IN THE UNITED STATES BANKRUPTCY COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

IN RE:	)	
	)	CASE NOS. 89-9715-8P1
HILLSBOROUGH HOLDINGS	)	through 89-9746-8P1
CORPORATION, ET AL.,	)	and NO. 90-11997-9P1
	)	
Debtors.	)	
_____	)	
	)	
HILLSBOROUGH HOLDINGS	)	
CORPORATION, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ADVERSARY NO. 91-313
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

UNITED STATES' RESPONSE TO PLAINTIFF'S MOTION FOR AN ORDER PURSUANT TO 28 U.S.C. § 1412 AND BANKRUPTCY RULE 7087 (A) TRANSFERRING ADVERSARY PROCEEDING TO THE BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND (B) GRANTING RELATED RELIEF

Hillsborough Holdings Corporation, et al (Plaintiffs) have filed "Plaintiff's Motion for an Order Pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 7087 (A) Transferring Adversary Proceeding to the Bankruptcy Court for the Northern District of Alabama and (B) Granting Related Relief" (Doc. 444) (Motion). The Plaintiffs argue that the sole remaining issue in this adversary proceeding should be heard by the Alabama court in which the successor in interest to the Plaintiffs, Walter Energy, Inc. (Walter Energy), has filed bankruptcy instead of by this Court. That sole remaining issue before this Court is whether there is an enforceable settlement between

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the parties which resolves all the issues of this adversary proceeding. *See*, United States Motion for Entry of Judgment (Judgment Motion), Doc. 439, p. 2. The Plaintiffs argue that the Alabama court should hear that issue because: First, to do otherwise would split this tax case between the years before 1995 and the years after 1995 to present when there is a "single dispute over prepetition taxes" (Motion, p. 9); and, second, a transfer of this adversary proceeding serves "the convenience of the parties." *Id*. Neither of these arguments is supported by the facts.

On June 24, 2015, the Defendant filed the Judgment Motion. That motion along with several exhibits demonstrated that after several years of negotiation, a final settlement had been reached between the parties which resolves all the issues of this adversary proceeding, whether those issues had been tried by this Court or resolved by agreement of the parties. Doc. 439, p. 2. To reach the settlement, the Plaintiffs submitted to the Defendant an offer to settle all tax issues pending in this litigation. The Defendant accepted the offer and moved the Court to enter a judgment consistent with the terms of the settlement.

The Plaintiffs are entirely correct when they point out that "[t]his Court cannot adjudicate the post-1995 tax years, because these issues arose after the earlier bankruptcy cases concluded and are not addressed by the Adversary Proceeding." Motion, p. 9. But, they are entirely incorrect when they claim that it therefore follows that "unless the Adversary Proceeding is transferred, a single dispute over prepetition taxes will be divided into two, causing decisions by this Court over certain aspects of the issue to potential [sic] impact the outcome of the other half of the dispute pending before the Alabama Bankruptcy Court." *Id*. The pre-1995 tax years which are the subject of this adversary proceeding are in an entirely different posture from the post-1995 tax years: all aspects of the pre-1995 tax disputes are settled by orders of this Court. This is

true whether or not the Court decides that the settlement agreement between the parties is enforceable and grants the Judgment Motion filed by the Defendant. If this Court grants the Judgment Motion then the tax liabilities for the pre-1995 years will be fixed according to the settlement agreement. If this Court denies the Judgment Motion and the parties do not agree on some other settlement, then this Court will enter judgment for the pre-1995 years according to the orders of this Court. Those orders are final orders and any appeal of them will be possible to a district court after a final judgment is entered by this Court. Such was the order of this Court. *See*, Doc. 403. So, there is no advantage to this adversary proceeding being transferred to the Alabama Bankruptcy Court.

Equally, transferring this adversary proceeding to Alabama will not serve the convenience of the parties. The only parties involved in what remains of this adversary proceeding are the accountants and attorneys who negotiated the settlement which is the basis for the Judgment Motion. Contrary to the statement in the Plaintiffs' Motion (Motion, pp. 10-11), any witnesses to the settlement are not the employees of the Alabama Debtor at its new headquarters in Alabama, but are the attorneys and accountants who negotiated the settlement and they are located in New York and Washington, D.C., as are any books and records on which they may rely.

The Defendant filed its Judgment Motion on June 24, 2015. The Plaintiffs filed their Plaintiffs' Initial Response in Opposition to United States' Motion for Entry of Judgment (Initial Response), the next day. Doc. 440. In their Initial Response, the Plaintiffs denied that a settlement "exists or that Defendant has standing to seek approval for what it unilaterally contends to be the terms of a settlement." *Id*., p. 1. They claim that the Judgment Motion "omits

correspondence setting forth material unresolved terms of the global settlement discussions." *Id*. They then reserved the right to supplement their Initial Response and to hold an evidentiary hearing. *Id*., p. 2. A preliminary hearing was set on the Judgment Motion and Initial Response for July 15, 2015. Doc. 441. Coincidentally, however, on the morning of July15, 2015, the Debtor filed its Alabama bankruptcy case. The hearing on the Judgment Motion was continued and this Motion filed. The Plaintiffs point out that the Alabama bankruptcy case is on an expedited schedule. They only have six months to confirm a plan of reorganization and the federal tax claims must be resolved in that time. Motion, p. 2. If that is so, then it would benefit the Plaintiffs to have their tax liabilities fixed for the pre-1995 years. This is because, obviously, the earlier tax year amounts need to be resolved before the later years' liabilities can be determined. The Plaintiffs claim that they are "entitled to substantial tax benefits over the last 20 years, primarily in the form of tax refunds…. As a result, the company has consistently sought to resolve the Adversary Proceeding by simultaneously resolving its entitlement to the Refunds." Motion, p. 4. By resolving the pre-1995 tax claims now, which have been legally determined by orders of this Court and subject to the settlement, an overall resolution of the Debtor's total tax liability for all years can be more expeditiously achieved.

CONCLUSION

For the foregoing reasons, this Court should deny the Motion and proceed to a hearing on the Judgment Motion.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the foregoing United States' Response to Plaintiff's Motion for an Order Pursuant to 28 U.S.C. § 1412 and Bankruptcy Rule 7087 (A) Transferring Adversary Proceeding to the Bankruptcy Court for the Northern District of Alabama and (B) Granting Related Relief, has this 2nd day of August, 2015 been filed with the CM/ECF system. The CM/ECF system will automatically serve a copy to those attorneys registered with it.

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