UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re

UNITED STATES LEATHER, INC., Case No. 98-24997

Debtor. Chapter 11

MEMORANDUM DECISION ON DEBTOR'S MOTION FOR ORDER DETERMINING AMOUNT OF FEES DUE UNDER 28 U.S.C. § 1930(a)(6)

The debtor, United States Leather, Inc., moved the court for an order determining that the debtor's "disbursements," for purposes of calculating the amount of postconfirmation fees owed under 28 U.S.C. § 1930(a)(6), include only payments made by the reorganized debtor pursuant to the plan and do not include any other postconfirmation payments. The United States Trustee objected to the motion and asserted that fees due are based on all disbursements, i.e., including all operating costs, of the reorganized debtor. For the reasons stated in this decision, the debtor's motion is overruled.

This is a core proceeding under 28 U.S.C. § 157(a) and (b)(1) and this court has jurisdiction pursuant to 28 U.S.C. §§ 1334, 157(a) and (b)(1), and 151. This memorandum decision shall serve as findings of fact and conclusions of law under Bankruptcy Rule 7052.

Background

The pertinent facts are not in dispute. On May 11, 1998, the debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Acceptances of the plan of reorganization were solicited from creditors before the petition was filed, making this a

prepackaged plan or "prepak." On July 7, 1998, this court entered an order confirming the plan of reorganization. On July 20, 1998, all conditions precedent to the effectiveness of the plan had occurred and the plan became effective. The debtor expeditiously resolved its objections to claims without the need for hearings before the court.

The debtor had been prepared to have the case closed shortly thereafter. However, the Informal Noteholders' Committee objected to the unsecured claim of Houlihan, Lokey, Howard & Zukin Capital, a financial advisor to the debtor. Through no fault of the debtor, the case could not be closed for the remainder of the third quarter of 1998, the fourth quarter of 1998, and the first two quarters of 1999.

The objection to the financial advisor's claim was eventually settled. A final decree has now been entered because the case has been fully administered. Fed. R. Bankr. P. 3022. *See In re Jay Bee Enters., Inc.*, 207 B.R. 536 (Bankr. E.D. Ky. 1997) (holding it is not necessary to delay final closing of case for final determination of U.S. Trustee's fees).

Section 1930(a)(6)

Under 28 U.S.C. § 1930(a)(6), a party commencing a case under chapter 11 of the Bankruptcy Code is required to pay quarterly fees to the United States Trustee. The statute states, in relevant part, as follows:

> In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be $250 for each quarter in which disbursements total less than $15,000....

28 U.S.C. § 1930(a)(6). The amount of fees is calculated on a sliding scale based on the debtor's

"disbursements" for the quarter, with a maximum fee of $10,000 for any quarter in which disbursements exceed $5,000,000. *Id.*

The dollar amount to which the sliding scale is applied has been the source of frequent litigation, primarily centered around the meaning of the term "disbursements." Neither the statute nor the Bankruptcy Code defines the term. Courts which have addressed this issue have come up with three definitions.

The first line of cases, espoused by the U.S. Trustee, defines the term broadly: disbursements include all disbursements of the reorganized debtor. There are numerous cases in support of the U.S. Trustee's position. *See In re Maruko, Inc.*, 219 B.R. 567 (S.D. Cal. 1998); *In re Postconfirmation Fees*, 224 B.R. 793 (E.D. Wash. 1998); *In re A.H. Robins Co.*, 219 B.R. 145 (Bankr. E.D. Va. 1998); *In re Campesinos Unidos, Inc.*, 219 B.R. 886 (Bankr. S.D. Cal. 1998); *In re Hess'Sons, Inc.*, 218 B.R. 354 (Bankr. D. Md. 1998); *In re Roy Stanley, Inc.*, 217 B.R. 23 (Bankr. N.D.N.Y. 1997); *In re Gates Community Chapel of Rochester, Inc.*, 212 B.R. 220 (Bankr. W.D.N.Y. 1997); *In re Corporate Business Prods., Inc.*, 209 B.R. 951 (Bankr. C.D. Cal. 1997); *In re Sedro-Woolley Lumber Co.*, 209 B.R. 987 (Bankr. W.D. Wash. 1997); *In re P.J. Keating Co.*, 205 B.R. 663 (Bankr. D. Mass. 1997); *In re Ozark Beverage Co.*, 105 B.R. 510 (Bankr. E.D. Mo. 1989). These cases generally emphasize the legislative purpose of the statute, which was to raise revenues for the self-funded U.S. Trustee program. Thus, any restrictions placed on the term would frustrate that purpose.

The second line of case defines "disbursements" narrowly, holding that postconfirmation quarterly fees are limited to the $250 minimum amount specified by the statute. *See In re Celebrity Duplicating Serv., Inc.*, 216 B.R. 942 (C.D. Cal. 1997); *In re Maruko, Inc.*, 206 B.R.

225 (Bankr. S.D. Cal. 1997), *rev'd*, 219 B.R. 567 (S.D. Cal. 1998); *In re Boulders on the River, Inc.*, 205 B.R. 948 (Bankr. D. Or.), *rev'd*, 218 B.R. 528 (D.Or. 1997). Reasoning that upon confirmation of a plan the bankruptcy estate ceases to exist, these courts conclude that there can be no "disbursements" made postconfirmation by the estate. Neither the U.S. Trustee nor the debtor espouses this view.

Finally, the third line of cases holds that postconfirmation quarterly fees should be computed upon "disbursements" made pursuant to the confirmed plan. *In re Munford, Inc.*, 216 B.R. 913 (Bankr. N.D. Ga. 1997); *In re Betwell Oil & Gas Co.*, 204 B.R. 817 (Bankr. S.D. Fla. 1997); *In re Jamko, Inc.*, 207 B.R. 758 (Bankr. S.D. Fla. 1996); *In re SeaEscape Cruises, Ltd.*, 201 B.R. 321 (Bankr. S.D. Fla. 1996). As one court noted, this line of cases "attempts to harmonize the legislative purpose with the reorganized debtor's right to a 'fresh start.'" *Munford*, 216 B.R. at 918. The debtor argues that the court should adopt this third line of reasoning.

For the third quarter of 1998, the debtor's postconfirmation plan disbursements were $141,000, and it paid a fee of $750.00. The United States Trustee demanded a balance of $9,250.00 for that quarter, the maximum fee based on total operating disbursements of $46,723,000.00. Operating disbursements would result in the $10,000.00 maximum fee for the remaining quarters that the case remained open.

Legislative History

As a general rule, courts do not inquire into legislative history of a statute when the meaning of the statute is clear on its face. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235,

240-41, 109 S.Ct. 1026, 1030 (1989). When a statute is ambiguous as to what it means or how it is to be applied, the legislative history may be instructive. Here, 28 U.S.C. § 1930(a)(6) is grammatically unambiguous, but that does not mean that the meaning is clear; hence, the voluminous litigation on how the term "disbursements" is to be applied. The fact that three quite different interpretations of the statute have emerged, which are described above, persuades this court that ambiguity exists. Thus, a review of the legislative history is in order.

In 1996, Congress passed two amendments to section 1930. Prior to these amendments, poor drafting of the statute caused quarterly fees in chapter 11 cases to terminate upon the occurrence of any of three events: (1) confirmation of the plan, (2) conversion of the case to another chapter the bankruptcy code, or (3) dismissal of the case.[1] *See St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1534 (9th Cir. 1994), *modified in part*, 46 F.3d 969 (9th Cir. 1995). Thus, under the pre-amended statute, quarterly fees were only owed during the existence of the chapter 11 bankruptcy estate.

Prior to the first amendment, the need for additional staff and revenue for the self-funded U.S. Trustee system was recognized. The budget justification documents filed in connection with the fiscal year 1996 budget proposed by President Clinton contained the following:

> Program Increase: Increase by 55 positions (20 attorneys) ... to strengthen chapter 11 case supervision and post confirmation oversight.
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> ...
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> The most recent available data from the Administrative Office of the United States Courts

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[1]The pre-amended statute read as follows:

> In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until a plan is confirmed or the case is converted or dismissed, whichever occurs first.

28 U.S.C. § 1930(a)(6)(1995).

> indicates that as of September 30, 1994, there were 69,472 chapter 11 cases pending in the courts (including both preconfirmation and post confirmation cases). Yet, the [UST] Program's chapter 11 data indicate that as of October 15, 1994 there were only 16,387 chapter 11 cases for which no confirmation plan had been approved. These statistics highlight the problem of chapter 11 cases languishing on the docket after a plan of confirmation had been approved by the court. For cases to remain on the docket in an active status when debtors are not meeting their obligations as specified in the restructuring plan is a patent abuse of the bankruptcy system. It is estimated that approximately 80 percent of the reorganization plans confirmed under chapter 11 of the Bankruptcy Code do not make it to fruition. Monitoring debtors in post confirmation is a duty which was not envisioned by the staffing structure at the time of the Program's nationwide expansion and one for which the Program has never received resources. The requested increase is critical to ensure that there is an entity in the bankruptcy process which will require debtors to meet their post confirmation responsibilities under the law.
>
> General Provisions: the [requested increase in legal staff] is paid for by a proposed change in the law which, if enacted, would require chapter 11 debtors to continue to make quarterly payments based on disbursements until a case is converted or dismissed. The proposed change is a logical extension of the Program's present funding mechanism. Currently, chapter 11 debtors are only assessed quarterly fees until a reorganization plan is confirmed by the bankruptcy court, making post confirmation debtors the only entities in the bankruptcy process who are exempt from fees. There is no rational basis for such an exemption and the proposed amendment will close a loophole that allows cases to lanquish without paying for Program services.

Fiscal Year 1996 Budget Justifications, United States Trustee Fund, Salaries and Expenses, Summary Statement, Fiscal Year 1996, p. 12-13 (1995), cited in *In re Boulders on the River, Inc.*, 218 B.R. 528, 533-34 (D. Or. 1997).

Furthermore, Congress was aware of an anticipated decline in business bankruptcy filings, which would not necessarily cause a decline in the work of the United States Trustee in the near future:

> The recommendation [to increase the U.S. Trustee's fees] assumes an overall decline in bankruptcy filings in 1996, as assumed in the budget, but reduces the amount of funding to correspond to this decline, which was not reflected in the budget request. The Committee understands that due to this decline, Chapter 11 filing fees which partially finance this program are anticipated to drop significantly. However, because cases with assets to administer often take two to three years, the pending caseload still in progress

> will require ongoing attention. The Committee recommendation includes an extension of the quarterly fee payments made under Chapter 11 to include the period after a reorganization plan has been confirmed by the Bankruptcy Court until the case has been dismissed (i.e., the post-confirmation period). Presently, quarterly fees are collected only until the plan of reorganization in the case is confirmed by the court.

H.R. Rep. No. 104-196, 104th Cong., 1st Sess. at 16-17 (1995).

Consequently, in January 1996, the statute was amended, as follows:

> In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until ~~a plan is confirmed or~~ the case is converted or dismissed, whichever occurs first.

28 U.S.C. § 1930(a)(6)(1996). The amendment was later clarified in September 1996 to apply to all pending cases, even those with plans confirmed prior to the January amendment's effective date. *See* Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. No. 104-208, § 109(d), 110 Stat. 3009 (1996).

Analysis

The legislative background demonstrates that section 1930 was intended to generate additional revenue for the U.S. Trustee system, in part for postconfirmation oversight. That much is crystal clear. The conflict among reported cases is over how those funds were to be generated. Most courts, and the parties herein, have focused on the meaning of "disbursements" in order to reach what they perceive as a logical and fair result in the absence of legislative history on the meaning of the word. The two narrower approaches are both grammatically and logically defensible. The narrowest definition, not advocated by either of the parties here, focuses on the fact that preconfirmation disbursements all come from property of the estate, so

Congress must have meant that postconfirmation disbursements refers only to disbursements of property of the estate. Since there is no such property postconfirmation, the minimum fee must be due. The debtor's approach is that all preconfirmation disbursements come from activities related to the bankruptcy, so Congress must have meant that postconfirmation disbursements refers only to bankruptcy related payments, i.e., disbursements made pursuant to the plan. Either of these limitations would facilitate debtors' reorganizations and would still raise money for the U.S. Trustee system. Unfortunately for debtors, the wording of the statute and the legislative history are not so limited or qualified.

A few cases rejecting the broad definition discussed the purpose for which additional fees are needed. For example, postconfirmation oversight by the U. S. Trustee's office is usually limited to, in most chapter 11 cases, whether an application for final decree is timely filed and whether the plan has been substantially consummated. It does not have oversight over the postconfirmation debtor's regularly conducted business activities. So why should Congress provide that the U.S. Trustee receive a payment from funds it does not supervise and that have no relation to its duties? The court in *Betwell,* 204 B.R. 817, and courts that followed it, point out that to charge the debtor's postconfirmation operations when it is no longer under court supervision makes no sense. Perhaps it is not wise or fair – certainly it is not fair in this exceedingly brief and well run case – but this is not the same as saying that Congress did not mean to charge fees based on all postconfirmation disbursements or that it cannot do so. By eliminating confirmation of the plan as an event changing how fees were charged, it is logical that Congress intended for operating disbursements to be defined the same for fee purposes before and after confirmation. *See P.J. Keating*, 205 B.R. 663; *Maruko*, 219 B.R. 567. Congress

identified postconfirmation debtors as a burden to the system and a source of funds. It did not by statutory language or legislative history limit calculation of fees to a class of disbursements related in some way to the bankruptcy estate or to the plan. Therefore, this court cannot infer or impose such limits.

The debtor points out that charging it for postconfirmation operations actually undermines the debtor's reorganization efforts and compromises its chances for future success. That may be correct, but again, Congress is within its policy making authority to raise funds in this manner. Perhaps it intended to cause those who successfully used the system to fund it to a higher degree than before. Failed cases certainly do not fund the United States Trustee system, but these take up a good deal of the Trustee's workload, as do cases that are operating but not closed. Thus, the method chosen by Congress is not altogether illogical or even unfair.

Conclusion

For the reasons stated above, fees imposed by 28 U.S.C. § 1930(a)(6) shall be determined by reference to all disbursements of any kind made by the debtor until the case was closed. The debtor's objection to fees charged by the United States Trustee is overruled. A separate order will be entered accordingly.

Dated at Milwaukee, Wisconsin, June 15, 1999.

BY THE COURT:

Honorable Margaret Dee McGarity
United States Bankruptcy Judge