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HEADLINE: Ohio Top Court Rejects Appointment Of Receiver For Dissolved Illinois Company

DATELINE: CLEVELAND -

BODY:

Ohio cannot appoint a receiver to manage allegedly unexhausted asbestos insurance proceeds for a dissolved company no longer amenable to suit in the state where it originally incorporated, the Ohio Supreme Court held April 3 (In re: All cases against Sager Corp., No. 10-1705, Ohio Sup.; *2012 U.S. Dist. LEXIS 845;* See 4/27/11, Page 13).

(Opinion available 01-120404-029Z)

In 2007, the law firm of Bevan & Associates moved to have the Cuyahoga County Court of Common Pleas appoint a receiver to wind up the affairs and accept service of process for Sager Corp., an Illinois corporation that dissolved June 17, 1998. Bevan & Associates alleged that unexhausted insurance policies existed that could cover claims against Sager brought by Ohio asbestos litigants.

Other plaintiffs joined the motion, which Sager opposed on the grounds that Ohio law precluded appointment of receivers for dissolved foreign corporations.

The court granted the motion, and Sager appealed. The Eighth District Court of Appeals held that Revised Code Section 2735.01 "clearly vested the trial court with jurisdiction to appoint a receiver for Sager." Section 2735.01 allows for appointment of a receiver when a corporation has been dissolved or is insolvent or is in danger of becoming so, the court explained. The law does not, contrary to Sager's contention, limit the power to domestic corporations, the court said. Sager appealed to the Ohio Supreme Court.

'Full Faith And Credit'

In reversing, the court noted that whether a dissolved corporation is amenable to suit is determined by the laws of the state of incorporation. Further, the court said Ohio must "afford full faith and credit to laws in our sister states and that a dissolved foreign corporation that is no longer amendable to suit in its state of incorporation is likewise not amendable to suit in Ohio."

Because the five-year post-dissolution period for Sager ended June 17, 2003, under Illinois law without a judgment entered against it, the claimants at issue here cannot now seek to have a receiver appointed to collect allegedly unexhausted insurance policies, the court held.

Absent the ability to sue Sager, plaintiffs could not obtain a judgment against it, and absent a judgment, Revised Code 3929.06(b) precludes a direct action against the insurer, the court said.

"Accordingly, a receiver may not accept service of process on behalf of Sager, process defenses, or purport to marshal its assets consisting of unexhausted insurance proceeds, because the statute precludes that action until a judgment has been rendered that remains unpaid," the court concluded.

Justice Terrence O'Donnell wrote for the court and was joined by Justices Evelyn Lundberg Stratton, Judith Ann Lanzinger, Robert R. Cupp and Yvette McGee Brown.

Dissent

In dissent, Justice Paul E. Pfeifer wrote that he would adopt the opinion below allowing for the appointment of a receiver. "The appointment of a receiver would allow the insurance policies that Sager Corp. paid for to do what Sager intended that they do: cover insured risks that arose in Ohio within the applicable coverage period." This would do no harm to Sager nor its shareholders and leave "the philosophical underpinnings of the Illinois survival statute unscathed," Justice Pfeifer wrote.

Bruce P. Mandel and Max W. Thomas of Ulmer & Berne in Cleveland and Patrick F. Hofer of Troutman Sanders in Washington, D.C., represent Sager. Thomas W. Bevan, Patrick M. Walsh, Jessica M. Bacon and Joshua P. Grunda of Bevan & Associates in Boston Heights, Ohio, represent the plaintiffs.

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