



SO ORDERED,

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: December 5, 2016**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

**PIONEER HEALTH SERVICES, INC.
ET AL.,**

CASE NO. 16-01119-NPO

JOINTLY ADMINISTERED

DEBTORS.

CHAPTER 11

**ORDER ON MOTION OF UNITEDHEALTHCARE INSURANCE
COMPANY FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE
CLAIM AND FOR CONDITIONAL RELIEF FROM THE AUTOMATIC STAY**

This matter came before the Court for hearing on October 7, 2016 (the “Hearing”), on the Motion of UnitedHealthcare Insurance Company for Allowance of Administrative Expense Claim and for Conditional Relief from the Automatic Stay (the “Motion”) (Dkt. 887) filed by UnitedHealthcare Insurance Company (“UHIC”); the Answer and Response to Motion of UnitedHealthcare Insurance Company for Allowance of Administrative Expense Claim and for Conditional Relief from the Automatic Stay (the “Answer”) (Dkt. 1008) filed by Pioneer Health Services, Inc. (the “Debtor”); and the Official Committee of Unsecured Creditors’ Joinder in Debtors’ Answer and Response to Motion of UnitedHealthcare Insurance Company for Allowance of Administrative Expense Claim and for Conditional Relief from the Automatic Stay [Dkt. 887] (Dkt. 1013) filed by the Official Committee of the Unsecured Creditors of the Debtor

(the “Committee”) in the above-referenced jointly-administered bankruptcy case (the “Bankruptcy Case”). At the Hearing, Douglas C. Noble represented UHIC, James A. McCullough, II and Darryl Scott Laddin represented the Committee, and Craig M. Geno represented the Debtor. At the end of the Hearing, the Court denied the Motion in part from the bench and reserved ruling on the Debtor’s right of recoupment and/or setoff and UHIC’s request for conditional relief from the automatic stay. The Court then instructed UHIC, the Committee, and the Debtor to file supplemental briefs in support of their respective positions on the recoupment and setoff issues.

On October 14, 2016, the Committee and Debtor filed the Joint Supplement in Opposition to Motion of UnitedHealthcare Insurance Company for Allowance of Administrative Expense Claim and for Conditional Relief from the Automatic Stay (the “Joint Supplemental Brief”) (Dkt. 1142), and on October 21, 2016, UHIC filed the Supplemental Brief in Support of UnitedHealthcare Insurance Company’s Motion for Allowance of Administrative Expense Claim and for Conditional Relief from the Automatic Stay (the “UHIC Supplemental Brief”) (Dkt. 1177). After considering the pleadings, testimony, and arguments of counsel, the Court finds as follows:¹

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of the Bankruptcy Case pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). Notice of the Motion was proper under the circumstances.

¹ Pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, the following constitutes the findings of fact and conclusions of law of the Court.

Facts

1. The Debtor is the parent company of numerous hospitals and healthcare facilities located throughout the southeastern United States. UHIC and the Debtor are parties to a Group Policy under Group Number 905264 with an effective date of May 20, 2015 (the “Policy”). (UHIC Ex. 1).² Under the Policy, UHIC provides health insurance coverage to all eligible employees of the Debtor and its affiliated entities in exchange for payment of a monthly premium. (UHIC Supp. Br. at 2).

2. Pursuant to the Policy, the premium is due, in advance, on the first day of each month. (Mot. ¶ 2; Ans. ¶ 2). The Policy grants a grace period of thirty-one (31) days (the “Grace Period”) following the due date for the payment of the premium. (Policy § 3.5). If the monthly premium is not paid within the Grace Period, the Policy automatically terminates on the last day of the Grace Period. (Policy § 5.1).

3. The present dispute arises out of the calculation of the premium under the Policy for the months of March through June, 2016. The Court was given only redacted excerpts from the Policy, but it appears from the testimony of Larry Neese (“Neese”), the director of sales at UHIC, and from the invoices introduced into evidence at the Hearing, that the premium amount varied each month depending on the number of eligible employees and dependents in each coverage classification.³ The final premium amount involved a process of estimating the eligibility number in advance and later adjusting that number to account for new hires, terminated employees, and other changes in coverage. Pursuant to this reconciliation process, as

² Exhibits introduced into evidence at the Hearing by UHIC are cited as “(UHIC Ex. ___)”, and exhibits introduced into evidence by the Debtor are cited as “(Debtor Ex. ___)”.

³ The categories of coverage include: Employee Only; Employee plus Spouse; Employee plus Child[ren]; and Employee plus Family. (UHIC Supp. Br. at 2 n.2) (citing Policy Art. 1).

described by Neese, UHIC would calculate the premium due on the first day of the month by determining the eligibility number from information in its own records. UHIC then would send the Debtor an invoice reflecting the estimated premium amount. The Policy allowed the Debtor to notify UHIC, within sixty (60) days of the effective date, of any changes in enrollment. (UHIC Supp. Br. at 2). When the Debtor notified UHIC of any such changes, UHIC would send the Debtor a supplemental invoice reflecting either a debit (when the eligibility number increased) or a credit (when the eligibility number decreased). As the information from the Debtor changed, UHIC would issue another invoice to the Debtor. For any one month, UHIC might issue several invoices. The Debtor would pay the premium amount based on the total of the first invoice and all supplemental invoices issued by UHIC having the same due date. A relevant aspect of this process is that not all adjustments necessarily reflected eligibility changes occurring in the same month the premium was due. UHIC would routinely adjust premiums based on eligibility changes that occurred in the past sixty (60) days.

4. Throughout the term of the Policy, the Debtor was consistently late in paying the premium due. (Mot. ¶ 3; Ans. ¶ 3).

5. On March 30, 2016 (the “Petition Date”), at 7:22 p.m., the Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code (the “Petition”) (Dkt. 1). The Debtor did not pay the premium due on March 1, 2016, prior to the Petition Date. (Mot. ¶ 7; Ans. ¶ 7).

6. UHIC continued to provide insurance coverage and pay claims under the Policy on a postpetition basis. (Mot. ¶ 6; Ans. ¶ 6). The Debtor paid postpetition premiums for the months of April, May, and July after the expiration of the Grace Period, and paid the postpetition premium for the month of June on the last day of the Grace Period. (Mot. ¶ 10; Ans. ¶ 10).

7. On August 26, 2016, UHIC filed the Motion requesting payment of an administrative expense claim pursuant to 11 U.S.C. § 503(b)⁴ in the amount of \$62,359.35 for outstanding postpetition premiums allegedly owed by the Debtor under the Policy for the months of March through July, 2016. (Mot. ¶ 7). In the alternative, UHIC seeks conditional relief from the automatic stay pursuant to § 362(d)(1) to terminate the Policy in the event the Debtor failed to pay future postpetition premiums within the Grace Period. (Mot. ¶ 12).

UHIC's Administrative Expense Claim

8. UHIC's administrative expense claim arises from its contention that: (1) the Debtor failed to pay the prorated postpetition premium of \$36,117.50 due for March 30 and 31, 2016, and (2) the Debtor improperly applied prepetition adjustment credits against postpetition premiums, creating a shortfall of \$26,241.85. (Mot. ¶ 7).

9. With respect to the March premium, UHIC alleges that the Debtor owes it a prorated postpetition premium in the amount of \$36,117.50 for health insurance coverage provided on March 30 and 31, 2016. (*Id.*). UHIC arrived at this amount by dividing the total premium allegedly due for the month of March 2016 by thirty-one (31) days to obtain a per diem amount and then multiplied the per diem amount by two (2) days to arrive at an administrative expense claim of \$36,117.50. (UHIC Supp. Br. at 1; UHIC Ex. 3 at 3).

10. With respect to the April premium, UHIC alleges that the Debtor improperly adjusted credits against the premium amount, creating a shortfall of \$25,281.47. (Mot. ¶ 8). UHIC sent the Debtor two invoices with a due date of April 1, 2016, Invoice Nos. 0040101450 (the "First April Invoice") (UHIC Ex. 7) and 0040101464 (the "Second April Invoice") (UHIC

⁴ Hereinafter, all code sections refer to the United States Bankruptcy Code found at title 11 of the United States Code unless otherwise noted.

Ex. 8). The First April Invoice reflects \$543,093.43 in premium due for insurance coverage for April 2016. (UHIC Ex. 7). The Second April Invoice reflects an adjustment credit in the amount of \$26,205.58. (UHIC Ex. 8). The Debtor paid UHIC \$516,887.85, which is the difference between these two amounts.⁵ (Debtor Ex. 1). UHIC, however, contends that only \$924.11 of the credit reflected in the Second April Invoice related to the postpetition premium for insurance coverage provided on and after March 30, 2016, and the balance of the credit, \$25,281.47, related to the prepetition premium for insurance coverage provided from January 1, 2016, to March 29, 2016. (Mot. ¶ 8). Thus, according to UHIC, the Debtor was entitled to reduce the premium shown in the First April Invoice by only \$924.11. (UHIC Supp. Br. at 3). Therefore, UHIC asserts that the postpetition premium due for April 2016 was \$542,169.32,⁶ not \$516,887.85, paid by the Debtor, a difference of \$25,281.47.⁷ (*Id.* at 4).

11. With respect to the May premium, UHIC similarly alleged that the Debtor improperly adjusted credits against the premium amount. (Mot. ¶ 9). UHIC sent the Debtor three invoices with a due date of May 1, 2016, Invoice Nos. 0040375435 (the “First May Invoice”) (UHIC Ex. 9), 0040375496 (the “Second May Invoice”) (UHIC Ex. 10), and 0040531391 (the “Third May Invoice”) (UHIC Ex. 11). The First May Invoice reflects \$546,283.02 in premium due for insurance coverage for May 2016. (UHIC Ex. 9). The Second May Invoice is an adjustment invoice reflecting a debit of \$6,564.87 (UHIC Ex. 10; Debtor Ex. 2). According to UHIC, however, only \$1,493.90 of the Second May Invoice related to postpetition adjustments, so the premium increased only by that amount. (Mot. ¶ 9). The Third

⁵ \$516,887.85 = \$543,093.43 - \$26,205.58 (Debtor Ex. 1).

⁶ \$542,169.32 = \$543,093.43 - \$924.11.

⁷ \$25,281.47 = \$542,169.32 - \$516,887.85.

May Invoice reflects an adjustment credit of \$37,905.97, which UHIC related to the postpetition period. (UHIC Ex. 11; Debtor Ex. 3). The Debtor paid UHIC \$507,843.55.⁸ (UHIC Ex. 2). UHIC, however, maintains the proper application of postpetition adjustments to the postpetition debt resulted in a postpetition premium due for May 2016, of \$509,870.95,⁹ not the \$507,843.55 paid by the Debtor, a difference of \$2,027.40.¹⁰ (Mot. ¶ 9).

12. On April 28, 2016, UHIC filed a proof of claim in the amount of \$550,425.62 (Claim No. 21-1). This amount takes into account the prepetition credit adjustment of \$25,281.47 reflected, in part, in the Second April Invoice and the prepetition debit adjustment of \$5,070.97 reflected, in part, in the Second May Invoice. (*Id.* at 4).

13. The Debtor paid the June premium in the amount of \$474,643.30. (UHIC Ex. 2 at 3). An adjustment issued after the payment entitled the Debtor to a credit of \$1,067.02. (*Id.*). The total amount of UHIC's administrative claim (\$62,359.35) consists of the premiums of \$36,117.50 allegedly due for March 30 and 31, 2016; \$25,281.47 for April 2016; and \$2,027.40 for May 2016, less a credit of \$1,067.02 for the June 2016 premium. (*Id.*).

Conditional Relief from the Automatic Stay

14. UHIC contends in the Motion that cause exists under § 362(d)(1) to grant it conditional relief from the automatic stay so that it may terminate the Policy should the Debtor fail to pay any future postpetition premiums within the Grace Period. (Mot. ¶ 19).

⁸ The Debtor did not explain how it arrived at this figure.

⁹ \$509,870.95 = \$546,283.02 + \$1,493.90 - \$37,905.97.

¹⁰ \$2,027.40 = \$509,870.95 - \$507,843.55.

Discussion

A. UHIC's Administrative Expense Claim

UHIC seeks payment of the premiums in question as administrative expenses under § 503(b)(1)(A) on the ground that such amounts were part of “the actual, necessary cost and expenses of preserving the estate.”¹¹ Administrative expenses allowed under § 503(b) are entitled to first priority in payment under § 507(a)(2). Priority is given to administrative expenses to encourage creditors to provide goods and services to the debtor that are necessary to the orderly administration of the estate. The priority accorded administrative expenses is narrowly construed “because the presumption in bankruptcy cases is that the debtor’s limited resources be equally distributed among . . . the creditors.” *In re Premium Well Drilling, Inc.*, No. 10-54062-C, 2012 WL 1192828, at *2 (Bankr. W.D. Tex. Apr. 10, 2012) (quotation omitted).

“Most courts apply a two-part test to determine whether a claim is entitled to administrative expense priority under § 503(b)(1)(A).” 4 COLLIER ON BANKRUPTCY ¶ 503.06[3] (16th ed. 2016). In order to satisfy the test, the claim must arise from a transaction with the bankruptcy estate, and it must have directly and substantially benefitted the estate. *Id.* Moreover, the “bankruptcy court enjoys broad discretion” in making a determination whether § 503(b) is applicable. *In re DP Partners Ltd. P’ship*, 106 F.3d 667, 674-75 (5th Cir. 1997).

UHIC asserts that it has satisfied this two-part test. (Mot. ¶ 16). First, UHIC maintains that the postpetition premiums arise out of a postpetition transaction between UHIC and the Debtor. (*Id.*). Specifically, the postpetition premiums are the result of the health insurance coverage services performed by UHIC during the pendency of the Bankruptcy Case under the

¹¹ Section 503(b)(1)(A) provides, in pertinent part, “[a]fter a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including . . . the actual, necessary costs and expenses of preserving the estate” 11 U.S.C. § 503(b)(1)(A).

Policy. *See In re Home Interiors & Gifts, Inc.*, No. 08-31961-11-BJH, 2008 WL 4772102, at *5 (Bankr. N.D. Tex. Oct. 9, 2008) (noting that postpetition payment obligations commence as of the petition date). Second, UHIC alleges that the Debtor's bankruptcy estate benefited by UHIC's insurance services under the Policy. (Mot. ¶ 17). Therefore, UHIC asserts that the Debtor is obligated to pay the prorated postpetition premium due for March 30 and 31 of \$36,117.50 and the shortfalls in the postpetition premiums due for the months of April and May of \$26,241.85, which takes into account the credit adjustment of \$1,067.02 for the June premium. (Mot. ¶ 7).

The Debtor and Committee do not dispute that the insurance services that UHIC continues to furnish pursuant to the Policy provide a benefit to the Debtor's bankruptcy estate. They contend that the additional premium amounts sought by UHIC are prepetition obligations not entitled to the status of administrative expense claims.

1. March Premium

“A fundamental tenet of bankruptcy law is that a petition for bankruptcy operates as a ‘cleavage’ in time. Once a petition is filed, debts that arose before the petition may not be satisfied through post-petition transactions.” *In re R&C Petroleum, Inc.*, 247 B.R. 203, 208 (Bankr. E.D. Tex. 2000) (citation omitted). Here, the Petition Date is 7:22 p.m. on March 30.

Because the full premium was due on the first day of March, the Debtor and Committee maintain that the entire March premium is a prepetition obligation, not entitled to the status of an administrative expense claim. For that reason, they oppose any proration of the March premium to account for the insurance coverage provided on March 30 and 31. UHIC, in contrast, asked the Court to prorate the premium due on March 1 into prepetition and postpetition components to account for the postpetition insurance coverage provided on March 30 and 31. Counsel for the

Debtor, who admitted engaging in “hair-splitting,” argued in response that if UHIC is allowed to prorate the March premium, then the Court should compute the proration on an hourly basis since the postpetition coverage on March 30 extended only from 7:22 p.m. until midnight. (H’rg Tr. at 11:01:44-11:02).¹²

The Court found at the Hearing that the Debtor’s obligation to pay the March premium arose in its entirety on March 1 and, therefore, is a prepetition claim. That the Debtor had until March 31 to perform the obligation as a result of the Grace Period and that the Debtor routinely paid the premiums after the first of the month did not transform the prepetition debt into an administrative expense, in whole or in part. The Policy did not compute the premium on a per diem basis and the invoices that UHIC issued to the Debtor did not show a per diem amount. Moreover, the amount of the premium did not fluctuate based on the number of days in each month. In short, UHIC provided no legal authority supporting the Court’s adoption of an accrual method for calculating the monthly premium amount for insurance services provided under the Policy. For these reasons, the Court ruled at the Hearing that the entire March premium is a prepetition claim and denied UHIC’s \$36,117.50 administrative expense claim for March 30 and 31.

2. April & May Premiums

UHIC has a different interpretation than the Debtor and Committee have regarding the amount of its administrative expense claim for the months of April and May. UHIC advocates preserving its administrative expense claim but reducing its prepetition claim, while the Debtor and Committee seek to reduce the administrative expense claim. Their dispute arises out of the application of the adjustment credits. The Debtor and Committee argued at the Hearing that the

¹² The Hearing was not transcribed. References are to the time stamp of the audio recording.

Debtor properly applied prepetition credit adjustments against the postpetition premiums owed to UHIC because such application is either a recoupment or a setoff. Indeed, the Debtor paid no less than the amounts reflected in the invoices issued by UHIC. UHIC argues, in contrast, that notwithstanding the invoices, the Debtor did not have a right to apply adjustments based on prepetition enrollment changes that occurred prepetition because: (1) the downward adjustments of the postpetition premiums owed by the Debtor to UHIC are not independent claims owed by UHIC to the Debtor and (2) to the extent the adjustment invoices created a claim, allowing the Debtor to apply prepetition adjustments against the postpetition premiums creates an inequitable windfall for the Debtor. (UHIC Supp. Br. at 5). The Court considers the recoupment issue first.

a. Recoupment

In its simplest terms, recoupment is an equitable doctrine that allows a defendant to reduce the amount of a plaintiff's claim to the extent that the defendant has a valid defense against the plaintiff arising out of the same transaction as the plaintiff's claim. *U.S. Abatement Corp. v. Mobil Expl. & Producing U.S., Inc. (In re U.S. Abatement Corp.)*, 79 F.3d 393, 398 (5th Cir. 1996). The doctrine of recoupment, although not statutorily provided for in the Bankruptcy Code, has long been recognized as applicable in bankruptcy proceedings. *Holford v. Powers (In re Holford)*, 896 F.2d 176, 179 (5th Cir. 1990); 11 U.S.C. § 558 ("The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statute of limitations, statutes of frauds, usury and other personal defenses."). "Recoupment is often applied where the claims arise from a contract which calls for advance payments based on estimates of what will be owed, with the actual amount owed determined later." *Centergas, Inc. v. Conoco, Inc. (In re Centergas, Inc.)*, 172 B.R. 844, 849 (Bankr. N.D. Tex. 1994) (citation omitted).

In light of the present dispute, a salient feature of the doctrine of recoupment is that the claim giving rise to the right of recoupment may arise either before or after the commencement of a bankruptcy case, thus permitting a party to recoup a prepetition claim against a postpetition liability and vice-versa. *Aetna Life Ins. Co. v. Bram (In re Bram)*, 179 B.R. 824, 826 (Bankr. E.D. Tex. 1995). The threshold question governing the applicability of the recoupment doctrine is whether the amount to be reduced arises from the “same transaction” as the original sum. *In re Holford*, 896 F.2d at 178. “There is no general standard governing whether events are part of the same or different transactions. “[G]iven the equitable nature of the [recoupment] doctrine, courts have refrained from precisely defining the same-transaction standard, focusing instead on the facts and the equities of each case.” See *Kosadnar v. Metro. Life Ins. Co. (In re Kosadnar)*, 157 F.3d 1011, 1015 (5th Cir. 1998) (holding that an employer’s right to recover commission overpayments from employee’s expense reimbursement account was in the nature of a recoupment) (citations & quotation omitted). Although the term “same transaction” has been given different interpretations, it is clear that two claims satisfy the “same transaction” requirement if they arise from a “single integrated transaction.” *Eggers v. Van Zandt (In re Eggers)*, 466 F. App’x 337, 338 (5th Cir. 2012).

In bankruptcy, the recoupment doctrine has been applied primarily to situations where the creditor’s claim against the debtor and the debtor’s claim against the creditor arise out of a single contract. *In re R&C Petroleum, Inc.*, 247 B.R. at 208. Even so, the mere fact that a contract exists between the parties is not dispositive as to the creditor’s right of recoupment. *In re Centergas, Inc.*, 172 B.R. at 849 (citation omitted). Likewise, the absence of an express contractual right is not necessary to effect a recoupment. *In re Holford*, 896 F.2d at 178.

Here, the parties agree that the credit adjustments and postpetition premiums arose from the Policy. They disagree, however, about whether they arose from a single integrated transaction. UHIC insists that the prepetition adjustments and postpetition premiums do not arise out of the same transaction because the coverages are for different time periods. In other words, UHIC views each monthly premium as a separate transaction. The Debtor and Committee assert that the premiums and adjustments arose from the same transaction.

The Court finds that, for purposes of recoupment, the premiums and adjustments should be considered as a single, continuing transaction notwithstanding the division in time brought about by the filing of the Petition. The Policy and invoices issued by UHIC establish that the Debtor's obligation to pay the premium amount estimated by UHIC was subject to downward adjustments regardless of the effective date of an enrollment change (as long as that date fell within the sixty (60)-day limit). The reconciliation process outlined in the Policy did not provide for the calculation of the premium due on a monthly basis. Rather, the payment arrangement consisted of estimated payments subject to adjustments over time, which is precisely the type of payment arrangement to which recoupment is often applied in the healthcare context. *Centergas*, 172 B.R. at 849. Moreover, UHIC's suggestion that the adjustments are not independent claims is misplaced because recoupment generally does not apply when there is an independent basis for a claim. *In re Bram*, 179 B. R. at 827. Having found that the same-transaction requirement has been met, the Court next turns to the equitable considerations raised by UHIC before determining whether recoupment should apply.

Courts generally will not allow a party to apply the equitable doctrine of recoupment when it would unjustly enrich that party. *Herod v. Sw. Gas Corp. (In re Gasmark Ltd.)*, 193 F.3d 371, 375 (5th Cir. 1999). UHIC contends that the equities do not favor applying the doctrine of

recoupment because doing so would likely create a windfall for the Debtor. According to UHIC, the \$26,241.85 portion of its administrative expense claim relates to unpaid premiums due for April and May. UHIC insists that the prepetition adjustments reflected in the invoices reduce UHIC's general unsecured claim as set forth in its proof of claim, not the postpetition premiums owed by the Debtor. Unless the Debtor pays UHIC's general unsecured claim in full, according to UHIC, the Debtor will be unjustly enriched, perhaps as much as \$26,241.85.

The Debtor and Committee, on the other hand, assert that the facts and equities weigh heavily in favor of allowing the recoupment. (Jt. Supp. Br. at 3). They point to the testimony of UHIC's witness, Neese, that the Debtor would have been entitled to recover the credits against the premiums owed but for the intervening Bankruptcy Case. (*Id.*).

The Court finds that UHIC's concerns about a potential windfall for the Debtor are unfounded because any such windfall would not be unjust, but they would be the result of the manner in which premiums are calculated under the Policy. The methodology for payment of premiums under the Policy may not be to UHIC's liking, but it represents the bargain reached between the parties. UHIC's argument is more of a criticism of the payment arrangement than a discussion of the equities. The Court, therefore, finds that recoupment applies and, more specifically, finds that the Debtor properly applied the prepetition credit adjustments against the postpetition premiums owed for April and May. Thus, UHIC's administrative expense claim of \$26,241.85 should be denied. Although this finding renders any further discussion of this matter unnecessary, in the interest of completeness, the Court will briefly address the doctrine of setoff.

b. Setoff

In bankruptcy, the doctrine of setoff is governed by § 553, which gives a creditor the right "to offset a mutual debt owing by such creditor to the debtor," provided that both debts

arose before the commencement of the bankruptcy case. 11 U.S.C. § 553. A setoff is usually asserted for the purpose of reducing or extinguishing a mutual debt involving different transactions. *In re Centergas*, 172 B.R. at 850. The Fifth Circuit Court of Appeals has held that in order for setoff to be permissible, “[i]t is essential . . . that the claims or debts be mutual The mutuality element is lacking if a party attempts to setoff a pre-petition debt against a post-petition claim.” *Braniff Airways Inc. v. Exxon Co., U.S.A.*, 814 F.2d 1030, 1036-37 (5th Cir. 1987) (citations & quotations omitted). In bankruptcy, the mutuality requirement in § 553 is an important distinction between the doctrines of setoff and recoupment.

At the Hearing, the Committee asserted that numerous cases support the application of setoff in favor of a debtor, notwithstanding the distinction between prepetition and postpetition claims under § 553(a), on the ground that § 558 preserves any prepetition defenses a debtor may have under state law. *See In re PSA, Inc.*, 277 B.R. 51, 53 (Bankr. D. Del. 2002) (“[T]he trustee [or debtor] must be able to assert all the defenses that the Debtor could have asserted had bankruptcy not intervened. . . . Courts have held that § 558 preserves any right of setoff the debtors may have under state law, including the right to setoff debtor’s prepetition claims against administrative expense claims.”); *A.B.C. Learning Centres Ltd. v. RCS Capital Dev., LLC (In re RCS Capital Dev., LLC)*, No. AZ-12-1381, 2013 WL 3618550, at *8 (B.A.P. 9th Cir. July 16, 2013) (stating “[b]ecause there is no restrictive language in § 558 confining setoff to prepetition debts, courts have concluded that a debtor may setoff prepetition claims against postpetition obligations that it owes”). In the Joint Supplemental Brief filed after the Hearing, the Committee and Debtor noted, in candor to the Court, that legal precedent in the Fifth Circuit Court is inapposite to their asserted position that the Debtor may setoff the prepetition credit adjustments against postpetition premiums under § 558. (Jt. Supp. Br. at 3 n.1) (citing *Galaz v. Galaz (In re*

Galaz), 480 F. App'x 790, 793 n.3 (5th Cir. 2012) (noting that “prepetition/postpetition distinction is still relevant in this circuit in § 558 cases”). The Court thus agrees with UHIC that § 553 and Fifth Circuit precedent prevent the Debtor’s exercise of the right of setoff.

B. Conditional Relief from the Automatic Stay

The filing of a bankruptcy petition operates as an automatic stay of any action to obtain possession of property of the estate or to exercise control over the estate. 11 U.S.C. § 362(a). Section 362(d)(1) provides that the Court may grant relief from the automatic stay for cause. “The Bankruptcy Code does not precisely define ‘cause’ under § 362(d)(1), and in the past we have noted that this lack of definition affords ‘flexibility to the bankruptcy courts.’” *Bonneville Power Admin. v Mirant Corp. (In re Mirant Corp.)*, 440 F.3d 238, 253 (5th Cir. 2006) (citation & quotation omitted).

UHIC alleges that cause exists to grant conditional relief from the automatic stay to allow it to pursue its right to terminate the Policy if the Debtor fails to pay future postpetition premiums in a timely manner. Under § 5.1 of the Policy, if the monthly premium is not paid by the expiration of the Grace Period, the Policy terminates automatically. UHIC asserts that it will suffer significant prejudice unless such relief is granted “because UHIC will continue to be exposed to liability for claims submitted by insureds under the Policy, but without the bargained for payment of premium.” (Mot. ¶ 24).

The evidence in the record does not indicate the dates on which the Debtor paid the April and May premiums. To the extent UHIC’s request to terminate the stay rests on the Debtor’s failure to pay the alleged shortfalls for the months of April and May, the Court finds insufficient reason to grant the requested relief, in light of its ruling that no additional premiums were due for those months. As to the July premium, there is no dispute that the Debtor paid it after the Grace

Period had expired. According to the Debtor and Committee, however, UHIC routinely accepted such late payments before the commencement of the Bankruptcy Case, notwithstanding UHIC's assertion of prejudice in its Motion. (Ans. ¶ 3). Regardless, the Court finds that the Debtor's postpetition payment history, consisting of one confirmed late payment of the July premium, does not justify conditional relief. The Court, therefore, finds that UHIC has failed to show cause for conditional under § 362(d)(1). UHIC, however, may file another motion requesting the same relief in the event a postpetition pattern of late payments develops.

Conclusion

Because the entire March premium is a prepetition claim, UHIC's administrative claim of \$36,117.50 for the insurance services provided on March 30 and 31, 2016, was denied at the Hearing. The Court finds that UHIC's administrative claim of \$26,241.85 should be denied because the Debtor properly exercised its right of recoupment when it applied prepetition credit adjustments against the postpetition premiums owed for April and May, 2016.¹³ Finally, in the absence of evidence of a postpetition history of chronic late payments, the Court finds that cause does not exist at this juncture to terminate or modify the automatic stay under § 362(d).

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

##END OF ORDER##

¹³ As noted previously, UHIC's alleged administrative claim for April and May, 2016, includes a credit adjustment for the premium paid in June 2016.