

In the United States Bankruptcy Court

for the Northern District of Iowa

PRODUCT DESIGN & FABRICATION

Bankruptcy No. 92-11526LC

Debtor.

Chapter 7

ORDER RE: APPLICATION FOR COMPENSATION and MOTION FOR IMMEDIATE PAYMENT OF ADMINISTRATIVE EXPENSES

Two requests have been presented to the court, each by attorney Joseph A. Peiffer. Peiffer has filed an application for payment of professional compensation for his work representing the trustee in the prosecution of one of this case's adversary proceedings. He has filed also a motion seeking immediate payment of fees previously awarded to him for representation of the debtor in this chapter 11 and chapter 7.

The application and motion were noticed to all parties. No party objected to the application for fees. Three parties objected to immediate payment of Peiffer's awards: Harry R. Terpstra, the trustee; Linn County, Iowa; and Childers & Fiegen, P.C. The court held a telephonic hearing on the two matters on June 30, 1995. Joseph A. Peiffer appeared for himself. Harry R. Terpstra appeared for himself. Gary P. Jarvis appeared for Linn County. Dan Childers appeared for Childers & Fiegen, P.C.

Findings

Product Design and Fabrication, Inc. filed its voluntary chapter 11 case on August 14, 1992. The court approved the retention of Joseph A. Peiffer as its attorney and the debtor's payment to him of a \$25,000.00 retainer fee. Debtor was unable to reorganize, and on September 14, 1993, the case was converted at debtor's request to a case under chapter 7.

On February 10, 1992, attorney Peiffer filed two interim applications for professional compensation and reimbursement of expenses. The first was for work done on the debtor's behalf in the chapter 11 case (docket no. 202); the second was for work done for the debtor in the chapter 7 case (docket no. 204). The court awarded Peiffer \$33,001.74 for the chapter 11 application and \$2,600.50 for the chapter 7 case (docket no. 220). Peiffer was permitted to apply the retainer to the chapter 11 award. The remainder of the award, \$8,001.74, is unpaid as is the chapter 7 award.

The court has allowed other professionals interim compensation in the chapter 11 case and permitted all or partial payment of the awards. These professionals include Childers & Fiegen, P.C., attorneys for the Unsecured Creditors Committee; McGladrey & Pullen, accountants for the debtor-in-possession; Larry W. Cheeves, a financial consultant for the debtor-in-possession. Cheeves was paid in full from his retainer. Childers & Fiegen, P.C. was partially paid from its retainer. It has an unpaid chapter 11 compensation award of \$2,973.32. The court awarded All Iowa Body, debtor's landlord, chapter 11 administrative rent of \$88,103.75. This allowance is unpaid. The trustee has made various other payments to professionals and others in his administration of the chapter 7 estate. These total \$55,888.42. This amount includes a payment of \$47,570.28 to an auctioneer.

The trustee is holding approximately \$260,000.00 in cash. From that amount, he must pay a secured creditor \$100,000.00. To date, the chapter 11 administrative payments to professionals total \$41,138.00. Unpaid chapter 11 administrative awards total \$99,078.81. The approved chapter 7 payments to date total \$55,888.42. The unpaid chapter 7 award is \$2,600.50. Based on distribution of the funds under his control, the trustee would be entitled to maximum fees of about \$8,000.00. Linn County claims approximately \$4,000.00 in post-petition taxes.

Discussion

The trustee objects to immediate payment because he is concerned the estate will be insufficient to pay all chapter 7 and chapter 11 administrative expenses in full. He believes that there may be additional chapter 7 administrative awards. Childers & Fiegen, P.C. does not object to Peiffer's application but asks that if the court grants it, that the court also order payment of its unpaid chapter 11 award. Linn County claims it has chapter 11 and chapter 7 administrative claims for unpaid real estate taxes and that unless there are sufficient assets to pay all administrative creditors in the case, Peiffer's request should be denied. Peiffer contends that there are sufficient funds to warrant his payment, but if he is not paid immediately, he asks the court to allow interest on the unpaid awards.

Fee Application

Peiffer's interim application for fees for work done for the chapter 7 trustee is not contested. Peiffer was retained by the trustee for a specific purpose--to recover property from John Michelosen using the trustee's chapter 5 powers. The litigation was, to a large extent, successful. Nearly all of the time itemized by Peiffer in his application is attributable to that litigation. Some, however, is not. To the extent it is not, it will not be allowed as Peiffer was not approved to do general legal work for the trustee or the estate. The court excludes the following time as not attributable to the case for which Peiffer was retained:

September 14, 1994	telephone call re "other preferences"	.20
September 14, 1994	review checks re "other preferences"	.40
September 15, 1994	letter to Dunbar re checks	.20
September 15, 1994	letter to Terpstra re checks	.50
October 6, 1994	telephone call from Terpstra re lease	.20
October 7, 1994	revise letter, PDF checks	.40
October 14, 1994	letter to Terpstra re answer complaint	.10
October 17, 1994	letter to Terpstra re objection	.20
October 25, 1994	telephone call from Epping re Norwest	.30

Also, 2.0 hours of the attorney's fee application will be disallowed because the work appears to be clerical in nature. The time was expended by Peiffer's associate or partner in reviewing schedules on August 24, 1994 to compile a list of the 40 largest unsecured creditors. In all, the court will disallow 4.5 hours valued at \$492.00. The court will award \$10,848.20 in professional fees and expenses as a chapter 7 administrative expense.

Immediate Payment

In a case converted from chapter 11 to chapter 7, the chapter 7 priority administrative expenses have priority in the distribution scheme over the chapter 11 administrative expenses. 11 U.S.C. 726(b). The allowed chapter 7 administrative expense claims must, therefore, be paid in full before the chapter 11 administrative expense claims can receive any distribution.

Peiffer has an unpaid chapter 7 administrative claim for professional fees of \$2,600.50. He also asks payment of the award which will result from this order. If the trustee collects no more funds, Terpstra would be entitled to a maximum fee of at least \$8,000.00. The trustee has employed other professionals who presumably will file fee applications for their work. Nonetheless, it appears that there are sufficient unencumbered funds to pay Peiffer at this time for his chapter 7 administrative awards. If all administrative expense claims arising in the chapter 7 case cannot be compensated at 100 per cent of their awards, it may be necessary for the trustee to seek disgorgement of some payments in order to provide for a pro rata distribution. Based on the present evidence, the court considers that unlikely. The Code provides for interim compensation of professionals. 11 U.S.C. 331. The court may decline to permit payment of such

awards if it appears to the court that there are insufficient estate assets to pay all administrative claims. Based on the evidence, the court considers it unlikely that there will be insufficient estate assets to pay all chapter 7 administrative claims. An order will enter requiring immediate payment of Peiffer's chapter 7 awards.

He also asks immediate payment of his unpaid chapter 11 fees in the amount of \$8,001.74. Childers & Fiegen, P.C. asks for immediate payment of its chapter 11 allowance. It is not so likely that all chapter 11 administrative claims will be paid in full. As stated, there may be additional chapter 7 administrative claims. There may be further court costs. There may be other costs of administering the estate. Linn County claims nearly \$4,000.00 in chapter 7 administrative claims. No one has addressed whether there may be other administrative tax claims.

Moreover, the trustee should retain some funds to aid in his administration of the estate. The trustee presently holds about \$160,000.00 in unencumbered funds. Subtracting from this sum Peiffer's chapter 7 awards in the total amount of \$13,448.70, an estimated \$8,000.00 in trustee's fees, and Linn County's claim of about \$4,000.00 leaves approximately \$135,000.00. All Iowa Body has an allowed chapter 11 administrative claim of \$88,103.75. Childers & Fiegen, P.C. has an unpaid chapter 11 award of \$2,973.00. Peiffer's chapter 11 award is \$8,001.74. If the court were to permit payment of Peiffer's and Childers & Fiegen's chapter 11 awards, it appears that at present there would be sufficient remaining funds (approximately \$35,000.00) in the estate to pay other known administrative claims. However, because of the uncertainty as to the existence of other chapter 7 administrative claims, and the uncertainty of whether there will be sufficient funds to pay all administrative expenses in full, unpaid chapter 11 professional awards should not be paid at this time. The court considers premature the request for allowance of interest on Peiffer's chapter 11 award.

ORDER

IT IS ORDERED that Joseph A. Peiffer is allowed a chapter 7 administrative claim for professional fees and expenses in the amount of \$10,848.20. The trustee shall pay the award within 14 days of this order. The trustee shall also pay within such period the court's prior chapter 7 award to Peiffer in the amount of \$2,600.50.

IT IS FURTHER ORDERED that the request for immediate payment of Peiffer's chapter 11 award in the amount of \$8,001.74 is denied. The request for interest is denied.

SO ORDERED THIS 8th DAY OF AUGUST, 1995.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order by U.S. mail to: Joseph Peiffer, Dan Childers, Gary Jarvis, Harry Terpstra, 2002 List and U. S. Trustee.