IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
BURLINGTON MOTOR HOLDINGS, INC., *et al*.,	)	
Debtors.	)	Bankruptcy Case No. 95-1559 (JKF)
	)	
ALL STAR INTERNATIONAL TRUCKS, INC.,	)	
Appellant,	)	
v.	)	Civil Action No. 99-232-GMS
BURLINGTON MOTOR CARRIERS, INC.,	)	
Appellee.	)	
	)	
BACOMPT,	)	
Appellant,	)	
v.	)	Civil Action No. 99-231-GMS
BURLINGTON MOTOR CARRIERS, INC.,	)	
Appellee.	)	
	)	
CSX INTERMODAL, *et al.*,	)	
Appellant,	)	
v.	)	Civil Action No. 99-224-GMS
BURLINGTON MOTOR CARRIERS, INC.,	)	
Appellee.	)	
	)	

IDEAL PAINT & BODY, INC., Appellant,	)	
v.	)	Civil Action No. 99-233-GMS
BURLINGTON MOTOR CARRIERS, INC., Appellee.	)	
DHIRU PATEL, *et al*., Appellant,	)	
v.	)	Civil Action No. 99-230-GMS
BURLINGTON MOTOR CARRIERS, INC., Appellee.	)	
UHL TRUCK SALES OF KENTUCKYIANA, Appellant,	)	
v.	)	Civil Action No. 99-229-GMS
BURLINGTON MOTOR CARRIERS, INC., Appellee.	)	

MEMORANDUM AND ORDER

I. INTRODUCTION

On December 4, 1995, Burlington Motor Holdings, Inc., Burlington Motor Carrier, Inc., Spirit Transportation Inc., BNMC Real Estate Inc., and BMC Equipment Inc. (the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On November 22, 1996, the bankruptcy court entered an order confirming the Debtor's Fourth Amended Plan of Reorganization (the "Plan"). The bankruptcy court also entered an order consolidating the Debtors' estates for all purposes. Pursuant to the Plan, substantially all of the Debtors' assets were transferred to the successor corporation, Burlington Motor Carriers, Inc. ("Burlington").

On December 2, 1997, Burlington filed suit seeking to avoid and recover certain allegedly preferential payments made to All Star International Trucks, Inc., Bacompt Systems, Inc., CSX Intermodal, Inc., CSX Services, Inc., CSX Transportation, Inc., Ideal Paint & Body, Inc., Dhiru Patel, and UHL Truck Sales of Kentuckiana (the "appellants"). On September 4, 1998, the appellants filed a motion to dismiss, claiming that the bankruptcy court lacked subject matter over Burlington's avoidance actions. On November 24, 1998, the bankruptcy court entered an order denying the appellants' motion to dismiss.

The appellants filed motions of appeal on December 4, 1998. On July 6, 1999, the court consolidated the pending appeals.

II. DISCUSSION

The appellants raise two issues on appeal. First, they argue that the bankruptcy court erred as a matter of law in denying their motion to dismiss for lack of subject matter jurisdiction. Second, they

argue that the bankruptcy court lacked subject matter jurisdiction over Burlington's claims because Burlington did not have standing to bring those claims. The court will discuss each of these issues in turn.

A. Subject Matter Jurisdiction

Bankruptcy court jurisdiction is a question of law subject to *de novo* review. *See In re Marcus Hook Dev. Park, Inc.* 943 F.2d 261, 263 n.2 (3d Cir. 1991).

An analysis of the bankruptcy court's jurisdiction must first begin with 28 U.S.C. § 1334. This section grants the district court jurisdiction over bankruptcy cases. *See* 28 U.S.C. § 1334. It provides that "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." *Id*. Moreover, district courts routinely refer bankruptcy cases to the bankruptcy court pursuant to 28 U.S.C. § 157(a). *See United States Trustee v. Gryphon at the Stone Mansion, Inc.*, 216 B.R. 764, 767 (W.D. Pa. 1997), *aff'd,* 166 F.3d 552 (3d Cir. 1999).

Thus, in determining whether Burlington's avoidance actions fall within the bankruptcy court's subject matter jurisdiction, the court need only decide whether the matter is at least "related to" the bankruptcy. *See Gryphon*, 216 B.R. at 767. An action is related to the bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action, and would in any way impact upon the handling and administration of the bankrupt estate. *See id*. Furthermore, post-confirmation jurisdiction is appropriate when the matter is 'related to' the bankruptcy case. *See id*. at 768. A retention of jurisdiction provision within a confirmed plan does not grant a bankruptcy court jurisdiction. *See id*. at 769. Similarly, the absence of such a provision within a confirmed plan does not deprive a

bankruptcy court of jurisdiction. *See id*.

As the bankruptcy court here noted, avoidance actions are a creation of bankruptcy law and are within the matters enumerated in 28 U.S.C. § 157 as core proceedings. *See* 28 U.S.C. § 157(b)(2)(F). Thus, there can be no question that such actions are "related to" the bankruptcy. Further, the fact that these actions were not enumerated in the retention of jurisdiction recitation in the Plan is of no moment. The court thus finds that the bankruptcy court was correct in retaining jurisdiction over Burlington's avoidance actions.

B. Standing

The appellants next argue that Burlington lacks standing to bring avoidance actions under 11 U.S.C. § 550(a).

1. May the Appellants Raise Standing for the First Time on Appeal?

Because the appellants did not raise this issue below, the court must first address whether it is a proper issue to be heard on appeal. The court finds that it is. Standing represents a jurisdictional requirement that is open to review at all stages of the litigation. *See Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 255 (1994). Nevertheless, Burlington argues that prudential standing requirements are non-jurisdictional and can thus be waived by not raising them below.[1] The Third Circuit, while recognizing the issue, has not definitively ruled on whether prudential standing may be waived. *See UPS Worldwide Forwarding v. United States Postal Serv.*, 66 F.3d 621, 626 (3d Cir. 1995). However, the majority of courts of appeal that have considered the issue have held

[1]The constitutional standing requirements here are not at issue.

that prudential standing requirements may not be waived. *See e.g., Community First Bank v. National Credit Union Admin.*, 41 F.3d 1050, 1053 (6th Cir. 1994); *Thompson v. County of Franklin*, 15 F.3d 245, 248 (2d Cir. 1994).

The court finds persuasive the view that prudential standing requirements are jurisdictional and cannot be waived. As the Second Circuit noted, even prudential standing implicates federal jurisdiction, and thus, cannot be treated lightly. *See Thompson*, 15 F.3d at 248. Accordingly, the court will now consider whether Burlington has standing.

2. Burlington's Standing

The appellants argue that Section 550(a) of the Bankruptcy Code requires that Burlington's avoidance actions be for the benefit of the estate. *See* 11 U.S.C. § 550(a). Under the Plan, Burlington is unconditionally obligated to pay creditors. The appellants thus maintain that, under the terms of the Plan, any recovery by Burlington in the avoidance actions is not for the benefit of the estate. Accordingly, any recovery of preferences will only benefit Burlington. For the following reasons, the court disagrees.

It is a well-settled principle that avoidance powers may be assigned to someone other than the debtor or trustee pursuant to a plan of reorganization. *See In re Churchfield Management & Inv. Corp.*, 122 B.R. 76, 81 (Bankr. N.D. Ill. 1990). However, a party seeking to enforce such a claim who is neither the debtor, nor the trustee, must establish two elements. *See McFarland v. Leyh*, 52 F.3d 1330, 1335 (5th Cir. 1995). First, the party must establish that it has been appointed to bring the actions; and second that it is a representative of the estate. *See id.*

There is little dispute that Burlington satisfies the first element. The Plan clearly stated that

Burlington was to assume "selected assets," including causes of action under sections 547 and 550 of the bankruptcy code. The bankruptcy court approved this Plan. Thus, the court finds that Burlington was appointed to bring these avoidance actions.

In determining whether a party is the "representative of the estate," courts apply a case-by-case approach. *See McFarland*, 52 F.3d at 1335. The primary consideration is whether a successful recovery by the appointed representative would benefit the debtor's estate, and particularly the unsecured creditors. *See In re Sweetwater*, 884 F.2d 1323, 1326-27 (10th Cir. 1989). In determining whether a benefit has inured, courts will broadly interpret this requirement. *See In re North Atl. MillWork Corp.*, 155 B.R. 271, 282 (Bankr. D. Mass. 1993).

It is clear that the benefit to the estate may occur prior to an actual avoidance recovery.[2] *See In re Maxwell Newspapers, Inc.*, 189 B.R. 282, 287 (Bankr. S.D.N.Y. 1995); *Churchfield*, 122 B.R. at 82. In *Maxwell*, the bankruptcy court found a benefit where the debtor's creditors were assigned certain avoidance claims in exchange for the withdrawal of the creditor's $93 million claim. 189 B.R. at 286. In *Churchfield*, the avoidance claims were exchanged for a direct payment to the creditors and for payment of the estate's administrative expenses. 122 B.R. at 82-83. The court in *Churchfield* went on to note that the unsecured creditors received the benefit of every valuable consideration paid by the assignee to the estate. *See id.* "[T]o conclude otherwise would be to deprive [the assignee] of its bargained for rights and might allow it a present claim of partial failure of

[2]There can be little dispute here that, under the terms of the Plan itself, no benefit would inure to the estate in the event of an actual avoidance recovery. The Plan specifically states that any such future proceeds would benefit only Burlington.

consideration against the estate." *Id*. at 83.

In this case, the court acknowledges that the prior benefit, while present, is not as clear as in other cases. Here, pursuant to the Plan, Burlington paid $3.8 million to be issued directly to the unsecured creditors. It also assumed liability for various other types of claims, such as administrative claims and tax claims. In exchange for this, Burlington received substantially all of the debtors' assets, including the rights to pursue the avoidance actions. Thus, while the payment and assumption of liabilities were not solely consideration for the avoidance actions, these actions were clearly set forth in the Plan as part of the total bargain.[3]

Because Burlington was assigned these actions, and the estate benefitted from such assignment, the court finds that Burlington has standing to bring the avoidance actions.

III. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The November 24, 1998 decision by the United States Bankruptcy Court for the District of Delaware is AFFIRMED.

Date: January 17, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

[3]Much is made in the appellants' briefs of the fact that it is unclear what portion of the consideration went to the avoidance actions. This argument is of no moment because the estate benefitted from a voluntary, mutual exchange which explicitly included the avoidance actions.