

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 05-19883
)
CLARK INDUSTRIAL) Chapter 11
INSULATION, INC.,)
Debtor.) Judge Arthur I. Harris

ORDER

Before the Court are motions (Dockets #78 & #80 respectively) of creditor Cincinnati Insurance Company for orders determining the failure of Climaco, Leftkowitz, Peca, Wilcox & Garfoli Co., LPA (Climaco) and of Brent Coon & Associates (Brent Coon) to comply with Bankruptcy Rule 2019(a). The motions also request that the Court refuse to permit these firms to be heard further or to intervene in the above-captioned case. For the reasons that follow, the motions are granted in part and denied in part. The Court finds that both Climaco and Brent Coon have failed to comply with Rule 2019(a) but declines to prohibit either Climaco or Brent Coon from being heard further or otherwise intervening. On or before February 10, 2006, each firm shall file verified statements containing the information set forth below. Failure to so file shall be the subject of further orders by the Court.

Federal Rule of Bankruptcy Procedure 2019(a) provides in pertinent part:

[E]very entity . . . representing more than one creditor . . . shall file a verified statement setting forth

- (1) the name and address of the creditor . . . ;
- (2) the nature and amount of the claim . . . ;
- (3) a recital of the pertinent facts and circumstances in connection with the employment of the entity . . . ;

Under 2019(b) the Court may determine whether there has been a failure to comply with the provisions of subdivision (a) and may, if it so determines, “refuse to permit that entity . . . to be heard further or to intervene in the case.” *See Baron & Budd, P.C. v. Unsecured Asbestos Claimants*, 321 B.R. 147 (D.N.J. 2005). Here, Climaco filed a notice of appearance and request for notice (Docket #33) which stated that Climaco represents “certain persons with asbestos-related injuries, creditors, and parties in interest” but contained none of the information required by Rule 2019(a). Brent Coon filed a notice of appearance (Docket #24) with similar language, which also fails to comply with Rule 2019(a).

While the language of Rule 2019(a) is mandatory with respect to information which must be filed by attorneys purporting to represent multiple creditors, the language of 2019(b) is discretionary. If the Court determines that an entity has failed to comply with 2019(a), “the [C]ourt *may* refuse to permit that entity . . . to be heard further or to intervene in the case.” Fed. R. Bankr. P. 2019(b) (emphasis added). At this time, the Court declines to prohibit either Climaco or Brent Coon from being heard or otherwise intervening.

Under subsection 105(a) of the Bankruptcy Code and the Court's inherent powers, the Court may take any action "necessary or appropriate to enforce or implement court orders or rules." *See Baron & Budd*, 321 B.R. at 166. Therefore, both Climaco and Brent Coon are directed to file verified statements substantially similar to those filed by Kelley & Ferraro, LLP (Docket #69) and Bevan & Associates, LPA (Docket #75). Such verified statements shall be filed on or before February 10, 2006, and shall set forth the names and addresses of all creditors represented, the nature of each claim (*e.g.*, a diagnosis), the value of the claim (or a statement that such claim is unliquidated), and the pertinent facts and circumstances in connection with the employment of Climaco or Brent Coon. Once the verified statements are timely filed, the matter shall be concluded. Failure to file the verified statements in accordance with this order shall be the subject of further orders by the Court.

IT IS SO ORDERED.

/s/ Arthur I. Harris 1/27/2006
Arthur I. Harris
United States Bankruptcy Judge