



**IT IS ORDERED as set forth below:**

**Date: September 17, 2008**

*C. Ray Mullins*

**C. Ray Mullins  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
ALLIED HOLDINGS, INC., and	:	05-12515-CRM through
Affiliated Debtors.	:	05-12537-CRM
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 11 OF THE
Debtors.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Objection to the Claim of John Kavooras and Auto Haulaway, Limited (hereinafter collectively the "Claimants"), filed by Allied Holdings, Inc. and its affiliated debtors (hereinafter the "Debtors"). This matter constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(B); 1334.

**FINDINGS OF FACT**

On January 1, 1981 the Debtors and Auto Haulaway Limited (hereinafter "AHL")

entered into an agreement (hereinafter the "Agreement") through which the Debtors engaged AHL to provide consulting services. Pursuant to the Agreement, John Kavooras was entitled to receive monthly payments from the Debtor in the amount of \$8,516.67 for the remainder of his life.

On July 31, 2005 (hereinafter the "Petition Date"), the Debtors filed a voluntary petition under Chapter 11 of the Bankruptcy Code. At that time, Mr. Kavooras was 88 years of age. On the Petition Date, Mr. Kavooras had a life expectancy of sixty months based upon life expectancy tables promulgated by the CDC and published in the National Vital Statistics Report, Volume 53, No. 6, dated November 10, 2004. Mr. Kavooras died on September 10, 2007. As of the date of Mr. Kavooras' death, the Claimants had failed to receive twenty-six monthly payments from the Debtors.

On February 14, 2006, the Claimants filed a Proof of Claim in the amount of \$452,598.66. The Debtors objected to the Claimants' Proof of Claim on the basis that the claim amount was overstated. The Claimants contend that their claim should be allowed in the amount of \$443,040.91, which is derived by multiplying the amount of the monthly payment due from the Debtors by Mr. Kavooras' sixty-month life expectancy as of the Petition Date and then by reducing the sum to its present value using a six percent assumed rate of interest. The Debtors request that the Court reduce the amount of the claim to \$221,433.40, which the Debtors calculate by multiplying the monthly payment due by the twenty-six monthly payments Mr. Kavooras failed to receive as of his actual date of death.

The parties have agreed that, once the Court determines the proper method for determining the amount of the claim, the Claimants shall be entitled to an allowed general, unsecured claim (Class 4A) in the name of the Estate of John P. Kavooras. Accordingly, the Court need only decide whether the amount of the claim should be calculated by using Mr. Kavooras' projected death date (based on the actuarial table) or by using Mr. Kavooras' actual death date.

### **CONCLUSIONS OF LAW**

Section 501 of the Code provides that a "creditor . . . may file a proof of claim." 11 U.S.C. § 501. "Claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured . . . ." 11 U.S.C. § 101 (5). Pursuant to section 502(a) of the Code, "a claim or interest, proof of which is filed under section 501 . . . , is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Upon objection to a claim, "the court, after notice and a hearing, shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, except" to the extent that the claim would not be enforceable against the debtor and property of the debtor under . . . applicable law." 11 U.S.C. § 502(b). With regard to contingent or unliquidated claims, the Code provides that such claims "shall be estimated for purposes of allowance" under section 502 if the "fixing or liquidation" of the claim "would unduly delay the administration of the case." 11 U.S.C. § 502(c).

A claim is not contingent if all events giving rise to the debtor's liability occurred pre-petition. *See United States v. Verdunn*, 89 F.3d 799 (11th Cir. 1996) (citing *In re Knight*, 55 F.3d 231 (7th Cir. 1995)); *see also In re Jordan*, 166 B.R. 201 (Bankr. D. Me. 1994) ("A claim is contingent if 'the debtor's legal duty to pay does not come into existence until triggered by the occurrence of a future event. . . ."). A claim is "liquidated if the amount due can be readily ascertained either by reference to an agreement or by simple mathematics." *In re Jordan*, 166 B.R. 201 (Bankr. D. Me. 1994).

Here, the claim at issue was not contingent as of the petition date, as the Debtors' liability for the amount of the debt had already accrued. The claim *was* unliquidated because the total amount of the claim was unknown on the petition date. Accordingly, the Claimants filed a claim seeking what they believed, based on the actuarial tables, was a reasonable amount that would come due under the Agreement. However, at this time, the parties can ascertain the true amount due under the Agreement because Mr. Kavooras has actually passed away. Accordingly, there is no longer any need for the Court to estimate the amount of the claim based on an informed guess as to how long Mr. Kavooras would live.

As of the petition date, the Claimants' had a right to be paid a certain amount of money per year until the death of Mr. Kavooras. This right constitutes a prepetition claim. The amount of a prepetition claim arising from a contract is determined in accordance with the parties' agreement and applicable state law. *See* 11 U.S.C. § 502(b)(1). As the Debtors note, the agreement did not provide that the amount due would be calculated by reference

to actuarial tables. The agreement provided that the payments would be due and owing until Mr. Kavooras' death.

Contrary to the Claimants' contentions, the Bankruptcy Code does not require the Court to ignore the fact that Mr. Kavooras has actually passed away. A prepetition claim amount may be affected by events that occur only after the petition date. *See In re Manville Forest Prods. Corp.*, 209 F.3d 125 (2d Cir. 2000) ("The fact that the contingency in this case- the environmental liability claim . . . - materialized post-petition does not transmogrify the claim into a post-petition claim, but merely means that the contingent claim moved closer to becoming liquidated upon the happening of that contingency."); *In re DeVore*, 2002 WL 970407 (Bankr. D. Iowa 2002) (claim for indemnity became fixed and liquidated postpetition when creditor became liable for debt owed by the debtor). As the Claimants point out, in some cases, it is not feasible to wait for events to occur or for facts to be revealed, and doing so would result in an unreasonable delay in the claims administration process. In such cases, the claim is allowed in an estimated amount that takes into consideration the possibility that certain events will occur in order to accommodate the expeditious administration of the case. Here, however, because the operative event has occurred and all facts necessary to calculate the claim are known, there is no need to guess as to the amount of this claim.

## **CONCLUSION**

For the reasons stated above, the Court concludes that the Debtors' objection to the claim of John Kavooras and Auto Haulaway, Limited should be, and hereby is, **SUSTAINED.**

The Estate of John P. Kavooras shall be allowed a general, unsecured claim (Class 4A) in the amount of \$221,433.40.

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