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Delaware Supreme Court Holds That the Delaware General Corporation Law Does Not Generally Time-Bar Claims Against a Dissolved Corporation

In Anderson v. Krafft-Murphy Company, Inc., the Delaware Supreme Court (the “Court”) held, inter alia, that (1) contingent contractual rights such as insurance policies may be considered the “property” of a dissolved corporation so long as such rights are capable of vesting and (2) that the Delaware General Corporation Law (the “DGCL”) does not impose a generally applicable statute of limitations that would time-bar claims against a dissolved corporation. The Court reversed the holding of the Chancery Court of the State of Delaware (the “Chancery Court”) that the relevant dissolution provisions of the DGCL operate to extinguish a dissolved corporation’s liability after ten years from the date of dissolution. The full text of the opinion can be found [here](#).

Background

Krafft-Murphy Company, Inc. (the “Corporation”) was a Delaware corporation organized on July 29, 1952. The Corporation was engaged primarily in the plastering business but also supplied and installed certain asbestos-containing products. As a result of its asbestos-related activities, the Corporation was named as a defendant in hundreds of lawsuits. In 1999 the Corporation was formally dissolved under Section 275 of the DGCL, and in 2010 it began filing motions to dismiss the asbestos-related claims commenced more than ten years after its dissolution, arguing generally that Sections 278-282 of the DGCL operate as a statute of limitations for claims brought against the Corporation more than ten years after the date of its dissolution. At the time of filing such motions to dismiss, the Corporation’s only unexhausted assets were liability insurance policies. In granting summary judgment in favor of the Corporation, the Chancery Court held that Sections 278-282 of the DGCL extinguish a dissolved corporation’s liability for claims brought after ten years from the date of dissolution because those statutes establish a ten year outer limit within which a corporation can potentially be held liable for third party claims. Accordingly, because the Corporation’s remaining insurance policies would only have value if the Corporation could be held liable to third parties, the Chancery Court held the Corporation had no remaining property interests and that appointment of a receiver under Section 279 of the DGCL was therefore inappropriate.

Discussion

The Court first examined whether the Corporation’s unexhausted liability insurance policies constituted “property” within the meaning of Section 279 of the DGCL. The Court held that under Delaware law, contingent contractual rights such as the Corporation’s insurance policies are “property” for the purposes of Section 279 if and to the extent that they are capable of vesting. Accordingly, the Court found that a receiver could be appointed under Section 279 provided that the contingent contractual rights provided for by the Corporation’s insurance policies were capable of vesting, *i.e.*, that the Corporation could still be held liable to third parties.

In addressing whether the Corporation could still be liable to third parties, the Court found that Sections 278-282 of the DGCL do not operate as a general statute of limitations for a dissolved corporation (notwithstanding the limited time bar of Section 280(a)(4), which bars certain claims of certain known claimants which are not filed within the statutorily prescribed procedural window of time). The five and ten year claims-planning periods in Sections 280(c) and 281(b), respectively, the Court reasoned, were intended only as temporal limitations on the claims for which a dissolved corporation must make provision in order to take advantage of the director safe-harbor set forth in Section 281(c) or the shareholder safe-harbor set forth in Section 282. Section 281(c) limits the liability of directors to claimants of a dissolved corporation if the dissolved corporation followed either the Chancery Court supervised procedures for dealing with claimants of a dissolved corporation set forth in Sections 280-281(a) of the DGCL or the unsupervised procedures of Section 281(b). Section 282 of the DGCL limits the liability of

shareholders of a dissolved corporation that has followed the procedures of Sections 280-281(a) or 281(b) to the amount distributed to the shareholder in the dissolution, and, for shareholders of corporations that followed the supervised procedures set forth in Section 280-281(a), eliminates shareholder liability on claims brought against the dissolved corporation after the three year winding up period set forth in Section 278 of the DGCL has expired. While claims against shareholders and/or directors can be barred or capped if the Corporation followed the dissolution procedures of Sections 280-281(a) or Section 281(b), the Court held that the underlying liability of the Corporation continues regardless of what procedures were followed or how much time has passed.

For More Information

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