

Supreme Court Won't Hear Case On 'Nonsensical' Renco Trial

By Ryan Boysen

Law360, New York (October 10, 2017, 4:26 PM EDT) -- Billionaire industrialist Ira Rennert and his Renco Group Inc. will not get to challenge the “nonsensical” trial that led to a \$213 million judgment against the pair for allegedly looting a subsidiary before parking it in bankruptcy, after the U.S. Supreme Court on Tuesday refused to hear the case.

The high court’s denial of a writ of certiorari marks the end of Magnesium Corp. of America Chapter 7 trustee Lee Buchwald’s contentious, 15-year crusade against MagCorp owners Renco and Rennert. Buchwald accused the pair of improperly stripping the ailing MagCorp of its assets, in part to pay for a \$200 million mega-mansion in the Hamptons.

“After years of litigation, we are pleased that we have finally reached the end of the road,” Nicholas F. Kajon of Stevens & Lee PC, who represents Buchwald, told Law360. “Now we look forward to working constructively with the major creditors in the case to resolve how the funds will be distributed.”

Buchwald obtained the \$213 million judgment following a nearly month-long trial in 2015, where he argued Rennert’s actions left the magnesium producer defenseless against the environmental litigation and market headwinds that later crippled it. Buchwald sold a stake in that judgment to keep the case going, a move believed to be the first major sale of a bankruptcy-related judgment to a third-party litigation funder.

The jury in that trial found Renco and Rennert not liable on federal fraudulent conveyance charges, but did find them liable on New York state fraudulent conveyance charges “even though that state-law claim requires the exact same findings as under federal law,” Rennert said in his petition.

“To this day no court has ever reconciled the nonsensical verdict in this case, which is why the Supreme Court’s denial of our petition for certiorari is so disappointing,” a Renco spokesperson told Law360. “This verdict makes no sense as a matter of law or logic, and the court’s decision to allow that verdict to stand sanctions a grave injustice.”

On appeal, Rennert argued that the jury should have been a judge, saying that U.S. District Judge Alison J. Nathan erred by denying a request to convert the jury trial to a bench trial in late 2014, roughly two months before the trial was set to begin. The Second Circuit affirmed that decision in March, writing that Rennert and Renco “conflate an inconsistent verdict with a compromise verdict.”

In his petition, Rennert said the Second Circuit's decision exposed a circuit split on the broader question of whether or not Buchwald was ever entitled to a jury trial in the first place.

The Sixth and Seventh Circuits, he said, "hold that debtors never have a jury right in bankruptcy proceedings," while the Second, Third and Fifth Circuits only disallow jury rights for debtors and their trustees in certain situations.

"The question presented thus infected all aspects of the proceedings below," Rennert said in his petition. "If the parties' dispute had arisen in the Fifth, Sixth or Seventh Circuits, the trustee would have had no jury right to invoke on any of his claims, and the action would have proceeded to a bench trial at the outset."

In his opposition brief, Buchwald said Rennert had overstated the circuit split and overlooked "fatal procedural defects" in his petition.

The suit stems from MagCorp's 2001 bankruptcy, caused by a \$900 million pollution lawsuit by the U.S. Environmental Protection Agency and competition from magnesium producers in Asia.

At trial, jurors heard that Renco and Rennert were well aware in the mid- to late-1990s that the outdated technology at MagCorp's plant in Utah, which wrung magnesium out of brine extracted from the Great Salt Lake, wasn't in compliance with new environmental regulations.

Instead of investing in new infrastructure, jurors were told, Renco seized on a brief spike in magnesium prices to justify raising \$150 million in bond debt that left the company overleveraged and undercapitalized while simultaneously jacking up the dividend payouts to Renco and Rennert.

Rennert used some of that money to finance a sprawling, \$200 million, 29-bedroom compound in the Hamptons, jurors were told.

The jury deadlocked on the central issue of whether or not MagCorp was solvent when it was directed to take out the \$150 million in debt and then pay millions in dividends, requiring Judge Nathan to issue an Allen charge — essentially sending deliberations into overtime — and leading one juror to suffer a panic attack before a verdict was finally rendered, according to Rennert's petition.

Accusations that the money stripped from MagCorp went toward building the estate, called Fair Field,

stemmed from an unjust enrichment charge that was later tossed before trial for lack of evidence, however. The jury only found Rennert and Renco liable for fraudulent conveyance for taking money out of MagCorp while it was functionally insolvent.

"The jury was asked to decide a highly technical issue of the solvency of a magnesium company almost 20 years ago," Jim McCarthy, a spokesman for Renco, told Law360 in an earlier interview. He called the unjust enrichment claim and accusations about the mansion "a sideshow."

Renco was represented in the district court case by Adam L. Shiff and Shai Schmidt of Kasowitz Benson Torres LLP, and by E. Joshua Rosenkranz, Daniel A. Rubens, Christopher J. Cariello, Matthew J. Bush, Kelsi Brown Corkran, Douglas S. Mintz and Brian P. Goldman of Orrick Herrington & Sutcliffe LLP in the Second Circuit and before the Supreme Court.

Buchwald was represented by Nicholas F. Kajon of Stevens & Lee PC in the district court case, and by Michael K. Kellogg, Gregory G. Rapawy and Daniel G. Bird of Kellogg Hansen Todd Figel & Frederick PLLC in the Second Circuit and before the Supreme Court.

The case is Renco Group Inc. et al. v. Lee E. Buchwald et al., case number 17-228, in the U.S. Supreme Court.

--Additional reporting by Pete Brush. Editing by Adam LoBelia.