

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE/BRYSON CITY DIVISIONS



IN RE:

Michael Allan Blair and Elizabeth Wood Blair
Timothy Leon Bradford and Carrie Sue Bradford
Henry Wayne Broome and Patricia Moe Broome
Rhonda Leona Burrell
Gregory Thomas Day and Christine Pace Day
Scott Benjamin Emory and Lindy Higgins Emory
Glenn Ray Griffin and Wanda Lee Griffin
David Randall Hannah and Mary Porter Hannah
Harold Jeffery Hargus and Linda Kay Hargus
Robert Lee Messer and Betty Jean Messer
Pamela Darlene Moody
Edward Clarence Morrow and Kathy Diane Morrow
Jeffery Allen Payne and Jodi Holt Payne
Frank Robinson, Jr. and Barbara Ann Robinson
William Ronald Rogers and Katherine B. Rogers
Dale Alan Stafford and Amanda Autry-Stafford
Dale W. Tweedie and Cherie D. Tweedie
Leonard Chris Waldroup and Crystal L. Waldroup

Debtor(s)

Chapter 13
Case Nos.: 02-11400
03-10062
03-10107
03-20033
03-10269
03-10091
02-11269
03-10175
02-11093
02-20169
02-11217
03-20008
03-20018
03-10157
02-11243
03-10114
02-11226
03-20024

AMENDED
ORDER OVERRULING
OBJECTION TO CLAIM(S)

JUDGMENT ENTERED ON FEB 10 2004

THIS CAUSE COMING on for hearing January 20, 2004, before the Honorable George R. Hodges on the Debtors' Objection to the Claim(s) of Capital One Bank Objection, filed July 16, 2003, with Capital One represented by Deborah Tyson and the Debtors by T. Bentley Leonard, It Is Found as Fact as follows:

1. The above Debtors listed Capital One Bank as an unsecured creditor.
2. Capital One Bank filed claims in each of the above cases listing a principal balance plus interest and fees. In each case, there is no supporting documentation showing how such calculations were made.
3. In the case of Michael Allen Blair and Elizabeth Wood Blair, (Case No. 02-11400) Capital One Bank filed a claim in the amount of \$640.49 of which \$286.89 is listed as principal and \$353.60 is listed as interest and fees.
4. In the case of Timothy Leon Bradford and Carrie Sue Bradford, (Case No. 03-10062) Capital One Bank filed a claim in the amount of \$296.74 of which \$98.71 is listed as

principal and \$198.03 is listed as interest and fees. A second claim was filed in the amount of \$293.07 of which \$94.76 is listed as principal and \$198.31 is listed as interest and fees.

5. In the case of Henry Wayne Broome and Patricia Moe Broome, (Case No. 03-10107) Capital One Bank filed a claim in the amount of \$671.94 of which \$159.29 is listed as principal and \$512.65 is listed as interest and fees. A second claim was filed in the amount of \$1,699.12 of which \$1,151.46 is listed as principal and \$547.66 is listed as interest and fees.

6. In the case of Rhonda Leona Burrell, (Case No. 03-20033) Capital One Bank filed a claim in the amount of \$841.15 of which \$463.37 is listed as principal and \$377.78 is listed as interest and fees. A second claim was filed in the amount of \$616.85 of which \$339.98 is listed as principal and \$276.87 is listed as interest and fees.

7. In the case of Gregory Thomas Day and Christine Pace Day, (Case No. 03-10269) Capital One Bank filed a claim in the amount of \$562.26 of which \$184.08 is listed as principal and \$378.18 is listed as interest and fees. A second claim was filed in the amount of \$632.98 of which \$298.90 is listed as principal and \$334.08 is listed as interest and fees.

8. In the case of Scott Benjamin Emory and Lindy Higgins Emory, (Case No. 03-10091) Capital One Bank filed a claim in the amount of \$569.70 of which \$124.30 is listed as principal and \$445.40 is listed as interest and fees.

9. In the case of Glenn Ray Griffin and Wanda Lee Griffin, (Case No. 02-11269) Capital One Bank filed a claim in the amount of \$913.44 of which \$279.27 is listed as principal and \$634.17 is listed as interest and fees.

10. In the case of David Randall Hannah and Mary Porter Hannah, (Case No. 03-10175) Capital One Bank filed a claim in the amount of \$770.04 of which \$305.55 is listed as principal and \$464.49 is listed as interest and fees.

11. In the case of Harold Jeffery Hargus and Linda Kay Hargus, (Case No. 02-11093) Capital One Bank filed a claim in the amount of \$570.92 of which \$439.44 is listed as principal and \$131.48 is listed as interest and fees. A second claim was filed in the amount of \$1,040.00 of which \$960.58 is listed as principal and \$79.42 is listed as interest and fees. A third claim was filed in the amount of \$598.67 of which \$383.11 is listed as principal and \$215.56 is listed as interest and fees.

12. In the case of Robert Lee Messer and Betty Jean Messer, (Case No. 02-20169) Capital One Bank filed a claim in the amount of \$843.86 of which \$224.80 is listed as principal and \$619.06 is listed as interest and fees.

13. In the case of Pamela Darlene Moody, (Case No. 02-11217) Capital One Bank filed a claim in the amount of \$839.81 of which \$453.51 is listed as principal and \$386.30 is listed as interest and fees.

14. In the case of Edward Clarence Morrow and Kathy Diane Morrow, (Case No. 03-2008) Capital One Bank filed a claim in the amount of \$663.65 of which \$244.16 is listed as principal and \$419.49 is listed as interest and fees.

15. In the case of Jeffery Allen Payne and Jodi Holt Payne, (Case o. 03-20018) Capital One Bank filed a claim in the amount of \$943.58 of which \$199.63 is listed as principal and \$743.95 is listed as interest and fees. A second claim was filed in the amount of \$817.55 of which \$306.76 is listed as principal and \$501.79 is listed as interest and fees.

16. In the case of Frank Robinson, Jr. and Barbara Ann Robinson, (Case No. 03-10157) Capital One Bank filed a claim in the amount of \$1,011.97 of which \$273.33 is listed as principal and \$738.64 is listed as interest and fees. A second claim was filed in the amount of 885.25 of which \$266.82 is listed as principal and \$618.43 is listed as interest and fees.

17. In the case of William Ronald Rogers and Katherine B. Rogers, (Case No. 02-11243) Capital One Bank filed a claim in the amount of \$334.41 of which \$174.88 is listed as principal and \$159.53 is listed as interest and fees. A second claim was filed in the amount of \$447.52 of which \$198.61 is listed as principal and \$248.91 is listed as interest and fees.

18. In the case of Dale Alan Stafford and Amanda Autry-Stafford (Case No. 03-10114) Capital One Bank filed a claim in the amount of \$1,531.60 of which \$1,002.88 is listed as principal and \$528.72 is listed as interest and fees. A second claim was filed in the amount of \$884.04 of which \$310.30 is listed as principal and \$573.74 is listed as interest and fees. A third claim was filed in the amount of \$1,207.59 of which \$519.17 is listed as principal and \$688.42 is listed as interest and fees. A fourth claim was filed in the amount of \$615.83 of which \$146.92 is listed as principal and \$468.71 is listed as interest and fees. A fifth claim was filed in the amount of \$982.61 of which \$495.64 is listed as principal and \$486.97 is listed as interest and fees.

19. In the case of Dale W. Tweedie and Cheri D. Tweedie, (Case No. 02-11226) Capital One Bank filed a claim in the amount of \$476.99 of which \$187.88 is listed as principal and \$289.11 is listed as interest and fees.

20. In the case of Leonard Chris Waldroup and Crystal L. Waldroup, (Case No. 03-20024) Capital One Bank filed a claim in the amount of \$481.66 of which \$147.00 is listed as principal and \$334.66 is listed as interest and fees.

21. Capital One failed to attach documentation to each claim as required by Bankruptcy Rule 3001 and failed to itemize "interest and fees" for other charges in the proof of claim.

22. In May, 2003, Bentley Leonard, attorney for Debtors', sent a letter to Capital One Bank asking for such documentation to be provided for those specific claims and also that documentation be attached to all future claims filed. No response was made to such letter by Capital One Bank.

23. Capital One has furnished the Debtors' attorney documentation indicting the breakdown amounts for each claim and the portion labeled "interest and fees" appears to be for late charges and over limit fees. Such late and over limit fees are proper obligations of the Debtors.

24. Capital One has paid to Debtors' attorney \$600.00 for attorney fees incurred in filing the Objection to Claims.

Upon the foregoing Finding of Facts, it is Concluded as a Matter of Law as follows:

1. The claims filed by Capital One Bank are deemed allowed.

Upon the Foregoing Findings of Facts and Conclusions of Law It Is NOW THEREFORE, ORDERED, ADJUDGED and DECREED as follows:

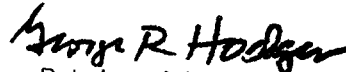
1. That the proofs of claim filed by Capital One Bank in the above cases and supplemented by follow-up documentation provided after objection had been filed are allowed, and the Debtors' objection overruled.

2. That Capital One Bank shall file no more proofs of claim with the court and/or the Trustee unless it complies with Bankruptcy Rule 3001 and provides a written itemization in understandable language specifically describing the basis of the claim, including the calculation of any "interest and fees".

3. Should Capital One Bank file a proof of claim in any case without supporting documentation as per Bankruptcy Rule 3001 or fail to itemize in understandable language "interest and fees", then Capital One Bank shall be subject to further attorney fees.

4. That Capital One Bank shall pay to debtors' attorney Bentley Leonard the sum or \$1,200.00 of which \$600.00 has already been previously paid.

Effective date entered.

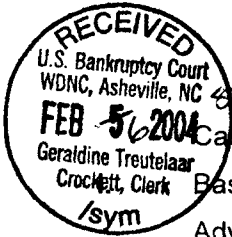


~~Dated as of date entered~~

JUDGE PRESIDING
UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

Form for Tender of Order or Judgment



Case Name: See Attached List

Base Case No.: See Attached Chapter: 13 Adv. Proc. #: _____

Adv. Proc. Name: _____

Primary Relief: Overruling Objection to Claim(s)

_____ Consent Order _____ Order after "No-Protest Notice" with No Objection or Response

II. _____ Ex Parte Order Submitted with Motion
XX Pursuant to Court's Oral Ruling at Hearing on: 1/20/2004
_____ Other Order _____

_____ No Opposing Counsel or Party (Objection to Form of Order Waived)
_____ Form of Order Approved by Opposing Counsel

III. _____ Date Opposing Party/Counsel was Served with Copy of Proposed Order and this Form:

Parties served are as follows: _____

IV. Order will be Tendered to the Court on: 02/04/2004

V. XX Return filed copy of order in enclosed self-addressed, stamped envelope to attorney who on attached envelope. Copy will be forwarded to Trustee.
_____ Call attorney who prepared order (tel. **342-5250**) when signed order can be picked up.

Attorney preparing order: Deborah M. Tyson Bar # 28134

Law Firm: Poyner & Spruill LLP

VI. Address: 301 South College Street, Suite 2300
City, State and Zip: Charlotte, North Carolina 28202
Telephone: 704-342-5250 (Direct Line: 704) 342-5316
Representing: Capital One Bank

INFORMATION MUST BE COMPLETED IN EACH SECTION (I-VI)
OR THE COURT MAY REJECT THE ORDER AS SUBMITTED.

NOTICE TO ATTORNEYS: REPRODUCE THIS FORM ON GREEN STOCK AND TENDER IT WITH ORIGINAL AND FOUR COPIES OF ORDER. SUBMIT ORDER WITH EX PARTE MOTION. SUBMIT OTHER ORDERS ONLY AFTER EXPIRATION OF NOTICE OR OBJECTION PERIODS (IF APPLICABLE).

Pre-addressed, stamped envelopes and certificate of parties to be served attached.