IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
BURLINGTON MOTOR HOLDINGS INC. BURLINGTON MOTOR CARRIERS INC. SPIRIT TRANSPORTATION, INC. BNMC REAL ESTATE INC. and BMC EQUIPMENT LEASING, INC.	)	Case Nos. 95-1559 through 95-1563 (JKF)
Debtors.	)	
BURLINGTON MOTOR CARRIERS INC.	)	
Appellant,	)	
v.	)	Civil Action No. 99-572 GMS
MCI TELECOMMUNICATIONS,	)	
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 Debtors' 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 3, 1997, Burlington filed suit seeking to avoid and recover preferential transfers made to MCI Telecommunications ("MCI"). On November 6, 1998, MCI filed a motion to dismiss for lack of subject matter jurisdiction. On November 24, 1998, the bankruptcy court entered an order denying MCI's motion to dismiss.

On April 14, 1999, the bankruptcy court issued a memorandum opinion granting MCI's December 4, 1998 motion for reconsideration. In that opinion, the bankruptcy court dismissed Burlington's preference claims against MCI for want of subject matter jurisdiction because Burlington lacked standing to pursue the action. In particular, the bankruptcy court found that Burlington lacked standing because the avoidance claims would provide no benefit to the Debtors' bankruptcy estate.

On April 23, 1999, Burlington appealed the bankruptcy court's decision.

II. DISCUSSION

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).

A. Constitutional Standing

MCI argues that Burlington lacks an injury in fact, and therefore lacks constitutional standing. The court finds this argument to be without merit.

A party meets the injury in fact element of the constitutional standing doctrine where it can allege "a harm suffered by the plaintiff that is 'concrete' and 'actual and imminent.'" *Steel Co. v. Citizens For a Better Env't.*, 523 U.S. 83, 103 (1998). Burlington has met this standard. It paid $3.8 million to the Debtors' unsecured creditors in exchange for the Debtors' assets. Included in the

Debtors' assets was the right to pursue the Debtors' avoidance actions. As the court will further discuss in Section IIB, Burlington is thus a representative of the estate. In its capacity as estate representative, Burlington alleges that MCI owes it money, which MCI refuses to pay. Therefore, the harm to Burlington, as the estate representative, is concrete and ongoing.[1]

B. Benefit to the Estate

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*.

The parties do not dispute that Burlington has been appointed to bring this preference action. 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.

The dispute in this case centers squarely on the requirement that Burlington be a "representative of the estate." 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

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[1]It is true that, as is discussed further in Section IIB, *supra*, any funds received as the result of the avoidance actions will not directly benefit the estate itself. However, this fact is unavailing because the estate was previously benefitted by the money Burlington paid as consideration for the estate's assets, including the right to bring avoidance actions.

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 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,

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[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.

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]

Thus, the court finds that Burlington was assigned these actions and the estate benefitted from such assignment.

III. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. The April 14, 1999 decision by the United States Bankruptcy Court for the District of Delaware is REVERSED.

Date: January 18, 2002

Gregory M. Sleet
UNITED STATES DISTRICT JUDGE

[3]Much is made in the appellee's 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.