

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa
(Central Division)

In the Matter of
PESTER REFINING COMPANY, Case No. 85-340-C H
Debtor. Chapter 11

ORDER--MOTION FOR RECONSIDERATION OF CLAIM
AND APPLICATION FOR APPROVAL OF AMENDED CLAIM

On September 13, 1990, a hearing was held on the motion for reconsideration of claim and application for approval of amended claim. The following attorneys appeared on behalf of their respective clients: T. Randall Wright for Unsecured Creditors Committee; John G. Fletcher for Pester Refining Company ("PRC"); and Anita L. Shodeen and John D. White for Blackburn, Inc. ("Blackburn"). At the conclusion of said hearing, the Court took the matter under advisement and the Court considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B). The Court, upon review of the motion, resistances thereto, and arguments of counsel now enters its findings of fact and conclusions of law pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. PRC was one of four Pester companies to seek protection under Chapter 11 of the Bankruptcy Code on February 25, 1985.

2. On March 21, 1986, the Court confirmed the First Amended Joint Plan of Reorganization submitted by the Pester Companies.

3. The schedules filed by PRC listed Blackburn as an unsecured creditor.

4. Blackburn timely filed proof of claim in the PRC bankruptcy proceeding which designated its claim as secured by virtue of mechanic's liens filed in Kansas.

5. The Unsecured Creditors Committee of PRC filed an adversary proceeding, Adv. No. 87-0187, against Blackburn alleging that preferential transfers had occurred pursuant to 11 U.S.C. §547.

6. On May 31, 1989, the Court entered an order and judgment in favor of Plaintiff Unsecured Creditors Committee and against Blackburn in the amount of \$381,040.16. The Official Unsecured Creditors Committee of Pester Refining Company v. Blackburn, Inc. (In re Pester Refining Company), Case No. 85-340, Adv. No. 87-0187 (Bankr. S.D. Iowa May 31, 1989). The Court determined in this May 31, 1989 order that the claim of Blackburn was unsecured.

7. Blackburn filed a notice of appeal regarding the Court's May 31, 1989 order and pursued its right to appeal to the United States District Court for the Southern District of Iowa under Civil No. 89-510-B.

8. As a result of a stipulated settlement agreement

between the Unsecured Creditors Committee of PRC and Blackburn ("Settlement Agreement"), the appeal was dismissed by the attorneys for Blackburn on December 22, 1989.

9. After the Settlement Agreement was negotiated and the dismissal filed, Blackburn filed an amended proof of claim. The amended proof of claim totals \$394,055.44. This amount is the sum of the original claim (\$194,055.44) and the settlement amount (\$200,000.00).

10. The original proof of claim in the amount of \$194,055.44 has been allowed as a class 10 unsecured claim against PRC.

DISCUSSION

Blackburn prays that the Court grant its motion to reconsider claim and application for approval of amended proof of claim so that it can increase its unsecured claim by the \$200,000.00 paid pursuant to the preference action Settlement Agreement. The Court grants Blackburn's motion to reconsider claim and application for approval of amended proof of claim such that Blackburn's rights under 11 U.S.C. §502(j) and Fed.R.Banr.P. 3008 are protected. Blackburn will be permitted to increase its unsecured claim by the amount of the \$200,000.00 preference settlement. See In re J.A.S. Markets, Inc., 113 B.R. 193, 199 (Bankr. W.D. Pa. 1990).

PRC and Unsecured Creditors Committee assert that

Blackburn waived its right to receive any portion of the \$200,000.00 settlement pursuant to a provision in the Settlement Agreement. The Settlement Agreement provides in pertinent part:

5. By agreeing to pay \$200,000.00 in settlement of this case, Blackburn, Inc. waives its right to receive any portion of said amount by virtue of its status as an unsecured creditor. Blackburn, Inc. and its successors and assigns do not, however, waive any right to receive any other plan benefits to which Blackburn, Inc. is entitled through the plan of reorganization of the Pester Companies.

The Court interprets this clause of the Settlement Agreement to mean that Blackburn only waives its right to receive any portion of the \$200,000.00 specifically paid pursuant to the Settlement Agreement. Therefore, Blackburn's rights under 11 U.S.C. §502(j), and right to increase its unsecured claim by the \$200,000.00 preference settlement, are preserved.

ORDER

IT IS ACCORDINGLY ORDERED that Blackburn's motion for reconsideration of claim and application for approval of amended proof of claim is granted. Blackburn's pro rata share of the amounts due to unsecured creditors is increased by the \$200,000.00 paid pursuant to the preference action Settlement Agreement.

IT IS FURTHER ORDERED that modification of payments by

the paying agent shall be prospective, from the date of this order.

IT IS FURTHER ORDERED that costs incurred by PRC or the paying agent as a result of altering payments in compliance with this order, are to be paid by Blackburn as costs of litigation.

Dated this 15th day of January, 1991.

RUSSELL J. HILL
United States Bankruptcy Judge