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Manville Plans to Seek Strict Limit On Its Liability for Asbestos Claims

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DENVER—Manville Corp. thinks it has figured out a way to resolve its unusual bankruptcy status.

Among other features, the working reorganization plan would let the company wash its hands of all liability resulting from health claims involving exposure to Manville asbestos. The proposal would set a limit on the size and number of claims the company would have to pay, and then arrange the funding to pay those claims and no more.

The plan would require concessions by asbestos victims as well as payment of some claims by the federal government and contributions from both Manville and its insurance carriers. Strong resistance is certain, but many at Manville think the plan stands a good chance of winning court approval.

And Manville thinks the liability limit is crucial. "The business organization that emerges from Chapter 11 can't be subject to any further asbestos claims," says G. Earl Parker, a Manville senior vice president who is leading the company's reorganization efforts.

Thousands of Lawsuits

Despite a relatively strong balance sheet and cash flow, the maker of building materials and other products last August filed for court protection under Chapter 11 of the federal Bankruptcy Code, primarily to cope with the growing number of asbestos liability suits pending against it. Manville said at the time it could eventually face 52,000 such suits at a cost of $2 billion. Under Chapter 11, a company receives court protection from creditors while it works out a reorganization plan.

Manville has until Feb. 22 to present a formal reorganization plan to Bankruptcy Judge Burton Lifland in New York. Despite certain opposition to the plan, which is still in rough outline, some members of Manville's trade and asbestos-related creditors' committees say they believe many creditors will find the proposal acceptable.

The plan promises to pay Manville's lenders and suppliers most of their hundreds of millions of dollars worth of claims. Even some asbestos-victim litigants say they are attracted to the proposal because it would break the legal logjam that was certain to tie up their claims for years.

But the part of the company's proposal that deals with asbestos victims is considered likely to cause the most sparks. Some of the victims already accuse Manville of covering up its knowledge of the health risks associated with exposure to asbestos. Some also accuse the company of using the Chapter 11 filing to try shirking its responsibilities to asbestos victims. Manville denies both allegations. "We didn't get into this (reorganization) to cheat anybody," Mr. Parker says.

Manville repeatedly has argued that the best way to handle all the asbestos claims isn't through litigation which, it says, often results in inequitable verdicts for victims. Company executives cite several cases of juries awarding seriously injured workers low amounts, while other juries awarded workers with less-serious injuries more money.

Manville wants to see the asbestos claims against it converted from tort claims, which are litigated, to something resembling a workman's compensation claim. But unlike a workman's compensation claim, which would set specific compensation amounts for various injuries arising from asbestos exposure, Manville is considering proposing a provision for binding arbitration. With such a provision, the company would be able to challenge claimants it believes aren't deserving of the predetermined recovery, and claimants could ask for more, if they believe their specific cases warrant it. The plan would also entitle Manville to settle with victims outside the setting of the compensation agreement.

Attorneys for asbestos litigants have said all along that they wouldn't accept any type of workman's compensation package. "I don't think there is a chance in the world that we'd agree to one now," says a leading attorney for asbestos litigants. But even he says he might be willing to support a "defined benefits scheme which includes a certain amount of negotiation and an arbitration system."

Asbestos and Illness

The plan also proposes various means for Manville to pay a substantial amount to victims. While the company has never conceded any blanket liability for all the illnesses claimed, it does concede that some workers who have been exposed to its asbestos products have developed related illnesses.

> *"We didn't get into this to cheat anybody," a Manville senior vice president says about a reorganization plan being developed under Chapter 11 of the Bankruptcy Code.*

The company's Mr. Parker and George Johannes, another senior vice president, acknowledge Manville's obligations to pay part of the tab for asbestos claims. They won't give any figures, though other sources have suggested that Manville is prepared to pay about $500 million over the life of the reorganization plan toward existing and future claims.

One idea Manville says it may propose is to pay a fixed percentage of its future earnings to creditors. An alternative—or additional—approach, Manville says, would be to use retroactive insurance, like that used to pay victims of the MGM Grand hotel fire in Las Vegas.

Such insurance really would be a financing plan, whereby Manville would pay premiums essentially equal to the size of all the claims that it anticipates. While the company wouldn't save money on claims, it would gain certain tax benefits. And creditors would know that the insurers stand behind any payments due to them.

In order to get such insurance, Mr. Johannes says, the court would have to set an absolute ceiling on the number and size of total asbestos-related claims against the company.

In addition, Manville's relations with its insurance carriers have been stormy, and are likely to be a sizable obstacle to reorganization under the company's working plan. Shortly after Manville filed for reorganization, its Johns Manville unit, which makes asbestos, filed papers as part of a suit in San Francisco Superior Court asking $[illegible] billion in punitive damages from its carriers. The company claims its insurers have refused to pay their obligations under liability policies covering asbestos disease and property damage claims.

Pressure on Insurers

It is unclear how Manville intends to get the carriers to contribute to the company's reorganization. But Mr. Parker indicates that Manville may seek to consolidate the insurance suit under the aegis of the bankruptcy court and thereby "put some pressure on the insurance carriers to begin serious settlement negotiations." (Consolidating the insurance suit, of course, would expose insurers to the risk of unfavorable bankruptcy court judgments.) Mr. Parker adds: "I think the insurance recovery will be in excess of $600 million."

Besides getting funds from the insurers, the Manville plan also envisions the federal government's agreeing to compensate victims exposed to asbestos while doing government-related work. Through court cases and lobbying, Manville has tried unsuccessfully for years to get the government to admit partial liability in many construction-worker cases, particularly involving the government's World War II shipbuilding effort, which used asbestos extensively. Manville recently asked Judge Lifland for permission to hire additional lawyers to study the possibility of further litigation against the government on this issue.

Timing of the company's reorganization would depend largely on how the plan is received. Mr. Parker says the whole proceeding could "degenerate into a long protracted confrontation." But, he adds, "if all the parties who have an interest in a short proceeding can keep that interest uppermost . . . I think we can have a very short Chapter 11."