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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

GenCanna Bankruptcy Control Fight Heads To 6th Circuit

By **Diana Novak Jones**

Law360 (July 17, 2020, 10:13 PM EDT) -- A fight over the control of hemp company GenCanna is heading before a Sixth Circuit's bankruptcy appellate panel right as the company is looking to wrap up its Chapter 11 case.

On Thursday, cannabis company and major GenCanna shareholder MariMed filed a notice saying it would appeal an order from U.S. Bankruptcy Judge Gregory Schaaf of Kentucky finding MariMed had acted improperly when it attempted to replace members of GenCanna's board of directors and force out GenCanna's president and chief executive officer.

The fight over control of GenCanna comes after the hemp company **sold the bulk of its assets** in a deal worth more than \$75 million. It is in settlement negotiations with its senior secured lender and buyer to resolve claims from the committee of unsecured creditors, according to the company.

MariMed holds the largest equity interest in GenCanna's parent company. MariMed Hemp, an affiliate, has a \$34 million claim against GenCanna USA, a subsidiary, according to court records. It opposed the sale plan and put forward its own proposal for reorganization earlier this year. But when MariMed was unable to come up with the money to support its plan, GenCanna went with the purchase offer, court records show.

But on June 24, MariMed's president and chief executive officer Robert Fireman, who sits on GenCanna's board of directors, teamed up with another board member, Michael Falcone, to form a voting bloc controlling 52% of GenCanna's parent company's shares.

They then removed GenCanna Chief Executive Officer Matty Mangone-Miranda, GenCanna President Steve Bevan and one other member of the board of the parent company, and installed Fireman as chairman, according to court records. They made similar changes to the board of GenCanna USA.

Fireman and Falcone appointed a new CEO of the parent company, and directed him to get the bankruptcy case dismissed. The new director of GenCanna USA's board was told to develop a plan to liquidate the company within 30 days, according to filings.

Once Mangone-Miranda and Bevan learned what had happened, they filed a motion asking Judge Schaaf to intervene. MariMed's moves violate board rules and the bankruptcy's automatic stay, GenCanna argued. The changes also involve an unauthorized use of estate property, the company said.

MariMed countered that it is simply trying to stop GenCanna from spending more on fees for attorneys, accountants and consultants and get the most out of GenCanna's remaining assets. The settlement with the lender is likely to be just \$1 million, and the creditors' claims could be worth more than 20 times that, it said.

But Judge Schaaf agreed with GenCanna, issuing an order on July 2 that called the reorganization a clear violation of the automatic stay. Any actions taken by the new directors and management are void, he said.

Now that GenCanna's assets have been sold, equity holders like MariMed have "no hope of recovery" in this case, Judge Schaaf wrote. So there's no way MariMed can argue that it was trying to improve its equity interest, he said.

"Using an equity position that has no chance of recovery to object to a settlement that is not even filed is an obvious attempt to exercise control over the case and enhance the creditor interests," Judge Schaaf wrote. "Further, this also suggests clear abuse of the governance process that would warrant action in this court if an injunction was requested. For now, that analysis is not required."

MariMed's appeal targets the judge's order. An attorney for the company declined to comment on Friday.

James Irving of Dentons LLP, who represents GenCanna, said in a statement that the company believes the appeal to be "entirely without merit."

"It will not impact the debtors or prevent them from continuing to properly reorganize under Chapter 11," he said.

MariMed is represented by James Moon of Kaplan & Moon PLLC.

GenCanna is represented by James R. Irving, April A. Wimberg and Christopher B. Madden of Dentons and Michael J. Barrie, Jennifer R. Hoover and Elliot M. Smith of Benesch Friedlander Coplan & Aronoff.

The case is *In re: GenCanna Global USA Inc.*, case number 20-50133, in the U.S. Bankruptcy Court for the Eastern District of Kentucky.

--Editing by Michael Watanabe.