

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

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June 27, 1990

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Re: Robert L. Ehrich
Chapter 11; 585-00119

Dear Counsel:

The Court has before it the United States Trustee's motion for compliance under 11 U.S.C. § 1142(b). The gist of the motion requires the payment of certain quarterly trustee fees that the UST alleges were underpaid. After reviewing the file, the applicable caselaw and statutes, the Court will grant the UST's motion.

The debtor filed a petition under Chapter 11 of the Bankruptcy Code on August 28, 1985. The case was converted to a Chapter 12 proceeding in June of 1988. The order of conversion was vacated and the case was resumed as a Chapter 11 proceeding on December 12, 1988. A plan of reorganization was confirmed on November 17, 1989.

After confirmation, the UST calculated the quarterly fees owed by the debtor. According to the reports filed by the debtor with the UST, the debtor had disbursements in the fourth quarter of 1987 totaling \$547,745.50. Pursuant to 28 U.S.C. § 1930(a)(6), the quarterly fee on this amount would total \$2,250.00. However, debtor paid only \$300.00. The trustee also claims that the debtor owes a minimum of \$300.00 for the third quarter of 1989 and a minimum of \$300.00 for the fourth quarter of 1989. No reports were filed for the months of those quarters, so the UST computed an average monthly disbursement based upon financial reports that were previously filed.

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The UST informed the debtor that he owed additional trustee fees

for the fourth quarter of 1987. The debtor responded that expenditures during that quarter included \$137,452.75 for cattle purchases and \$264,316.92 as a plan payment, both of which he contended would not be subject to quarterly fees. The UST responded that he stood by his original position that such disbursements, regardless of how they were denominated, were subject to quarterly fees.

The issue specifically presented is whether the debtor's post-petition pre-confirmation payment to the Production Credit Association in settlement of PCA's claim was a "disbursement" for the purpose of calculating the quarterly fees payable to the United States Trustee under 28 U.S.C. § 1930(a)(6).

The debtor argues that the \$264,000.00 payment to the PCA was pursuant to a stipulation and settlement agreement approved by this Court and that such payment was in essence a pre-confirmation payment under the plan to PCA. The UST argues that such pre-confirmation disbursements are subject to quarterly fees regardless of whether they are later ratified by the debtor's confirmed plan.

28 U.S.C. § 1930(a) (6) provides:

Notwithstanding section 1915 of this title, the parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court. . .the following filing fees: (1) . . . (6) in addition to the filing fee 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. The fee shall be \$150 for each quarter in which disbursements total less than \$15,000; \$300 for each quarter in which disbursements total \$15,000 or more but less than \$150,000; \$750 for each quarter in which disbursements total \$150,000.00 or more but less than \$300,000; \$2,250 for each quarter in which disbursements total \$300,000 or more but less than \$3,000,000; \$3,000 for each quarter in which disbursements total \$3,000,000 or more. The fees shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

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A review of this statute reveals no definition for the term "disbursement." No specific reference is made to the term in the legislative history. However, the legislative history does state that the United States Trustee program is to be paid by the users of the bankruptcy system rather than the taxpayers. See H.R. Rep. No. 764, 99th Cong., 2d Sess. 18-22 (1986) reprinted in 1986 U.S. Code Cong. & Admin. News 5234.

The caselaw in this area is sparse. However, *In re Prines*, 867 F.2d 478 (8th Cir. 1989) instructs that the calculation of quarterly fees is to be a simple computation based upon the debtor's financial reports. *Id.* at 481. *In re Ozark Beverage Co., Inc.*, 105 B.R. 510 (Bankr. E.D. Mo. 1989) wrestled with this question, holding that in the absence of any guidance from the statute or legislative history, the plain meaning of the statute must be examined. The Court concluded that "disbursements" meant all expenses of a debtor in possession in a given quarter. *Id.* at 512.

Like the court in *Ozark Beverage*, this Court finds that the plain meaning of the statute must be examined. Cf. *Perrin v. U.S.*, 444 US 37, 100 S.Ct. 311, 62 L.Ed. 2d 199 (1979) (The fundamental canon of statutory construction is that words will be interpreted in their ordinary common meaning.) Black's Law Dictionary defines disbursement as meaning to "pay out" or to "make payment" in settlement of a debt or account payable. Black's Law Dictionary, 5th Ed. The term is defined by Webster simply as an "expenditure." Webster's II New Riverside University Dictionary.

The debtor contends that the lump sum payment to the PCA before confirmation is in fact a "plan payment" that would not be subject to the quarterly fee provision. However, he offers no basis in statute or caselaw to support that position. Instead, he makes a factual argument that the payment was actually held "in trust" and was not effective until the debtor's plan of reorganization was confirmed by the court. However, neither the stipulation and settlement agreement, dated February 13, 1987, nor the order approving such agreement, signed by Judge Ecker on April 14, 1987, make such a provision. Rather, the stipulation merely provides that the debtor had the right to satisfy the PCA's claim by paying the sum of \$250,000.00 plus interest in the event that the agreement is approved.

The debtor also asserts that requiring interim trustee fees to be exacted against plan payments would have a chilling effect on creditor agreements to pay creditors' plan payments effective upon the date of confirmation. However, the trustee argues that

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the debtor's theory does not take into account that the quarterly fees are payable regardless whether a plan is confirmed, dismissed or converted. The Court agrees with the trustee's conclusion that recognizing a distinction between disbursements when a plan is confirmed or when a plan is dismissed or converted would be contrary to § 1930. The Court further observes that the debtor's proposal, like the proposal in *Ozark Beverage*, is designed to engender a less harsh result than would otherwise be obtained. See *Ozark Beverage*, supra at 512.

Keeping with the dictates of the Eighth Circuit, the plain meaning of "disbursements" under § 1930(a) (6), include all post-petition pre-confirmation expenditures made by a debtor. This would include payments that might later be included in a reorganization plan. The Court thus finds that the debtor's disbursements for the fourth quarter of 1987 should include the payment made to PCA and that an additional \$1,950.00 in interim trustee fees is due to the United States Trustee. Further, the Court finds that the debtor owes \$300.00 for the third quarter of 1989 and \$300.00 for the fourth quarter of 1989.

This constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52 and Bankruptcy Rule 9014. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). The Court will enter an appropriate order.

Very truly yours,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH/sh
CC: Bankruptcy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

IN RE:) CASE NO. 585-00119
)
ROBERT LAVERNE EHRICH,) CHAPTER 11
) ORDER REQUIRING
) COMPLIANCE WITH
Debtor.) 11 U.S.C. § 1142(B)

Pursuant to the letter opinion filed by the Court and executed this same date,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that debtor Robert L. Ehrich must pay an additional \$1,950.00 in interim trustee fees for the fourth quarter of 1987.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the debtor must pay \$300.00 in interim trustee fees for the third quarter of 1989.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the debtor must pay \$300.00 in interim trustee fees for the fourth quarter of 1989.

IT IS FURTHER ORDERED that the debtor shall pay the sum total of \$2,550.00 in interim trustee fees within thirty days of entry of this order.

Dated this 27th day of June, 1990.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

ATTEST:
PATRICIA MERRITT, CLERK

By _____
Deputy Clerk

(SEAL)