

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
NEC HOLDINGS CORP., et al.,)	Case No. 10-11890 (PJW)
)	
Debtors.)	Jointly Administered
_____)	
)	
NEC HOLDINGS CORP., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Adv. Proc. No. 11-51129 (PJW)
)	
LINDE LLC, LINDE, INC., AIRCO)	
WELDING PRODUCTS, INC., AIR)	
REDUCTION COMPANY, INC., AIRCO,)	
INC., THE BOC GROUP, INC., JOHN)	
DOE(S) I THROUGH X,)	
)	
Defendants.)	

AMENDED MEMORANDUM OPINION¹

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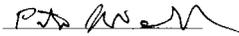
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Dated: May 18, 2011

¹ Memorandum Opinion dated May 4, 2011 (Doc. # 23) amended at p. 3 to correct the cite to 28 U.S.C. § 157(b)(2)

WALSH, J. 

This opinion is with respect to Defendants' motion for a determination that the claims in this adversary proceeding are non-core (the "Motion"). (Doc. # 12.) For the reasons below, I will grant the Motion.

Background

Plaintiffs NEC Holdings Corp. and related entities (the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq., on June 10, 2010. Debtors sold substantially all their assets during their bankruptcy proceedings. Their sole remaining substantial tangible asset is property located at 400 Clermont Terrace in Union, New Jersey (the "Union Property"). Linde LLC and related entities ("Linde") were the prior owners and occupiers of the Union Property.

The Union Property is environmentally contaminated, and Debtors have expended, and continue to expend, substantial sums to remediate the contamination. Debtors commenced this adversary proceeding against Linde seeking cost recovery and contribution, as well as declaratory relief, from Linde relating to environmental liabilities. The complaint contains four counts: (i) a claim for cost recovery and contribution under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607; (ii) declaratory relief under section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2); (ii)

contribution under the New Jersey Spill Compensation and Control Act (the "New Jersey Spill Act"), N.J.S.A. § 58:10-23.11(f) (2); and (iv) contribution under the New Jersey Joint Tortfeasors Contribution Law, N.J.S.A. § 2A:53A-1 et seq.

Debtors assert that the claims are core proceedings under 28 U.S.C. § 157(b) (2) (A) and (O). Linde contends that they are non-core, as the adversary proceeding does not invoke substantive rights under the Bankruptcy Code and could arise outside of bankruptcy.

Discussion

To determine whether a claim is "core," the Court will first look at the non-exhaustive list of core proceedings in 28 U.S.C. § 157(b) (2). In re Exide Technologies, 544 F.3d 196, 206 (3d Cir. 2008). The Court then, on a claim-by-claim basis, conducts a "two-step test, according to which a claim will be deemed core if (1) it invokes a substantive right provided by title 11 or (2) if it is a proceeding, that by its nature, could arise only in the context of a bankruptcy case." Id. (internal quotation marks omitted).

Debtors assert that the claims fall under § 157(b) (2) (A), which covers "matters concerning the administration of the estate." They contend that this is so because success in the adversary proceeding will impact Debtors' ability to sell the Union Property, enable Debtors to avert having this case converted to a chapter 7

case, and increase distributions to unsecured creditors. Debtors also argue that the claims fall under § 157(b)(2)(O), covering “other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.”

To accept Debtors’ arguments concerning these environmental claims would stretch § 157(b)(2) too far. The claims under CERCLA, the New Jersey Spill Act, and the New Jersey Joint Tortfeasors Contribution Law do not involve any substantive rights arising under the Bankruptcy Code. In addition, these claims could arise outside of the bankruptcy context. Thus, even if these claims could be shoe-horned into § 157(b)(2)(A) or (O), they do not satisfy the two-step test for core proceedings. See In re Exide, 544 F.3d at 207 (“Even assuming that the claims fall within [§ 157(b)(2)’s] list, none – on its face – invokes a substantive right under the Bankruptcy Code It is important . . . that a court not simply apply the terms of the statute but rather analyze the nature of the underlying claim to determine whether, given constitutional constraints on bankruptcy jurisdiction, that claim should be considered a core proceeding.”) (internal quotation marks and alterations omitted).

Conclusion

For the aforementioned reasons, I will grant Linde's Motion.