

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA**

In re:  
MICHAEL C. HATTEN,  
  
Debtor.

Case No. A98-00174-DMD  
Chapter 7

**Filed On  
3/28/12**

**MEMORANDUM ON MOTION TO DISTRIBUTE**

11 U.S.C. § 726 sets forth the order in which property of the estate is distributed. Priority claims are paid first, pursuant to § 726(a)(1). Timely filed unsecured claims and certain tardily filed unsecured claims<sup>1</sup> are paid second under § 726(a)(2).

Section 726(a)(3) then provides for payment of the remaining untimely filed claims. Section 726(a)(4) provides for the payment of fines and penalties. Section 726(a)(5) provides for the payment of interest on claims paid under (a)(1) through (a)(4) of § 726. Only after all claims arising under § 726(a)(1) - (a)(4) are paid in full with interest does the debtor receive any funds.<sup>2</sup>

Here, the debtor made payments to the State of Alaska over the years. The State of Alaska's unsecured claim was reduced from \$45,367.69 to just \$949.38 through prior dividends and money from the debtor. When the State returned \$28,121.81 to the trustee, it became property of the estate payable under the priorities of 11 U.S.C. § 726(a).

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<sup>1</sup> These tardily filed unsecured claims are paid with timely filed claims if the creditor had no knowledge of the filing of the case and the proof of claim was filed in time to permit payment. 11 U.S.C. § 726(a)(2)(C).

<sup>2</sup> 11 U.S.C. § 726(a)(6).

As such, it is payable to Bonita Mahan's allowed unsecured proof of claim pursuant to § 726(a)(4).

The debtor has cited *Hoos & Company v. Dynamics Corporation of America*, 570 F.2d 433 (2nd Cir. 1978), in support of his position. *Hoos* is an interesting case. It arose under the old Bankruptcy Act that preceded the Bankruptcy Reform Act of 1978. In *Hoos*, a chapter 11 creditor sought to use a letter to an unofficial creditors' committee secretary as a timely filed proof of claim. The court found that the letter simply was not a proof of claim and denied the creditor's application. *Hoos* was a chapter 11 reorganization proceeding. It was not a distribution in a liquidation proceeding governed by § 726. Here, Bonita Mahan filed a tardy unsecured claim with the court on June 25, 1998. She did not submit a letter to the trustee. *Hoos* does not apply here.

An order and judgment will be entered granting the trustee's motion for authority to disburse money.

DATED: March 28, 2012

BY THE COURT

/s/ Donald MacDonald IV  
DONALD MacDONALD IV  
United States Bankruptcy Judge

Serve: M. Hatten, Pro Se Debtor  
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K. Battley, Trustee  
U. S. Trustee

03/28/12