

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
ORION REFINING CORPORATION,)
)
Debtor.) Case No. 03-11483 (CGC)
)
_____)

MEMORANDUM DECISION

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Fund II, LLC, and Jefferies Employees
Opportunity Fund, LLC

Dated: February 19, 2004

CASE, J.

Before this Court is the Motion of Merrill Lynch Bond Fund, Inc. - High Income Portfolio ("Merrill Lynch") for Allowance of Postpetition Portion of its Secured Claim. (Docket No. 997). Objections were filed by Orion Refining Corporation ("Orion") (Docket No. 1036) and Credit Suisse First Boston Management LLC ("CSFB") (Docket No. 1035) both on substantive grounds and on the grounds that the matter is not ripe for adjudication. As set forth below, the Court agrees that the matter is not ripe for adjudication.

FACTS

On May 13, 2003 (the "Petition Date"), Orion filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code. Orion continues to manage its business and property as debtor-in-possession.

Also on May 13, 2003, Orion entered into the Purchase and Sale Agreement Among Orion Refining Corporation, Valero Energy Corporation and Valero Refining - New Orleans, L.L.C.

On May 30, 2003, Orion filed a motion seeking determination of the secured status of Merrill Lynch's secured claim to the extent such claim is an allowed secured claim (the "Valuation Motion"). Merrill Lynch objected to the Valuation Motion on June 24, 2003.

A hearing was held on June 26, 2003 to address Orion's proposed sale of all its assets to Valero. This Court approved the sale and the sale was consummated on July 1, 2003.

Pursuant to the sale order, the amount of principal and interest due to Merrill Lynch as of the Petition Date was stipulated to be \$37,954,285.71. The sale order established a reserve of \$45,500,000 to satisfy any secured obligation to Merrill Lynch.

On January 30, 2004, Merrill Lynch filed a motion seeking an order allowing the postpetition portion of its secured claim. Specifically seeking certain interest, fees and other charges which have accrued since the Petition Date.

The Court held a hearing that lasted four days with respect to the Valuation Motion. The hearing concluded on February 17, 2004.

DISCUSSION

Merrill Lynch seeks an order determining the amount of interest due on its claim. It acknowledges that it is entitled to interest only to the extent it is oversecured. The extent of its security will be determined primarily by the result of the tank farm trial – the evidence for which has now been concluded. The parties have agreed to conclude briefing in April, after which time the Court will issue a decision.

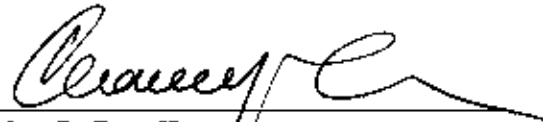
Orion and CSFB have objected, both on the grounds that the matter is not ripe until the tank farm valuation is fixed, and for substantive reasons.

The Court has reviewed the papers filed by the parties and the arguments made at the hearing on February 17, 2004 and concludes that the objections are well taken. It is a fundamental principle of jurisprudence that courts should decide actual cases or controversies and not give advisory opinions. Ruling on this issue now would be an advisory opinion.

CONCLUSION

The Court will revisit the issue immediately after ruling on the valuation of the tank farm. It is the Court's intention that the issue of postpetition interest and costs will be decided concurrently with the underlying valuation issues so that both matters will result in simultaneous

final orders subject to contemporaneous or consolidated appeals, should any party wish so to proceed.



Charles G. Case II
United States Bankruptcy Judge