

Conflict-Of-Interest Question Added To NorthWestern Controversies

**DELAWARE
DOCKET**

By Peg Brickley

COUNT ON DELAYS in getting electronic access to the NorthWestern Corp. docket over the next few weeks: The big case has some big issues awaiting decision as it barrels toward confirmation in August, and the demands on Pacer will be proportionate.

U.S. Bankruptcy Judge Charles Case may rule soon on a motion to dismiss an adversary proceeding that says a substantial portion of NorthWestern's assets don't belong to the South Dakota utility, but to a subsidiary.

Case is also expected to decide whether to approve the first of two settlements destined to return some cash to holders of NorthWestern and Montana Power Co. stock.

But it was arguments over the third open issue in NorthWestern that played to a packed house in Wilmington Thursday.

Even lawyers whose matters already had been handled stuck around to watch an attempt by holders of subordinated debt to unseat Paul Hastings Janofsky & Walker as counsel to NorthWestern.

Magten Asset Management Corp. says Paul Hastings should be knocked out of the case for failing to disclose a connection that turned out to be a crucial conflict: dual representation of NorthWestern and its unit known as Clark Fork & Blackfoot LLC in a deal that passed Montana Power's assets from the subsidiary to the parent.

Bijan Amini, attorney for Magten, said the transaction is now at the heart of a swirl of controversy in the case, where Magten has sued over control of the former Montana Power assets.

That, the lawyer said, is part of a continuing conflict for Paul Hastings in its role as debtor's counsel.

The other part of the conflict, of course, will be the releases the law firm will ask for as part of the Chapter 11 plan, provisions that could take it off the hook for potential lawsuits, Amini said.

Dennis Glazer, arguing for Paul Hastings, said the law firm had no conflict in connection with its representation of NorthWestern, and that what was at the heart of the controversy was Magten.

"Magten is simply unhappy with what they're getting under the plan," Glazer said, accusing the subordinated debt holder of trying to delay and derail the case six weeks from confirmation.

He denied that Paul Hastings attempted to conceal its dual role as adviser to both sides of the deal that transferred the Montana Power assets to NorthWestern from Clark Fork.

For the same law firm to advise a corporation and its subsidiary in a transaction is ordinary practice, Glazer said.

Mark Kenney, attorney with the U.S. Trustee's Office, agreed. It would have been, he said, "unnatural" for Paul Hastings to have called in another firm to represent Clark Fork when it handed off Montana Power to NorthWestern.

Amini called the U.S. Trustee's position "frightening."

Case honed in on a single word, one that frightens many in the incestuous world of Chapter 11 - conflict.

"What I'm most interested in is this question of, is there a conflict and, if so, what is it?" the judge said.

NorthWestern said only Clark Fork could cry foul on the point of conflict, and that the subsidiary is solvent and not complaining.

Amini said Clark Fork is being artificially propped up by NorthWestern, and with its bills paid by the bankrupt utility, the unit lacks the independence to protest.

Jesse Austin and Karol Denniston, the Paul Hastings attorneys handling NorthWestern's bankruptcy, sat calmly through the debate.

A Wilmington visitor, Case said he would decide the open NorthWestern issues after his return to Arizona, where he is usually posted.

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JUST SAY NO to the idea that bankruptcy courts play by different rules when it comes to handling evidence - and handing it over when the public has a right to see it.

U.S. District Judge Kent Jordan Monday told U.S. Bankruptcy Judge Judith Fitzgerald to return to the court record a report into an investigation of suspected financial fraud at Peregrine Systems Inc.

Fitzgerald yanked the 250-page report early last year, saying she was worried that it might cause problems for people not involved in the bankruptcy.

It may do that anyway, because Peregrine Systems handed the report over to the Securities and Exchange Commission in 2002. It was produced by the firm of Latham & Watkins at the behest of the San Diego software maker's audit committee.

Copley Press, owner of the San Diego Union-Tribune, challenged Fitzgerald in federal court and won - not the report, but an order that the Peregrine report be returned to the record where the newspaper has a chance to get it unsealed.

Jordan said that the report presumably became open to the public when it was offered into evidence in the Chapter 11 case - now it's up to Peregrine Systems, which is out of Chapter 11 and back in business, to make the case for keeping the report sealed.

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