UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED
MAR 0 8 '00
U.S. Bankruptcy Court
Greensboro, NC
CPH

IN RE:	)	
	)	
MAC Panel Company,	)	Case No. 98-10952C-11G
	)	
Debtor.	)	
	)	

ORDER

This case came before the court on March 6, 2000, for hearing upon a motion by Virginia Panel Corporation to stay order confirming plan pending appeal. Rory D. Whelehan appeared on behalf of Virginia Panel Corporation, John H. Small and H. Arthur Bolick, II, appeared on behalf of MAC Panel Company, Gerald A. Pell appeared on behalf of the Unsecured Creditors' Committee and Scott P. Vaughn appeared on behalf of Bank of America, N.A. Having considered the arguments of counsel and the matters of record in this case, the court makes the following findings and conclusions.

MATTER BEFORE THE COURT

Virginia Panel Corporation ("VPC") has appealed to the District Court from an order entered on February 24, 2000, confirming MAC Panel's Modified Plan. The notice of appeal from the confirmation order was filed on March 2, 2000, along with the motion for stay which is now before the court. The motion was filed pursuant to Rule 8005 of the Federal Rules of Bankruptcy

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Procedure and prays that this court enter an order staying the effect of the confirmation order pending the appeal of the order by VPC.

PROCEDURAL BACKGROUND

This case was before the court on October 27 and 28, 1999, for a confirmation hearing on Debtor's Second Amended Plan of Reorganization dated July 26, 1999, and for trial of the adversary proceeding entitled MAC Panel Company v. Virginia Panel Corporation. Debtor's Second Amended Plan was accepted by all creditors and parties in interest except for Virginia Panel Corporation ("VPC"), who objected to confirmation of the plan on the grounds that the plan failed to satisfy the requirements of § 1129 of the Bankruptcy Code. VPC also objected to the granting of the injunctive relief sought in the adversary proceeding. Following the hearing on October 27 and 28, this court filed a memorandum opinion regarding confirmation of Debtor's Plan on December 2, 1999. Among other things, the court found that the Second Amended Plan was proposed in good faith and therefore satisfied the requirements of § 1129(a)(3), that the plan satisfied the best interest of creditors requirement under § 1129(a)(7), that the plan satisfied the feasibility requirements of § 1129(a)(11) and that the plan did not discriminate unfairly against VPC and

therefore satisfied the requirements of § 1129(a), and also concluded that the court had jurisdiction to enter an injunction against VPC. However, the court denied confirmation because the Second Amended Plan did not provide VPC with the present value of its claim as required by § 1129(b)(2)(B)(i) and because a portion of the release contained in Article IX of the plan was overly broad.

Based on the findings and conclusions contained in the memorandum opinion, this court entered an order on December 2, 1999, denying confirmation of the Second Amended Plan and allowing the Debtor until December 22, 1999, to modify its Plan. On December 22, 1999, the Debtor filed its Modification to Debtor's Second Amended Plan of Reorganization (the "Modification").

The Modification filed on December 22, 1999, amended the Plan in three principal respects. The first modification involved the treatment of the claim of Bank of America.[1] Under the Modification, interest payable to Bank of America accrues under the term loan and new revolving line of credit at LIBOR plus 2% per annum, rather than LIBOR plus 2½% as originally provided in the Plan. The two remaining changes dealt with the two areas in which

[1]Bank of America, N.A., is the successor in interest to NationsBank, N.A., the creditor referred to in the Modification.

the court found the Plan deficient, namely, the rate of interest paid to VPC and the release provisions contained in Article IX. The Plan, as modified on December 22, 1999, provides that VPC will be paid the full principal balance of its claim, plus 9% per annum interest rather than the 5.125% originally provided under the Plan. Additionally, the release provisions in Article IX of the Plan were revised and made more narrow by the Modification.

On December 22, 1999, this court conditionally granted Debtor's motion requesting that the court hold a confirmation hearing on the modified plan without requiring additional disclosure and without additional voting on the modified plan. That order set a confirmation hearing on January 28, 2000, and provided that, pursuant to § 1127(d) and Bankruptcy Rule 3019, all prior ballots indicating acceptance of the plan would be deemed to constitute acceptances of the modified plan unless creditors filed and served a written notice changing their previous acceptance on or before January 10, 2000. The Modification and the December 22, 1999 order were then served upon creditors and other parties in interest.

Pursuant to the December 22 order, this case came before the court on January 28, 2000, for a confirmation hearing regarding confirmation of Debtor's Plan of Reorganization as amended by the

Modification. At the outset of the hearing, the Debtor filed acceptances of the Modification from Bank of America and Joseph L. Craycroft, Jr., the only two parties whose treatment under the Plan was adversely affected by the Modification. Debtor also reported to the court that no creditors had changed their previous acceptance of the Plan, again leaving VPC as the only party objecting to the Plan as modified.[2] At the conclusion of the evidence, the Debtor announced a further modification to its Plan involving a further narrowing of the scope of the release contained in the modified Plan. The court granted the Debtor ten (10) days within which to file a written modification and took the matter of confirming the Debtor's plan under advisement pending receipt of the written modification and proposed findings of fact and conclusions of law from the parties. On February 1, 2000, Debtor filed its Second Modification to Debtor's Second Amended Plan (the "Second Modification") in which Debtor further modified the release contained in Article IX by further narrowing the scope of the release. Both parties then submitted proposed findings of fact and conclusions of law. After considering the Debtor's Second Amended Plan as modified by the Modification and the Second Modification

[2]It was stipulated in open court that VPC no longer objected to the interest rate payable under the Plan as modified.

(the "Modified Plan"), the objections to the Modified Plan, the evidence offered at the confirmation hearings, the proposed findings and conclusions and briefs submitted by the parties and the matters of record in this case, the court entered an order on February 24, 2000, confirming MAC Panel's Modified Plan. This is the order giving rise to VPC's appeal.

DISCUSSION

A motion for a stay pending appeal in a sense seeks injunctive relief because the movant is asking that an event be halted, i.e., that the court order that a judgment or order not go into effect. Because of this similarity, the standards which have been adopted for the granting of a stay pending appeal are essentially the same as those required for the issuance of a preliminary injunction. See In re Miraj & Sons, Inc., 201 B.R. 23, 26 (Bankr. D. Mass. 1996).

Federal courts have developed two distinct standards to govern the granting of preliminary injunctions. These standards are referred to as the likelihood-of-success test and the hardship balancing test. The essential difference between these two tests or standards is that while the first begins its inquiry with the determination of "likelihood of success" on the merits and proceeds to consider in sequence other factors embraced within the standard,

the second begins by balancing the harm or injury imposed on the plaintiff in the event the relief is denied against the harm to the defendant if the relief is granted, and on the basis of such *balancing proceeds to determine the degree by which a "likelihood* of success" on the merits must be established before relief may be granted. The hardship balancing test has been adopted in the Fourth Circuit. See Direx Israel, Ltd. v. Breakthrough Medical Corp., 952 F.2d 802, 811 (4th Cir. 1992).

1. Requirements for Granting of Stay.

Under the hardship balancing test, the party seeking a stay pending appeal in the Fourth Circuit must show: (1) that it will suffer irreparable injury if the stay is denied, (2) that other parties will not be substantially harmed by the stay, (3) that it will likely prevail on the merits of the appeal, and (4) that the public interest will be served by granting the stay. See In re Wilson, 233 B.R. 915, 917 (M.D.N.C. 1998) (citing Long v. Robinson, 432 F.2d 977 (4th Cir. 1970)). In analyzing these factors, the court should use the balance-of-hardships test as described in the Direx case, in which the court first balances the hardships to the parties before determining how strong a showing of success is required by the moving party. See In re Wilson, 233 B.R. at 917. Under this balancing test, the likelihood of success that need be

shown by the movant will vary inversely with the degree of injury the movant will suffer without a stay. If the balance of harm tips decidedly toward the movant, then the movant need not show as strong a likelihood of success on the merits as when the balance tips less decidedly. See Direx, 952 F.2d at 812.

2. Irreparable Harm.

The only harm alleged by VPC in its motion is that its appeal may become moot and be lost if the stay is not granted. VPC alleges that this circumstance constitutes irreparable harm. In some circumstances an appeal from an order confirming a plan may become moot if the order is not stayed and the plan is substantially consummated before the appeal is heard. See, e.g., In re AOV Indus., Inc., 792 F.2d 1140 (D.C. Cir. 1986). However, there is no bright-line rule that substantial consummation forecloses any possibility of appellate relief with respect to a confirmed plan of reorganization. "Determinations of mootness in this latter sense cannot be cabined by inflexible, formalistic rules, but instead requires a case-by-case judgment regarding the feasibility or futility of effective relief should a litigant prevail." Id. at 1147-48. A similar rule prevails in the Fourth Circuit: "Orders confirming plans of reorganization do not become immune from appellate review upon their partial, or even

substantial, consummation." Central States v. Central Transp., Inc., 841 F.2d 92, 96 (4th Cir. 1988). The test of mootness is whether implementation of the plan has created, extinguished or modified rights, particularly of persons not before the court, to such an extent that effective judicial relief is no longer practically available. This, in turn, depends upon the nature and complexity of the transactions carried out under the plan, the parties involved in those transactions and the other circumstances of the particular case. Id. at 96. This determination is one to be made by the appellate court based upon the circumstances which exist at the time the appeal is before the reviewing court. Obviously, such a determination is yet to be made in the present case. However, the cases support the conclusion that at this point, VPC faces the risk that its appeal may become moot if the confirmation order is not stayed. In making the analysis required in order to determine whether a stay should be granted in the present case, the court must determine whether this risk of the appeal becoming moot constitutes irreparable harm and, if so, then apply the balance-of-hardships test.

In Direx Israel, Ltd. v. Breakthrough Medical Corp., 952 F.2d 802 (4th Cir. 1992), the court reviewed the meaning of irreparable harm in the context of deciding whether to grant preliminary

injunctive relief. The court pointed out that the "irreparable harm" which is required must be neither remote nor speculative, but must be actual and imminent. Moreover, quoting from an earlier case, the court stated: "Establishing a risk of irreparable harm is not enough. A plaintiff has the burden of proving a clear showing of immediate irreparable injury." 952 F.2d at 812. The cases are divided on the issue of whether the risk that an appeal may become moot constitutes irreparable injury for purposes of obtaining a stay pending appeal. However, it appears that a majority of the cases which have considered the issue have found that the risk that an appeal may become moot does not, standing alone, constitute irreparable injury. See In re Sunflower Racing, Inc., 223 B.R. 222 (D. Kans. 1998); In re BA-MAK Gaming Int'l, Inc., 1996 W.L. 411610 (E.D. La. July 22, 1996); In re 203 N. LaSalle St. Partnership, 190 B.R. 595 (N.D. Ill. 1995); In re Clark, 1995 W.L. 495951 (N.D. Ill. August 17, 1995); In re Best Prods. Co., 177 B.R. 791 (S.D.N.Y. 1995); In re Moreau, 135 B.R. 209 (N.D.N.Y. 1992); In re Asheville Bldg. Assocs., 93 B.R. 920 (W.D.N.C. 1988); In re Kent, 145 B.R. 843 (Bankr. E.D. Va. 1991); In re The Charter Co., 72 B.R. 70 (Bankr. M.D. Fla. 1987); In re Great Barrington Fair & Amusement, Inc., 53 B.R. 237 (Bankr. D. Mass. 1985); In re Baldwin United Corp., 45 B.R. 385 (Bankr. S.D. Ohio 1984). But see, In re Country

Squire Assocs. of Carle Place, L.P., 203 B.R. 182 (B.A.P. 2nd Cir. 1996); In re St. Johnsbury Trucking Co., 185 B.R. 687 (S.D.N.Y. 1995); In re Advanced Mining Sys., Inc., 173 B.R. 467 (S.D.N.Y. 1994); In re Grandview Estates Assocs., Ltd., 89 B.R. 42 (Bankr. W.D. Mo. 1988).

In the present case, the court concludes that the risk that the appeal from the confirmation order may become moot does not constitute irreparable injury. The plan, as confirmed, provides for a 100% payment of VPC's unsecured claim, plus interest at 9% per annum. The plan provides for 35% of the claim to be paid on March 27, 2000, which will result in an immediate cash payment of $744,000.00 to VPC. The injunction called for under the plan enjoins VPC from prosecuting its suit against the Craycrofts to collect its patent infringement damages from the Craycrofts only for as long as the payments are made under the plan. If the Debtor defaults under the plan, the injunction terminates and VPC is free to activate its suit against the Craycrofts. The release of Joseph Craycroft under the plan is similarly conditioned. Thus, the release protects Craycroft only as to claims which are payable by MAC Panel in this Chapter 11 case and then for only so long as those claims are paid under the plan. Under these and the other circumstances involved in the present case, the court is convinced

that the risk of the appeal becoming moot does not constitute irreparable injury. Such a conclusion is consistent with the Fourth Circuit view that establishing only a risk of irreparable harm/injury is insufficient to warrant the issuance of a preliminary injunction and is fully warranted by the circumstances presented in the present case.

3. Balancing of Hardships.

Even if the risk of the appeal becoming moot could be regarded as irreparable injury, it would not follow automatically that VPC is entitled to a stay of the confirmation order. Instead, the court would be required to administer the balance-of-hardships test by balancing the harm or injury imposed on VPC in the event the stay is denied against the harm or injury to other parties if the stay is granted. Although lack of irreparable injury to the movant is a sufficient ground for denying VPC's motion for a stay, the court has weighed the hardship to VPC if the stay is denied against the injury to MAC Panel and the other creditors if a stay were granted. The results of doing so weigh heavily in favor of MAC Panel and the other parties who would be harmed if a stay were granted.

The granting of a stay in this case would be injurious to MAC Panel in many respects, some of which are difficult, if not

impossible, to quantify in terms of dollars. The most obvious direct effect of granting a stay pending appeal is that there would be extensive delay before any plan could be implemented in this case. Two appeals are available as a matter of right to a party appealing from a final order entered in the bankruptcy court. It is safe to assume that if a stay is granted the appellate path followed by VPC will lead at least to the Court of Appeals if VPC is not successful in the District Court. The time required for VPC to exhaust the two appeals which are available as a matter of right easily could be two years or more. During this delay, MAC Panel would have to remain in the bankruptcy court as a Chapter 11 debtor, more or less in limbo. This undoubtedly would result in MAC Panel incurring a number of very significant expenses which it otherwise would not incur. For example, without the implementation of its confirmed plan, MAC Panel would have to continue to operate under the cash collateral order in this case which obligates MAC Panel to pay interest of some $12,000.00 per month to Bank of America. Additionally, as long as the Chapter 11 case remains operative, the attorneys for MAC Panel, the attorneys for Bank of America and the attorney for the Unsecured Creditors' Committee will all remain in place performing services such as preparing monthly reports, dealing with extensions of the cash collateral

order, monitoring developments in the case and performing other services required in an operating Chapter 11 case, as well as preparing appellate briefs and participating in the appellate process. The burden of paying all of these fees as allowed by the court would fall squarely upon MAC Panel.

Apart from such out-of-pocket expenses, there would be other and more damaging consequences for MAC Panel resulting from an extended stay in Chapter 11. A company in Chapter 11 simply cannot operate as efficiently and effectively as one outside bankruptcy. For one thing, a Chapter 11 case requires time and attention of officers and employees which must be taken away from the time and attention which otherwise would be devoted to the operation of the business. This diversion invariably leads to less effectiveness and a reduction in productivity and profitability.

A long delay also exposes MAC Panel and the other parties who voted for the plan to significant uncertainty as to whether the plan ultimately will be implemented, even if upheld on appeal. During a two-year delay in this case, there is a risk that circumstances could change which would prevent the implementation of the plan. The plan is dependent upon a minimum contribution by Joseph Craycroft of $1,100,000.00, which is essential for the plan to be consummated. Mr. Craycroft is 62 years of age and has a

serious diabetic condition. Because Mr. Craycroft is the sole source of the necessary cash infusion, the viability and ultimate consummation of the plan is dependent upon Mr. Craycroft being available at such time as the plan is to be consummated. If Mr. Craycroft were not available at such time as all available appeals are finally exhausted, MAC Panel most likely would be unable to proceed with the plan even if it were upheld on appeal. Also, a significant change in interest rates could greatly increase MAC Panel's debt service prior to consummation and could create interest rate issues which could undermine the Bank's support of the plan. Risks such as these, of course, are uncertain and impossible to quantify. Yet, such risks are real from the standpoint of MAC Panel, as well as the unsecured creditors other than VPC, who stand to receive nothing if MAC Panel's efforts to reorganize fail.

The status of being a company in bankruptcy also creates many hurdles which result from the uncertainty and negativity which invariably arises in the minds of employees, suppliers, customers and others upon whom a company is dependent for business success. In a word, a company simply cannot operate as effectively and profitably while it remains in the bankruptcy court. In downplaying the injury to MAC Panel which would result from a stay

of the confirmation order, VPC has placed great emphasis on the fact that MAC Panel thus far has been able to operate profitably while in Chapter 11. This argument misses the point of the balancing test. The point is not just whether MAC Panel can survive and earn some profit if forced to remain in Chapter 11 indefinitely, but, rather, whether MAC Panel would be injured if forced to do so. VPC's argument also overlooks the cumulative effect of a company remaining in Chapter 11, which is that the longer the company remains in Chapter 11, the more doubt arises regarding its chances of successfully emerging. The court is satisfied that, if forced to remain in bankruptcy indefinitely, MAC Panel would suffer a very significant loss of profits while languishing in bankruptcy and also would be set back considerably in regaining its full vitality and profitably once out of bankruptcy. It would be very difficult to quantify the resulting loss of profits, which raises a serious question as to whether MAC Panel would have an adequate remedy to recover such losses.

A prolonged stay in Chapter 11 is particularly perilous for MAC Panel because of the relationship between VPC and MAC Panel. In addition to the debtor-creditor relationship between the two companies, the two companies sell many of the same products and, with respect to a number of these products, MAC Panel is the only

competitor of VPC. In most Chapter 11 cases, a creditor faced with a plan under which it was to be paid its entire indebtedness plus 9% interest, with an immediate payment of $744,000.00, would be motivated to support the plan to the extent that such creditor was guided by the instincts of a creditor. In the present case, VPC is not solely a creditor and has not been guided solely by the instincts of a creditor. Unlike any other creditor in the case, VPC would benefit significantly from the failure of MAC Panel because such failure would eliminate the competition. The longer MAC Panel remains in bankruptcy, the longer MAC Panel must compete against a competitor who not only is in a position to utilize MAC Panel's presence in Chapter 11 to gain competitive advantage but, in its dual status as a creditor, also is in a position to oppose and prolong MAC Panel's efforts to emerge from bankruptcy.

The granting of a stay in this case also would damage the unsecured creditors other than VPC. Under the plan, these unsecured creditors do not receive any interest on their claims. The longer that implementation of the plan is delayed, the longer these creditors must go without interest and the more the value of their distribution shrinks. It is true that these creditors agreed to accept a payment plan under which they do not receive interest. Under the plan, if not delayed by an appeal, they will begin

receiving payments on March 27, 2000. A two-year delay in getting paid is not something that these creditors agreed to and will result in a significant loss to these creditors.

In summary, if the stay is not granted, VPC's appeal could become moot. The result of that occurring is that VPC will be bound by the Modified Plan. VPC's complaint regarding the plan is that it deprives VPC of the opportunity of pursuing the litigation against the Craycrofts as an alternative source of payment for indebtedness which is to be paid in full under the plan. Under a correct reading of the plan, VPC is enjoined and Joseph Craycroft is released only if those damages are paid in full in accordance with the plan. If MAC Panel defaults, then both the injunction and the release become ineffective and VPC is free to proceed as it desires. Any detriment to VPC which could result from denying the stay is greatly outweighed by the above-described actual and immediate injury to MAC Panel and the other unsecured creditors which would result from granting the stay and placing this case in limbo indefinitely.

4. Likelihood of Success on Appeal.

As pointed out in the Direx decision, the likelihood of success that must be shown by a movant seeking a stay on appeal, will vary inversely with the degree of injury the movant will

suffer without a stay. If the balance of harm tips decidedly toward the movant, the movant may be entitled to relief simply by showing that the question raised regarding the merits is serious, substantial, difficult and doubtful enough as to make it fair ground for litigation. The balance of hardships in the present case, however, does not tip decidedly in favor of VPC. As explained above, the contrary is true in that the balance of hardships tips decidedly in favor of MAC Panel and the other creditors who will suffer immediate and substantial harm if a stay is granted. Given this balance in favor of MAC Panel and the other creditors, VPC may not satisfy its burden by showing merely that it raises an issue which is "fair ground for litigation." Instead, the standard which must be met is a showing that the likelihood of success on appeal is a probability and not merely a possibility. See Direx, 952 F.2d at 813-14. No such showing has been made in the present case.

The primary issue raised by VPC is whether the bankruptcy court has the jurisdiction and power to issue the type of injunction and release involved in the present case. Citing cases from outside the Fourth Circuit, VPC points out that the cases are divided on this issue. However, this carries little weight in the present case because the Court of Appeals for the Fourth Circuit

has upheld the jurisdiction and power of the bankruptcy court to permanently enjoin claims and actions against nondebtors in the context of a Chapter 11 plan of reorganization, as well as to grant releases to nondebtor third parties in that context. See In re A.H. Robins Co., 880 F.2d 694, 701 (4th Cir. 1989). This view is supported by significant additional authority taking the same position as the Court of Appeals for the Fourth Circuit. See, e.g., In re Munford, Inc., 97 F.3d 349, 454-55 (11th Cir. 1996); In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 293 (2d Cir. 1992); MacArthur Co. v. Johns Manville Corp., 837 F.2d 89, 93-94 (2d Cir. 1988).

The recognition of bankruptcy court jurisdiction in the A.H. Robins case is not rendered inapplicable in the present case on the grounds that mass tort litigation was involved in the Robins case, as suggested by VPC. A careful reading of the case reflects that perhaps the most important consideration prompting the decision was that the nondebtors who were being enjoined could obtain full payment of their claims under the plan of reorganization. 880 F.2d at 701-02. That is precisely the circumstance which exist in the present case. The plan provides for full payment to VPC and neither the injunction nor the release is effective unless such indebtedness is, in fact, paid in full by MAC Panel. In short, the

issue of whether the bankruptcy court has jurisdiction and power to permanently enjoin claims and actions by nondebtors is settled in the Fourth Circuit, leaving as the only real issue, the question of when such jurisdiction and power should be exercised in a Chapter 11 case.

The circumstances under which the bankruptcy court should exercise its jurisdiction to enjoin nondebtors have been well delineated in the cases which recognize the existence of such jurisdiction. These circumstances include (1) whether the third party who would be protected by the injunction or release has made an important contribution to the reorganization; (2) whether the requested injunctive relief or release is "essential" to the confirmation of the plan; (3) whether a large majority of the creditors in the case have approved the plan; (4) whether there is a close connection between the cases against the third party and the case against the debtor; and (5) whether the plan provides for payment of substantially all of the claims affected by the injunction or release. See In re A.H. Robins Co., 880 F.2d 694 (4th Cir. 1989); In re Munford, Inc., 97 F.3d 349 (11th Cir. 1996); In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285 (2d Cir. 1992); MacArthur Co. v. Johns Manville Corp., 837 F.2d 89 (2d Cir. 1988); In re Master Mortgage Inv. Fund, 168 B.R. 930 (Bankr. W.D.

Mo. 1994); In re Harron Burchette, Ruckert & Rothwell, 148 B.R. 660 (Bankr. D.D.C. 1992).

If the present case satisfied none or only a few of these factors, a substantial argument could be made that the court should not have exercised injunctive jurisdiction in the present case. However, that is not the case. To the contrary, as set forth in the findings and conclusions contained in the confirmation orders, the present case satisfies all of the foregoing circumstances. In that regard, the evidence fully supports the court's findings that the large monetary contribution from the Craycrofts is an important contribution to the reorganization; that the requested injunctive relief is essential to the confirmation of the plan because Mr. Craycroft was not willing to make this substantial contribution if still faced with the expense and effort required to defend the VPC litigation; that a large majority of the creditors in this case (all but one) approved the plan; that there is a close connection between the case against the Craycrofts and the case against the Debtor (both involve the same patent infringement and damages); and the plan provides for payment in full of the claims affected by the injunction and release. Since the present case satisfies all of these factors, the court concludes that VPC has not shown that there is a probability that it can successfully argue on appeal

that it was error for the court to issue the limited and conditional injunction granted in the present case or to approve the narrowly circumscribed release contained in the plan.

5. The Public Interest.

The remaining factor to be considered is the public interest. To the extent that the public interest is implicated in the present case, it appears that the public interest would be served by denying the stay rather than by granting the stay. MAC Panel and VPC are competitors in the business of manufacturing and selling high performance interface connector systems and enclosures used for the test and measurement of electronic systems. The customer base for many of these products consists of the United States Military and the aerospace industry. As to a number of the highly specialized items which are sold to the Military and the aerospace industry, VPC and MAC Panel are the only companies manufacturing and selling the products. As discussed above, the grant of a stay and the resulting delay poses a significant risk to the continuing viability of MAC Panel. The public interest is served where there are at least two viable suppliers who compete against each other. Such competition makes for innovation and product improvement, as well as lower prices. Despite the patent infringement by MAC Panel which gave rise to VPC's claim in this case, MAC Panel is entitled

to the opportunity of reorganizing, paying the damages which were *awarded and thereafter engaging in business in a lawful manner.* To the extent that MAC Panel remains viable and can provide lawful competition, the public interest will be served. The crippling or demise of MAC Panel through a prolonged stay in bankruptcy will cripple or possibly eliminate competition with respect to the products sold by VPC and MAC Panel to the important industries served by the two companies. Granting a stay in the present case and thereby impairing competition therefore is more likely to disserve, rather than serve, the public interest.

For the foregoing reasons, the court has concluded that the motion for stay pending appeal filed on behalf of Virginia Panel Corporation should be denied.

IT IS SO ORDERED.

This 8th day of March, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge

ENTERED
MAR 0 8 '00
U.S. Bankruptcy Court
Greensboro, NC
CPH

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:	
MAC Panel Company,	Case No. 98-10952C-11G
Debtor.	
MAC Panel Company,	
Plaintiff,	
v.	Adversary No. 98-2032
Virginia Panel Corporation,	
Defendant.	

ORDER

This adversary proceeding came before the court on March 6, 2000, for hearing upon a motion by Virginia Panel Corporation to stay the judgment entered in this adversary proceeding on February 24, 2000, pending an appeal by Virginia Panel Corporation. For the same reasons stated in the order denying Virginia Panel Corporation's motion to stay the order confirming plan, the motion for stay in this adversary proceeding is denied.

This 8th day of March, 2000.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge