

benefits are payable agree to the modification of such benefit payments; or

“(B) the court finds that a modification proposed by the trustee meets the standards of section 1113(b)(1)(A) of such title and the balance of the equities clearly favors the modification.

If such benefits are covered by a collective bargaining agreement, the authorized representative shall be the labor organization that is signatory to such collective bargaining agreement unless there is a conflict of interest.

“(3) The trustee shall pay benefits in accordance with this subsection until—

“(A) the dismissal of the case involved; or

“(B) the effective date of a plan confirmed under section 1129 of such title which provides for the continued payment after confirmation of the plan of all such benefits at the level established under paragraph (2) of this subsection, at any time prior to the confirmation of the plan, for the duration of the period the debtor (as defined in such title) has obligated itself to provide such benefits.

“(4) No such benefits paid between the filing of a petition in a case covered by this section and the time a plan confirmed under section 1129 of such title with respect to such case becomes effective shall be deducted or offset from the amount allowed as claims for any benefits which remain unpaid, or from the amount to be paid under the plan with respect to such claims for unpaid benefits, whether such claims for unpaid benefits are based upon or arise from a right to future benefits or from any benefit not paid as a result of modifications allowed pursuant to this section.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such

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

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

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95-989

This section places a debtor in possession in the shoes of a trustee in every way. The debtor is given the rights and powers of a chapter 11 trustee. He is required to perform the functions and duties of a chapter 11 trustee (except the investigative duties). He is also subject to any limitations on a chapter 11 trustee, and to such other limitations and conditions as the court prescribes cf. *Wolf v. Weinstein*, 372 U.S. 633, 649-650 (1963).

AMENDMENTS

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

§ 1108. Authorization to operate business

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

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

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

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

SENATE REPORT NO. 95-989

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

HOUSE REPORT NO. 95-595

This section does not presume that a trustee will be appointed to operate the business of the debtor. Rather,