the definition requires.

In *Signature Combs*, however, the court simply noted that a plaintiff can bring a § 113(f) contribution claim against a defendant only if both parties "share a common derivation of liability." In other words, both the plaintiff and the defendant must be liable to the United States for cleanup costs at a particular site. Accordingly, in *Signature Combs*, the viability of the plaintiffs' contribution claim hinged on whether the defendant's potential liability to the United States had been discharged in bankruptcy. *Id.* at 1032. The court found that there was not enough evidence in the record to make that determination on a motion for judgment on the pleadings. *Id.* at 1040-41.

In this case, there appears to be little question that La Mirada and Plaintiffs "share a common derivation of liability," as required for a § 113(f) contribution claim. Having entered into settlement agreements with the United States Environmental Protection Agency ("EPA"), Plaintiffs are liable to the United States for cleanup costs. La Mirada is also potentially liable to the United States because the reorganization plan specifically excludes those environmental claims from discharge.

But just because environmental claims brought by the United States are expressly preserved, it does not necessarily follow that contribution claims brought against La Mirada by private parties are implicitly preserved as well. The contractual terms of the bankruptcy reorganization plan govern this issue. For the reasons set forth above, the Court concludes that the exclusion for environmental claims filed against La Mirada by the United States does not extend to contingent

environmental claims filed by private parties. Therefore, Plaintiffs' claims are not specifically preserved by the terms of the plan.

C.

Whether Plaintiffs' contribution claims were discharged in La Mirada's bankruptcy proceedings depends, in large part, on when those claims arose. The Bankruptcy Code broadly defines a "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A). To enable debtors to obtain a fresh start, this definition is meant to provide them with the "broadest possible relief" from legal obligations arising from their pre-petition conduct. *In re Huffy Corp.*, 424 B.R. 295, 301 (Bankr. S.D. Ohio 2010).

It is undisputed that neither the EPA nor Plaintiffs filed a proof of claim under 11 U.S.C. § 501 in La Mirada's bankruptcy case with respect to cleanup costs at the Site.[2] Nevertheless, unless a Chapter 11 reorganization plan provides

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[2] Plaintiffs argue that they did not have notice of La Mirada's bankruptcy proceedings in time to file a proof of claim. But, as La Mirada points out, even if Plaintiffs had filed a timely proof of claim in La Mirada's bankruptcy proceedings, the claim would likely have been disallowed under 11 U.S.C. § 502(e)(1)(B). That section of the Bankruptcy Code states, in relevant part, that "the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor . . . , to the extent that . . . such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution." 11 U.S.C. § 502(e)(1)(B). Plaintiffs' claims against La Mirada appear to fall squarely within this provision. *See In re*

otherwise, the judicial confirmation of the plan "discharges the debtor from any debt that arose before the date of such confirmation," regardless of whether the creditor filed a proof of claim under 11 U.S.C. § 501. *See* 11 U.S.C. § 1141 (d)(1)(A). However, "[t]he debtor remains fully liable for all 'claims' arising after the bankruptcy confirmation." *Signature Combs*, 253 F. Supp. 2d at 1032.

D.

The viability of Plaintiffs' contribution claims against La Mirada hinges on whether those claims arose before or after La Mirada's bankruptcy reorganization plan was finalized. In *Signature Combs*, the court discussed the pros and cons of various judicial approaches for identifying when a contingent CERCLA claim "arises" for purposes of bankruptcy discharge. Courts must balance CERCLA's goal of holding polluters accountable for clean-up costs against the Bankruptcy

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*New York Trap Rock Corp.*, 153 648, 651 (Bankr. S.D.N.Y. 1993) ("A contingent CERCLA claim that . . . depends upon the co-liability of the parties, as to a third party or to the Environmental Protection Agency ("EPA"), is a disallowable claim for reimbursement or contribution.").

As one court explained, the purpose of § 502(e)(1)(B) is to "'preclude redundant recoveries on identical claims against insolvent estates' and 'double-dipping' resulting from EPA and PRP claim for the same future CERCLA response costs." *In re FV Steel & Wire Co.*, 372 B.R. 446, 455 (Bankr. E.D. Wis. 2007) (quoting *In re Hemingway Transp.*, 993 F.2d 915, 923 (1st Cir. 1993)). Section 502(e)(1)(B) therefore "protects debtors from multiple liability on contingent debts." *In re Eagle Picher Indus., Inc.*, 131 F.3d 1185, 1187 (6th Cir. 1997) (quoting *In re Allegheny Int'l, Inc.*, 126 B.R. 919, 923 (W.D. Pa. 1991)). Multiple liability would have been an obvious concern here, given that the reorganization plan specifically preserves environmental claims filed by the United States.

Code's goal of providing debtors with a fresh start, relieving them of liability for all claims arising from pre-petition conduct. *See Signature Combs*, 253 F. Supp. 2d at 1031-40.

In addition, courts must consider the due process rights of the creditors, who are entitled to fair notice of the bankruptcy proceedings and the deadlines for filing a proof of claim. *See id.* As the court noted in *Huffy*, "providing constitutionally sufficient notice to a creditor may verge on the impossible when the claim is not known to the debtor at the time of the bankruptcy filing, nor the creditor itself, due to the fact that the claim is contingent and relies on future events for the debtor's liability to arise." *Huffy*, 424 B.R. at 302.

In attempting to balance each of these concerns, many courts have adopted a "fair contemplation" approach to determining if a CERCLA contribution claim arose pre-petition and was discharged in bankruptcy. *Signature Combs*, 253 F. Supp. 2d at 1037. Under this approach, the relevant question is whether the contingent claim could have been "fairly contemplated by the parties" at the time of the debtor's bankruptcy. *Huffy*, 424 B.R. at 304 (quoting *Cal. Dep't of Health Servs. v. Jensen (In re Jensen)*, 995 F.2d 925, 930 (9th Cir. 1993)).

At issue is whether the CERCLA plaintiff "could have ascertained through the exercise of reasonable diligence" that it had a contingent contribution claim against the debtor. *Signature Combs*, 253 F. Supp. 2d at 1037 (quoting *In re Crystal Oil Co.*, 158 F.3d 291, 296 (5th Cir. 1998)). "[A] future claim that cannot be contemplated by the parties is not discharged under the Bankruptcy Code, even

if that claim stems from the pre-petition conduct of the debtor." *In re Hexcel Corp.*, 239 B.R. 564, 572 (N.D. Cal. 1999).

In this case, La Mirada's bankruptcy plan was finalized in June of 2006, but Plaintiffs did not enter into the first Administrative Settlement Agreement and Order on Consent ("ASAOC") with the EPA until two months later, in August of 2006. Plaintiffs argue that because they could not have fairly contemplated La Mirada's CERCLA liability until after the 2006 ASAOC was signed, their contribution claims against La Mirada cannot be deemed to have been discharged in bankruptcy.

In response, La Mirada notes that the EPA began investigating the Site in 1991, ten years before La Mirada filed for bankruptcy protection. *See* Doc. #1-1, PageID#33. Therefore, according to La Mirada, the EPA could have fairly contemplated a claim against La Mirada prior to the conclusion of the bankruptcy proceedings in June of 2006. But this is not the relevant question. The EPA's knowledge is not necessarily imputed to Plaintiffs. The Court must determine whether *Plaintiffs* could have fairly contemplated a contribution claim against La Mirada prior to the conclusion of the bankruptcy proceedings.

At this juncture, the Court does not have enough information to make that determination. The ASAOC was signed in August of 2006. Nevertheless, it is not clear when Plaintiffs were identified as potentially responsible parties, or when they began negotiating with the EPA. More importantly, it is not clear when La Mirada was identified as a potentially responsible party, or by whom. Without this

additional information, it is impossible to say whether Plaintiffs, exercising due diligence, could have fairly contemplated La Mirada's contribution liability prior to June of 2006 when the bankruptcy reorganization plan was finalized.

E.

La Mirada has not satisfied its burden, under Federal Rule of Civil Procedure 12(c), of proving that Plaintiffs have failed to state a plausible claim. Accordingly, the Court OVERRULES La Mirada's Motion for Judgment on the Pleadings, Doc. #232, WITHOUT PREJUDICE to re-filing in the form of a properly-supported motion for summary judgment.

Date: September 26, 2014

WALTER H. RICE
UNITED STATES DISTRICT JUDGE