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Bankruptcy and Restructuring Alert

Third Circuit Court Obligates Debtors in Jointly Administered Cases to Pay U.S. Trustee's Fees Based on Disbursements Made By or On Behalf of Each Debtor Notwithstanding Centralized Cash Management System

In *Genesis Health Ventures, Inc. v. Stapleton (In re Genesis Health Ventures, Inc.)*, 402 F.3d 416 (3d Cir. 2005), the United States Court of Appeals for the Third Circuit (the "Third Circuit") held, in a case of first impression, that *each* debtor in jointly administered cases must pay U.S. Trustee's fees based on the payment of its respective operating expenses, regardless of whether such expenses are paid directly or paid indirectly by another debtor through a centralized cash management system. The Third Circuit also addressed a related issue concerning calculation of U.S. Trustee's fees after confirmation of a plan containing a deemed consolidation provision.

The *Genesis* case involved approximately 350 affiliated debtors (the "Debtors") which utilized an approved centralized cash management system. In the little more than one year since the filings, the Debtors had paid \$691,250 in quarterly disbursement fees to the U.S. Trustee. The Debtors calculated these fees based upon disbursements made by the Debtors holding the accounts from which the disbursements were made. The U.S. Trustee objected to the plan on the ground that her office was owed an additional \$3.7 million in quarterly fees. The U.S. Trustee argued that the quarterly fees should have been calculated based upon the disbursements actually made on behalf of each Debtor, regardless of which Debtor held the accounts from which the disbursements were made. The bankruptcy court and the district court agreed with the U.S. Trustee, and the Third Circuit affirmed.

The Third Circuit examined the plain meaning of the statute requiring the payment of quarterly fees to the U.S. Trustee. 28 U.S.C. § 1930(a)(6) provides that "a quarterly fee shall be paid to the United States trustee ... *in each case* under chapter 11 of title 11 for each quarter ... until the case is converted or dismissed, whichever occurs first." (Emphasis added.) The Third Circuit concluded that the plain meaning of this statutory language is that *each* debtor in its respective chapter 11 case must pay its own quarterly fee. The Debtors' centralized cash management procedures did not alter the fact that payments were for the account of particular Debtors. Indeed, the bankruptcy court when it approved the procedures directed the Debtors to maintain records of all inter-company transfers. In this context, "[s]ubstantive trumps form."

For the same reason, the Third Circuit flatly rejected the Debtors' argument that the quarterly fees payable on behalf of *each* Debtor ceased upon confirmation of the Debtors' plan which deemed the Debtors consolidated "for Plan [p]urposes [o]nly." The Third Circuit viewed the Debtors' plan to be "several zip (if not area) codes away

from anything resembling substantive consolidation.” The plan itself explicitly provided that the deemed consolidation did not affect the legal and organizational structure of the reorganized Debtors. In addition, the record showed that neither the Debtors nor any other party had requested substantive consolidation and that the Debtors affirmatively made the business decision *not* to seek substantive consolidation. Thus, each of the Debtors remained liable for post-confirmation quarterly fees in each of their cases.

For more information on this case, “The Bankruptcy Abuse and Consumer Protection Act of 2005,” or any other aspect of business bankruptcy law, please feel free to contact one of our Partners in our Bankruptcy and Restructuring Department.

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