

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA

In re:

ALLVEST CORPORATION, d/b/a  
Allvest, Inc.,

Debtor.

Case No. 02-01042-DMD  
Chapter 7

Filed On  
5/19/09

**MEMORANDUM ON MOTION FOR PROTECTIVE ORDER  
AND TO QUASH**

David Bukey, counsel for William Weimar in *United States v. William Weimar*, 3:08-CR-0089-JWS, has filed a motion for protective order and to quash. The motion was brought after Mr. Bukey was served with a subpoena duces tecum issued in this bankruptcy case by counsel for the chapter 7 trustee. The subpoena requested Mr. Bukey to provide copies of the following:

- Presentence Investigation Report and attachments, *including, but not limited to* Weimar's Assets and Liabilities (DE 17, Attachment 5), filed October 28, 2008, *and*
- All documents of any nature submitted to the U.S. District Court in Case No.: 3:08-CR-00089-JWS or submitted to the Department of Justice or any agency of the Federal Government in conjunction with that case which contain or disclose the ownership of any or all assets of William Weimar or provide financial information of any nature concerning William Weimar.<sup>1</sup>

Mr. Bukey contends the subpoena should be quashed on the following grounds:

1) the information requested isn't relevant to any party's claim or defense, as required under Fed. R. Civ. P. 26(b)(1); and 2) all of the information requested is protected against

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<sup>1</sup> See Ex. A to Decl. of J. Torgerson, filed Apr. 22, 2009 (Docket No. 392).

disclosure under D. AKLR 32.2, the work product doctrine or Mr. Weimar's constitutionally protected privacy interests. The trustee opposes the motion.

Although presentence reports are generally considered to be confidential documents, they may be released to third parties upon a showing that such release will serve the ends of justice.<sup>2</sup> Such a showing was established where a newspaper requested release of a presentence report for the purpose of informing the public about the sentencing process.<sup>3</sup> This same presentence report was also released to a decedent's estate which sought the information to determine whether it had a cause of action for negligence, because the information in the report could not be obtained from other sources.<sup>4</sup> The release of the presentence report was not preconditioned on the estate initiating a civil action first.

Here, I feel the trustee has shown that disclosure of the presentence report and other documents he has requested will serve the ends of justice. The information is material to this bankruptcy proceeding, which is still pending. The integrity of the bankruptcy process is a matter of legitimate public concern. Additionally, the trustee is obligated by statute, 11 U.S.C. § 704, to investigate the financial affairs of a debtor. This duty survives for the duration of the bankruptcy case. In fact, bankruptcy cases are routinely reopened in instances

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<sup>2</sup> *United States v. Schlette*, 842 F.2d 1574, 1579 (9th Cir. 1988), *amended on other grounds*, 854 F.2d 359 (9th Cir. 1988).

<sup>3</sup> *Schlette*, 842 F.2d at 1581-82. The court found the public had a legitimate interest in this issue in a situation where a convicted felon, after being placed on probation, shot and killed the prosecutor who had obtained the arson conviction which had resulted in the felon's incarceration.

<sup>4</sup> *Id.* at 1584.

where a trustee has discovered concealed or omitted assets after the case has closed. Further, Weimar had a duty, under the terms of the settlement, to make a full and honest disclosure of his assets. I agree with the trustee that under such circumstances, Weimar cannot claim a violation of his privacy interests.<sup>5</sup> Finally, as Weimar is now incarcerated, it would be extremely difficult for the trustee to obtain the information from other sources.

While I agree that the trustee has shown good cause for having access to the records requested, I cannot compel their production. The presentence report and the financial documentation that was submitted to the pretrial services office for the purpose of preparing the report are confidential court records under D. AK LR 32.2(a)(1). The bankruptcy court cannot order the release of confidential records of the District Court. Nor can Mr. Bukey release these records to the trustee voluntarily.<sup>6</sup> The trustee is not without remedy, however. The District Court may order the release of these records “to serve the interests of justice.”<sup>7</sup> The trustee must file a motion with the District Court, following the procedure found in D. AK LR 32.2(e), to obtain access to the documents he seeks.

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<sup>5</sup> In fact, Weimar’s credibility, with regard to his financial disclosures, has previously been brought into issue before this court. In *Battley v. Weimar*, Adv. No. A04-90106, I found that Weimar had, in the course of his settlement negotiations with the trustee and Allvest’s two major creditors, fraudulently misrepresented the value of a yacht and understated the amount of time it had been listed for sale. There was also evidence that Weimar had asked the boat broker with the listing for the yacht to overstate the yacht’s value to the trustee and that, after settlement was reached and without the trustee’s knowledge, Weimar had removed fixtures from the yacht, reducing its market value. *See* Report and Recommendation to the United States District Court, filed in *Battley v. Weimar*, Adv. No. A04-90106-DMD, filed Feb. 27, 2006 (Docket No. 81).

<sup>6</sup> D. AK LR 32.2(a)(2), (b)(1).

<sup>7</sup> D. AK LR 32.2(a)(2).

For the foregoing reasons, Mr. Bukey's motion for protective order and to quash is granted. An order will be entered consistent with this memorandum.

DATED: May 19, 2009

BY THE COURT

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

Serve: J. Siemers, Esq.  
J. Torgerson, Esq.  
S. Shamburek, Esq.  
K. Battley, Trustee  
U. S. Trustee  
5/19/09