

FILED

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

FEB 5 1986

CLERK  
U.S. BANKRUPTCY COURT

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In re:

Case Number:

LA CROSSE GLASS CO., INC.

LF11-84-00877

Debtor.  
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OPINION AND ORDER

Wisconsin State Carpenters' Funds (Funds), by Susan J. M. Bauman, has requested this court to assess attorney fees and costs against the debtor and its attorney, Donald J. Harman. The court exercises jurisdiction in this matter pursuant to 28 U.S.C. § 1334. The jurisdiction of this court is not disputed by the parties.

A brief history of this case is necessary for an understanding of the relevant facts. On April 15, 1985 Funds was found to have an allowed claim against the debtor. This claim was brought pursuant to 29 U.S.C. §§ 186, 1132, and 1145. On August 19, 1985 the debtor brought a motion for reconsideration of this claim. In an order dated September 6, 1985 the court ruled that the debtor had not demonstrated adequate cause for reconsideration. This order was appealed to the District Court where the order was affirmed. The Funds now petition this court to assess the costs and attorney fees of said action against the debtor.

The relevant statutory authority for such an award is found at 29 U.S.C. § 1132(g)(2). The language clearly states that the

court "shall award reasonable attorney fees and costs of the action." The debtor would have the court apply the language of § 1132(g)(1) instead. However, this section clearly does not apply to the instant case. § 1132(g)(1) explicitly states, "(other than an action described in paragraph 2)." There is no question but that § 1132(g)(2) is the applicable section of the Code. This section provides for and entitles Funds to reasonable attorneys fees and costs. The only question that remains to be decided is the reasonableness of the attorneys fees.

Funds has also requested that such fees and costs also be assessed against the debtor's attorney. § 1132(g)(2) only authorizes such fees and costs against the defendant debtor. Funds has failed to establish that the debtor's attorney can be liable for this award.

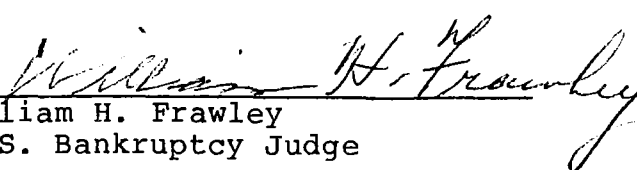
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT Funds is awarded reasonable attorney fees and costs to be determined by the court upon a hearing.

Dated: February 5, 1986.

BY THE COURT:

  
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William H. Frawley  
U. S. Bankruptcy Judge

cc: Attorney Donald J. Harman  
Attorney Susan J. M. Bauman