

Investment Co. Says Mesabi \$16M Fee Suit Outside Ch. 11

By **Vince Sullivan**

Law360, Wilmington (February 11, 2019, 6:43 PM EST) -- An investment banking firm alleging it is owed more than \$16 million in advisory fees from reorganized debtor Mesabi Metallica Co. LLC told a Delaware bankruptcy judge Monday that an adversary suit filed by Mesabi's estate should be tossed because Mesabi is not involved in the fee row.

During oral argument, B. Riley FBR Inc. attorney Joseph M. Pastore III of Pastore & Dailey LLC told the court that the suit filed by Mesabi seeking to stop the banking firm from pursuing litigation over its fee claim doesn't belong in the bankruptcy court because the advisory contract was entered into with the reorganized debtor.

Pastore said the deal was executed after the confirmation of the Chapter 11 plan of reorganization for Mesabi's predecessor and covered B. Riley's efforts to secure construction financing to complete the building of the company's iron mine in Minnesota. The fees at issue were incurred by B. Riley after the effective date of the plan beginning at the end of December 2017, he said.

"This isn't some windfall that B. Riley is seeking," Pastore said. "B. Riley is seeking compensation for the advisory services rendered to this reorganized debtor."

Mesabi eventually secured \$650 million in funding from another source, but Pastore said the fees were earned by B. Riley despite the results.

Because the engagement agreement was signed by the sole managing director of plan sponsor and Mesabi equity owner Chippewa Capital Partners LLC and specifically called for reorganized debtor Mesabi to be a party to the engagement, Pastore said, the adversary suit doesn't deal with any claims against the Chapter 11 estate and shouldn't be before the bankruptcy court.

The banking firm is trying to initiate litigation before the Financial Industry Regulatory Authority over the unpaid fees and claims that forum or federal court litigation is the appropriate method to adjudicate the dispute, Pastore said.

"We don't have a claim against the debtor. We've never asserted a claim against the debtor," Pastore said. "We could not have asserted a claim against the debtor. These are all claims against the reorganized debtor and the plan sponsor."

Mesabi attorney Craig H. Averch of White & Case LLP said the engagement with B. Riley was signed on Dec. 21, 2017, which was the day before the Dec. 22 plan effective date, meaning the deal involved the Chapter 11 debtor entities.

The Chapter 11 plan confirmed in June 2017 included a discharge provision that would have eliminated the alleged administrative expense claim of B. Riley and barred the investment banker from pursuing any enforcement actions relating to the discharged debt, Averch said.

"This agreement was entered into before the effective date and is subject to the discharge of the plan," Averch argued. "B. Riley was a witness at confirmation. They knew what was in the plan. This provision couldn't be a surprise to B. Riley."

The debtor was not aware of the engagement with B. Riley that was signed in December 2017 because Chippewa's member signed it on behalf of Mesabi, Averch said, and the engagement was not subject to the normal retention procedures for estate professionals, which would have required court approval of the retention and notice to creditors.

U.S. Bankruptcy Judge Brendan L. Shannon said the issues raised about retention during the period between plan confirmation and plan effectiveness was essentially a “no-man’s land” and there wasn’t any case law that dealt with those questions.

He said he would issue his ruling on the motion to dismiss Tuesday at 2 p.m. via teleconference.

Mesabi predecessor Essar Steel retreated into Chapter 11 in July 2016 just ahead of Minnesota's move to revoke state-owned mineral rights, which accounted for about 40 percent of the company’s holdings. Its former India-based sponsors spent more than \$1.8 billion on the site before Essar filed for Chapter 11.

The company’s equity was auctioned off in the Chapter 11 case, with Chippewa paying \$250 million and providing a \$650 million exit facility to fund completion of the project.

Mesabi filed the adversary complaint in September asking the bankruptcy court to bar B. Riley from filing litigation over the fee claim and to find the firm in contempt of the court’s confirmation order.

Mesabi and Chippewa are represented by Jeffrey M. Schlerf and Carl D. Neff of Fox Rothschild LLP, and Craig H. Averch and Ronald K. Gorsich of White & Case LLP.

B. Riley is represented by Nicholas J. Brannick and Katherine M. Devanney of Cole Schotz PC and Joseph M. Pastore III of Pastore & Dailey LLC.

The adversary case is Mesabi Metallic Co. LLC et al. v. B. Riley FBR Inc., case number 1:18-ap-50833, in the U.S. Bankruptcy Court for the District of Delaware.

The bankruptcy case is In re: ESML Holdings Inc., case number 1:16-bk-11626, in the same venue.

--Additional reporting by Mike Curley. Editing by Jack Karp.

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