UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO

In Re:	)	
	)	**JUDGE RICHARD L. SPEER**
Bunting Bearings Corp.	)	
	)	Case No. 03-3227
Debtor(s)	)	
	)	(Related Case: 02-32578)
International Union United, et al	)	
	)	
Plaintiff(s)	)	
	)	
v.	)	
	)	
Bunting Bearings Corp.	)	
	)	
Defendant(s)	)	

DECISION AND ORDER

This cause is before the Court upon the Plaintiffs' Motion for Summary Judgment. In their Motion, the Plaintiffs ask that, as prayed for in their complaint, an arbitration award issued against the Defendant/Debtor-in-Possession, as administrator of an ERISA qualified pension plan, be enforced. The Debtor-in-Possession, on the other hand, seeks to have the arbitrator's award set aside. On this matter, both the Plaintiffs and the Debtor filed numerous legal memorandum in support of their respective legal positions. After reviewing the arguments set forth therein, the Court finds that the Plaintiffs' Motion for Summary Judgment should be Granted in Part, and Denied in Part.

Procedurally, the Plaintiffs' Motion to enforce the arbitration award is brought by way of a Motion for Summary Judgment. The well-established standard for such a motion as set forth in Fed.R.Civ.P. 56(c), and made applicable to this case by Bankruptcy Rule 7056, is that summary judgment must be granted "when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." As it pertains thereto, the Parties do not dispute the facts underlying the instant controversy which – as copied from a prior decision involving the same Parties[1] – are as follows:

> The Debtor-in-Possession, Bunting Bearings Corporation, is in the business of manufacturing bronze castings and other finished parts. As a part of its business operations, the DIP and the Plaintiff, the UAW, have been parties to a series of collective bargaining agreements. As a part of these agreements, the DIP agreed to provide and maintain a pension plan for its employees. The collective bargaining agreement and the pension plan, which is incorporated by reference into the collective bargaining agreement, both provide that arbitration is to be used in the event of a dispute over the terms of the Pension Plan. Pursuant to this provision, the Plaintiff, the UAW, on April 10, 2002, requested arbitration concerning the interpretation of a provision of the Pension Plan on behalf of one of the DIP's former employees. The issue presented by the UAW's request for arbitration potentially affects 85 other employees and former employees of the DIP.
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> On April 22, 2002, the DIP filed a petition in this Court for relief under Chapter 11 of the United States Bankruptcy Code. Less than a month later, the arbitrator employed to hear the pension issue conducted a hearing on the matter, thereafter releasing his decision on July 1, 2002. In this decision, the arbitrator ruled against the DIP.

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[1] In this prior decision, the DIP sought to have the arbitration award set aside as a violation of the automatic stay of 11 U.S.C. § 362(a). The Court, however, sided with the Plaintiffs, finding that § 1113(f) constituted an exception to the applicability of the stay. *In re Bunting Bearings*, 302 B.R. 210 (Bankr. N.D.Ohio 2003).

The arbitration award at issue has two overall components: (1) it sets the rate at which both past and future pension benefits of the Plaintiff, Betty Keller must be calculated; and (2) it makes a lump sum award to Ms. Keller, the amount of which represents the difference between the rate set by the arbitrator and the rate at which the DIP had previously paid Ms. Keller's pension benefits. In opposition to the enforcement of this award, the DIP raised two points of defense: (1) a lack of jurisdiction on the part of the arbitrator; and (2) the award does not conform to the principles of ERISA, and thus is violative of public policy. (Doc. No. 15). The Court, however, for the reasons that will now be explained, declines to reach the merits of these defenses.

Frequently, a debtor, upon filing a bankruptcy petition, is a party to pending or prospective litigation. At the same time, there is often a need (as when there is no bankruptcy jurisdiction) or a desire by a party to have the matter litigated outside of the bankruptcy forum. Section 362(a)(1) – the automatic stay – however, effectively freezes any pending litigation, including arbitration, in place at the time a petition is filed by providing that the "commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case . . ." As a result, for litigation to proceed in a nonbankruptcy forum, one of two circumstances must exist: (1) either the stay must not apply; or (2) the party seeking to continue the litigation in the nonbankruptcy forum must come before the bankruptcy court and obtain relief from the stay (which in the context of pending litigation is frequently granted as long as the estate's interests are protected).

In a previous matter brought in this case, the Court, contrary to the position taken by the DIP, found that the stay was inapplicable to the arbitrator's decision pursuant to Bankruptcy Code § 1113(f). *In re Bunting Bearings*, 302 B.R. 210 (Bankr. N.D.Ohio 2003). Still, whether the stay is inapplicable from the onset, as is the situation here, or relief from the stay is subsequently obtained, the overall effect

is the same: subject to the estate's interest, an entity holding a prepetition claim is free to pursue its nonbankruptcy remedies. *Wittman v. Toll (In re Cordry)*, 149 B.R. 970, 973-74 (D.Kan.1993); *In re Oakes*, 129 B.R. 477, 479 (Bankr. N.D.Ohio 1991). When litigation is at issue, this simply means that a party may pursue the matter in a nonbankruptcy forum. This ability to pursue litigation outside the bankruptcy court, however, also comes at a cost: Once pursued in a nonbankruptcy forum, a party dissatisfied with the result cannot seek review in the bankruptcy court, but must instead utilize the process otherwise available in the nonbankruptcy forum. As set forth below, this statement, far from being simply permissive in nature, is jurisdictional.

As defined by Congress, a bankruptcy court's jurisdiction is limited in two important ways. First, a bankruptcy court's jurisdiction is limited to matters arising "under" "in" or "related to" cases created under the Bankruptcy Code. 28 U.S.C. § 1334. More importantly for purposes of this case, when such jurisdiction does exist, statutory law also limits a bankruptcy court's authority to that of "original jurisdiction." *Id*. Original jurisdiction may be defined as the "[j]urisdiction to hear a case in the first instance." BLACK'S LAW DICTIONARY, 1099 (6th ed. 1990). *Tanguis v. M/V Westchester*, 153 F.Supp. 859, 863 (E.D. La. 2001). This is directly inapposite to "appellate jurisdiction" which vests power in a court to "review and revise the judicial action of an inferior court." BLACK'S LAW DICTIONARY, 98 (6th ed. 1990) *United States v. El Edwy*, 272 F.3d 149 (2nd Cir.2001). It logically follows therefore, that an inherent limitation on this Court's jurisdiction is the lack of authority to review a decision rendered in another judicial forum. Two legal doctrines help to illustrate and refine this limitation.

First, as it pertains to the review of a state court decision, there exist the Rooker-Feldman

doctrine[2] which holds that "lower federal courts lack subject matter jurisdiction to engage in appellate review of state court proceedings or to adjudicate claims 'inextricably intertwined' with issues decided in state court proceedings." *Peterson Novelties, Inc. v. Berkley*, 305 F.3d 386, 390 (6th Cir. 2002). In the federal court context, there exists the fundamental principle of *stare decisis* which provides that lower courts are bound by the precedential authority of cases rendered by higher courts. A point of clarification, however, should be made.

The above statements do not mean that bankruptcy law (and thus a court's interpretation thereof), may not have the effect of nullifying a decision rendered in another judicial; often it does. Rather, this limitation on a bankruptcy court's ability to review a decision rendered in another forum extends solely to the situation where the actions of the bankruptcy court are aimed directly at overturning the conclusions – whether factual or legal – made in another judicial forum. In other words, the principle of "original jurisdiction" is not violated to the extent that bankruptcy law is simply being applied to a decision rendered in another forum, regardless of its ultimate effect.

Turning then to bankruptcy law, the Congress of the United States, as a part of its grant of "original jurisdiction," conferred upon bankruptcy courts the power to hear and determine the "allowance or disallowance of claims against the estate . . . [.]" 28 U.S.C. § 157(b)(2)(B). In turn, this grant of jurisdictional power allows a bankruptcy court to hear and determine issues, as a part of its "original jurisdiction," which require the application of nonbankruptcy law. *In re Answerfone*, 67 B.R. 167, 168 (Bankr. E.D.Ark.1986). Consequently, while the matter concerning the Parties' arbitration Agreement –

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This doctrine is derived from two Supreme Court cases: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983).

e.g., ERISA, collective bargaining agreements – does not directly implicate bankruptcy law, this is not, in and of itself, an impediment to the Court hearing matters related to the agreement.

As a part of this Court's power to hear matters involving claims, § 502(b)(1) provides that a claim made against the bankruptcy estate is to be disallowed to the extent that "such claim is unenforceable . . . under any agreement of applicable law. . . [.]" On the surface, at least, this would seem to fit nicely with the defenses raised by the DIP – the first, being based upon a lack of jurisdiction, the second, being based upon a contravention of public policy. Nevertheless, § 502(b)(1) does not provide a method to circumvent this Court's "original jurisdiction." As was explained in *In re Liptak*: objections to claims "don't occur in a legal vacuum; they are subject to and limited by other legal considerations such as the subject-matter jurisdiction restrictions imposed by the Rooker-Feldman doctrine." 2004 WL 114933 (Bankr. N.D.Ill. 2004).

With this in mind, the Court believes that it is important to make this distinction: the defenses raised by the DIP against the enforcement of the arbitrator's award, while ultimately affecting the enforceability of the agreement, directly question the legality of the arbitrator's decision. This distinction is important as matters concerning the legality of a decision are typically raised on appeal, while matters questioning the enforceability of an agreement are normally raised in the first instance. On balance then, the Court must conclude that hearing the defenses raised by the DIP requires something more than just the exercise of "original jurisdiction."

All the same, arbitration is not a true judicial proceeding, instead being only quasi-judicial in nature. *Wells v. Southern Airways, Inc.*, 616 F.2d 107, 110 (5th Cir. 1980). As a result, there is authority for the position that a bankruptcy court may entertain a collateral attack on an arbitrator's decision *Superpumper v. Nerland Oil (In re Nerland Oil)*, 2001 W.L. 1891470 (Bankr. D.N.D) (unpublished

opinion). *Skinner v. Lesh (In re Lesh),* 253 B.R 849, 853 fn.1 (Bankr. N.D.Ohio 2001). Nevertheless, even if permitted, a court is not required to entertain a collateral attack; and should, in fact, decline to hear such an attack under the proper circumstances. *In re Peramco Int'l, Inc.*, 242 B.R. 313 (E.D.Va., 2000), *rev'd on other grounds*, 2001 WL 101463 (4th Cir. 2001) (unpublished opinion). Important, but not dispositive in this regard is whether other direct remedies are available to the litigant. *See, e.g., Skinner v. Lesh (In re Lesh),* 253 B.R. 849, 852 (Bankr. N.D.Ohio 2000) (declining to consider a motion brought for relief from judgment under Ohio Rule of Procedure 60(b), on the basis that the merits of the action should be determined by the court from which the judgment arose). For this reason and others there is ample reason not to hear the merits of the DIP's collateral attack.

Both federal law (by way of the Federal Arbitration Act, 9 U.S.C. § 1 et. seq.) and state law (through the Ohio Arbitration Act, O.R.C. § 2711.01 et. seq.) prescribe a procedure by which an arbitration award may be challenged, neither of which directly envision a role for the bankruptcy court. Such procedures, however, were not utilized by the DIP, despite being available (and possibly still available) since the automatic stay has never been applicable with respect to the Parties' arbitration. What makes these points especially significant, is that despite the DIP's pending bankruptcy, both the Plaintiffs and the DIP sought to pursue their arbitration outside of any oversight by this Court, thus exhibiting a desire by both Parties to limit, at least to the extent possible, the effects of the DIP's bankruptcy on the arbitration. In fact, this matter was only brought to the Court's attention by the DIP after an unfavorable ruling had been entered against it.

Putting this together then, the DIP seeks to collaterally attack the arbitrator's decision under these unfavorable circumstances: (1) the automatic stay has never been applicable, thereby affording the DIP a completely nonbankruptcy forum to review the matter; (2) this Court, as a bankruptcy court, has no statutorily enumerated authority to review an arbitrator's award; and (3) the DIP only brought this matter

before the Court after it had received an unfavorable ruling. Under such circumstances, to now jump into the fray and review the legality of the arbitrator's decision, places this Court right at the edge, if not beyond, the role envisioned for a bankruptcy court. Adding to this concern, are a few legal principles which together highly discourage any second-guessing of an arbitrator's award.

First, both the Federal Arbitration Act and the Ohio Arbitration Act require that an arbitrator's decision be afforded a high degree of deference. *Floyd County Bd. of Educ. v. EUA Cogenex Corp.*, 198 F.3d 245 (6th Cir. 1999) (unpublished), *citing ARW Exploration Corp. v. Aguirre*, 45 F.3d 1455, 1462 (10th Cir. 1995); *Goodyear Tire & Rubber Co. v. Local Union No. 200*, 42 Ohio St.2d 516, 520, 330 N.E.2d 703 (1975). In this respect, the Sixth Circuit, in *Floyd County Bd. Of Educ.*, characterized the standard of review of an arbitrator's award as "among the narrowest known to the law." Second, both Federal law and Ohio law generally set a time limit of just three months to contest an arbitrator's award; the instant action, however, was brought well outside this time frame. *Eisenmann Corp. v. Sheet Metal Workers Int'l Ass'n Local No. 24*, 323 F.3d 375, 380 (6th Cir. 2003). Finally, while the defenses raised by the DIP do constitute valid exceptions to the enforcement of an arbitration award, notwithstanding the three-month time limitation, such defenses are strictly applied. *U.S. Postal Serv. v. Nat'l Ass'n of Letter Carriers*, 330 F.3d 747, 751 (6th Cir. 2003) (addressing public policy exception).

In summary, a serious question exists whether this Court, as a court having only "original jurisdiction," has the authority to review the arbitration award entered in the Plaintiffs' favor. Furthermore, even if such jurisdictional authority does exist, the facts as presented in this case make it highly inappropriate to permit the DIP to collaterally attack the award in this particular forum. Accordingly, the defenses raised by the DIP against the enforcement of the arbitrator's decision will not, on a substantive basis, be addressed. The next question thus becomes whether and the extent to which the Plaintiffs may enforce their arbitration award in this Court.

A long line of cases has held that notwithstanding the subsequent filing of a bankruptcy petition, prepetition agreements to arbitrate are to be enforced; this is especially true in the case of noncore matters, as opposed to core matters where bankruptcy courts have some discretion to stay an agreement to arbitrate. *Hays & Co. v. Merrill Lynch, Pierce, Fenner and Smith*, 885 F.2d 1149 (3rd Cir. 1989).[3] *See also Karter Gandy Limited Partnership v. Gandy (In the Matter of Gandy),* 299 F.3d 489, 494 (5th Cir. 2002) (it is generally accepted that a bankruptcy court has no discretion to refuse to compel the arbitration of matters not involving core bankruptcy proceedings); *Insurance Co. of N. America v. NGC Settlement Trust & Asbestos Claims Management Corp. (In re National Gypsum Co.),* 118 F.3d 1056, 1065 (5th Cir.1997) (bankruptcy court may, in its discretion, not enforce an agreement to arbitrate when the matter involves a core proceeding); *In re Crysen/Montenay Energy Co.*, 226 F.3d 160, 165 (2nd Cir. 2000) (the presumption in favor of arbitration generally will trump the lesser interest of bankruptcy courts in adjudicating noncore proceedings that could otherwise be arbitrated); *In re United States Lines, Inc.*, 197 F.3d 631, 640 (2nd Cir. 1999) (holding that with regards to noncore matters, a bankruptcy court has no discretion to deny a stay and compel arbitration).

In their Motion for Summary Judgment, however, the Plaintiffs do not actually seek to enforce the agreement to arbitrate; this has already been accomplished. Rather, the Plaintiffs seek to have the award, itself, enforced. Specifically, the Plaintiffs, in their Motion for Summary Judgment, state that the "award against the company [DIP] as administrator of the Plan should be enforced." (Doc. No. 19, at pg. 9). Based therefore upon this language, the Plaintiffs' requested relief must be approached from this perspective: notwithstanding its underlying bankruptcy, the DIP should be compelled to strictly follow the

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Although not addressing the exact issue presented in this case, in *Javitch v. First Union Securities, Inc.*, 315 F.3d 619, 624 (6th Cir. 2003), the Sixth Circuit cited *Hays & Co.* with approval in finding that a receiver could be forced to arbitrate.

terms of the arbitrator's decision, including, but not necessarily limited to making remunerations due under the terms of the decision.

Among others goals, bankruptcy law seeks to ensure uniformity and equality in the treatment of creditors and, in a Chapter 11 reorganization, bankruptcy law also seeks to preserve the going concern value of the business. *In re A.H. Robins Co., Inc. (Nelson v. Dalkon Shield Claimants Trust),* 216 B.R. 175 (E.D.Va.1997); *United Savings Assc. of Texas v. Timbers of Inwood Forest Assc. (In re Timbers of Inwood Forest Assc., Ltd.*, 808 F.2d 363, 373 (5th Cir.1987) (en banc), *aff'd*, 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988). From the creditor's perspective, however, the implementation of these goals often comes at a price: (1) given the limited financial resources available, a creditor may not be repaid in full, if at all; (2) if a remuneration is made, it is frequently delayed; and (3) regardless of payment, a debtor's legal obligation to pay a creditor will often be discharged. The relief sought by the Plaintiffs is directly aimed at avoiding these negative effects.

From a global perspective, two possible explanations will support the relief the Plaintiffs seek: (1) the Bankruptcy Code does not apply with respect to the DIP's liability to the Plaintiffs; or if applicable, (2) the Bankruptcy Code confers preferential treatment upon the Plaintiffs. With regards to the first explanation, only those liabilities which give rise to a "claim" are subject to the burdens, (as well as the benefits) set forth in the Bankruptcy Code. *Ohio v. Kovacs,* 469 U.S. 274, 105 S.Ct. 705, 83 L.Ed.2d 649 (1985). Thus, to the extent that the Plaintiffs have no "claim" against the DIP, there exists no impediment against the Plaintiffs seeking the immediate enforcement of the arbitrator's award. This, however, would not appear to be the case.

The Bankruptcy Code defines a "claim" in very broad terms as any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,

disputed[.]" 11 U.S.C. § 101(5)(A). In *Pennsylvania Dep't of Pub. Welfare v. Davenport*, the Supreme Court, based upon this definition and its legislative history, noted Congress's intent to invest the term "claim" with the "broadest possible" scope so that "all legal obligations of the debtor . . . will be able to be dealt with in a bankruptcy case." 495 U.S. 552, 558, 110 S.Ct. 2126, 2130-31, 109 L.Ed.2d 588 (1990). Based therefore upon its broad definition, and the purpose it serves, it is difficult to see how damages awarded by an arbitrator against a debtor, even if not yet confirmed by a court, would somehow fail to qualify as a "claim" for purposes of bankruptcy law. Other courts, while not specifically addressing the reasoning in detail, have agreed, and thus operated on the assumption that an arbitrator's award of damages constitutes a "claim" that may be handled through the bankruptcy process. *Continental Airlines*, 125 F.3d 120 (3rd Cir.1997); *In re Altair Airlines, Inc.*, 727 F.2d 88 (3rd Cir. 1984).

To get around this impediment, however, the Plaintiffs argue that the DIP's pension is a separate legal entity over which this Court has no jurisdiction. In doing so, the Plaintiffs cite to § 541(b)(1), which excludes trusts from estate property, and argue as follows:

> The company established the Pension Plan pursuant to the collective bargaining agreement for the exclusive benefit of Plan participants. Under the terms of the Pension Plan, the company functions as the Plan Administrator. All asserts of the Plan are to be held in trust. The Bankruptcy Code excludes property over which the debtor is trustee. Assets of an ERISA qualified benefit plan held in trust are not property of the bankruptcy estate. Thus, the Plan is not within the ambit of the instant bankruptcy proceeding.

(Doc. No. 14, at pg. 8). In essence then, it is the Plaintiffs position that their "claim" is not against the DIP, but instead against the pension plan.

On the surface, courts addressing the issue have generally agreed with the Plaintiffs' position by holding that a pension plan set up for the benefit of a company's employees is a distinct legal entity, and

thus its assets do not become property of an employer/debtor's bankruptcy estate. *In re Springfield Furniture, Inc.*, 145 B.R. 520 (Bankr. E.D.Va.1992); *Holloway v. HECI Exploration Co. Employees' Profit Sharing Plan*, 76 B.R. 563, 568-69 (N.D.Tex.1987). As a result, to the extent that the Plaintiffs seek to enforce the arbitrator's award solely against the plan, this Court, having no jurisdiction over the plan, can neither stay the matter[4] nor order that the award be enforced.

Nevertheless, this argument seems rather academic because unless the pension plan set up by the DIP is presently solvent and able to meet all of its obligations, a "claim" still has to be made against the DIP. In fact, the Plaintiffs' argument would seem to suggest that the pension plan administrator, and not the Plaintiffs, would be the proper party in interest to make this claim.[5] All the same, to the extent that the source of funding for the pension plan is sought from the DIP, and not directly against the plan, the Bankruptcy Code will apply. This, in turn, leads to the second issue: whether the arbitrator's award may be accorded special treatment under the Bankruptcy Code.

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It should, however, be pointed out that in appropriate but limited circumstances, § 105(a) may be employed to enjoin a creditor's action against a third party. *See, e.g., Willis v. Celotex Corp.*, 978 F.2d 146 (4th Cir.1992), *cert. denied*, 507 U.S. 1030, 113 S.Ct. 1846, 123 L.Ed.2d 470 (1993).

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ERISA requires that the fiduciary of a pension plan discharge their duties solely for the benefit of plan participants and beneficiaries and that the assets of an employee benefit plan shall never inure to the benefit of the employer. *Holloway v. HECI Exploration Co. Employees' Profit Sharing Plan*, 76 B.R. 563, 568-69 (N.D. Tex. 1987), *citing* 29 U.S.C. §§ 1104(a)(1)(A) and 1103(c)(1). Also, Federal Rule of Civil Procedure 17(e), made applicable to this case by Bankruptcy Rule 7017, provides that "[e]very action shall be prosecuted in the name of the real party in interest." The term "real party in interest" has been defined as "the party who, by substantive law, possesses the right to be enforced, and not necessarily the person who will ultimately benefit from the recovery." *Cohen v. Smith*, 534 F.Supp. 618, 622 (S.D.Tex 1982).

The Bankruptcy Code (and applicable case law) is replete with examples of where preferential treatment is afforded to a creditor. To just scratch the surface, creditors may receive an immediate payment on their claim under these circumstances: (1) adequate protection payments under § 361; (2) the necessity doctrine, which allows immediate payment of prepetition debts in order to obtain continued supplies or services essential to a debtor's reorganization, *In re Chandlier*, 292 B.R. 583, 588 (Bankr. W.D.Mich. 2003); and (3) § 1113(f), which creates what is, in essence, a superpriority claim for certain obligations arising under a collective bargaining agreement. *United Steelworkers v. Unimet Corp. (In re Unimet Corp.)*, 842 F.2d 879 (6th Cir. 1988). Also, to the extent that an obligation is an executory contract for purposes of § 365, a debtor must generally perform their duties thereunder.

With the above in mind, the remaining arguments put forth by the Plaintiffs to have the arbitrator's decision enforced make two overall points: (1) the time has passed to contest the merits of the award; and (2) federal law limits this Court's authority, under the circumstances as they exist here, to review the merits of the award. Although not in exact terms, the Court has essentially accepted the premise of these arguments by declining to address the merits of the defenses against enforcement raised by the DIP. On the other hand, neither of these arguments address why their arbitration award is entitled to preferential treatment. Accordingly, to the extent that the Plaintiffs seek the immediate enforcement of the arbitrator's award, this relief must be denied at this time.

To put everything together, while not precluding the DIP from contesting the validity of the arbitrator's decision in another forum, the Court, for reasons of jurisdiction and comity, declines to address the substantive merits of those defenses raised by DIP against the enforcement of the award. Conversely, unless the Plaintiffs can establish that the arbitrator's award is otherwise entitled to preferential treatment under the Bankruptcy Code, or not a "claim" that may be handled through the reorganization process, the Court will not order the DIP to immediately comply with the terms of the arbitrator's decision.

In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

ORDERED that consistent with this decision, the Plaintiffs' Motion for Summary Judgment, be, and is hereby, GRANTED IN PART and DENIED IN PART.

Dated:

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Richard L. Speer
United States
Bankruptcy Judge