

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:)
)
CONSOLIDATED INDUSTRIES CORP.) CASE NO. 98-40533
)
)
Debtor)

DECISION ON OBJECTION TO CLAIM

At Fort Wayne, Indiana, on February 21, 2007.

The trustee has objected to claim number 422 filed on behalf of Enodis Corporation in this chapter 7 case. That claim is in excess of \$52 million and is based upon a judgment entered against Enodis in adversary proceeding number 99-4022, Freeland v. Enodis Corporation, et. al., which is presently the subject of an appeal to the Seventh Circuit. The trustee objects to this claim because, among other things, Enodis has not paid the judgment. Enodis responded to the trustee's objection and premises its right to file the claim upon § 502(h) which states that "[a] claim arising from the recovery of property . . . shall be determined and allowed . . . or disallowed . . . as if such claim had arisen before the date of the filing of the petition." 11 U.S.C. § 502(h). In taking this position, Enodis acknowledges that, as the trustee states in his objection, it has not yet paid the judgment against it. That undisputed fact is dispositive and is sufficient to allow the matter to be determined without further proceedings.

Until Enodis pays the judgment against it all the estate has is an unsatisfied judgment and there has been no recovery of anything. The language of § 502(h) suggests that unless the estate actually recovers something on its judgment the judgment defendant has no claim. The accuracy of this interpretation is confirmed by Rule 3002(c) which specifically directs that "[i]f the judgment

imposes a liability which is not satisfied . . . the claim shall not be allowed.” Fed. R. Bankr. P. Rule 3002(c)(3). Since Enodis acknowledges that it has not satisfied the judgment upon which its claim is based, the trustee’s objection to claim number 422 is well-taken and should be sustained. An order doing so will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court