

11 U.S.C. § 541(c)(1)(B)

In re Western Empires Corp., Case Nos. 392-33738-elp11
392-33739-elp11
392-33740-elp11

5/22/95

ELP

The State Accident Insurance Corporation filed a proof of claim against debtor Western Empires Corporation. Western Empires objected to the amount of the claim. A workers' compensation insurance agreement authorized SAIF to make a "special calculation" of retrospective premiums upon the filing for bankruptcy. Western Empires contended that § 541(c)(1)(B) invalidated the special calculation provision.

Judge Perris held that § 541(c)(1) invalidated the special calculation provision. In reaching this holding, she explained that the special calculation provision triggered the termination of Western Empires' property interest, circumvented the procedures and safeguards of the Code and contravened the policy concerns of § 541(c)(1).

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:) Case Nos. 392-33738-elp1
) 392-33739-elp1
WESTERN EMPIRES CORPORATION,) 392-33740-elp1
)
Debtor.) MEMORANDUM OPINION

The State Accident Insurance Corporation ("SAIF") filed a proof of claim against debtor Western Empires Corporation ("Western Empires") for unpaid insurance premiums. Western Empires objected to the amount of SAIF's claim because it utilizes a special retrospective premium calculation which the contract authorizes when the insured files bankruptcy. Western Empires asserts that 11 U.S.C. § 541(c)(1)(B)¹ invalidates the special bankruptcy calculation provision.

FACTS

This dispute arises from a workers' compensation insurance agreement ("Agreement") between Western Empires and SAIF. Under

¹ Unless otherwise stated, all references to "section" refer to the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

the Agreement, SAIF retrospectively adjusted Western Empires' premium each year over the five years of the Agreement based on the actual losses during the year ("Retrospective Provision"). (Stipulated Facts, Ex. 2, ¶ D.4, at 4-5) Depending on the losses, Western Empires could receive a refund or owe SAIF money. Id. Western Empires "nearly always" earned refunds from the Retrospective Provision. (Stipulated Facts, ¶ 6, at 3) Western Empires expected to continue to earn refunds at the time it filed for bankruptcy. Id. Paragraph D.6 of the Agreement authorized SAIF to make a "special calculation" of the retrospective premium if Western Empires filed for bankruptcy (Stipulated Facts, Ex. 2, ¶ D.6, at 6). This provision states that SAIF "may make a special calculation of the retrospective premium as of . . ." the date Western Empires files for bankruptcy. Id. When Western Empires filed its Chapter 11 petition, SAIF exercised this option to make a special calculation. The parties stipulate that if I enforce ¶ D.6 SAIF has a \$81,459.75 claim and that if I do not enforce ¶ D.6 SAIF has a \$36,884.80 claim (Stipulated Facts, ¶¶ 7 & 8, at 3-4)

ISSUE

Does § 541(c)(1)(B) invalidate ¶ D.6 of the Agreement?

DISCUSSION

Section 541(c)(1)(B) states in pertinent part that "an interest of the debtor in property becomes property of the estate . . . notwithstanding any provision in an agreement . . . that is

conditioned . . . on the commencement of a case" This section operates to make virtually all property interests of the debtor property of the estate regardless of any condition or restriction on the transfer of that interest. 4 Collier On Bankruptcy, ¶ 541.22, at 541-113 (15th ed. 1994). It does this by invalidating any provision that purports to modify or terminate a debtor's interest. In re Railway Reorganization Estate, Inc., 133 B.R. 578 (Bankr. D. Del. 1991).

Section 541(c)(1) invalidates ¶ D.6 of the Agreement. Under § 541(c)(1), the filing of a bankruptcy cannot trigger the modification or termination of a debtor's interest in property. Section 541(a) broadly defines property to include a contract right. In re Computer Communications, Inc., 824 F.2d 725, 729 (9th Cir. 1987). When Western Empires entered into the Agreement, it obtained the right to have its premium payments retrospectively adjusted. Paragraph D.6 triggered the termination of this right when Western Empires filed for bankruptcy and, thus, violated § 541(c)(1).

SAIF presents three interrelated arguments. First, it argues that ¶ D.6 does not modify or terminate a property interest of Western Empires. I disagree. As stated, § 541(a) broadly defines property of the estate to include contract rights. As SAIF stipulated, ¶ D.6 "had the effect of terminating" Western Empires' right to have its premium payments retrospectively adjusted.

(Stipulated Facts, ¶ 5, at 3). With this termination, Western Empires lost the right to a substantial refund (\$44,575). Clearly, ¶ D.6 modified Western Empires' interest in property as defined by the Code.

Second, SAIF argues that ¶ D.6 "is a clause of administrative convenience" that allows SAIF to specify a date for determining its claim. (Creditor's Mem., at 3-4) In making this argument, SAIF relies on In re Brints Cotton, 737 F.2d 1338 (5th Cir. 1984). In Brints Cotton, the Fifth Circuit Court of Appeals affirmed a bankruptcy court's fixing of a contract claim based on the date of the filing. Id., at 1341-42. However, the point of Brints Cotton is not that the petition date is always the appropriate date to base an estimate of a contract claim. The point is that the Code describes specific procedures for estimating a claim. As explained in Brints Cotton, the Code directs the bankruptcy court, not a creditor, to determine the amount of all claims, including unliquidated and contingent claims. Id. at 1340-41. If fixing a claim would unduly delay the administration of a case, the Code directs the court to estimate the claim. § 502(c)(1). In estimating a claim, a bankruptcy court may use whatever method is best suited to the circumstances. Brints Cotton, at 1341. That method is then subject to appellate review. By specifying the petition date as the basis for determining the retrospective premium, the Agreement seeks to circumvent the

procedures and safeguards of the Code.

Third, SAIF contends that ¶ D.6 does not contravene the policy concerns of § 541(c)(1), because it does not impose a penalty on Western Empires. Again, I disagree. In this case, ¶ D.6 if enforced undermines the purposes of § 541(c)(1) by terminating Western Empires' right to a retrospective adjustment on the filing for bankruptcy. That right has a value of \$44,575.

For the foregoing reasons, I sustain Western Empires' objection. Section 541(c)(1) invalidates ¶ D.6 of the Agreement and is unenforceable as a matter of law.

ELIZABETH L. PERRIS
Bankruptcy Judge

cc: David W. Criswell
Daniel H. Rosenhouse
U. S. Trustee