



for legal services rendered after the date of conversion. The bankruptcy court permitted the payment of the attorney's fee, and an appeal was taken to this court.

After briefing and argument, the bankruptcy court's decision was affirmed. *See United States Trustee v. Equip. Servs., Inc. (In re Equip. Servs., Inc.)*, 260 B.R. 273 (W.D. Va. 2001), *aff'g* 253 B.R. 724 (Bankr. W.D. Va. 2000). The United States trustee noted a timely appeal to the court of appeals. Thereafter, on the joint motion of the parties, the court of appeals granted a limited remand of the case to this court for consideration of a proposed settlement. The proposed settlement has been argued to the court, and is ripe for decision.

Under the proposed settlement, the attorney would be allowed to receive the bulk of the contested fee, on condition that the opinions of this court and the bankruptcy court be vacated.<sup>1</sup> I must determine whether it is appropriate under the circumstances of this case to accede to the wishes of the parties and vacate my prior opinion. The United States trustee's office desires this result in order to remove the

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<sup>1</sup> The pre-petition retainer was \$5000, and the bankruptcy court allowed, without objection, a fee of \$1325 and expenses of \$3.85 for services rendered prior to the date of conversion. The fee petition previously before the court sought an additional \$1000 for post-conversion services through May 31, 2000. *See Equip. Servs., Inc.*, 260 B.R. at 275. The proposed settlement would allow a total of \$1787.50 for post-conversion services, with the balance of the retainer to be turned over to the Chapter 7 trustee. It is thus apparent that under the settlement, the attorney would receive the full amount of \$1000 sought for post-conversion services through May 31, 2000, as well as an additional amount of \$787.50 covering later services. The submissions by the parties do not indicate the nature of these later services, but I assume that they involve the litigation over the attorney's fee issue.

opinion's precedential value, which it considers detrimental to its interests in future litigation.

Vacatur as part of a post-judgment settlement is a controversial issue. *See Evans v. Mullins*, 130 F. Supp. 2d 774, 775-76 (W.D. Va. 2001). While voluntary settlements between litigants are to be encouraged, there is a public interest in retaining judicial decisions once rendered, and thus there is a general presumption against vacatur. *See Valero Terrestrial Corp. v. Paige*, 211 F.3d 112, 118 (4th Cir. 2000).

In the present case, considerable judicial resources were expended in both this court and the bankruptcy court in determining the complex legal issues involved in this case. The primary question involved statutory construction of a provision of the Bankruptcy Code, over which there is considerable diverse judicial opinion. *See Equip. Servs., Inc.*, 260 B.R. at 278 n.8. There is yet no reported Fourth Circuit opinion on the particular issue, and since the question is a recurring one, the opinions of this court and the bankruptcy court are useful precedent.

Moreover, vacatur here is likely to lead ultimately to fewer settlements. The United States trustee's office is a frequent litigator in this court over important and often contentious bankruptcy issues, and if it believed that it could simply buy out of any precedent it disfavors by agreeing to the original relief sought, it would have little incentive to consider settlement before the parties and the courts have invested time and

effort in litigating the case. In the long run, approving this settlement will consume more judicial resources than will be saved.

For the foregoing reasons, I cannot approve the vacatur as proposed. Judgment will thus be entered denying the parties' request for approval of the settlement.

DATED: November 16, 2001

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United States District Judge