UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560
FAX (605) 224-9020

June 29, 1989

Cecelia Grunewaldt, Esq.
Post Office Box 966
Sioux Falls, South Dakota 57101—0966

Kay Cee Hodson, Esq.
300 North Dakota Avenue, Suite 510
Sioux Falls, South Dakota 57102

Re: Edward W. and Wilma Carr d/b/a Carr Farms, Inc.
Chapter 11 87-40067
87-40068

Dear Counsel:

This matter comes before the Court due to the United States Trustee's (U.S.T.) objection to confirmation of the debtors' plan. Debtors Carr Farms, Inc. (Corporation) and Edward W. and Wilma Carr (Carrs) filed Chapter 11 petitions in February 1987. In April, Corporation and Carrs sought joint administration of the cases pursuant to Bankruptcy Rule 1015. No objections were filed and the Court[1] thereafter ordered the case to be administered jointly.

A joint amended reorganization plan was set for a confirmation hearing in March 1989. Objections were filed by the U.S.T. and the Farmer's Home Administration (FmHA). The FmHA's objections were tentatively resolved at the hearing and the plan was provisionally confirmed pending the resolution of U.S.T.'s objection.

U.S.T. claims that the quarterly fees required by 28 U.S.C. § 1930(a) (6) must be paid in each of two or more cases ordered to

[1] The Honorable Peder K. Ecker, Judge, United States Bankruptcy Court, District of South Dakota, presiding.

be jointly administered.[2] Neither party submitted authority which was directly on point. The Court was also unable to find such authority. However, statutes, rules and case law have provided guidance on this issue.

Bankruptcy Rule 1015 provides, in salient part:

"(b) Cases Involving Two or More Related Debtors. If a joint petition or two or more petitions are pending in the same court by or against ... (4) a debtor and an affiliate, the court may order a joint administration of the estates[.]"

The rule also provides that the court must consider the need to protect creditors of different estates against potential conflicts of interest. Bankruptcy Rule 1015(b) and (c).

A significant difference exists between joint administration and consolidation under 11 U.S.C. §105(a). The Advisory Committee Notes to Rule 1015 state that joint administration may include combining estates by using a single docket for matters occurring in administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process least costly. Consolidation, on the other hand, implies a unitary administration of the estates. It is neither authorized nor prohibited by Rule 1015 because the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. Id. See also In Re N.S. Garrott & Sons, 63 B.R. 189 (Bkrtcy. E.D. Ark. 1986). Thus, under Rule 1015, it does not appear that jointly administered estates and their attendant assets and liabilities lose any of their independent character, as they would if they had been substantively consolidated.

Finding that jointly administered estates do not lose their independent character, the Court must next examine 28 U.S.C. §1930(a)(6) which provides in part:

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[2] U.S.T. also argues that the cases were to be jointly administered rather than consolidated. It is clear that debtors' motion, although captioned as one for "consolidation," more specifically is for joint administration under Rule. 1015.

> In addition to the filing fees paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until a plan is confirmed or the case is converted or dismissed, whichever occurs first. (emphasis added)

On its face, it is clear that the statute requires the payment of trustee fees in each case administered under Chapter 11 of the Bankruptcy Code. This conclusion is further supported by the fact that Congress intended that the trustee program would be self-funding, i.e. paid for "by the users of the bankruptcy system not by the taxpayer." United States Trustee v. Prines, 867 F.2d 478, 480 (8th Cir. 1988) citing H.R. Rep. No.764, 99th Cong., 2d Sess. 22, reprinted in 1986 U.S. Code Cong. & Admin. News 5234~

Joint administration does not serve to substantively combine bankruptcy cases; hence, the Court finds that quarterly trustee's fees must be paid by both Corporation and Carr in this jointly administered case.

The Court notes that this issue revolves around undisputed facts. This decision represents the Court's conclusions of law in this proceeding. This matter constitutes a core proceeding under 28 U.S.C. §157(b). The Court shall enter an order sustaining the U.S.T.'s objection and will further order that the debtors amend their plan in accordance with this decision.

Very truly yours,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk
Thomas Lloyd, Esq.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

IN RE:	)	CASE NO. 87-40067
	)	87—40068
EDWARD W. CARR, AND WILMA CARR,	)	
d/b/a Farmers, and	)	
CARR FARMS, INC .,a South	)	(Jointly Administered Case)
Dakota Corporation,	)	
	)	Chapter 11
Debtors.	)	ORDER

Pursuant to the letter opinion filed in this matter and executed this same date

IT IS HEREBY ORDERED that the objection of the United States Trustee to the confirmation of the debtors' provisionally confirmed plan as amended is hereby sustained and

IT IS FURTHER ORDERED that debtors amend their plan to provide that the above referenced debtors will each pay quarterly fees to the United States Trustee.

Dated this 29th day of June, 1989.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:

PATRICIA MERRITT, CLERK

By: _____
Deputy Clerk

(SEAL)