

*Case Study**Jenner & Block Guides McDermott Incorporated  
Through Babcock & Wilcox Bankruptcy*

On February 22, 2006, The Babcock & Wilcox Company (“B&W”) and certain of its subsidiaries emerged from bankruptcy and comprehensively resolved billions of dollars of alleged present and future liability for their use of asbestos. Jenner & Block represented Babcock & Wilcox Investment Company (“BWICO”), the equity holder of B&W, and McDermott Incorporated (“McDermott”), the parent company of BWICO, as the six year reorganization process zigged and zagged through the Bankruptcy Court and the District Court for the Eastern District of Louisiana.

During the course of the Chapter 11 proceedings, Jenner & Block assisted its clients in successfully defending an action seeking to revoke the transfer of over \$600 million worth of assets by B&W to BWICO and McDermott (the “1998 Transfers”), negotiating settlements of insurance coverage valued at approximately \$1.15 billion, monitoring the effects of potential federal asbestos legislation, and expeditiously guiding an ultimately consensual plan of reorganization through the Chapter 11 proceedings.

The B&W reorganization demonstrates how a balance of vigorous litigation, creative negotiating, and a steady focus on a strategy for achieving a favorable exit can produce an extraordinary Chapter 11 result. The results achieved in the 1998 Transfers litigation and the insurance settlement negotiations allowed McDermott to retain B&W, thus preserving the synergistic benefits shared between B&W and the other McDermott affiliates as providers of energy and power services.

**B&W Files for Chapter 11**

On February 22, 2000, B&W and certain of its subsidiaries filed for bankruptcy protection under Chapter 11 as a result of a large number of asbestos claims and escalating demands to settle them. Shortly thereafter, the Asbestos Claimants’ Committee (the “ACC”) was formed and a Future Claimants’ Representative (the “FCR”) was appointed

to represent the interests of present and future asbestos claimants. Initially, B&W, McDermott, the ACC and the FCR pursued strictly adversarial strategies: B&W proposed an aggressive litigation strategy of objecting to nearly all asbestos claims; the ACC and the FCR challenged the 1998 Transfers; and both sides proposed competing plans of reorganization.

**Securing Victory in the 1998 Transfers Litigation**

Although the District Court did not implement B&W’s proposed litigation strategy, the Bankruptcy Court refused to grant the relief requested by the ACC and the FCR in the 1998 Transfers litigation. The ACC and the FCR appealed the Bankruptcy Court’s ruling, but the victory in the transfers litigation served as a catalyst for the parties’ negotiating a joint plan of reorganization whereby a trust would be created for the benefit of present and future asbestos claimants. The joint plan also provided that B&W, McDermott, and their affiliates would receive the protection of an asbestos channeling injunction to direct all of B&W’s asbestos liabilities to a post-confirmation trust, as provided for by Section 524(g) of the Bankruptcy Code.

**Settling \$1.15 Billion of Insurance Coverage**

However, confirmation of the joint plan of reorganization was not a clear path. The insurers of B&W’s and McDermott’s asbestos liabilities filed numerous objections to the joint plan, including the joint plan’s proposed assignment of \$1.15 billion of insurance rights to the asbestos trust that would be created by the joint plan.

Jenner & Block represented McDermott in negotiations with these insurers to resolve their objections and to liquidate the insurance rights. Any settlement which liquidated insurance rights generated additional assets available to the asbestos trust for the payment of asbestos claimants. In February 2005, after the Bankruptcy Court had recommended confirmation of the joint plan to the

District Court, McDermott and B&W finalized a settlement with their largest asbestos insurer – Underwriters at Lloyd’s of London which was represented by Equitas. The \$415 million settlement represented nearly one-half of B&W’s and McDermott’s shared asbestos insurance coverage. Eventually, B&W and McDermott would settle \$1.15 billion of shared coverage for a nominal amount of over \$950 million. This achievement was a significant accomplishment because the asbestos trust became entitled to over \$950 million without the delay and cost of future litigation. At the time the joint plan was filed, the asbestos trust would have received only the rights to \$1.15 billion of insurance coverage, which would have been the subject of protracted and costly litigation.

### **Monitoring Federal Asbestos Legislation**

During the course of the proceedings on the joint plan of reorganization and the negotiations of the insurance settlement agreements, the United States Congress began more actively considering federal asbestos legislation that would create a national trust, funded by defendant companies and insurers, to pay individuals harmed by asbestos exposure. The legislation would also generally remove asbestos litigation from the judicial system. If enacted, the legislation would have resolved B&W’s asbestos liabilities and McDermott would have retained its interest in B&W. Jenner & Block continually monitored the status of the legislation and these potential effects on the B&W bankruptcy proceedings.

Eventually, the momentum of the federal asbestos legislation and the value generated by the insurance settlement agreements led B&W, McDermott, the

ACC, and the FCR back to the negotiating table. In August 2005, the parties announced the terms of a settlement that permitted McDermott to retain all of its equity interests in B&W and that became embodied in a joint plan filed in September 2005. The settlement and September joint plan also resolved issues raised by certain insurers in order to allow the plan to move expeditiously through the confirmation process.

In the months following the filing of the September joint plan, Jenner & Block assisted in completing settlements with the remaining objecting insurers and guided the plan through the procedural hurdles of confirmation in the Bankruptcy and District Courts. Because the settlement and the September joint plan became effective before their expiration date of February 22, 2006, upon the effectiveness of the plan, McDermott retained its equity interests in B&W while at the same time McDermott and its affiliates received injunctive protection from liability for asbestos claims derivative of asbestos used by B&W or its subsidiaries.

McDermott and its affiliates were able to achieve this extraordinary outcome because of the success in the 1998 Transfers litigation, the outstanding results of the insurance settlements, and the leveraging of pending federal asbestos legislation in negotiations. In announcing the B&W plan had become effective, Bruce W. Wilkinson, McDermott International, Inc.’s Chairman and Chief Executive Officer, noted the significance of this achievement for the company: “With today’s announcements, McDermott is well-positioned to move forward as a worldwide energy services company with our focus on power generation, marine construction and government operations.”

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