

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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In re) Bankruptcy Case No. 81C-02203
ENVIROWEST, INC., a Utah)
corporation,) MEMORANDUM AND ORDER ON MOTION
Debtor.) OF JACK W. PECK FOR PERMISSION
TO FILE PROOF OF CLAIM

This is an involuntary Chapter 7 case. Roger G. Segal, Esq., is the trustee. On January 22, 1982, the Court mailed a notice to creditors that claims must be filed within six months from the date set for the meeting of creditors, which was February 9, 1982.

On March 22, 1983, the Court received a letter from Mr. Jack W. Peck, copy attached, requesting permission to file a proof of claim.

Nothing prohibits Mr. Peck from filing a proof of claim at this time. If he files a claim before distribution, if any, that claim will be treated as a tardily filed claim. Based on the facts stated in Mr. Peck's letter, however, the Court cannot determine whether such a tardily filed claim would be paid under 11 U.S.C. § 726(a)(2)(C) or 11 U.S.C. § 726(a)(3). The priority of payment for late claims is higher under § 726(a)(2)(C) than under § 726(a)(3). The claim should be treated under § 726(a)(2)(C) if Mr. Peck did not have notice or actual knowledge of this case in time for timely filing of a proof of his

claim and if he files that claim in time to permit payment of his claim. Otherwise, the claim should be treated under § 726(a)(3).

Thus, if Mr. Peck wishes to file his proof of claim as a late claim, he is permitted to do so. If he chooses to file a proof of claim, he should attach a notarized affidavit indicating, if such is the case, that he did not have notice or actual knowledge of this case in time for timely filing of a proof of his claim. If that is not the case, in other words, if Mr. Peck did have notice or actual knowledge of this case in time for timely filing of a proof of his claim, he need not attach an affidavit and his claim will be treated under § 726(a)(3). If an affidavit is attached, the trustee may object to treatment of the claim under § 726(a)(2)(C) and schedule a hearing. If the trustee does not object prior to distribution, and if an affidavit as described above is attached, the claim will be treated under § 726(a)(2)(C).

If Mr. Peck had notice of this case in time for timely filing of his proof of claim but wants the Court to allow his late filed claim as a timely filed claim pursuant to § 726(a)(2)(a) (which would give it a higher priority in distribution than if the claim were treated under § 726(a)(3) and the same treatment as if he did not have knowledge of this case in time for filing a timely proof of claim), then Mr. Peck must file a motion to extend the time for filing his proof of claim

supported by a notarized affidavit showing a good reason why the Court should excuse his neglect in filing his claim on time.

Mr. Peck is directed to send copies of everything he files with the Court to Roger G. Segal, Trustee, 66 Exchange Place, Salt Lake City, Utah 84111.

IT IS SO ORDERED.

DATED this 30 day of March, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE