

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

In re:

JAMES WORTH BAXTER,

Debtor.

Case No. A04-01154-DMD

Chapter 7

**Filed On
10/1/07**

**MEMORANDUM REGARDING MOTION FOR RECONSIDERATION
OF CLAIMS OF ROBERT EDELEN**

After a hearing on the trustee's objection to Mr. Edelen's claims, an order was entered allowing his claim in the sum of \$35,439.92. That ruling was based on the premise that Edelen was an employee of the debtor and not an independent contractor. The trustee has discovered new evidence which indicates that premise was incorrect.

First, the Alaska State Department of Labor, Wage and Hour Administration does not support Edelen's claim. It has concluded that Edelen and his company "Dirt to Finish" was an independent contractor and not an employee of the debtor. The trustee also submitted an Alaska Business License for Dirt to Finish along with a certificate of liability insurance indicating that Dirt to Finish had liability insurance of \$1,000,000.00 per occurrence. In response Mr. Edelen has indicated that he operated the debtor's equipment on occasion. That fact alone does not make Edelen an employee of the debtor, however. I conclude that Edelen was an independent contractor. He is not entitled to a 50% overtime surcharge of \$4,530.00 or the first penalty of \$13,590.00.

That leaves Edelen's supplemental claim of \$6,383.20. I have again reviewed Edelen's lengthy documentation in support of his proofs of claim. I simply cannot reconcile

the amended proof of claim with the supplemental proof of claim. Edelen has failed to produce records detailing the additional sums allegedly due him for July and August of 2006. Therefore, his claim will be disallowed accordingly. An appropriate order will be entered.

DATED: October 1, 2007.

BY THE COURT

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

Serve: C. Christianson, Esq.
Pro Se Debtor
R. Edelen
K. Battley, Trustee
U.S. Trustee

10/1/07