

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY**

In re:)	
)	
TRANSPORT GROUP, INC.,)	Case No. 93-30015
A KENTUCKY CORPORATION)	Chapter 7
Debtor)	
and)	
)	
TRANSPORT ASSOCIATES, INC.,)	Case No. 93-30016
A KENTUCKY CORPORATION)	Chapter 7
Debtor)	
_____)	

MEMORANDUM

This matter comes before the Court on the Motion for Reconsideration of Order on Debtors’ Motions for Return of Unclaimed Funds filed by the debtor in the Transport Group, Inc. (“Transport Group”) case and the debtor in the Transport Associates, Inc. (“Transport Associates”) case.

On March 7, 2007, this Court entered orders overruling the motions for refund of unclaimed funds filed by the debtors in these two cases. The Court found no statutory authority to refund funds being held for creditors to the now defunct chapter 7 debtors. Specifically, the Court held that 11 U.S.C. § 347 and chapter 129 of title 28 [28 U.S.C. § 2041 and 2042] preclude disbursing unclaimed funds to former chapter 7 debtors. The debtors now move for reconsideration of those orders. In support, the debtors reference 28 U.S.C. § 2042 and 11 U.S.C. § 726(c).

Section 2042 states that the Court may disburse unclaimed funds to any “claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.” As discussed previously, the debtors are not claimants with any right to these unclaimed funds. Instead, the funds belong to the original creditors of the debtors’ bankruptcy estates. The debtors reference to 11 U.S.C. § 726(c)

is also inaccurate. That section establishes the priority of payment of estate funds. While the debtor correctly notes that § 726(a)(6) lists the debtor as the last entity to receive funds, the debtor only receives funds to the extent there is surplus funds after paying the first five classes of claimants. Section 726 does not authorize the debtor to recover unclaimed funds held in the court registry on behalf of creditors with allowed claims.

The debtors also cite to a decision from the Sixth Circuit, Hendri v. Lowmaster, 152 F.2d 83 (6th Cir. 1945). As with their original motions, the debtors rely on pre-Bankruptcy Code law. Furthermore, that case dealt with a corporate reorganization, rather than a straight liquidation as are the cases before this Court, and the rules regarding unclaimed funds differ in chapter 11 corporate reorganizations. See 11 U.S.C. § 347(b). Finally, that case addressed the disposition of surplus assets. The debtors confuse the concepts of surplus assets with unclaimed funds. Surplus assets, as the name denotes, are assets left over after the payment of all allowed claims. Unclaimed funds, however, belong to a particular creditor, that has failed to collect or receive those funds. In the cases before this Court, the assets in question are unclaimed funds, and not surplus assets as the debtors suggest. This Court must hold unclaimed funds until properly petitioned by the rightful owners of the funds. Under 28 U.S.C. § 2042, the burden of proof is upon any movant to show its right to the unclaimed funds. In these cases, the individual creditors are the “rightful owners” and, as such, only they may petition the Court for turnover of unclaimed funds.

The Court concludes with a cautionary warning to the debtors and counsel for the debtors. While the Court certainly appreciates the zeal to acquire these funds, the debtors must act with the limits of Fed. R. Bank. P. 9011 (Fed. R. Civ. P. 11). Rule 11 requires every pleading filed before a court to be supported by existing law or a good faith argument for the extension, modification, or reversal of existing law. The pleadings filed before this Court, both the original motions and these

motions to reconsider, come dangerously close to crossing the Rule 11 threshold. Furthermore, counsel's citations to the Bankruptcy Act, which was repealed many years ago, as well as to cases which are clearly inapplicable, addressing reorganizations as opposed to chapter 7 liquidations, come close to violating counsel's duty of professional responsibility. SCR 3.130(3.1) (meritorious claims and contentions) and SCR 3.130(3.3) (candor toward the tribunal). The Court shall enter an Order this same date in accordance with the holding of this Memorandum.

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ORDER

Pursuant to the Court's Memorandum entered this same date and incorporated herein by reference,

It is hereby **ORDERED** the Debtors' Motion for Reconsideration of Order on Debtors' Motions for Return of Unclaimed Funds are **OVERRULED**.