
In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)
)
) Adversary Proceeding
FIRST AMERICAN HEALTH CARE)
OF GEORGIA, INC.,) Number 97-2026
And its wholly owned subsidiaries)
(Chapter 11 Case No. 96-20188))
)
Debtors)
)
)
IHS OF BRUNSWICK, INC.,)
and)
INTEGRATED HEALTH)
SERVICES, INC.,)
Plaintiffs)
)
v.)
)
)
STATE OF MICHIGAN, MEDICAL)
SERVICES ADMINISTRATION,)
DEPARTMENT OF COMMUNITY)
HEALTH, and)
UNITED STATES OF AMERICA,)
DEPARTMENT OF HEALTH AND)
HUMAN SERVICES,)
THROUGH THE HEALTH CARE)
FINANCE ADMINISTRATION,)
)
Defendants)

ORDER ON UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES' MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

This matter comes before the Court on the United States' Motion to Dismiss Plaintiff's Amended Complaint, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). The United States Department of Health and Human Services

("HHS") filed this motion on August 20, 1997; Integrated Health Services ("IHS"), successor to First American, filed its response on September 9, 1997. The motion was argued before the Court on January 22, 1998. Based on the submissions of the parties and the applicable authorities, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Debtor filed its Chapter 11 petition for relief on February 21, 1996. Immediately prior to filing bankruptcy, Debtor's principal shareholders negotiated with Integrated Health Services ("IHS") for a merger with IHS of Brunswick, Inc., a subsidiary. The merger was successfully renegotiated post-petition,¹ and was closed on October 16, 1996 for a price of \$329 million, following confirmation of Debtors' second amended and restated plan on October 4, 1996. In conjunction with the merger, Debtors and IHS entered into an Omnibus Settlement Agreement on September 9, 1996, agreeing to value the claim of the United States for Medicare overpayments at \$ 255 million. Motion to Enforce Discharge Injunction, Exhibit B. IHS assumed liability for Debtors' obligations under the plan of reorganization.

Prior to bankruptcy, Debtor participated in a Medicaid program in the state of Michigan through a provider agreement, which was assumed post-petition and assigned to IHS under the merger agreement. Michigan's Medicaid program is administered by the Medical Services Administration, Department of Community Health

¹ The facts of Debtors' filing and negotiations for merger are set forth in more detail in previous Orders of this Court, *see In re First American Health Care of Georgia, Inc., et al.*, 212 B.R. 408 (Bankr. S.D.Ga. 1997) (Davis, J.).

("DCH"). In early 1996, Michigan began investigations into overpayments to First American (Debtor) which concluded in December 1996. At that time, DCH informed IHS that the State of Michigan was entitled to reimbursements in the amount of \$1.8 million for overpayments. This adversary proceeding was filed against Michigan to enforce the discharge injunction, and later amended to add HHS as a real party in interest. On January 20, 1998, this Court granted summary judgment to the State of Michigan. *See IHS v. Michigan*, Order on Motion for Summary Judgment, Ch. 11 No. 96-20188, Adv. Pro. 97-2026, slip op. (Bankr. S.D.Ga. 1998) (Davis, J.). Thus the only remaining dispute before this Court is IHS's action against the United States.

The role of the United States, through HHS, as a defendant in this adversary is premised upon payments made by HHS to the State of Michigan. Debtor alleges that HHS has a financial interest of approximately 54% in any recovery that Michigan may take against Debtor. Under the Settlement Agreement, HHS released Debtors from all claims "under any statutory or regulatory provision over which HHS (including HCF A and/or OIG) . . . has authority, that the United States has or may have, which relate to acts or omissions occurring prior to the date of Merger, arising with respect to the conduct and/or Causes of Action alleged in Section H, above." Plaintiff's Amended Complaint, Exhibit B, Omnibus Settlement Agreement.² Thus, IHS contends,

² Section H of the Settlement Agreement provides:

The United States contends that it has civil and administrative monetary claims and causes of action against the Company under . . . all statutory and/or regulatory provisions over which HHS . . . has authority: (1) for allegedly submitting false and fraudulent claims to the Medicare Program . . . (2) in addition, the United States allegedly has monetary claims for overpayments arising from Medicare cost reports filed by the Company . . ., and/or arising from Medicare payments . . ., and/or Medicare costs reported or Medicare payments made for non-reimbursable costs to the Company.

“the release extends, at a minimum, to the interest of HHS in the Michigan Medicaid claim.” Plaintiff’s Brief in Opposition of Motion to Dismiss, p.2.³

CONCLUSIONS OF LAW

A party is entitled to the dismissal of an action against it if the Court in which the action is brought lacks jurisdiction over the subject matter of the dispute, FED. R. CIV. P. 12(b)(1), or if the complaint fails to state a claim upon which relief can be granted, FED. R. CIV. P. 12(b)(6).⁴ For the reasons set forth in this opinion, this Court denies the Defendant’s motion.

I. Subject Matter Jurisdiction

_____ IHS contends that under the Settlement Agreement, HHS waived any right to recover the portion of the Michigan overpayments to which the United States might be entitled, and that the debt which represents that portion owing to the United States was therefore discharged. With respect to the Settlement Agreement, this Court retains jurisdiction to hear and decide any issues arising out of its interpretation. Debtor’s Second Amended Plan of Reorganization (“Confirmed Plan”), Article X, ¶ 10.01.⁵ 28

_____ Omnibus Settlement Agreement, ¶ H, p.4-5.

³ Plaintiff argued at the hearing on the Motion to Dismiss that because the Settlement Agreement contains a broad general release and a specific list of those claims excepted from that release, Medicaid was included in the release even if not specifically mentioned in the agreement. The settlement agreement specifically excepts from its terms “(1) any civil claims arising under Title 26 of the United States Code (Internal Revenue Code); (2) any claims based upon such obligations as are expressly created by this Settlement Agreement; (3) respecting individuals only, from prosecution for violations of federal criminal statutes; or (4) civil claims made by federal agencies other than the Department of Health and Human Services, including HCFA.” Omnibus Settlement Agreement, ¶ 13, p.18.

⁴ Federal Rule of Civil Procedure 12 is incorporated by Bankruptcy Rule 7012.

⁵ Article X: Jurisdiction. ¶ 10.01 reads, in pertinent part:

Notwithstanding Confirmation of this Plan or the Effective Date having occurred, the Bankruptcy Court (or, to the extent applicable, the District

U.S.C. Section 157 provides:

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to ---

(I) determinations as to the dischargeability of particular debts.

28 U.S.C. § 157(b)(2)(I). Whether the United States waived its claim upon debts owed by First American is a matter within this Court’s jurisdiction as a core proceeding.

Moreover, the assertion by the United States that this Court lacks subject-matter jurisdiction, on the grounds that the dispute lies between HHS and Michigan, oversimplifies the issue. A bankruptcy court has jurisdiction over “any or all civil proceedings . . . arising in or related to a case under title 11.” 28 U.S.C. § 157(a). “[I]t is relevant to note that we are dealing here with a reorganization under Chapter 11, rather than a liquidation under Chapter 7. The jurisdiction of bankruptcy courts may extend

Court to the extent that the reference of any proceeding or matter has been withdrawn) shall retain jurisdiction for the following purposes:

(c) Determination of any disputes as set forth in paragraph 5.03 and 5.04 with regard to the assumption, assignment, or rejection of executory contracts or unexpired leases of the Debtor pursuant to § 362 of the Bankruptcy Code; . . .

(e) Resolution of controversies and disputes regarding the interpretation and implementation of the Plan;

(f) Implementation of the provisions of this Plan, determinations with regard to amendment of the Merger Agreement as set forth in paragraph 6.01, and entry of orders in aid of Confirmation or consummation of this Plan.

more broadly in the former case than in the latter.” Celotex Corp. v. Edwards, 514 U.S. 300, 310, 115 S.Ct. 1493, 1500, 131 L.Ed.2d 403 (U.S. 1995).

For this Court to exercise subject matter jurisdiction over a dispute between parties, “some nexus between the civil proceeding and the title 11 case must exist.” Matter of Munford, Inc., 97 F.3d 449, 453 (11th Cir. 1996) (citing Matter of Lemco Gypsum, Inc., 910 F.2d 784, 787 (11th Cir. 1990)). The court in Lemco Gypsum stated:

The test for determining whether a civil proceeding is related to bankruptcy is whether the outcome of the proceeding could conceivably have an effect on the estate being administered in bankruptcy.

910 F.2d at 788 (quoting Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)); *see also* Celotex Corp. v. Edwards, 514 U.S. 300, 115 S.Ct. 1493, 1499, 131 L.Ed.2d 403 (1995) (citing Pacor, Inc. with approval). An outcome could have such effect if it “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 bankrupt estate.” Lemco Gypsum, 910 F.2d at 788.

Under the law of the Eleventh Circuit, such a nexus exists where a condition of settlement specifically implicates the dispute at hand. Matter of Munford, 97 F.3d 449, 454 (11th Cir. 1996).⁶ Thus even where a dispute or claim standing alone

⁶ At issue in Munford was a bar order entered, as terms of a settlement, preventing nonsettling defendants from seeking contribution and indemnity from the defendant which entered the settlement agreement.

would not confer jurisdiction on two non-debtor parties, it still can affect a debtor's estate where a settlement would not have been reached without specific treatment of that claim. Id. It "is not the language of the settlement agreement that confers subject matter jurisdiction . . . Rather, it is the 'nexus' of those claims to the settlement agreement --- an agreement, we emphasize, that the bankruptcy court must approve pursuant to Rules of Bankruptcy Procedure 9019(a)." Id.

Where the approval of a settlement agreement is imperative to the successful reorganization of a debtor, a bankruptcy court has subject-matter jurisdiction to "ensure that the provisions of the [settlement] and the Order of Confirmation are complied with to the letter of the law." In re Hillsborough Holdings Co. (HHC), 197 B.R. 366, 371 (Bankr. M.D.Fl. 1996) (Paskay, J.). Like the settlement reached in HHC, the claims of HHS against First American "loomed over the economic existence" of the debtor, making the settlement agreement the "linchpin and heart" of the Plan of Reorganization supporting the feasibility of the plan. *See* HHC, 197 B.R. at 371. I find, therefore, that the need for resolution of the scope of the Omnibus Settlement Agreement and the express reservation of jurisdiction to this Court under the Confirmed Plan more than sufficiently meet the 'nexus' requirement of Lemco Gypsum.

II. Failure to State a Claim Upon Which Relief Can Be Granted

HHS further alleges that Debtor/IHS has no cause of action against the United States under the Medicaid statute. That may well be true, but it also misses the point. Debtor/IHS is not suing the United States under the Medicaid statute; rather, it brings this action seeking an interpretation of the Settlement Agreement and of an order

of this Court. Congress expressly waived the sovereign immunity of the federal government with regard to actions under the Federal Rules of Bankruptcy Procedure in 11 U.S.C. Section 106.⁷ The Bankruptcy Rules specifically provide:

An adversary proceeding is governed by the rules of this Part VII. It is a proceeding . . . (6) to determine the dischargeability of a debt, (7) to obtain an injunction or other equitable relief, . . . (9) to obtain a declaratory judgment relating to any of the foregoing.

FED. R. BANKR. P. 7001. This Court therefore may grant relief to Debtor, as against the United States through HHS, in the form of a declaratory judgment interpreting the respective duties and obligations of the parties to the Omnibus Settlement Agreement.

HHS argues in its Motion to Dismiss that Debtor/IHS lacks standing under Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).⁸ This Court rejects this

⁷ 11 U.S.C. Section 106 states, in pertinent part:

Notwithstanding an assertion of sovereign immunity, sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to the following:

(3) The court may issue against a governmental unit an order, process, or judgment under such sections *or the Federal Rules of Bankruptcy Procedure*, including an order or judgment awarding a money recovery, but not including an award of punitive damages. Such order or judgment for costs or fees under this title or the Federal Rule of Bankruptcy Procedure against any governmental unit shall be consistent with the provisions and limitations of section 2412(d)(2)(A) of title 28.

⁸ The Supreme Court in Lujan stated:

First, the plaintiff must have suffered an "injury in fact"--an invasion of a legally protected interest which is (a) concrete and particularized and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there

argument with regard to a determination of dischargeability under the Settlement Agreement. IHS in its Amended Complaint seeks two forms of relief: (1) a determination by this Court that the “HHS portion of the Medicaid Claim was discharged by the Debtors’ bankruptcy, paid and satisfied under the Plan of Reorganization, and released in the Settlement Agreement; and (2) an injunction against “the State of Michigan and the HHS Defendant from taking any enforcement action with respect to the HHS Defendant’s portion of the Medicaid claim.” (Pls’ Am. Compl., ¶ 20). Despite the grant of summary judgment to the State of Michigan, a determination of the scope of the discharge or an injunction against the United States are still within the relief sought by IHS.

Either form of relief would be relevant to the amount of reimbursement to which Michigan may be entitled, but the exact amount, if any, will ultimately be a matter for Michigan courts. The remedy of declaratory judgment is created by 28 U.S.C. Section 2201, which states:

In a case of actual controversy within its jurisdiction . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration whether or not further relief is or could be sought. *Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.*

must be a causal connection between the injury and the conduct complained of--the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." 504 U.S. at 560 (internal citations omitted).

28 U.S.C. § 2201(a) (1997) (emphasis supplied). Both Debtor and HHS were parties to the settlement agreement; thus, the alleged injury (incurring liabilities which have previously been released) is concrete and imminent⁹, traceable directly to the settlement, and likely to be redressed, as well as clarified, by a judgment by this Court as to the legal status of the respective parties to the agreement. *See Hillsborough Holdings*, 197 B.R. at 371 (Interpretation of settlement agreement was made in debtor's Chapter 11 case, agreement was approved and embodied in the order on confirmation, and bankruptcy court's own order on confirmation can be more properly interpreted and construed by same court "than by a Court which did not enter same").

CONCLUSION

This Court finds that pursuant to Federal Rule of Bankruptcy Procedure 7001, Plaintiffs' Amended Complaint is not subject to dismissal under Rule 12(b). Defendant HHS is ordered to file its Answer to the Amended Complaint within ten days of the date of entry of this Order. FED. R. CIV. P. 12(a).

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of February, 1998.

⁹ This action began when Michigan informed Debtor/IHS that it intended to seek reimbursement for the overpayments. This Court thus finds it likely and imminent that Michigan will, having been granted summary judgment in this action, pursue its intended course of recovery.