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III. Bankruptcy & Creditors' Rights

III. BANKRUPTCY & CREDITORS' RIGHTS

Vancouver Women's Health Collective Society v. A.H. Robins Co.: *Providing Adequate Notice to Foreigners in a "Mass Tort" Bankruptcy Proceeding*

Chapter 11 of the Bankruptcy Reform Act of 1978 (Bankruptcy Code)[1] governs the requirements for the reorganization of financially distressed businesses.[2] In enacting Chapter 11, Congress intended to create a reorganization structure that would provide greater flexibility, speed, and economy in resolving the problems that arise for creditors, debtors, and stockholders in a bankruptcy proceeding.[3] Since the enactment of the Bankruptcy Code, many businesses faced with bankruptcy because of multiple tort claims have had difficulty reorganizing under Chapter 11.[4] A significant impediment to

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1. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (codified at 11 U.S.C. §§ 1101-74 (1982)).

2. *See* 11 U.S.C. §§ 1121-29 (1982)(bankruptcy provisions dealing with business reorganization plan).

3. *See* 11 U.S.C. ch. 11 (1982) (Historical and Revision Notes). Before the adoption of the Bankruptcy Reform Act of 1978 (Bankruptcy Code), each chapter dealing with business reorganization had different rules and procedures. *Id.* Therefore, filing for bankruptcy under one chapter of the Former Bankruptcy Act created different consequences for different parties than filing under another chapter. *Id.* The consolidated reorganization provisions in Chapter 11 of the Bankruptcy Code provide a flexible system that allows the court to evaluate all sides of a position to determine the best interest of all parties. *Id.* The greater flexibility of the Bankruptcy Code also provides greater simplicity and speed in reorganizing, benefitting all parties with interests in the proceeding. *Id.* Early confirmation of the reorganization plan reduces administration expenses for the bankruptcy estate and permits creditors to receive prompt distributions on their claims. *Id.*; *see also* B. WEINTRAUB & A. RESNICK, BANKRUPTCY LAW MANUAL ¶¶ 8.02-8.03 (1986) (comparing and contrasting provisions in Former Bankruptcy Act and Bankruptcy Reform Act).

4. *See In re* Johns-Manville Corp., 36 Bankr. 743, 744-59 (S.D.N.Y. 1984) (addressing problems confronted in mass tort bankruptcy proceeding); *In re* UNR Indus., 29 Bankr. 741, 744-48 (N.D. Ill. 1983) (same), *appeal dismissed*, [1983-1984 Transfer Binder] 3 BANKR. L. REP. (CCH) 60,589 (7th Cir. Jan. 17, 1984); *see generally*, Roe, *Bankruptcy and Mass Tort*, 84 COLUM. L. REV. 846 (1984) (providing background of problems that arise during mass tort bankruptcy). In some bankruptcy proceedings courts have been unwilling to proceed with any reorganization program that affected the interests of contingent tort claimants. *See Id.* at 846 (addressing problems that arise in mass tort bankruptcy). When a business faces bankruptcy because of multiple tort claims, applying ordinary tort procedures and remedies often leads to an unsatisfactory result for all parties involved in the bankruptcy reorganization proceeding. *Id.* at 846-47. For example, early settlements of claims may act to destroy the responsible business while leaving injured parties uncompensated. *Id.* at 846; *see In re* Dalkon Shield IUD Prod. Liab. Litig., 521 F. Supp. 1188, 1191 (N.D. Cal. 1981) (stating that destroying A.H. Robins Co. may leave many plaintiffs with no practical means of redress). Uncertainty as to the number or the size of contingent or future tort claims presents a problem in establishing an adequate reorganization plan. Roe, *supra*, at 848-49. Also, providing adequate notice to unknown potential future tort claimants presents tremendous logistical problems. *Id.* at 848. In some bankruptcy proceedings courts have been unwilling to proceed with any reorganization program that affected the interests of contingent tort claimants. *See In re* Amatex Corp., 30 Bankr. 309, 311 (E.D. Pa. 1983) (court unwilling to allow corporation to escape liability to

the progress of a "mass tort" reorganization is the problem of providing adequate notice to potential claimants.[5] In products liability cases where a business has distributed potentially unsafe products to unknown parties, the problems of determining what constitutes adequate notice and to whom to distribute the notice are especially troublesome.[6] In *Vancouver Women's Health Collective Society v. A.H. Robins Co.*[7] the United States Court of Appeals for the Fourth Circuit considered what notice a domestic business undergoing Chapter 11 reorganization must give a potential claimant who is a nonresident alien located outside the jurisdiction of the United States before a bankruptcy court can terminate the alien's interest in the claim.[8]

In 1984 the A.H. Robins Company ["Robins"] initiated an international media campaign to notify women who had used an intrauterine contraceptive known as the Dalkon Shield of potential harms from the device.[9] During the next several months individuals filed over 5000 claims against Robins seeking compensatory and punitive damages for harm resulting from use of the device.[10] In August 1985 Robins filed a petition to reorganize under Chapter 11 of the Bankruptcy Code.[11] The United States District Court for

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future tort claimants by allowing early reorganization), *rev'd on other grounds* 755 F.2d 1034, 1044 (3d Cir. 1985); *In re* U.N.R. Indus., 29 Bankr. 741, 744-48 (N.D. Ill. 1983) (same), *appeal dismissed*, [1983-1984 Transfer Binder] 3 BANKR. L. REP. (CCH) 60,589 (7th Cir. Jan. 17, 1984). In another bankruptcy proceeding the court allowed the appointment of a representative to represent the interests of future tort claimants while the reorganization procedure continued. *See In re* Johns-Manville Corp., 36 Bankr. 743, 744-59 (S.D.N.Y. 1984) (court required appointment of representative of future claimants in order to allow bankruptcy reorganization procedure to continue).

5. *See, e.g., In re* Johns-Manville Corp., 36 Bankr. at 754-56 n.6 (discussing logistical and financial problems of providing notice to large group of potential tort claimants); *In re* Agent Orange Prod. Liab. Litig., 100 F.R.D. 718, MDL No. 381, Memorandum and Pretrial Order No. 72 (E.D.N.Y. Dec. 16, 1983) (same), *writ of mandamus denied*, 725 F.2d 858 (2d Cir.), *cert. denied* 465 U.S. 1067 (1984); *In re* UNR Indus., 29 Bankr. 741, 747-48 (N.D. Ill. 1983)(same); *appeal dismissed*, [1983-1984 Transfer Binder] 3 BANKR. L. REP (CCH) 60,589 (7th Cir. Jan. 17, 1984).

6. *See supra* note 5 (listing bankruptcy proceedings resulting from products liability claims in which courts had difficulty providing notice to potential claimants).

7. 820 F.2d 1359 (4th Cir. 1987).

8. Vancouver Women's Health Collective Soc'y v. A.H. Robins Co., 820 F.2d 1359, 1363 (4th Cir. 1987).

9. *Id.* at 1363. In 1973 Robins became aware of reports linking the Dalkon Shield, an intrauterine contraceptive device, to medical complications and notified the United States Food and Drug Administration of the problem. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. Apr. 1, 1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection With Bar Date Notification Program, Exhib. C, App. C). Robins withdrew the Dalkon Shield from the United States market by June 28, 1974 and from foreign markets by March 1975. *Id.* In 1980, because of medical literature suggesting a relationship between the use of IUD's and pelvic infection, Robins advised doctors to remove the Dalkon Shield from women who were using the device. *Id.* In 1984 Robins initiated on intensive $4.5 million global campaign advising women of the potential harm from the Dalkon Shield and offering to pay the medical costs of removing the device. *Vancouver Women's Health Collective*, 820 F.2d at 1360.

10. *Vancouver Women's Health Collective*, 820 F.2d at 1360.

11. *Id.*

the Eastern District of Virginia assumed jurisdiction over the Dalkon Shield tort claims in the bankruptcy proceeding.[12]

On November 21, 1985 the district court entered an order setting April 30, 1986 as a bar date after which no party could file a claim in the bankruptcy proceeding against Robins.[13] The order established the form of notice of the bar date that Robins was to distribute to Robins' trade creditors, stockholders, and Dalkon Shield claimants.[14] The order also established general procedures by which Robins was to disseminate the notice of the bar date.[15] The order provided separate procedures for foreign and domestic notice, and limited the amount Robins could spend on both notice programs combined to five million dollars.[16] The domestic notice program provided for a combination of direct payment advertising and public relations.[17] The foreign notice program only provided for a public relations campaign.[18] A direct payment advertising campaign consists of paid advertisements in print and electronic media.[19] A public relations campaign consists of distributing information in the form of press releases and information packets to news media and government and private organizations so that the groups will relay the information to the public in the form of news.[20]

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12. *Id.*

13. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. Nov. 21, 1985) (order establishing bar date).

14. *Id.*

15. *Id.*

16. *Id.* The final cost of implementing Robins' foreign and domestic programs was approximately four million dollars. Vancouver Women's Health Collective Soc'y v. A.H. Robins Co., 820 F.2d 1359, 1361 (4th Cir. 1987). Robins spent approximately $3,100,000 on the domestic program and approximately $750,000 on the foreign program. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. April 1,1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection with Bar Date Notification Program, Exhib. C., App. C.).

17. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. April 1, 1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection with Bar Date Notification Program, Exhib. C., App. C). The domestic notice program formulated by the district court required Robins to publish notice of the bar date in the form provided by the court through 220 thirty second television advertisements on local and national stations, and through 241 printed advertisements in local and national newspapers and magazines. *Id.* The domestic program also required Robins to issue news releases and public service announcements that provided basic information about the bar date and the manner in which individuals could obtain additional information about the bankruptcy proceeding. *Id.*

18. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. Nov. 21, 1985) (order establishing bar date). The foreign notice program formulated by the district court required Robins to implement a public relations program designed to provide notice regarding the bar date to potential claimants. *Id.* Robins was to disseminate the notice through news releases, press conferences, public service announcements, letters to health ministers and medical associations, and information packets to American embassies located in each country where Robins knew women had used the Dalkon Shield. *Id.*

19. *Vancouver Women's Health Collective*, 820 F.2d at 1361; *see supra* note 17 and accompanying text (describing domestic notice program).

20. *Vancouver Women's Health Collective*, 820 F.2d at 1361-62; *see supra* note 18 and accompanying text (describing foreign notice program).

Following the district court's instructions, in December 1985 Robins submitted to the district court a detailed outline of how Robins was going to implement the district court's guidelines for the notice program.[21] Robins retained a public relations agency to design and implement the foreign public relations program.[22] The agency used over thirty of its international offices to distribute the notice to all persons the Dalkon Shield may have injured.[23] Each office attempted to tailor the notice to make the notice accessible to the different cultural and political groups in the region for which each office was responsible.[24] The agency distributed information packets concerning the bar date in twenty-nine languages to ninety countries and held press conferences in sixteen countries.[25] In addition, every daily printed and electronic news outlet in the world received notice of the bar date through the international wire services.[26]

Both the domestic and the foreign notice programs began on January 6, 1986 and, for the most part, ended on January 31, 1986.[27] The Dalkon Shield Claimants' Committee (Claimants' Committee), a committee organized to represent the interests of Dalkon Shield claimants in the Robins bankruptcy proceeding, objected to the Robins notice program on January

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21. *Vancouver Women's Health Collective*, 820 F.2d at 1361. Robins hired Burson-Marsteller, an international public relations agency, to design and implement the foreign notice campaign. *Id.* Robins instructed Burson-Marsteller to develop a program that would provide adequate notice of the bar date to the foreign audience. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. April 1, 1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection With Bar Date Notification Program, Exhib. C, App. C). The district court's order concerning notice provided that Robins could not use any direct payment advertising in the foreign program. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. Nov. 21, 1985) (order establishing bar date). Also, to fall within the district court's five million dollar spending limit on the combined foreign and domestic programs, Robins instructed Burson-Marsteller not to spend more than one million dollars on the foreign public relations program. *In re* A.H. Robins Co., No. 85-0137-R (E.D. Va. April 1, 1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection With Bar Date Notification Program, Exhib. C., App. C). The foreign notice program provided for distribution of notice through the mass media, medical associations, health officials, and government agencies and ministries in each country in which the Dalkon Shield was made available. *Id.* The foreign notice took the form of press releases, letters, information packets, and press conferences. *Id.*

22. *Vancouver Women's Health Collective*, 820 F.2d at 1361.

23. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. April 1, 1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection With Bar Date Notification Program, Exhib. C, App. C).

24. *Id.* In *Vancouver Women's Health Collective* each Burson-Marsteller office translated the notice of the bar date into the language of each area in which the office distributed the notice. *Id.* Each office also attempted to use the public relations techniques that best suited each particular area. *Id.*

25. *Id.*

26. *Id.* Since every international wire service carried the Robins bar date story, Burson-Marsteller concluded that every daily news outlet in the world received the bar date information. *Id.*

27. *Id.* In Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Saudi Arabia, and Syria negotiations with the governments concerning the content of the notice message delayed distribution of notice of the bar date until shortly after January 31, 1986. *Id.*

14, 1986.[28] On April 30, 1986, the Claimants' Committee asked the district court to extend or abolish the bar date for foreign claimants, arguing that Robins' foreign notice program did not satisfy the due process requirements of the United States Constitution.[29] The Claimants' Committee claimed that the notice program that Robins developed at the district court's direction was insufficient to notify users of the Dalkon Shield outside the United States of their legal rights.[30]

The district court found that the foreign claimants were not entitled to constitutional protection because the foreign claimants were nonresident aliens located outside the jurisdiction of the United States.[31] The district court held that since the foreign claimants did not have constitutional rights, the claimants could not object to the constitutionality of the Robins foreign notice program.[32] Alternatively, the district court held that even if the foreign claimants were entitled to constitutional protection, the foreign notice program satisfied constitutional notice requirements.[33] Accordingly, the district court refused to extend or abolish the bar date.[34] The Claimants'

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28. *Vancouver Women's Health Collective*, 820 F.2d at 1361. The Bankruptcy Code requires a court to appoint a committee of unsecured creditors as soon as practicable after the court issues an order for reorganizational relief. 11 U.S.C. § 1102(a)(1) (1986). The committee usually consists of the unsecured creditors that hold the seven largest claims of the different kinds represented in the proceeding. B. WEINTRAUB & A. RESNICK, *supra* note 3, at ¶ 8.12(1). In *Vancouver Women's Health Collective* the Dalkon Shield Claimants' Committee represented the interests of those parties who had tort claims against Robins stemming from use of the Dalkon Shield. Brief of Appellant Dalkon Shield Claimants' Committee at 2, *Vancouver Women's Health Collective*, 820 F.2d 1359 (4th Cir. 1987). The Claimants' Committee made 12 objections to the Robins foreign and domestic notice programs in a memorandum submitted to the district court on January 31, 1986. *See* Committee of Representatives of Dalkon Shield Claimants' Supplemental Memorandum Concerning Notice, *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. Jan. 14, 1986). The Claimants' Committee raised only three objections to the foreign notice program. *Id.* The first objection to the foreign notice program was that Robins planned no news conferences in an Arabic speaking country. *Id.* The Claimants' Committee thus requested a news conference in Cairo, Egypt. *Id.* The second objection was that the third, fifth, sixth, and seventh paragraphs of a background handout contained in the notice materials were inaccurate. *Id.* The Claimants' Committee requested that Robins delete the paragraphs. *Id.* The third objection was a general objection that the foreign notice program was inadequate in budget and scope. *Id.*

29. *In re* A.H. Robins Co., No. 85-01307-R, Memorandum Opinion Denying Motions to Extend or Abolish Bar Date at 7 (E.D. Va. June 16, 1986).

30. *Vancouver Women's Health Collective*, 820 F.2d at 1360. In *Vancouver Women's Health Collective* the Claimants' Committee asserted that as potential creditors in the Robins bankruptcy proceeding the foreign Dalkon Shield users were entitled to notice under the fifth amendment due process clause. Brief of Appellant Dalkon Shield Claimants' Committee at 17, *Vancouver Women's Health Collective*, 820 F.2d 1359 (4th Cir. 1987).

31. *In re* A.H. Robins Co., No. 85-01307-R, memorandum opinion at 12-14 (E.D. Va. June 16, 1986).

32. *Id.* at 13.

33. *See id.* at 14-17 (finding that Robins foreign notice program was reasonably calculated under the circumstances to notify potential foreign claimants of bar date in Robins bankruptcy proceeding).

34. *See id.* at 17-18 (refusing to extend bar date in Robins bankruptcy proceeding).

Committee appealed the district court's decision to the United States Court of Appeals for the Fourth Circuit.[35]

On appeal, the Fourth Circuit in *Vancouver Women's Health Collective* acknowledged that the United States Supreme Court has not held that nonresident aliens do not enjoy the rights and privileges provided by the United States Constitution.[36] However, the Fourth Circuit agreed with the district court that constitutional protections do not extend to nonresident aliens living outside the United States.[37] The Fourth Circuit reasoned that because Supreme Court decisions addressing rights and privileges of aliens located within the United States have not extended constitutional protection to aliens located outside the United States, constitutional protection only extends to aliens within the United States.[38] Concurrently, the Fourth Circuit also reasoned that because an alien seeking admission into the United States has no constitutional rights regarding admission, the Constitution does not protect aliens outside the territorial jurisdiction of the United States.[39] Having found that the foreign claimants had no constitutional rights, the Fourth Circuit held that there was no merit to the foreign claimants' constitutional claim.[40]

The Fourth Circuit also agreed with the district court's alternative holding that the Robins foreign notice program met the constitutional due process requirements regardless of the constitutional rights of the potential foreign claimants.[41] The Fourth Circuit noted that the United States Supreme Court established the benchmark for determining whether a notice program satisfies due process requirements in *Mullane v. Central Hanover Bank & Trust Co.*[42] The Fourth Circuit stated that the *Mullane* standard requires a party to provide notice that is reasonably calculated under the circumstances to inform all parties affected by a judicial proceeding.[43]

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35. Vancouver Women's Health Collective Soc'y v. A.H. Robins Co., 820 F.2d 1359, 1359 (4th Cir. 1987).

36. *Id.* at 1363.

37. *See id.* (stating that United States Supreme Court has intimated that constitutional protections only extend to United States citizens and to individuals within the jurisdiction of the United States).

38. *Id.; see* Matthews v. Diaz, 426 U.S. 67, 77 (1976) (Constitution protects aliens living within jurisdiction of United States even if presence is unlawful, involuntary, or transitory); Wong Wing v. United States, 163 U.S. 228, 238 (1896) (Constitution protects all persons within territory of United States).

39. *Vancouver Women's Health Collective*, 820 F.2d at 1363; *see* Landon v. Plasencia, 459 U.S. 21, 32 (1982) (alien seeking initial admission into United States requests privilege and has no constitutional rights regarding application for admission).

40. *Vancouver Women's Health Collective*, 820 F.2d at 1363.

41. *Id.* at 1363-64; *see supra* note 33 and accompanying text (discussing district court's decision in *In re A.H. Robins Co.* that Robins' foreign notice program met constitutional requirements of due process).

42. *Vancouver Women's Health Collective*, 820 F.2d at 1363; *see also* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1949) (United States Supreme Court establishing constitutional standard for adequate notice).

43. *Mullane*, 339 U.S. at 314-15. In *Mullane* the Central Hanover Bank & Trust Co.

The Claimants' Committee made two arguments to the Fourth Circuit in support of its claim that the foreign public relations program failed to satisfy the notice requirements of due process.[44] First, the Committee claimed that the Robins foreign notice program was not designed to provide adequate notice to potential claimants.[45] Second, the Committee claimed that a statistical disparity between the number of foreign and domestic claims filed in the Robins bankruptcy proceeding indicated that the foreign notice program was inadequate.[46] After reviewing the scope and the steps taken in implementing the foreign notice plan, the Fourth Circuit found that the Robins foreign notice program satisfied the notice requirements of *Mullane* because it found the program was reasonably calculated under the circumstances to provide adequate notice to potential claimants.[47]

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obtained a decree settling all questions concerning management of a common trust fund after providing only notice by publication in a local newspaper. *Id.* at 310-11. The fund contained assets of an unspecified number of beneficiaries, some of whom lived out of state. *Id.* at 309. The bank was aware of the names and addresses of at least some of the beneficiaries. *Id.* at 310. Appellant, a trustee of the trust, objected to the decree, claiming that notice to the beneficiaries was inadequate to satisfy due process, and, therefore, that the court could not properly enter a final decree ending the beneficiaries' right to object to negligent or illegal management of the trust. *Id.* at 311. The Supreme Court stated, "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.* at 314. In *Mullane* the Supreme Court held that, under the circumstances, notice was not adequate to the parties of whose identities and addresses the bank was aware because the bank could have mailed those parties notice without an unreasonble amount of effort. *Id.* at 318. The Supreme Court, however, held that notice by publication was adequate for the unknown parties. *Id.*

44. *See infra* notes 45 and 46 and accompanying text (discussing Claimants' Committee's arguments supporting conclusion that Robins' foreign notice program was inadequate).

45. Brief of Appellant Dalkon Shield Claimants' Committee at 29-30, *Vancouver Women's Health Collective*, 820 F.2d 1359 (4th Cir. 1987). In *Vancouver Women's Health Collective* the Claimants' Committee asserted five reasons why Robins' foreign notice program was unreasonable: (1) The program was not adequately funded, (2) the timing of the program on Epiphany, a major religious holiday, deprived the program of media coverage, (3) the notice failed to describe the Dalkon Shield in a manner that was comprehensible to women in El Salvador and Taiwan, (4) the program did not establish a means for Robins to examine the effectiveness of the notice program, and (5) the program did not provide for the purchase of printed and electronic advertising. *Id.*

46. Brief of Appellant Dalkon Shield Claimants' Committee at 25-29, *Vancouver Women's Health Collective*, 820 F.2d at 1359 (4th Cir. 1987). In *Vancouver Women's Health Collective* the Claimants' Committee indicated that a statistical disparity between the number of foreign and domestic claims established that the domestic program of paid advertising was more effective than the foreign program of public relations. *Id.* at 25-29. The Claimants' Committee claimed that because the foreign program was less effective in reaching the foreign Dalkon Shield users than the domestic program was in reaching the domestic Dalkon Shield users, the foreign program was not reasonably certain to inform those affected by the bar date, and thus the program was unconstitutional. *Id.*

47. *See Vancouver Women's Health Collective*, 820 F.2d at 1363-64 (court reviewing strategy and results of Robins' foreign notice program and finding notice program reasonable under the circumstances); *supra* notes 14-26 and accompanying text (describing strategy and results of foreign notice program); *see also supra* note 43 and accompanying text (notice must

The Fourth Circuit also considered for the first time on appeal the Claimants' Committee's argument that Robins' foreign notice campaign was inadequate because distributing notice through press releases and information packets did not constitute notice by mail or publication as the Bankruptcy Rules of Procedure require.[48] In addressing the argument, the Fourth Circuit noted that, under the Bankruptcy Rules of Procedure, the court determines the form and manner of publication in a bankruptcy proceeding.[49] The court found that the publication provision of the Bankruptcy Rules of Procedure requires a party only to inform or advise interested parties in a bankruptcy proceeding of matters that affect the parties' interests, and that the provision does not require paid advertising to satisfy the notice requirement.[50] Because the Fourth Circuit held that the foreign notice program advised the public of the bar date, the Fourth Circuit held that the Robins' foreign notice program provided adequate notice under the Bankruptcy Rules of Procedure.[51] Therefore, the Fourth Circuit affirmed the district court's decision not to extend or abolish the bar date.[52]

The Fourth Circuit in *Vancouver Women's Health Collective* erred in ruling that constitutional protections do not extend to potential tort claimants in a bankruptcy proceeding who are nonresident aliens located outside the United States.[53] The fifth and fourteenth amendments to the United States Constitution entitle all persons to due process before a United States

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be reasonably calculated under the circumstances to notify all interested parties of pendency of action that may affect party's interest).

48. *Vancouver Women's Health Collective*, 820 F.2d at 1364; *see* Brief of Appellees A.H. Robins Co. and Official Committee of Equity Security Holders at 35, *Vancouver Women's Health Collective*, 820 F.2d at 1359 (4th Cir. 1987) (stating that Claimants' Committee first raised issue of notice violating Bankruptcy Rules of Procedure on appeal). The Bankruptcy Rules of Procedure provide for notice by mail unless the court finds that notice by publication is more practical. *See* BANKR. R.P. 2002(a) (notice by mail provision); 2002(k) (notice by publication provision).

49. *Vancouver Women's Health Collective*, 820 F.2d at 1364; *See* BANKR. R.P. 9008 (providing that court shall determine form and manner of notice when rules require notice by publication).

50. *Vancouver Women's Health Collective*, 820 F.2d at 1364; *see* Estill County v. Noland, 295 Ky. 753, 763, 175 S.W.2d 341, 346 (1943) (publication indicates advising of public or making something known to public). In *Estill County v. Noland* a state statute required county officers to publish proposed county budgets in a newspaper for at least 10 days before final adoption by the Fiscal Court. *Id.* at 763, 175 S.W.2d at 346. Plaintiff argued that notice of the proposed budget was not proper because county officers published in the newspaper only a summary of the budget proposal rather than the full proposal. *Id.* The Kentucky Court of Appeals held that "publication" indicates an advising of the public for a purpose, and that publication is sufficient if the publication gives adequate notice to the public of any matter desired to be brought to the public's attention. *Id.*

51. *Vancouver Women's Health Collective*, 820 F.2d at 1364.

52. *Id.* at 1365; *see also supra* notes 36-51 and accompanying text (discussing Fourth Circuit's decision not to extend or abolish bar date in *Vancouver Women's Health Collective*).

53. *See infra* notes 54-63 and accompanying text (analysis supporting conclusion that Constitution entitles nonresident aliens located outside the United States to due process before United States court may terminate alien's property interest).

court deprives them of a property interest.[54] The United States Supreme Court has held explicitly that non-enemy aliens are persons protected by the fifth amendment due process clause.[55] The Supreme Court also applied the due process clause of the fourteenth amendment to nonresident aliens located outside the United States when the Supreme Court held that the fourteenth amendment due process clause protects foreign parties from being drawn into a state court if the state court does not have personal jurisdiction.[56] In addition, the Supreme Court has ruled that a court violates due process if the court proceeds with an action in a manner that terminates a party's interest before providing the party with adequate notice and an opportunity to be heard on the merits.[57]

Although potential claimants may not have cognizable "claims" under the Bankruptcy Code,[58] potential tort claimants are parties in interest in a reorganization proceeding.[59] As parties in interest, potential tort claimants

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54. *See* U.S. CONST. amend. V (prohibiting federal government from depriving any person of life, liberty, or property without due process of law); U.S. CONST. amend. XIV (prohibiting state from depriving any person of life, liberty, or property without due process of law).

55. *See, e.g*, Societe Internationale v. Rogers, 357 U.S. 197, 212 (1958) (Swiss petitioner entitled to fifth amendment due process before court dismisses action); Russian Volunteer Fleet v. United States, 282 U.S. 481, 489 (1931) (Russian petitioner entitled to fifth amendment protection when United States government requisitioned petitioner's contracts for construction of two ships); *In re* Aircrash in Bali, 684 F.2d 1301, 1308 n.6 (9th Cir. 1982) (fifth amendment applies to all persons who have valid claim over which federal courts have jurisdiction); *cf.* Johnson v. Eisentrager, 339 U.S. 763, 768-77 (1949) (nonresident enemy alien has no access to United States Courts during wartime).

56. *See* Asahi Metal Indus. Co. v. California, 107 S. Ct. 1026, 1030-33 (1987) (fourteenth amendment due process clause requires foreign party to have minimum contacts with forum state before court can assert personal jurisdiction over foreign party). In *Asahi* a California court assumed personal jursidction over a Japanese manufacturer in connection with a products liability suit. *Asahi*, 127 S. Ct. at 1027. The United States Supreme Court ruled that the fourteenth amendment due process clause protected defendant from being drawn into California court because the manufacturer did not have sufficient contacts with California for the court to assume personal jurisdiction. *Id.* at 1033.

57. *See* Logan v. Zimmerman Brush Co., 455 U.S. 422, 429 (1981) (stating that fifth amendment imposes constitutional limits upon power of court to dismiss action without affording interested party opportunity to be heard); Societe Internationale v. Rogers, 357 U.S. 197, 209 (1957) (due process requirement imposes limits on power of courts to dismiss action without a hearing on the merits); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (same); Hovey v. Elliott, 167 U.S. 409, 414-15 (1897) (same).

58. *See In re* Amatex Corp., 755 F.2d 1034, 1040 (3d Cir. 1985) (noting that future claimants in bankruptcy proceeding may not have claims under the Bankruptcy Code); *In re* Johns-Manville Corp., 36 Bankr. 743, 754-56 n.6 (Bankr. S.D.N.Y. 1984) (same). *But see In re* UNR Indus., 29 Bankr. 741, 745 (N.D. Ill. 1983) (potential tort claim is not cognizable under Bankruptcy Code); *see also* 11 U.S.C. § 101(4) (1982) (defining "claim" in bankruptcy proceeding). Under the Bankruptcy Code, a claim is a right to payment or a right to an equitable remedy. *Id.*

59. *See In re* Amatex Corp., 755 F.2d 1034, 1042 (3rd Cir. 1985) (holding that future claimants are parties in interest under § 1109(b) of the Bankruptcy Code); *In re Johns-Manville*, 36 Bankr. 743, 747-48 (S.D.N.Y. 1984) (same); *see also* 11 U.S.C. § 1109(b) (1982) (listing

are entitled to reasonable notice of a bar date that would terminate the claimant's ability to assert a claim.[60] Just as the due process clauses limit the power of a federal district court to exert personal jurisdiction over a foreign defendant,[61] the due process clauses required that the potential foreign claimants in the Robins bankruptcy proceeding receive adequate notice before the Virginia federal district court imposed a bar date that terminated the foreign claimants' ability to assert a claim.[62] In *Vancouver Women's Health Collective*, the Fourth Circuit failed to recognize that the potential foreign claimants were entitled to due process before the district court extinguished the right of the potential foreign claimant to make a claim in the Robins bankruptcy proceeding.[63]

Although the Fourth Circuit erred in ruling that nonresident aliens located outside the United States do not have a constitutional right to notice, the Fourth Circuit's decision not to extend or abolish the bar date was correct because notice to the potential foreign claimants was adequate.[64] The *Mullane* notice standard requires that notice be reasonably calculated to inform all interested parties of an action affecting the parties' interest.[65] A party must formulate notice considering all the circumstances of the proceeding.[66] The reasonableness of the notice depends on whether the

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examples of "party in interest"). Section 1109(b) of the Bankruptcy Code includes debtors, trustees, creditors' committees, equity securities holders' committees, creditors, equity security holders, and indentured trustees as examples of parties in interest. *Id.* However, courts and commentators have held widely that the list of parties in interest in section 1109(b) is not exhaustive, and that the list should be construed broadly to permit parties affected by the proceeding to appear and be heard as parties in interest in the bankruptcy proceeding. *See In re* Cash Currency Exchange Inc., 37 Bankr. 617, 628 n.10 (N.D. Ill. 1984) (stating that courts should construe section 1109(b) liberally) *aff'd*, 762 F.2d 542 (7th Cir. 1985), *cert. denied*, 100 S. Ct. 1233 (1985); 5 W. COLLIER, COLLIER ON BANKRUPTCY ¶ 1109.02 at 1109-23-1109-25 (stating that courts should construe section 1109(b) of Bankruptcy Code broadly to allow parties affected by Chapter 11 proceeding to be heard). Indeed, in a bankruptcy proceeding brought on by mass products liability claims, future claimants are the central focus of the entire reorganization. *In re Johns Manville*, 36 Bankr. at 748-49. Any plan not dealing with the interests of future claimants prevents effective reorganization under chapter eleven. *Id.* at 749.

60. *See* Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1949) (due process requires that all interested parties must be given notice of any proceeding to be accorded finality); *supra* note 43 and accompanying text (discussing *Mullane* notice standard).

61. *See Asahi*, 107 S. Ct. at 1031-33 (due process clause prevents state court from asserting personal jurisdiction over foreign party if foreign party does not have sufficient contact with forum state); *supra* note 56 and accompanying text (discussing *Asahi*).

62. *See supra* notes 55-57 and accompanying text (supporting conclusion that due process entitles potential foreign claimants to notice of Robins bankruptcy proceeding).

63. *See supra* notes 54-62 and accompanying text (cases and analysis supporting conclusion that potential foreign claimants were entitled to adequate notice under fifth and fourteenth amendment due process clauses).

64. *See infra* notes 65-97 and accompanying text (analysis supporting conclusion that Robins foreign notice program was adequate).

65. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1949); *see supra* note 44 and accompanying text (discussing *Mullane* notice standard).

66. *Mullane*, 339 U.S. at 314; *see supra* note 44 and accompanying text (discussing *Mullane* notice standard).

notice is reasonably certain to inform the parties affected by the action, or, alternatively, on whether the notice is less likely to inform than other feasible and customary forms of notice.[67] The *Mullane* standard does not require a party to convey actual knowledge of the action to all interested parties.[68] Indeed, the *Mullane* standard provides that when the audience is missing or unknown, an indirect and probably futile means of notice may be reasonable.[69]

To satisfy the *Mullane* reasonability standard, a court reviewing a notice plan in a bankruptcy reorganization proceeding must balance the need to notify potential claimants against the need to arrive at an efficient, final resolution of claims.[70] Accordingly, the court must consider the interests of the debtor, the security equity holders, the creditors, and the existing claimants in the proceeding as well as the interests of the potential claimants in order to formulate a reasonable notice program.[71] The Bankruptcy Rules of Procedure allow a court flexibility to formulate a reasonable notice plan that accommodates the circumstances of each proceeding.[72] The court has the power to establish the bar date and the form of notice for the proof of claims procedure.[73] The court also may extend the bar date beyond the initial date.[74] A party must show that a court has abused its discretion in formulating a notice program before an appellate court will find cause to amend the notice program.[75] Therefore, the Claimants' Committee in *Vancouver Women's Health Collective* had to show an abuse of discretion

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67. *Mullane*, 339 U.S. at 315. In *Mullane* the Supreme Court held that notice by publication in the newspaper would not be a feasible substitute for notice by mail in a situation in which a party could determine the names and addresses of parties with an interest in the proceeding. *Id.* at 320.

68. *See id.* at 317 (notice by publication is sufficient in circumstances where interested party is unknown, even though notice probably never will reach the party).

69. *Id.*

70. *See In re* DCA Development Corp., 489 F.2d 43, 46 (1st Cir. 1973) (court must balance individual's interest in receiving adequate notice against overall interest of efficient, final resolution of claims); *In re* Johns-Manville Corp., 36 Bankr. 743, 756 n.6 (S.D.N.Y. 1984) (courts must balance need for individual notice against need to move forward to facilitate reorganization plan).

71. *See supra* notes 43 & 65-69 and accompanying text (discussing *Mullane* notice standard); *supra* note 3 and accompanying text (discussing Congress' intent to provide for interests of all parties in reorganization under Bankruptcy Reform Act).

72. *See infra* notes 73-74 and accompanying text (discussion supporting conclusion that court has great discretion in establishing notice program that provides for particular circumstances of each bankruptcy proceeding).

73. *See* BANKR. R.P. 3003(c)(3) (court shall fix time within which party must file proof of claim); *Id.* at 9008 (court determines form and manner in which party may distribute notice by publication).

74. *Id.* at 3003(c) (court may extend bar date upon cause shown).

75. Vancouver Women's Health Collective Soc'y v. A.H. Robins Co., 820 F.2d 1359, 1363 (4th Cir. 1987); *see also In re* GAC Corp., 681 F.2d 1295, 1301 (11th Cir. 1982) (appellant had to show abuse of discretion in formulating notice program for Eleventh Circuit to extend bar date).

before the Fourth Circuit could find cause to reverse the district court's decision not to extend the bar date.[76]

The Robins foreign notice program met the *Mullane* standard because the district court formulated the program considering the unique circumstances of the Robins bankruptcy proceeding.[77] Two significant factors restricted Robins' options in establishing a plan to notify potential foreign claimants of the bar date for tort claims.[78] First, the target audience consisted of unknown and unidentifiable individuals spread out over ninety different countries.[79] Second, the district court had set a five million dollar fiscal limit on the amount Robins could spend on implementing both the foreign and domestic programs.[80] Although the *Mullane* standard requires notice by mail when the identities of the parties in interest are identifiable, the United States Supreme Court has held that when the names, interests, and addresses of the parties are unknown, a party may give valid notice by publication.[81] Courts often have held that notice by publication was adequate to notify unknown potential claimants of the bar date in a bankruptcy proceeding.[82] The unprecedented scale of the Robins' foreign public relations campaign met and surpassed the level of notice supplied by publication programs in other bankruptcy proceedings.[83]

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76. *See supra* note 75 and accompanying text (cases and discussion indicating that Claimants' Committee had to show abuse of discretion in order for Fourth Circuit to reverse district court and extend bar date).

77. *See infra* notes 79-80 (listing two most significant factors in establishing Robins notice program).

78. *See infra* notes 79-80 and accompanying text (describing problems facing Robins in distributing notice to foreign audience in *Vancouver Women's Health Collective*).

79. *See In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. April 1, 1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection With Bar Date Notification Program, Exhib. C., App. C) (report by public relations agency describing obstacles, strategy, and results of notice program).

80. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. Nov. 21, 1985) (order establishing bar date); *see supra* notes 14-21 (discussing district court's order concerning notice).

81. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 317 (1949); *see supra* notes 68-69 and accompanying text (*Mullane* standard does not require notice by mail if identity of party is unknown).

82. *See, e.g.*, *In re* Weis Securities, Inc., 411 F. Supp. 194, 195 (S.D.N.Y.) (finding that notice of bar date published in *New York Times* on two occasions was sufficient in light of policy in favor expediting liquidation proceedings) *aff'd* Siedman v. Redington, 538 F.2d 313 (2d Cir. 1976); *In re* O.P.M. Leasing Services, Inc., 48 Bankr. 824, 831 (S.D.N.Y. 1985) (finding that publication of notice in *Wall Street Journal*, *Datamation*, and *Computer World* was adequate to apprise interested parties of bar date); *In re* Computer Devices, Inc., 51 Bankr. 471, 476 (Bankr. D. Mass. 1985) (finding that publication of bar date on three occasions in *Boston Globe* and *New York Times* was sufficient to satisfy due process notice requirements).

83. *See In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. April 1, 1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection With Bar Date Notification Program, Exhib. C, App. A) (report from public relations agency to John D. Taylor noting that scope of Robins foreign notice program was unprecedented); *compare supra* notes 23-26 and accompanying text (describing scope of Robins foreign notice program) *with supra* note 82 (discussing cases in which notice of bar date in bankruptcy proceeding was adequate when parties only published notice in limited number of newspapers).

Considering the scope of the Robins foreign notice campaign and the reasonability standard of *Mullane*, the Claimants' Committee's contention that Robins could have provided adequate notice to potential foreign claimants only by implementing a paid printed and electronic advertising campaign similar to the domestic program is untenable.[84] A foreign campaign similar to the domestic program would have required as much as ten times the funding set aside by the district court for both the foreign and domestic programs.[85] The Claimants' Committee's proposed foreign notice program would have depleted significantly the bankrupt estate of Robins and, therefore, would have reduced the amount of recovery for all parties with cognizable claims against Robins.[86] Because any portion of a reorganization plan which unreasonably benefits one group at the expense of all other parties violates both the letter and the intent of the Bankruptcy Code, the Claimants' Committee's paid advertising proposal was unreasonable.[87]

The Claimants' Committee's assertion that Robins' foreign notice program was unreasonable because there was a statistical disparity between the response rates of foreign and domestic claimants is also invalid.[88] While the discrepancy in the response rates of the foreign and domestic audiences may be probative in ascertaining the adequacy of the foreign notice program, the discrepancy is not determinative.[89] Robins directed the domestic and foreign notice programs at vastly different audiences, each of which presented different problems in formulating an adequate notice program.[90] The

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84. *See infra* notes 85-87 and accompanying text (analysis supporting conclusion that paid foreign advertising campaign by Robins in *Vancouver Women's Health Collective* would have been unreasonable under the circumstances).

85. Vancouver Women's Health Collective Soc'y v. A.H. Robins Co., 820 F.2d 1359, 1361 (4th Cir. 1987) (foreign direct payment advertising program similar to domestic program would have cost $40-50 million).

86. *See supra* note 3 and accompanying text (discussing Congress' intention to provide for all interests involved in bankruptcy reorganization proceeding); *supra* note 85 and accompanying text (Claimants' Committee's proposed foreign notice program would have depleted bankrupt estate by $40-50 million).

87. *See* 11 U.S.C. § 1123(a)(4) (1982) (providing that reorganization plan must provide for same treatment of each claim or interest of a particular class); 11 U.S.C. chapt. 11 (1982) (Historical and Revision Notes) (indicating that Congress passed Bankruptcy Reform Act to provide greater speed and simplicity in reorganization proceeding for the benefit of all parties).

88. *See infra* notes 89-97 and accompanying text (analysis supporting conclusion that statistical disparity between domestic and foreign response rates does not indicate that foreign notice program was inadequate).

89. *See In re* Johns-Manville Corp, 36 Bankr. 743, 756 n.6 (Bankr. S.D.N.Y. 1984) (if number of claims differs from statistical projections, supplemental notice may be necessary). Even if a party disputing adequacy of notice in a bankruptcy proceeding can show that there was a statistical disparity between the projected response rate and the actual response rate, the party still has to carry the burden of showing that the program was unreasonable under the circumstances or poorly implemented to show that the notice plan was inadequate. *See supra* note 43 and accompanying text (*Mullane* standard requires that notice must be reasonably calculated under circumstances to be valid); *Mullane*, 339 U.S. at 314; *In re* Yoder, 758 F.2d 1114, 1121 (6th Cir. 1985) (court may extend bar date if notice plan not properly implemented).

90. *See In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. April 1, 1986) (Declaration of

domestic audience, for the most part, was largely English-speaking and literate with ready access to electronic and printed media.[91] In contrast, the foreign audience consisted of individuals from many different countries and cultures and, in some areas, was largely illiterate with limited access to printed or electronic media.[92] In accordance with the *Mullane* standard, the district court in *Vancouver Women's Health Collective* considered the different circumstances of the different target environments when the court formulated the foreign and domestic notice programs.[93] The discrepancy between the foreign and domestic response rates does not indicate that the notice program was unreasonable because several other factors may have contributed to the discrepancy.[94] Cultural and political differences between the foreign and domestic groups may have contributed to the disparity in the response rates.[95] For example, sexual modesty and a general unwillingness to litigate may have prevented some foreign individuals from filing claims.[96] Also, governments in some countries restricted Robins' ability to distribute notice to its citizens, possibly contributing to lower response rates in those areas.[97] Accordingly, the Fourth Circuit correctly held that the statistical

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John D. Taylor Regarding Expenses Incurred in Connection With Bar Date Notification Program, Exhib. C, App. C) (public relations agency report describing obstacles, strategy, and results of notice program). *Compare infra* note 91 and accompanying text (describing domestic audience) *with infra* note 92 and accompanying text (describing foreign audience).

91. *In re* A.H. Robins Co., No. 85-01307-R (E.D. Va. April 1, 1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection With Bar Date Notification Program).

92. *Id.*

93. *See In re* A.H. Robins Co., No. 85-01307-R, Memorandum Opinion Denying Motions to Extend or Abolish Bar Date at 16 (June 16, 1986) (court worked with counsel of all parties to formulate reasonable notice program). The district court in *Vancouver Women's Health Collective* found that all parties agreed on the foreign notice program. *Id.*

94. *See infra* notes 95-97 and accompanying text (analysis supporting conclusion that factors other than inadequacy of Robins foreign notice program may have contributed to disparity between domestic and foreign response rates in *Vancouver Women's Health Collective*).

95. *See* Vancouver Women's Health Collective Soc'y v. A.H. Robins Co., 820 F.2d 1359, 1363 (4th Cir. 1987) (Fourth Circuit suggesting reasons for statistical disparity between domestic and foreign response rates).

96. *Id.*

97. *In re* A.H. Robins Co., No. 85-01327-R (E.D. Va. April 1, 1986) (Declaration of John D. Taylor Regarding Expenses Incurred in Connection With Bar Date Notification Program, Exhib. C, App. C) (public relations agency report describing obstacles, strategy and results of notice program). In Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Saudi Arabia, and Syria, for religious and cultural reasons, the governments hesitated to allow the public relations agency to distribute information concerning birth control devices. *Id.* In Laos and Vietnam the governments would not permit the public relations agency to distribute notice of the bar date in the Robins bankruptcy proceeding unless the claims were submitted to the governments and unless the governments' central banks could receive and distribute any compensation. *Id.* In Kenya the government asked the public relations agency not to conduct a press conference announcing the bar date because the government was worried that publicity about a birth control device might conflict with the government's birth control programs. *Id.*

disparity between the number of foreign and domestic claims filed did not make the Robins foreign notice program inadequate.[98]

The Fourth Circuit also correctly held that the foreign notice program did not violate the Bankruptcy Rules of Procedure.[99] The Bankruptcy Rules of Procedure provide for notice by mail or by publication in the event that notice by mail is not practical.[100] Because the Bankruptcy Rules of Procedure provide that the court shall determine the manner and form of publication,[101] and because courts have held that publication is not limited exclusively to paid advertisement in the media,[102] the public relations campaign implemented to provide foreign claimants with notice of the bar date satisfied the Bankruptcy Rules of Procedure.[103]

The Fourth Circuit in *Vancouver Women's Health Collective Society v. A.H. Robins Co.* upheld the district court's decision not to extend the bar date for foreign claimants in the A.H. Robins bankruptcy proceeding.[104] The Fourth Circuit's ruling concerning the constitutional rights of potential foreign claimants in *Vancouver Women's Health Collective Society v. A.H. Robins Co.* was improper because the ruling denied the potential foreign claimants' their right to due process.[105] However, the Fourth Circuit properly interpreted the *Mullane* notice standard in finding that the potential foreign claimants were given adequate notice of the bar date.[106]

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98. *See supra* notes 94-97 and accompanying text (analysis supporting conclusion that factors other than inadequacy of Robins foreign notice program may have contributed to disparity between domestic and foreign response rates in *Vancouver Women's Health Collective*).

99. *See infra* notes 100-103 and accompanying text (supporting conclusion that foreign notice program in *Vancouver Women's Health Collective* did not violate Bankruptcy Rules of Procedure).

100. *See supra* note 73 and accompanying text (court has discretion in determining whether a party shall provide notice by mail or publication).

101. *See* BANKR. R.P. 9008 (court shall determine form and manner of notice by publication).

102. *See* Estill County v. Noland, 295 Ky. 753, 763, 175 S.W.2d 341, 346 (1943) (discussing definition of "publication"); *supra* note 50 and accompanying text (discussing *Estill County v. Noland*).

103. *See supra* notes 100-102 and accompanying text (supporting conclusion that foreign notice program in *Vancouver Women's Health Collective* did not violate Bankruptcy Rules of Procedure).

104. Vancouver Women's Health Collective Soc'y v. A.H. Robins Co., 820 F.2d 1359, 1365 (4th Cir. 1987).

105. *See supra* notes 54-63 and accompanying text (cases and analysis supporting conclusion that Fourth Circuit in *Vancouver Women's Health Collective* erred in ruling that United States Constitution does not entitle potential foreign claimants to notice).

106. *See supra* notes 62-103 and accompanying text (cases and analysis supporting conclusion that Robins foreign notice program satisfied constitutional requirements of due process and procedural requirements of Bankruptcy Rules of Procedure).