

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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**IN RE**

**Transway, Inc.,**

**Case No. 01-11453**

**Debtor.**

**Chapter 7**

**Mark Alexander and  
Harry Boosey,**

**Plaintiffs,**

**and**

**Elaine L. Chao,  
Secretary of Labor,  
United States Department of Labor,**

**Plaintiff in intervention,**

**v.**

**Adv. Pro. No. 01-5356**

**Union Planters Bank, N.A. and  
Marianna Williams, Chapter 7 Trustee,**

**Defendants.**

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**MEMORANDUM OPINION AND ORDER GRANTING THE  
SECRETARY OF LABOR'S MOTION FOR SUMMARY JUDGMENT**

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The Court conducted a hearing on the following matters on December 18, 2002. FED. R. BANKR. P. 9014:

1. Secretary of Labor's Motion for Summary Judgment (filed on October 4, 2002);
2. Plaintiff's Response to the Secretary's Motion for Summary Judgment (filed on November 1, 2002);
3. Union Planters Bank's Response to the Secretary's Motion for Summary Judgment (filed on November 4, 2002);
4. Plaintiff's Motion for Summary Judgment (filed on November 8, 2002);
5. Transway Inc.'s Cross-Motion for Summary Judgment (filed on November 18, 2002);
6. Secretary of Labor's Objection to Plaintiff's Motion for Summary Judgment (filed on December 9, 2002);
7. Secretary of Labor's Response to Plaintiff's Motion for Summary Judgment and Plaintiff's Response to Secretary's Motion for Summary Judgment (filed on December 9, 2002);

8. Transway, Inc.'s Objection to Plaintiff's Motion for Summary Judgment, Response to Plaintiff's Motion for Summary Judgment and Reply to Plaintiff's Response to Secretary of Labor's Motion for Summary Judgment (filed on December 6, 2002);
9. Plaintiff's Response to Transway Inc.'s Cross-Motion for Summary Judgment (filed on December 9, 2002);
10. Plaintiff's Objection to Exhibits (filed on October 4, 2002).

Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing, the exhibits submitted to the Court prior to the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

### **I. FINDINGS OF FACT**

The facts of this case are essentially undisputed. Transway, Inc., ("Transway"), is a Tennessee Corporation owned and operated by Larry and Angela Winkles. Transway was incorporated in 1987 with its principle place of business in Selmer, TN. Transway's business operations consisted of leasing truck drivers to various employers. *See*, Secretary of Labor's Exhibit 6. Larry and Angela Winkles, as President and Secretary/Treasurer of Transway, resigned from their respective positions at Transway on March 27, 2001. Transway, Inc., filed for chapter 7 relief on April 2, 2001.

#### **A. The Plan and Trust**

In 1990, Transway established the "Transway, Inc., Employee Benefit Plan and Trust," ("Plan"). Pursuant to its terms, the Plan was established as an "Employee Welfare Benefit Plan" under the Employee Retirement Income Security Act of 1974 ("ERISA") for the purpose of "payment or reimbursement of all or a portion of eligible medical expenses."<sup>1</sup> *See*, Chapter 7 Trustee's Exhibit 1, "Plan Document" pages ii-iii. Insurance Management Administrators of Louisiana, ("IMA") was appointed as the plan supervisor and Transway was named as fiduciary and plan administrator. *Id.* The Plan was an self-funded plan.

In addition to setting forth preliminary information as well as benefit payment schedules, the Plan also contained information regarding funding of the Plan:

Contributions to the Plan: Contributions to the Plan are to be made as indicated on the Schedule of Benefits. The company shall from time to time evaluate the costs of the plan and determine the amount to be contributed by the company and the amount to be contributed (if any) by each covered employee.

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<sup>1</sup>In the November 30, 1999, "Notes to Financial Statements," "Note 1," the Plan is described as providing "medical, dental, vision, life and death, and disability benefits covering substantially all employees of a controlled group of corporations." *See*, Chapter 7 Trustee's Exhibit 6.

This is a contributory Plan. The employer's contributions shall be made as specified by the Plan's funding policy. An employee's contributions shall be made as soon as practicable after such contributions have been received from the employee or withheld from employee's pay.

*Id.* at ii, 41.

On May 1, 1990, Transway executed a trust, ("Trust"), "for the sole purpose of creating a fund to provide for the payment of the self-funded benefits under the [Employee Benefit] Plan to Members." *See*, Chapter 7 Trustee's Exhibit 2, page 2-1. Pursuant to the terms of the Trust:

. . . the Employer and the Trustee acknowledge the transfer of certain assets or payments. Such funds and such other funds or securities that shall from time to time be deposited with the Trustee under the terms [of the Trust], and any increment thereto and income therefrom shall be held by the Trustee, in trust, and in a manner consistent with the funding requirements of the Plan, for the exclusive benefit of the Participants, their eligible dependents and their beneficiaries.

*See*, Plaintiff's Collective Exhibit 3, "Transway, Inc. Employee Benefit Trust" Article II, 2.01. Article II of the Trust also established that:

[t]itle to the Trust Fund, including all funds and investments held hereunder by the Trustee from time to time, shall be and remain in the Trust and no Participants, their eligible dependents, beneficiaries, or person claiming through any of them shall have any legal or equitable rights or interests in the Trust Fund except to the extent that such rights or interests may be expressly granted under the provisions of this Agreement and the Plan Document.

*Id.* at 2.03. Transway made an initial contribution of \$25,000 to the Trust and agreed to contribute "the total amount collected by the Employer from employees as employee contributions." Transway also agreed to contribute "such additional amounts as the Employer may deem necessary to fund the payment of claims, pay required insurance premiums and administrative costs." *Id.* at Article IV. The trust documents originally designated Terry Parry and Angela Winkles as the trustees; however, an amendment to the Plan and trust executed on May 3, 1999, replaced Terry Parry with Larry Winkles.

The Plan filed Form 5500, Annual Return/Report of Employee Benefit Plan, for 1997 with the Internal Revenue Service, ("IRS"), on September 10, 1999. *See*, Chapter 7 Trustee's Exhibit 7. The name of the Plan was listed on the return as "Transway, Inc. Employee Benefit Plan and Trust" and was identified as a welfare benefit plan on line 6a of the return. *Id.* On Page 5 of the return, line 31b, "Assets," the Plan listed \$468,227.00 in employer contributions and \$41,607.00 in participant contributions. *Id.* at 5. On page 6, line 32(a), "Income," the Plan listed employer contributions of \$837,806.00 and participant contributions of \$804,950.00.

The Plan filed Form 5500 for 1998 with the IRS on September 5, 2000. *See*, Chapter 7 Trustee's Exhibit 6. On page 5 of the return, line 31b, "Assets," the Plan listed \$26,323.00 in employer contributions and

\$25,290.00 in participant contributions. *Id.* at 5. On page 6 of the return, line 32(a), the Plan listed employer contributions of \$1,682,189.00 and participant contributions of \$1,092,556. *Id.* at 6. The Summary Annual Report for December 1, 1998 - November 30, 1999, also contains this information. *See*, Chapter 7 Trustee's Exhibits 1 and 12.

**B. The Union Planters Promissory Note/Account**

On February 25, 1998, Union Planters Bank, N.A., ("Union Planters), loaned Transway the sum of \$250,000.00. *See*, Plaintiff's Collective Exhibit 1, Master Promissory Note. Transway executed a security agreement in conjunction with this loan. *See*, Plaintiff's Exhibit 1, Security Agreement. This agreement granted Union Planters a security interest in the debtor's accounts, all proceeds on said accounts, contract rights, and inventory. *Id.* Union Planters perfected their security interest by filing a UCC-1 financing statement with the Tennessee Secretary of State on March 3, 1998. Mark Alexander and Harry Boosey, ("Plaintiffs"), together with their wives, guaranteed payment of the Union Planters loan pursuant to guaranty agreements executed on February 16, 1999. *See* Union Planters' Exhibit 2, Guaranty executed by Mark and Melinda Alexander, and Union Planters' Exhibit 3, Guaranty executed by Harry and Marty Boosey.

Debtor maintained account number 9700000265, ("plan account"), at Union Planters for payment of claims under the Plan. The signature card for the account lists "Transway, Inc. Employee Benefit Plan and Trust" as the account owner. *See*, Secretary's Response to Plaintiff's Motion for Summary Judgment Exhibit 8. The name on the Plan Account checks was listed as "Transway, Inc. EBP & T." *See*, Plaintiff's Collective Exhibit 2.

When depositing money into the Plan Account, the Winkles would use a printed deposit ticket which read "Transway, Inc., Employee Benefit Plan & Trust" at the top. Checks from Transway's clients which were deposited into the plan account were made out to "Transway," "Transway, Inc.," "Transway/IMA," or "Transway, Inc. EBP & T." "Transway Inc., For Deposit Only" was stamped on the back of all these checks; however, the Winkles used a Plan Account deposit slip and deposited said checks into the Plan Account. *Id.* The deposits are reflected on the Plan Account's monthly bank statements from Union Planters. At the time of Transway's chapter 7 filing, the balance in the Plan Account was \$139,771.19. Transway did not use this account to fund its day-to-day business operations. All of the checks drawn on this account were used to pay medical claims of Transway's employees. *Id.*

**C. IMA**

IMA was the claims supervisor for the Transway Plan. IMA would receive a claim from a provider or participant of the Plan and would process the claim to assess what amounts were covered under the plan. *See*,

October 21, 2002, telephone deposition of Ann Green. IMA would then issue a check drawn on the Plan Account at Union Planters to pay the claim and send that check to Transway. Transway had the responsibility of releasing the checks to the providers or participants as cash flow permitted. *Id.* All of the checks written or approved for writing by IMA were for healthcare-related expenses. IMA would receive monthly bank statements from Union Planters and would reconcile those statements with their records. *Id.* IMA never knew the source of funds which were deposited into the account, *See, Id.* at 14, 8, 23, 25. By April 2001, the claims checks processed by IMA but not released by Transway due to lack of funds was approximately \$2,000,000.00.

#### **D. Adversary Proceeding**

The Plaintiffs in this proceeding filed a complaint on October 22, 2001, asking the Court to declare that Union Planters is the holder of a valid and properly perfected security interest in the Plan Account funds and that the Plaintiffs are entitled to pay the funds to Union Planters. Plaintiffs filed their first motion for summary judgment on March 6, 2002, which was denied by the Court on May 31, 2002.

As of April 2001, Transway was in default on the promissory note to Union Planters in the amount of \$255,102.61. To satisfy part of this outstanding balance, the parties entered into a consent order on July 11, 2001, in which the Chapter 7 Trustee abandoned the debtor's account receivables in the amount of \$118,307.61. The consent order further granted relief from the automatic stay to Union Planters as to the \$118,307.61. *See*, Docket Number 50 in case file 01-11453.

On June 27, 2001, the parties entered into a consent order lifting the automatic stay and allowing Union Planters to effectuate a setoff against the Plan Account in the amount of \$17,197.20. After the setoff, Union Planters remitted the remaining balance in the Plan Account to the Chapter 7 Trustee. *See*, Docket Number 47 in case file 01-11453. The turnover was without prejudice to any creditors or interested parties asserting a claim against the funds.

## **II. CONCLUSIONS OF LAW**

Summary Judgment under FED. R. CIV. P. 56(c), made applicable to bankruptcy contested matters and adversary proceedings by FED. R. BANKR. P. 7056, is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The facts in the case at bar are not in dispute. What is in dispute is what conclusion the Court is to draw from those facts. As a result, the Court finds that this matter is appropriate for summary judgment.

The Plaintiffs in this matter, along with Union Planters, allege that (1) the Plan Account is owned by Transway and not the employee benefit plan, and (2) even if the Plan Account is property of the employee benefit plan, the funds deposited into the account were proceeds of Union Planters' collateral and, therefore, subject to Union Planters' security interest. Conversely, the Secretary of Labor alleges that (1) the Plan Account at Union Planters is property of the employee benefit plan, and (2) as a result, the funds in the Plan Account are not property of the estate.

In the case at bar, the key issue before the Court is whether or not the funds in the Plan Account at Union Planters are property of Transway's chapter 7 estate. Property of a bankruptcy estate is extensive and generally includes "all legal or equitable interests of the debtor in property;" however,

property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate . . . only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

11 U.S.C. § 541(a)(1), (d). To determine whether the Debtor's interest in property is property of the estate, state law must be examined. *Butner v. United States*, 440 U.S. 48, 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (1979) ("Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.").

In order for the Court to conclude whether or not the funds in the Plan Account are property of the estate, the Court must first decide several issues. First, the Court must determine whether or not Transway created a valid employee welfare benefit plan under ERISA. If the Court finds that it did, the Court must then determine who owned the funds in the Plan Account at Union Planters. If the Court finds that the funds were property of the Plan, the Court must then decide if Transway retained an interest in the property sufficient to make the Plan Account property of Transway's chapter 7 estate.<sup>2</sup>

29 U.S.C. § 1002(1) defines an ERISA-qualified welfare benefit plan as:

any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer . . . to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event

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<sup>2</sup>At the hearing in this matter, the Secretary of Labor offered the U.S. Supreme Court case of *Patterson v. Schumate*, 504 U.S. 753, 112 S.Ct. 2242, 119 L.Ed.2d 519 (1992) as support for her argument the Plan Account is not property of the estate. The *Patterson* Court found that "a debtor's interest in an ERISA-qualified pension plan may be excluded from the property of the bankruptcy estate pursuant to [11 U.S.C.] § 541(c)(2)" *Id.* at 2250. The Court based this holding on the fact that the pension plan at issue contained an anti-alienation provision pursuant to ERISA § 206(d)(1) which does not apply to welfare benefit plans. ERISA § 201. As a result, *Patterson* is inapplicable to the case at bar.

of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

26 U.S.C. § 1002(1). To determine if a plan is a "welfare plan" pursuant to ERISA, a court must determine whether there is "(1) a plan, fund or program, (2) established or maintained, (3) by an employer or by an employee organization, or by both, (4) for the purpose of providing medical, surgical, hospital care, sickness, accident, disability, death, unemployment or vacation benefits ... (5) to participants or their beneficiaries." *O'Neill v. UNAM Life Insurance Co. of America*, 2002 WL 31356453, \*2 (N.D. Ill. 2002) (citing *Ed Miniat, Inc. v. Globe Life Ins. Group, Inc.*, 805 F.2d 732, 738 (7th Cir.1986)). Additionally, a welfare benefit plan under ERISA must be "established and maintained pursuant to a written instrument." 29 U.S.C. § 1102(a)(1). Said instrument must name a fiduciary who has "authority to control and manage the operation and administration of the plan." *Id.* The plan must also set forth the funding procedures as well as a policy for amending the plan. 29 U.S.C. § 1102(b)(1) - (4).

In the case at bar, the facts and exhibits firmly establish that the Transway Plan is a welfare benefit plan under ERISA. There is a written instrument entitled "Transway, Inc., Employee Benefit Plan and Trust." The plan document specifically states that it (1) is an "Employee Welfare Benefit Plan" under the Employee Retirement Income Security Act of 1974 ("ERISA") and it (2) was established for the purpose of "payment or reimbursement of all or a portion of eligible medical expenses" *See*, Chapter 7 Trustee's Exhibit 1, "Plan Document" pages ii-iii. The plan names Transway, Inc., as the plan fiduciary and explicitly describes the funding policy for the plan.

“With limited exceptions,<sup>3]</sup> the assets of an employee welfare benefit plan authorized under ERISA must be held in trust to be managed and controlled under the authority and discretion of a named fiduciary(ies).” *Adams, et al, v. Cyprus Amax Minerals Co.*, 149 F.3d 1156, 1160 (10<sup>th</sup> Cir. 1998), citing 29 U.S.C. §§ 1102, 1103.<sup>4</sup> “Because a debtor does not own an equitable interest in property he holds in trust for another, that interest is not ‘property of the estate.’” *Beiger v. IRS*, 496 U.S. 53, 59, 110 S.Ct. 2258, 110 L.Ed.2d 46 (1990); *Stevenson v. J.C. Bradford & Co., et al (In re Cannon)*, 277 F.3d 838, 849 (6<sup>th</sup> Cir.2002). To establish the existence of an express trust that is excluded from the debtor’s estate, Tennessee law mandates proof of three elements:

- (1) a trustee who holds trust property and who is subject to the equitable duties to deal with it for the benefit of another,
- (2) a beneficiary to whom the trustee owes the equitable duties to deal with the trust property for his benefit, and
- (3) identifiable trust property.

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<sup>3</sup>None of the exceptions to § 1103's trust requirements apply to the case at bar. *See*, 29 U.S.C. § 1103(b): The requirements of subsection (a) of this section shall not apply--

- (1) to any assets of a plan which consist of insurance contracts or policies issued by an insurance company qualified to do business in a State;
- (2) to any assets of such an insurance company or any assets of a plan which are held by such an insurance company;
- (3) to a plan--
  - (A) some or all of the participants of which are employees described in section 401(c)(1) of Title 26; or
  - (B) which consists of one or more individual retirement accounts described in section 408 of Title 26; to the extent that such plan's assets are held in one or more custodial accounts which qualify under section 401(f) or 408(h) of Title 26, whichever is applicable.
- (4) to a plan which the Secretary exempts from the requirement of subsection (a) of this section and which is not subject to any of the following provisions of this chapter--
  - (A) part 2 of this subtitle,
  - (B) part 3 of this subtitle, or
  - (C) subchapter III of this chapter; or
- (5) to a contract established and maintained under section 403(b) of Title 26 to the extent that the assets of the contract are held in one or more custodial accounts pursuant to section 403(b)(7) of Title 26.
- (6) Any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

<sup>4</sup>In an unpublished disposition, the Sixth Circuit has held that “[b]enefits paid from an employer's general assets do not constitute an employee welfare benefit plan under ERISA but instead are considered "payroll practices" not regulated by ERISA.” *Capriccioso v. Henry Ford Health Systems*, 2000 WL 1033030, \* 2 (6<sup>th</sup> Cir. 2000); however, at issue in that case were “[p]ayment[s] of an employee's normal compensation, out of the employer's general assets, on account of periods of time during which the employee is physically or mentally unable to perform his or her duties, or is otherwise absent for medical reasons (such as pregnancy, a physical examination or psychiatric treatment)” *Id.* Such payments are explicitly excluded from ERISA. 29 C.F.R. § 2510.3-1(b)(2).

*Id.* at 850 (citing *Kopsombut-Myint Buddhist Ctr. v. State Bd. Of Equalization*, 728 S.W.2d 327, 333 (Tenn.Ct.App. 1986). “[A]t a minimum, there must be a grantor or settlor who *intends* to create a trust, a corpus (the subject property); a trustee; and a beneficiary.” *Cannon*, 277 F.3d at 850 (citing *Myers v. Myers*, 891 S.W.2d 216, 218-19 (Tenn.Ct.App. 1994).

In the case at bar, Transway established the “Transway, Inc., Employee Benefit Trust “for the sole purpose of creating a fund to provide for the payment of the self-funded benefits under the [Employee Benefit] Plan to Members.” *See*, Chapter 7 Trustee’s Exhibit 2, page 2-1. The trust documents establish that all assets in the trust, including Transway’s initial contribution and any deposits made thereafter, “*shall be held by the Trustee, in trust.*” *See*, “Transway, Inc. Employee Benefit Trust” Article II, 2.01 (emphasis added). The trust document also states that “[t]itle to the Trust Fund, . . . shall be and remain in the Trust.” *Id.* The trust document itself names Transway’s owners as trustees and Transway employees as beneficiaries.

When opening the bank account at Union Planters, the account was put in the name of the “Transway, Inc., Employee Benefit Plan & Trust.” The signature card designates “Transway, Inc. Employee Benefit Plan and Trust” as the account owner. *See*, Secretary’s Response to Plaintiff’s Motion for Summary Judgment Exhibit 8. The name on the Plan Account checks was listed as “Transway, Inc. EBP & T.” *See*, Plaintiff’s Collective Exhibit 2. When depositing checks into the account, the Winkles would use a pre-printed deposit slip with “Transway, Inc., EBP & T” at the top. All of the checks drawn on this account were for reimbursement of medical claims of Transway’s employees.

After examining the undisputed facts of this case, the Court finds that Transway did establish a valid and enforceable welfare benefit plan pursuant to ERISA. In accordance with ERISA requirements, Transway established a trust to fund the plan. The trust opened and owned the Union Planters bank account, account number 9700000265, in order to pay claims under the benefit plan. As a result, Transway did not hold an equitable interest in the bank account and the bank account is not property of the estate.

### **III. ORDER**

It is therefore **ORDERED** that the Secretary of Labor's Motion for Summary Judgment, filed on October 4, 2002, is **GRANTED**.

It is **FURTHER ORDERED** that the consent order entered into on June 27, 2001, lifting the automatic stay and allowing Union Planters to effectuate a setoff against the Plan Account in the amount of \$17,197.20 is **HEREBY SET ASIDE**.

It is **FURTHER ORDERED** that, based on the granting of summary judgment to the Secretary of Labor, the following matters are **MOOT**:

1. Plaintiff's Response to the Secretary's Motion for Summary Judgment (filed on November 1, 2002);
2. Union Planters Bank's Response to the Secretary's Motion for Summary Judgment (filed on November 4, 2002);
3. Plaintiff's Motion for Summary Judgment (filed on November 8, 2002);
4. Transway Inc.'s Cross-Motion for Summary Judgment (filed on November 18, 2002);
5. Secretary of Labor's Objection to Plaintiff's Motion for Summary Judgment (filed on December 9, 2002);
6. Secretary of Labor's Response to Plaintiff's Motion for Summary Judgment and Plaintiff's Response to Secretary's Motion for Summary Judgment (filed on December 9, 2002);
7. Transway, Inc.'s Objection to Plaintiff's Motion for Summary Judgment, Response to Plaintiff's Motion for Summary Judgment and Reply to Plaintiff's Response to Secretary of Labor's Motion for Summary Judgment (filed on December 6, 2002);
8. Plaintiff's Response to Transway Inc.'s Cross-Motion for Summary Judgment (filed on December 9, 2002);
9. Plaintiff's Objection to Exhibits (filed on October 4, 2002).

**IT IS SO ORDERED.**

**By the Court,**

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**G. Harvey Boswell**  
**United States Bankruptcy Judge**

**Date: February 13, 2003**

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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**IN RE**

**Transway, Inc.,**

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**v.**

**Adv. Pro. No. 01-5356**

**Union Planters Bank, N.A. and  
Marianna Williams, Chapter 7 Trustee,**

**Defendants.**

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**MEMORANDUM OPINION AND ORDER  
DENYING MOTION OF HARRY BOOSEY AND MARK ALEXANDER  
TO ALTER OR AMEND FEBRUARY 13, 2003, MEMORANDUM OPINION AND ORDER**

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The Court conducted a hearing on Harry Boosey and Mark Alexander's Motion to Alter or Amend February 13, 2003, Memorandum Opinion and Order on March 19, 2003. FED. R. BANKR. P. 9014. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

On February 13, 2003, this Court issued a Memorandum Opinion and Order Granting the Secretary of Labor's Motion for Summary Judgment. In so doing, the Court found that the Transway, Inc., Employee Benefit Plan and Trust bank account at Union Planters Bank was not property of the estate. The plaintiffs in this matter, Harry Boosey and Mark Alexander, filed a Motion to alter or amend the February 13<sup>th</sup> order on February 24, 2003. The plaintiffs do not dispute the Court's February 13<sup>th</sup> finding that the Employee Benefit Plan and Trust bank account was not property of the estate. Instead, the plaintiffs ask the Court to determine that the funds in the Plan and Trust bank account are proceeds of Union Planters' collateral.

Bankruptcy courts are courts of limited jurisdiction. They derive what jurisdiction they do have from district court. 28 U.S.C. § 157(a), (b)(1). The district court has "original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). This matter is neither a case arising under title 11<sup>5</sup> nor a case arising in title 11.<sup>6</sup> As a result, the question is whether or not this matter is "related to" a case under title 11.

"Related to" proceedings have been described as

those which (1) involve causes of action owned by the debtor that became property of the estate under [11 U.S.C.] § 541, and (2) are suits between third parties which "in the absence of bankruptcy, could have been brought in a district court or state court" and whose outcome could conceivably have an effect on the bankruptcy estate.

*Eastland Partners Ltd. P'ship. v. Brown (In re Eastland Partners Ltd. P'ship)*, 199 B.R. 917, 919 (Bankr. E.D. Mich. 1996) (citing 1 *Collier on Bankruptcy* ¶ 3.01[1][c][iv], at 3-28-29 (Lawrence P. King ed., 15th ed. 1996). "Similarly, the Sixth Circuit has concluded that bankruptcy court jurisdiction over a proceeding exists 'if the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.'"" *Eastland Partners Ltd.*, 199 B.R. at 919 (citing *Sanders Confectionery Prod. v. Heller Fin.*, 973 F.2d 474, 482 (6<sup>th</sup> Cir. 1992) [citations omitted]).

When the subject of a proceeding is not property of the estate, a bankruptcy court lacks "related to" jurisdiction:

If the action does not involve property of the estate, then not only is it a noncore proceeding, it is an unrelated matter completely beyond the bankruptcy court's subject-matter jurisdiction. This can be gleaned from a general principle of bankruptcy law: if the resolution of litigation cannot affect the administration of the estate, the bankruptcy court does not have jurisdiction to decide it.

*Gallucci v. Grant (In re Gallucci)*, 931 F.2d 738, 741 (11<sup>th</sup> cir. 1991). "Bankruptcy judges can adjust only those debtor-creditor relationships that involve claims against the bankruptcy estate or those that the Code brings into the bankruptcy process by specific provision." *Rajala v. Guaranty Bank & Trust (In re United Fruit & Vegetable, Inc.)*, 191 B.R. 445, 449 (Bankr. D. Kan. 1996).

Because the Court has previously found that the Employee Welfare Benefit Plan and Trust bank account was not property of the estate, the Court has no jurisdiction to resolve the issue of whether or not the funds in the bank account are proceeds of Union Planters collateral. The plaintiff's Motion to Alter or Amend will be denied.

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<sup>5</sup>"Arising under" is defined as a cause of action created by title 11. See 1 *Collier on Bankruptcy* ¶ 3.01[1][c][iii], [v] at 3-26, 3-32 (Lawrence P. King ed., 15th ed. 1996).

<sup>6</sup>"Arising in" is defined as a "sort of residual category of civil proceedings which includes administrative matters, motions to turnover property of the estate, and determinations of the validity, extent, and priority of liens." *Eastland Partners Ltd. P'ship. v. Brown (In re Eastland Partners Ltd. P'ship)*, 199 B.R. 917, 919 (Bankr. E.D. Mich. 1996) (citing 1 *Collier on Bankruptcy* ¶ 3.01[1][c][iii], [v] at 3-26, 3-32 (Lawrence P. King ed., 15th ed. 1996).

**ORDER**

It is therefore **ORDERED** that the Motion of Harry Boosey and Mark Alexander to Alter or Amend the Court's February 13, 2003, Memorandum Opinion and Order is **DENIED**.

**IT IS SO ORDERED.**

**By the Court,**

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**G. Harvey Boswell**  
**United States Bankruptcy Judge**

**Date: April 9, 2003**