IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
	)	
EQUIPMENT ACQUISITION RESOURCES, INC.	)	Case No.: 10 C 4565
Debtor.	)	Hon. Amy St. Eve
EQUIPMENT ACQUISITION RESOURCES, INC.	)	
Plaintiff,	)	
v.	)	10 C 4565
UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE,	)	
Defendant.	)	
UNITED STATES OF AMERICA	)	
Third-Party Plaintiff,	)	
v.	)	
MARK W. ANSTETT, MARTHA J. ANSTETT, SHELDON G. PLAYER, and DONNA L. MALONE,	)	
Third-Party Defendants.	)	

EQUIPMENT ACQUISITION RESOURCES, INC.'S MOTION TO REMAND

Plaintiff, Equipment Acquisition Resources, Inc. ("EAR"), by its attorneys, George P. Apostolides and Arnstein & Lehr LLP, moves this Court to remand this case to the United States Bankruptcy Court for the Northern District of Illinois. In support of this motion (the "Motion"), EAR states as follows.

BACKGROUND

1. EAR is the plaintiff in this case and the Debtor in the matter of In re Equipment Acquisition Resources, pending in the United States Bankruptcy Court for the Northern District of Illinois, case no. 09 B 39937. EAR filed its bankruptcy petition on October 23, 2009.

2. Prior to the filing of the bankruptcy petition, EAR made payments to the United States of America to pay tax liabilities for principals of EAR, namely Sheldon Player ("Player"), Donna Malone ("Malone"), and Mark Anstett ("Anstett").

3. On January 20, 2010, EAR filed a two-count adversary proceeding in the bankruptcy court, case no. 10 A 99, seeking the recovery of transfers totaling $4,737,261.36. Count I of the Complaint seeks the recovery of transfers pursuant to the fraudulent transfer avoidance and recovery provisions of the United States Bankruptcy Code, 11 U.S.C. §§ 548 and 550. Count II seeks the recovery of transfers pursuant to 11 U.S.C. § 544 and 740 ILCS 160/5(a)(2). A copy of the Complaint is attached as **Exhibit A**.

4. The Defendant United States of America, Internal Revenue Service (the "IRS") filed an Answer to the Complaint with Affirmative Defenses on March 24, 2010. On April 5, 2010, the IRS filed an Amended Answer with Affirmative Defenses and a Third-Party Complaint against Player, Malone, and Anstett. The Third-Party Complaint seeks the imposition of a constructive trust, a declaration that the IRS may reverse credits to any of the third-party defendants' tax accounts, restitution, and a declaration that the IRS has a paramount claim to

certain payments. A copy of the Answer with Affirmative Defenses and Third-Party Complaint is attached as **Exhibit B**. Third-Party Defendants Player and Malone filed an Answer to the Third-Party Complaint, a copy of which is attached as **Exhibit C**.

5. The IRS then served written discovery on EAR, which EAR answered on July 1, 2010. In addition, both EAR and the IRS served their Rule 26(a)(1) disclosures on each other pursuant to Federal Rule of Bankruptcy Procedure Rule 7026(a)(1).

6. The IRS served written discovery on third-party defendants Player and Malone on July 2, 2010. Third-party defendant Anstett filed for personal bankruptcy on June 7, 2010, case no. 10 B 25756, pending in the United States Bankruptcy Court for the Northern District of Illinois.

7. On June 7, 2010, the bankruptcy court entered an Order which set the matter for a preliminary pretrial conference before bankruptcy judge John H. Squires on August 10, 2010. A copy of the June 7, 2010 Order is attached as **Exhibit D**.

8. On July 15, 2010, the IRS filed its motion to withdraw the reference. That motion was not noticed for hearing in the bankruptcy court.

9. On July 22, 2010, the United States District Court opened this matter, case no. 10 C 4565, pursuant to the withdrawal of the reference.

10. On July 27, 2010, this Court entered an order requiring the parties to file a joint status report on or before August 4, 2010 and setting an initial status hearing for August 9, 2010. Though the motion to withdraw the reference has

not been heard, given the entry of the July 27, 2010 scheduling order EAR files this Motion in an abundance of caution to make clear that it believes this case belongs in the bankruptcy court.

ARGUMENT

11. This Court should remand this case to the bankruptcy court. There is no basis for allowing the withdrawal of the reference to proceed, because (1) there can be no "cause shown" to withdraw the reference; and (2) there is no basis for finding mandatory withdrawal.

12. Under the bankruptcy code, Congress intended for bankruptcy judges to determine complex Title 11 issues to the "greatest extent possible." In re Alpern, 191 B.R. 107, 110 (N.D. Ill. 1995). Thus, bankruptcy cases are automatically referred to bankruptcy judges for the federal district under 28 U.S.C. § 157(a). District judges can withdraw the reference and render decisions themselves in certain circumstances. In re Dorner, 343 F.3d 910, 914 (7th Cir. 2003).

13, The standard for withdrawal of the reference is outlined in 28 U.S.C. § 157(d):

> The district court may withdraw, in whole or in part, any case or proceeding referred [to the bankruptcy court], on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

14. Courts have interpreted section 157(d) to allow permissive withdrawal of the reference for "cause shown" and to dictate mandatory

withdrawal if both Title 11 and other laws of the United States regulating interstate commerce are implicated.

A. There is no basis for allowing the withdrawal to proceed for "cause shown."

15. The case of In re Coe-Truman Techologies, Inc., 214 B.R. 183, 187 (N.D. Ill. 1997) sets forth the factors courts consider in determining if cause for withdrawal of the reference exists:

> judicial economy, promotion of uniformity and efficiency in bankruptcy administration, reduction of forum shopping, delay and costs to the parties, the particular court's familiarity with the case, and whether the adversary proceeding is core or non-core.

The court in Coe-Truman also stated that "The most important of these factors is whether the adversary proceeding sought to be withdrawn is core or non-core." Id.

16. The case of In re Edgewater Medical Center, 2004 WL 2921957 (N.D. Ill. Dec. 15, 2004) clearly demonstrates why this Court should not allow withdrawal for "cause shown." A copy is attached as **Exhibit E**. In Edgewater Medical, the defendants sought an order withdrawing the reference of adversary proceedings asserting fraudulent transfer and breach of fiduciary duty. Id. at *2. The defendants in that case also sought to consolidate the withdrawn case with another pending district court case. Id.

17. The Court denied the motions, finding that under 28 U.S.C. § 157(b)(2)(H), proceedings to determine, avoid, and recover fraudulent conveyances, including those proceedings under Illinois state law, are core issues. The court in Edgewater Medical also rejected the defendants' argument

that withdrawal would avoid overlapping and duplicative litigation, and noted that the bankruptcy court had been involved in the case from its inception. Id. at *3.

18. First, the two counts of the Complaint are clearly core. Further, the case has been pending for nearly seven months, EAR and the IRS have engaged in and nearly completed written discovery, and the case is set for a preliminary pretrial conference on August 10, 2010. Second, the bankruptcy court is familiar with this case. The case has been pending for over nine months, and a liquidating plan was recently confirmed. Third, the case is heading to trial, and starting it over in district court will delay its resolution. Fourth, fraudulent transfer cases should be handled at the bankruptcy court level. Fifth, none of the claims here, either in the Complaint or the Third-Party Complaint, allow for a jury trial. Finally, and perhaps most importantly, the motion to withdraw the reference appears at first blush to be patent forum shopping, given the amount of time it took the IRS to file the motion.

B. There is no basis for allowing the withdrawal to proceed for mandatory reasons.

19. There is also no basis for allowing this withdrawal to proceed on a mandatory basis. Counsel for EAR did not identify any case law which says that payments of taxes by a company to the IRS to cover the tax liabilities of its principals constitutes "consideration of both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." This is not a situation where interstate commerce is implicated at all. This is simply a case in which the company paid taxes for individuals when it was insolvent or

had unreasonably small capital, and for less than reasonably equivalent value. This case is, simply, not about interstate commerce.

WHEREFORE, for the reasons set forth above, this Court should remand this case to the United States Bankruptcy Court for the Northern District of Illinois for hearing and resolution.

EQUIPMENT ACQUISITION RESOURCES, INC.

By: /s/ George P. Apostolides
One of its Attorneys

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EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE:	)	
	)	
EQUIPMENT ACQUISITION RESOURCES, INC.	)	Case No.: 09 B 39937
	)	
Debtor.	)	Hon. John H. Squires
	)	
	)	
EQUIPMENT ACQUISITION RESOURCES, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. No. ___________
	)	
UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE,	)	
	)	
	)	
Defendant.	)	

**ADVERSARY COMPLAINT FOR AVOIDANCE
AND RECOVERY OF FRAUDULENT TRANSFERS**

Plaintiff, EQUIPMENT ACQUISITION RESOURCES, INC. (the "Debtor" or "EAR"), by its attorneys, Arnstein & Lehr LLP, hereby files this Adversary Complaint for Avoidance and Recovery of Fraudulent Transfers against the United States of America, Internal Revenue Service (the "IRS"). In support of its Adversary Complaint, the Debtor states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

I. THE PARTIES

1. On or about October 23, 2009, the Debtor filed a Voluntary Petition (the "Petition") under Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Illinois. The Debtor is an Illinois Corporation, organized and existing under the laws of the state of Illinois, which formerly operated in several buildings near its headquarters at 555 S. Vermont Street, Palatine, Illinois.

2. The IRS is a federal governmental unit with its principal office located, on information and belief, at 500 North Capitol Street NW, Washington, DC 20226. The IRS also has a branch in Chicago, Illinois located at 230 S. Dearborn Street, Chicago, IL 60604.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334, and internal operating procedure 15(a) of the Federal District Court for the Northern District of Illinois because this action is related to the underlying bankruptcy case of Equipment Acquisition Resources, Inc. which is pending before this Court and is a civil proceeding arising under § 548 the United States Bankruptcy Code. This Court also has jurisdiction over this adversary proceeding pursuant to Section 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 7001(1).

4. This is a core proceeding under 28 U.S.C. §157. If for any reason this court determines that all or any portion of this proceeding is non-core, the Debtor consents to the entry of a final order by this Court.

5. The chapter 11 bankruptcy case is pending before this Court. Accordingly, venue of this adversary proceeding is proper in this Court under 28 U.S. C. § 1409(a).

III. BACKGROUND FACTS

6. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to manage its financial affairs as a debtor in possession. No trustee, examiner or committee has been appointed in its chapter 11 case.

7. Prior to commencement of its chapter 11 case, the Debtor purported to be a market maker in the semiconductor manufacturing equipment sales and servicing industry. The

Debtor also purported to perform processing services for companies in the semiconductor industry.

8. In the period from at least September, 2007 until October 8, 2009, the Debtor engaged in a massive fraud by which it sold equipment at inflated prices and leased the equipment back from various lenders. The Debtor misrepresented the value of the equipment, and pledged certain equipment multiple times to secure the financing. During this period of time, one or more of the officers, directors, and shareholders of the Debtor knew that the Debtor was engaged in the fraud, and knew that the Debtor was, in effect, not a real, functioning company. On information and belief, the Debtor paid substantial amounts of money to its board of directors and officers during this time.

9. On October 8, 2009, after it became apparent that the Debtor engaged in fraudulent activity, the members of the Debtor's board of directors and its officers, including Donna Malone ("Malone") and Mark Anstett ("Anstett"), resigned. The shareholders elected William A. Brandt, Jr. as the sole member of the board of directors and as the Chief Restructuring Officer (the "CRO"). The CRO filed the bankruptcy petition to manage the Debtor's assets for the benefit of all creditors.

10. The CRO's investigation has determined that on nine occasions from October 15, 2007 until December 3, 2008, the Debtor made transfers to the United States Treasury to pay taxes of individual owners and officers of the Debtor, including but not limited to Sheldon Player, Malone, and Anstett, along with Anstett's wife. The aggregate amount of the payments was $4,737,261.36. Exhibit A to this Complaint sets forth the $2,412,973.36 of payments made within the two year period prior to the bankruptcy filing. Exhibit B to the Complaint sets forth

one payment, in the amount of $2,324,288.00, made on October 15, 2007, just outside the two year period.

11. The Debtor did not receive any value for making the payments contained on Exhibit A and Exhibit B. Only Player, Malone, Anstett, and Anstett's wife received any benefit from the Debtor making those payments.

COUNT I
(Fraudulent Transfer – 11 U.S.C. §§ 548 and 550)

1-11. The Debtor restates and realleges Paragraphs One (1) through Eleven (11) of the Allegations Common to All Counts as Paragraphs One (1) through Eleven (11) of this Count I.

12. The transfers identified on Exhibit A were made by the Debtor to the IRS through the U.S. Treasury within the two year period prior to the Debtor's bankruptcy filing.

13. The Debtor received less than reasonably equivalent value for the transfers identified on Exhibit A.

14. On the dates of the transfers listed on Exhibit A, the Debtor either was insolvent, or was engaged in a business for which any property remaining with the Debtor was unreasonably small capital, or intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

15. The Debtor is entitled to avoid the transfers on Exhibit A pursuant to 11 U.S.C. § 548(a)(1)(B) and recover those transfers pursuant to 11 U.S.C. § 550.

WHEREFORE, Equipment Acquisition Resources, Inc., prays that this Court enter an order of judgment in the amount of $2,412,973.36 in favor of the Debtor and against Defendant on Count I of this Complaint.

COUNT II
(Fraudulent Transfer – 11 U.S.C. § 544 and 740 ILCS 160/5(a)(2))

1-15. EAR re-alleges paragraph 1-15 of the Allegations Common to All Counts as paragraphs 1-15 of this Count II.

16. The transfers on Exhibits A and B were made by the Debtor to the IRS through the U.S. Treasury within a four year period prior to the Debtor's bankruptcy filing.

17. The Debtor did not receive reasonably equivalent value in exchange for the transfers identified on Exhibits A and B.

18. The Debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or transaction. In the alternative, the Debtor intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due.

19. Pursuant to 11 U.S.C. § 544(b), the Debtor may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of Chapter 11 of the United States Code or that is not allowable only under section 502(e) of Chapter 11 of the United States Code.

20. The Debtor may avoid the transfers identified on Exhibits A and B pursuant to 11 U.S.C. § 544(b) and the Illinois Fraudulent Transfer Act, 740 ILCS 160/5(a)(2).

WHEREFORE, Equipment Acquisition Resources, Inc., prays that this Court enter an order of judgment in the amount of $4,737,261.36 in favor of the Debtor and against Defendant on Count II of this Complaint.

Respectfully submitted,

Equipment Acquisition Resources, Inc.

By: /s/ George P. Apostolides
One of its Attorneys

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EXHIBIT A

Transfers within two years prior to the bankruptcy filing

Date	Transferee	Amount of Transfer
4/15/2008	United States Treasury	$97,293.87
4/15/2008	United States Treasury	$446,750.96
4/15/2008	United States Treasury	$22,293.87
6/19/2008	United States Treasury	$25,000.00
9/9/2008	United States Treasury	$25,000.00
10/6/2008	Dept. of the Treasury	$136,280.95
10/15/2008	Dept. of the Treasury	$1,652,646.00
12/3/2008	United States Treasury	$7,707.01

EXHIBIT B

Transfers between two years and four years prior the bankruptcy filing

Date	Transferee	Amount of Transfer
10/15/2007	United States Treasury	$2,324,288.00

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	)	
	)	
EQUIPMENT ACQUISITION RESOURCES, INC.,	)	
Debtor.	)	Bk. No. 09 B 39937
	)	Chapter 11
	)	Hon. John H. Squires
EQUIPMENT ACQUISITION RESOURCES, INC.,	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 10-00099
	)	
UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE,	)	
	)	
Defendants.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
MARK W. ANSTETT, MARTHA J. ANSTETT, SHELDON G. PLAYER, and DONNA L. MALONE,	)	
	)	
Third-Party Defendants.	)	

UNITED STATES' AMENDED ANSWER (ADDING THIRD-PARTY COMPLAINT)

Defendant United States of America, named and sued as United States of America, Internal Revenue Service, responds to Plaintiff's Complaint and sets forth its Third-Party

Complaint against the above Third-Party Defendants as follows:[1]

ANSWER

FIRST DEFENSE

The adversary complaint is deficient under Fed. R. Civ. P. 8 and 9, and fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Count II of the adversary complaint is barred by the sovereign immunity of the United States of America for two reasons. First, a creditor holding an unsecured claim of the kind described in 11 U.S.C. § 544(b) could not avoid a fraudulent transfer to the United States under applicable *non-bankruptcy law* under similar circumstances. Second, under state law, the creditor of a debtor who fraudulently transfers money to the creditor of a relative or an affiliate in payment of the relative's or affiliate's debt to such creditor, where the creditor is unaware of the fraud, cannot recover from the creditor of the relative or the affiliate. Since the IRS was without knowledge of the fraud when it accepted payment by the debtor for the tax debts of the Third-Party Defendants, there is no waiver of sovereign immunity for a state-law fraudulent transfer action against the United States. While § 544 is listed in § 106(a)(1), the statutory waiver of sovereign immunity must be strictly construed with all ambiguities resolved in favor of immunity.

THIRD DEFENSE

The Court lacks subject matter jurisdiction over Count II of the adversary complaint.

[1] This pleading amends the original answer by adding the Third-Party Complaint and also making minor amendments to the original answer.

FOURTH DEFENSE

The adversary complaint must be dismissed to the extent that it was commenced after the applicable statute of limitations.

FIFTH DEFENSE

To the extent that Plaintiff prevails on the adversary complaint, the United States is entitled to restitution from the Third-Party Defendants and unless restitution is granted, it would be improper to hold the United States liable.

SIXTH DEFENSE

Plaintiff cannot recover from the United States, as the Internal Revenue Service was not the initial transferee, but rather at most, an immediate or mediate transferee of the initial transferee within the meaning of 11 U.S.C. § 550(a)(2), which took for value, in good faith, and without knowledge of the voidability of the transfer. (See also Ninth Defense below.)

SEVENTH DEFENSE

The Internal Revenue Service is not a sueable entity.

EIGHTH DEFENSE

The Debtor is an S Corporation under the Internal Revenue Code the income of which is taxed to its shareholders, and the payments at issue were not fraudulent to the extent that they were made in the ordinary course of business to pay the tax attributable to pass-through items.

NINTH DEFENSE

To the extent that the United States is an initial transferee (which is not admitted but disputed), it would be more appropriate or equitable on the facts of this case to hold liable the persons "for whose benefit such transfer[s] w[ere] made," within the meaning of 11 U.S.C. § 550(a)(1) – those being the Third-Party Defendants – and inappropriate to impose liability on

the United States. The failure of the Debtor in Possession to join those parties to the original complaint and thereby enable this Court to exercise appropriate discretion as to which party to hold liable under § 550(a)(1), unless cured, will entitle the United States to a judgment of dismissal on grounds of equitable estoppel. (See also footnote 2 to the Third-Party Complaint below.)

TENTH DEFENSE

For its tenth defense, Defendant responds to each of Plaintiff's allegations as follows:

1. On or about October 23, 2009, the Debtor filed a Voluntary Petition (the "Petition") under Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Illinois. The Debtor is an Illinois Corporation, organized and existing under the laws of the state of Illinois, which formerly operated in several buildings near its headquarters at 555 S. Vermont Street, Palatine, Illinois.

ANSWER: Admits the allegations contained in the first sentence of paragraph 1, and lacks knowledge and information sufficient to form a belief as to the truth of the allegations in the second sentence.

2. The IRS is a federal governmental unit with its principal office located, on information and belief, at 500 North Capitol Street NW, Washington, DC 20226. The IRS also has a branch in Chicago, Illinois located at 230 S. Dearborn Street, Chicago, IL 60604.

ANSWER: Admits that the Internal Revenue Service is a bureau within the United States Department of Treasury and has offices at the addresses alleged, and denies the remaining allegations contained in paragraph 2.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and internal operating procedure 15(a) of the Federal District Court for the Northern District of Illinois because this action is related to the underlying bankruptcy case of Equipment Acquisition Resources, Inc. which is pending before this Court and is a civil proceeding arising under § 548 the United States Bankruptcy Code. This Court also has jurisdiction over this adversary proceeding pursuant to Section 105(a) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 7001(1).

ANSWER: Defendant admits that, if this Court has jurisdiction, it arises under 28 U.S.C. §§ 157 and 1334, and internal operating procedure 15(a) of this district court, and denies the remaining allegations contained in paragraph 3.

4. This is a core proceeding under 28 U.S.C. § 157. If for any reason this court determines that all or any portion of this proceeding is non-core, the Debtor consents to the entry of a final order by this Court.

ANSWER: Defendant admits that an action under 11 U.S.C. §§ 548 and 550 is a core proceeding under 28 U.S.C. § 157(b)(2)(H) and that Plaintiff consents to entry of final orders and judgments by the bankruptcy judge for non-core proceedings, and denies the remaining allegations contained in paragraph 4.

5. The chapter 11 bankruptcy case is pending before this Court. Accordingly, venue of this adversary proceeding is proper in this Court under 28 U.S.C. § 1409(a).

ANSWER: Admits the allegations contained in paragraph 5.

III. BACKGROUND FACTS

6. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to manage its financial affairs as a debtor in possession. No trustee, examiner or committee has been appointed in its chapter 11 case.

ANSWER: Admits the allegations contained in paragraph 6.

7. Prior to commencement of its chapter 11 case, the Debtor purported to be a market maker in the semiconductor manufacturing equipment sales and servicing industry. The Debtor also purported to perform processing services for companies in the semiconductor industry.

ANSWER: Lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 7.

8. In the period from at least September, 2007 until October 8, 2009, the Debtor engaged in a massive fraud by which it sold equipment at inflated prices and leased the equipment back from various lenders. The Debtor misrepresented the value of the equipment and pledged certain equipment multiple times to secure the financing. During this period of time, one or more of the officers, directors, and shareholders of the Debtor knew that the Debtor was engaged in the fraud, and knew that the Debtor was, in effect, not a real, functioning company. On information and belief, the Debtor paid substantial amounts of money to its board of directors and officers during this time.

ANSWER: Lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 8.

9. On October 8, 2009, after it became apparent that the Debtor engaged in fraudulent activity, the members of the Debtor's board of directors and its officers, including Donna Malone ("Malone") and Mark Anstett ("Anstett"), resigned. The shareholders elected William A. Brandt, Jr. as the sole member of the board of directors and as the Chief Restructuring Officer (the "CRO"). The CRO filed the bankruptcy petition to manage the Debtor's assets for the benefit of all creditors.

ANSWER: Lacks sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 9.

10. The CRO's investigation has determined that on nine occasions from October 15, 2007 until December 3, 2008, the Debtor made transfers to the United States Treasury to pay taxes of individual owners and officers of the Debtor, including but not limited to Sheldon Player, Malone and Anstett, along with Anstett's wife. The aggregate amount of the payments was $4,737,261.36. Exhibit A to this Complaint sets forth the $2,412,973.36 of payments made within the two year period prior to the bankruptcy filing. Exhibit B to the Complaint sets forth one payment, in the amount of $2,324,288.00, made on October 15, 2007, just outside the two year period.

ANSWER: Admits that Exhibit A is attached to the Complaint and that it includes a document entitled "Transfers within two years prior to bankruptcy filing." Admits that Exhibit B is attached to the Complaint and that it includes a document entitled "Transfers between two years and four years prior to the bankruptcy filing." Admits that a payment of $97,293.87 was made to the Internal Revenue Service on April 15, 2008 for Anstetts' account for the 2007 federal income tax year. Admits that a payment of $446,750.96 was made to the Internal

Revenue Service on April 15, 2008 for Player's and Malone's account for the 2007 federal income tax year. Admits that a payment of $22,293.87 was made to the Internal Revenue Service on April 18, 2008 for Anstetts' account for the 2008 federal income tax year. Admits that a payment of $25,000.00 was made to the Internal Revenue Service on June 23, 2008 for Anstetts' account for the 2008 federal income tax year. Admits that a payment of $25,000.00 was made to the Internal Revenue Service on September 14, 2008 for Anstetts' account for the 2008 federal income tax year. Admits that a payment of $136,280.95 was made to the Internal Revenue Service on October 20, 2008 for Anstetts' account for the 2007 federal income tax year. Admits that a payment of $1,652,646.00 was made to the Internal Revenue Service on October 19, 2008 for Player's and Malone's account for the 2007 federal income tax year. Admits that a payment of $7,707.71 was made to the Internal Revenue Service on December 8, 2008 for Anstetts' account for the 2007 federal income tax year. Admits that a payment of $2,324,288 was made to the Internal Revenue Service on October 21, 2007 for Player's and Malone's account for the 2006 federal income tax year. Lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 10.

11. The Debtor did not receive any value for making the payments contained on Exhibit A and Exhibit B. Only Player, Malone, Anstett, and Anstett's wife received any benefit from the Debtor making those payments.

ANSWER: Denies the allegations contained in paragraph 11.

COUNT 1

(Fraudulent Transfer - 11 U.S.C. §§ 548 and 550)

1-11. The Debtor restates and realleges Paragraphs One (1) through Eleven (11) of the Allegations Common to All Counts as Paragraphs One (1) through Eleven (11) of this Count I.

ANSWER: Defendant incorporates herein its answers to paragraphs 1 through 11, above.

12. The transfers identified on Exhibit A were made by the Debtor to the IRS through the U.S. Treasury within the two year period prior to the Debtor's bankruptcy filing.

ANSWER: Admits that payments identified on Exhibit A were made within the two year period prior to the commencement of the Debtor's bankruptcy case, and lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 12.

13. The Debtor received less than reasonably equivalent value for the transfers identified on Exhibit A.

ANSWER: Denies the allegations contained in paragraph 13.

14. On the dates of the transfers listed on Exhibit A, the Debtor either was insolvent, or was engaged in a business for which any property remaining with the Debtor was unreasonably small capital, or intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

ANSWER: Lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 14.

15. The Debtor is entitled to avoid the transfers on Exhibit A pursuant to 11 U.S.C. § 548(a)(1)(B) and recover those transfers pursuant to 11 U.S.C. § 550.

ANSWER: Denies the allegations contained in paragraph 15.

COUNT II

(Fraudulent Transfer - 11 U.S.C. § 544 and 740 ILCS 160/5(a)(2))

1-15. EAR re-alleges paragraph 1-15 of the Allegations Common to All Counts as paragraphs 1-15 of this Count II.

ANSWER: Defendant incorporates herein its answers to paragraphs 1 through 15 above.

16. The transfers on Exhibit A and B were made by the Debtor to the IRS through the U.S. Treasury within a four year period prior to the Debtor's bankruptcy filing.

ANSWER: Admits that payments identified on Exhibits A and B were made within the four year period prior to the commencement of the Debtor's bankruptcy case, and lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 16.

17. The Debtor did not receive reasonably equivalent value in exchange for the transfers identified on Exhibits A and B.

ANSWER: Denies the allegations contained in paragraph 17.

18. The Debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or

transaction. In the alternative, the Debtor intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due.

ANSWER: Lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 18.

19. Pursuant to 11 U.S.C. § 544(b), the Debtor may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of Chapter 11 of the United States Code or that is not allowable only under section 502(e) of Chapter 11 of the United States Code.

ANSWER: Admits that the statement of law contained in paragraph 19 is a correct statement of what is set forth in § 544(b) but denies that the provision applies to where applicable non-bankruptcy law does not permit a such a creditor to commence an action against the United States. (See also Second Defense above.)

20. The Debtor may avoid the transfers identified on Exhibit A and B pursuant to 11 U.S.C. § 544 (b) and the Illinois Fraudulent Transfer Act, 740 ILCS 160/5(a)(2).

ANSWER: Denies the allegations contained in paragraph 20.

WHEREFORE the Defendant United States of America demands judgment dismissing Plaintiff's action, and such other and further relief as the court deems just and proper, and its costs in the action.

UNITED STATES' THIRD-PARTY COMPLAINT

Defendant United States of America (named and sued as United States of America, Internal Revenue Service), with the authorization of a delegate of the Secretary of the Treasury and under the direction of the Attorney General, pursuant to 26 U.S.C. § 7401, hereby asserts this action against Mark W. Anstett, Martha J. Anstett, Sheldon G. Player, and Donna L. Malone for restitution or unjust enrichment and the imposition of a constructive trust, and for its Third-Party Complaint alleges as follows:

Jurisdiction

1. This Court has jurisdiction over the complaint by Equipment Acquisitions Resources, Inc. against the United States of America on the basis of 28 U.S.C. §§ 1334(b) and 157(a) and internal operating procedure 15(a) of this district court.

2. This action is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E), (H), and (O).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

4. This Third-Party Complaint asserts that Mark W. Anstett, Martha J. Anstett, Sheldon G. Player, and Donna L. Malone ("Third-Party Defendants") are liable to the United States of America for any liability that Third-Party Defendants may owe to Plaintiff Equipment Acquisition Resources, Inc.

5. The claim asserted in this Third-Party Complaint arises out of the same transactions as those of the original complaint and thus falls within this Court's subject matter jurisdiction under 28 U.S.C. §§ 1334(b) and 157(a) and Fed.R.Civ.P. 14 made applicable by Bankruptcy Rule 7014.

Background Facts

6. The United States restates and realleges paragraphs 1 through 5.

7. On April 15, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $97,293.87 for Anstetts' account for the 2007 federal income tax year.

8. On April 15, 2008, Sheldon G. Player caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $446,750.96 for Player's and Malone's account for the 2007 federal income tax year.

9. On April 18, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $22,293.87 for Anstetts' account for the 2008 federal income tax year.

10. On June 23, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $25,000.00 for Anstetts' account for the 2008 federal income tax year.

11. On September 14, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $25,000.00 for Anstetts' account for the 2008 federal income tax year.

12. On October 20, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $136,280.95 for Anstetts' account for the 2007 federal income tax year.

13. On October 19, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $1,652,646.00 for Player's and Malone's account for the 2007 federal income tax year.

14. On December 8, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $7,707.71 for Anstetts'

account for the 2007 federal income tax year.

15. On October 21, 2997, Sheldon Player caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $2,324,288.00 for Player's and Malone's account for the 2006 federal income tax year.

16. On March 23, 2009, the IRS issued a refund to Sheldon G. Player and Donna L. Malone in the amount of $213,598.69 for the 2007 federal income tax year.

17. On April 15, 2009, Mark W. Anstett and Martha J. Anstett elected to have an overpayment of $101,385.82 from the 2008 federal income tax year to be applied to their income tax liability for the 2009 federal income tax year.[2]

18. On or about October 23, 2009, Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Illinois.

19. On January 20, 2010, Debtor commenced this adversary proceeding against the United States seeking (1) to recover, pursuant to 11 U.S.C. §§ 548 and 550, $2,412,973.36 of the tax payments that Third-Party Defendants caused Debtor to make to the United States Treasury; and (2) to recover, pursuant to 11 U.S.C. §§ 544 and 740 ILCS 160/5(a)(2), $2,324,288.00 of the tax payments that Third-Party Defendants caused Debtor to make to the United States Treasury.

---

[2] The United States has asked the Internal Revenue Service to freeze the credit and not permit a further refund pending this litigation and again states its position that the Trustee should amend his complaint to name the Third-Party Defendants directly, which may enable the Trustee to secure a judgment binding the Third-Party Defendants directly to a determination that they must give up the creditors to their 2009 tax returns. If for any reasons, the Trustee's failure to do so results in the United States not being able to do so, the Trustee should be equitably estopped from pursuing the relief sought against the United States.

Count I - Unjust Enrichment/Restitution

20. The United States restates and realleges paragraphs 1 through 19.

21. If the Court determines that the $2,099,396.96, which was paid through two checks drawn on Debtor's bank account for Player's and Malone's federal income tax year liabilities for 2007, was a fraudulent transfer as to the United States and that the United States is an initial transferee of the $2,099,396.96, and if it also rejects the United States' position that under § 550(a)(1) it is appropriate to impose liability on the person for whose benefit the transfer was made under these facts, then the United States will be required to repay $2,099,396.96 to Debtor's estate for that period, despite having already refunded $213,598.69 to Player and Malone in accordance with 26 U.S.C. § 6402 without any knowledge that the payment it received was a fraudulent transfer and having already parted with the transferred funds.

22. To the extent the United States is held liable to the Debtor in Possession with respect to the payments made for the benefit of Player and Malone, it would be it would be unjust, unconscionable, and inequitable for said Third-Party Defendants to retain any refunds received from the Internal Revenue Service and Player and Malone should be held liable to the United States for restitution or unjust enrichment.

23. If the Court determines that the $72,293.87, which was paid through three checks drawn on Debtor's bank account for Anstetts' federal income tax year liabilities for 2008, was a fraudulent transfer as to the United States and that the United States is an initial transferee of the $72,293.87, and if it also rejects the United States' position that under § 550(a)(1) it is appropriate to impose liability on the person for whose benefit the transfer was made under these facts, then the United States will be required to repay $72,293.87 to Debtor's estate for that period, despite the overpayment of $101,385.82 that the Anstetts have elected to apply to the

2009 federal income tax liability.

24. To the extent the United States is held liable to the Debtor in Possession with respect to the payments made for the benefit of Anstett, it would be it would be unjust, unconscionable, and inequitable for said Third-Party Defendants to retain the benefit of any credit to their 2009 federal income tax liability traceable to such payments, and any such credit should be eliminated and the 2008 year overpayment refunded to the Debtor in Possession in satisfaction of the United States' liability to the Debtor in Possession (or if that liability has already been paid by the United States, then such overpayment should be forfeited to the United States).

25. To the extent the United States is held liable to the Debtor in Possession with respect to any other of the payments made for the benefit of any Third-Party Defendant that were applied to satisfy in whole or party such Third-Party Defendants' income tax liabilities, it would be it would be unjust, unconscionable, and inequitable for said Third-Party Defendants to retain the benefit of any credit to any such tax liability. The United States is therefore entitled to reverse such credits and revive as unpaid tax assessments a corresponding portion of their income tax liabilities, and thereupon collect the unpaid taxes from the Third-Party Defendants according to law.

WHEREFORE, Third-Party Plaintiff United States requests this Court, that if Debtor prevails in its adversary proceeding against the United States, it:

A. Impose the equitable remedy of a constructive trust on any and all wrongfully acquired property attributable to the refunds issued as a result of the 2007 tax payment of $2,099,396.96 for Player and Malone and the 2008 tax payment of $72,293.87 for the Anstetts for the benefit of Equipment Acquisition Resources,

Inc. and/or the United States;

B. Order that the Internal Revenue Service may reverse credits to any tax accounts of the Third-Party Defendants that satisfied in whole or party their tax liabilities, and revive and then collect their income tax liabilities to the extent that the United States is held liable to the Debtor in Possession.

C. Find Third-Party Defendants liable to the United States in restitution for unjust enrichment and order the Anstetts to turn over any refunds from the 2007 federal income tax year, and Player and Malone are not entitled to any credit of any overpayments from the 2008 federal income tax year to the United States;

D. If Debtor prevails in its adversary proceeding against the United States, determine that the United States, in equity, has a paramount claim to all payments made by Third-Party Defendants for the tax years at issue and reverse all tax credits made by checks drawn on Debtor's bank account, returning Debtor and United States to the status quo before the transfers.

E. Grant any such further relief the Court deems just and proper.

Respectfully submitted,

JOHN A. DiCICCO
Acting Assistant Attorney General
Tax Division

/s/ Patrick B. Gushue
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EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE:	
EQUIPMENT ACQUISITION RESOURCES, INC.	**Case No.: 09 B 39937**
Debtor.	**Hon. John H. Squires**
EQUIPMENT ACQUISITION RESOURCES, INC.	
Plaintiff,	
v.	
UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE,	
Defendant.	
UNITED STATES OF AMERICA,	
Third-Party Plaintiff,	
v.	**Adv. Pro. No. 10-00099**
MARK W. ANSTETT, MARTHA J. ANSTETT, SHELDON G. PLAYER, and DONNA L. MALONE,	
Third-Party Defendants.	

SHELDON G. PLAYER AND DONNA L. MALONE'S
ANSWER TO UNITED STATES' THIRD-PARTY COMPLAINT

Third Party Defendants, Sheldon G. Player and Donna L. Malone, by Gregory J. Jordan and Vernon Kowal, their counsel, for their answer to the Third-Party Complaint filed by the Third Party Plaintiff, United States of America, for their response to the Third-Party Complaint filed against them state as follows:

JURISDICTION

1. This Court has jurisdiction over the complaint by Equipment Acquisitions Resources, Inc. against the United States of America on the basis of 28 U.S.C. §§ 1334(b) and 157(a) and internal operating procedure 15(a) of this district court.

Answer: Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 1.

2. This action is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (E), (H), and (0).

Answer: Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 2.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

Answer: Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 3.

3. This Third-Party Complaint asserts that Mark W. Anstett, Martha J. Anstett, Sheldon G. Player and Donna L. Malone ("Third-Party Defendants") are liable to the United States of America for any liability that Third-Party Defendants may owe to Plaintiff Equipment Acquisition Resources, Inc.

Answer: Sheldon G. Player and Donna L. Malone admits that the United States of America makes the assertions contained in paragraph 4, but deny that either have any liability to the United States of America with regard to such assertions. As to the assertions directed to Mark W. Anstett and Martha J. Anstett, Sheldon G. Player and Donna L. Malone are not liable for the actions or inactions of either Mark W. Anstett or Martha J. Anstett and, as such, Sheldon G. Player and Donna L. Malone neither admit nor deny such assertions.

4. The claim asserted in this Third-Party Complaint arises out of the same transactions as those of the original complaint and thus falls within this Court's subject matter jurisdiction under 28 U.S.C. §§ 1334(b) and 157(a) and Fed.R.Civ.P. 14 made applicable by Bankruptcy Rule 7014.

Answer: To the extent this Court finds that it lacks subject matter jurisdiction over the United States of America, then the Court lacks subject matter jurisdiction over Sheldon G. Player and Donna L. Malone, since the claims against them are derivative of the claims made against the United States of America. To the extent this Court finds that it has subject matter jurisdiction over the United States of America, Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 5.

BACKGROUND FACTS

5. The United States restates and realleges paragraphs 1 through 5.

Answer: Sheldon G. Player and Donna L. Malone restate and reallege their responses to paragraphs 1 through 5.

6. On April 15, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $97,293.87 for Anstetts' account for the 2007 federal income tax year.

   Answer: Sheldon G. Player and Donna L. Malone lack knowledge as to the matters alleged in paragraph 7 and therefore deny the same and demands strict proof thereof.

7. On April 15, 2008, Sheldon G. Player caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $446,750.96 for Player's and Malone's account for the 2007 federal income tax year.

   Answer: Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 8.

8. On April 18, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $22,293.87 for Anstetts' account for the 2008 federal income tax year.

   Answer: Sheldon G. Player and Donna L. Malone lack knowledge as to the matters alleged in paragraph 9 and therefore deny the same and demands strict proof thereof.

9. On June 23, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $25,000.00 for Anstetts' account for the 2008 federal income tax year.

   Answer: Sheldon G. Player and Donna L. Malone lack knowledge as to the matters alleged in paragraph 10 and therefore deny the same and demands strict proof thereof.

10. On September 14, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $25,000.00 for Anstetts' account for the 2008 federal income tax year.

    Answer: Sheldon G. Player and Donna L. Malone lack knowledge as to the matters alleged in paragraph 11 and therefore deny the same and demands strict proof thereof.

11. On October 20, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $136,280.95 for Anstetts' account for the 2007 federal income tax year.

    Answer: Sheldon G. Player and Donna L. Malone lack knowledge as to the matters alleged in paragraph 12 and therefore deny the same and demands strict proof thereof.

12. On October 19, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $1,652,646.00 for Player's and Malone's account for the 2007 federal income tax year.

    Answer: Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 13.

13. On December 8, 2008, Mark W. Anstett caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $7,707.71 for Anstetts' account for the 2007 federal income tax year.

    Answer: Sheldon G. Player and Donna L. Malone lack knowledge as to the matters alleged in paragraph 14 and therefore deny the same and demands strict proof thereof.

14. On October 21, 2997, Sheldon Player caused Debtor to issue a check, drawn on Debtor's bank account, to the United States Treasury in the amount of $2,324,288.00 for Player's and Malone's account for the 2006 federal income tax year.

    Answer: Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 15.

15. On March 23, 2009, the IRS issued a refund to Sheldon G. Player and Donna L. Malone in the amount of $213,598.69 for the 2007 federal income tax year.

    Answer: Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 16.

16. On April 15, 2009, Mark W. Anstett and Martha J. Anstett elected to have an overpayment of $101,385.82 from the 2008 federal income tax year to be applied to their income tax liability for the 2009 federal income tax year.[1]

    Answer: Sheldon G. Player and Donna L. Malone lack knowledge as to the matters alleged in paragraph 17 and therefore deny the same and demands strict proof thereof.

17. On or about October 23, 2009, Debtor filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Illinois.

    Answer: Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 18.

18. On January 20, 2010, Debtor commenced this adversary proceeding against the United States seeking (1) to recover, pursuant to 11 U.S.C. §§ 548 and 550, $2,412,973.36 of the tax payments that Third-Party Defendants caused Debtor to make to the United States Treasury; and (2) to recover, pursuant to 11 U.S.C. §§ 544 and 740 ILCS 160/5(a)(2), $2,324,288.00 of the tax payments that Third-Party Defendants caused Debtor to make to the United States Treasury.

[1] The United States has asked the Internal Revenue Service to freeze the credit and not permit a further refund pending this litigation and again states its position that the Trustee should amend his complaint to name the Third-Party Defendants directly, which may enable the Trustee to secure a judgment binding the Third-Party Defendants directly to a determination that they must give up the creditors to their 2009 tax returns. If for any reasons, the Trustee's failure to do so results in the United States not being able to do so, the Trustee should be equitably estopped from pursuing the relief sought against the United States.

Answer: Sheldon G. Player and Donna L. Malone admit the allegations contained in paragraph 19.

COUNT 1- UNJUST ENRICHMENT/RESTITUTION

19. The United States restates and realleges paragraphs 1 through 19.

Answer: Sheldon G. Player and Donna L. Malone restate and reallege their responses to paragraphs 1 through 19.

20. If the Court determines that the $2,099,396.96, which was paid through two checks drawn on Debtor's bank account for Player's and Malone's federal income tax year liabilities for 2007, was a fraudulent transfer as to the United States and that the United States is an initial transferee of the $2,099,396.96, and if it also rejects the United States' position that under § 550(a)(1) it is appropriate to impose liability on the person for whose benefit the transfer was made under these facts, then the United States will be required to repay $2,099,396.96 to Debtor's estate for that period, despite having already refunded $213,598.69 to Player and Malone in accordance with 26 U.S.C. § 6402 without any knowledge that the payment it received was a fraudulent transfer and having already parted with the transferred funds.

Answer: Sheldon G. Player and Donna L. Malone lack knowledge as to the matters alleged in paragraph 21 and therefore deny the same and demands strict proof thereof.

21. To the extent the United States is held liable to the Debtor in Possession with respect to the payments made for the benefit of Player and Malone, it would be it would be unjust, unconscionable, and inequitable for said Third-Party Defendants to retain any refunds received from the Internal Revenue Service and Player and Malone should be held liable to the United States for restitution or unjust enrichment.

Answer: Sheldon G. Player and Donna L. Malone deny the allegations contained in paragraph 19.

22. If the Court determines that the $72,293.87, which was paid through three checks drawn on Debtor's bank account for Anstetts' federal income tax year liabilities for 2008, was a fraudulent transfer as to the United States and that the United States is an initial transferee of the $72,293.87, and if it also rejects the United States' position that under § 550(a)(1) it is appropriate to impose liability on the person for whose benefit the transfer was made under these facts, then the United States will be required to repay $72,293.87 to Debtor's estate for that period, despite the overpayment of $101,385.82 that the Anstetts have elected to apply to the 2009 federal income tax liability.

Answer: Sheldon G. Player and Donna L. Malone make no answer to paragraph 23, as the allegations contained in paragraph 23 are not directed at either of them.

23. To the extent the United States is held liable to the Debtor in Possession with respect to the payments made for the benefit of Anstett, it would be it would be unjust, unconscionable, and inequitable for said Third-Party Defendants to retain the benefit of any credit to their 2009 federal income tax liability traceable to such payments, and any such credit should be

eliminated and the 2008 year overpayment refunded to the Debtor in Possession in satisfaction of the United States' liability to the Debtor in Possession (or if that liability has already been paid by the United States, then such overpayment should be forfeited to the United States).

Answer: Sheldon G. Player and Donna L. Malone make no answer to paragraph 24, as the allegations contained in paragraph 24 are not directed at either of them.

24. To the extent the United States is held liable to the Debtor in Possession with respect to any other of the payments made for the benefit of any Third-Party Defendant that were applied to satisfy in whole or party such Third-Party Defendants' income tax liabilities, it would be it would be unjust, unconscionable, and inequitable for said Third-Party Defendants to retain the benefit of any credit to any such tax liability. The United States is therefore entitled to reverse such credits and revive as unpaid tax assessments a corresponding portion of their income tax liabilities, and thereupon collect the unpaid taxes from the Third-Party Defendants according to law.

Answer: Sheldon G. Player and Donna L. Malone deny the allegations contained in paragraph 19 directed to them. Sheldon G. Player and Donna L. Malone make no answer to paragraph 25 with regard to the allegations contained in paragraph 25 that are directed to Mark W. Anstett or Martha J. Anstett.

WHEREFORE, Third Party Defendants, Sheldon G. Player and Donna L. Malone, pray that this Honorable Court deny the relief requested by Third-Party Plaintiff, United States of America and grant judgment in their favor and grant any such further relief the Court deems just and proper.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The adversary complaint is deficient under Fed. R. Civ. P. 8 and 9, and fails to state a claim upon which relief may be granted.

SECOND DEFENSE

To the extent the Court lacks subject matter jurisdiction over the United States of America, the Court lacks subject matter jurisdiction over Sheldon G. Player and Donna L. Malone, since the United States of America's claims against Sheldon G. Player and Donna L. Malone are derivative of the claims made against the United States of America.

THIRD DEFENSE

The adversary complaint must be dismissed to the extent that it was commenced after the applicable statute of limitations.

FOURTH DEFENSE

Equipment Acquisition Resources, Inc., the Debtor in the above-captioned bankruptcy case, is a corporation operating under Subchapter S Corporation under the Internal Revenue Code the income of which is taxed to its shareholders, and the payments at issue were not fraudulent to the extent that they were made in the ordinary course of business to pay the tax attributable to pass-through items.

WHEREFORE, Third Party Defendants, Sheldon G. Player and Donna L. Malone, pray that this Honorable Court deny the relief requested by Third-Party Plaintiff, United States of America and grant judgment in their favor and grant any such further relief the Court deems just and proper.

Respectfully submitted,

SHELDON G. PLAYER AND DONNA L. MALONE

By:______________________________
One of Their Attorneys

Gregory J. Jordan (ARDC# 6205510)
Vernon Kowal (ARDC #6194791)
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(312) 854-7181 (Telephone)
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EXHIBIT D

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable JACK B. SCHMETTERER

Hearing Date June 7, 2010

Bankruptcy Case No. 09 B 39937

Adversary No. 10-00099

Title of Case Equipment Acquisition Resources, v. United States of America

Brief Statement of Motion United States of America's Motion for Entry of Default

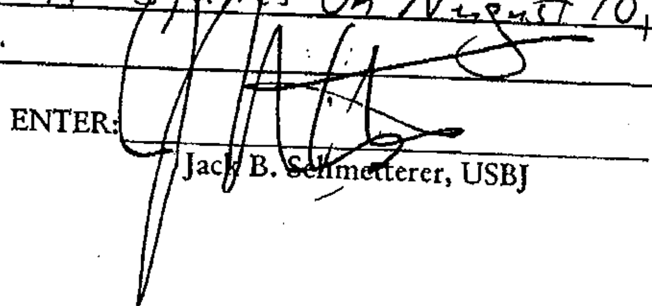
Representing Gregory J. Jordan, Jordan Kowal & Apostol LLC
200 South Wacker Dr. 32nd Fl, Chicago IL
Sheldon Player & Donna Malone

ORDER

IT IS HEREBY ORDERED THAT:

The Motion for Default is withdrawn, & Sheldon Player and Donna Malone shall answer or otherwise plead to the Third Party complaint by filing the same on or before July 6, 2010. This matter is set for a Preliminary Pretrial Conference before the Hon John H. Squires on August 10, 2010 at 9:00 A.M.

ENTER:



Jack B. Schmetterer, USBJ

EXHIBIT E

Westlaw.

Only the Westlaw citation is currently available.

United States District Court,
N.D. Illinois, Eastern Division.
In re EDGEWATER MEDICAL CENTER,
Debtor/Debtor in Possession.
EDGEWATER MEDICAL CENTER Plaintiff,
v.
EDGEWATER PROPERTY COMPANY and PGR
Properties, Inc., Defendants.
EDGEWATER MEDICAL CENTER, Plaintiff,
v.
ACCESS COMMUNITY HEALTH SERVICES,
INC., Vital Community Health Services, Inc., Wessel Bengston, B. Macon Brewer, George Chapas, Fred Cuppy, William Fruland, Roger Mays, John Mullen, David Shanahan, and George Thoma, Defendants.
EDGEWATER MEDICAL CENTER, Plaintiff,
v.
Peter LOGAN, Braddock Management, L.P., Bainbridge Management, L.P ., and Bainbridge Management, Inc., Defendants.
No. 02 B 07378, 04 A 2328, Civ. 04 C 3579, 04 C 2330, 04 A 2327.

Dec. 15, 2004.

Scott T. Mendeloff, R. Rene PengraGabriel Aizenberg, Eric S Pruitt, Sidley Austin Brown & Wood LLP, Chicago, IL, for Plaintiff.

Howard Michael Pearl, Winston & Strawn LLP, Phillip Stewart Reed, Debra L Bogo-Ernst, Sean Patrick Dailey, Mayer, Brown, Rowe & Maw LLP, Chicago, IL, for Defendants.

MEMORANDUM OPINION AND ORDER

ST. EVE, J.

*1 Defendants Peter Rogan, Braddock Management L.P., Bainbridge Management, L.P., and Bainbridge Management, Inc. (collectively the "Management Companies"), Edgewater Property Company and PGR Properties, Inc. (collectively "Property Companies"), and Access Community Health Services, Inc., et al. (collectively "Access") seek to withdraw the Court's reference of this matter to the bankruptcy court pursuant to 28 U.S.C. § 157(d), Rule 5011 of the Federal Rules of Bankruptcy Procedure, and Northern District of Illinois Internal Operating Procedure 15. For the following reasons, the Court denies Defendants' motions.

I. BACKGROUND

On February 25, 2002, Plaintiff Edgewater Medical Center ("Edgewater Medical Center") filed a voluntary Chapter 11 petition for bankruptcy protection. Because Edgewater Medical Center is a debtor in possession, it must commence and prosecute claims and causes of action for the benefit of its bankruptcy estate and creditors. *See* 11 U.S.C. § 1107(a). On April 23, 2004, Edgewater Medical Center filed the instant adversary proceedings against Defendants alleging fraudulent transfer and breach of fiduciary duty, among other claims. Defendants ask the Court for an order withdrawing the reference of these adversary proceedings from the bankruptcy court and to consolidate the action with *Dexia Credit Local v. Peter G. Rogan, et al.,* 02 C 8288 (N.D.Ill.) (Filip, J.).

II. LEGAL STANDARDS

Even though 28 U.S.C. § 1334 vests federal district courts with original jurisdiction over cases arising out of Title 11 of the Bankruptcy Code, bankruptcy cases are automatically referred to bankruptcy judges for the federal district under 28 U.S.C. § 157(a). *In re Vicars Ins. Agency, Inc.,* 96 F.3d 949, 951 (7th Cir.1996); *In re Coe-Truman Tech., Inc.,* 214 B.R. 183, 184-85 (N.D.Ill.1997). Under the Bankruptcy Code, Congress intended for bankruptcy judges to determine complex Title 11 issues to the "greatest extent possible." *In re Alpern,* 191 B.R. 107, 110 (N.D.Ill.1995) (citation omitted); *see also Xonics v. First Wisconsin Fin. Corp.,* 813 F.2d 127, 131 (7th Cir.1987) ("bankruptcy jurisdiction is designed to provide a single forum for dealing with all claims to the bankrupt's assets"). District judges, however, may withdraw certain matters that were automatically referred to the bankruptcy court and render the decisions themselves. *In re Dorner,* 343 F.3d 910, 914 (7th Cir.2003).

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The standard for withdrawal of the reference from a bankruptcy court is outlined in 28 U.S.C. § 157(d):

> The district court may withdraw, in whole or in part, any case or proceeding referred [to the bankruptcy court], on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both Title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

***2** Courts have interpreted the first sentence of Section 157(d) as allowing permissive withdrawal "for cause shown" and the second sentence as requiring mandatory withdrawal under certain circumstances. *In re Vicars Ins. Agency, Inc.,* 96 F.3d at 952. Because the parties do not argue that mandatory withdrawal is required, the Court turns to whether "cause" supports permissible withdrawal. *See In re Coe-Truman Tech., Inc.,* 214 B.R. at 184-85. The Court has broad discretion in determining whether to grant or deny a motion to withdraw the reference based on cause. *In re Sevko, Inc.,* 143 B.R. 114, 115 (N.D.Ill.1992); *see also In re Enron Corp.,* 295 B.R. 21, 25 (S.D.N.Y.2003).

The Court considers the following factors when determining whether Defendants have met their burden in establishing that cause for withdrawal exists: (1) judicial economy; (2) promotion of uniformity and efficiency in bankruptcy administration; (3) reduction of forum shopping; (4) delay and costs to the parties; (5) the court's familiarity with the case; and (6) whether the adversary proceeding is core or non-core. *In re Coe-Truman Technologies, Inc. .,* 214 B.R. at 185, 187. The Court must also consider whether the litigants are entitled to a jury trial. *See In re Sevko,* 143 B.R. at 117. The most important factor in the Court's determination is whether the adversary proceeding the party seeks to withdraw concerns core bankruptcy matters over which the bankruptcy court should preside. *In re Coe-Truman Technologies, Inc.,* 214 B.R. at 187.

III. ANALYSIS

A. Management Companies

In Edgewater Medical Center's Complaint against the Management Companies, it alleges state and federal claims, including breach of fiduciary duty, fraudulent transfer, avoidance of recovery of fraudulent transfer, and disallowance of claims. The Management Companies claim that because the Complaint involves predominantly state law claims, the adversary proceeding is non-core. Edgewater Medical Center, on the other hand, contends that eight out of the twelve counts in the Complaint are core matters over which the bankruptcy court should preside.

Despite Defendants' argument, the Court concludes that Edgewater Medical Center's Complaint against the Management Companies involves predominantly core bankruptcy matters. First, the Management Companies acknowledge that Count VI (fraudulent transfer), Count VII (preferential transfer), and Count VIII (disallowance of claims) are core matters. Furthermore, under the Bankruptcy Code, proceedings to determine, avoid, or recover fraudulent conveyances are core issues. *See* 28 U.S.C. § 157(b)(2)(H). Courts in this district have interpreted Section 157(b)(2)(H) to include actions brought under the Illinois Fraudulent Transfer Act, 740 ILCS 160/5 & 160/6. *See, e.g., In re Pro-Pak Services, Inc.,* No. 02 C 5528, 2002 WL 31915808, at *1 (N.D.Ill.Dec.31, 2002). In addition, other courts in this district have treated Illinois fraudulent transfer claims as core. *See Nelmark v. Helms,* No. 02 C 0925, 2003 WL 1089363, at *1 (N.D.Ill. Mar.11, 2003); *In re First Commercial Mgmt. Group, Inc.,* 279 B.R. 230, 236 (Bankr.N.D.Ill.2002). Accordingly, Counts III, IV, and V based on 740 ILCS 160/5 and 160/6 are core matters. The Court also notes that Edgewater Medical Center brought three of the state law claims-Counts X, XI, and XII-in the alternative. That leaves the breach of fiduciary duty claims as the only non-core matters in the Complaint. *See In re Coe-Truman Technologies, Inc.,* 214 B.R. at 187. As such, the Management Companies' argument that the adversary proceeding is predominantly non-core fails.

***3** The Management Companies also contend that withdrawal of the reference will avoid overlapping and duplicative litigation. Specifically, the Management Companies argue that Edgewater Medical Center's and Dexia's complaints are identical, and thus the reference should be withdrawn and the Court should consolidate the present adversary proceeding

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with the Dexia action. First, the Court denies the Management Companies' Motion for Reassignment of Related Cases because *Dexia Credit Local v. Peter G. Rogan et al.,* 02 C 8288 (N.D.Ill.) is the earlier-numbered case. *See* Northern District of Illinois, Local Rule 40.4. Second, Edgewater Medical Center's and Dexia's complaints against the Management Companies are not identical. Edgewater Medical Center's Complaint alleges that by using Edgewater Medical Center to commit healthcare fraud, Defendants breached their fiduciary duties to Edgewater Medical Center and that the management fees paid to the Management Companies constituted fraudulent transfers. In its Second Amended Complaint, Dexia alleges that the Management Companies fraudulently induced Dexia to issue a letter of credit totaling $56 million pertaining to the Illinois Health Facilities Authority's issuance of bonds.

Next, the Management Companies argue that because they will demand a jury trial, the reference should be withdrawn. The Court, however, concludes that this argument is premature. "The appropriateness of removal of the case to a district court for trial by jury, on asserted Seventh Amendment grounds, will become a question ripe for determination if and when the case becomes trial-ready." *Business Communications, Inc. v. Freeman,* 129 B.R. 165, 166 (N.D.Ill.1991) (quotation and citation omitted). Accordingly, the Management Companies may renew the motion when and if this case is ready to go to trial.

Finally, the Court recognizes that the bankruptcy court has managed this action since its inception and is presently considering Edgewater Medical Center's fully briefed motion for summary judgment against the Management Companies. The bankruptcy court also has presided over and resolved numerous motions, claims, objections, and settlements. On the other hand, the Court has had little involvement in the present matter. Therefore, not only is the bankruptcy judge more familiar with this matter, the bankruptcy judge is in the best situation to resolve the adversary proceeding at this procedural posture.

In sum, the Management Companies have failed to meet their burden in establishing that the reference should be withdrawn. Because the Court concludes that withdrawal of the reference at this stage of the proceedings is not warranted, the Court, in its discretion, denies the Management Companies' motion to withdraw the reference without prejudice.

B. Property Companies

Although the Property Companies originally argued that withdrawal was warranted because the claims Edgewater Medical Center asserted in the adversary proceeding were predominately non-core and that they would seek a jury trial, the Property Companies have since conceded these arguments by withdrawing their objections to Edgewater Medical Center's Briefs for Determination of Core Status and to Strike Jury Demand before the bankruptcy judge. Further, Judge Filip entered an order that dismissed the Property Companies with prejudice from the Dexia action and dismissed as moot the summary judgment motion the Property Companies filed against Dexia. Also, Dexia eliminated all allegations against the Property Companies in its Second Amended Complaint.

***4** Based on these recent events, the Court concludes that the Property Companies have not met their burden in establishing cause and denies the Property Companies' motion to withdraw the reference. *In re Coe-Truman Technologies, Inc.,* 214 B.R. at 185. Not only have the Property Companies conceded the most important factor in determining whether the adversary proceedings should be withdrawn, namely that the adversary proceedings concern core bankruptcy matters over which the bankruptcy court should preside, but the Property Companies also concede that they will not seek a jury trial. *See id.* at 187. Further, as discussed above, the bankruptcy judge is in the best situation to resolve these adversary proceedings. Therefore, the Court, in its discretion, denies the Property Companies' motion to withdraw the reference without prejudice. The Property Companies may renew the motion when and if this case is ready to proceed to trial. *See Business Communications, Inc.,* 129 B.R. at 166.

C. Access Community Health Services

In its Complaint against Access, Edgewater Medical Center alleges state and federal claims, including breach of fiduciary duty, fraudulent transfer under the Illinois Statute, avoidance and recovery of preferential transfer under the Bankruptcy Code, and disallowance of claims under the Bankruptcy Code.[FN1] The claims based on the Bankruptcy Code are con-

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sidered core, as well as the fraudulent transfer claim based on the Illinois Statute, as discussed above. Thus, the Court turns to whether Edgewater Medical Center's fiduciary duty claims are core matters.

FN1. Access asks the Court not to consider the disallowance of proof claim until there has been an adjudication of the avoidance actions. Even without considering the disallowance claim as a core matter, the Court concludes that Access has failed in its burden of establishing cause for the withdrawal of the reference.

Courts in this district have consistently held that breach of fiduciary duty claims are non-core. *See, e.g., In re Coe-Truman Technologies, Inc.,* 214 B.R. at 187. Edgewater Medical Center, however, contends that breach of fiduciary claims may be considered core when they are factually intertwined with fraudulent conveyance counts. Indeed, other courts in this district have concluded that state law counts that are factually intertwined with fraud counts may be considered core. *See, e.g., In re Pro-Pak Services, Inc.,* No. 02 C 5528, 2002 WL 31915808, at *2 (state law count was inextricably intertwined with fraudulent conveyance counts because it was based on same evidence). The Court, however, need not decide whether the fiduciary duty claims at issue are factually intertwined with the fraudulent transfer claims because approximately half of the Complaint against Access concerns core matters, and thus the Complaint is not predominantly non-core as Access contends. Furthermore, as discussed below, Access has failed in its burden of establishing "cause" based on the other relevant factors the Court must consider. *See In re Coe-Truman Technologies, Inc.,* 214 B.R. at 187.

For instance, Access argues that the Dexia action stems from the same set of core facts as Edgewater Medical Center's Complaint; therefore, the Court should withdraw the reference for the sake of judicial economy, uniformity, and efficiency. Dexia's Second Amended Complaint, however, does not include any allegations against Vital Community Health Services, Access Community Health Services, or the individual defendants. Therefore, Access' argument based on the similarities in the Dexia matter do not support a finding of "cause ." *See* 28 U.S.C. § 157(d); *In re Vicars Ins. Agency, Inc.,* 96 F.3d at 952.

*5 Further, Edgewater Medical Center contends that it has expeditiously pressed discovery in the bankruptcy court since that court approved the funding agreement. Based on Edgewater Medical Center's efforts, there has been no significant costs or delays to the parties. Edgewater Medical Center contends, however, that if this matter were withdrawn from the bankruptcy court, additional delays and costs would result. The Court agrees and concludes that this factor weighs against a finding of cause.

Finally, the bankruptcy judge has had extensive exposure to the circumstances surrounding the operation and closing of Edgewater Medical Center. As the Court previously discussed, the bankruptcy judge is in the best position to resolve the adversary proceeding at this juncture. If and when this action is ready to go to trial, Access may renew its motion. *See Business Communications, Inc.,* 129 B.R. at 166. Therefore, the Court, in its discretion, denies Access' motion to withdraw the reference without prejudice.

IV. CONCLUSION

For the stated reasons, the Court denies Defendants' Motions to Withdraw the Reference without prejudice. Because Access Community Health Service's Motion to Dismiss was filed in the bankruptcy court, the Court strikes as moot the motion to dismiss that was inadvertently docketed in the district court.

N.D.Ill.,2004.
In re Edgewater Medical Center
Not Reported in F.Supp.2d, 2004 WL 2921957 (N.D.Ill.)

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