

The below described is **SIGNED**.

Dated: May 13, 2005

*Glen E Clark*

**GLEN E. CLARK**  
U.S. Bankruptcy Judge



IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re	)	Bankruptcy Case Nos 02-22906 GEC
	)	02-22907
	)	02-24874
	)	
<b>SIMON TRANSPORTATION SERVICES, INC., DICK SIMON TRUCKING, INC., and SIMON TERMINAL, LLC.,</b>	)	(Chapter 11)
Debtors	)	
	)	<b>ORDER GRANTING THIRD- PARTY DEFENDANT CENTRAL MUTUAL INSURANCE CO. MOTION TO DISMISS</b>
<b>OFFICIAL COMMITTEE OF UNSECURED CREDITORS.</b>	)	
Plaintiffs,	)	
vs.	)	Adversary Proceeding No. 04P-2255
	)	
<b>BENJAMIN SANCHEZ &amp; HIS ATTORNEY MERIT BENNETT</b>	)	
Defendants.	)	
<b>MERIT BENNETT</b>	)	
Third-Party Plaintiff,	)	
vs.	)	
	)	
<b>CENTRAL MUTUAL INSURANCE CO. )</b>	)	
Third-Party Defendant	)	

On February 9, 2005, the Court heard oral argument on the motion to dismiss third-party complaint filed by Central Mutual Insurance Company (“Central Mutual”). Kirk Gibb appeared for Central Mutual, and Merrit Bennett (“Bennett”) appeared *pro se*. After hearing argument of counsel and reviewing the pleadings, the Court makes the following findings of fact and order.

**FINDINGS OF FACT**

1. On February 25, 2002, (the “Petition Date”), Simon Transportation Services Inc., and Dick Simon Trucking, Inc. filed separate voluntary Petitions for Relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Utah. Simon Terminal, LLC subsequently filed a voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on March 26, 2002.
2. The three bankruptcy cases, Simon Transportation Services Inc, Dick Simon Trucking, Inc., and Simon Terminal, LLC (the “Debtors”) are jointly administered by order of the court.
3. On March 11, 2003, an order confirming joint plan of liquidation with respect to the three cases was entered.
4. The order confirming plan vested exclusive control of the consolidated estate in the Official Committee of Unsecured Creditors (the “Committee”).
5. The Committee was vested with all rights of a Chapter 11 trustee, including the right to avoid transfers and obligations pursuant to 11 U.S.C. § 547.
6. Prior to the petition date, defendant Benjamin Sanchez (“Sanchez”) was a creditor of Debtors.
7. Defendant Merit Bennett (“Bennett”) is Sanchez’s attorney and represented Sanchez with

- respect to a personal injury claim involving one of the Debtors' trucks.
8. Pursuant to Bennett's contract of employment with Sanchez, Bennett is an authorized agent and assignee of Sanchez.
  9. Sanchez was a creditor of Debtors by virtue of a personal injury claim arising out of a motor vehicle accident involving one of the Debtors' trucks.
  10. In settlement of the personal injury claim, Debtors and Sanchez negotiated a settlement wherein Debtors paid to Sanchez and Bennett, one or more transfers amounting to \$90,000.00.
  11. The \$90,000.00 was transferred on or within 90 days before the Debtors' petition date.
  12. Defendant Central Mutual Insurance Company ("Central Mutual") is an insurance company authorized to do business in the State of New Mexico.
  13. Central Mutual provided uninsured motorist coverage for Sanchez.
  14. Debtors have no interest and no claim with respect to the uninsured motorist coverage policy issued by Central Mutual.
  15. Central Mutual has filed a motion to dismiss the Third-Party Complaint against Central Mutual arguing that this Court lacks subject matter jurisdiction over the Third-Party claim.

#### **ANAYSIS**

Federal courts are courts of limited jurisdiction. If jurisdiction is challenged, the burden in on the party claiming jurisdiction to show it by a preponderance of the evidence. Celli v. Shoell, 40 F.3d 324, 327 (10<sup>th</sup> Cir. 1994). To overcome the burden, Bennett must allege the facts essential to show jurisdiction and support those facts with competent proof. Mere conclusory

allegations of jurisdiction are not enough. United States v. Spectrum Emergency Care, Inc., 190 F.3d 1156, 1160 (10<sup>th</sup> Cir. 1999).

Having acknowledged that Bennett must carry the burden of persuasion with respect to the Court's jurisdiction, the Court also recognizes that granting a motion to dismiss is a harsh remedy which must be cautiously studied, not only to effectuate the spirit of the liberal rules of pleading but also to protect the interests of justice. Duran v. Carris, 238 F.3d 1268, 1270 (10<sup>th</sup> Cir. 2001). For purposes of considering Central Mutual's motion to dismiss for lack of subject matter jurisdiction, the Court will treat all material allegations in the third-party complaint as true and will construe the third-party complaint in favor the third-party plaintiff. Riggs, III v. City of Albuquerque, 916 F.2d 582 (10<sup>th</sup> Cir. 1990).

The material allegations stated by Bennett in his third-party complaint assert that: 1) if the payment of \$90,000.00 from Debtors to defendants is avoided as a preferential transfer, the Debtors will be deemed "uninsured" and Sanchez shall have the right to demand reimbursement from Central Mutual; 2) Bennett has a beneficial interest in, and is a beneficiary of Sanchez's policy with Central Mutual; 3) Bennett is an authorized agent and assignee of Sanchez; 4) Bennett has an equitable interest in Sanchez's policy of insurance with Central Mutual in order to prevent Sanchez's and/or Central Mutual's unjust enrichment at his expense, and 5) Bennett is authorized to, and does invoke the uninsured motorist benefits of the Central Mutual policy.

Even when accepted as true and construed most favorably to Bennett, the Court finds nothing in Bennett's third-party complaint to confer this Court's subject matter jurisdiction upon Central Mutual. The committee's preference action brought pursuant to 11 U.S.C. § 547 is a matter that "arises under" the Bankruptcy Code because it asserts a cause of action created by the

Bankruptcy Code. There is no allegation that Central Mutual is subject to recovery by the Debtor in this preference action. At best, the dispute between Bennett and Central Mutual is a proceeding "related to" the bankruptcy case.

A proceeding is "related to" a bankruptcy case if it could have been commenced in federal or state court independently of the bankruptcy case, but the outcome of that proceeding could conceivably have an effect on the estate being administered in bankruptcy. Related proceedings include causes of action owned by the Debtor which become property of the estate pursuant to § 541, and suits between third parties which have an effect on the bankruptcy estate. In re Midgard Corp., 204 B.R. 764 (10th Cir. BAP 1997). Bennett argues that his dispute with Central Mutual is related because "Debtors could obtain the funds sought more easily and certainly more rapidly from an \$876 million company than from Mr. Bennett or Mr. Sanchez." Bennett's third-party complaint does not allege any cause of action in favor of the Debtors against Central Mutual, nor does it allege that the Debtors have any right to collect funds from Central Mutual. Although Congress did not delineate the scope of "related to" jurisdiction, its choice of words suggests a grant of some breadth. Congress granted comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate, but the court's "related to" jurisdiction cannot be limitless. Celotex Corp. v. Edwards, 514 U.S. 300, 115 S. Ct. 1493 (1995).

The Court finds nothing in Bennett's third-party complaint to indicate that resolution of the Central Mutual dispute would have any effect on the estate being administered in bankruptcy. Bankruptcy courts lack related jurisdiction to resolve controversies between third party creditors which do not involve the debtor or his property unless the court cannot complete

administrative duties without resolving the controversy. In re Gardner, 913 F.2d 1515 (10th Cir. 1990). Here, the Court is capable of completing administrative duties of the Debtor's bankruptcy proceedings without resolving the Central Mutual dispute. The Court lacks subject matter jurisdiction over the Central Mutual dispute and must dismiss the third-party complaint against Central Mutual.

Therefore, it is hereby;

ORDERED that the third-party complaint naming Central Mutual as third-party defendant, is DISMISSED without prejudice to refile in a court of competent jurisdiction.

\*\*\* End of Document \*\*\*

ORDER SIGNED