

JUDGE RULES AGAINST MULTICANAL

BY TERRY BRENNAN

A Manhattan judge reversed himself by agreeing with an appellate ruling that Argentine cabler Multicanal SA discriminated against U.S. bondholders.

As a result, one lawyer said, recognition of an Argentine restructuring law could be thrown out by U.S. courts, and Multicanal may have to start its case from scratch.

Judge Allan Gropper of the U.S. Bankruptcy Court for the Southern District of New York ruled late Wednesday that small bondholders were treated unfairly in Multicanal's foreign restructuring, documents show.

Gropper had previously blocked the retail bondholders from moving against Multicanal's assets when he recognized the company's *acuerdo preventivo extrajudicial*, or APE, restructuring — the first time the out-of-court mechanism under Argentine law was ever approved under Section 304 of the U.S. Bankruptcy Code. (Section 304 was replaced by Chapter 15 on Oct. 17.)

The cabler's restructuring under its APE was approved in Argentina on May 16, but a series of bankruptcy and appeals decisions have affirmed and then reversed the plan.

Multicanal had argued before Gropper that its APE was entitled to an exemption under Rule 152 of U.S. securities law since it was a foreign proceeding that didn't need

to comply with either U.S. bankruptcy or securities law, according to the counsel to retail bondholders, Louis Solomon of Proskauer Rose LLP.

"There's now a chance that U.S. courts could throw out the APE and Multicanal could have to go back and start it all over again," he said.

Multicanal debtor counsel Cleary Gottlieb Steen & Hamilton LLP didn't respond to calls.

"The court finds that Rule 152 does not provide a safe harbor under the U.S. securities laws that would permit the APE to close at long last," Gropper said in his 42-page decision. "Multicanal cannot claim an exemption [under Rule 152] at this time ... but an exemption might be available after a 'fairness hearing.'"

A fairness hearing could also determine that too much time has elapsed since creditors voted to approve the APE and it might be unfair to enforce the vote at this time, Gropper said.

In his ruling, the judge ordered Multicanal to "promptly" inform the court how it plans to proceed due to those time constraints.

Gropper's ruling is the latest twist in the cabler's up-again, down-again saga since it sought to restructure via a new and untested APE restructuring law in Argentina.

Multicanal had raised the vast majority of its investments in the U.S. and had sought to block creditors from moving against its U.S. assets through the filing of a Section 304 petition in the Manhattan court on Jan. 14, 2004. Multicanal filed the APE in Buenos Aires.

Retail holders of 5% of roughly \$500 million of the U.S. bonds challenged the 304 petition by arguing that Multicanal's APE

discriminated against them.

They argued that they were mistreated since larger bondholders were offered a choice of either a cash or stock recovery of as high as 44% while they were offered only cash for a 30% recovery.

The retail bondholders, Argentinian Recovery Co. LLC, WRH Global Securities Pooled Trust and W.R. Huff Securities LP, sued Multicanal and then initially argued that the Section 304 petition would violate their rights as investors under the U.S. Trust Indenture Act. Gropper granted a temporary restraining order blocking the bondholders' suits and then approved the 304 petition on Jan. 6, 2005.

A federal district judge reversed that Gropper decision in September by ruling that Multicanal discriminated against the small U.S. bondholders.

Judge Alvin Hellerstein of U.S. District Court for the Southern District of New York in Manhattan then remanded the case back to Gropper for further review and his latest ruling.

Section 304 petitions were inserted in the Bankruptcy Code in 1978 and climbed in importance as more foreign companies began to restructure overseas. Chapter 15 replaced and greatly expanded Section 304 when bankruptcy reform took effect on Oct. 17.

Multicanal is still being heard under Section 304, however, since it filed its petition prior to the new law going into effect.

Lindsay Granfield, Evan Davis, Leslie Silverman and Timothy Mehok represent Multicanal in New York at Cleary Gottlieb.

Besides Solomon, Jennifer Scullion and Adam Berkowitz also represent the bondholders at Proskauer Rose. ■

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