


IT IS SO ORDERED.

Dated: June 19, 2017  
02:32:51 PM



*Kay Woods*  
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 Kay Woods  
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

	*	
	*	
IN RE:	*	CASE NUMBER 16-40675
	*	(Substantively Consolidated)
ALLIED CONSOLIDATED	*	
INDUSTRIES, INC.,	*	CHAPTER 11
	*	
Debtor/Debtor-in-Possession.	*	HONORABLE KAY WOODS
	*	
	*	

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 MEMORANDUM OPINION DENYING ORAL MOTION OF  
 UNITED STATES STEEL CORPORATION FOR STAY PENDING APPEAL  
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On May 2, 2017, Debtors and Debtors-in-Possession Allied Consolidated Industries, Inc., Allied Erecting & Dismantling Co., Inc., Allied Industrial Scrap, Inc., and Allied-Gator, Inc. (collectively, "Debtors") and the Official Committee of Unsecured Creditors jointly filed Second Amended Joint Plan of Reorganization Proposed by the Debtor and the Official Committee of Unsecured Creditors ("Joint Plan") (Doc. 356). On May 31, 2017,

United States Steel Corporation ("U. S. Steel") filed Objection of United States Steel Corporation to Confirmation of Second Amended Joint Plan of Reorganization (Doc. 364).

The Court held a hearing to consider confirmation of the Joint Plan on June 7, 2017, which hearing was continued to and concluded on June 14, 2017 ("Confirmation Hearing"). Upon conclusion of the Confirmation Hearing, the Court orally approved confirmation of the Joint Plan and overruled the Objection. That ruling has subsequently been memorialized in Order Confirming Second Amended Joint Plan of Reorganization, as Modified (Doc. 378), Memorandum Opinion Overruling Objection of United States Steel Corporation to Confirmation of Second Amended Joint Plan of Reorganization (Doc. 376), and Order Overruling Objection of United States Steel Corporation to Confirmation of Second Amended Joint Plan of Reorganization (Doc. 377) (collectively, "Confirmation Order"), each entered on June 19, 2017.

Following the Court's oral ruling approving confirmation of the Joint Plan, Charles M. Oellermann, Esq., counsel for U. S. Steel, made the following oral motion ("Oral Motion"):

If the court will entertain it, I would move the court on behalf of U. S. Steel, pursuant to Rule 8007, to stay the plan confirmation order pending United States Steel Corporation's appeal of the order. Absent the stay, the plan's effective date occurs 15 days after the entry of an order confirming the plan. The plan contemplates that certain events will occur on the effective date that is within as few as 15 days after confirmation, including, for example, creation of and

transfer of assets to the creditor trust, payment of the professionals' allowed class 1 claim into escrow, assumption of certain executory contracts – of course, excluding the fairless agreement. If U. S. Steel does not move for a stay, the debtor will likely argue that U. S. Steel's appeal of the confirmation order is equitably moot under such case law as the *United Producers* case here in the Sixth Circuit, a 2005 case, 526 F.3d 942. And that case states that when an appellant does not obtain a stay of the implementation of the confirmation plan, the debtor will normally implement the plan and reliance interests will be created. Thus, the failure to obtain a stay will count against the appellant in determining whether an appeal should be denied on equitable mootness grounds. Thus, U. S. Steel seeks a stay of the order in order to preserve its rights to appellate review of the court's confirmation order.

(June 14, 2017 Hr'g at 4:17:48 p.m.)

The Court issued an oral ruling denying the Oral Motion. The Court enters this Memorandum Opinion and accompanying Order to memorialize its denial of the Oral Motion.<sup>1</sup>

This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and General Order No. 2012-7 entered in this district pursuant to 28 U.S.C. § 157(a). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1391(b), 1408, and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The following constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052.

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<sup>1</sup> To the extent the Court's oral ruling may be inconsistent with this Memorandum Opinion and accompanying Order, the Memorandum Opinion and Order shall control.

U. S. Steel made no argument to support its Oral Motion other than a desire to avoid an adverse ruling on equitable mootness grounds.

The Sixth Circuit has recognized that, in determining whether an injunction should be issued pending appeal, a trial court, which in this case was the Bankruptcy Court, should apply "the same four factors that are traditionally considered in evaluating the granting of a preliminary injunction." [*Michigan Coalition of Radioactive Users, Inc. v. Griepentrog*, 945 F.2d [150,] 153 [(6th Cir. 1991)]]. These four balancing factors are: (1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay. *Id.*

*City of Akron v. Akron Thermal, Ltd. P'ship (In re Akron Thermal, Ltd. P'ship)*, 414 B.R. 193, 200-01 (N.D. Ohio 2009); see also *In re Scrub Island Dev. Group Ltd.*, 523 B.R. 862, 872 (Bankr. M.D. Fla. 2015) (n.5 omitted) ("To obtain a stay pending appeal under Rule 8005 [sic], the Bank must demonstrate (i) it has a likelihood of success on the merits of its appeal; (ii) it will suffer irreparable harm if the Court does not stay its confirmation order; (iii) the Debtors (or other parties) will not be substantially harmed if the confirmation order is stayed; and (iv) the public interest will be served if the confirmation order is stayed.").

In the present case, U. S. Steel made no attempt to show that any of the four factors required for imposing a stay are

applicable. Despite the lack of such argument, however, the Court will address each of these factors.

First, U. S. Steel has not demonstrated any likelihood that it will prevail on the merits of an appeal. U. S. Steel did not identify the basis of its anticipated appeal of the Confirmation Order. The Court assumes that U. S. Steel will assert that the Court erred in finding that the Joint Plan met all requirements for confirmation in 11 U.S.C. § 1129. In asserting such error, the Court further assumes that U. S. Steel will rely on the objections it raised in its Objection. In entering the Memorandum Opinion Overruling Objection of United States Steel Corporation to Confirmation of Second Amended Joint Plan of Reorganization and the accompanying Order, the Court carefully considered, addressed, and overruled all objections raised in the Objection and sees no likelihood that U. S. Steel will prevail on the merits of an appeal of the Confirmation Order.

The second factor requires U. S. Steel to demonstrate that it will be irreparably harmed absent a stay. In the absence of a stay, the Joint Plan will be implemented, which, as U. S. Steel noted, will result in the creation of the "Creditor Trust" and the transfer of substantially all of the Debtor's assets to the Creditor Trust.<sup>2</sup> As a consequence, it is contemplated that the

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<sup>2</sup> Creditor Trust is defined in Article I of the Joint Plan at page 4.

"Creditor Trustee" will begin to liquidate various assets and make distributions to creditors, including U. S. Steel, pursuant to the Joint Plan.<sup>3</sup> U. S. Steel has not made – and, indeed, it does not appear that it can make – an argument that it would be irreparably harmed by such action. As the Court pointed out in making its oral ruling, the alternative to confirmation of the Joint Plan is likely conversion to chapter 7 and liquidation by a chapter 7 trustee. U. S. Steel has acknowledged that all classes of creditors – including U. S. Steel – are likely to be paid 100 percent of the value of their claims plus interest under either the Joint Plan or a chapter 7 liquidation. Hence, it appears impossible for U. S. Steel to argue that it will be irreparably harmed absent a stay.

Indeed, U. S. Steel has argued that the "crux" of its opposition to confirmation of the Joint Plan is the long period of time for the Creditor Trustee to market the real estate to which U. S. Steel's judgment lien attaches and the resulting delay in U. S. Steel's receipt of payment on its claim. Despite the Joint Plan's provision for the payment of interest until the claim of U. S. Steel is paid in full, U. S. Steel argues that it is disadvantaged by what U. S. Steel characterizes as the Joint Plan's extraordinarily long marketing period. Consequently, because

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<sup>3</sup> Creditor Trustee is defined in Article I of the Joint Plan at page 4.

delay in payment is the stated crux of U. S. Steel's objection to confirmation, it is surprising that U. S. Steel now seeks a stay pending appeal. Any stay of confirmation and implementation of the Joint Plan would necessarily result in significant additional delay before U. S. Steel and other creditors could be paid. As the Court stated at the hearing, "If you truly wanted to be paid, which you say that this delay is the crux of your argument, then you would not be seeking a stay pending the anticipated appeal because you'd want things to start rolling out to be distributed to the creditors." (June 14, 2017 Hr'g at 4:23:07 p.m.) Accordingly, the Court finds that, not only would U. S. Steel not be irreparably harmed by the absence of a stay, U. S. Steel would benefit from the immediate implementation of the Joint Plan.

Conversely, the third factor requires consideration of the prospect that other parties will be harmed if the Court grants the stay. As set forth above, if the Court were to impose a stay pending appeal, all creditors would be harmed because the Creditor Trust would not be created, the Creditor Trustee would not liquidate assets, and the creditors would be deprived of distributions on their claims from the sales of those assets. Thus, the Court finds that other parties would be harmed by the imposition of a stay pending appeal of the Confirmation Order.

The fourth factor regarding the public interest in granting a stay does not appear to be applicable in this case.

For the reasons set forth above, the Court finds that U. S. Steel has not demonstrated any of the requisite four factors to obtain a stay pending appeal of the Confirmation Order.

Additionally, Mr. Oellermann referenced that reliance interests will be created if the Joint Plan is implemented. However, those reliance interests will be that creditors will receive distributions in payment of their claims. This is exactly the same result that would be obtained if the case were to be converted to a chapter 7 liquidation, which is the desired result U. S. Steel seeks. Consequently, the Court sees no basis to stay the Confirmation Order merely because reliance interests may be created.


Accordingly, the Oral Motion will be denied; the Court will not enter an order staying the Confirmation Order.

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IT IS SO ORDERED.

Dated: June 19, 2017  
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*Kay Woods*  
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(June 14, 2017 Hr'g at 4:17:48 p.m.)

The Court issued an oral ruling denying the Oral Motion.

For the reasons set forth in the Court's Memorandum Opinion Denying Oral Motion of United States Steel Corporation for Stay Pending Appeal entered on this date, the Court hereby finds:

1. U. S. Steel has not demonstrated any likelihood that it will prevail on the merits of an appeal;
2. U. S. Steel will not be irreparably harmed absent a stay; and

3. Other parties would be harmed by the imposition of a stay pending appeal of the Confirmation Order.

As a consequence, the Court hereby denies U. S. Steel's Oral Motion; the Court will not enter an order staying the Confirmation Order.

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