

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

In re: ) Bankr. No. 03-10194  
 ) Chapter 7  
TRI-STATE ETHANOL COMPANY LLC )  
 ) DECISION RE: WOODS  
Debtor. ) CONSULTING'S OBJECTION  
 ) TO TRUSTEE'S PROPOSED  
 ) INTERIM DISTRIBUTION

The matter before the Court is Trustee John S. Lovald's Interim Report and Proposed Distribution and the objection thereto filed by Woods Consulting. This is a core proceeding under 28 U.S.C. § 157(b)(2). This decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9019(c). As set forth below, the objection will be overruled.

I.

Tri-State Ethanol Company LLC ("Debtor") filed a Chapter 11 petition in bankruptcy on May 23, 2003. Debtor scheduled Woods Consulting Services ("Woods Consulting") as a creditor holding a general unsecured claim for \$18,097.16.<sup>1</sup> The claim was not delineated as contingent, unliquidated, or disputed.

While the case was pending under Chapter 11, Debtor filed a modified plan dated June 24, 2004. Woods Consulting timely filed a ballot (doc. 913) rejecting the plan. On the ballot, it stated

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<sup>1</sup> This entity has appeared in the case under a variety of names, including Woods Consulting, Inc., Woods Consulting Services, and just Woods Consulting. The Court assumes, but does not decide, they are one and the same.

it had an unsecured claim for \$12,997.15.

The evidentiary hearing on the confirmation of Debtor's modified plan dated June 24, 2004, and several other matters was held July 28, 2004. The case was converted to Chapter 7 that day, so confirmation of the plan was rendered moot.

On October 27, 2004, all creditors and other parties in interest, including Woods Consulting, were served with a notice that the deadline to file a proof of claim was January 25, 2005. Woods Consulting tardily filed a proof of claim on February 22, 2005, for \$12,997.18, unsecured.

During the administration of the Chapter 7 case, Trustee Lovald reached a settlement with Tri-State Financial, L.L.C. (doc. 1379). Their written agreement provided, in pertinent part,

6. Of the total \$1,983,654.42 claimed by Tri-State Financial, the amount of \$1,190,000 shall be allowed as a timely filed general unsecured claim. Such allowed general unsecured claim of Tri-State Financial shall be subordinated to other allowed general unsecured claims for which proofs of general unsecured claims were timely filed on or before the January 24, 2005, deadline fixed for filing unsecured claims. Such allowed general unsecured claim of Tri-State Financial shall not be subordinated to any allowed general unsecured claim for which a proof of general unsecured claim was not filed before the January 24, 2005, deadline. Nothing in this Compromise Agreement subordinates such allowed general, unsecured claim of Tri-State Financial to any claim for any purpose except for distribution(s) from the Bankruptcy on allowed general unsecured claims.

7. Subject to paragraph 8 below, this Compromise Agreement shall be binding upon Lovald, Trustee, Tri-State Ethanol's Bankruptcy Estate, Tri-State Financial,

Tri-State Ethanol, and on all creditors and all parties in interest in the Bankruptcy.

The settlement was noticed for objections to all creditors and other parties in interest, including Woods Consulting. The settlement was approved by order entered June 14, 2006. No appeal was taken.

On April 10, 2007, Chapter 7 Trustee John S. Lovald filed an Interim Report and Proposed Distribution (doc. 2246). Therein, he stated he had \$10,396,238.42 on hand and wanted to pay certain administrative expenses and some priority creditors and make a 46% *pro rata* distribution to unsecured creditors. Trustee Lovald did not include Woods Consulting on the list of unsecured creditors to be paid. Woods Consulting filed an objection to the proposed distribution (doc. 2305). It argued that under 11 U.S.C. § 1111(a), it was deemed to have filed a proof of claim because Debtor had scheduled its claim and the claim was not listed as disputed, contingent, or unliquidated. Woods further argued under Fed.R.Bankr.P. 1019, its recognized claim in the Chapter 11 case was deemed filed in the Chapter 7 case. Last, Woods Consulting argued its ballots regarding Debtor's proposed Chapter 11 plans constituted informal proofs of claims. The parties submitted the matter on stipulated facts and issues (doc. 2420) and briefs.<sup>2</sup>

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<sup>2</sup> On May 22, 2007, counsel for Tri-State Financial, L.L.C., docketed a letter to the Court and copied it to Trustee Lovald and counsel for Woods Consulting (doc. 2300). The letter was served on

While the matter was pending, the Court authorized Trustee Lovald to make those interim distributions he could without impinging on several pending contested matters, including Woods Consulting's objection.

Trustee Lovald and Woods Consulting's stipulated facts have been set forth above. The parties' stipulated issue was:

[W]hether the above cited facts, the Bankruptcy Code, and applicable case law, support consideration of the Woods claim, in the amount of \$12,997.15, as a timely filed, uncontested, unsecured proof of claim in the amount of \$12,997.15, for the purpose of the distribution proposed in Trustee's Interim Report, and any subsequent report filed during the administration of this bankruptcy.

In his brief (doc. 2449), Trustee Lovald noted the Bankruptcy Court Clerk had advised creditors to file a proof of claim through a notice stating, "Creditors who wish to share in any distribution of funds must file a proof of claim with the Clerk . . . [and t]o be considered timely, a proof of claim must be **received** . . . on or before January 25, 2005[.]" [Emphasis in original.] Trustee Lovald further noted the Clerk had advised creditors they did not need to file a proof of claim if they had already filed one.

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parties in interest on May 22, 2007 (doc. 2313-2). In the letter, counsel for Tri-State Financial advised the Court it was his opinion any claim held by Woods Consulting would have to be paid after Tri-State Financial's subordinated claim because Woods Consulting had not filed an actual proof of claim before the January 24, 2005, deadline. Tri-State Financial did not participate further in the proceedings though Trustee Lovald and Woods Consulting essentially incorporated the issue raised by Tri-State Financial into their stipulated facts and briefs.

Trustee Lovald focused on the precise language of Rule 1019(3), which provides "[a]ll claims *actually* filed by a creditor before conversion of the case are deemed filed in the chapter 7 case." He also cited *First American Bank & Trust of Minot v. Butler Machinery Co. (In re Haugen Construction Services, Inc.)*, 876 F.2d 681 (8th Cir. 1989), in which the appellate court noted the trial court held a creditor must file a "formal claim" if a case converts from Chapter 11 to Chapter 7 and also held a post-conversion letter from a creditor to the United States Trustee constituted an acceptable informal proof of claim where the letter was received before the proof of claim deadline. Trustee Lovald further argued that, in this case in particular, his settlement with Tri-State Financial, of which Woods Consulting received notice, also required Woods Consulting to timely file a proof of claim in order to be paid ahead of Tri-State Financial and an informal proof of claim should not be recognized ahead of Tri-State Financial's subordinated claim.

In its brief (doc. 2453), Woods Consulting argued its ballot regarding Debtor's proposed Chapter 11 plan was actually filed and thus complies with the requirements of Rule 1019 that a creditor must have "actually" filed a proof of claim for it to be considered after conversion to Chapter 7. It cited a Seventh Circuit decision in support of its argument that the ballot constituted a

recognizable informal proof of claim. Woods Consulting then made a new argument it had not clearly raised in its objection. It said its tardily-filed proof of claim constituted an amendment of its earlier informal proof of claim. It cited *Haugen* in support of this argument.

## II.

In a Chapter 11 case, unsecured creditors whose claims have been scheduled by the debtor and are not listed as disputed, contingent, or unliquidated are not required to file a proof of claim. Fed.R.Bankr.P. 3003. When a Chapter 11 case is converted to Chapter 7, however, a new claims-filing deadline is set, Fed.R.Bankr.P. 1019(2), and any creditor who has not actually filed a proof of claim must do so. Fed.R.Bankr.P. 1019(3).

Under some circumstances, the Court may recognize an informal proof of claim. For a document to be considered an informal proof of claim, it must state the nature and amount of the claim and indicate the creditor's intent to pursue the claim and hold the debtor liable. *Maynard Savings Bank v. Michels (In re Michels)*, 286 B.R. 684, 691 (B.A.P. 8th Cir. 2002) (cites therein). The document does not necessarily have to be filed with the Court, but the document must arise in the context of the creditor's active participation in the case and evidence an intent to assert a claim via that document. *Haugen*, 876 F.2d at 682. The debtor's or

trustee's knowledge of the claim, however, is not sufficient to constitute an informal proof of claim. *In re Farmland Industries, Inc.*, 318 B.R. 159, 164 (Bankr. W.D. Mo. 2004) (cites therein).

If the informal proof of claim was made within the statutory period, an amendment to that claim may be made after the statutory period. *Michels*, 286 B.R. at 691-92. Further,

Great liberality in permitting amendments of claims in bankruptcy proceedings is proper, but the statute requiring that a proof of claim in writing be filed is clear, positive, and unambiguous, and it must not be nullified in the name of equity. If the record made within the statutory period, formal or informal, disclosed facts showing an assertion of a claim against the estate and an intention by the claimant to share in its assets, there would be a basis for the proposed amendment[.]

*Tarbell v. Crex Carpet Co.*, 90 F.2d 683, 685-86 (8th Cir. 1937) (quoted in *In re Donovan Wire & Iron Co.*, 822 F.2d 38, 39 (8th Cir. 1987), and *Haugen*, 876 F.2d at 682).

### III.

Woods Consulting correctly stated it was not required to file a proof of claim while Debtor was under Chapter 11 because its claim was scheduled and not denominated as contingent, disputed, or unliquidated. When the case converted from Chapter 11 to Chapter 7, however, Woods Consulting stood in the same position as every other unsecured creditor who had not yet filed an actual proof of claim. Rule 1019 required each of them to file an "actual" proof of claim. See *Dicker v. Dye (In re Edelman)*, 237

B.R. 146, 148 n.3 (B.A.P. 9th Cir. 1999) (under Rule 1019(3), a claim merely scheduled in a Chapter 11 case is not deemed "actually filed" pre-conversion so as to be deemed filed in the Chapter 7 case post-conversion).

Rule 1019(3) is unequivocal. An informal proof of claim that may be recognizable in the Chapter 11 case is not recognizable post-conversion. To apply Rule 1019(3) otherwise would eviscerate Congress' specific use of "actually filed" in Rule 1019(3). Moreover, Rule 1019(2), which creates a new time period in which to file proofs of claims after a conversion to Chapter 7, insures a fair opportunity for creditors to comply with Rule 1019(3).

The facts do not show, and Woods Consulting has not argued, it made a *post-conversion* informal proof of claim. It thus follows that Woods Consulting's February 22, 2005, proof of claim cannot be deemed an amendment of an earlier informal proof of claim. *Michels*, 286 B.R. at 691-92.

Because Woods Consulting's February 22, 2005, proof of claim was tardy, it cannot be paid with the timely-filed claims. Compare 11 U.S.C. §§ 726(a)(1) and (a)(3). Accordingly, Trustee Lovald need not provide for Woods Consulting's claim in his pending interim distribution.

Woods Consulting's untimely claim will also have to be paid



after Tri-State Financial's subrogated claim.<sup>3</sup> Trustee Lovald's settlement with Tri-State Financial is binding on the estate and its creditors, even to the extent it may have modified the usual Chapter 7 distribution scheme under 11 U.S.C. § 726. Woods Consulting had an opportunity to object to the settlement, but chose not to do so.

An appropriate order will be entered.

Dated: January 3, 2008.

BY THE COURT:



Irvin N. Hoyt  
Bankruptcy Judge

On the above date, a copy of this document was mailed or faxed to the parties shown on the Notice of Electronic Filing as not having received electronic notice and Debtor(s), if Debtor(s) did not receive electronic notice.

Frederick M. Entwistle  
Clerk, U.S. Bankruptcy Court  
District of South Dakota

**NOTICE OF ENTRY  
Under Fed.R.Bankr.P. 9022(a)**

**This order/judgment was entered  
on the date shown above.**

**Frederick M. Entwistle  
Clerk, U.S. Bankruptcy Court  
District of South Dakota**

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<sup>3</sup> Because no party in interest has objected to Woods Consulting's tardy claim, it is still deemed an allowed claim. *In re Phillips*, 166 B.R. 129, 132-33 (Bankr. N.D. Iowa 1994).