

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN

FILED

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U.S. BANKRUPTCY COURT

In re:

Case Number:

SCHULD MANUFACTURING CO. INC.,

WF11-82-00738

Debtor.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER FOR HEARING TO DETERMINE ASSESSMENT

Van Metre, Hanson, Clarke, Schnitzler & Meyer, attorneys for the Debtor, by Attorney Roger G. Schnitzler, having filed an Application for Assessment; and a hearing having been held; and the Van Metre firm appearing by its counsel; and Lawrence T. Riordan appearing as Trustee of the above-captioned bankruptcy estate; and First American National Bank of Wausau appearing by Attorney Stewart L. Etten (with Attorney Arthur L. Eberlein on brief) to object to the assessment; and briefs having been filed; the Court, being fully advised in the premises, FINDS THAT:

1. Van Metre, Hanson, Clarke, Schnitzler & Meyer, attorneys for the Debtor, "asks that the court, pursuant to 11 U.S.C. §503 and §506 (c), grant a hearing to determine an assessment of the administrative costs and expenses incurred in the administration of the debtor's estate during these proceedings, including the fees and expenses of the debtor's counsel against the secured parties and for an order directing that said costs and expenses

be granted a priority over all other claims including taxes and other administrative expenses." Application for Assessment (filed August 8, 1984).

2. First American National Bank of Wausau opposes such relief on the grounds that the Van Metre firm "is not a proper party to pursue a recovery under Section 506(c) and, therefore, his application must be dismissed. Notwithstanding the foregoing, any recovery allowed pursuant to Section 506(c) must be limited to fees and expenses paid by the trustee in connection with the actual liquidation of Schuld's assets." Brief in Response (filed Sept. 26, 1984).

3. The Trustee, who--according to the Bank--would be a proper party, appeared at the assessment application hearing and did not object.

4. Under 11 U.S.C. sec. 503, an "entity" may recover certain administrative expenses from the bankruptcy estate on a priority basis. Under 11 U.S.C. section 506(c), the "trustee" may recover the reasonable, necessary costs and expenses of preserving or disposing of secured property from said property.

5. The case upon which the Bank relies, In re Codesco, Inc., 18 B.R. 225, 230, 8 B.C.D. 1089, 1092 (Bankr.S.D.N.Y. 1982), appears to elevate textural form over legislative function. Because Section 506(c) limits recovery to the "reasonable" and "necessary" costs which benefit the secured party, the Codesco Court reliance upon 11 U.S.C. sec. 330 is unpersuasive.

6. In re Manchester Hides, Inc., 32 B.R. 629, 631-633, 11 B.C.D. 969, 971-972 (Bankr.N.D.Iowa 1983), considers the legislative history of Section 506(c) and concludes: "Thus, the term 'trustee' in section 506(c) does not confer an exclusive right on the trustee to seek section 506(c) recovery." Id. 32 B.R. at 632-633, 11 B.C.D. at 972.

7. Manchester Hides is better law and this Court will follow it: Debtor's counsel may proceed under Section 506(c). Cf. In re Wilson Freight Co., 21 B.R. 398, 401 (S.D.N.Y. 1982) (creditors' committee counsel may receive interim compensation where there are insufficient assets to satisfy secured creditors; citation to 11 U.S.C. secs. 330, 503 & 506).

CONCLUSION OF LAW

A hearing should be held to determine the amount and source of the Applicants' 11 U.S.C. sec. 503 and/or 506 recovery.

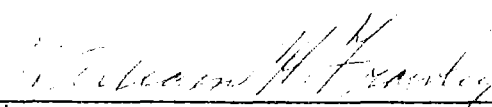
ORDER

IT IS THEREFORE ORDERED THAT an evidentiary hearing be held to determine the amount of the Van Metre, Hanson, Clark, Schnitzler & Meyer assessment and the extent to which said assessment should be made against the above-captioned estate and the

extent to which it should be made against the property in which the First American National Bank of Wausau holds a security interest.

Dated: November 20, 1984.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge