UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

HYMAN CONTAINER CORPORATION Case No. 96-10604 K

Debtor

I have read the Trustee's Brief and the Bank's Response.

Before ruling, it is important to set aside one misconception. Nothing that this Court might say about the size of the Bank's secured and unsecured claims against the bankrupt estate of Hyman Container under 11 U.S.C. §§ 502 and 506 could have the slightest impact on the buyer of the assets. There is absolutely no reason why the buyer's allocation for its own purposes and those of the IRS must accord with what this Court allows the Bank against the assets of this Debtor. The two matters are totally unrelated as a matter of law. For that reason I find that the Bank's lack of concern about the buyer's allocation does not give rise to waiver or estoppel.[1]

That being said, and in light of the concerns stated in my letter of October 25, 1996, it is possible that the buyer's allocation might be the best available evidence of the value of the respective assets, as a matter of fact.

In other words, even though no waiver or estoppel exists as against the bank, and

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[1]The possibility that evidence might be adduced in the present proceeding that provokes inquiry by the IRS or others does not change this result. The IRS can look at other evidence whether or not this dispute is pending here.

if the clock must be rolled back and a determination made as to the symbiotic and synergistic effects of offering the encumbered and unencumbered assets together as one lot, the Court would be hard-pressed to find a better starting point than the allocation used by the buyer, unless the buyer had tax attributes that were unrelated to this purchase, that affected its allocation. As an arms-length buyer applying tax laws and other consideration to maximum benefit, its allocation is probably the best evidence one can get of the "true" value of each facet of the combined asset "package," (unless there were unrelated tax implications affecting the ones at issue).

I have rejected the Bank's appraisal of the real estate as being inapposite. I have also observed that the appraised value of the equipment is useless without a way to allocate as between the other elements -- real estate and inventory.

The current posture of this dispute (whatever that posture is) is not unlike a typical claim objection. Essentially, the Bank asserts a secured claim in the amount of approximately $186,000, and the Trustee objects, believing the claim to be only about $88,000. His burden is to bring forth evidence that is at least as probative as the claim itself, and thereby rebut the presumption that exists by virtue of Bankruptcy Rule 3001(f).

The buyer's allocation is surely at least as probative as the faulty suppositions that are the basis of the Bank's claim.

The Bank now has the burden of persuasion, even though it is not estopped and has not waived its right to be heard.

As I indicated in my letter, I invite suggestion as to how better to roll the clock back. It is the Bank's burden to persuade us of a better way to do that than merely accepting the

buyer's allocation as the best valuation evidence. The Bank shall have until January , 1997, to propose a better method.

SO ORDERED.

Dated: Buffalo, New York
December , 1996

/s/Michael J. Kaplan
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Michael J. Kaplan, U.S.B.J.