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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	
	§	
MOSAIC GROUP (US) INC., et al.	§	Case No. 02-81440-HDH-11
	§	
Debtors.	§	(Jointly Administered)
	§	
	§	**Hearing: January 27, 2004, 1:30 p.m.**

OBJECTION TO CONNECTICUT GENERAL LIFE INSURANCE COMPANY'S APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM

Mosaic Group (US) Inc. and its affiliated entities (the "Debtors") file this Objection to Connecticut General Life Insurance Company's Application for Allowance of Administrative Expense Claim (the "Application"). The Debtors object to the allowance of an administrative expense claim as described in the Application.

I. JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a "core" proceeding pursuant to the provisions of 28 U.S.C. §§ 157(b)(2)(A), (L) and (O).

II. BACKGROUND

2. On December 17, 2002, the Debtors filed their voluntary petitions under Chapter 11 of the Bankruptcy Code (the "Petition Date"). Contemporaneous with the filing of the Debtors' chapter 11 petitions, the Debtors' parent company, Mosaic Group Inc. ("MGI") and certain of its Canadian affiliates and subsidiaries, commenced proceedings (the "Canadian Restructuring Process") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended ("CCAA"). The Debtors recognize that any successful restructuring will require the cooperation of parties in interest and the courts in both Canada and the United States.

3. The Court entered an Order consolidating the Debtors' cases for procedural and administrative purposes only on December 18, 2002. The Court granted complex Chapter 11 Bankruptcy Case treatment of the Debtors' cases on December 20, 2002.

4. The Debtors have continued in possession and in operation of their businesses as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. The U.S. Trustee has not appointed a committee pursuant to 11 U.S.C. § 1102.

5. On May 27, 2003, this Court entered its Order approving the sale of substantially all of the assets of the Debtors' Performance Solutions business (the "MPSUS Sale"). On July 2, 2003, this Court entered an order approving the sale of certain U.S. assets in connection with the Debtors' Sales Solutions Division, and the Canadian Court approved the sale of certain Canadian assets associated with the Sales Solutions Division (the "MSS Sale," together with the MPSUS Sale, the "Sales").

6. On or about June 1, 2002, the Debtors first entered into that certain insurance policy for group medical expense and group dental insurance (the "Policy") with Connecticut General Life Insurance Company (the "Claimant").

7. On December 4, 2003, the Claimant filed its Application, seeking administrative status for, *inter alia*, certain "supplemental premiums" due upon termination of the Policy.

III. ANALYSIS

8. The burden of proving entitlement to a priority claim lies with the Claimant. *See In re Quality Beverage Co., Inc .*, 181 B.R. 887, 896 (Bankr. S.D. Tex. 1995). The Claimant cannot carry this burden. As the Claimant notes, an administrative expense must benefit the estate and its creditors. Administrative claims are granted priority to induce creditors to continue serving a struggling debtor postpetition. *See In re Oread, Inc.*, 269 B.R. 871 (Bankr. D. Kan. 2001) (attached as **Exhibit A**)[1]. However, contrary to the Claimant's assertions, the amount sought, $1,326,002, was not incurred in the operation of Debtors' postpetition business. Instead, a large portion of the claimed amount relates back to the prepetition insurance contract. The Claimant has not established and cannot establish which amounts, if any, benefited the estate postpetition.

9. The Claimant states that the supplemental premium compensates the insurer for "among other things, assuming the insurance risk, paying and processing claims *that are incurred during a policy year but not reported until after the termination of the policy* . . . the expenses of administering these claims, and premium taxes." *Application* at ¶ 7 (emphasis added). In fact, the Policy provides that "[i]n addition to the premium . . . a Supplemental

[1] Claimant's premium structure is convoluted, at best. Fortunately, it is the same premium structure that was at issue in the *Oread* decision, and is clarified in that decision.

Premium will be due *on each Monthly Premium Due Date. Payment of such Supplemental Premium will be waived contemporaneously with a subsequent Monthly Supplemental Premium becoming due. The Supplemental Premium outstanding at termination of this Rider will be payable on the date of such termination."* Policy at ¶ 13 (emphasis added). This language makes it clear that the date on which the Claimant became entitled to payment is irrelevant to the analysis of to what period the charges relate. The Supplemental Premium must be analyzed as part of a prepetition contract. Under the case law, a claim is not entitled to administrative expense status depending on when the right to payment arises, but depending upon when the services were performed and their impact upon the estate. *In re Amarex*, 853 F.2d 1526, 1531 (10th Cir. 1988). The claimed amount here is not entitled to administrative expense status because the insurance coverage was consideration for employees' prepetition services and the claimed amounts were expended, at least in part, for illnesses or injuries that arose and were treated prepetition. From the information submitted with the claim, it is not possible to determine if the amounts are accurately calculated on what portion of the amounts relate to post-petition claims.

10. The court in *Oread* analyzed this precise issue relating to another Connecticut General Life Insurance Company cash management insurance policy. In analyzing the supplemental premium, among other payments, the court found that the Claimant did not meet its burden of proving the amount of the claim that was attributable to insurance coverage and medical services rendered postpetition, or the reasonable cost of insuring the debtor during the pertinent period. *Oread*, 269 B.R. at 873. The court held that the consideration that supported the supplemental premium was "mostly, if not entirely, the service of Debtor's employees to Debtor" prepetition. *Id.* at 878.

11. Additionally, the evidence in *Oread* showed that claims are rarely presented for payment until three to four months subsequent to services rendered, so that without more, it was impossible to tell to what period the claims payments made postpetition related. *Id.* at 875. The court denied administrative status for claims paid postpetition on that basis. The facts of *Oread* are indistinguishable from those in the present case.

12. The *Oread* court specifically rejected the reasoning of *In re Smith Corona Corp.*, 210 B.R. 243, 246 (Bankr. D. Del. 1993), where the court characterized an "additional premium," due upon termination of a health, life, and disability policy, as an additional form of compensation agreed to by the parties that benefited the estate. The *Oread* court found that it was irrelevant that the insurance coverage was agreed upon by the parties. The fact that the coverage benefited employees of the company and thus the employer did not bear upon whether the estate was benefited. *Oread*, 269 B.R. at 879. The estate was only benefited to the extent that the consideration for the coverage was labor or services to the estate. *Id.* Consistent with *Oread*, the Claimant is required to prove with reasonable certainty the total amount of insurance claims for postpetition illness or injuries. Only the amounts remitted in the interest of those claims could have induced services to the estate. *Id.* at 879.

13. Although Congress could have included employee insurance claims in its priority scheme for prepetition employee wages or benefit plans, it chose not to do so. Therefore, only such insurance coverage as benefited the bankruptcy estate is compensable as an administrative claim. *Id.* at 879. Because the Claimant has failed to meet its burden of proving which portion of the claim is attributable to the actual and reasonable cost of postpetition services, that is, insuring the particular employees of the Debtors, the claim should be denied administrative priority. *Id.* Additionally, the Debtors object to the immediate payment of any administrative

claim because the Debtors' funds are the cash collateral of its Lender Groups and the Lender Groups have not authorized the use of funds for such purpose.

WHEREFORE, premises considered, the Debtors request that the Court deny the Claimant's request for administrative priority, and grant all other relief as justice requires.

Dated: December ___, 2003

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I hereby certify that on the ____ day of December, 2003, I caused a true and correct copy of the foregoing to be sent via electronic mail to those parties listed on **Attachment A** and via First Class Mail to those parties listed on the Master Service List.

/s/ Kevin D. Rice
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