

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND

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In re: :  
NEWPORT CREAMERY, INC. : BK No. 01-13196  
Debtor : Chapter 7

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TITLE: *In re Newport Creamery, Inc.*

CITATION: 2002 WL 31433277 (Bankr. D.R.I. Aug. 9, 2002)

**ORDER DENYING APPLICATION FOR ADMINISTRATIVE EXPENSES**

APPEARANCES:

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Chapter 7 Trustee  
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Attorney for The Beacon Mutual Insurance Company  
PARTRIDGE, SNOW & HAHN  
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BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

Heard on the Chapter 7 Trustee's Objection to The Beacon Mutual Insurance Company's Motion for Administrative Expenses under 11 U.S.C. § 503(b)(3)(D).<sup>1</sup> Beacon requests \$24,813 for making a substantial contribution to the Chapter 11 and operating Chapter 7 proceedings, on the ground that by providing workers' compensation insurance to the Debtor, this allowed it to continue to operate and to be sold as a going concern. Beacon alleges that no other carrier was willing to insure the Debtor, and that without its participation the Debtor's business would have shut down, resulting in the diminution in value of the business assets. No evidence was presented at the hearing, only arguments of counsel.

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<sup>1</sup> The applicable Code sections state:  
After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including--

...

(3) the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by-

...

(D) a creditor ... in making a substantial contribution in a case under chapter 9 or 11 of this title. ...

11 U.S.C. § 503 (b)(3)(D).

A creditor has the burden of establishing its entitlement to administrative expenses under Section 503(b), and such applications should be carefully examined for the protection of other creditors. See (*Gray v. Water Street Corp.*) *In re American Shipyard Corp.*, 220 B.R. 734, 738-39 (Bankr. D.R.I. 1998); *In re Cole*, 189 B.R. 40, 47 (Bankr. S.D.N.Y. 1995) (citations omitted). The Motion for Administrative Expenses is DENIED on the following grounds, each of which is sufficient to deny the relief requested: (1) Beacon has not met its burden to establish entitlement to such payment; (2) there is no evidence to support a finding that Beacon provided a substantial contribution, and there is no room for an inference to be drawn that a substantial contribution has been made by Beacon. To the contrary, as the Debtor's insurance carrier on the date of the petition, there is a serious question whether Beacon would have been restrained, had it attempted to discontinue coverage post petition if the Debtor sought to assume the contract. See 11 U.S.C. § 365; (3) Beacon has been paid for all of its post-petition services, was never at risk of non-payment, and in fact is seeking this administrative expense via set off of a return premium due the Debtor. As a creditor who has been paid in

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full, Beacon will fare far better than any other creditor in this case, and there is no discernable reason for the Court to exercise its equitable or Section 105 power to grant the requested relief. Accordingly, the Motion is DENIED.

Enter Judgment consistent with this Order.

Dated at Providence, Rhode Island, this 9<sup>th</sup> day of August, 2002.

/s/ Arthur N. Votolato  
Arthur N. Votolato  
U.S. Bankruptcy Judge