IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re: SUN HEALTHCARE GROUP, INC., *et al.* Debtors.	)	Chapter 11 Bankruptcy Case No. 99-3657 through 99-3841 (MFW) (Jointly Administered)
ELEVEN STATE MEDICAID AGENCIES Appellants, v. CIT GROUP/BUSINESS CREDIT, INC., *et al.* Appellees.	)	Civil Action Nos. 00-475, 00-476, and 00-632-GMS (Consolidated under 00-475 GMS)

In re: VENCOR, INC., *et al.* Debtors.	)	Chapter 11 Bankruptcy Case Nos. 99-3199 (MFW) (Jointly Administered)
ALABAMA MEDICAID AGENCY, *et al.* Appellants, v. VENCOR, INC., *et al.* Appellees.	)	Civil Action No. 00-632-GMS (Consolidated under 00-475- GMS)

MEMORANDUM AND ORDER

I. INTRODUCTION

The above captioned consolidated cases present similar issues of law and fact for this court. The appellants are all state Medicaid agencies ("the States" or "the Agencies") that are bound to abide by the laws of their respective states as well as the federal Medicaid laws.[1] The appellees/debtors, Sun HealthCare Group, Inc. ("Sun Health") and Vencor, Inc ("Vencor") are bankrupt health care providers. Each of the States employs an "estimation" method of making payments to state Medicaid providers. The estimation methods required the States to pay for services prior to the services being rendered. The payment amounts were later adjusted after verification of the actual services provided was submitted at the end of a given period. Using this system, it was possible that in certain payment periods, the States might owe the providers money. Similarly, it was also the case that at other times, the States might have overpaid the providers, thus obligating the providers to return the overpayments to the States.

In 1999, both of the debtors filed petitions for bankruptcy under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware ("The Bankruptcy Court"). Both cases were assigned to the Honorable Mary F. Walrath. Each debtor then filed a motion for automatic stay that sought to prevent the States from collecting any debts from them during the bankruptcy, including the overpayments. Judge Walrath entered orders granting the debtors' motions and thereby prohibiting the collection of the monies. However, Judge

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[1] The states included in both the 00-475 and 00-632 appeals are Alabama, Connecticut, Idaho, Illinois, Louisiana, Missouri, New Hampshire, New Mexico, and Virginia. Also appearing in the 00-475 appeal but not in the 00-632 appeal are the states of New Jersey and Oklahoma. Conversely, states appearing in the 00-632 appeal, but not the 00-475 appeal, include Maine, Rhode Island, Tennessee, and Utah. The state of Texas filed a separate appeal in case number 00-476.

Walrath's orders did permit the States to recoup overpayments for the year immediately preceding the bankruptcy petition. Although the States were notified of these motions in the Bankruptcy Court, they did not contest the entry of the orders. Rather, after the orders were entered, they filed motions to vacate the orders. Judge Walrath promptly denied those motions, and the States timely appealed.

In their appeals, as in their motions to vacate in the Bankruptcy Court, the States argue that the Bankruptcy Court lacked jurisdiction to enter the orders because the orders were "suits" prohibited by the Eleventh Amendment to the United States Constitution. Alternatively, the States argue that the order exceeded the limitations of the Bankruptcy Code's automatic stay provisions. The debtor-appellants vigorously dispute both of these arguments. They contend, *inter alia*, that there was no money judgment or injunction against the States, and therefore no Eleventh Amendment implications.

Upon review of the record, the parties' submissions, and the applicable law, the court finds that the Bankruptcy Court's orders were not "suits" within the meaning of the Eleventh Amendment. Additionally, the court finds that under current Third Circuit law, the orders were well within the bounds of the Bankruptcy Code's automatic stay provisions. Therefore, the court will affirm the Bankruptcy Court in each of these cases. The court will now explain the reasons for its ruling.

II. FACTS

As previously noted, the appellants are the State Medicaid agencies of several states. In contrast to the Medicare program, which is completely controlled and administered by federal law and federal agencies, Medicaid is jointly administered between the federal government and the participating states. Thus, the State Medicaid agencies must comply with both state and federal law.

The Agencies are responsible for implementing their respective states' Medicaid programs in accordance with the law of their respective states. The States assert, without factual support, that the accounting and administration practices of the Medicare and Medicaid programs are markedly different. The states allege that while the Medicare program requires regular annual audits, the states might only conduct bi-annual audits, periodic audits, or no audits at all.

The appellees/debtors are health care providers that serve elderly patients. Each of the debtors operated facilities in the states where the Agencies operate, and had entered into provider agreements with the each of the states. The States contend that each of them has a funding formula for Medicaid services that operates in this fashion: The individual health care providers are paid through an automated system for services rendered based upon a formula determined by the participating states. At the end of the established payment cycle, the state will pay the provider. However, because many of the providers' costs are not final until at the time payment is made, the state makes the periodic payments based upon estimates of the providers' services and costs. Given the fact that the States periodically pay money to providers based upon estimates, it is frequently the case that after a scheduled audit is completed, the state has underpaid a provider for a given period. In that instance, the state would pay the provider the difference between the estimated and actual costs. Similarly, the estimation method also means that at times, the state may overpay the providers. In that instance, the provider would be required to promptly return any overpayment to the state. Indeed, the States allege that overpayments may arise from a number of sources, and that the providers are responsible for repayment in each instance.

On September 13, 1999, Vencor filed its petition for Chapter 11 bankruptcy in the Bankruptcy Court. On October 14, 1999, Sun Health filed its Chapter 11 petition. Both debtors

expressed a desire to continue operating. In order to remain in business, however, the debtors needed to secure financing from various lenders. The debtors' primary source of funding at the time was accounts receivable from the States and other places. In order to protect these and other assets, the debtors requested orders from the Bankruptcy Court that would place an automatic stay on any proceedings against the debtors' assets. In this fashion, the debtors hoped to prevent the States from collecting any overpayments during the bankruptcy. On September 13, 1999, in a "first day" order, the Bankruptcy Court granted Vencor's motion, stating that "[A]bsent any further order of the Court, the Payors shall not withhold, recoup, or otherwise offset, whether in respect to pre-petition or post-petition amounts, any payments owed to the Debtors related to any pre-petition services provided." (D.I. 12 - 00-632 at B05.) The Bankruptcy Court also gave any payor or creditor thirty days to file a motion for reconsideration of it order. The State appellants in the Vencor case promptly filed such a motion to vacate.

Subsequent to the entry of the first Vencor order, the Bankruptcy Court issued a similar order in the Sun Health bankruptcy. Although the issue was the same, the Bankruptcy Court's order in the Sun health case was slightly different. In a modified order issued on November 29, 1999, the Bankruptcy Court stated:

> Without limiting the foregoing, the first priority, priming lien on Accounts and proceeds thereof granted hereunder shall be senior to and prime any right of a holder of a claim including without limitation, any mortgagee, *governmental unit*, or landlord, that arose or is deemed to arise, prior to the Filing Date, to set off, or *except as set forth in paragraph 16 of this Order*, to recoup, such claim against any Accounts that are created or otherwise arise after the Filing Date.

(D.I. 8 - 00-475 at A63)(emphasis added).[2] Paragraph 16 of the November 1999 order stated:

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[2] The original motion was entered on November 12, 1999, but was modified on November 29, 1999.

> Any governmental unit, including the departments and agencies thereof, shall have no right to recoup provider reimbursement payments that were made to any Debtor from amounts due to such Debtor (or any other Debtor) other than to recoup such overpayments that arise under the same provider agreement or comparable applicable statutes, regulations, or arrangements, and in the same provider cost-year as the amounts due to the Debtor arise.

(*Id.* at A70.)

Although the States had been notified of the pending orders and the associated hearings, they did not object to the entry of the orders at that time. However, on December 3, 1999, the States in the Sun Health bankruptcy filed a motion to vacate the November 1999 order. The States argued that the debtor's actions amounted to a "suit" against the States, and were therefore prohibited by the Eleventh Amendment. The Bankruptcy Court denied this motion on February 25, 2000. In addressing the States' arguments, the Bankruptcy Court noted that in this case, no adversary proceeding had actually been commenced against the States. The court thus concluded that neither the debtor's motion nor the entry of the order constituted a "suit" under the Eleventh Amendment, and further cited authority for the proposition that such an action could not be considered a suit under the Eleventh Amendment. *See* 245 B.R. 779, 784 (Bankr. D. Del. 2000) (citing *In re Collins*, 173 F.3d 924 (4th Cir. 1999); *Maryland v. Antonelli*, 123 F.3d 777 (4th Cir. 1997)).

The Bankruptcy Court then addressed the States' contention that the order amounted to a money judgment against the states. Judge Walrath stated:

> We disagree with the Movants' argument on two bases. First, the Movants could not have kept the funds in the absence of the entry of the Order. The Order in question merely recites the effect of the Debtors' bankruptcy filing. It is the fact that the Debtors filed bankruptcy and the applicability of the Bankruptcy Code itself which results in the effects that the Movants seek to avoid, not the entry of the Order itself. For example, paragraph 5 merely recites that entities, including the states, are prohibited from taking certain actions as delineated in section 362(a) of the Bankruptcy Code. Specifically, section 362(a)(7) stays 'the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against

any claim against the debtor.' 11 U.S.C. § 362(a)(7). Similarly, paragraph 16 merely reiterates the holding of the Third Circuit in *In re University Medical Center,* 973 F.2d 1065 (3d Cir.1992) that the equitable doctrine of recoupment is an exception to the effect of the automatic stay, but is only available if the claims arise under the same contract or transaction. *Id.* at 1079-80. In the *University Medical Center* case, the Third Circuit concluded that recoupment of Medicare overpayments could be accomplished, without violating the automatic stay, only if they related to the same cost year. *Id.* at 1081.

The Movants argue, however, that the holding in *University Medical Center* is not applicable to them since that case dealt with Medicare statutes which are different from the various state regulations at issue in their relationships with the Debtors. However, the relevant language of paragraph 16 is sufficiently broad to encompass this. It provides that recoupment is available only under the 'same provider agreement or comparable applicable statutes, regulations, or arrangements, and in the same provider cost year.' This is in keeping with the general holding of *University Medical Center* that recoupment is available only with respect to claims arising out of the same transaction or contract. *Id.* at 1079-80. The Movants' citation to contrary authority from other courts is neither binding nor persuasive on this point. *See, e.g., United States v. Consumer Health Services of America, Inc.,* 108 F.3d 390 (D.C.Cir.1997) (rejecting reasoning in *University Medical Center* and holding that Medicare overpayments could be recouped in later cost year); *In re TLC Hospitals, Inc.,* 225 B.R. 709, 714- 15 (N.D.Cal.1998) (declining to follow *University Medical Center* and allowing recoupment from Medicare provider beyond fiscal year); *Mercy Hospital of Watertown v. New York State Dep't of Social Services,* 171 B.R. 490 (N.D.N.Y.1994) (reversing Bankruptcy Court determination that recoupment was permitted and remanding for explicit findings that claims arose from the same transaction); *In re Tri County Home Health Services, Inc.,* 230 B.R. 106, 111 (Bankr.W.D.Tenn.1999) (although disagreeing with reasoning in *University Medical Center,* found recoupment requested would be allowed even under that reasoning since it was within the same fiscal year); *In re CDM Management Services, Inc.,* 226 B.R. 195, 197 (Bankr.S.D.Ind.1997) (finding that state provider agreement was a single continuing provider agreement in contrast to annual provider agreement in the *University Medical Center* case); *In re AHN Homecare, LLC,* 222 B.R. 804, 811-12 (Bankr.N.D.Tex.1998) (declining to follow *University Medical Center* and allowing recoupment of Medicare overpayments from prior cost years against current cost year); *In re Southern Institute for Treatment and Evaluation, Inc.,* 217 B.R. 962, 966 (Bankr.S.D.Fla.1998) (following *Consumer Health* decision without mentioning *University Medical Center* case).

Consequently, the Final DIP Order simply reiterates the requirements of the Bankruptcy Code, as interpreted in this Circuit. Thus, even in the absence of the entry of the Final DIP Order, the Movants would not have been free to act as they assert.

Id. at 784-85.

In light of its decision in the Sun Health case, on May 3, 2000, the Bankruptcy Court amended its prior order in the Vencor bankruptcy to contain the language that was used in the Sun Health case. (D.I. 12 - 00-632 at B02.) The parties subsequently agreed to withdraw the pending motion to vacate in the Vencor case. The States promptly appealed the entry of both orders.

III. STANDARD OF REVIEW

In reviewing a case on appeal, the Bankruptcy Court's factual determinations will not be set aside unless they are clearly erroneous. *See Mellon Bank, N.A. v. Metro Comm., Inc.*, 945 F.2d 635, 641 (3d Cir. 1991), *cert. denied*, 503 U.S. 937, (1992). Conversely, a Bankruptcy Court's conclusions of law are subject to plenary review. *See Metro Comm., Inc.*, 945 F.2d at 641. Mixed questions of law and fact are subject to a "mixed standard of review." *See id*. at 641-42. Under this "mixed standard of review," the appellate court accepts findings of "historical or narrative facts unless clearly erroneous, but exercise[s] plenary review of the trial court's choice and interpretation of legal precepts and its application of those precepts to historical facts." *Id*.

IV. DISCUSSION

The court will first address whether the motion or the entry of the order was a suit for Eleventh Amendment purposes. The court will then consider whether the Bankruptcy Court's order exceeded the permissible scope of section 362.

A. The Debtors' Motions did not Constitute "Suits" under the Eleventh Amendment

The Eleventh Amendment prohibits the courts of the United States from presiding over "any suit in

law or equity, commenced or prosecuted against one of the United States by a Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI. Thus, the Eleventh Amendment means that "states are immune from suits brought by individuals from other states and by their own citizens." *See In re Vegliante*, 261 B.R. 817, 819 (Bankr. M.D. Pa. 2001).

The appellants argue that the debtors' motions were suits because the motions required action from them, namely, monetary payments from their state treasuries. The debtors respond that no adversary proceeding was commenced in the Bankruptcy Court, and therefore, there could not be a suit. The appellants assert that the court must look to the substance and effect of the judicial action at issue to determine whether or not it is a suit.

The court agrees with the appellants that the court must observe the nature and effect of the proceedings to determine whether a suit has been filed. To that end, courts have developed a six part test for determining whether a suit has been brought against a state. As stated by the court in *In re Vegliante*,

> As far back as 1821, the Supreme Court held that a suit requires:(1) an adversarial proceeding; (2) which arises as a result of deprivation or injury; (3) which involves at least two parties; (4) which compels the attendance of one of the parties; (5) which asserts and prosecutes a claim against one of the parties; and (6) which demands the restoration of some thing from the defending party.

Id. at 819-20 (citing *Cohens v. Virginia*, 19 U.S. 264 (6 Wheat 264) (1821)). The court will now consider each of these six "*Cohens* factors."

The first *Cohens* factor requires that there be an adversarial proceeding. In this case, there was no adversarial proceeding filed, so this factor should weigh in favor of finding that there was no suit. The States, however, argue that given the injunctive nature of the relief sought, an

adversarial proceeding *should* have been filed in the Bankruptcy Court. The court declines to find that an adversary proceeding was necessary in this instance. As the debtors point out, section 362 of the Bankruptcy Code prevents any creditor - including government entities - from "collect[ing], assess[ing], or recover[ing], a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(6). In other words, the automatic stay would have prevented the States from collecting the overpayments for the duration of the debtors' bankruptcies or until the stay was lifted. Since the Bankruptcy Code would have automatically prevented the States from collecting the overpayment in the event of the bankruptcy, there was no need for the debtors to commence an adversary proceeding to obtain the protection of the automatic stay.

To be certain, the effect of the automatic stay in this case may be akin to certain actions (i.e. a discharge of a debt or an injunction) that may only be pursued through an adversary proceeding. *See* FED. R. BANKR. P. 7001 (noting that discharges and injunctions are adversary proceedings). Nevertheless, as previously noted, the motion simply outlined what the States could and could not do pursuant to the automatic stay. Thus, although the States may object to the effect of the automatic stay, the debtors' motions cannot be considered suits because with or without their motions, the Bankruptcy Code would have prevented the States from retrieving the overpayments. For these reasons, the court finds that no adversary proceeding was necessary in this case.

The second *Cohens* factor requires the court to consider whether the action arose as a result of deprivation or injury. The court finds that the motions in question did not arise out of deprivation or injury, but rather were a preventative measure taken to ensure that the States could not receive overpayments from the bankrupt estate. Thus, there was no deprivation or injury.

The court finds that the third *Cohens* factor is clearly met because more than two parties

were involved. Thus, this factor weighs in favor of finding that there was a suit. However, the remaining factors do not lead the court to a similar conclusion. The fourth factor asks the court to examine whether attendance of a party was compelled. The orders of the Bankruptcy Court never required the States to appear in the Bankruptcy Court, thus the fourth factor is not met. Similarly, the fifth factor, which requires the court to consider whether a claim was commenced by the parties, is not met in this case. The debtors did not make a claim against the States. They simply sought an order protecting their rights under the Bankruptcy Code. Finally, the sixth factor was similarly absent in this case. The sixth factor requires that the movant seek the restoration of some thing. As previously noted, the debtors' motions merely sought an order establishing their rights under the Code, and did not seek the restoration of anything. Therefore, the court finds that the final three *Cohens* factors were not implicated in this case.[3]

For all of these reasons, the court finds that five out of six *Cohens* factors weigh in favor of finding that no suit was commenced against the States. Thus, the court finds that the Eleventh

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[3] In addition to their arguments regarding the suit, the States argue that they did not waive their sovereign immunity under the Bankruptcy Code, and therefore, the Bankruptcy Court had no jurisdiction to enter the motion. In support of this position, the appellants rely on *In re Sacred heart Hospital of Norristown*, 133 F.3d 237 (3d Cir. 1998), in which the Third Circuit questioned the constitutionality of section 106(a) of the Bankruptcy Code, which purports to strip states of their sovereign immunity under the Bankruptcy Code. *See id*. at 245. Nevertheless, the facts of the *Sacred Heart* case differ greatly from the facts of the present case, because in *Sacred Heart*, the debtor actually sought to receive a monetary payment from the state of Pennsylvania. *See id.* at 239-40 (noting that debtor "demanded judgment against DPW 'in the amount to which it is entitled under the Medical Assistance program"). Conversely, in the present case, as previously noted, there was no adversary proceeding in the Bankruptcy Court. Therefore, *Sacred Heart* is inapposite, and the court will reject the States' arguments on jurisdiction.

Amendment was not implicated in this case.[4]

B. The Bankruptcy Court's Order Did Not Overstep the Bounds of Section 362

The States next argue that even if the Bankruptcy Court had the power under the Eleventh Amendment to enter the orders at issue, the relief granted in the orders went beyond the permissible scope of the automatic stay provisions in section 362. The court disagrees with the States for two reasons.

First, the States rest their arguments on the fact that Congress lacks the authority under the Constitution (and presumably the Eleventh Amendment) to require the States to make monetary payments to anyone. The States further contend that even if Congress had this authority, it failed to clearly express its intention to require States to make such payments. The court agrees that as a legal precept, a federal court cannot compel a state to pay money to a person or entity. *See, e.g., Hoffman v. Connecticut Dept. of Income Maintenance*, 492 U.S. 96,102 1989) (noting that Bankruptcy Code did not authorize court to require states to make monetary payments). Nevertheless, the court disagrees with the appellants for factual, rather than legal, reasons.

Even if the law clearly establishes that a state cannot be made to render a monetary payment

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[4] The State of Texas argues that if the Bankruptcy Court's orders merely restate the Bankruptcy Code, there is no "case or controversy" as required by Article III. The court finds that Texas' argument on this point borders on being frivolous. The Third Circuit has stated that a case or controversy is present where there is "(1) a legal controversy that is real and not hypothetical, (2) a legal controversy that affects an individual in a concrete manner so as to provide the factual predicate for reasoned adjudication, and (3) a legal controversy with sufficiently adverse parties so as to sharpen the issues for judicial resolution." *See International Broth. of Boilermakers v. Kelly*, 815 F.2d 912, 915 (3d Cir. 1987). The court finds that all of these elements are met here, as when the States objected, a real legal controversy with adverse parties and concrete consequences was created. Thus, the court rejects Texas' argument on this point.

to a citizen, those are not the facts of this case. In the present case, the Bankruptcy Court's orders do not require the States to pay anything to anyone. They merely prevent the state from collecting the overpayments currently held by the debtors. If anything, the Bankruptcy Court merely prevented the States from collecting a debt for the time being. Under current law, this *de facto* discharge is entirely permissible. *See Texas v. Walker*,142 F.3d 813, 822023 (5th Cir. 1998), *cert. denied*, 525 U.S. 1102 (1999) (holding that despite the Eleventh Amendment, "Bankruptcy law [can] modif[y] the state's collection rights with respect to its claims against the debtor . . ." and permitting discharge of debt owed to State by debtor). The decision to pay the money to the debtors was made long ago, and was made by the States without any interference from the Bankruptcy Court. Thus, although the Bankruptcy Court's orders may prevent the states from collecting the monies that are owed to them, the orders in no way require the States to pay any additional money to the debtors. Since the debtors arguments concerning Congressional power center on the monetary payments, and the court finds that no monetary payment was present here, the court rejects the appellants' arguments on this point.

The final issue raised by the appellants regarding the scope of the section 362 motion is the appellants' belief that the Bankruptcy Court impermissibly relied upon the Third Circuit's decision in *In re University Medical Center*, 973 F.3d 1065 (3d Cir. 1992). In that case, the Third Circuit held that the Department of Health and Human Services could, under the equitable doctrine of recoupment, recoup monies that it paid to a Medicare provider where there was an "on-going relationship" between the providers and the recoupments were limited to the year immediately preceding the bankruptcy petition. *See id.* at 1080-81. The Bankruptcy Court relied on *University Medical* in drafting its order, and consequently limited the States to recoupment of overpayments in the pre-petition year, or same provider cost-year.

The parties do not disagree that recoupment is an equitable exception to the terms of the automatic stay. The States, however, argue that the recoupment terms in the Bankruptcy Court's order are incorrect. They assert that *University Medical* is distinguishable because that case involved payments under the Medicare system - which is completely federalized - whereas Medicaid is jointly operated by the states and the federal government. Thus, they assert that federalism is implicated in the present case, whereas this was not an issue in *University Medical*. The States further allege that whereas the Medicare program has a uniform method for the timing and formulation of payments, state Medicaid programs are not subject to uniform accounting standards. Thus, the States contend that *University Medical*, which relied on the federal government's annual audits, should not control this case.

The court finds the States' arguments unpersuasive for two reasons. First, as a factual matter, the States have failed to persuasively demonstrate why the accounting practices in the Medicare and Medicaid programs are so different that the Bankruptcy Court could not reasonably rely on *University Medical's* limiting instructions. Although it may be more difficult for the individual states to calculate the pre-petition year costs, the States have not demonstrated that it would be impossible to do so. Since the States can establish some manner of determining liability in the pre-petition year, the States have provided no compelling reason to view the programs in a different light. Indeed, as a policy matter, in these types of cases, it seems fair in both the Medicare and Medicaid contexts to cut off the recoupment at some point prior to the bankruptcy petition. To hold otherwise would allow the States and other creditors to completely circumvent the provisions of the automatic stay and achieve through the recoupment doctrine what they cannot achieve through other means, namely, full repayment of their debts. This is exactly the sort of preferential treatment

the Bankruptcy Code is designed to avoid.

Finally, although the States argue that federalism is implicated in the Medicaid context, whereas it is not under the Medicare program, the court is not persuaded. The States acknowledge that even in the Medicaid context, where the states and the federal government share authority, the Supremacy Clause dictates that the states are still required to follow federal law, including the Bankruptcy Code. Since the States would be bound by the Bankruptcy Code in any event, the States are bound by section 362. Specifically, in this case, they are bound by its provisions as interpreted by the Third Circuit. The Bankruptcy Court was faithful to the Third Circuit's interpretation of section 362 in University Medical and will therefore be affirmed.[5]

IV. CONCLUSION

For all of the foregoing reasons, the court finds that the orders entered by the Bankruptcy Court did not constitute suits under the Eleventh Amendment. Additionally, the court finds that the Bankruptcy Court's orders did not exceed the scope of section 362 as interpreted in the Third Circuit. Therefore, the court will affirm the Bankruptcy Court in each of the above cases.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The February 25, 2000 decision of the Bankruptcy Court which denied the appellants motion to vacate the November 1999 order in cases 00-475 and 00-476 is hereby

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[5] The appellants also argue that in light of subsequent cases from other circuits, the *University Medical* case is now questionable authority, and the Bankruptcy Court would have been justified in rejecting the case. The court disagrees. None of the cases cited by the appellants are Third Circuit cases. Thus, although other Circuits may disagree with the Third Circuit's decision, the States have not demonstrated that *University Medical* is not good law in *this* Circuit. This court and the Bankruptcy Court are bound only by the decisions of this Circuit, and this court will not overturn the Bankruptcy Court for faithfully following binding precedent in the face of contrary persuasive authority.

AFFIRMED.

2. The May 31, 2000 order of the Bankruptcy Court in case no. 00-632 is hereby AFFIRMED.

3. The Clerk shall close these cases. (Case Nos. 00-475, 00-476, and 00-632).

Dated: September 27, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE