

“(5) No claim for benefits covered by this section shall be limited by section 502(b)(7) of such title.

“(b)(1) Notwithstanding any provision of title 11 of the United States Code, the trustee shall pay an allowable claim of any person for a benefit paid—

“(A) before the filing of the petition under title 11 of the United States Code; and

“(B) directly or indirectly to a retired former employee under a plan, fund, or program described in subsection (a)(1);

if, as determined by the court, such person is entitled to recover from such employee, or any provider of health care to such employee, directly or indirectly, the amount of such benefit for which such person receives no payment from the debtor.

“(2) For purposes of paragraph (1), the term ‘provider of health care’ means a person who—

“(A) is the direct provider of health care (including a physician, dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician); or

“(B) administers a facility or institution (including a hospital, alcohol and drug abuse treatment facility, outpatient facility, or health maintenance organization) in which health care is provided.

“(c) This section is effective with respect to cases commenced under chapter 11, of title 11, United States Code, in which a plan for reorganization has not been confirmed by the court and in which any such benefit is still being paid on October 2, 1986, and in cases that become subject to chapter 11, title 11, United States Code, after October 2, 1986 and before the date of the enactment of the Retiree Benefits Bankruptcy Protection Act of 1988 [June 16, 1988].

“(d) This section shall not apply during any period in which a case is subject to chapter 7, title 11, United States Code.”

Similar provisions were contained in Pub. L. 99-656, § 2, Nov. 14, 1986, 100 Stat. 3668, as amended by Pub. L. 100-41, May 15, 1987, 101 Stat. 309; Pub. L. 100-99, Aug. 18, 1987, 101 Stat. 716, and were repealed by Pub. L. 100-334, § 3(b), June 16, 1988, 102 Stat. 614.

§ 1107. Rights, powers, and duties of debtor in possession

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

(b) Notwithstanding section 327(a) of this title, a person is not disqualified for employment under section 327 of this title by a debtor in possession solely because of such person’s employment by or representation of the debtor before the commencement of the case.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2628; Pub. L. 98-353, title III, § 503, July 10, 1984, 98 Stat. 384.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment adopts section 1107(b) of the Senate amendment which clarifies a point not covered by the House bill.

SENATE REPORT NO. 95-989

This section places a debtor in possession in the shoes of a trustee in every way. The debtor is given the rights and powers of a chapter 11 trustee. He is required to perform the functions and duties of a chapter 11 trustee

(except the investigative duties). He is also subject to any limitations on a chapter 11 trustee, and to such other limitations and conditions as the court prescribes cf. *Wolf v. Weinstein*, 372 U.S. 633, 649-650 (1963).

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted “on a trustee serving in a case” for “on a trustee”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1108. Authorization to operate business

Unless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor’s business.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2629; Pub. L. 98-353, title III, § 504, July 10, 1984, 98 Stat. 384.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment adopts section 1108 of the House bill in preference to the style of an identical substantive provision contained in the Senate amendment. Throughout title 11 references to a “trustee” is read to include other parties under various sections of the bill. For example, section 1107 applies to give the debtor in possession all the rights and powers of a trustee in a case under chapter 11; this includes the power of the trustee to operate the debtor’s business under section 1108.

SENATE REPORT NO. 95-989

This section permits the debtor’s business to continue to be operated, unless the court orders otherwise. Thus, in a reorganization case, operation of the business will be the rule, and it will not be necessary to go to the court to obtain an order authorizing operation.

HOUSE REPORT NO. 95-595

This section does not presume that a trustee will be appointed to operate the business of the debtor. Rather, the power granted to trustee under this section is one of the powers that a debtor in possession acquires by virtue of proposed 11 U.S.C. 1107.

AMENDMENTS

1984—Pub. L. 98-353 inserted “, on request of a party in interest and after notice and a hearing.”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1109. Right to be heard

(a) The Securities and Exchange Commission may raise and may appear and be heard on any issue in a case under this chapter, but the Securities and Exchange Commission may not appeal from any judgment, order, or decree entered in the case.

(b) A party in interest, including the debtor, the trustee, a creditors’ committee, an equity security holders’ committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2629.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1109 of the House amendment represents a compromise between comparable provisions in the House bill and Senate amendment. As previously discussed the section gives the Securities and Exchange Commission the right to appear and be heard and to raise any issue in a case under chapter 11; however, the Securities and Exchange Commission is not a party in interest and the Commission may not appeal from any judgment, order, or decree entered in the case. Under section 1109(b) a party in interest, including the debtor, the trustee, creditors committee, equity securities holders committee, a creditor, an equity security holder, or an indentured trustee, may raise and may appear and be heard on any issue in a case under chapter 11. Section 1109(c) of the Senate amendment has been moved to subchapter IV pertaining to Railroad Reorganizations.

SENATE REPORT NO. 95-989

Subsection (a) provides, in unqualified terms, that any creditor, equity security holder, or an indenture trustee shall have the right to be heard as a party in interest under this chapter in person, by an attorney, or by a committee. It is derived from section 206 of chapter X ([former] 11 U.S.C. 606).

Subsection (b) provides that the Securities and Exchange Commission may appear by filing an appearance in a case of a public company and may appear in other cases if authorized or requested by the court. As a party in interest in either case, the Commission may raise and be heard on any issue. The Commission may not appeal from a judgment, order, or decree in a case, but may participate in any appeal by any other party in interest. This is the present law under section 208 of chapter X ([former] 11 U.S.C. 608).

HOUSE REPORT NO. 95-595

Section 1109 authorizes the Securities and Exchange Commission and any indenture trustee to intervene in the case at any time on any issue. They may raise an issue or may appear and be heard on an issue that is raised by someone else. The section, following current law, denies the right of appeal to the Securities and Exchange Commission. It does not, however, prevent the Commission from joining or participating in an appeal taken by a true party in interest. The Commission is merely prevented from initiating the appeal in any capacity.

§ 1110. Aircraft equipment and vessels

(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 if—

(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the

debtor under such security agreement, lease, or conditional sale contract; and

(B) any default, other than a default of a kind specified in section 365(b)(2), under such security agreement, lease, or conditional sale contract—

(i) that occurs before the date of the order is cured before the expiration of such 60-day period;

(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—

(I) the date that is 30 days after the date of the default; or

(II) the expiration of such 60-day period; and

(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.

(3) The equipment described in this paragraph—

(A) is—

(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

(ii) a vessel documented under chapter 121 of title 46 that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and

(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).

(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.