Supreme Court Grants Certiorari in *Johns-Manville* Case

On December 12, 2008, the Supreme Court of the United States granted two petitions for certiorari seeking review of the Second Circuit’s decision in *In re Johns-Manville Corp.*, 517 F.3d 52 (2d Cir. 2008), which addressed the jurisdiction of a bankruptcy court to enter injunctive orders protecting non-debtor parties in connection with the confirmation of a debtor’s plan of reorganization. Depending on how the Court disposes of these cases, a ruling could have a significant impact on existing and potential future asbestos trust settlements approved under the Bankruptcy Code.

Both petitions arise out of the Johns-Manville bankruptcy. In connection with the confirmation of the Johns-Manville plan in 1986, which was funded in part through the settlement of the company’s claims against its primary insurer, Travelers, the bankruptcy court issued a series of orders enjoining “any Person” from commencing “any claims” “based upon, arising out of or related to” the policies that Travelers issued to Johns-Manville.

By 2002, Travelers was faced with a number of lawsuits filed by individuals claiming that Travelers was liable to them for personal injuries caused by asbestos because Travelers had allegedly suppressed information about asbestos and/or conspired to misrepresent the dangers associated with asbestos. In an effort to defeat these claims, Travelers asked the bankruptcy court to enforce the injunctions it issued in 1986, and declare that those orders covered these allegedly new and independent claims against Travelers. Travelers ultimately negotiated a settlement with certain claimants, in connection with which the bankruptcy court issued an order purporting to clarify that its 1986 orders applied to these new claims against Travelers. The district court affirmed in relevant part. *In re Johns-Manville Corp.*, 380 B.R. 49 (S.D.N.Y. 2006).

On appeal, the Court of Appeals for the Second Circuit vacated the order, concluding that the scope of the bankruptcy court’s 1986 orders should have been interpreted in light of the district court’s and bankruptcy court’s jurisdiction to issue those orders. The Second Circuit ultimately concluded that “the district court lacked subject matter jurisdiction to enjoin claims against Travelers that were predicated, as a matter of state law, on Travelers’ own alleged misconduct and were unrelated to Manville’s insurance policy proceeds and the res of the Manville estate.” *Manville*, 517 F.3d at 68. Additionally, while the underlying orders were entered in 1986, the opinion also contains a discussion of section 524(g) of the Bankruptcy Code – the 1994 addition to the Code that forms the principal basis for many modern asbestos trust settlements.

In seeking review, Travelers and the settling claimants have asserted that the Second Circuit’s decision has far-reaching implications concerning the jurisdiction of bankruptcy courts to approve settlements granting relief to non-debtor parties in connection with reorganization plans, not only under the sources of authority that existed in 1986, but also under the later-enacted section 524(g). While the Supreme
Court may well decide or otherwise dispose of the case on a number of narrow grounds that would have little or no implications beyond the *Manville* case itself, the Court’s decision to grant review holds the potential to yield a broader ruling regarding the subject matter jurisdiction of bankruptcy courts generally, and/or the ability of a bankruptcy court to provide relief to non-debtor parties under section 524(g) or other possible sources of authority.