Successful Reorganization of Kaiser Aluminum Corporation

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On July 6, 2006, with Jones Day's assistance as reorganization counsel, Kaiser Aluminum and twenty of its subsidiaries successfully emerged from chapter 11 protection, having resolved more than $4 billion in liabilities, many of which were unusually complex. Kaiser emerged virtually debt-free, with substantial liquidity and streamlined business operations that are considered first-in-class in the aluminum industry. The reorganization plan, which was confirmed by the U.S. Bankruptcy Court for the District of Delaware on February 6, 2006 and affirmed by the U.S. District Court for the District of Delaware on May 11, 2006, received over 90% acceptance by every class of creditors entitled to vote.

Kaiser, which was founded by well-known industrialist Henry J. Kaiser in 1946, commenced its reorganization case on February 12, 2002. At that time, it faced, among other issues, massive numbers of asbestos and other tort claims, significantly underfunded pension plans, crushing retiree medical obligations and scores of environmental liabilities associated with numerous sites. In addition, Kaiser faced significant near-term debt maturities, including two issuances of senior notes with an aggregate outstanding principal balance of approximately $398 million (collectively, the "Senior Notes") and an issuance of senior subordinated notes with an outstanding principal balance of $400 million (the "Senior Subordinated Notes" and, together with the Senior Notes, the "Notes"). At the time of the filing, Kaiser had worldwide operations in all principal aspects of the aluminum industry — the mining of bauxite, the refining of bauxite into alumina, the production of primary aluminum from alumina and the manufacture of both fabricated and semi-fabricated aluminum products. Much of the bauxite mining, alumina refining and aluminum production was conducted at overseas facilities owned through five nondebtor, joint venture affiliates in which Kaiser had less than a 100% ownership interest (collectively, the “Joint Ventures”).

As part of the agreements in connection with the Joint Ventures, Kaiser was obligated to fund a percentage of the cash costs for each facility's operations and purchase a percentage of each facility's output. Failure to either fund the costs of, or purchase output from, the Joint Ventures could have resulted in forfeiture of Kaiser's ownership interests in the Joint Ventures. To ensure the preservation of these significant Joint Venture interests and the related flow of product from the Joint Ventures, which was critical to Kaiser's integrated operations, at the outset of the chapter 11 filing Kaiser obtained, with Jones Day's assistance, authority from the bankruptcy court to continue funding the Joint Ventures. In addition to that relief and other critical “first day” relief that was successfully obtained from the bankruptcy court, Jones Day also assisted Kaiser in securing access to a $200 million postpetition revolving credit facility.

Once Kaiser's post-bankruptcy operations were stabilized, the company began formulating a strategic plan. After extensive deliberations and consultations with its financial advisors, Kaiser proposed a strategic plan to its principal creditor constituents that involved the divestiture of most of its bauxite, alumina and aluminum assets and a reorganization around its fabricated products business. The creditors, with the assistance of their financial advisors, thoroughly reviewed and ultimately approved the strategic plan.

After formulating its strategic plan, the company focused its efforts on the multifold task of restructuring its substantial bond, retiree medical, pension, tort, intercompany and environmental liabilities. Kaiser and Jones Day first sought to resolve the company's legacy liabilities: over $600 million in underfunded pension liabilities and $790 million in retiree medical liabilities. Kaiser had eight separate defined benefit pension plans as well as retiree medical programs, most of which were provided pursuant to collective bargaining agreements with various unions. Annual benefit payments in respect of Kaiser's retiree medical liabilities were running $60 million, with cash requirements projected to increase substantially in future years due to a variety of factors, including double-digit percentage increases in medical and prescription drug costs and increased life expectancies of covered individuals. Required contributions to Kaiser's pension plans for hourly employees were projected to aggregate more than $274 million for calendar years 2004 through 2009.

To achieve a resolution of these liabilities, the company, with the assistance of Jones Day, entered into negotiations with the United Steelworkers and four other labor unions, the Pension Benefit Guaranty Corporation (the "PBGC") and a committee of salaried retirees. Although progress was being made in the negotiations, to bring closure to the issues, Kaiser, with Jones Day's assistance, filed motions requesting that the bankruptcy court (i) authorize the termination or substantial modification of the retiree medical obligations, (ii) determine that the financial requirements for a distress termination of certain of the pension plans were satisfied and authorize implementation of replacement defined contribution plans for active employees and (iii) authorize the rejection of certain collective bargaining agreements as necessary to terminate certain of the pension plans. Shortly after filing these motions, Kaiser reached negotiated agreements with the unions and the retirees' committee that were eventually approved by the bankruptcy court. With respect to retiree medical liabilities, the agreements provided for the termination of all retiree medical plans and the establishment of voluntary employees' beneficiary associations to provide medical benefits to retirees and to be funded by a certain percentage of the equity of reorganized Kaiser and certain cash payments, including payments based on percentages of reorganized Kaiser's after tax profit. The agreements also provided for the termination of certain pension plans for hourly employees and the implementation of replacement pension plans.

The company, however, had to engage in litigation against the PBGC regarding the distress termination of Kaiser's pension plans. The litigation with the PBGC was ultimately resolved pursuant to a comprehensive settlement, resulting in the termination of Kaiser's three largest pension plans (representing over 90% of the liability) and the resolution of all the PBGC's administrative and unsecured claims against Kaiser. The settlement permitted the PBGC to continue its appeal to the Third Circuit Court of Appeals regarding the distress termination of certain smaller pension plans. Kaiser prevailed on the distress termination issues in the bankruptcy court and the district court, and the Third Circuit recently affirmed the lower court decisions. The decisions of the bankruptcy court and district court have set a significant precedent regarding the standards for distress termination of multiple pension plans.

The official committee of unsecured creditors opposed these agreed resolutions of the retiree medical and pension issues absent resolution of Kaiser's intercompany claims. Kaiser's operations, which included transactions with the Joint Ventures and the use of a centralized cash management system, gave rise to a significant number of intercompany claims, in some cases aggregating more than $1 billion. In addition to the complex nature of the transactions and the significant amounts involved, there were numerous legal theories and arguments that could have been advanced to support varying treatments of all or a portion of the intercompany claims or to apply principles of setoff or recoupment to eliminate all or substantially reduce certain of the claims. Because some of the Kaiser entities did not commence their chapter 11 cases until January 2003 — almost a year after the other Kaiser entities — novel issues were also presented regarding, among other things, the treatment of certain intercompany claims among the debtors that constituted a prepetition obligation of one Kaiser debtor but a postpetition obligation of the other Kaiser debtor. Threatened litigation over these issues jeopardized the retiree medical and pension settlements, as well as the reorganization as a whole.

With Jones Day's assistance, after protracted negotiations with the creditors' committee, the company successfully reached a complex global settlement of the intercompany claims that involved cash payments, offsets of claims, releases and permission to substantively consolidate certain Kaiser entities. The intercompany claims settlement, once approved by the bankruptcy court, would enable the Kaiser subsidiaries that held most of the Joint Venture interests, which were at that time in the process of being sold as the strategic plan contemplated, to proceed with separate plans of liquidation without awaiting the formulation and confirmation of a plan of reorganization for the remaining Kaiser entities. Because of this proposed separation of the Kaiser entities, the asbestos claimants' committee and the bankruptcy court-appointed legal representatives for future asbestos and other tort claimants each filed an objection to the intercompany claims settlement. Those objections were ultimately resolved by an agreement among all principal constituencies on a plan of reorganization term sheet setting forth, among other things, the parameters for the treatment of the various tort claims and future demands under any plan of reorganization for the reorganizing Kaiser entities.

The tort claims that had to be addressed included not only asbestos claims and future demands — there were more than 100,000 pending asbestos-related lawsuits against Kaiser when the chapter 11 cases were filed — but also a significant number of non-asbestos tort claims and future demands, including claims relating to alleged injuries caused by exposure to silica, coal-tar-pitch volatiles and excess occupational noise. The plan resolves each of these categories of tort claims through (a) the creation of trusts funded by a cash payment of $13 million, 6.4% of the equity in the reorganized company (plus 100% of the stock of a subsidiary with limited assets) and rights to insurance proceeds and (b) the implementation of channeling injunctions permanently directing these tort claims and future demands from Kaiser to the trusts. The primary source of funding for the trusts will consist of the proceeds of insurance coverage settlements that Kaiser entered into with its insurers prior to the plan's effective date, which proceeds total more than $1.2 billion.

Because of the nature of its operations, which had been conducted at many sites, Kaiser also faced significant environmental liabilities. Jones Day assisted Kaiser in resolving these liabilities through the chapter 11 process. During the course of the bankruptcy cases, Kaiser entered into numerous consent decrees that collectively resolved the environmental liabilities related to numerous sites, including a multi-site consent decree with certain federal agencies and states that resolved more than $727 million of environmental claims relating to 66 sites.

While dealing with all these issues, Jones Day also assisted Kaiser in implementing its strategic business plan, which resulted in the sales of most of Kaiser's commodities businesses worldwide, comprising all but one of Kaiser's Joint Venture interests. Those sales included sales of Kaiser's mining and refinery interests in Jamaica, an interest in an alumina refinery in Australia, interests in a smelter in Ghana and a refinery in Louisiana. The Joint Venture structures, including rights of first refusal and rights of first opportunity held by certain of the Joint Venture partners, raised difficult issues in many of the transactions, requiring the establishment of creative structures to preserve those rights and also comply with appropriate bankruptcy auction procedures.

The proceeds of these sales, which aggregated approximately $700 million, are being distributed to creditors pursuant to separate liquidating plans that were confirmed by the bankruptcy court in December 2005. The liquidating plans were subject to extensive litigation among the Kaiser debtors, the respective indenture trustees for the Notes, which were guaranteed by the Kaiser entities that held the Joint Venture interests as well as certain other Kaiser entities, and certain material holders of Notes regarding the subordination provisions in the indenture for the Senior Subordinated Notes. Kaiser and the indenture trustees for the Senior Notes prevailed in the litigation in the bankruptcy court, and the subordination issues are currently on appeal to the district court.

As a result of the commodities business sales discussed above and the sales of other non-strategic assets, Kaiser has now divested itself of most of its bauxite mining, alumina refining and aluminum production operations, retaining only a 49% interest in an aluminum smelter in Wales. Kaiser currently owns 11 aluminum fabricating plants in North America. Before filing for protection, Kaiser was burdened by approximately $3.1 billion in debt, on a consolidated basis, but has emerged from bankruptcy with virtually no debt.