IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|---|
| In re | ) | |
| | ) | |
| INTEGRATED HEALTH SERVICES, INC., *et al.*, | ) | Bankr. Case No. 00-389 (MFW) (Chapter 11) |
| | ) | |
| Debtors. | ) | |
| | ) | |
| IHS LIQUIDATING LLC, | ) | |
| | ) | |
| Appellant, | ) | |
| | ) | C.A. No. 04-917 (GMS) |
| v. | ) | |
| | ) | |
| DON G. ANGELL, *et al.*, | ) | |
| | ) | |
| Appellees. | ) | |

**MEMORANDUM**

## I. INTRODUCTION

Presently before the court is an appeal of a June 25, 2004 order of the bankruptcy court allowing certain objected-to claims amounting to roughly $13,000,000. (Bankr. 00-BK-389, D.I. 11007.) For the reasons explained below, this court concludes that the bankruptcy court did not err in allowing those claims. Therefore, the order of June 25 will be affirmed.

## II. BACKGROUND

On February 2, 2000, Integrated Health Services, Inc. and its subsidiaries (collectively, "the Debtors") filed for Chapter 11 relief in the United States Bankruptcy Court for the District of Delaware. About seven months later, the Appellees filed proofs of claim in the bankruptcy court.

Then, in March of 2001, the Appellees filed a lawsuit in North Carolina state court[1] against certain of the Debtors' former directors and officers, alleging two relevant sets of claims: (1) fraudulent conveyance, unlawful distribution, and unauthorized execution; and (2) fraud, negligent misrepresentation, and unfair and deceptive trade practices.

The Debtors responded by initiating an adversary proceeding in the Delaware bankruptcy court to enjoin the Appellees from prosecuting the North Carolina action in its entirety. Regarding the first set, the Debtors argued that because the alleged injuries are common to all creditors, those claims are property of the estate. 11 U.S.C.A. § 541(a)(1) (2004); *see also PHP Liquidating, LLC v. Robbins (In re PHP Healthcare Corp.)*, 128 Fed. Appx. 839, 844-45 (3d Cir. 2005) (non-precedential) ("[A]n individual creditor of a debtor may not assert a general claim belonging to all creditors."). Therefore, they argued, any individual pursuit of estate claims violates the automatic stay provision of the Bankruptcy Code, which applies to "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C.A. § 362(a)(3) (2004). As to the second set of claims, in which injuries unique to the Appellees are alleged, the Debtors argued that pursuit of those claims also violates the automatic stay because of an indirect adverse effect on the property of the estate in the form of potential indemnity claims and the like.

Before the injunction action was resolved by the bankruptcy court, the Debtors and the Appellees agreed to a stipulation and order, providing in relevant part:

> 2. The parties stipulate and agree that, upon the entry of this Stipulation and Order by the Court, all further proceedings in the [North Carolina action]

---

[1]The North Carolina action was eventually removed to the United States District Court for the Middle District of North Carolina.

> shall be and are stayed pursuant to the provisions of § 105 of the Bankruptcy Code, and shall remain stayed until 30 days after . . . the effective date of both Debtors' Plan or Plans or Reorganization, provided, however, that in any event the stay shall be lifted no later than 90 days after the entry of a final order by the Bankruptcy Court confirming the Debtors' Plan or Plans of Reorganization (the "Plans"), unless provided otherwise in such Plan or Plans . . . .
>
> 3. The parties further stipulate and agree that the entry of this Stipulation and Order fully resolves the issues raised by the Debtors' [injunction action]. . . . The Debtors further agree to take a voluntary dismissal with prejudice of the [injunction action] at the time the stay entered pursuant to this Stipulation and Order terminates under any provision of Paragraph 2, above . . . .

(Bankr. 01-AP-1030, D.I. 20.)

Subsequently, an official committee of unsecured creditors, which included at least one of the Appellees, was given authorization by the bankruptcy court to file an adversary proceeding alleging some of the same or similar estate claims against some of the same former directors and officers named as defendants in the stayed North Carolina action. (Bankr. 00-BK-389, D.I. 6376.) That proceeding was ultimately resolved by section 10.9 the Debtors' Amended Joint Plan of Reorganization ("the Plan"), wherein the parties agreed to a dismissal with prejudice of the official committee's action upon confirmation. (Bankr. 00-BK-389, D.I. 9651, Ex. 1A at 79.) It was further agreed in section 10.4 that the Debtors' injunction action against the proceedings in North Carolina would be dismissed with prejudice, and that the stipulated stay of the North Carolina action would be vacated. (Id. at 76-77.) The relevant parties also agreed to include the following language in section 10.4:

> [T]o the extent any stay pursuant to Section 362 or 105 is applicable to the civil action, pending in [North Carolina], such stay shall be deemed modified to allow the [North Carolina action] to be prosecuted; *provided, however*, that nothing herein shall be construed as waiving or limiting the right of any defendant in the [North Carolina action] to raise any defenses or counterclaims it may have, including without limitation, that the claims asserted in the [North Carolina action] are property

> of the Debtors' estates and that the plaintiffs do not have standing to assert such claims[.]

(Id. at 77 (emphasis in original).)

After confirmation, the Appellees resumed their prosecution of the North Carolina action in full, including the estate claims, under the purported authority of section 10.4. The Appellant, IHS Liquidating LLC ("the Liquidating LLC"), disagreeing with the Appellees interpretation of section 10.4, sought relief from the bankruptcy court.[2] The Liquidating LLC argued that because the Appellees were acting in violation of the Plan by continuing to pursue the estate claims in North Carolina, their claims as creditors against the estate should be disallowed or subordinated. The bankruptcy court was not persuaded, and allowed the claims in the aforementioned June 25th order. The Liquidating LLC subsequently appealed that decision to this court.

## III. DISCUSSION

As is pointed out by the Appellees, a district court is to review "the bankruptcy court's interpretation of the Confirmation Plan under the abuse of discretion standard," rather than the *de novo* standard. *First Western SBLC, Inc. v. Mac-Tav, Inc.*, 231 B.R. 878, 883-84 (D.N.J. Apr. 19, 1999) (collecting cases). In this case, however, it does not matter which standard of review applies because the Appellees' prosecution of the previously-stayed North Carolina action is clearly contemplated by both the plain language of section 10.4, as well as paragraphs 2 and 3 of the stipulation and order agreed to by the Debtors. The mere fact that section 10.9 provides for the dismissal of the unsecured committee's adversary proceeding (which had similar estate claims and similar parties) does not, as the Liquidating LLC suggests, create a negative implication that the

---

[2]The Liquidating LLC was created by the Plan to act on behalf of the Debtors' estates after confirmation.

Appellees are thereafter permitted to pursue only the non-estate claims in the North Carolina action. Any extrinsic evidence tending to suggest otherwise is irrelevant in light of such straightforward language. *Cf. Gleason v. Norwest Mortgage, Inc.*, 243 F.3d 130, 138 (3rd Cir. 2001). Therefore, the bankruptcy court did not err in failing to agree with the Liquidating LLC's extremely strained reading of the Plan.[3]

## IV. CONCLUSION

For the above-stated reasons, the court will affirm the bankruptcy court's order of June 25, 2004.

Dated: March 21, 2006

UNITED STATES DISTRICT JUDGE

---

[3]The Appellees' characterization of the Liquidating LLC's opening brief as "confusing" is an understatement, to say the least. Along those same lines, the court also points out that sifting through the seemingly-random bits and pieces of the bankruptcy record submitted in two cardboard boxes with no readily-discernable organizational scheme was as arduous as reading the Liquidating LLC's brief. Moreover, the court is dismayed that included among the Liquidating LLC's voluminous submissions are only *seven* of the sixty-two pages of transcript from the May 12, 2004 hearing of this matter by the bankruptcy court. Although the concatenation of those seven scattered pages provides the bulk of that court's ruling, the remaining fifty-five pages provide valuable insight into the underlying rationale. Thankfully, the Appellees were considerate enough to provide the transcript in full.

This litigation strategy is not only unbefitting of an NYU-educated lawyer with over a quarter century of experience, but also wasteful of this court's extremely limited resources. The court sincerely hopes that perusing any future submissions of the Liquidating LLC will be more akin to scuba diving the Molokini Crater at high noon in search of exotic sea creatures, and less like snorkeling Lake Superior at midnight in search of the Edmund Fitzgerald.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

| | |
|---|---|
| In re<br><br>INTEGRATED HEALTH SERVICES, INC., *et al.*,<br><br>Debtors. | Bankr. Case No. 00-389 (MFW)<br>(Chapter 11) |
| IHS LIQUIDATING LLC,<br><br>Appellant,<br><br>v.<br><br>DON G. ANGELL, *et al.*,<br><br>Appellees. | C.A. No. 04-917 (GMS) |

**ORDER**

IT IS HEREBY ORDERED THAT:

The bankruptcy court's order in the above-captioned matter dated June 25, 2004 be AFFIRMED.

Dated: March 21, 2006

UNITED STATES DISTRICT JUDGE