28 U.S.C. § 1930(a)(6)
28 U.S.C. § 1334(b)
28 U.S.C. § 157(b)(1)
28 U.S.C. § 157(c)
FRBP 3022

United States Trustee v. Boulders On The River, Inc.
(In Re Boulders On The River, Inc.) Dist. Ct. # 97-6138-HO
Main Case # 692-64208-aer11

12/18/97 District Court (Hogan) ~~Unpublished~~ PUBLISHED
reversing Radcliffe
(Radcliffe opinion found at 205 B.R. 948, and E97-2(8) in Court's directory) 218 B.R. 528

A Chapter 11 plan was confirmed. Several years later, the Reorganized Debtor moved for entry of a final decree. The United States Trustee (UST) objected to entry of same until its quarterly fees were paid. At issue was the amount of post confirmation fees owed under 28 U.S.C. § 1930(a)(6), as amended, (the statute).

The bankruptcy court held the term "disbursements" as used in the statute, and upon which the quarterly fee is based, is limited to funds paid by a bankruptcy estate. If no bankruptcy estate survives confirmation, (as was the case at bar) only the minimum quarterly fee is owed.

The bankruptcy court conditioned entry of the final decree upon payment of the minimum fee for the quarter in question.

On appeal, the district court reversed.

After analyzing the statute's legislative history, the court held the term "disbursements" is <u>not</u> limited to funds paid from a bankruptcy estate. A reorganized debtor is liable for UST fees under the statute's formula, based on its disbursements post confirmation, even if no bankruptcy estate survives confirmation. This interpretation comports with the statute's revenue-raising purpose, especially in light of the UST's duty to monitor cases post-confirmation.

The court further noted: 1) a "reorganized debtor" remains a commencing party within the terms of the statute, so as to be liable for UST fees post confirmation; 2) the fees apply even to cases with plans confirmed before the statute's effective date of January 27, 1996; 3) the fees terminate when the case is converted, dismissed or closed (whichever earlier). Although the term "closed" is not contained in the statute, the existence of an open case is a precondition to assessment of the fees;

The court did not address whether all disbursements by a

reorganized debtor, or only those made pursuant to a confirmed plan, are subject to UST fees,

Further, the court held the bankruptcy court had "arising in" jurisdiction under 28 U.S.C. § 1334(b) to hear the fee dispute, finding the matter was "core" under 28 U.S.C. § 157(b)(1). In the alternative, the bankruptcy court had at least "related to" jurisdiction over a "non core" matter.

Finally, the court held the bankruptcy court properly conditioned entry of the final decree upon payment of the outstanding UST fees. The fee dispute had been either a "contested matter or adversary proceeding" which had not been "finally resolved." As such, the estate was not "fully administered" under FRBP 3022, and entry of a final decree was not appropriate until the fee dsipute had been resolved. The bankruptcy court had authority to condition entry of the final decree upon payment of the fees, and did not err in exercising its discretion to do so.

U.S. BANKRUPTCY COURT
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DISTRICT OF OREGON
EUGENE, OREGON
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

In re: BOULDERS ON THE RIVER, INC., Debtor. UNITED STATES TRUSTEE, Appellant, v. BOULDERS ON THE RIVER, INC., Appellee.	Civil No. 97-6138-HO Bankruptcy Court Case No. 692-64208-aer11 ORDER

The United States Trustee ("UST") appeals from the January 31, 1997, order of the bankruptcy court requiring the debtor, Boulders on the River, Inc. ("Boulders"), to pay the minimum quarterly fee of $250 for the second quarter of 1996, pursuant to 28 U.S.C. § 1930(a)(6), as recently amended by Congress. The order further indicates a final decree closing the case, although otherwise appropriate,

E97-26(40)

will be withheld pending payment of the proper fee. In re Boulders on the River, Inc., 30 B.R. 948, 952-53 (Bankr. Or. 1997).

On appeal, the UST argues the bankruptcy court misinterpreted 28 U.S.C. § 1930(a)(6), the UST quarterly fee statute. The UST argues the bankruptcy court erred by calculating the fee based only on disbursements made by the bankruptcy estate, rather than distributions made in the case generally. In particular, the UST objects to the bankruptcy court's refusal to consider disbursements made by the reorganized debtor.

BACKGROUND

The facts are not in dispute. The debtor, Boulders, an Arizona corporation, filed a petition for relief under chapter 11 of the United States Bankruptcy Code on July 21, 1992. Boulders' principal business is a 248-unit apartment complex located in Eugene, Oregon. The bankruptcy court valued the debtor's property at over $15 million, and for the purposes of voting and plan confirmation, the parties agreed the secured creditor was owed approximately $13.3 million. The bankruptcy court confirmed Boulders' plan of reorganization on April 14, 1993. The case remained open to resolve disagreements between the debtor and the secured creditor as well as other matters. In re Boulders on the River, Inc., 169 Bankr. 969 (Bankr. Or. 1994).

The plan of reorganization does not mention the payment of post-confirmation quarterly fees. Paragraph VIIA of the confirmed plan provides:

> On the Effective Date the Reorganized Debtor shall be vested with all of its property free and clear of all claims, liens, charges or other interests of creditors arising prior to the Confirmation Date except for liens upon property securing Allowed Secured Claims provided for in the Plan. The Reorganized Debtor may transact business and conduct its affairs free of any restriction of the Court or the Code, except as explicitly set forth in the Plan and various security documents and debt instruments. . . .

Second Amended Plan of Reorganization, p. 6.

Paragraph XI of the confirmed plan provides: "The Bankruptcy Court shall retain jurisdiction of this case for the following purposes: * * * D. To fix allowances of compensation and other Administrative claims." Second Amended Plan of Reorganization, XI, p. 8. The plan's glossary defines "Administrative Claim" to mean: "all costs and expenses of administration allowed under Bankruptcy Code § 503(b), including, without limitation . . . any fees or charges assessed against the estate of a debtor under Chapter 123, Title 128, United States Code, § 1930." Second Amended Plan of Reorganization, XIII, p. 10.

The plan also provides for the preservation of certain causes of action:

> Any and all causes of action which the Debtor may currently possess (known or unknown), or which may subsequently arise under any of the provisions of the Code or which may be enforceable under any of the

> provisions of the Code, or any other law or statute, shall be preserved and this Court shall retain jurisdiction to dispose of such causes of action. All such causes of action shall belong to the Debtor as a part of the assets retained by the Debtor.

Second Amended Plan of Reorganization, XIIF, p. 10.

In November, 1995, two and a half years after the bankruptcy court confirmed the plan, Boulders and the secured creditor amicably resolved their differences, in large part through the refinancing of the property which resulted in an $11.5 million payment to the secured creditor. On June 11, 1996, Boulders filed its final report and application for entry of a final decree with the bankruptcy court. The UST filed a response arguing the decree should not be entered until Boulders paid the appropriate quarterly fee for the second quarter of 1996.[1]

On January 31, 1997, the bankruptcy court entered a memorandum opinion ordering Boulders to pay a quarterly fee of $250 for the second quarter of 1996, the minimum fee under the fee schedule set out in 28 U.S.C. § 1930(a)(6). The court concluded that, upon payment of the fee, a final decree would be entered closing the case. Boulders, 205

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[1] The parties agree Boulders paid the proper fee for the first quarter of 1996. The UST is seeking fees only for the second quarter of 1996. The parties further agree that if disbursements from the reorganized debtor, rather than the bankruptcy estate, are the proper basis for calculation of the quarterly fee in this case, the correct fee for the second quarter of 1996 is $3,750. Appellant's Opening Brief at 2, n.2; Brief of Appellee at 2, n.1.

B.R. at 951. The court stated:

> [T]he bankruptcy estate ceased to exist when the order of confirmation became final. Hence, there was no bankruptcy estate in existence during the second quarter of 1996. It follows, there were no 'disbursements' upon which to compute the fees owing to the UST pursuant to the statute.
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> * * *
>
> It does not follow, however, that there are no fees owing to the UST pursuant to the statute. The statute makes it clear that fees are owing in ". . . each case under Chapter 11 of Title 11. . . ." The statutory scale provides that the fees shall be ". . . $250 for each quarter in which disbursements total less than $15,000; . . ." Here, since the disbursements for the second quarter of 1996 were less than $15,000, a fee of $250 is owed to the UST.

Id.

One substantive and two procedural issues are presented in this case. The substantive issue is whether the term disbursements in section 1930(a)(6) includes distributions made by a reorganized debtor. The procedural issues relate to the bankruptcy court's jurisdiction to hear and decide this matter and whether it properly withheld entry of a final decree pending payment of the fees.

For the reasons set forth below, this court will reverse the order of the bankruptcy court. The bankruptcy court's exercise of jurisdiction and the form of its order were proper.

STANDARD OF REVIEW

A bankruptcy court's findings of fact are reviewed for clear error, and its conclusions of law are reviewed de novo. In re DAK Indus., Inc., 66 F.3d 1091, 1094 (9th Cir.

1995). Questions of statutory construction are conclusions of law subject to de novo review. In re MacIntyre, 74 F.3d 186, 187 (9th Cir. 1996).

STATUTORY AND LEGISLATIVE BACKGROUND

a. Pre-Amendment Statute:

In 1996, Congress passed two amendments to the UST quarterly fee statute. Prior to these amendments, quarterly fees in chapter 11 cases terminated upon the occurrence of any of three events: (1) confirmation of a plan, (2) conversion of the case to another chapter of the bankruptcy code, or (3) dismissal of the case. Of these three, plan confirmation, which is ideally followed soon after by entry of a final decree closing the case, was and is the preferred and most frequently used method of concluding a chapter 11 case. Prior to one of these three terminating events, section 1930(a)(6) fees were determined for each quarter by reference to a graduated fee schedule set forth in the statute. Depending upon the level of disbursements in a quarter, section 1930(a)(6) fees ranged from a minimum of $250 for cases with disbursements less than $15,000, to a maximum of $5,000 for cases with disbursements of $3 million or more. The pre-amended statute is as follows:

Section 1930. Bankruptcy Fees.

(a) Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay

> to the clerk of the district court or the clerk of the bankruptcy court . . . the following filing fees:
>
> * * * *
>
> (6) 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. The fee shall be $250 for each quarter in which disbursements total less than $15,000; $500 for each quarter in which disbursements total $15,000 or more but less than $150,000; $1,250 for each quarter in which disbursements total $150,000 or more but less than $300,000; $3,750 for each quarter in which disbursements total $300,000 or more but less than $3,000,000; $5,000 for each quarter in which disbursements total $3,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

28 U.S.C. § 1930(a)(6) (1995).

When a debtor files a case seeking protection under chapter 11 of the bankruptcy code, a "bankruptcy estate" is immediately created and becomes the repository of the debtor's property generally until a plan is confirmed by the bankruptcy court. 11 U.S.C. §§ 541, 1141(b). Thus, under the pre-amended statute, quarterly fees and the bankruptcy estate often terminated at the same moment. Because fees were owed only during the existence of the bankruptcy estate, it was reasonable for courts and the UST, in calculating quarterly fees, to look only at disbursements made by the bankruptcy estate, and ignore distributions made subsequent to plan confirmation by the reorganized debtor or the otherwise reconstituted estate.

Within this context, and prior to the congressional amendments at issue here, the Ninth Circuit interpreted "disbursements" broadly to encompass all payments from the bankruptcy estate. St. Angelo v. Victoria Farms, 38 F.3d 1525, 1534 (9th Cir. 1994), modified in part, 46 F.3d 969 (9th Cir. 1995) (no modification to analysis of "disbursements"). See also In re Ozark Beverage Co., Inc., 105 B.R. 510 (Bankr. E.D. Mo. 1989).

b. January 1996 Amendment:

On January 26, 1996, President Clinton signed H.R. 2880, the Balanced Budget Downpayment Act, I, Pub.L. No. 104-99, 110 Stat. 26, 37-38 (1996). Section 211 of that legislation amended the UST fee statute, 28 U.S.C. § 1930(a)(6), by deleting the words "a plan is confirmed or." As amended, section 1930(a)(6) provides, in pertinent part, as follows (the language stricken is bracketed):

> (6) 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).

Thus, the January, 1996, amendment expanded the scope of the quarterly fees by removing one of the three terminating events.

c. Legislative History of January Amendment:

The legislative history leading up to the enactment of the January amendment is helpful in uncovering its purpose, scope and intent. As with many federal budgetary matters and many initiatives proposed to Congress by the Executive, a full historical understanding of this provision is greatly assisted by reference to the budget justification documents submitted to Congress in conjunction with the President's annual budget proposal.

The UST system was originally established to operate as a self-funded program. H.R. Rep. 99-764, 99th Cong., 2d Sess., p. 26 (1986); United States Trustee v. Endy (In re Endy), 104 F.3d 1154, 1157 (9th Cir. 1997). By the mid-1990s, quarterly fees, which constitute a significant portion of UST funds, had sharply declined.[3] In response to this decline in financial resources, as well as to a stated need for increased post-confirmation oversight, the budget justification documents filed in connection with the fiscal year 1996 budget proposed by the President for the UST program contained two proposals. One proposal, the amendment to the quarterly fee statute at issue here, to pay for the other, a staffing increase:

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[3] "U.S. Trustee Revenue Drop Causes Chapter 11 Quarterly Fee Increases and Imposition of Post-Confirmation Fees," 16-Feb. Am. Bankr. Inst. J. 26 (1997).

The first proposal was to increase the UST staff by twenty attorneys in order to strengthen general chapter 11 case supervision and post-confirmation oversight. The second proposal was to amend the UST quarterly fee statute, 28 U.S.C. § 1930(a)(6), to require chapter 11 debtors to pay quarterly fees after plan confirmation. Both of these requests were ultimately granted. The budget justification document includes the following:

> Program Increase: Increase by 55 positions (20 attorneys) . . . to strengthen chapter 11 case supervision and post confirmation oversight.
>
> * * *
>
> The most recent available data from the Administrative Office of the United States Courts 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 Provision: 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 languish 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) (attached as Appendix A) (on file with the U.S. Department of Justice, Washington, D.C., the House Committee on Appropriations, Washington, D.C., and the Senate Committee on Appropriations, Washington, D.C.).[3]

Pursuant to this request, the fee increase proposal was

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[3] The budget justification document also includes an estimate that $18.2 million in additional fees would be raised by the proposed statutory fee change. The court attempted to roughly correlate this projection with the number of post-confirmation cases that appear to have been in existence to generate it (approximately 53,000 as of September 30, 1994) in order to extrapolate the per case fee that might have been expected. However, because the projected revenue is significantly lower than would be realized even by collection of the minimum of $250 per quarter in each post-confirmation case, the court draws no conclusion from this information. The court assumes the $18.2 million projection is based on the UST seeking to collect post-confirmation fees primarily in cases that seek a final decree, which, based on the published cases, appears to be the agency's practice. In re Kroy (Europe) Ltd., 1997 WL 178857 (Bankr. D. Az 1997).

included as section 111 of H.R. 2076, the Departments of Commerce, Justice, and State, the Judiciary, and related agencies appropriations bill for fiscal year 1996, which was favorably reported by the House Appropriations Committee on July 19, 1995. 141 Cong. Rec. D-881 (1995).[4] In the report accompanying H.R. 2076, the Committee included the following explanation of section 111:

> Decline in Bankruptcy filings. - The [Committee] recommendation assumes an overall decline in bankruptcy filings in 1996, as assumed in the budget. . . . 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. The additional fees will be deposited as offsetting collections to the United States Trustee System Fund and will provide the resources necessary to ensure adequate post-confirmation oversight and supervision of Chapter 11 cases.

H. Rep. 104-196, 104th Cong., 1st Sess., at 16-17 (1995).

The House of Representatives passed H.R. 2076 on July 26, 1995. 141 Cong. Rec. H-7791 (section 111 reprinted at

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[4] "SEC. 111. (a) Section 1930(a)(6) of title 28 United States Code, is amended by striking 'a plan is confirmed or'." Under the UST's statute, acceptance by Congress of this proposed fee increase provided sufficient funds for, and therefore endorsed, the UST's accompanying proposal to increase staff.

141 Cong. Rec. H-7635) (1995). The Senate Appropriations Committee in turn included identical fee language in its counterpart version of the bill, and explained in its report: "As requested, 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." Sen. Rep. 104-139, 104th Cong., 1st Sess. (1995). The Senate passed this measure on September 29, 1995. 141 Cong. Rec. S-14697 (1995).

The joint House-Senate conference committee, appointed to resolve the differing versions of H.R. 2076, included the following passages in its conference report:

> The conference agreement includes section 111 as proposed in the House and Senate bills, which extends the quarterly fee payments for debtors under Chapter 11 of the Bankruptcy Code to include the period from when a reorganization plan is confirmed by the Bankruptcy Court until the case is converted or dismissed. The conferees intend that this fee will apply to both pending and new cases.
>
> * * *
>
> [T]he conferees agree to include an extension of post-confirmation quarterly fee payments made under Chapter 11 as proposed in both the House and Senate bills and expect that these fees will apply to all pending Chapter 11 cases with confirmed reorganization plans.

H.R. Conf. Rep. 104-396, 104th Cong., 1st Sess. (1995); 141 Cong. Rec. H-13894, 13899 (1995).

On December 6th and 7th, 1995, respectively, the House and Senate passed the conference report to H.R. 2076,

clearing the measure for the President. 141 Cong. Rec. H-14112, S-18183 (1995). President Clinton vetoed the measure[5] on December 19, 1995, and the House's override effort failed. 142 Cong. Rec. H-33 (1996).

The conflict over H.R. 2076 took place within the context of the comprehensive and well publicized budget battle between the President and Congress that resulted in a number of government shutdowns and required thirteen short term appropriations measures.[6] One such short term measure

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[5] The President's veto was unrelated to the UST fee amendments contained within the measure. See President's Veto Message to Congress, 141 Cong. Rec. H-15166-67 (1995).

[6] The annual appropriations process for Fiscal Year 1996 required Congress to pass thirteen interim spending bills and resulted in partial to complete government shutdowns for twenty-seven days. The thirteen interim spending bills, as well as the final omnibus legislation, are as follows: H.J.Res. 108, Pub. L. 104-31, provided funding from October 1, 1995, to November 13, 1995; H.J.Res. 123, Pub. L. 104-54, provided funding from November 19, 1995, to November 20, 1995; H.J.Res. 122, Pub. L. 104-56, provided funding from November 20, 1995, to December 22, 1995; H.J.Res. 136, Pub. L. 104-69, provided funding from December 22, 1995, to January 3, 1996, covering only Veterans Affairs, Aid to Families with Dependent Children and foster care payments and spending for the District of Columbia; H.J.Res. 153, Pub. L. 104-90, provided funding from January 3, 1996, to January 25, 1996, covering only Veterans Affairs, Aid to Families with Dependent Children and foster care payments and spending for the District of Columbia; H.R. 1358, Pub. L. 104-91, provided funding for certain programs; H.R. 1643, Pub. L. 104-92, provided funding from January 6, 1996, to January 25, 1996, for a broad group of government programs; H.J.Res. 134, Pub. L. 104-94, provided funding from January 6, 1996, to January 25, 1996, for all government programs if the President submits a seven-year balanced budget plan that uses Congressional Budget Office scoring; H.R. 2880, Pub. L. 104-99, provided general government funding from January 27, 1996, to March 15, 1996; H.J.Res. 163, Pub. L. 104-116, provided funding from March 15, 1996, to March 22, 1996; H.J.Res 165, Pub. L. 104-

was H.R. 2880, the Balanced Budget Downpayment Act, I, Pub. L. 104-99 (1996). Section 211 of H.R. 2880 incorporated by reference the UST quarterly fee amendment included in section 111 of the vetoed H.R. 2076, the Commerce, Justice, State, Judiciary Appropriations conference report. On

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118, provided funding from March 22, 1996, to March 29, 1996; H.J.Res. 170, Pub. L. 104-122, provided funding from March 29, 1996, to April 24, 1996; H.J.Res. 175, Pub. L. 104-131, provided funding from April 24, 1996, to April 25, 1996; H.R. 3019, Pub. L. 104-134, provided funding for the remainder of the fiscal year, from April 25, 1996, through October 1, 1996.

Section 211 in its entirety provides:

> Public Law 104-91 is amended by inserting after the words "the protection of the Federal judiciary" in section 101(a), the following: "to the extent and in the manner and", and by inserting at the end of the paragraph containing those words, but before the semicolon, the following: ": Provided That, with the exception of section 114, the General Provisions for the Department of Justice included in [H.R. 2076, H.R. Conf. Rep. 104-378] are hereby enacted into law." (emphasis added.)

Referring in turn to the "General Provisions" for the Department of Justice in House Report 104-378, which the above language incorporated by reference, section 111 states as follows: "Section 1930(a)(6) of title 28, United States Code, is amended by striking the words 'a plan is confirmed or'."

Public Law 104-91, the point of reference at the beginning of section 211, is a reference to H.R. 1358, a bill to provide for the conveyance of a National Marine Fisheries Service Laboratory at Gloucester, Massachusetts. This bill was conscripted into service in the ongoing budget battle, serving as a legislative vehicle for one of the short term funding measures, commonly known as continuing resolutions. Included within the continuing resolution attached to H.R. 1358 was a general provision continuing funding for a broad array of law enforcement and judicial programs normally funded within the Commerce, Justice, State, and Judiciary appropriations bill. This general funding provision did not adopt the amendment to 28 U.S.C. § 1930(a)(6) included in section 111 of the general provisions of the Commerce, Justice, State, and Judiciary appropriations bill. Therefore, the above further

January 26, 1996, H.R. 2880 and its accompanying amendment to the UST quarterly fee statute, 28 U.S.C. § 1930(a)(6), became law.

d. September 1996 Clarifying Amendment:

Following its enactment, a number of bankruptcy courts refused to apply the January amendment to cases with plans confirmed prior to the amendment's effective date, January 27, 1996.[3] Congress resolved this issue by enactment of a second clarifying amendment, which became effective September 30, 1996. In section 109 of H.R. 3019, the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Pub. L. 104-208, 110 Stat. 3009 (1996), Congress powerfully clarified its intent that the amended version of section 1930(a)(6) apply to all pending cases, even those with plans confirmed prior to the January amendment's effective date. Section 109(d) states: "[N]otwithstanding any other provision of law, the fees under 28 U.S.C. § 1930(a)(6) shall accrue and be payable from and after January 27, 1996, in all cases (including without limitation, any cases pending as of that date), regardless

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legislative action was required.

[3] In re Beechknoll Nursing Homes, Inc., 202 B.R. 260 (Bankr. S.D. Ohio 1996); In re CF & I Fabricators of Utah, Inc., 199 B.R. 936 (Bankr. D. Utah 1996); In re Hudson Oil Co. Inc., 200 B.R. 52 (Bankr. D. Kan. 1996); In re Precision Autocraft, Inc., 197 B.R. 901 (Bankr. W.D. Wash. 1996).

of confirmation status of their plans."[9] Section 109(a) of the September, 1996, amendment also includes an across-the-board increase in section 1930(a)(6) fees, another item requested by the Executive to further offset declining UST fees. H. Rep. 104-676, 104th Cong., 2d Sess. (July 16, 1996).

DISCUSSION

a. Statute.

The court begins its review with the words of the statute itself. The statute appears to assess a quarterly fee against "the parties commencing a case under title 11 . . . ." This is somewhat ambiguous, however, due to the break in the cadence of the statute. The statute begins with a list of five categories of fees which "the parties commencing a case under title 11 shall pay to the clerk" of the court. The sixth category of fees under section 1930(a) is the UST quarterly fee. Here the language of the statute changes somewhat, directing that, "[i]n addition to the filing fee to be 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 . . . ."

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[9] The conference report further explains: "Sec. 109. - The conference agreement includes section 109 as proposed in the Senate bill . . . which amends a provision included in the 1996 Appropriations Act, to clarify that fees collected under post-confirmation status are to be assessed in all pending chapter 11 cases."

Although the statute does not specify the entity responsible for paying the fee, nothing in the statute indicates a departure from the initial focus on "the parties commencing a case under title 11," as set forth at the beginning of the series.

Under the statute, fees are calculated based on disbursements. The term disbursements is not defined in the statute and is susceptible to a number of possible meanings. Nothing in the statute, however, indicates disbursements are to be limited to those made by the bankruptcy estate or are to exclude disbursements made by a reorganized debtor with an open case before the bankruptcy court.

Fees terminate under the statute at the conversion of the case to another chapter of the bankruptcy code or at dismissal of the case. Although not expressly stated in the statute, closure of a case after entry of a final decree is also an event that terminates quarterly fees because the existence of a case is a statutory precondition to the assessment of such fees.

Finally, in its September, 1996, clarifying amendment, Congress included a "notwithstanding" provision. This sweeping provision overrides any statutory provision that might be inconsistent with the provision Congress seeks to enact. Thus, regardless of any statute to the contrary, UST quarterly fees are due in all pending and newly filed

chapter 11 cases from January 27, 1996, even cases with plans confirmed prior to that date.

Although not perfectly luminescent or free of potential contradictions, the statute standing alone is sufficiently clear to resolve this case. If the language of the statute is clear, the court should follow that language, rather than "isolated excerpts from the legislative history." Patterson v. Shumate, 504 U.S. 753, 761 n.4 (1992). The exception to this rule of statutory construction is when "the plain language of the statute would lead to 'patently absurd consequences,' that 'Congress could not possibly have intended,' we need not apply the language in such a fashion." Public Citizen v. United States Dept. of Justice, 491 U.S. 440, 470 (1989)(Kennedy, J., concurring)(quotations and internal citations omitted).

b. Pre-amendment Case Law.

The bankruptcy court appears to have been heavily influenced by dicta in the Ninth Circuit's 1994 Victoria Farms decision. There the court read the term "disbursements" broadly "to include all payments made by the bankruptcy estate." 38 F.3d at 1534 (emphasis added). The bankruptcy court, stating that "disbursements" is a term of art, seized upon the Ninth Circuit's reference to the "bankruptcy estate." On the basis of this sentence, the

bankruptcy court concluded "disbursements" under the statute must be limited to those made by the bankruptcy estate.

This interpretation is hampered by a number of factors, primarily that the Victoria Farms decision predated Congress' amendment to section 1930(a)(6). Prior to January 27, 1996, the statute did not allow post-confirmation fees. It is not surprising that, in 1994, the Ninth Circuit would limit disbursements to those made by the bankruptcy estate, the relevant entity under the pre-amendment regime. However, to rely heavily upon that interpretation after Congress amended the statute, fundamentally altering its scope, is questionable.

> Clearly in Victoria Farms, the Ninth Circuit addressed the issue of preconfirmation fees alone and could not have known that the fee would later be extended to postconfirmation periods. To attribute substantive meaning to the phrase "of the estate" is to impute an intention to the Court which it simply could not have formed in the circumstances as they existed at that time.

In re Sedro-Woolley Lumber Co., Inc., 209 B.R. 987, 989 (Bankr. W.D. Wa. 1997).

Moreover, as the UST points out, despite the bankruptcy court's reliance upon Victoria Farms to limit the scope of the newly amended section 1930(a)(6), the Victoria Farms decision interpreted the fee statute broadly to include all

disbursements made by the bankruptcy estate.[11] In the two other recent cases where the Ninth Circuit has been called upon to construe the scope of a trustee fee, the court has rejected arguments to limit the scope of the fee. Endy, 104 F.3d at 1157; In re Fulkrod, 973 F.2d 801, 803 (9th Cir. 1992) (per curiam).

c. Legislative Authority.

Congress selected a very complex statute within which to accomplish its apparent goal of raising revenue. Given the high degree of statutory harmonization that must accompany nearly any proposed amendment to this intricate code, it is not surprising that a number of bankruptcy courts reviewing this newly altered statutory scheme have pronounced it to be incompatible with a series of

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[11] Both parties argue Congress is presumed to be aware of and endorse court decisions. United States v. Hunter, 101 F.3d 82, 85 (9th Cir. 1996). Both argue, based on this principle, Congress was aware of and endorsed the Victoria Farms decision when the statute was amended. The UST argues Congress thereby adopted Victoria Farms' broad reading of the term disbursements. Boulders in turn argues Congress thereby endorsed Victoria Farms' view that disbursements are limited to those made by the bankruptcy estate. Given that these two interpretations verge on being mutually exclusive, the court finds them to be of little assistance. The court further notes that Victoria Farms had only been cited by one bankruptcy court prior to congressional fee amendment at issue here. That court cited the case in support of an expansive reading of the term disbursements. In re Meyer, 187 B.R. 650 (Bankr. W.D. Mo. 1995). Since the enactment of the January amendment, except for one case (In re Flatbush Assoc., 198 B.R. 75 (Bankr. S.D.N.Y. 1996) (citing Victoria Farms as authority for expansive reading of "disbursements")), Victoria Farms has been cited only in connection with fee cases such as this.

independent bankruptcy code provisions. Nor is it surprising that a number of these same courts have determined the amendment to constitute the modification of a private contract (i.e., the confirmed plan of reorganization).

These observations, accurate as they may be, do not diminish the congressional authority to enact such a statute or the judicial duty to give it effect. In its September clarifying amendment, Congress began with the words "notwithstanding any other provision of law." This sweeping language can only be read to evidence Congress' intent that the amendment override any inconsistent statute, including any contrary provision of the bankruptcy code.

> As we have noted previously in construing statutes, the use of such a "notwithstanding" clause clearly signals the drafter's intention that the provisions of the "notwithstanding" section override conflicting provisions of any other section. Likewise, the Courts of Appeals generally have "interpreted similar 'notwithstanding' language . . . to supersede all other laws, stating that '[a] clearer statement is difficult to imagine.'"

Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 (1993) (citations and internal quotations omitted).

Similarly, Congress possesses the authority to modify private contracts, governed only by the Fifth Amendment's prohibition on the taking of property without just compensation. The Supreme Court has frequently confirmed that Congress "undeniably, has authority to pass legislation

pertinent to any of the powers conferred by the Constitution however it may operate collaterally or incidentally to impair or destroy the obligation of private contracts." Continental Illinois Nat. Bank & Trust Co. of Chicago v. Chicago, Rock Island & P. Ry. Co., 294 U.S. 648, 680 (1935).

More recently, the Court set forth the appropriate inquiry in such cases:

> To prevail on a claim that federal economic legislation unconstitutionally impairs a private contractual right, the party complaining of unconstitutionality has the burden of demonstrating, first, that the statute alters contractual rights or obligations. If an impairment is found, the reviewing court next determines whether the impairment is of constitutional dimension. If the alteration of contractual obligations is minimal, the inquiry may end at this stage; if the impairment is substantial, a court must look more closely at the legislation. When the contract is a private one, and when the impairing statute is a federal one, this next inquiry is especially limited, and the judicial scrutiny quite minimal. The party asserting a Fifth Amendment due process violation must overcome a presumption of constitutionality and establish that the legislature has acted in an arbitrary and irrational way.

National R.R. Passenger Corp. v. Atchison, Topeka and Santa Fe Ry. Co., 470 U.S. 451, 472, (1985) (internal quotations and citations omitted).

d. Interpretation of Legislative History.

The legislative history set forth in detail above supports extending post-confirmation fees to reorganized debtors. It also supports including distributions made by reorganized debtors in estimating the proper fee and

strongly indicates Congress sought to raise revenue in the face of declining bankruptcy fees. Congress, at the urging of the Administration, sought to obtain this revenue by closing a statutory loophole that exempted post-confirmation debtors from paying quarterly fees.

The House report to H.R. 2076 refers to a significant decline in chapter 11 filing fees, and to the fact that "the pending caseload still in progress will require ongoing attention," as the committee's rationale for extending quarterly fee payments to "the post-confirmation period." H. Rep. 104-196, 104th Cong., 1st Sess. at 16-17 (1995). Later in the process, the House-Senate conference report referred to the provision as extending "the quarterly fee payments for debtors . . . to include the period from when a reorganization plan is confirmed . . . until the case is converted or dismissed. [T]his fee will apply to both pending and new cases." H.R. Conf. Rep. 104-396, 104th Cong., 1st Sess. (1995) (emphasis added).

Finally, in its clarifying amendment, Congress stated: "Notwithstanding any other provision of law, the fees under 28 U.S.C. § 1930(a)(6) shall accrue and be payable from and after January 27, 1996, in all cases (including without limitation, any cases ending as of that date), regardless of confirmation status of their plans." Pub. L. 104-208, § 109(a) (emphasis added).

The bankruptcy court's decision is faithful to the legislative intent in that it would allow the amended statute to raise some additional post-confirmation fee revenue. However, by limiting fees to distributions by the commonly defunct bankruptcy estate, the decision essentially creates a flat fee at the minimum level of $250 per quarter in the vast majority of cases. Nothing in the legislative history supports such a conclusion.[11]

It is apparent that Congress sought to raise revenue through this statutory change. It would be unreasonable to assume that, even though it accepted the amendment suggested by the Administration, Congress harbored an unstated intention that post-confirmation fees would be limited to a flat fee of $250 per quarter. In connection with its September clarifying amendment, Congress also included an

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[11] The UST argues Congress considered and rejected a flat fee approach. As authority for this position, the UST cites a House report from 1986 which indicates Congress considered and rejected a range of mechanisms for calculating section 1930(a)(6) fees, including institution of a flat fee. Equally valid, however, is the proposition that Congress, at the same time, considered and rejected fees on post-confirmation debtors, the very fee mechanism the UST urges here. The fact that the 99th Congress considered and rejected a certain legislative approach is not necessarily authority for the proposition that the 104th Congress was of the same mind. Likewise flawed is Boulders' attempt to carry forward the 1986 statements of Senator Dennis DeConcini regarding the UST quarterly fee statute that UST fees should match the oversight services rendered by the UST. 131 Cong. Rec. S-17780, 99th Cong., 1st Sess. (1985). Such statements are of minimal assistance in interpreting an amendment to that very statute by a subsequent and independent session of Congress.

across-the-board increase in the § 1930(a)(6) fee schedule, further evidence of its revenue raising intent.

The bankruptcy court struggled to reconcile the confirmed plan with the new statute. As a basis for its refusal to base quarterly fees upon distributions made by the reorganized debtor, the bankruptcy court focused on language in the confirmed plan that required the property of the bankruptcy estate to vest free of all claims in Boulders on the effective date of the plan. Next, however, the bankruptcy court directed Boulders to pay the quarterly fee, citing the statute's requirement that fees are due in each case. The court also calculated the fee based on distributions made by the bankruptcy estate, an entity that had ceased to exist.

Congress, for better or worse, did not make such fine distinctions about the required origin of the "distributions" or about the entity responsible for quarterly fees at any given stage of a case. Rather, Congress referred more generally to fees collected in "cases" or to fees paid by "debtors" after a plan had been confirmed. The statute refers to "the parties commencing a case." The absence of legislative history supporting more precise congressional distinctions within the statute, such as references to the "bankruptcy estate" or the "reorganized debtor," significantly undermines the bankruptcy court's

conclusion that such distinctions were intended.

Boulders, in its brief and the materials appended to it, raises a series of objections to the newly amended fee statute.[12] One such objection is that the amendment would impermissibly modify the terms of the confirmed plan, a private contract, in violation of bankruptcy code and the vested contractual rights of the parties to the plan.[13] The bankruptcy court here indirectly credited that issue by noting the confirmed plan vested all property from the bankruptcy estate in Boulders free of all claims, and that nothing appeared to supersede that grant. Boulders, 205 B.R. at 951.

The bankruptcy code includes detailed procedures for

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[12] A number of issues raised in the materials accompanying Boulders' brief are not fairly raised here. Several bankruptcy court decisions in the months following enactment of the January amendment objected to the retroactive application of the amendment. The September amendment resolved this issue and the parties here do not raise it. Likewise, a number of courts, after concluding the new statute applies to the reorganized debtor's disbursements, have struggled with whether to subject all disbursements to the fee, or only those pursuant to the confirmed plan. This issue is not raised here and the court need not address it.

[13] The court in In re Salina Speedway, Inc., --- B.R. ---, 1997 WL 459805, *5 n.2 (10th Cir. BAP (Okla.)) cited a number of contradictory provisions within the code, including 11 U.S.C. § 1129(a)(12) (requiring a plan to provide for the payment of all section 1930 fees on or before the effective date of the plan); and 11 U.S.C. § 1141 (describing the binding effect of a confirmed plan). These inconsistent code provisions are overcome by the "notwithstanding" clause in the September amendment.

modification of confirmed plans.[14] These procedures were not utilized in this case. As is apparent from the preceding analysis, however, this objection is without merit. Neither the plan modification provisions of the bankruptcy code nor the terms of a private contract are effective barriers. Congress has the authority to override existing statutes and impair private contracts.[15]

Boulders argues that Congress intended the fees at issue here to be user fees. Because the UST is rarely involved in post-confirmation oversight, the argument continues, collection of user fees during that period is unfair and contrary to the intent of Congress.

Such a reading of congressional intent would require this court to disregard the plain language of the amended statute as well as the legislative intent accompanying it. The UST's budget justifications make it especially clear that the amendment would usher in new post-confirmation monitoring by the UST. The statute can now be read to

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[14] 11 U.S.C. § 1127(b) allows only the plan proponent or the reorganized debtor to modify the plan post-confirmation and before substantial consummation of the plan.

[15] The new statutory obligation to pay post-confirmation fees also arose by operation of law. Holywell Corp. v. Smith, 503 U.S. 47 (1992) (duty of liquidating trustee, appointed to chapter 11 plan, to pay taxes on income generated by estate arose by operation of law). It is insignificant that, as some courts have asserted, the taxes in Holywell arose separately from the bankruptcy or that they were enforced by an entity separate from the bankruptcy. In re Lancy, 208 B.R. 481, 485 (Bankr. D. Az. 1997).

impose such a duty upon the UST. Even if the statute or the legislative history required a correlation between the effort put forth by the UST in a case and the quarterly fee received, which this court does not accept, the statute's apparent creation of a new post-confirmation duty would make such a fee reasonable.

Boulders questions the statute's potential to assess fees in perpetuity. Boulders argues that, because fees under the statute now terminate only on conversion or dismissal of a case, fees in cases that merely close could go on forever. It is apparent from the legislative history that such an absurd result is not what Congress intended. When the plain language of a statute results in "patently absurd consequences" not intended by Congress, the court is not required to apply the language in such a fashion. Public Citizen, 491 U.S. at 470.

Also, by the terms of the statute, fees are owed for each case. The existence of a case is a precondition to the assessment of fees. Upon closure, the case ceases to exist as does the obligation to pay fees. Moreover, because the UST here is seeking only fees for the second quarter of 1996, the court need not resolve this controversy.

e. Conclusion.

Based on the language of the statute and its

legislative history, the court respectfully concludes the bankruptcy court erred in interpreting the amended statute to assess post-confirmation fees only against the bankruptcy estate. This court is convinced Congress intended to extend the post-confirmation fees to the reorganized debtor based on distributions made by the reorganized debtor. The reorganized debtor remains a commencing party in a case pending before the bankruptcy court. Until the case is converted, dismissed or closed, the statute requires such a party to pay quarterly fees based on distributions made in the case.

JURISDICTION

The court next considers whether the bankruptcy court had jurisdiction to consider this matter, and, if so, whether it properly conditioned entry of a final decree upon payment of the proper fee. Although neither the bankruptcy court nor the parties here addressed these issues, questions remain which this court will address on its own motion.

A number of bankruptcy courts addressing the fee issue now before this court have concluded they lack either an enforcement mechanism or jurisdictional authority over such matters when they arise after a plan has been confirmed by the bankruptcy court. See, e.g., In re Indian Creek Limited Partnership, 205 B.R. 609, 612 (Bankr. D. Az. 1997) ("To the extent that the United States Trustee can assert its post-

confirmation claim, it must assert and liquidate such a claim just as any other post-confirmation creditor would in an appropriate non-bankruptcy forum."); In re Gryphon at the Stone Mansion, 204 B.R. 460, 464 (Bankr. W.D. Pa. 1997) ("The jurisdiction of the bankruptcy court after confirmation of a chapter 11 plan is normally limited to matters concerning the implementation or execution of the confirmed plan. . . . [T]he United States Trustee must pursue its claim in another forum, as must any other creditor who acquires its claim after a chapter 11 plan has been confirmed.") (internal quotation omitted).

The current jurisdictional framework of bankruptcy courts reflects the concerns expressed by the Supreme Court in Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982), which held unconstitutional the jurisdictional provisions of the Bankruptcy Reform Act of 1978 (the "1978 Act"), Pub. L. 95-598, 92 Stat. 2549. The 1978 Act created bankruptcy courts and vested in them jurisdiction over all "civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. § 1471(b) (1976 ed., Supp. 1505 IV). The plurality in Northern Pipeline concluded that the 1978 Act was unconstitutional because it allowed non-Article III courts to "entertain and decide" state law claims that were merely "related to" the underlying bankruptcy case. 458 U.S. at

91.

In response to Northern Pipeline, Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 333. Pursuant to 28 U.S.C. § 1334(b), the district courts possess original but not exclusive jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." Title 28 U.S.C. § 157(a) provides that district courts may refer this title 11 jurisdiction to bankruptcy courts in "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or relating to a case under title 11."[16]

Section 157 also establishes two broad categories of proceedings: "core proceedings" and "non-core proceedings." For "all core proceedings arising under title 11, or arising in a case under title 11," section 157(b)(1) permits bankruptcy courts to "hear and determine" the proceedings and to "enter appropriate orders and judgments." However, in non-core proceedings otherwise related to cases under title 11, section 157(c)(1) allows bankruptcy courts to hear

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[16] This court has referred title 11 cases to the bankruptcy court in this district pursuant to the 28 U.S.C. § 157(a). Rule 2100-1 of the Local Rules for the U.S. District Court for Oregon provides: "This court hereby continues its reference to the bankruptcy judges of this district of all cases under Title 11 and all proceedings arising under Title 11 or arising in or in relation to cases under Title 11."

the proceedings and then submit proposed findings of fact and conclusions of law to the district court.

Ninth Circuit cases suggest there are two general categories of core[17] proceedings: (1) those "arising under" title 11 and (2) those "arising in" title 11. In re Harris Pine Mills, 44 F.3d 1431, 1435 (9th Cir. 1995), cert. denied, 115 S.Ct. 2555 (1995). Proceedings "arising under" title 11 "involve a cause of action created or determined by a statutory provision of title 11." Id. (quotation omitted). Proceedings "arising in" title 11 "seems to be a reference to those administrative matters that arise only in bankruptcy cases. . . . [They] are not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy." Id. (quotation omitted).

Here, the UST's claim to collect fees is based on 28 U.S.C. § 1930(a)(6), and therefore does not "arise under" title 11. It does, however, appear to fit within the Ninth Circuit's description of "arising in" jurisdiction. This issue is an administrative matter that, by its very nature, exists because the bankruptcy case filed by Boulders remained an open case on the bankruptcy court's docket

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[17] Section 157(b)(2) sets forth a non-exclusive list of proceedings Congress deemed to be core proceedings. While the fee issue here does not fit within any of the listed categories, the list, by its terms, is non-exclusive.

during the second quarter of 1996. Based on the jurisdictional statute and the case law, the fee issue presented here arises in a title 11 case and is therefore a core proceeding squarely within the jurisdiction of the bankruptcy court.

Even if the present issue were to fall short of satisfying the requirements of a core proceeding, the bankruptcy court's more inclusive "related to" jurisdictional authority over non-core proceedings would have sufficed. A non-core proceeding "does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy."[13] Id. (quotation omitted).

The Ninth Circuit's test for determining whether a matter is "related to" the bankruptcy:

> is whether the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy. . . . Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the

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[13] The distinction between "arising in" and "related to" jurisdiction appears to turn on whether the matter could exist outside the bankruptcy. It could be argued that the fee issue asserted here could exist outside the bankruptcy for the purposes of enforcement. It could also be argued the issue exists only in the bankruptcy because that is where it was created. The court need not decide within which category the present matter falls, but simply notes it cannot fall in both.

bankrupt estate.[19]

In re Fietz, 852 F.2d 455, 457 (9th Cir. 1988) quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3rd Cir. 1984).

The Supreme Court has also suggested a broad reading of the "related to" jurisdiction:

> Congress did not delineate the scope of "related to" jurisdiction, but its choice of words suggests a grant of some breadth. The jurisdictional grant in § 1334(b) was a distinct departure from the jurisdiction conferred under previous acts, which had been limited to either possession of property by the debtor or consent as a basis for jurisdiction. See S. Rep. No. 95-989, 2nd Sess., pp. 153, 154 (1978), U.S. Code Cong. & Admin. News 1978, pp. 5787, 5939, 5940. We agree with the views expressed by the Court of Appeals for the Third Circuit in Pacor, Inc. v. Higgins, 747 F.2d 984 (1984), that "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate,". . . and the "related to" language in § 1334(b) must be read to give district courts (and bankruptcy courts under § 157(a)) jurisdiction over more than simple proceedings involving the property of the debtor or the estate."

Celotex Corp. v. Edwards, 514 U.S. 300, 307-308 (1995) (citation omitted)(emphasis added).

Based on the foregoing, the court concludes the quarterly fee question now before the court constitutes a

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[19] Boulders would place extra emphasis on the words "bankruptcy estate." As discussed above, one of the effects of the 1996 amendments was to create the argument, inadvertently in this court's view, that the words "bankruptcy estate," previously uncomplicated words of inclusion, had been transformed into abrupt words of exclusion. In reviewing decisions that predate the 1996 amendments, this court avoided placing on these words more significance, particularly in terms of their ability to limit, than these earlier courts could have intended at the time. Keating, 205 B.R. at 667.

core proceeding because it arises in a title 11 case. In the alternative, the matter falls within the more inclusive category of "related to" jurisdiction available to bankruptcy courts over non-core matters. Of all the potential forums for resolution of such an issue, the bankruptcy court that presided over this case for four years would appear to be the best suited to "deal efficiently and expeditiously" with the matter. Id. Moreover, none of the concerns expressed by the Supreme Court in Northern Pipeline about pendent state claims which gave rise to the jurisdictional distinction between core and noncore proceedings appear to arise here.[33]

Consistent with this interpretation of the jurisdictional statute, the plan of reorganization in this case also supports jurisdiction in the bankruptcy court. In particular, paragraph XIIF of the plan provides that any causes of action that "subsequently arise under any of the provisions of the Code or which may be enforceable under any of the provisions of the Code, or any other law or statute,

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[33] If indeed its authority to hear this case was based on "related to" jurisdictional authority, the bankruptcy court failed to follow the required procedural steps, namely submission to this court of proposed findings of fact and conclusions of law. Rather, the bankruptcy court entered a memorandum opinion and order requiring payment of the minimum quarterly fee as a precondition to entry of a final decree closing the case. If it in fact was made, such an error was harmless. To the extent necessary, this court construes the bankruptcy court's order as proposed findings of fact and conclusions of law.

shall be preserved and this Court shall retain jurisdiction to dispose of such causes of action." (emphasis added). Moreover, paragraph XI of the plan specifically preserves jurisdiction in the bankruptcy court over "Administrative Claims," which the plan defines to include "any fees or charges assessed against the estate of a debtor under Chapter 123, Title 128, United States Code, § 1930."

The above analysis exposes an ample selection of jurisdictional bases available to the bankruptcy court in this matter.

A number of bankruptcy courts have declined to condition the issuance of a final decree closing a case upon a reorganized debtor's payment of section 1930(a)(6) post-confirmation quarterly fees. See, e.g., Indian Creek, 205 B.R. at 611. These courts cite Rule 3022 of the Federal Rules of Bankruptcy Procedure, which requires: "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case." However, among the factors to be considered by a court in determining if an estate has been "fully administered," indicating the case must be closed, is "whether all motions, contested matters, and adversary proceedings have been

finally resolved."[21] Fed. R. Bankr. Pro. 3022 (emphasis added); 11 U.S.C. § 350(a).

The court concludes the UST quarterly fee issue constitutes a contested matter or an adversary proceeding that had not been finally resolved.

These courts also refuse to withhold entry of a final decree based on a lack of authority to order the payment of

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[21] The 1991 Advisory Committee Note to Rule 3022 advises:

> Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.
>
> The court should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future. A final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the Code. For example, on motion of a party in interest, the court may reopen the case to revoke an order of confirmation procured by fraud under § 1144 of the Code. If the plan or confirmation order provides that the case shall remain open until a certain date or event because of the likelihood that the court's jurisdiction may be required for specific purposes prior thereto, the case should remain open until that date or event.

the fees. They correctly note the absence of a specific statute authorizing bankruptcy court to order the collection of post-confirmation claims. They also note their post-confirmation jurisdiction is generally limited to plan oversight matters. Once the plan is confirmed, the bankruptcy estate ceases to exist and its property vests elsewhere (with the reorganized debtor in this case) free of claims.

The issue here, however, despite the bankruptcy court's decision, is not a claim against the former bankruptcy estate. Rather, the statute assesses fees against the party filing the case. The court notes that section 1930(a)(6) has generally and correctly been interpreted to require the bankruptcy estate to pay the quarterly fees prior to plan confirmation. This practice should not, however, prevent assessment of quarterly fees against the entity primarily identified by the statute, "the part[y] commencing a case," who remains before the court, now as a reorganized debtor. Although it may present practical questions regarding the court's ability to compel payment of the fee, continuing direct authority by the bankruptcy court over the property of the estate is not a precondition to assessment of a fee against a party before the court.

This is at some level a discretionary issue for each bankruptcy court. In exercising such discretion, the

bankruptcy court should be counseled by the congressional intent behind the jurisdictional statute for the bankruptcy courts, which indicates such courts are to provide a forum for the efficient and expeditious consideration of bankruptcy matters. Although it may not have been required to do so, the bankruptcy court did not err in conditioning entry of a final decree on final resolution of this contested fee matter.

CONCLUSION

Based on the foregoing, the decision of the bankruptcy court is hereby reversed and this case is remanded for proceedings consistent with this order.

DATED this 17th day of December, 1997.

UNITED STATES DISTRICT JUDGE