

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:	)	CASE NO. BK93-80133
	)	
LOCKWOOD CORPORATION,	)	CH. 7
	)	
	)	Filing No. 1243, 1251
Debtor(s).	)	

ORDER

Hearing was held in Omaha, Nebraska, on August 14, 2006, regarding Filing No. 1243, Motion Requiring Distribution Among Chapter 11 Administrative Claimants on Pro Rata Basis, filed by KPMG Peat Marwick, L.L.P., and Filing No. 1251, Resistance, filed by Trustee James J. Stumpf. Donald Swanson appeared for the movant and James Stumpf appeared as trustee.

This case was filed in 1993 as a Chapter 11 case. In February of 1996 the case was converted to Chapter 7.

During the Chapter 11 portion of the case, KPMG and other Chapter 11 professional administrative claimants received court-approved interim payments on their allowed Chapter 11 administrative claims. However, upon conversion to Chapter 7, the trustee determined that the case was administratively insolvent and brought actions against various professionals to require disgorgement of interim payments received on Chapter 11 administrative claims. Numerous professionals disgorged all or part of the payments they had earlier received.

The Chapter 7 trustee is now winding up the administration of the Chapter 7 case and has determined that he has funds available for distribution to Chapter 11 administrative claims of a little less than \$300,000, an amount which is less than the total amount disgorged by the Chapter 11 professionals.

The Chapter 7 trustee is proposing to distribute the available funds to all the administrative claimants based upon the amount of their remaining claims, not the amount of their actual claims. In other words, a significant number of persons and entities who received payment on administrative claims in the ordinary course of business of the debtor were not required to disgorge. They, therefore, have kept the payments originally received. In some cases, the payments originally received by the ordinary-course-of-business claimants are less than their total claim. The trustee proposes to calculate a pro rata distribution to those claimants and to the disgorging professionals using, for the ordinary-course-of-business claimants, the remaining portion of their claims only. KPMG suggests that the trustee's proposed distribution distorts the amounts of such claimants' "claims" by failing to account for the percentage of such claims that have been previously paid and retained by those claimants. KPMG suggests that such a procedure grants a significant windfall to the non-disgorging claimants that is contrary to the pro rata requirement of 11 U.S.C. § 726(b).

The trustee takes the position that he does not have all of the necessary records available to him and he does not have computer capability to calculate a distribution in an amount different from what he has presently calculated.

In a memorandum in this case at Filing No. 1241, this court found that administrative claims should be paid on a pro rata basis pursuant to 11 U.S.C. § 726(b). A general rule for distribution to members of the same class is that “the quantum of claimant’s recovery is limited to that pro rata share of assets which it would have received if all payments had been delayed until the final accounting.” In re Florida West Gateway, Inc., 180 B.R. 299 (Bankr. S.D. Fla. 1995). Numerous cases cited in the motion support the rule.

At the hearing on the motion, counsel for the moving party informed the court and the trustee that he had possession of all the records necessary for the trustee to complete the proper calculation. He also suggested a possible method by which the burden on the trustee could be significantly reduced. For example, counsel suggested that since none of the disgorging professionals would receive more than 50% of its claim, no matter how the distribution is calculated, the trustee could simply eliminate all claimants that had already received more than 50% of their claim and do a pro rata distribution for the remaining claimants. Such a procedure may not be perfect, but it comes a lot closer to being fair and consistent with § 726(b) than the currently proposed distribution scheme. Since the movant has already done significant work in attempting to determine a proper distribution, the trustee would not be in error if he requested help in performing the calculation from counsel for the movant.

IT IS ORDERED: The motion (Fil. #1243) is granted. The trustee’s proposed distribution scheme reflected on Exhibit A to the motion is not approved. The proper distribution scheme in this Chapter 7 administratively insolvent case is one that considers all amounts previously paid and retained by the Chapter 11 administrative claimants, based upon the following proposition of law: The quantum of an administrative claimant’s recovery is limited to that pro rata share of assets which it would have received if all payments had been delayed until the final accounting.

DATED this 22<sup>nd</sup> day of September 2006.

BY THE COURT:

/s/ Timothy J. Mahoney  
Chief Judge

Notice given by the Court to:  
\*Donald Swanson  
James Stumpf  
United States Trustee

\*Movant is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.