

## Judge to extend Cavendish injunction

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A judge in bankrupt **Cavendish Analytical Laboratory Ltd.** will issue an order Thursday, July 12, extending a preliminary injunction under its unusual Chapter 15 petition.

There was still uncertainty late Wednesday, however, over whether the order would merely extend the preliminary injunction blocking U.S. creditors from moving on Cavendish's assets or if the injunction would be made permanent.

Either way, the order due out Thursday by Judge James Marlar in U.S. Bankruptcy Court for the District of Arizona in Tucson would set the stage for a final hearing on where the decision will be made on the ownership and future distribution of Cavendish's U.S. assets. That ruling will be made in either U.S. Bankruptcy Court under the Chapter 15 petition or in Cavendish's Canadian liquidation, said Cathy Reece of **Fennemore Craig PC**, counsel for the debtor's foreign representative.

Cavendish filed for Chapter 15 on May 30 and Marlar granted the preliminary injunction on June 1 pending Tuesday's hearing when the debtor sought to make the injunction permanent over the life of its Canadian liquidation. An involuntary bankruptcy was filed against Cavendish by creditor **Royal Bank of Canada** in Supreme Court of British Columbia on Jan. 27, 2006, and Cavendish is in the process of liquidating under that petition.

Cavendish is seeking to turn its preliminary injunction barring U.S. creditors from moving on its assets into permanent relief for the life of its Canadian liquidation through recognition of that insolvency as its foreign main petition.

While Chapter 15 has typically been used by foreign debtors as a tool to keep U.S. creditors from attaching their assets, the Vancouver, B.C.-based automated chemical analyst is seeking to expand that function by giving its foreign representative the right to move on its assets in the U.S. and seizing them on behalf of its bankruptcy estate.

The specific Cavendish assets were repossessed by **Arizona Assayers** on Jan. 4, 2006, after it unilaterally terminated a \$180,000 contract to sell them to Cavendish for alleged nonpayment. Both Cavendish and Arizona Assayers assay ore samples from around the world.

"There is a serious question as to whether the assets in Tucson may be considered part of the debtor's estate," Arizona Assayers, formerly known as Actlabs Inc., argued in its objection to recognition at Tuesday's hearing. "When the debtor did not pay when the \$180,000 was due 120-days after closing on Dec. 31, 2005, Actlabs acted to retain the seized assets in full satisfaction of the debt owed to it."

On Jan. 24, 2006, Actlabs filed a lawsuit against Cavendish for breach of contract in a case that is pending in Arizona Superior Court in Tucson, records show. A trial has been set for Aug. 21-24 on the matter.

"Despite knowledge of the Canadian proceeding, Actlabs continues to wrongfully possess the Arizona assets, to operate the business, to collect receivables and to prosecute the Arizona action," Cavendish said in its Chapter 15.

Cavendish is seeking bankruptcy court approval for its foreign representative, **Wolrige Mahon Ltd.**, to attach the disputed U.S. assets from Arizona Assayers under recognition of its Canadian liquidation as its main foreign proceeding, records show. Wolrige Mahon is the Canadian trustee in the foreign liquidation and was appointed by that court as Cavendish's foreign representative as the sole party authorized to file a Chapter 15 on its behalf in the U.S.

"There's a slight twist to this one (Chapter 15) because we're not asking the bankruptcy court to stay a U.S.

action against a foreign debtor that you often see in these proceedings," Reece said. "We expect the preliminary injunction to be made permanent (Thursday) and then either Judge Marlar or the Canadian judge will have to decide who owns the (U.S.) assets and whether they're subject to the security interests of creditor (Arizona Assayers)." The counsel for Arizona Assayers, Karl Macomber of **Monroe & McDonough PC** in Tucson, said he thought that Marlar indicated he would merely extend the preliminary injunction indefinitely without granting recognition of the Canadian liquidation as the foreign main proceeding. That would require Cavendish to return to court within several weeks to seek a second hearing on the recognition issue.

"Judge Marlar granted an indefinite extension to the preliminary injunction until the next hearing but held back on recognition of Cavendish's Canadian insolvency as its foreign main proceeding," Macomber said. "The judge held off on recognition because there's so little case law concerning Chapter 15 and it's not exactly clear what things necessarily flow from it."

Chapter 15 expanded and replaced Section 304 of the U.S. Bankruptcy Code when it was added along with other amendments on Oct. 17, 2005. The entirely new chapter to the Code was designed to give foreign debtors more time to restructure in their home courts by staying creditors from moving against their U.S. Assets.