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RECOUPMENT IN CHAPTER 11 BANKRUPTCY

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A CLE Presentation

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INTRODUCTION

An area of substantial importance within bankruptcy jurisprudence is the distinction between the common law doctrine of recoupment and the Bankruptcy Code's statutory doctrine of setoff. The Bankruptcy Code does not explicitly address recoupment. However, setoff is addressed specifically under 11 U.S.C. § 553 of the Code. The terms recoupment and setoff are often used interchangeably, however distinction is important because these doctrines are in fact two divergent concepts of law.

I. RECOUPMENT

A. Recoupment in general.

The common law doctrine of recoupment is equitable in nature, and is referred to as reconvention in civil law jurisdictions.¹ The doctrine was recognized by the Supreme Court for the first time in *Bull v. United States*², and refers to a defendant's right to reduce or eliminate the plaintiff's claim, where that right has arisen in the same action.³ It is well-established that recoupment will be allowed whenever an action for damages can be sustained, and thus circuitry of action avoided.⁴

Recoupment is defined in Black's Law Dictionary (8th ed. 2004) as:

1. The recovery or regaining of something, esp. expenses. 2. The withholding, for equitable reasons, of all or part of something that is due. 3. Reduction of a plaintiff's damages because of a demand by the defendant arising out of the same transaction. 4. The right of a defendant to have the plaintiff's claim reduced or eliminated because of the plaintiff's breach of contract or duty in the same transaction. 5. An affirmative defense alleging such a breach. 6. Archaic. A counterclaim arising out of the same transaction or occurrence as the one on which the original action is based. In modern practice, recoupment has been replaced by the compulsory counterclaim.

In a recent opinion, the Indiana Court of Appeals in *York Linings International, Inc. v. Harbison-Walker Refractories Co.*, 839 N.E.2d 766, 769 (Ind.App.2005), recognized this as the generally accepted definition of recoupment.

The doctrine of recoupment rests upon the principle that it is just and equitable to settle in one action all claims growing out of the same contract or transaction; the object of the plea is to rebate or recoup, in whole or part, the claim sued on.⁵ The practice serves to avoid needless delay and unnecessary litigation.⁶

There are two circumstances under which the right to recoupment will generally arise. The first of these circumstances is where the plaintiff has not complied with some cross-obligation of the contract on which he or she sues.⁷ Recoupment is also common where a plaintiff has violated some legal duty in the making or performance of the contract on which he or she sues.⁸ The majority of cases recognizing and applying the doctrine of recoupment are those which deal with business transactions and involve contracts.⁹ A classic example for recoupment under a contract is the case of an overpayment under the contract at issue.¹⁰

B. Doctrinal requirements.

In order for a creditor to successfully assert their right of recoupment in bankruptcy, two requirements must initially be met. First, the claims must arise from a single contract or transaction.¹¹ Second, there must be some type of "overpayment" whether accidentally or contractually made.¹²

Currently, the "same transaction" requirement has two divergent jurisdictional approaches to interpretation.¹³ "One line of cases considers obligations to arise from the same transaction where they bear a logical relationship to each other."¹⁴ In determining whether there is a logical relationship under this approach, the focus is on the agreement between the parties.¹⁵ The second approach is somewhat

more restrictive, requiring a “single, integrated transaction.”¹⁶ The 7th Circuit Court of Appeals, in *Kleven v. Household Bank*¹⁷, has affirmed that this jurisdiction is to follow this second approach. The main difference in the two approaches lies in the degree of “interconnectedness” necessary between the obligations at issue.¹⁸

C. The defensive nature of the doctrine of recoupment.

It has been well-established that recoupment is a doctrine of an intrinsically defensive nature.¹⁹ The right to recoup is an equitable defense, which enables a defendant to reduce or satisfy liability on a plaintiff’s claim by asserting an obligation of the plaintiff, which arose out of the same transaction.²⁰ Stated otherwise, the defense of recoupment applies only by way of reduction, mitigation, or abatement of damages claimed by the plaintiff, and is not an independent action.²¹

The doctrine of recoupment does not provide a basis for affirmative relief.²² The right to recoup is only a challenge to the validity and extent of the plaintiff’s claim, and no affirmative recovery is permitted.²³

The doctrine of equitable recoupment is partially intended to alleviate the harsh consequences resulting from the application of a statute of limitations.²⁴ “Generally, a defendant’s right to plead recoupment as a defense survives expiration of the period provided by the statute of limitations that would otherwise bar a recoupment claim as an independent cause of action.”²⁵ Because “recoupment is in the nature of a defense arising out of some feature of the transaction upon which the plaintiff’s action is grounded, such a defense is never barred by the statute of limitations so long as the main action itself is timely.”²⁶

It has been well-established that the defense of recoupment can be successfully asserted even if the party asserting it is not entitled to relief in a direct action.²⁷ A party may assert a claim for equitable recoupment, even though a timely counterclaim has not or cannot be filed.²⁸ In some jurisdictions, however, in order to assert the defense of equitable recoupment, a party may have to have a legally subsisting cause of action upon which the party could otherwise maintain an independent claim.²⁹

D. Recoupment in Bankruptcy.

The equitable doctrine of recoupment exists independent of the Bankruptcy Code.³⁰ “A claim subject to recoupment avoids the usual bankruptcy channels and thus, in essence, is given priority over other creditors’ claims.”³¹ Since recoupment operates as an exception to the statutory priorities of claims in a bankruptcy case³², the doctrine is thus narrowly construed because it conflicts with the basic principle of equal distribution among creditors.³³

Courts consider several factors to determine if recoupment is proper in bankruptcy. Courts examine whether the obligations arise out of a single transaction, and whether it would be fair or equitable for the debtor to enjoy the benefits of the transaction without also meeting its obligations.³⁴ Recoupment is allowed to prevent a windfall to the debtor where there has been some type of overpayment,³⁵ and in order to prevent unjust enrichment.³⁶

In many cases where courts have allowed recoupment, either the applicable common law or the contract at issue has specifically provided for the recovery of overpayments previously received by withholding funds from future payments.³⁷ However, application of the doctrine has evolved among jurisdictions so that an express provision for repayment in the contract at issue is not necessary for a creditor to exercise recoupment in the course of bankruptcy litigation.³⁸ Alternatively, it is important to note that the mere fact that a contract exists between a creditor and debtor does not automatically allow a creditor to exercise recoupment.³⁹

II. SETOFF

A. The doctrine of “setoff” in general.

“The right of setoff derives from the precept that persons “should not be compelled to pay one moment what they will be entitled to recover back the next.”⁴⁰ Alternatively stated, “[t]he principle upon which the rule [of setoff] proceeds is that in [the] case of mutual debts, it is only the balance which is the real and just sum owing by or to the bankrupt.”⁴¹ The doctrine of setoff is specifically important in bankruptcy, because “in the absence of such a right the creditor would be forced to pay full the amount owed to the debtor, but may be limited to no more than a pro rata recovery of his claim against the debtor.”⁴²

B. The Bankruptcy Code’s “setoff” provision in 11 U.S.C. § 553.

Setoff is addressed in Section 553 of the Bankruptcy Code. Most relevant to the current discussion is Section 553(a), which reads as follows:

“Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that —

- (1) the claim of such creditor against the debtor is disallowed;
- (2) such claim was transferred, by an entity other than the debtor, to such creditor —
 - (A) after the commencement of the case; or
 - (B) (i) after 90 days before the date of the filing of the petition; and
(ii) while the debtor was insolvent (except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561); or
- (3) the debt owed to the debtor by such creditor was incurred by such creditor —
 - (A) after 90 days before the date of the filing of the petition;
 - (B) while the debtor was insolvent; and
 - (C) for the purpose of obtaining a right of setoff against the debtor (except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561).”

The statutory language of Section 553(a) requires debts between a creditor and debtor to be “mutual” and arise “before the commencement of the case.” In general, the mutuality requirement means that the debts owing one to the other must be in the same right or capacity⁴³, but need not arise in the same transaction.⁴⁴ Both the “mutual debt owing by such creditor to the debtor” and the “claim of such creditor against the debtor” must be one that “arose before the commencement of the case.”⁴⁵

Section 553(a)’s requirement that mutual debts arise “before the commencement of the case,” precludes the setoff of post-petition debts against pre-petition debts.⁴⁶ This provision of the Code essentially has the effect of elevating an unsecured claim to secured status, to the extent that the debtor has a mutual, prepetition claim against the creditor.⁴⁷ “Furthermore, a setoff will not be denied simply because creditors will not be treated equally.”⁴⁸ “Therefore, equitable considerations do not preclude a setoff.”⁴⁹

“The right to setoff is not absolute, but is limited by the provisions of the automatic stay under [Section] 362.”⁵⁰ “In order to exercise a valid right of setoff, a creditor must move for relief from the automatic stay under [Section] 362(d).”⁵¹ “Where a valid right of setoff is established, the creditor’s claim is secured to the extent of the amount subject to the setoff under [Section] 506(a), and the creditor is entitled to adequate protection in that amount.”⁵²

Although the Bankruptcy Code does not create a federal right of setoff, the Code's setoff provision ensures that, with certain exceptions, whatever right of setoff exists under applicable non-bankruptcy law is preserved in bankruptcy under Section 553.⁵³ This is made explicit in Section 553 when it states "this title does not affect any right of a creditor to offset mutual debts owing between creditor and debtor pre-petition."⁵⁴

III. RECOUPMENT DISTINGUISHED FROM SETOFF

A. Distinction of the doctrines in general.

Distinction between the doctrines of recoupment and setoff is of particular importance in bankruptcy. Claims for recoupment and setoff are both recognized in bankruptcy law, but they are independent and distinct doctrines.⁵⁵ While it is true that recoupment has some of the characteristics of setoff, in that both doctrines have a common origin and are equitable in nature, the doctrines' differences far outweigh these basic commonalities.⁵⁶

B. Recoupment provides an exception to the Bankruptcy Code's provisions on setoff.

One of the most fundamental differences between the two doctrines is that recoupment is not defined in the Bankruptcy Code, nor does the doctrine, as applied by the bankruptcy courts, derive from any part of the Code.⁵⁷ The right to recoupment allows a creditor to assert that certain mutual claims extinguish one another in spite of the fact that they could not be setoff under the Code's bankruptcy setoff provision in Section 553.⁵⁸ Therefore, the common law doctrine of recoupment provides a widely-recognized exception to the Bankruptcy Code's limitations on the setoff of claims.⁵⁹

The foremost justification for this exception is that where a creditor's claim against a debtor arises from the same transaction as debtor's claim, it is essentially a defense to debtor's claim against creditor, rather than a mutual obligation, such that it would be inequitable to apply the Bankruptcy Code's limitations on setoff.⁶⁰

1. Recoupment is not subject to the Bankruptcy Code's automatic stay provisions.

It is well-established that a claim for recoupment, unlike setoff, generally is not barred by the Bankruptcy Code's automatic stay provision in 11 U.S.C. § 362.⁶¹ "Because funds subject to recoupment are not the debtor's property, the automatic stay imposed upon the filing of a bankruptcy petition does not bar recoupment."⁶² "Applied in bankruptcy, recoupment...exempts a debt from the automatic stay when the debt is inextricably tied up in the post-petition claim"⁶³

This is an important point of distinction between the two doctrines since Section 553 explicitly states that setoffs are subject to Section 362 and the code's provisions regarding the automatic stay.⁶⁴ Section 362(a)(7) prohibits "the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim of the debtor," subject to certain exceptions.⁶⁵ Stated otherwise, the availability of setoff in bankruptcy turns on whether the claims of the creditor and the debtor both arose pre-petition or both arose post-petition; a creditor may not set off a prepetition claim against a post-petition obligation.⁶⁶

2. Recoupment is not subject to the Code's provisions on preference actions.

The two doctrines are also distinguishable in Section 553(b) condemns pre-petition setoffs that allow a creditor to improve its position, however its provisions do not apply to recoupments.⁶⁷ This is true even though the recoupment permits the creditor to obtain otherwise preferential treatment."⁶⁸

The trustee of a bankruptcy estate does not have the statutory authority to avoid a recoupment as a preference. Alternatively, Section 553(b) gives a trustee the statutory authorization to avoid a setoff as a preference if it occurred on or within 90 days of the petition date.⁶⁹

A trustee of a bankruptcy estate takes the property subject to the rights of recoupment⁷⁰, since to the extent that party is entitled to recoupment of funds, a debtor has no interest in funds.⁷¹ Therefore, “recoupment is not generally available as a defense to a trustee’s fraudulent transfer-avoidance claim.”⁷² This general rule provides an equitable remedy because when the creditor’s claim arises from the same transaction as the debtor’s claim, it is essentially a defense to the debtor’s claim against the creditor rather than a mutual obligation, and application of the limitations on setoff in bankruptcy would be inequitable.⁷³

Section 553(b) addresses the relationship between preferences and actions for setoff, and the language of this section is as follows:

- (1) Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561, 365(h), 546(h), or 365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of –
 - (A) 90 days before the date of the filing of the petition; and
 - (B) the first date during the 90 days immediately preceding the date of the filing of the petition on which there is an insufficiency.
- (2) In this subsection, “insufficiency” means amount, if any, by which a claim against the debtor exceeds a mutual debt owing to the debtor by the holder of such claim.

3. Recoupment is not subject to the bankruptcy discharge injunction in 11 U.S.C. § 524.

“While the discharge prohibits a setoff of any debt as to the personal liability of a debtor, Section 524(a)(2) of the code does not prohibit a recoupment.”⁷⁴ “The equitable doctrine of recoupment, as it applies in bankruptcy, is not limited to prepetition claims, and recoupment may be employed to recover across the petition date.”⁷⁵

The term “debt” is defined by 11 U.S.C. § 101(12) as a liability of a claim, which in turn is defined by 11 U.S.C. § 101(5), to mean a “right to payment.”⁷⁶ Because recoupment only reduces debt as opposed to constituting an independent basis for debt, it is not a claim in bankruptcy within 11 U.S.C. § 101(5) and is therefore unaffected by debtor’s discharge.⁷⁷

C. Recoupment requires debts to arise from a single transaction.

A final point of distinction between the two doctrines is that recoupment only cancels debts that arise out of the same transaction, while setoff cancels mutual debts owed between parties that may arise out of different transactions.⁷⁸

Alternatively stated, “in bankruptcy, “setoff” is asserted for the purpose of reducing or extinguishing creditor’s claim against debtor when mutual debt and the claim contemplated are generally those arising from different transactions, while “recoupment” is [the] setting up of [a] demand arising from the same transaction as a creditor’s claim or cause of action, strictly for the purpose of abatement or reduction of such claim.”⁷⁹ Therefore, the equitable doctrine of recoupment is more limited in its application, in this respect, than the Code’s provision on setoff.⁸⁰

IV. COMMON RECOUPMENT AREAS

A. Recoupment of payments by a health insurance provider.

In re Health Management Limited Partnership, 336 B.R. 392, 393-397 (Bkrcty.C.D.Ill.2005).

The Debtor, Health Management Limited Partnership, operated a hospital in Illinois. The debtor had a contractual relationship with health maintenance insurer, Blue Cross Blue Shield of Illinois (“Blue Cross”), wherein Debtor provided medical treatment to Blue Cross members in exchange for Blue Cross’ payment of certain contractual rates or amounts for such treatment. Debtor filed a petition pursuant to Chapter 11 of the Bankruptcy Code on April 2, 2003. A liquidating plan was confirmed on September of 2003, and the debtor never sought to assume or reject the Blue Cross contracts. Similarly, Blue Cross never moved to compel the debtor to assume or reject the contracts.

The issue presented before this Court was whether Blue Cross’ recovery of overpayments for pre-petition advances from post-petition obligations constitutes recoupment, which is not barred by the automatic stay of 11 U.S.C. § 362, or setoff, which is barred by the automatic stay. More specifically, the parties to this litigation had agreed there were overpayments, so the real question was whether the Debtor’s claim for Net Covered Charges and Blue Cross’ claim for contractual allowances arose out of a single integrated transaction.

Under the agreement between Debtor and Blue Cross, Blue Cross initially paid hospital its full fee for covered services that it provided to members of insurer’s medical coverage plan and recovered any overpayments. The amount of overpayment was based on discounted prices that insurer had negotiated for such services, and calculated by reducing its payments to hospital for services that it later provided to other members.

The Court determined that Debtor’s claim against Blue Cross for medical services which it provided and Blue Cross’ claim against Debtor for prior over payments both arose of out single, integrated transaction. The Court reasoned that both parties clearly recognized that hospital would be overpaid initially, and system which they set up for full payment and subsequent adjustment indicated one ongoing, integrated transaction. In coming to its decision, the Court noted the similarities between the present situation and Medicare’s procedures. It stated that “while there may be differences between Medicare and the private insurance in this case, both programs feature a system of interim recognize payments subject to subsequent adjustments. It is this common characteristic between the programs that makes the Medicare cases helpful in providing guidance to the Court. The Bankruptcy Court held that the insurer’s continued reduction of its payments to the hospital to recover overpayments after the hospital filed for bankruptcy was an exercise of the right of recoupment, rather than setoff, and therefore it did not violate the automatic stay.

B. Recoupment claims deriving from overpayment of Medicaid or Medicare benefits.

In re Slater Health Center, Inc., 398 F.3d 98 (1st Cir. R.I.2005).

The Chapter 11 debtor, a nursing home that was overpaid by Medicare, filed an adversary complaint against the federal government and its fiscal intermediary, seeking injunctive and declaratory relief preventing the government from recovering overpayments by reducing post-petition Medicare reimbursements due the debtor, and also seeking to assume its provider agreements. Vacating the prior opinion on motion for reconsideration, the U.S. Bankruptcy Court for the District of Rhode Island, entered an order denying recoupment on equitable grounds and allowed the debtor to assume the contracts. The Government appealed. The District Court reversed, allowing Medicare to recoup the funds at issue. Debtor appealed.

The 1st Circuit Court of Appeals held that: (1) pursuant to the “same transaction” test, the government’s adjustment for a prior Medicare overpayment resulting from a health center’s failure to pay third-party providers for services that have already been provided is a recoupment, not a setoff; and (2) the bankruptcy court erred in performing further equitable balancing once the recoupment versus setoff analysis had been completed. Decision was affirmed.

In re Healthback, LLC, 226 B.R. 464 (Bkrtcy.W.D.Okla.1998).

The facts of this case set forth that the Chapter 11 debtor's costs were reimbursed by the Secretary as part of the federal Medicare program established by Title XVIII of the Social Security Act. Debtor filed its motion with the court after the Secretary withheld funds from current payments owed to debtor to apply against what the Secretary calculated to be overpayments made to debtor in the past, both pre-and post petition. Debtor argued that payments should not be withheld because the funds were necessary for debtor's continued operation. The court rejected the Secretary's assertion that the court did not have jurisdiction over the matter until exhaustion of the administrative procedures in 42 U.S.C.S. § 405(g). The court pointed out that its primary jurisdiction over bankruptcy estate property under 28 U.S.C.S. § 1334(a) was not a "judicial review" of the Secretary's decisions and that the court's effect on such decisions was indirect and ancillary. Furthermore, the court disagreed with the Secretary's characterization of her actions as "recoupment." The court held that setoff was the proper doctrine to be applied because the Secretary's reimbursement scheme did not constitute a "single, integrated transaction."

In coming to its decision, the court adopted the reasoning of the Third Circuit Court of Appeals for its definition of a "single integrated transaction" in the Medicare reimbursement scheme. The Third Circuit's position is that the annual audit conducted by the Department of Health and Human Services should be the defining standard for determining separate transactions for the purposes of equitable recoupment in Medicare cases. *In re University Medical Center*, 973 F.2d 1065, 1081-85 (3rd Cir.1992). In that case, the court held that withholding payments, in an analogous fact pattern to this case, by the Department of Health and Human Services was improper. *Id.* The Third Circuit Court of Appeals also acknowledged that the Department was not being prevented from ever recovering the alleged overpayments, only that the Department had to respect the automatic stay. *Id.*

In re District Memorial Hospital of Southwestern North Carolina, Inc., 297 B.R. 451 (Bankr.W.D.N.C.2002).

In this case, the North Carolina Department of Health and Human Services filed notice of intent to recoup Medicaid overpayments that had been made to the bankrupt health care provider in past. The Bankruptcy Court, George R. Hodges, Chief Judge, held that distinctive Medicare and Medicaid systems of estimated payments and later adjustments qualified as single "transaction," for recoupment purposes.

In re CDM Management Servs., Inc., 226 B.R. 195, 196-97 (Bkrcty.S.D.Ind.1997).

The Chapter 11 Debtor in this case, CDM Management Services, Inc., d/b/a Vinewood Nursing Home, operated a nursing home facility. The creditor-state agency, Indiana Family & Social Services Administration, filed a motion for authorization for recoupment, seeking to recoup pre-petition Medicaid advances from post-petition Medicaid payments due to Debtor.

The issue that was presented to the Court was whether the creditor may recoup pre-petition advances on Medicaid claims payments from post-petition Medicaid payments due to the Debtor. More specifically, the issue was whether the Debtor's claim for reimbursement and Indiana Family & Social Services Administrations claim for recoupment arise out of a single integrated transaction.

Here, the right of recoupment arose within the statutory scheme established by the Medicaid Program, 42 U.S.C. § 1396(b)(d)(2)(A), and specifically provided for adjustments to reflect overpayments or underpayments. Moreover, there was a contract in this case which expressly provided for repayment of advances or overpayments. The court determined that "although there may be a series of claims, these claims against Medicaid are all covered by the one contract which provides for payment of the claims and recoupment of the advances." Citing *In re Visiting Nurse Association*, 121 B.R. 114, 118-19 (Bankr.M.D.Fla.1990). Therefore, the court determined that in this case there was a single, continuing provider agreement that was still in effect. The Court also noted that "unlike the right of setoff, the right of recoupment is exempt from the operation of the automatic stay of 11 U.S.C. § 362. *Id.* at 119-20; see, 11 U.S.C. § 362(a)(7).

Therefore, the Court held the Indiana Family & Social Services administration was free to recoup a percentage of each Medicaid advance from post-petition payments. The Indiana Family & Social Services Administration's Motion for Authorization for Recoupment was allowed.

C. Recoupment and Setoff in business bankruptcy by contractors/sub-contractors.

Matter of United States Abatement Corporation, 79 F.3d 393 (5th Cir.1996).

Chapter 11 debtor-contractor filed adversary complaint for payment on oil platform maintenance contract that had been terminated by an oil company. The oil company filed a proof of claim and asserted recoupment, and the assignee of debtor's accounts receivable intervened. The Bankruptcy Court made findings on the amount owed by the company, and allowed recoupment. Debtor and assignee appealed, and company cross-appealed. The U.S. District Court for the Eastern District of Louisiana reversed the recoupment decision. The company appealed, and debtor and assignee cross-appealed.

The facts of the case show that the appellants' contract provisions with appellee corporation included an indemnification provision on subcontractor liens and a retainage clause on a percentage of the contract price until subcontractor payments were ensured. Following a dispute, appellants sought declaratory relief reducing the contract debt by subcontractor liens. Subsequently, appellee corporation filed for bankruptcy, and a stay was issued on appellants' action. Counterclaims by subcontractors against appellants were enforced. The bankruptcy court allowed appellants' recoupment of subcontractor payments from the debt to appellee and calculated the debt after recoupment. The district court reversed and did not consider the parties' appeals regarding the recoupment calculation.

In its holding, the 5th Circuit Court of Appeals reversed the district court's decision, reinstating the bankruptcy court's holding that appellants were entitled to recoupment since appellants' lien payments arose out of the contract with appellee corporation. The court remanded regarding the calculations since the bankruptcy court erred by altering the parties' stipulations regarding direct costs.

In re A and C Elec. Co., Inc., 188 B.R. 975 (Bankr.N.D.Ill.1995); *aff'd by Divane v. A and C Elec. Co., Inc.*, 193 B.R. 856 (N.D.Ill.1996).

Chapter 11 debtor-subcontractor was hired by an electrical contractor to perform certain electrical construction work and, after submitting "extras claim" for work done outside the work required under subcontract, debtor ceased work on project and filed bankruptcy petition. The contractor subsequently completed debtor's work with its own personnel. Debtor brought adversary proceeding against contractor, seeking turnover of the balance of certain proceeds in contractor's possession to which contractor asserted right of recoupment. Parties cross-moved for summary judgment.

The Bankruptcy Court held that: (1) contractor's recoupment right did not constitute a dischargeable "claim"; (2) debtor's obligation to contractor under subcontract and monies due debtor for extras claim arose from the same transaction for purposes of the recoupment doctrine; (3) contractor's participation in debtor's bankruptcy without raising its right to recoupment did not preclude it from recovery; and (4) amount of contractor's recoupment claim remained to be adjudicated. Motions denied.

In re IT Group, Inc., 350 B.R. 166 (Bkrtcy.D.Del.2006).

Plaintiff assignee in this case, Shaw Environmental, Inc. ("Shaw"), is a Louisiana corporation that provides professional construction and consulting services. The Defendant, Bechtel Jacobs Company LLC ("Bechtel"), is the environmental management contractor for the United States Department of Energy's office in Tennessee. Prior to the commencement of these jointly administered bankruptcy cases, Bechtel, as general contractor, entered into four subcontracts with The IT Group, Inc. (the "Debtor").

On January 16, 2002, the Debtor filed for relief under Chapter 11 of the Bankruptcy Code. Shortly thereafter, the Debtors and Shaw entered into an Asset Purchase Agreement, whereby Shaw agreed to

purchase substantially all the Debtors' assets, and assumed liabilities. The primary assets to be transferred were the Debtors' rights under various project contracts, including three of the Bechtel subcontracts.

Shortly thereafter, Plaintiff assignee of the subcontracts brought an adversary proceeding against defendant contractor, Bechtel, alleging that the contractor breached the subcontracts by offsetting amounts due to the assignee under the subcontracts against the contractor's asserted damages under a subcontract which the debtor rejected. The assignee and the contractor cross-moved for summary judgment.

The bankruptcy court held that, under either 11 U.S.C.S. §§ 363 or 365, the contractor did not have the right to set off payments due to the assignee against its damages for the debtor's rejection of a subcontract. The contractual requirement that the contractor be made whole with regard to all of the subcontracts was not a condition precedent in the absence of express language to that effect, and any right of setoff against the debtor for damages caused by the debtor could not be asserted against the assignee. Further, the debtor's right to assume the favorable subcontracts and to reject the unfavorable subcontract precluded the enforcement of the cross-default clauses as improper restrictions on the debtor's rights to assume, assign, and reject the subcontracts.

The assignee's motion for summary judgment was granted, and the contractor's cross-motion was denied.

D. Recoupment claim arising from default on government contract.

In re Delta Air Lines, 2006 WL 3200850 (S.D.N.Y.2006).

Chapter 11 debtor-airline brought adversary proceeding for declaratory judgment that federal government could not deduct amounts that it had allegedly overpaid for travel services provided by debtor to government employees prepetition from amounts that government admittedly owed to debtor for services purchased post-petition.

In its holding, the Bankruptcy Court held that: (1) the section of the Transportation Payment Act providing that "[p]ayment for transportation ordered [by government] but not provided may be recovered by deduction or other means" granted government a right of setoff for overpayments that it had made to debtor prepetition for transportation services which government employees did not in fact use, but did not trump limitations imposed by the Bankruptcy Code on exercise of right of setoff in bankruptcy; and (2) the government's prepetition claim against debtor did not arise out of "single, integrated transaction" as government's post-petition obligation, for purposes of application of recoupment doctrine. Judgment was entered for the debtor.

¹ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *Distribution Services, Ltd. V. Eddie Parker Interests, Inc.*, 897 F.2d 811 (5th Cir.1990)(citations omitted).

² *Bull v. United States*, 295 U.S. 247, 55 S.Ct. 695, 79 L.Ed. 1421 (1935).

³ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *Distribution Services*, 897 F.2d 811 (5th Cir.1990)(other citations omitted); *F.D.I.C. v. Kooyomijian*, 220 F.3d 10 (1st Cir.2000)(Recoupment allows a defendant to defend against a claim by asserting, up to the amount of the claim, the defendant's own claim against the plaintiff growing out of the same transaction.).

⁴ *Houston v. Young*, 7 Ind. 200, 1855 WL 3649, 2 (Ind.1855).

⁵ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *Boone Nat. Sav. & Loan Ass'n, F.A. v. Crouch*, 47 S.W.3d 371 (Mo.2001).

⁶ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *Lofchie v. Washington Square Ltd. Partnership*, 580 A.2d 665 (D.C.1990).

⁷ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *Distribution Services*, 897 F.2d 811 (other citations omitted).

⁸ *Id.*

⁹ *In re Ampel*, 2006 Bankr. LEXIS 3244, 7 (N.D.Ga.2006).

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- ¹⁰ *In re Transcommunications Inc.*, 355 B.R. 668 (E.D.Tenn.2006).
- ¹¹ *In re American Sunlake Ltd. Partnership*, 109 B.R. 727, 730 (Bankr.W.D.Mich.1989); *In re District Memorial Hospital*, 297 B.R. 451, 454 (W.D.N.C.2002); *In re Al-Jiboury*, 344 B.R. 218, 228 (Bankr.D.Mass.2006); see, e.g., *Kleven v. Household Bank F.S.B.*, 334 F.3d 638, 643 C.A.7 (Ind. 2003)(Transactions in the tax refund anticipation loan process are a single integrated transaction, because lender held title to funds when received at bank and transferred to bank's account, the bank was not engaging in a "setoff" under the Bankruptcy Code.).
- ¹² *In re Public Service Co. of New Hampshire*, 107 B.R. 441, 445 (Bankr.D.N.H.1989); see also *In re Photo Mechanical Services, Inc.*, 179 B.R. 604 (Bkrcty.D.Minn.1995); *In re CDM Management Servs., Inc.*, 226 B.R. 195, 197 (Bankr.S.D.Ind.1997); *In re District Memorial Hospital*, 297 B.R. 451, 454 (W.D.N.C.2002); *In re Health Management Limited Partnership*, 336 B.R. 392, 396 (Bkrcty.C.D.Ill.2005).
- ¹³ *In re Transcommunications Inc.*, 355 B.R. at 671.
- ¹⁴ *Id.*; see also *In re Health Management*, 336 B.R. at 396 (quoting *In re TLC Hospitals, Inc.*, 224 F.3d 1008, 1013-14 (9th Cir.2000)).
- ¹⁵ *In re Health Management*, 336 B.R. at 396-97; see also *U.S. v. Consumer Health Services of America, Inc.*, 108 F.3d 390, 395 (D.C.Cir.1997)(key in Medicare case is Medicare statutes).
- ¹⁶ *Id.*; see also *In re Malinowski*, 156 F.3d 131, 133 (2d Cir.1998)(internal citations omitted); *In re Delta Air Lines*, 2006 WL 3200850, 10 (S.D.N.Y.2006).
- ¹⁷ *Warsco v. Household Bank*, 272 B.R. 246 (Bkrcty.N.D.Ind.2002), *aff'd* by *Kleven v. Household Bank, F.S.B.*, 334 F.3d 638 (7th Cir.2003).
- ¹⁸ *In re Delta Air Lines*, 2006 WL 3200850, 10 (S.D.N.Y.2006)(citing 5 COLLIER ON BANKRUPTCY ¶ 553.10[1], P. 553-104 (15th ed.rev.2006)).
- ¹⁹ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *Kaiser by Taylor v. Monitrend Inv. Management, Inc.*, 672 A.2d 359 (Pa.Comm.w.Ct.1996); *Mudge v. Macomb County*, 458 Mich. 87, 580 N.W.2d 845 (1998).
- ²⁰ *In re Malinowski*, 156 F.3d 131, 133 (2d Cir.1998); *Citibank (South Dakota), N.A., v. Mincks*, 135 S.W.3d 545 (Mo.Ct.App.S.D.2004); see also *In re U.S. Abatement Corp.*, 79 F.3d 393, 398 (5th Cir.1996)("Recoupment allows a defendant to reduce the amount of a plaintiff's claim by asserting a claim against the plaintiff that arose out of the same transaction to arrive at a just and proper liability on the plaintiff's claim."); *In re Caldwell*, 350 B.R. 182, 195 (Bkrcty.E.D.Pa. 2006)(The defense of recoupment "is the setting up of a demand arising from the same transaction as plaintiff's claim or cause of action, strictly for the purpose of abatement or reduction of such claim.")(citing 4 COLLIER ON BANKRUPTCY § 553.03, at 553-15-17).
- ²¹ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *General Motors Acceptance Corp. v. Vaughn*, 358 Ill. 541, 193 N.E. 483 (1934); *Stanley v. Clark*, 159 F.Supp. 65 (D.N.H. 1957); *Villa v. Hedge*, 96 R.I. 52, 188 A.2d 904 (1963); *Minex Resources, Inc. v. Morland*, 467 N.W.2d 691 (N.D.1991); *Haddad v. English*, 145 Ohio App.3d 598, 763 N.E.2d 1199 (9th Dist. Lorain County 2001)(Affirmative defense of recoupment is a claim of right to reduce the amount demanded and can be had only to an extent sufficient to satisfy the plaintiff's claim.).
- ²² *York Linings International, Inc. v. Harbison-Walker Refractories Company*, 839 N.E.2d 766, 771 (In.Ct.App.2005).
- ²³ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *In re Malinowski*, 156 F.3d at 133; *In re Al-Jiboury*, 344 B.R. at 227 (citing *In re Jones*, 289 B.R. 188, 191(Bankr.M.D.Fla. 2002)).
- ²⁴ See *O'Brien v. United States*, 766 F.2d 1038, 1048 (7th Cir.1985).
- ²⁵ *In re Sallings*, 357 B.R. 646 (Bankr.N.D.Ala.2007)(citing *Beach v. Ocwen Federal Bank*, 523 U.S. 410, 415, 118 S.Ct. 1408, 140 L.Ed.2d 566 (1998)).
- ²⁶ *Bull*, 295 U.S. at 262, 55 S.Ct. [at] 700 (citations omitted); *In re Sallings*, 357 B.R. 646 (Bkrcty.N.D.Ala. 2007)(citing *Beach*, 523 U.S. at 415 ("Generally, a defendant's right to plead recoupment as a defense survives expiration of the period provided by the statute of limitations that would otherwise bar a recoupment claim as an independent cause of action.")).
- ²⁷ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *Morris v. Achen Const. Co., Inc.*, 155 Ariz. 507, 747 P.2d 1206 (Ct.App.Div.2 1986), judgment rev'd in part on other grounds, vacated in part on other grounds, 155 Ariz. 512, 747 P.2d 1211 (1987).
- ²⁸ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *Town of Amherst v. County of Erie*, 247 A.D.2d 869, 668 N.Y.S.2d 848 (4th Dep't 1998).
- ²⁹ 20 Am. Jur. 2d Counterclaim, Recoupment, Etc. § 5 (2007); *Telmark, Inc. v. C & R Farms, Inc.*, 115 A.D.2d 966, 497 N.Y.S.2d 536 (4th Dep't 1985).
- ³⁰ *In re Vaughter*, 109 B.R. 229, 20 Bankr. Ct. Dec. (CRR) 109 (Bankr. W.D. Tex. 1989); *In re Public Service Co. of New Hampshire*, 107 B.R. 441, 107 Pub. Util. Rep. 4th (PUR) 555 (Bankr. D.N.H. 1989).

³¹ *In re Flagstaff Realty Assocs.*, 60 F.3d 1031, 1035 (3d.Cir.1995).

³² *In re Mirant*, 331 B.R. 693 (N.D.Texas2005)(citing *In re Gasmark Ltd.*, 193 F.3d 371, 374 (5th Cir.1999); see also *In re Dewey Freight Sys., Inc.*, 31 F.3d 620, 623 (8th Cir.1994).

³³ 9C Am. Jur. 2d Bankruptcy § 2747 (2007); *In re HQ Global Holdings, Inc.*, 290 B.R. 78 (Bankr.D.Del. 2003)(recoupment is to be narrowly construed); *In re Furr's Supermarkets, Inc.*, 320 B.R.1 (Bankr.D.N.M. 2004)(Doctrines of recoupment should not be used, or at least used only sparingly, in derogation of the fundamental tenets of the Bankruptcy Code.).

³⁴ 9C Am. Jur. 2d Bankruptcy § 2747; *In re HQ Global Holdings, Inc.*, 290 B.R. 78 (Bankr.D.Del. 2003); *In re Mirant Corp.*, 331 B.R. 693 (N.D. Texas 2005)(citing *In re Gasmark*, 193 F.3d 371, 374-75 (5th Cir.1999)).

³⁵ *Id.* At 375.

³⁶ *In re McCoy v. Caterpillar Company*, 65 B.R. 673, 674-75 (C.D.Ill.1986).

³⁷ See *In re Yonkers Hamilton Sanitarium, Inc.*, 22 B.R. 427 (Bkrtcy.S.D.N.Y.1983), aff'd 34 B.R. 385 (S.D.N.Y.1983); *In re Midwest Service and Supply Co., Inc.*, 44 B.R. 262 (D.C.D.Utah 1983).

³⁸ *In re B & L Oil Co.*, 782 F.2d 155, 158-59 (10th Cir.1986).

³⁹ *Matter of Gaither*, 200 B.R. 847, 36 Collier Bankr. Cas. 2d (MB) 1480, Bankr. L. Rep. (CCH) ¶77138, Unempl. Ins. Rep. (CCH) ¶22165 (Bankr. S.D. Ohio 1996).

⁴⁰ 3 Norton Bankr. L. & Prac. 2d § 63:1 (2007); Loyd, *The Development of Setoff*, 64 University of Pennsylvania L. Rev. 541 (1916).

⁴¹ 3 Norton Bankr. L. & Prac. 2d § 63:1 (2007); *Prudential Ins. Co. of America v. Nelson*, 101 F.2d 441 (C.C.A. 6th Cir. 1939).

⁴² 3 Norton Bankr. L. & Prac. 2d § 63:1 (2007); See, e.g., *United States v. Brunner*, 282 F.2d 535, 537 (10th Cir. Kan. 1960)("The purpose of this section [(Act § 68)] is to make it unnecessary for a creditor to pay the bankruptcy estate the full value of a claim he owes the bankrupt, while at the same time being allowed only partial satisfaction of a claim due him from the estate.").

⁴³ *Meyer Medical Physicians Group, Ltd. v. Health Care Service Corp.*, 385 F.3d 1039, 1041 (7th Cir.2004).

⁴⁴ 3 Norton Bankr. L. & Prac. 2d §63:3 (2007) [FN71] See § 63:5, infra.

⁴⁵ *In re Delta Air Lines*, 341 B.R. 439, 443 (Bkrtcy.S.D.N.Y.2006).

⁴⁶ 3 Norton Bankr. L. & Prac. 2d §63:3 (2007); 11 U.S.C.A. § 553; *In re Bertram*, 1996 WL 33683568 (Bkrtcy.S.D.Ind.); *In re Stratman*, 217 B.R. 250, 252 (Bankr.S.D.Ill.1998)(citing *In re Calstar, Inc.*, 159 B.R. 247 (Bankr.D.Minn.1993)).

⁴⁷ *In re Cooks*, 157 B.R. 385, 388 (Bankr.S.D.Ohio 1993).

⁴⁸ *Meyer Medical Physicians Group*, 385 F.3d at 1042 (citing *United States v. Maxwell*, 157 F.3d 1099, 1102 (7th Cir.1998)).

⁴⁹ *Id.*

⁵⁰ *In re Stienes*, 285 B.R. 360, 362 (Bkrtcy.D.N.J.2002)(citing *In re Patterson*, 967 F.2d 505, 509 (11th Cir.1992)).

⁵¹ *Id.*

⁵² *Id.*; see 11 U.S.C. § 362(d)(1).

⁵³ 11 U.S.C.A. § 553(a); *In re Garden Ridge Corp.*, 338 B.R. 627, 632 (Bkrtcy.D.Del. 2006)(citing *In re HAL, Inc.*, 196 B.R. 159, 161 (9th Cir. BAP 1996)); *U.S. v. Maxwell*, 157 F.3d 1099, 1102 (7th Cir.1998); see also *In re Atanasov*, 221 B.R. 113, 117 (D.N.J.1998)("Courts may look to state law in order to determine whether a setoff has occurred, however, the granting or denial of the right to a setoff depends upon the terms of section 553, and not upon the terms of state statutes or laws.").

⁵⁴ *In re Delta Air Lines*, 341 B.R. at 443; see, e.g., *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 116 S.Ct. 286, 289, 133 L.Ed.2d 258 (1995)("Although no federal right of setoff is created by the Bankruptcy Code, 11 U.S.C. § 553(a) provides that, with certain exceptions, whatever right of setoff otherwise exists is preserved in bankruptcy."); *United States v. Maxwell*, 157 F.3d 1099, 1102 (7th Cir.1998)("The Bankruptcy Code neither expands nor constricts the common law right of setoff. Rather, it preserves, with exceptions not relevant here, whatever right exists outside bankruptcy.")(citations omitted).

⁵⁵ *In re McCoy v. Caterpillar Company*, 65 B.R. 673, 674 (C.D.Ill.1986); see *Reiter v. Cooper*, 507 U.S. 258, 113 S.Ct. 1213, 1218, n. 2, 122 L.Ed.2d 604 (1993)(United States Supreme Court recognized courts have permitted the use of recoupment in the context of bankruptcy).

⁵⁶ *In re Izaguirre*, 166 B.R. 484 (Bkrtcy.N.D.Ga.1994); *In re CDM Management Servs., Inc.*, 226 B.R. at 197.

⁵⁷ *In re Transcommunications Inc.*, 355 B.R. 668, 670 (E.D. Tenn.2006).

⁵⁸ *In re Madigan*, 270 B.R. 749, 38 Bankr. Ct. Dec. (CRR) 227, 27 Employee Benefits Cas. (BNA) 1753 (B.A.P. 9th Cir. 2001).

⁵⁹ *Newbery Corp. v. Fireman's Fund Ins. Co.*, 95 F.3d 1392 (9th Cir.1996); see also *In re American Cent. Airlines, Inc.*, 60 B.R. 587 (Bkrcty.N.D.Iowa 1986)(recoupment not subject to limitations on setoff set forth in the Bankruptcy Code); 3B Bankr. Service L. Ed. § 36:30 (2007); *In re Caldwell*, 350 B.R. at 195.

⁶⁰ *In re Telephone Warehouse, Inc.*, 259 B.R. 64, 37 Bankr. Ct. Dec. (CRR) 128, 45 Collier Bankr. Cas. 2d (MB) 1242, 44 U.C.C. Rep. Serv. 2d 609 (Bankr. D. Del. 2001).

⁶¹ *In re Health Management*, 336 B.R. at 393; *In re CDM*, 226 B.R. at 197 (citing *In re Visiting Nurse Association*, 121 B.R. 114, 119-20 (Bkrcty.M.D.Fla.1990)(unlike the right of setoff, right of recoupment is exempt from the operation of the automatic stay of 11 U.S.C. § 362)); *In re LaPierre*, 180 B.R. 95 (Bkrcty.D.S.C.1994); see 11 U.S.C. § 362(a)(7).

⁶² *In re Malinowski*, 156 F.3d 131 (2^d Cir.1998).

⁶³ *York Linings International, Inc. v. Harbison-Walker Refractories Company*, 839 N.E.2d 766 (In.Ct.App.2005)(citing *In re TLC Hospitals*, 224 F.3d at 1011).

⁶⁴ See 11 U.S.C. § 553.

⁶⁵ See 11 U.S.C. § 362(a)(7).

⁶⁶ 11 U.S.C.A. § 553; *In re Stratman*, 217 B.R. 250, 252 (Bankr.S.D.Ill.1998)(citing *In re Calstar*, 159 B.R. 247 (Bankr.D.Minn.1993)); see also *In re Bertram*, 1996 WL 33683568 (Bkrcty.S.D.Ind.); Lara B. O'Dell, *Recoupment: Creditors Rights v. the Stay and Preference Actions*, 2007.

⁶⁷ *In re Warsco*, 272 B.R. 246, 252 (N.D.Ind.2002)(citing *In re Malinowski*, 156 F.3d at 133); *In re Holyoke Nursing Home*, 372 F.3d 1, 4 (1st Cir.2004); see also *In re Transcommunications Inc.*, 355 B.R. at 671-72.

⁶⁸ *Id.* at 252-53 (citing *In re Kosadnar*, 157 F.3d 1011, 1014 (5th Cir.1998)); see also *In re B & L Oil Co.*, 782 F.2d 155, 157 (10th Cir. 1986)(“The doctrine of recoupment is also distinguishable from setoff in that it has been well-established that “setoff is allowed only in very narrow circumstances in bankruptcy, but [a] recouping creditor can receive preferred treatment even though setoff would not be permitted.”); *In re Hiler* 99 B.R. at 243 (the invocation of the recoupment doctrine promotes no preference problem).

⁶⁹ Lara B. O'Dell, *Recoupment: Creditors Rights v. the Stay and Preference Actions*, 2007.

⁷⁰ *In re District Memorial Hospital*, 297 B.R. 451, 454 (W.D.N.C.2002); see also *In re Holdford*, 896 F.2d 176, 178 (5th Cir.1990); *In re Madigan*, 270 B.R. 749, 754 (9th Cir. BAP 2001).

⁷¹ *Matter of U.S. Abatement Corp.*, 79 F.3d 393 (5th Cir. 1996); *Matter of Kosadnar*, 157 F.3d 1011, 33 Bankr. Ct. Dec. (CRR) 486, Bankr. L. Rep. (CCH) ¶77838 (5th Cir. 1998).

⁷² 9C Am. Jur. 2d Bankruptcy § 2747 (2007); *In re Trace Intern. Holdings, Inc.*, 289 B.R. 548 (Bankr. S.D. N.Y. 2003).

⁷³ *In re B & L Oil Co.*, 782 F.2d at 157.

⁷⁴ *In re Al-Jiboury*, 344 B.R.at 227; see also *In re Sigman*, 270 B.R. 858, 38 Bankr. Ct. Dec. (CRR) 233 (Bankr. S.D. Ohio 2001); see also *In re Hiler*, 99 B.R. at 243-45 (recoupment of payments under disability plan is not subject to the automatic stay or dischargeability); *Brown v. General Motors Corporation*, 152 B.R. 935 (W.D.Wis.1993)(holding the bankruptcy discharge had no effect on the continuing right of the Pension Plan to recoup overpayments from future benefits); *In re Ampel*, 2006 Bankr. LEXIS 3244 at 5.

⁷⁵ *In re District Memorial Hospital*, 297 B.R. 451, 454 (W.D.N.C.2002)(citing *In re TLC Hosps., Inc.*, 224 F.3d 1008, 1011 (9th Cir.2000)).

⁷⁶ *In re Al-Jiboury*, 344 B.R.at 227.

⁷⁷ *In re Harmon*, 188 B.R. 421, Bankr. L. Rep. (CCH) ¶76796 (B.A.P. 9th Cir. 1995); see also *Westinghouse Elec. Corp. v. Fidelity and Deposit Co. of Maryland*, 63 B.R. 18 (E.D. Pa. 1986)(“Right to recoupment, unlike right to setoff under Bankruptcy Code § 553, is unaffected by bankruptcy and there is no prohibition against applying post-petition payments due debtor to reduce pre-petition debt owed by debtor.”).

⁷⁸ *In re Transcommunications Inc.*, 355 B.R. 668, 670 (E.D. Tenn.2006); *In re Caldwell*, 350 B.R. at 195; *In re Ampel*, 2006 Bankr. LEXIS 3244 at 6-7; *In re Yonkers*, 22 B.R. at 432.

⁷⁹ *Matter of U.S. Abatement Corp.*, 79 F.3d 393 (5th Cir. 1996); see, e.g., *Waldschmidt v. CBS, Inc.*, 14 B.R. 309 (M.D.Tenn.1981)(setoff under this section [553] is limited to instances involving mutuality of obligation, recoupment is subject to no such limitation and [the] only real requirement regarding recoupment is that [the] sum can be reduced only by matters or claims arising out of the same transaction a the original sum); *In re McCoy*, 65 B.R. at 674 citing *Lee v. Schweiker*, 739 F.2d 870 (3d Cir.1984)(recoupment primarily applied where the claims arise out of a single contract or the same transaction); *Warsco v. Household Bank*, 272 B.R. 246 (Bankr.N.D.Ind.2002), aff'd 334 F.3d 638 (7th Cir.2003), cert. denied. (Where mutual debts arise out of a single integrated transaction so that it would be inequitable for the debtor to enjoy the benefits of that transaction without also meeting its obligations, the creditor's apparent offset is really recoupment.); see also *In re Monongahela Rye*

Liquors, 141 F.2d 864 (3d Cir. 1944); *Howard Johnson, Inc. v. Tucker*, 157 F.2d 959 (5th Cir. 1946).; *Grace Line v. U.S.*, 144 F. Supp. 548, 550 (S.D.N.Y.1956), aff'd 255 F.2d 810 (2d Cir. 1958); *In re Yonkers Hamilton Sanitarium, Inc.*, 22 B.R. 427, 432 (Bkrcty.S.D.N.Y.1983), aff'd 34 B.R. 385 (S.D.N.Y.1983) citing *Quittner v. Los Angeles Steel Casting Co.*, 202 F.2d 814 (9 Cir. 1953);

⁸⁰ *In re Klingberg Schools*, 68 B.R. 173, 178 (N.D.Ill.1986), aff'd 837 F.2d 763 (7th Cir.1988)(citations omitted); *In re CDM*, 226 B.R. 195, 197 (Bankr.S.D.Ind.1997); *In re Health Management*, 336 B.R. at 395.