United States Bankruptcy Court
Western District of Wisconsin

Cite as: [Unpublished]

**Gross Common Carrier, Inc., Plaintiff, v.
Ronald DeSotelle, individually and as the surviving spouse
of Paula Desotelle, the Estate of Paula Desotelle,
Lou-Ques Corporation, Marshfield Clinic, and
St. Joseph's Hospital, Defendants,
and Suzanne M. Pilger and Michael L. Weinbauer, individually
and as Personal Representative of the Estate of Ruth M.
Gross, Defendants and Third Party Plaintiffs,
v.
The Gross Common Carrier, Inc. Group Health Plan
and Suzanne M. Pilger and Michael L. Weinbauer, as
Administrators of the Gross Common Carrier, Inc.
Group Health Plan, Third-Party Defendants**
(In re Gross Common Carrier, Inc., Debtor)
Bankruptcy Case No. 91-52860-11, Adv. Case. No. A91-5242-11

United States Bankruptcy Court
W.D. Wisconsin, Eau Claire Division

August 14, 1992

William J. Rameker and Stephen R. Tumbush, for the debtor.
David I. Cisar, Daniel F. Miller, and Brian L. Anderson, for St. Joseph's Hospital.
Russell W. Wilson and Stewart L. Etten, for Michael Weinbauer and Suzanne Pilger, individually and as personal representative of the estate of Ruth M. Gross.

Thomas S. Utschig, United States Bankruptcy Judge.

MEMORANDUM OPINION, FINDINGS OF FACT, AND CONCLUSIONS OF LAW

This matter comes before the Court on an adversary proceeding filed by the debtor, Gross Common Carrier, Inc. The debtor seeks a determination of whether certain insurance proceeds in its possession are property of its bankruptcy estate pursuant to 11 U.S.C. § 541. The defendants in this adversary proceeding are Ronald Desotelle, individually and as the surviving spouse of Paula Desotelle; the estate of Paula Desotelle; Lou-Ques Corporation; the Marshfield Clinic; St. Joseph's Hospital of Marshfield; and Suzanne M. Pilger and Michael L. Weinbauer, individually and as personal representative of the estate of Ruth M. Gross. Defendants Pilger and Weinbauer are also third-party plaintiffs in a suit naming the Group Health Plan of Gross Common Carrier, Inc., and Suzanne M. Pilger and Michael L. Weinbauer in their capacity as administrators of that Plan, as third-party defendants.

The debtor is represented by William J. Rameker and Stephen R. Tumbush; St. Joseph's Hospital is represented by David I. Cisar, Daniel F. Miller, and Brian L.

Anderson; and Michael Weinbauer and Suzanne Pilger, individually and as personal representative of the estate of Ruth M. Gross, are represented by Russell W. Wilson and Stewart L. Etten.

Numerous motions are currently before the Court in this adversary proceeding. These include a motion by the debtor-plaintiff for default judgment against the non-answering defendants and for judgment on the pleadings, and a motion by St. Joseph's Hospital for judgment on the pleadings. The Court, in an order dated May 22, 1992, denied the plaintiff's motion for default judgment as to defendant St. Joseph's Hospital. The Court further granted the hospital's motion to enlarge the time to file an answer.

The plaintiff and several defendants filed briefs supporting their positions and the parties declined an opportunity for an evidentiary hearing on this matter. The Court will accordingly render its decision on the basis of the documents, affidavits and memoranda submitted to it.

The relevant facts are as follows. Up until approximately 1988, the plaintiff provided health insurance through an outside insurance carrier to its employees as partial consideration for their services. In approximately 1988, the plaintiff implemented a self-insured group health plan for its employees and their dependents. The plan was called the Gross Common Carrier, Inc. Group Health Plan (Plan). Plaintiff's employees were required to pay a monthly premium to the Plan in order to participate in it.

The plaintiff is the administrator of the Plan and as such has the authority to control and manage the operation and administration of it. Premiums deducted monthly from employees' paychecks were placed in the general corporate account of the plaintiff. Claims submitted to the Plan were paid out of the general assets of the plaintiff. Payment of claims occurred by means of direct payments by the plaintiff to the health-care providers and/or direct reimbursements to Plan participants for health-care expenses incurred by them.

In order to lessen the economic losses potentially incurrable through a self-funded plan, the plaintiff purchased a stop-loss insurance policy (Policy) from the Mutual Benefit Life Insurance Company (Mutual). Under the terms of the Policy, Mutual agreed to reimburse the plaintiff for health-care claims of participants for any amount exceeding $50,000 but not to exceed $1,000,000 per claim event. Payments under the Policy would be made directly to the plaintiff to reimburse it for claims paid under the Plan within the limits of the Policy.

Ronald Desotelle, one of the defendants in this action, was an employee of the plaintiff for approximately eight years. Both Ronald and his wife Paula were participants in the Plan. Ronald's employment with the plaintiff was terminated in July of 1991. Ronald and his spouse, Paula Desotelle (now deceased) incurred approximately $151,941.60 in medical expenses from November 1, 1990, to August 20, 1991 -- the date the plaintiff filed its chapter 11 bankruptcy petition. These expenses are eligible for payment under the terms of the Plan.

On November 8, 1991, the plaintiff received a check payable to it in the amount of $82,856.84 from Mutual. It received a second check on November 12, 1991, from Mutual in the amount of $5,060.16. These payments were made as a result of the medical expenses incurred by Paula Desotelle. Plaintiff anticipates it will receive an additional $14,024.60 from Mutual based on those expenses.

The proceeds of the Mutual payments have been placed in an account in the plaintiff's name over which it has exclusive control. The outstanding balance for medical services rendered to Paula Desotelle totals $140,124.04. After each of three successive discharges of Paula Desotelle from St. Joseph's, the hospital submitted itemized billings to the claims administrator of the Plan -- Lester, Smart & Treml -- an insurance agency in Wisconsin Rapids, Wisconsin. Subsequent to the submission of its billings, St. Joseph's had numerous telephone contacts with Lester, Smart & Treml and the plaintiff concerning payment. Although some partial payments did result, the aforementioned substantial balance remains outstanding.

The principal issue presented by this matter is whether the insurance proceeds paid and payable by Mutual to the plaintiff-debtor are part of its bankruptcy estate. The plaintiff raises several arguments in support of its assertion that the proceeds are a part of its bankruptcy estate. First, the plaintiff examines the potential impact of the Employee Retirement Income Security Act[(1)] (ERISA) on this issue. It concedes that the Plan is a welfare benefit plan under that act.[(2)] It then examines the threshold question of whether the proceeds from the Policy are ERISA plan assets and concludes that they are not. It bases its conclusion primarily on a Department of Labor Advisory Opinion dated January 17 1992. That decision was in response to an inquiry made by the Self-Insurance Institute of America, Inc. The Institute inquired whether a stop-loss insurance policy purchased by an employer sponsoring a welfare benefit plan that provides benefits exclusively out of the employer's general assets would be an asset of the ERISA plan. The Labor Department replied that, based on the facts and circumstances submitted in the hypothetical scenario in the Institute's inquiry, the stop-loss policy would not be a plan asset. See Labor Department Advisory Opinion 92-02A on the Definition of Plan Assets (Jan. 17, 1992), reprinted in 19 Pens. Rep. (BNA) 229 (Feb. 3, 1992). The hypothetical facts as presented in the inquiry upon which the Labor Department based its conclusions were as follows:

i) the employer's ERISA welfare plan was a medical benefit plan whose benefits were paid exclusively out of the employer's general assets;

ii) the insurance proceeds would be payable only to the employer, who would be the named insured under the policy;

iii) the employer would have all rights of ownership under the policy, and the policy would be subject to the claims of the employer's creditors;

iv) neither the health plan nor any participant or beneficiary of the plan would have any preferential claim against the policy or any beneficial interest in the policy;

v) no representations would be made to any participant or beneficiary of the health plan that the policy will be used to provide benefits under the plan or that the policy in any way represents security for the payment of benefits;

vi) the benefits associated with the plan would not be limited or governed in any way by the amount of insurance proceeds received by the employer; and

vii) the plan does not, and will not, require or allow employee contributions.

The plaintiff argues that elements i, ii, iii, iv and vi are present in the facts currently before the Court, that elements ii and iii are the most important ones, and therefore the Court should find that the proceeds at issue are not Plan assets.

Plaintiff next asserts that even if the Court should find the proceeds to be Plan

assets, the fiduciary duties imposed by ERISA on employers are irrelevant for purposes of this case. It bases this assertion on the contention that federal bankruptcy law -- specifically the duties imposed on the bankruptcy trustee under 11 U.S.C. § 704 -- takes precedence over ERISA. The plaintiff then concludes by alleging that the proper focus in cases such as this should therefore be on the priority of the welfare beneficiaries' claims under 11 U.S.C. § 507(c) -- not whether any fiduciary duties imposed by ERISA would be violated.

The plaintiff continues this line of argument and alleges that, even if the insurance proceeds are found to be assets of the Plan, the key question remains whether they are property of the estate pursuant to 11 U.S.C. § 541. After reasserting the supremacy of the bankruptcy code as against ERISA, the plaintiff cites the broad language in § 541(a)(1) that "[the bankruptcy estate is comprised of] all legal or equitable interests of the debtor in property . . . ." See 11 U.S.C. § 541(a)(1) (West 1992). It then notes that the legislative history of that section indicates it was intended to be broad in scope.

In the final part of its analysis of the impact of ERISA, the plaintiff examines whether the proceeds are excludable from the estate under § 541(c)(1)(A). That provision provides that "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title." See, 11 U.S.C. § 541(c)(2) (West 1992). Plaintiff briefly examines the wealth of case law addressing this language in regard to pension benefits, including this Court's decision in In re Shaker, 137 B.R. 930 (Bankr. W.D. Wis. 1992). This Court held in that case that the "applicable nonbankruptcy law" language of § 541(c)(2) includes laws such as ERISA. Thus ERISA pension benefits which are subject to that act's anti-alienation provisions are excluded from the bankruptcy estate under § 541(c)(2).[3]

After reviewing this history, the plaintiff then notes that it doesn't apply to this case at all because ERISA welfare benefits are at issue here and such benefits are not subject to the act's anti-alienation provisions. See Mackey v. Lanier Collections Agency, 486 U.S. 825, 836 (1988).

As a final argument in support of the inclusion of the proceeds in its bankruptcy estate, the plaintiff addresses the "earmarking doctrine" and asserts that it is inapplicable here.

Defendant St. Joseph's Hospital and third-party defendants Gross Common Carrier Group Health Plan and Suzanne Pilger and Michael Weinbauer as administrators thereof filed memoranda in opposition to the plaintiff's motion for default judgment. Briefly, the defendants make two principal arguments in support of their position. First, they argue that the insurance proceeds are assets of the Plan and as such they are to be held in trust and used solely for the benefit of plan participants. Therefore the proceeds cannot be part of the debtor's bankruptcy estate. Second, the defendants assert that the proceeds are held by the plaintiff in a constructive trust for the exclusive benefit of the Desotelles or their assignee, St. Joseph's Hospital.

The Court has examined and considered the affidavits and memoranda submitted by the parties. On the basis of the evidence before it and the arguments and precedent asserted by the parties, the Court finds that the defendants must prevail. Although persuasive arguments have been raised by the defendants based on the provisions of ERISA, the Court has determined that recourse to ERISA law is unnecessary under the facts presented. The Court finds that the facts of this case

warrant the imposition of a constructive trust under Wisconsin law on the insurance proceeds at issue.

As a general proposition, "[a] constructive trust is an equitable device created by law to prevent unjust enrichment, which arises when one party receives a benefit, the retention of which is unjust to another." Wilharms v. Wilharms, 93 Wis. 2d 671, 678, 287 N.W.2d 779, 783 (1980), citing with approval Richards v. Richards, 58 Wis. 2d 290, 296-97, 206 N.W.2d 134, 137 (1973); Hanson v. Valdivia, 51 Wis. 2d 466, 476, 187 N.W.2d 151, 156 (1971). One bankruptcy court has succinctly summarized the elements of constructive trust law in Wisconsin as follows:

> To invoke a constructive trust unjust enrichment and some additional factor such as actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong or some form of unconscionable conduct must be found. *Wilharms v. Wilharms*, 93 Wis.2d 671, 679, 287 N.W.2d 779, 783 (1980); *Prince v. Bryant*, 87 Wis.2d 662, 275 N.W.2d 676 (1979); *Gorski v. Gorski*, 82 Wis.2d 248, 262 N.W.2d 120 (1978); *Meyer v. Ludwig*, 65 Wis.2d 280, 222 N.W.2d 679 (1974). Wisconsin courts have added a third element; a constructive trust may only be applied to a specific *res* to which the party has acquired legal title. *In re Raschke*, 84-C-635-C (W.D.Wis. May 15, 1985); *Hanson v. Valdivia*, 51 Wis.2d 466, 476, 187 N.W.2d 151, 156 (1971) (footnote omitted).

Mumm v. Adametz (In re Adametz), 53 B.R. 299, 305-06 (Bankr. W.D. Wis. 1985). The first and third elements are easily dispensed with under the facts of this case. The debtor has clearly been unjustly enriched. It has received over $80,000 in health insurance proceeds as "reimbursement" from Mutual for medical expenses and services which it did not incur or provide. It did not pay the claims submitted by the health-care provider -- St. Joseph's Hospital -- citing its intervening bankruptcy filing as grounds for not doing so. As for the third requirement -- that there be a specific res upon which the trust can be imposed -- that too is satisfied here. As indicated by the plaintiff in its brief, the proceeds at issue have been placed in an account in its name.

The second element, although slightly more problematic, is also present in this case. As noted, that element is the presence of "[s]ome additional factor such as actual or constructive fraud, duress, abuse of a confidential relationship, mistake, commission of a wrong or some form of unconscionable conduct." In re Adametz, 53 B.R. 299, 305 (Bankr. W.D. Wis. 1985). How strictly this element is to be applied in a given case appears to be a matter of some uncertainty among Wisconsin courts. "Although the presence of fraudulent or wrongful conduct is frequently the basis of the constructive trust, the Wisconsin cases have also focused on the potential unjust enrichment of the grantee." Kepler v. Steele (In re Steele), 27 B.R. 474, 479 (Bankr. W.D. Wis. 1983), citing with approval Richards v. Richards, 58 Wis. 2d 290, 297, 206 N.W.2d 134, 137-38 (1973); Estate of Massouras, 16 Wis. 2d 304, 312, 114 N.W.2d 449, 453 (1962). Wisconsin courts, moreover, have not required that the one against whom a constructive trust is to be imposed be guilty of any wrongdoing. "Since the doctrine of constructive trust is an equitable remedy, [the rule that there be wrongdoing on the part of the one against whom it is to be imposed] has not been strictly applied and in imposing the doctrine each case must be considered in the factual situation presented." Prince v. Bryant, 87 Wis. 2d 662, 667-68, 275 N.W.2d 676, 678 (1979).

In spite of this uncertainty among Wisconsin courts, the Court finds nevertheless that the retention of the proceeds by the debtor here would constitute a wrongdoing sufficient to satisfy this element and warrant imposition of a constructive trust. In an

affidavit submitted to the Court, Ronald Desotelle asserted that he and the other employees of the debtor were informed in writing about the existence of the stop-loss Policy and that it had been purchased to "[i]nsure that sufficient assets would be available to pay for cases in which a covered participant incurred very substantial medical expenses." See Affidavit of Ronald Desotelle at 3. The written summary of the debtor's insurance Plan, moreover, noted that "[t]he Plan is self-funded with excess insurance purchased." See Supplement to Pre-hearing Statement of Suzanne M. Pilger and Michael L. Weinbauer, Exhibit D. Aside from these general assurances, however, Ronald Desotelle further asserts in his affidavit that he was given repeated specific assurances by representatives of the debtor and the claims administrator (Lester, Smart & Treml) that his wife's medical expenses would be covered in full to the extent of plan benefits. See Affidavit of Ronald Desotelle at 5. The stop-loss Policy was also discussed in Mr. Desotelle's meetings with the claims administrator. See id. at 4. These attestations of Mr. Desotelle were uncontroverted by the debtor; it declined the opportunity to have a hearing before this Court for the purpose of presenting evidence about them.[(4)]

Given the oral and written assurances made by the debtor and its representatives to Ronald Desotelle concerning the coverage provided by the stop-loss Policy, the Court finds the debtor's current efforts to procure the Policy proceeds for its bankruptcy estate wrongful and unconscionable. Although the debtor's claim to the proceeds for its bankruptcy estate may be barely colorable at best,[(5)] the Court finds that retention of those proceeds by the debtor would be unconscionable under the facts of this case. Such retention would rise to a degree of unconscionability sufficient to meet the heretofore broadly construed second "element" of Wisconsin constructive trust law. See, e.g., In re Steele, 27 B.R. 474, 479 (Bankr. W.D. Wis. 1983); Prince v. Bryant, 87 Wis. 2d 662, 667-68, 275 N.W.2d 676, 678 (1979); Richards v. Richards, 58 Wis. 2d 290, 297-98, 206 N.W.2d 134, 137-38 (1973). Defendant Ronald Desotelle purchased insurance from his employer (the plaintiff-debtor) and received numerous assurances that his wife's expenses would be covered. Defendant St. Joseph's Hospital provided medical services in good faith after receiving information from the debtor about its insurance Plan. The debtor has been "reimbursed" for a claim which it has not paid. Debtor's retention of these funds in light of its repeated assurances to defendant Ronald Desotelle is wrongful.

Numerous other considerations support the imposition of a constructive trust here. First, the Court finds the facts of this case not unlike another group of Wisconsin cases (or cases applying Wisconsin law) which have imposed constructive trusts under the facts presented. Those cases have focused on a special relationship that existed between the parties involved. See, e.g., Kaiser v. Wise (In re Telemark Management Co.), 47 B.R. 1013 (W.D. Wis. 1985) (corporate officer); Gorski v. Gorski, 82 Wis. 2d 248, 262 N.W.2d 120 (1978) (family members); Joerres v. Koscielniak, 13 Wis. 2d 242, 108 N.W.2d 569 (1961) (close friends). See generally George T. Bogert, Trusts § 86 (6th ed. 1987) Some courts have noted that the abuse of such confidential relationships can be sufficient to fulfill the fraud, mistake or unconscionable conduct element under Wisconsin law. See, e.g., Gorski v. Gorski, 82 Wis. 2d 248, 262 N.W.2d 120 (1978); Meyer v. Ludwig, 65 Wis. 2d. 280, 222 N.W.2d 679 (1974). The relationship between the parties here is admittedly not as close as a familial connection. Nevertheless, the Court finds the relationship between a self-funded health insurance plan administrator and a plan participant to be akin to the special relationships focused upon in the aforementioned cases. Adequate health insurance is an issue of increasing importance in American society and as such the relationship between an employer-insurer and an employee-insured assumes an especial importance. Courts must therefore give careful scrutiny to claims such as

the one by the plaintiff-debtor here -- a claim which if successful could potentially result in huge financial liabilities to the "insured" Plan participant's estate and the assignee health-care provider. Defendants have raised a similar persuasive argument concerning a special relationship in asserting that the debtor is a "fiduciary" under ERISA law. Although the Court makes no finding in regard to this argument, it does hold that the relationship between the parties here is a factor worthy of note in supporting the result it reaches.

Second, there is another Wisconsin statute which indirectly supports the Court's decision here. WIS. STAT. § 631.07(4) provides:

> (4) Effect of lack of insurable interest or consent. No insurance policy is invalid merely because the policyholder lacks insurable interest or because consent has not been given, but a court with appropriate jurisdiction may order the proceeds to be paid to someone other than the person to whom the policy is designated to be payable, who is equitably entitled thereto, or may create a constructive trust in the proceeds or a part thereof, subject to terms and conditions of the policy other than those relating to insurable interest or consent.

WIS. STAT. § 631.07(4) (West 1980) (emphasis added). This statute is contained in the insurance section of the Wisconsin statutes. Although not directly applicable here, it does indicate Wisconsin legislative approval for the constructive trust remedy in certain cases where a third party is equitably entitled to insurance proceeds payable to a designated beneficiary. Even though the subsection is titled "Effect of lack of insurable interest or consent," at least one recent Wisconsin court has applied it where consent or a lack of an insurable interest were not at issue. See Disrud v. Arnold, 167 Wis. 2d 177, 482 N.W.2d 114 (Ct. App. 1992). In that case, the Wisconsin Court of Appeals affirmed a lower court's award of insurance proceeds to an undesignated third party who was equitably entitled to them. In so doing, the court cited only that part of § 631.07(4) underlined above and focused on the lower court's equitable powers in reaching the result it did. See id. This does provide additional support -- albeit indirect -- to the decision in equity reached by this Court on the basis of Wisconsin law in the present case.

Third and finally, the result reached by this Court finds direct support in the legislative history to § 541 of the Bankruptcy Code and various cases citing that history. § 541 delineates what is and is not property of the bankruptcy estate. The legislative history to that section contains the following language:

> Situations occasionally arise where property ostensibly belonging to the debtor will actually not be property of the debtor, but will be held in trust for another. For example, if the debtor has incurred medical bills that were covered by insurance, and the insurance company had sent the payment of the bills to the debtor before the debtor had paid the bill for which the payment was reimbursement, the payment would actually be held in a constructive trust for the person to whom the bill was owed.

See H.R. Rep. No. 595, 95th Cong., 1st Sess. 368 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 82 (1978), reprinted in 1978 U.S.C.C.A.N. at 5787.

The facts here are not identical to those in this hypothetical situation. Here it was not the debtor who incurred the medical bills, rather it was a participant in the debtor's self-funded health plan. Such differences, however, are irrelevant. The reasoning contained in the legislative history is directly applicable here. The debtor

here is holding over $80,000 in insurance proceeds which it would not have received but for the illness and subsequent treatment experienced by one of its Plan participants. The debtor is holding money which is owed to another entity -- St. Joseph's Hospital as assignee of Paula Desotelle's insurance policy proceeds. Other cases citing the aforementioned language from the legislative history to § 541 have reached the same result under similar reasoning as this Court reaches here.[(6)] See, e.g., Arizona Health Care Cost Containment System v. Nelson (In re Yakel), 97 B.R. 580 (D. Ariz 1989); In re Moskowitz, 14 B.R. 681 (Bankr. S.D.N.Y. 1981).

Such considerations, therefore, provide further support for the imposition of a constructive trust against the debtor as to the insurance proceeds at issue here. One further argument of the debtor should be addressed. The debtor in its memorandum cites the following language from its reinsurance contract with Mutual:

> Insolvency. In event of the insolvency of [the debtor], all reinsurance shall be payable directly to the liquidator, trustee or statutory successor of said reinsured, without diminution because of the insolvency of the reinsured.

See Plaintiff's Complaint, Exhibit B at 8. The debtor apparently asserts that, since the contract requires payment to the trustee (here the chapter 11 debtor in possession -- Gross Common Carrier), it necessarily follows that the proceeds paid are to remain in the estate. The Court finds this argument wholly without merit and the aforementioned contract language irrelevant for purposes of its analysis. The quoted language was clearly meant merely to prevent the reinsurer from asserting the reinsured's (the debtor's) insolvency as an excuse for nonpayment of reimbursements due under the policy.[(7)] The language carries no weight as to the ultimate disposition of the proceeds once they are paid to a trustee or a chapter 11 debtor. Such a decision is to be made on the basis of federal bankruptcy law with reference to applicable state law where appropriate.

For the aforementioned reasons then, the Court finds that the insurance proceeds at issue are held in constructive trust by the debtor for payment to the health-care provider -- St. Joseph's Hospital. The proceeds, therefore, do not become a part of the bankruptcy estate.[(8)] This result is eminently justifiable when considerations of equity are taken into account. Bankruptcy courts are courts of equity[(9)] and Wisconsin courts have consistently stressed the primacy of equitable considerations in cases involving constructive trusts. See, e.g., Prince v. Bryant, 87 Wis. 2d 662, 667-68, 275 N.W.2d 676, 678 (1979); Richards v. Richards, 58 Wis. 2d 290, 297-98, 206 N.W.2d 134, 137-38 (1973).

This decision shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and Rule 52 of the Federal Rules of Civil Procedure.

END NOTES:

1. Pub. L. No. 93-406, 88 Stat. 829 (codified as amended in numerous sections of Titles 26 and 29 U.S.C.).

2. An "employee welfare benefit plan" is defined under ERISA as

> [a]ny plan, . . . fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, 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 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.

See 29 U.S.C.A. § 1002(1) (West 1985).

3. The U.S. Supreme Court recently reached the same result in another case addressing this issue. See Patterson v. Shumate, 112 S. Ct. 2242 (1992).

4. Warren Cook, Director of Patient Business Services at St. Joseph's Hospital, also submitted an affidavit to the Court. In it, he attests that hospital personnel contacted the administrator of the Plan at the time of Paula Desotelle's first admission to the hospital. He states that the hospital thereby "[d]etermined the insurance benefits available to Mrs. Desotelle . . . ." See Affidavit of Warren Cook at 3.

5. It was the debtor which brought this claim before this Court, seeking a determination of whether the insurance proceeds are property of the estate pursuant to 11 U.S.C. § 541.

6. It is important to note that this Court, in citing the legislative history of 11 U.S.C. § 541, is not creating a federal common law of constructive trusts or unjust enrichment. As is appropriate, the Court bases its decision on Wisconsin constructive trust law. See generally, In re Moskowitz, 14 B.R. 677, 680 (Bankr. S.D.N.Y. 1981). The Court cites the legislative history to § 541 merely as support for the result it reaches under Wisconsin law.

7. Similarly, the Court's decision here has the effect of preventing the debtor from asserting its bankruptcy filing as an excuse for nonpayment of the stop-loss Policy proceeds to the health care provider. Any other result would make the "stop-loss" designation a misnomer under the circumstances. The Mutual stop-loss Policy was meant to do just that -- prevent the debtor from suffering potentially devastating losses in cases involving huge medical bills. It was not meant to provide the debtor a windfall in such cases. Nor does the additional fact of the debtor's bankruptcy filing warrant such a result for its bankruptcy estate.

8. This result will also apply to any additional proceeds the debtor receives from Mutual on the basis of the claims of Paula Desotelle.

9. See United States v. Energy Resources Co., 495 U.S. 545, 549 (1990), citing with approval Katchen v. Landy, 382 U.S. 323, 327 (1966); United States Nat'l Bank v. Chase Nat'l Bank, 331 U.S. 28, 36 (1947); Pepper v. Litton, 308 U.S. 295, 303-04 (1939).