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Delaware Supreme Court Holds Receiver is Required to Defend Lawsuits After a Corporation is Wound-Up; Finds No Generally Applicable Statute of Limitation for Claims Against a Dissolved Corporation

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In Anderson v Krafft-Murphy Co. Inc., 2013 Del. LEXIS 597 (Del. Nov. 26, 2013), the Delaware Supreme Court held that Sections 278 and 279 of the Delaware General Corporation Law, 8 Del. C. §§ 278-279, require a dissolved corporation to act through a court-appointed trustee or receiver after the corporation winds-up its business. Further, the Court held that Sections 278-279 contain no generally applicable statute of limitation for third party lawsuits against dissolved corporations. This decision signals that long-tail tort liability can follow a dissolved corporation for decades under Delaware law, underscoring the importance of properly handling a corporation's dissolution.

Krafft-Murphy Company, Inc. ("Krafft") was a plastering corporation that dissolved in 1999. Krafft began its operations in 1952, supplying and installing Sprayed Limpet Asbestos in the Washington, D.C. area. Krafft's continued use of asbestos caused it to become a defendant in hundreds of personal injury lawsuits. During the period Krafft supplied and installed asbestos, Krafft was protected by various liability insurance policies. Because asbestos-related injuries were covered by Krafft's insurance policies, Krafft's liability insurers took over the defense of Krafft's asbestos-related lawsuits and agreed to indemnify Krafft for potential damages.

In 2010 — more than ten years after Krafft's dissolution — Krafft began filing motions for summary judgment in the Delaware Superior Courts arguing that, because Krafft had been dissolved and wound-up, Krafft was no longer amenable to suit. Subsequently, a group of asbestos claimants filed a petition for the appointment of a receiver for Krafft in the Delaware Court of Chancery.

Krafft responded in the Court of Chancery with a motion for summary judgment, contending that (1) all claims brought more than ten years after Krafft's dissolution were time barred; (2) a receiver was unnecessary for claims brought within ten years of Krafft's dissolution, because Krafft's insurers were actively defending those claims; and (3) Krafft did not own any "property" for the receiver to take control of. The asbestos claimants countered with a motion for judgment on the pleadings. The Court of Chancery granted Krafft's motion for summary judgment and denied the asbestos

claimants' motion for judgment on the pleadings. The asbestos claimants then appealed to the Delaware Supreme Court. The Court reversed the lower court's grant of Krafft's motion for summary judgment, and remanded the case to the Court of Chancery.

The Supreme Court rejected Krafft's argument that claims brought after ten years were time-barred by Sections 280-282. The Delaware Supreme Court held that the Court of Chancery had misread the references in Sections 281(c) and 282 to a ten year time limit on third party claims. The Court clarified that Sections 281(c) and 282 establish director and shareholder safe harbors, not a statute of limitation. The safe harbors in Section 281(c) and 282 protect shareholders and directors as long as the dissolved corporation follows a set of procedures designed to preserve corporate assets. To qualify for the director and shareholder safe harbors, a corporation must reserve funds to cover potential liabilities arising five to ten years after the corporation's dissolution. However, because the asbestos claimants sued Krafft as a corporation, the Court held that director and shareholder safe harbors were irrelevant to Krafft's defense.

The Court also held that, although Section 280(a)(1)(c) provides a sixty day time limit for third party claims, a corporation must provide claimants with notice of the corporation's dissolution to start the sixty day clock. Similarly, the 120 day time bar found in Section 280(a)(4) requires a dissolved corporation to provide claimants a written rejection of their claim. Krafft had not served any of the asbestos claimants with notice of dissolution or rejection of their claims. As a result, the sixty and 120 day time limits did not apply in this case.

Moreover, the Court held that a receiver was required for Krafft to defend the asbestos claims, because Krafft had already completed the Section 278 winding-up process. Under Section 278, a corporation's body corporate is extinguished once the winding-up process ends. Without a body corporate, a corporation may no longer act on its own behalf, including disposing of property and defending against lawsuits. However, pursuant to Section 279, a court may appoint a receiver to administer any corporate property interests remaining after the close of the winding-up process. The Court held that Krafft's unexhausted liability insurance policies qualified as property requiring a receiver's administration. The Court also rejected Krafft's argument that a receiver was not required to handle the claims Krafft's insurers had already agreed to defend. Without a body corporate, Krafft had no power to act absent a court appointed receiver. Thus, a receiver was necessary for Krafft's defense, despite the participation of Krafft's insurers.

Finally, the Court rejected Krafft's argument that it had no "property" for the receiver to take charge of under Section 279. The Court held that, because Krafft's asbestos liability was not extinguished by its dissolution, Krafft's rights under its insurance policies were still capable of vesting. Accordingly, Krafft's insurance policies qualified as "property" under Section 279.

Krafft-Murphy establishes that potential liability for a dissolved corporation persists even after the corporation's business has been fully wound-up. Due to the lack of any generally applicable statute of limitation for claims made after dissolution, third party claimants could petition for a receiver decades after a corporation is dissolved. Accordingly, a dissolved corporation should consider providing statutory notice of dissolution to claimants, as well as rejecting claims arising after dissolution. Liability insurance carriers might benefit from assisting a dissolved corporate policyholder with the notification and rejection process. This decision thus confirms the importance of conducting a corporate dissolution with care.

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