

**UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

BANK OF NEW YORK TRUST	§	
COMPANY, N.A. AS INDENTURE	§	
TRUSTEE FOR THE TIMBER NOTES,	§	
ET AL.,	§	
Appellants	§	
	§	Civil No. CC-08-259
v.	§	
	§	
SCOTIA PACIFIC LLC, ET AL.,	§	
Appellees	§	

ORDER DISMISSING APPEAL

On July 8, 2008, the Bankruptcy Court entered an order confirming the MRC/Marathon Plan of Reorganization (“Confirmation Order”). On the same day the Bankruptcy Court also entered an order denying the Indenture Trustee’s Motion for a Superpriority Administrative Expense Claim Pursuant to 11 U.S.C. §507(b) (“the 507(b) Order”). On July 24, 2008, the Fifth Circuit Court of Appeals agreed to hear a direct appeal of the Confirmation Order. Appellants now appeal the 507(b) Order to this Court. Appellees move to dismiss this appeal for lack of subject matter jurisdiction or as equitably moot.

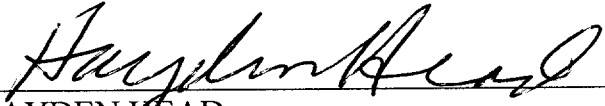
The filing of a notice of appeal is an event of jurisdictional significance. *United States v. Hitchmon*, 587 F.2d 1357, 1359 (5th Cir. 1979). It confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal. *Id.*

The record before this Court demonstrates the 507(b) Order is an integral part of the Confirmation Order. The Bankruptcy Court postponed entry of the Confirmation Order until after hearing evidence on the 507(b) motion because all parties agreed it was critical for the court to determine the amount of the Indenture Trustee's administrative claim before the MRC/Marathon Plan could be confirmed. In fact, all parties agreed the MRC/Marathon Plan could not be confirmed if the Indenture Trustee had an administrative expense claim exceeding \$200 million. The Bankruptcy Court expressly incorporates its 507(b) ruling in the Confirmation Order. Moreover, one of the issues listed by certain Appellants in their statement of issues on appeal of the Confirmation Order is "whether the Bankruptcy Court erred as a matter of law in concluding that the Marathon/MRC Plan satisfies 11 U.S.C. §1129(a)(9) because it does not adequately provide for payment in full of the Indenture Trustee's superpriority claim under 11 U.S.C. §507(b) ..."

The Court finds the 507(b) Order is part of the Confirmation Order, which is currently on appeal to the Fifth Circuit Court of Appeals. Because the Fifth Circuit Court of Appeals has accepted appellant jurisdiction to review the Confirmation Order, this Court does not have subject matter jurisdiction over this appeal.

Appellees' motion to dismiss this appeal is GRANTED.¹

ORDERED this 6 day of Feb, 2009.



HAYDEN HEAD
CHIEF JUDGE

¹ This Order applies to Civil Action Nos. 2:08-cv-260, 2:08-cv-261, and 2:08-cv-262. These cases have been consolidated into Civil Action No. 2:08-cv-259. See D.E. 6.