

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: . Case No. 82-11656 (CGM)
. .
. Chapter 11
JOHNS-MANVILLE CORPORATION, .
ET AL, . One Bowling Green
. New York, NY 10004
Debtors. .
. Thursday, July 16, 2015
. 10:17 a.m.

TRANSCRIPT OF ORDER APPROVING NOTICE OF FILING AND SERVICE LIST FOR ACCOUNT OF TRUSTEES AND FINANCIAL STATEMENTS OF THE MANVILLE PERSONAL INJURY SETTLEMENT TRUST FOR THE PERIOD OF JANUARY 1, 2014 THROUGH DECEMBER 31, 2014 AND APPLICATION FOR APPROVAL THEREFOR SIGNED ON 6/10/2015 [4160];
OBJECTION TO ACCOUNT OF TRUSTEE'S 2014 FILED BY MICHAEL JONATHAN MANDELBROT ON BEHALF OF MICHAEL J. MANDELBROT;
RESPONSE OF THE MANVILLE PERSONAL INJURY SETTLEMENT TRUST TO OBJECTION TO THE APPLICATION FOR ORDER APPROVING ACCOUNT OF TRUSTEES FILED BY JARED S. GARELICK ON BEHALF OF TRUSTEES OF THE MANVILLE PERSONAL INJURY SETTLEMENT TRUST [4159, 4162];
REPLY TO MOTION RESPONDING TO OBJECTION TO TRUSTEE'S ANNUAL REPORT FILED BY MICHAEL JONATHAN MANDELBROT ON BEHALF OF MICHAEL J. MANDELBROT;
**BEFORE THE HONORABLE CECELIA G. MORRIS
UNITED STATES BANKRUPTCY COURT JUDGE**

APPEARANCES:

For the Trustees of the
Manville Personal Injury
Settlement Trust:

Manville Personal Injury
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1 (Proceedings commence at 10:17 a.m.)

2 THE COURT: Thank you very much. Very good. Thank
3 you all for being patient, but those were rather quick. Now
4 we'll go to Johns-Manville, 82-11656, Johns-Manville Corp, et
5 al. Come forward, please.

6 MR. GARELICK: I'll come here where I can hear the
7 best.

8 THE COURT: Good. Yeah. I'm sorry about no A/C, but
9 it interferes with the sound system.

10 MR. GARELICK: Okay.

11 THE COURT: If it gets too hot, we'll go for jackets.
12 Let's go first with just the Johns-Manville case, and then
13 we'll move to the adversary proceeding. All right. State your
14 name.

15 MR. GARELICK: Good morning. I am Jared Garelick. I
16 represent the Manville Trust and its trustees, and I'm here to
17 move the order approving the account of trustees for the year
18 2014, which was presented to this Court.

19 THE COURT: Very good.

20 MS. VOGEL: Good morning, Your Honor. Heike Vogel of
21 Vogel Bach, PC, here on a limited representation of Michael
22 Mandelbrot, who is present on the phone. And also here with me
23 is my law firm partner, Eric Horn.

24 THE COURT: Very good.

25 UNIDENTIFIED: Operator?



1 THE OPERATOR: Yes.

2 UNIDENTIFIED: I don't hear anything, and I don't
3 need a live line. I just need to listen and I don't want to
4 speak.

5 THE COURT: That's Frances. She does want to hear.
6 Yeah, everything is -- I don't know if anybody can hear. We
7 turned off all the A/C. You know, it's interesting the red
8 light came on when you did that, but it --

9 MR. GARELICK: It's supposed to be off.

10 THE COURT: Oh, I thought so.

11 MR. GARELICK: Frances, can you hear us now?

12 UNIDENTIFIED: She's on this call on listen only.

13 (Counsel confer)

14 THE COURT: Magic sometimes happens. We turned off
15 all the air conditioning because we couldn't hear -- I couldn't
16 even hear -- which makes it very warm in here very fast. You
17 know, Judge Lifland used to keep his courtroom warm on purpose.

18 MS. VOGEL: To get a quicker result.

19 THE COURT: Brenda cannot hear. We need to work on
20 it. We need to keep talking so that they will at least hear us
21 talking if, in fact, it goes through. I believe Ms. -- no, the
22 microphone is not working right now you said.

23 MS. VOGEL: Should I say something? Testing.
24 Testing.

25 THE COURT: It's on?



1 MS. VOGEL: I'm just testing the microphone.

2 THE COURT: Just keep talking.

3 MS. VOGEL: Yes. How are you doing, Your Honor?

4 THE COURT: What a lovely morning this is.

5 MS. VOGEL: Yes.

6 THE COURT: It was really quite nice.

7 MS. VOGEL: I'm so glad it cooled off a little bit.

8 It was way too humid for the last couple of days.

9 THE COURT: Yesterday, walking to the Court was a
10 chore.

11 MS. VOGEL: Yes.

12 THE COURT: This morning walking to the Court was
13 just --

14 MS. VOGEL: A pleasure.

15 THE COURT: It was. We think it may be on our end.
16 That light doesn't stay on too well. Are you going to stand
17 there and hold it better or make it work? You know, the
18 typical we've got someone right there holding it.

19 MS. VOGEL: Is this microphone working? Anybody, can
20 you hear --

21 MR. GARELICK: So then this works over here.

22 THE COURT: Yeah, you can hear it here, but what
23 we're not doing is feeding.

24 MS. VOGEL: Okay.

25 THE COURT: We have other people listening, and if



1 other people are listening, we need to make sure they're
2 hearing. Your client is not hearing.

3 MS. VOGEL: Oh, he can't hear either?

4 THE COURT: Yeah, because what happens is we have
5 someone on CourtCall, too, making sure that they can be heard.

6 MS. VOGEL: Oh.

7 THE COURT: So that's what --

8 MR. GARELICK: Do I need to be at a microphone then?
9 This -- is this --

10 THE COURT: That one is probably -- should be a
11 stronger microphone.

12 MR. GARELICK: Yeah, that one works, as well.

13 THE COURT: Okay. Is it -- do you have a red light
14 on?

15 MS. VOGEL: I have all the --

16 (Simultaneous speech)

17 THE COURT: I think everybody in the courtroom is --

18 MS. VOGEL: Yes.

19 THE COURT: It's what?

20 MR. GARELICK: It's on. Let me --

21 THE COURT: Yeah, it's CourtCall that's not working.

22 MR. GARELICK: She can hear, Judge.

23 THE COURT: Brenda can but what about Frances?

24 Frances is the one that's on the --

25 MR. GARELICK: Frances called for Brenda.



1 THE COURT: Okay. All right, everyone. On -- I know
2 CourtCall can't talk back to us, but Brenda, is everybody
3 hearing now? Okay. They now say the line is live. Okay.
4 We're good now.

5 MS. VOGEL: Excellent.

6 THE COURT: Very good. Okay. Now, sorry everyone.
7 Go right ahead.

8 MR. GARELICK: Okay. Good morning again.

9 THE COURT: State your name again, please.

10 MR. GARELICK: I'm Jared Garelick. I represent the
11 Manville Trust and its trustees, and I'm here to move the
12 approval of the order approving the account of trustees for the
13 year 2014, which has been submitted.

14 THE COURT: Okay.

15 MR. GARELICK: We've given Your Honor papers. Just a
16 couple of highlights from the account. The net claimant's
17 equity at the beginning of 2014 was approximately \$835 million,
18 and at the end of the year it decreased to \$789 million.
19 During that time, the trust had made settlement payments of
20 about 223,000 plans with total payments of \$116 million. And
21 the payments were probably offset by investment income of
22 approximately \$59 million.

23 Trust net operating expenses during 2014 were
24 approximately \$4.7 million, and that was on an operation making
25 more than \$100 million in settlement payments.



1 During 2014, the trustees, in cooperation with the
2 selected counsel of the beneficiaries and the legal
3 representative of future claimants, both of whose concurrence
4 is required, performed a re-estimation of the pro rata payment
5 that the trust is able to make on its settlements.

6 The trust distribution process, or TDP, requires that
7 the estimations be made at least every three years, and that
8 involves looking at the trust assets and making projections of
9 asset returns as well as the more complicated project of
10 estimating future liabilities.

11 And that involves an epidemiological projection of
12 disease trends, timing of disease, and also propensity claim,
13 which has increased over the years as information about the
14 compensability of asbestos claims has increased both by
15 probably lawyer advertising and the Internet. As a result of
16 that re-estimation, the pro rata payment was reduced from 7.25
17 percent to 6.25 percent.

18 Also during 2014, an additional trustee was elected,
19 Kirk Watson of Austin, Texas, and that brings us up currently
20 to four trustees. The current trust agreement requires there
21 to be no fewer than three trustees, and we added a fourth as
22 part of kind of a multi-year leadership transition under which,
23 at the end of this calendar year, the longest serving trustee,
24 Robert Felis (phonetic), who has served since 1991, most of it
25 as managing trustee, will be retiring, and we will be back to



1 having four trustees.

2 THE COURT: Okay.

3 MR. GARELICK: And finally I will briefly address the
4 objections that have been --

5 THE COURT: Thank you.

6 MR. GARELICK: -- made to the Court. First, there's
7 one, I'm not sure it was actually sent into the Court that I
8 received a copy. And it's not really an objection. I received
9 from a pro se claimant, and she said it was in response to the
10 notice, a re-submission of a proof of claim form.

11 THE COURT: We did not get that.

12 MR. GARELICK: I'm not surprised. She sent it to me.
13 She didn't state it as an objection. She just said, in
14 response to the notice, I am resubmitting the following, and it
15 was a proof of claim form that had been denied and the claim is
16 in inactive status.

17 It's on behalf of her husband who died. He did have
18 exposure to asbestos occupationally, but his death was from a
19 brain tumor, which is not an asbestos-related disease. And as
20 heartbreaking as the medical reports are in that -- that she
21 submitted --

22 THE COURT: Right now I would say you need -- I will
23 -- if she -- if in any way it looks like an objection, I will
24 deny it and let you use it in the -- in your normal course.

25 MR. GARELICK: That's fine, Your Honor. She did not



1 say that she was objecting to the account. She did not even
2 mention the account. She just said she was writing in response
3 to the notice.

4 THE COURT: Well, we now have a record that --

5 MR. GARELICK: Thank you.

6 THE COURT: -- gives you leeway to do what is
7 necessary to be done.

8 MR. GARELICK: Thank you. And finally --

9 THE COURT: And if at any point you need an order on
10 that, you let me know.

11 MR. GARELICK: Okay. Thank you.

12 THE COURT: Okay.

13 MR. GARELICK: And finally there is the objection
14 that I know that the trust -- that the Court has received, and
15 that is from Michael Mandelbrot and the Mandelbrot Law Firm on
16 behalf of some claimants. And he actually has counsel here
17 today.

18 THE COURT: Right.

19 MR. GARELICK: And I will just address that very
20 briefly. I'm confident that between us and Mr. Mandelbrot,
21 Your Honor has seen enough paper to explain the issue. And in
22 our view it's a very easy question. In suspending the
23 processing claim submitted by Mr. Mandelbrot and his law firm,
24 the trustees were acting well within their authority to protect
25 the integrity of the claims process on behalf of the trust's



1 beneficiaries.

2 THE COURT: Let me stop you right there and let me
3 just ask you a question about what you just said.

4 MR. GARELICK: Yes.

5 THE COURT: You suspended the claims of the lawyer
6 and the --

7 MR. GARELICK: And the -- it's Michael Mandelbrot and
8 the Mandelbrot Law Firm.

9 THE COURT: Not the claimants?

10 MR. GARELICK: Not the claimants. That is correct.

11 THE COURT: Okay. And do you have authority to
12 suspend some lawyers from filing?

13 MR. GARELICK: We believe that the trust does, and to
14 explain in a letter that we sent to Mr. Mandelbrot in September
15 of 2014, and that was Exhibit C, to the trust's response, and
16 that quotes from the trust agreement. Now, when the trust was
17 established, the people who wrote up the papers realized they
18 could not anticipate every event that might conceivably happen
19 over the many decades of the trust's life, and so they gave
20 fairly broad authority.

21 And the trust agreement states -- and this was in the
22 letter, and this is a quote:

23 "The purposes of the trust are, one, to use the
24 assets in the trust estate to deliver fair, adequate
25 and equitable compensation to bonafide beneficiaries,



1 and two, to enhance and preserve the trust estate."

2 And that's the end of that quote, but it also further
3 states that the trustees of the Manville Trust are, and this is
4 a quote:

5 "Responsible for supervising and administering the
6 claim resolution facility."

7 And it also says that the trustees, quote:

8 "Shall have the power to take any and all such
9 actions as in the judgment of the trustees are
10 necessary or convenient to effectuate the purposes of
11 the trust."

12 And that's the end of that quote. But among the
13 specific authority is the power to supervise and administer the
14 claims facility.

15 THE COURT: Well, let me just ask you a question.

16 MR. GARELICK: There is also in the trust
17 distribution process --

18 THE COURT: Sure.

19 MR. GARELICK: -- a provision that permits the trust
20 to do audits of information that is submitted to it. And in
21 the case of medical records, certainly it is their specific
22 authority to suspend acceptance or to refuse to accept further
23 evidence from sources which the audits show to have
24 unacceptable levels of reliability.

25 THE COURT: I think anybody that's ever sat in the



1 position that I sit in is very empathetic to your -- what I'm
2 hearing from you. That being said, even I do not have the
3 power to suspend a lawyer from the practice of law. Only an
4 ethics committee or an ethics group would have that ability, so
5 it seems interesting to me that without an order of this Court,
6 that you could suspend a lawyer.

7 I can see that you might hold up the funds going out
8 until such time as you get an order from me based on whatever,
9 but just explain that to me. I heard what you said. I just
10 need it explained a little more clearly.

11 MR. GARELICK: Well, the trustees are really relying
12 on the findings of a different bankruptcy court, the Bankruptcy
13 Court for the Central District of California --

14 THE COURT: Okay.

15 MR. GARELICK: -- which after three days of hearing
16 and an evidence and trial came to the conclusion that
17 Mr. Mandelbrot and the Mandelbrot Law Firm had engaged in a
18 pattern and practice of filing unreliable information in
19 support of asbestos bankruptcy trust claims. Now, this was to
20 different bankruptcy trusts.

21 THE COURT: Exactly. And see that's the point. I
22 mean, again I sit here, but if the Southern District of -- or
23 the Central District of California suspended a lawyer in
24 California and filing there, that would have precedential --
25 not necessarily precedential effect, but it would have effect



1 on my -- persuasive effect on my decision. I don't think it
2 has precedential effect on my decision. It is a sister court.
3 It is not something that they have basically said nationwide.

4 Trust me, I do know of certain lawyers that have been
5 suspended from practice nationwide, but we also know of ones
6 that ran out his welcome in Southern District and the Second
7 Circuit, then went to Boston, ran out his welcome, then went to
8 Florida and ran out his welcome.

9 So I hear you. I just don't see how a -- I want to
10 hear more clearly how an order of a Court in the Central
11 District of California could give you the power to suspend
12 someone from filing on a trust that is out of the Southern
13 District of New York.

14 MR. GARELICK: The position of the trustees is that
15 they, as fiduciaries, should be and need to be confident in the
16 reliability of the information that's submitted to them.

17 THE COURT: I don't disagree with that. Nobody has
18 an argument with that. I think the argument, and what I'm
19 hearing, is the argument that it should have been in front of
20 this Court and bring a motion here. I mean, I'm listening.
21 I'm listening carefully.

22 MR. GARELICK: Okay. No, that's fair, Your Honor.
23 And if that's the case, then the trustees will consider
24 bringing a motion.

25 THE COURT: Well, I'm trying to hear you.



1 MR. GARELICK: Okay.

2 THE COURT: I mean, I'm listening and I'm trying to
3 hear you.

4 MR. GARELICK: Well, the -- if Your Honor would
5 entertain it right now, we do move that the trust be given the
6 authority to suspend the processing of claims by
7 Mr. Mandelbrot.

8 THE COURT: Without notice, no way.

9 MR. GARELICK: But that's my assumption, yes.

10 THE COURT: You're talking to a Court that is --

11 MR. GARELICK: Right.

12 THE COURT: -- a stickler for notice.

13 MR. GARELICK: That's fine, Your Honor. And we will
14 take that under advisement and consider it.

15 THE COURT: I am one of those -- I have seen many
16 cases overturned over just simply not giving someone notice.

17 MR. GARELICK: Understood, Your Honor.

18 THE COURT: And -- okay. Now I'm sort of in a
19 struggle. The opposition is the opposition to the trust
20 report, right?

21 MS. VOGEL: Correct, Your Honor, but also to the --
22 the opposition also is in connection with the suspension of
23 Michael Mandelbrot and Mandelbrot Law Firm. And, Your Honor,
24 if I just may add, the attorney mentioned that this does not
25 affect the claimants, the suspension.



1 However, it does affect the claimants because, from
2 what I understand, approximately 122 claims, or 96 claims, have
3 been moved into an inactive file by the trustees. And the
4 reason is because Michael Mandelbrot, having been suspended, is
5 -- cannot take any actions or can entertain -- is not allowed
6 to take any actions according to the trustees, so --

7 THE COURT: Okay. I hear you. How does this
8 suspension relate to the report though?

9 MS. VOGEL: Mr. Mandelbrot objected to the report
10 because he believes that the trustees are under an obligation
11 to, in the very least, modify the report to disclose this
12 unauthorized suspension or give the reasons for the
13 suspensions, do their -- how -- different calculations how this
14 suspension affects the claims that he submitted.

15 THE COURT: That's an injury to him, not to the
16 beneficiaries. And it may end up being that the beneficiaries
17 are delayed. Any other reason about the report?

18 MS. VOGEL: Well, because -- I'm sorry, Your Honor.

19 THE COURT: Sure.

20 MS. VOGEL: The other modification he is requesting
21 is that the trustees do provide impact and value of his
22 suspension on his claimants' equity and to provide the
23 number --

24 THE COURT: I don't think so. Aren't you reserving?
25 You've got it in inactive, but they're -- paying out to these



1 beneficiaries is basically reserved.

2 MR. GARELICK: That is correct. The assets of the
3 trust are available to all future beneficiaries.

4 THE COURT: So it could stay there. Okay. I'm going
5 to overrule your -- do you wish to be heard, somebody else?

6 MS. VOGEL: No. I'm sorry, Your Honor, but it is
7 also -- but this is a timing that if these claimants are being
8 moved into an inactive or a deferred pool, you know, it does
9 affect the timing of when they might receive distribution.

10 THE COURT: That's true, it will.

11 MS. VOGEL: And I do believe that should be -- in the
12 very least be modified or acknowledged in the trust as to the
13 discussions of the various claims.

14 THE COURT: I don't think so. I'm going to approve
15 the trust report. I am going to make sure that you have
16 reserved the amount from the -- for the beneficiaries, correct?

17 MR. GARELICK: Uh-huh.

18 THE COURT: But I am holding that until such time as
19 this is determined and you have an opportunity to notice.

20 MR. GARELICK: Thank you, Your Honor.

21 MS. VOGEL: Thank you, Your Honor.

22 THE COURT: So it may cause injury to the trust. I
23 understand that because you have to defend it, but we'll take
24 care of that when we take care of it.

25 MS. VOGEL: So, Your Honor, just to be clear, so



1 there will be an official motion filed by the trustee?

2 THE COURT: I don't know. That's up to him. It's
3 going to stay inactive until somebody gets it in front of me.

4 MS. VOGEL: But is there any way that we could
5 address this unauthorized suspension of Mr. Mandelbrot because
6 it is still unclear in the authority that --

7 THE COURT: I'm not addressing it today.

8 MS. VOGEL: Okay.

9 THE COURT: You can bring a motion, too, instead of
10 simply a response. I find that Mr. Mandelbrot does not have
11 standing basically to object to the report. All I did today
12 was approve the report and made sure that there were sufficient
13 funds for the true beneficiaries of those claims if they are,
14 in fact, allowed. If they're not allowed, it stays with the
15 trust. Or they are allowed already?

16 MR. GARELICK: No.

17 THE COURT: I don't think so either.

18 MR. GARELICK: I don't think so. I think they're --

19 THE COURT: Yeah.

20 MR. GARELICK: -- in a pending status.

21 THE COURT: Okay.

22 MR. GARELICK: The claims that would have been
23 approved have probably been paid by now.

24 THE COURT: Okay, and you -- and obviously you'll be
25 auditing those, too.



1 MR. GARELICK: We may very well, yes, Your Honor.

2 MS. VOGEL: Because, Your Honor -- I'm sorry, if I
3 may add.

4 THE COURT: No, it's all right.

5 MS. VOGEL: As Mr. Garelick pointed out before that
6 the trust, Section 8 of the trust, provides that an audit of
7 medical records submitted by doctors and medical facilities are
8 permitted. And the trust continues stating that the trust may
9 develop methods for auditing other types of evidence necessary
10 to support a claim.

11 THE COURT: Okay.

12 MS. VOGEL: And in this case, again going back to the
13 suspension, there has been no audit done of the claims that
14 Mr. Mandelbrot submitted.

15 THE COURT: Okay. I understand now. We're simply
16 holding them to determine until the audit -- not the audits.

17 They should have been audited already, but the trustee has to
18 do something to pay them.

19 MR. GARELICK: Correct.

20 THE COURT: And so you can do whatever is necessary
21 to process those claims, but you can move quickly to suspend
22 the Mandelbrot parties, but you've got to look at those claims.

23 MR. GARELICK: Okay. That's understood, Your Honor.

24 THE COURT: They should be allowed claims right now,
25 and they maybe should be paid but maybe not to the attorney.



1 MS. VOGEL: But then --

2 THE COURT: Just didn't move fast on that.

3 MS. VOGEL: However, the question then also becomes
4 the fact, you know, Mr. Mandelbrot, there has been no evidence
5 submitted or before Your Honor that any of the claims that
6 Mr. Mandelbrot filed in Manville were improper or defective in
7 any way. Their reliance, as Your Honor pointed out, is on a
8 completely different case in California, an entirely different
9 trust. There has been no allegations made that the claims
10 before Your Honor in Manville filed by Mandelbrot are
11 unreliable or improper.

12 THE COURT: I have heard you. You've been heard.

13 MS. VOGEL: Thank you.

14 THE COURT: Get a notice. I want due process.

15 MR. GARELICK: Thank you, Your Honor.

16 MS. VOGEL: Thank you, Your Honor. Thank you.

17 THE COURT: I know there were falsified claims in a
18 different court, but it is a different court.

19 MS. VOGEL: Thank you, Your Honor.

20 THE COURT: Very good.

21 (Proceedings concluded at 10:40 a.m.)

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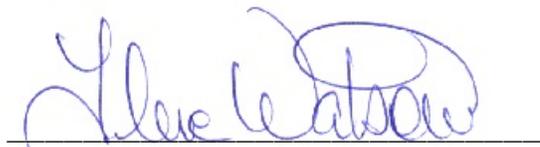
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I, Ilene Watson, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.



ILENE WATSON, AAERT NO. 447 DATE: July 20, 2015
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