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Bowflex Keeps the Weight of Successor Liability from Landing on the Purchaser

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District Court Affirms that a Well-Drafted Sale Order and Adequate Notice Can Keep Legacy Product Liability Behind in Bankruptcy

A recent decision by a New Jersey District Court offers useful guidance for credit bidding lenders and other buyers of assets in bankruptcy. The opinion confirms that the “free and clear” provisions of a section 363 sale order provide buyers with real protection that will be enforced when clearly documented and supported by a defensible notice process.

In *Proposed Class Representatives v. Bowflex Liquidating Trust (In re Bowflex Inc.)*, the district court affirmed enforcement of the injunction provisions of a bankruptcy sale order that barred product liability claims against the buyer arising from products sold by the debtor before the sale closed. The court also found that without a sufficient factual record to demonstrate that the product liability claimants were known to the debtor — and a relatively small number of generic consumer complaints without more did not transform those customers into “known” creditors — the plaintiffs were “unknown creditors” entitled to notice by publication only. For prospective buyers, the decision highlights the importance of carefully drafting the asset purchase agreement and sale order to expressly exclude legacy liabilities and enjoin claims against the buyer, while also ensuring that potential claimants receive adequate notice. Together, these protections can determine whether legacy liabilities remain behind as intended or follow the purchaser after closing, eviscerating perhaps the most important benefit of going through the time and expense of a section 363 sale.

The Bowflex Decision

Bowflex filed for chapter 11 in 2024 and sold its assets to Johnson Health Tech. The asset purchase agreement (“APA”) provided that Johnson would not assume liabilities other than narrowly defined “Assumed Liabilities,” which were largely limited to liabilities arising after the closing.

The sale order built on the APA's allocation of liabilities by transferring the acquired assets "free and clear" of broadly defined claims, expressly including product liability claims, and binding holders of claims, whether known or unknown. Critically, the sale order also permanently enjoined claimants from pursuing those claims against Johnson or the acquired assets and retained the bankruptcy court's jurisdiction to interpret and enforce the sale order and the APA.

Those provisions became important more than a year later, when Johnson recalled certain Bowflex adjustable dumbbells due to the risk that weight plates could separate from the handle during exercise, posing risk of injury to the user. Certain customers who had purchased the products **before** closing filed putative class actions seeking economic damages from the purchaser.

Rather than litigate the merits in multiple courts, Johnson and the Bowflex Liquidating Trust returned to the bankruptcy court and sought to enforce the sale order. The bankruptcy court ordered the plaintiffs to dismiss their actions, and the district court affirmed.

Why the Decision Matters?

The district court's decision illustrates the practical value of section 363's free and clear protections and offers an after-action report on one of the strategic considerations that weighs in favor of purchasing assets through a bankruptcy process. Read our prior alert on the out-of-court vs. in-court dynamic here. In finding that the product liability claims were barred, the court focused on both the APA's allocation of liabilities and the clear protections contained in the sale order.

The decision also confirms an important enforcement tool. A bankruptcy court may retain jurisdiction to interpret and enforce its own sale order, including with respect to disputes between non-debtors concerning the effect of the sale order. The district court concluded that enforcement of the Bowflex sale order was within the bankruptcy court's core jurisdiction and, independently, its ancillary jurisdiction. The court also emphasized that the bankruptcy court was enforcing an existing injunction rather than creating a new one after the litigation arose.

For purchasers (including credit bidding secured lenders), that distinction matters. A clear sale order can provide both a substantive defense against legacy claims and a procedural path back to the bankruptcy court to enforce that defense on an expedited basis.

Notice Remains Critical

Private credit lenders should be warned: free and clear protection by itself is not enough. As the district court emphasized, "broad sale-order language cannot be enforced without constitutionally sufficient notice."

Bowflex prevailed on this issue because the plaintiffs were treated as "unknown creditors." While known creditors must receive *actual* written notice (e.g., mailed notice to the creditor's last-known address), publication notice generally suffices for unknown creditors (i.e., creditors whose interests are speculative or do not come to the knowledge of the debtor in the due course of business, although perhaps they could be discovered upon investigation). Bowflex had published notice in three newspapers with national and local coverage — *The New York Times*, *The Seattle Times*, and *The Columbian*, and therefore provided sufficient publication notice.

The district court rejected the argument because more than 330 consumers previously lodged complaints about the subject dumbbells that the putative class was transformed into known creditors. The record, however, failed to establish what those complaints said, whether they involved the same defect, who submitted them, or whether they otherwise put Bowflex on notice of the claims later asserted.

The known vs. unknown creditor distinction creates an important diligence point for buyers and credit bidding lenders of assets that may be subject to product liability. Where potential legacy liabilities are identifiable before closing, including through recalls, litigation, warranty claims, regulatory inquiries, customer complaints, or similar information, the notice analysis deserves particular attention and the potential for successor liability (due to lack of sufficient notice) may justify the added cost of identifying claimants and providing notice on an individualized basis. A purchaser should not assume that broad "free and clear" language will cure deficiencies in notice.

Takeaways for Prospective Buyers and Credit Bidding Lenders

A prospective buyer in a bankruptcy sale should consider the following before closing:

- **Define assumed liabilities narrowly and precisely.** The APA should clearly distinguish liabilities the buyer is assuming from those that will remain with the seller.
- **Make the sale order comprehensive.** The free and clear provisions of a sale order should expressly address known and unknown, asserted and unasserted, contingent and future claims and, where relevant, identify specific categories of legacy liabilities such as product liability.
- **Include express successor liability protection.** Do not rely solely on generic "free and clear" language. The Bowflex order separately addressed successor and vicarious liability arising from the debtor's pre-closing business.
- **Include an express injunction.** Customary but critical, the sale order must include an injunction permanently barring claimants from pursuing legacy claims against the purchaser and the purchased assets.
- **Pressure-test the notice process.** Due diligence should identify potential creditor groups and information suggesting known or reasonably ascertainable claims. As a best practice, buyers should consider conducting their own lien and litigation searches, not only in the debtor's state of domicile but also in jurisdictions where the debtor does business. Depending on the nature and scope of the business, this may include a 50-state litigation search. Buyers can then use the results of those searches, together with the debtor and its counsel, to assess whether particular claimants should receive individual notice rather than relying solely on publication notice. Buyers should also ensure that the notice process and service are appropriately documented.
- **Build the record.** Service lists, publication affidavits, claims agent records, email delivery records, and evidence concerning known potential claims may become critical long after closing. In Bowflex, evidence that an emailed notice had been sent without a bounce-back supported the finding of adequate actual notice.

The Bottom Line

Bowflex is a favorable decision for distressed asset purchasers, including private credit lenders credit bidding for collateral, but its lesson is not simply that section 363 sales eliminate successor liability. The lesson potential buyers should heed is that the protection a purchaser receives after closing depends in large part on the work done *before* closing.

The APA should clearly allocate liabilities. The sale order should expressly cover the claims the buyer will leave behind, include clear injunctive relief, and retain bankruptcy court jurisdiction to enforce those protections. And the notice process should be designed with potential future challenges in mind.

When those pieces work together, as they did in *Bowflex*, a 363 sale order can do more than effectuate a sale free and clear. It can provide an effective mechanism for keeping legacy liabilities where the parties intended them to remain.

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