IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
	:	
ABC COMPANY ET AL.,	:	**Case No. 00-00000 (PJW)**
	:	
Debtors.	:	**Jointly Administered**
	:	
	:	**Re: Docket Nos. 6, 7, 36**
	:	**and 10**

CREDITORS CITY OF MILTON'S AND CITY OF MILTON GAS AND ELECTRIC'S ANSWERING BRIEF IN OPPOSITION TO THE DEBTORS' THIRD OMNIBUS OBJECTION TO CLAIMS (SUBSTANTIVE) AND MOTION TO DISALLOW, REDUCE, AND/OR RECLASSIFY SUCH CLAIMS

Dated: **January 12, 2008**
Milton, Massachusetts

John J. Nesbitt
Nesbitt & Nesbitt, LLC
Suite 100
100 Shady Side Road
Milton, Massachusetts 09040
Telephone: (222) 535-0000
Facsimile: (222) 535-2222

Counsel to the City of Milton Gas & Electric Department, Creditor

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases Page

TABLE OF AUTHORITIES

Creditors the City of Milton and City of Milton Gas and Electric Department (collectively, "the Milton Creditors") hereby file this answering brief (the "Answering Brief") pursuant to this Court's Order (Agreed) Concerning Briefing Schedule in Connection with Debtors' Third Omnibus Objection to Claims (Substantive) and Motion to Disallow, Reduce and/or Reclassify Such Claims [Docket No. 650] with Respect to (A) Proof of Claim Number 134 Filed by the City of Milton and (B) Proof of Claim Number 109 Filed by the City of Milton Gas and Electric Department [Docket No. 1039], entered November 16, 2007 in response to the Debtors' Opening Brief in Support of Third Omnibus Objection to Claims (Substantive) and Motion to Disallow, Reduce, and/or Reclassify Such Claims, and in Response to the Oppositions of Milton and the City of Milton Gas and Electric, filed on December 21, 2007. The Milton Creditors respectfully represent as follows:

BACKGROUND

[To be supplied by client]

ARGUMENT

The Milton Creditors' claims should be allowed because the Milton Creditors have established their entitlement to a claim against the Debtors' estates under 11 U.S.C. § 502(a) and (b)(3), and the Debtors have failed to produce evidence refuting the claims.

I. THE DEBTORS' ARGUMENT THAT § 502(a) DOES NOT APPLY TO CLAIMS ASSERTED AGAINST ABANDONED PROPERTY IS BASED UPON MISINTERPRETATIONS OF THE LAW AND ERRONEOUS DICTA.

The Debtors cite *Swiatek v. Pagliero (In re Swiatek)*, 231 B.R. 26, 28 (Bankr. D. Del. 1999), and *Dewsnup v. Timm (In re Dewsnup)*, 908 F.2d 588, 590-91 (10th Cir. 1990), *aff'd*, 502 U.S. 410 (1992), in support of their argument that because they abandoned the real property at 84 Sergeant Street, Milton, Massachusetts (the "Property"), the Milton Creditors are not entitled "to assert a claim against the Property or the Debtors." Therefore, the Debtors argue, the Milton Creditors have not met their initial burden to prove entitlement to a claim. The Debtors' argument centers upon an excerpt from *Swiatek* stating that "once abandoned, the estate had no interest in [property] and § 502(a) applies only to property in which the estate has an interest." 231 B.R. at 28. However, not only does the *Swiatek* quote consist entirely of dicta which is taken out of context, it is *erroneous* dicta, containing a significant typographical error that is fatal to the Debtors' argument.

A more complete excerpt from *Swiatek* (the facts of which are not discussed here, as they are irrelevant to the instant case) is as follows:

> In *Dewsnup* the Court held that § 506(d) does not allow the strip down of a lien that is secured and has been fully allowed pursuant to § 502. In *Dewsnup* the trustee had abandoned the property. The bankruptcy court reasoned that § 506(a) did not reach the property because, once abandoned, the estate had no interest in it and § 502(a) applies only to property in which the estate has an interest. The district court and the Court of Appeals for the Tenth Circuit affirmed the bankruptcy court, as did the Supreme Court. The Supreme Court recognized that its interpretation of § 506 may not be applicable "to all possible fact situations" and it therefore focused upon the case before it. 502 U.S. at 416-17, 112 S.Ct. at 778.

Id.

A careful reading of the *Dewsnup* cases reveals that *none* of the courts in the various stages of *Dewsnup* held that § 502(a) "applies only to property in which the estate has an interest." Thus, the quote from *Swiatek* is erroneous. Rather, *Dewsnup* concerned § 50*6*(a), which explicitly applies only to "[a]n allowed claim of a creditor secured by a lien on property *in which the estate has an interest*" (emphasis added). Section 502(a) contains no such language, and thus, whether the estate has an interest in or administers any given property is irrelevant to an analysis under that section. It was in the context of its discussion of § 506, not § 502, that the Tenth Circuit stated that "the estate has no interest in, and does not administer, abandoned property." 908 F.2d at 590-91.

Swiatek actually defeats the very argument the Debtors attempt to make. Despite noting that "the estate no longer has an interest in the claim inasmuch as Debtors have been discharged and the trustee filed a notice of abandonment," the *Swiatek* court held:

> Section 502(a) provides that a claim is allowed unless an objection is filed. The record before us does not establish that an objection was ever filed or that the claim was disallowed for any other reason. Accordingly we find that the claim underlying the judgment lien is allowed.

231 B.R. at 28. Thus, it is readily apparent that § 502(a) does, in fact, apply to claims asserted against abandoned property.

II. BURDEN OF PROOF.

Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." When a claim objection is filed, the burden of proof as to the validity of the claim shifts between parties. *In re Allegheny Int'l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992); *In re United Cos. Fin. Corp.*, 267 B.R. 524, 527 (Bankr. D. Del. 2000). These shifting burdens of proof are described in *Allegheny Int'l* as follows:

> Initially, the claimant must allege facts sufficient to support the claim. If the averments in his filed claim meet this standard of sufficiency, it is "prima facie" valid. . . . In other words, a claim that alleges facts sufficient to support a legal liability to the claimant satisfies the claimant's initial obligation to go forward. The burden of going forward then shifts to the objector to produce evidence sufficient to negate the prima facie validity of the filed claim. It is often said that the objector must produce evidence equal in force to the prima facie case. . . . In practice, the objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency. If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. . . . The burden of persuasion is always on the claimant.

954 F.2d at 173-74 (citations omitted).

The Milton Creditors met their initial burden by filing proofs of claim against the Debtors' estates alleging facts sufficient to support legal liabilities, including tax liens for municipal water, gas, and electric services that were incurred prepetition, and real estate taxes assessed against the Property in the years 2004 through 2007. Thus, the Debtors bear the burden to establish that the claim should be disallowed pursuant to § 502(b)(3). This they have failed to accomplish.

III. THE DEBTORS HAVE FAILED TO ESTABLISH THAT THE CLAIM SHOULD BE DISALLOWED UNDER § 502(b)(3).

A. Courts Have Disallowed Claims Under § 502(b)(3) Where The Taxing Agency Can Collect The Taxes From The Ultimate Purchaser Of The Property Or Repossessing Secured Creditor, But Have Refused To Disallow Claims Where The Tax Claim Is Not Collectable From A Party Other Than The Debtor.

Section 502(b)(3) provides, in relevant part:

> (b) [With exceptions not here relevant] if . . . objection to a claim [filed under section 501 of the Bankruptcy code] is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—
>
> . . . .
>
> (3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property.

The application of § 502(b)(3) in the context of a tax claim on abandoned property is an issue of first impression in the Third Circuit.[1] However, courts elsewhere have been consistent in their interpretation of § 502(b)(3). Where the taxing agency can collect the taxes from the ultimate purchaser of the property or repossessing secured creditor, and allowing the taxes as a claim on the bankruptcy estate would therefore work an injustice upon the unsecured creditors, the taxing agency's claim will be disallowed. *See, e.g.*, *In re Skinner Lumber Co.*, 35 B.R. 31 (Bankr. D.S.C. 1983) (noting that tax claim was susceptible to disallowance under § 502(b)(4) because it exceeded the value of the estate's interest in the property taxed, in case where county could collect delinquent taxes from ultimate purchaser or repossessing secured creditor); *Griffith v. Plainview Indep.*

1Although the Debtors noted in their brief that the Milton Creditors' arguments rely on cases which are "not binding on this court," the Debtors were also unable to cite a single Third Circuit case on the issue.

Sch. Dist. (In re Transco Corp.), 11 B.R. 310 (Bankr. N.D. Tex. 1981); *Davis v. Lamesa Indep. Sch. Dist. (In re Davis)*, 11 B.R. 621 (Bankr. N.D. Tex. 1981). Where, as here, the tax claim is uncollectable from the ultimate recipient of the property, the taxing agency's claim will be allowed. *See, e.g.*, *In re Precision Concepts*, 305 B.R. 438, 443 (Bankr. M.D.N.C. 2004) (allowing claim and distinguishing *Skinner* on the basis that "[i]f the estate had been required to pay the taxes in *Skinner*, the secured creditors would have received a windfall, as the estate would have paid a tax claim that would have remained charges on the real property in the 'hands of the mortgagees or the tax sale purchasers'"); *In re Duckwall-Alco Stores, Inc.*, No. 89-40642-11 (Bankr. D. Kan. 1995) (mem.) (allowing claims for personal property taxes on inventory that was no longer in the hands of the debtor, stating that the taxes were "collectable, if at all, only from the debtor and not from any party now owning the inventory," and distinguishing *Skinner*, where the taxes "followed the taxed property into the hands of its eventual owner").

In *Skinner*, a county filed a claim for delinquent ad valorem taxes on real and personal property which had been abandoned by the bankruptcy trustee. 35 B.R. at 31. The trustee objected, and the court disallowed the entire claim. In support of its ruling, the court noted that the county, "as the taxing authority, was not divested of the lien created by [statute] when the property was abandoned by the trustee." *Id.* at 31-32. Thus, the holding of the *Skinner* court was dependent upon the assumption that the county could collect the delinquent taxes from the ultimate purchaser of the property or repossessing secured creditor, and that therefore allowing the taxes as a claim on the bankruptcy estate would impose an injustice upon the unsecured creditors. The other cases cited by the Debtors in which courts disallowed tax claims under § 502(b)(3), like

Skinner, concern situations in which the taxes were collectable from sources other than the debtor. *See Transco*, 11 B.R. 310; *Davis*, 11 B.R. 621.

In *Transco*, a bank had certificate-of-title liens on the debtor's "trucks, trailers, and other rolling stock." 11 B.R. at 311. The debtor filed Chapter 11 proceedings, and the court lifted the stay in order to allow the bank to enforce its certificate of title liens. The county taxing units then levied upon the rolling stock, pursuant to a Texas statute allowing them to levy upon certain personal property of a tax debtor, to secure the ad valorem taxes owed to them by the debtor. The tax collectors then filed proofs of claim for ad valorem taxes against personal property in the bankruptcy proceeding. The court denied the claims under § 502(b)(4), a predecessor to (b)(3), stating:

> An ad valorem taxing unit has two types of claim for its taxes. It may assert its lien for taxes against the property itself. In addition it ordinarily has an unsecured claim against the taxpayer.
>
> When possession of the rolling stock passed from the trustee to [the bank] the taxing units *still had their claims of lien against that personal property*, but the only claims remaining which they possessed against the estate of the taxpayer was [sic] the unsecured claims. The interest of the estate in the rolling stock is valueless and therefore the claim for taxes against other properties of the estate may not be allowed by virtue of the provisions of 11 U.S.C. § 502(b)(4)[.]

Id. at 312. Thus, in *Transco*, like in *Skinner* and unlike the instant case, the taxes were collectable (and were, in fact, collected) from the ultimate recipient of the property.

In *Davis*, after the order of discharge was entered, the tax collector made demand upon the debtors for the payment of ad valorem taxes assessed against the inventory of the debtor businesses. 11 B.R. at 623 n.1. Although the issue was not raised by the parties, the court noted, in a footnote, that an order had previously been entered in another adversary proceeding permitting a bank to foreclose its valid security agreement lien against the inventory at issue before the tax collector had filed its proof of claim. The court stated that, therefore, "the interest of the estate in that personal property is valueless and the claim for ad valorem taxes may not be allowed by virtue of the provisions of 11 U.S.C. § 502(b)(4)." *Id.* Because, as noted in *Transco*, an ad valorem taxing unit may assert its lien for taxes against the property itself, and the property at issue in *Davis* had been repossessed by the bank, the taxes were collectable from the bank. Therefore, *Davis* is distinguishable from the instant case for the same reason as *Transco* and *Skinner* are: The taxes were collectable from the ultimate recipient of the property.

The cases cited by the Debtors that were decided under former 11 U.S.C. § 64(a)(4) are distinguishable from, and factually at odds with, the instant case. *See County of Humboldt v. Grover (In re Cummins)*, 656 F.2d 1262 (9th Cir. 1981); *In re Nussbaum*, 257 F. Supp. 498, 501 (S.D. Tex. 1966). In *Cummins*, the county taxing authority had obtained a lien on the debtor's real and personal property located in the county. The debtor then filed for bankruptcy, and the assets that passed to the trustee included certain items of that property. The court found that the tax lien was ineffective against the trustee, but that the county was entitled to a priority claim for the unpaid taxes up to the value of the property. While the taxing authority had personal and property tax claims against the debtor exceeding $2,000, the property that came into the hands of the trustee was worth only approximately $400. The court found, applying § 64(a)(4), that the taxing authority could not participate as a general creditor for the value of its tax claim in excess of the value of the property, as "it is unfair to require the estate to pay property taxes at the creditors' expense in excess of the benefit the estate has received from the taxed property." 656 F.2d at 1264. *Cummins* is readily distinguishable from the instant case in that, by seeking to participate as a general creditor, the taxing authority was seeking to obtain payment for taxes on property on which it had no lien and which never entered the bankruptcy estate.

Similarly, in *Nussbaum*, the county petitioned for review of a referee's order which denied the county's claim for payment of ad valorem taxes from the bankrupt estate. 257 F. Supp. at 501. The court held that ad valorem taxes assessed on inventory, furniture, and fixtures could not be paid out of the bankrupt estate where such property did not enter the bankrupt estate. The court specifically stated:

> The burden of paying taxes levied upon such property *should fall upon the bankrupt or upon the purchasers who took the property subject to the taxes then due and owing*; it should not fall upon creditors of the estate who have no interest in the property and who will not benefit from the payment of the tax claim.

Id. (emphasis added). Thus, like *Skinner*, *Transco*, and *Davis*, the court's decision was dependent upon the assumption that the taxes were collectable from the ultimate recipients of the property. Furthermore, unlike the instant case, and like *Cummins*, *Nussbaum* involved taxes on property which never entered the bankruptcy estate and on which the taxing authority had no lien.

In the instant case, unlike *Cummins* and *Nussbaum*, the Milton Creditors have a lien on the taxed property, which did enter the estate. Furthermore, unlike in *Skinner*, *Transco*, and *Davis*, the taxes will *not* be paid by mortgagees or tax sale purchasers, and can be collected *only* from the estate. The Debtors, in their brief, seek to dismiss this paramount factual distinction as an inapposite "policy argument." However, in cases in which taxes are not collectable by mortgagees or tax sale purchasers, courts have recognized the importance of the distinction and refused to disallow claims.

In *Precision Concepts*, a tax collector filed a claim for delinquent personal property taxes of almost $400,000 owed by the corporate debtor. 305 B.R. at 442. The property taxes constituted a lien on the personal property. The property subject to the tax was the centerpiece of a successful 11 U.S.C. § 363 sale and generated millions of dollars of revenue. The court found that while the property had been sold out of the estate, the value of the interest of the estate in the property exceeded the amount of the claim, and therefore § 502(b)(3) was not applicable. *Id.* at 445. In the process of reaching its conclusion, the court employed the following analysis:

> In discussing the underlying purpose of § 502(b)(3), Collier on Bankruptcy states that:
>
>> The purpose of this section is to prevent the depletion of the debtor's estate by the payment of taxes assessed against property that has no value to the estate and is likely to be abandoned by the trustee. This section is designed to prevent injustice to unsecured creditors and to prevent a windfall to mortgagees and other lienors who would unfairly benefit from the payment of property taxes that would otherwise remain charges on the property.
>
> 4 COLLIER ON BANKRUPTCY, 502.03[4], at 502-34 (15th ed.1999). *See also In re Damar Machine, Inc.,* 30 B.R. 256, 257-58 (Bankr.D.Me.1983). In *In re Skinner Lumber Co.* the court further explained that § 502(b)(3) was:
>
>> Congress' response to a situation which often saw estates almost entirely depleted by taxes to the detriment of unsecured creditors in spite of the fact that such property was often thereafter abandoned to mortgagees or the taxing authorities. This was so because such taxes were construed, under many state statutes, to be taxes legally due and owing by the bankrupt personally although they may have been liens on the real estate as well. The injustice of such payments was apparent since the payment of taxes from the bankrupt estate would have the effect of clearing away tax claims which

> otherwise would have remained charges on the real estate in the hands of the mortgagees or the tax sale purchasers.
>
> *In re Skinner Lumber Co.,* 35 B.R. 31, 32 (Bankr.D.S.C.1983). If the estate had been required to pay the taxes in *Skinner,* the secured creditors would have received a windfall, as the estate would have paid a tax claim that would have remained charges on the real property in the "hands of the mortgagees or the tax sale purchasers." *Id.* Finally, in examining the purpose of § 502(b)(3), this court must bear in mind "Congress' historic concern for the collection of taxes due and owing to national, state and local governments." *Lawler v. Henrico County,* 636 F.2d 68 (4th Cir.1980) (holding that, under the Bankruptcy Act, the taxing authority was allowed a general unsecured claim rather than a priority claim because no interest in the taxed property passed to the bankruptcy estate).
>
> In North Carolina, property taxes assessed on personal property constitute a lien on real property within the county or municipality as of the listing date. *See* N.C. Gen. Stat. § 105-355(a). It is undisputed that if the Debtor had owned real property in Forsyth County, the personal property taxes would have attached to the real property and constituted a first lien on the real estate, which would have been sold subject to the taxes. In as much as the Debtor did not own any real property in Forsyth County, these taxes will not remain "charges on the real estate in the hands of the mortgagees or the tax sale purchaser." Nevertheless, § 502(b)(3) does not distinguish between real and personal property taxes.

Id. at 442-43.

Thus, while other factors also came into play in its decision, the court's decision to refuse to disallow the claim under § 502(b)(3) was based in part on the fact that the case was distinguishable from *Skinner* in that the taxes would not be passed along to the "mortgagees or the tax sale purchaser," and, therefore, that allowing the claim would not result in a windfall to the secured creditors. This Court, like the *Precision Concepts* court, should consider the distinction in its analysis.

In *Duckwall-Alco*, No. 89-40642-11, the debtor operated retail stores, and owed ad valorem taxes based upon the average value of its inventory during a given tax year. The debtor filed for bankruptcy, and argued that the inventory taxes must be disallowed pursuant to § 502(b)(3), as the inventory had been sold and did not come into the bankruptcy estate. *Id.* The court, rejecting the debtor's argument, stated that the purpose of § 502(b)(3) is

> to require taxes which can follow property out of the debtor's hands to be collected from the property, or the party that winds up with it, rather than from the bankruptcy estate. However, Congress clearly *did not intend to disallow all taxes that would deplete estates to the detriment of unsecured creditors*. In fact, far from being disallowed, many, if not most, taxes are given priority over the unsecured claims. §507(a)(8). Taxes on or measured by income or gross receipts, for example, are equally capable of depleting an estate to the detriment of unsecured creditors even though the taxed income or gross receipts rarely come into the estate. The personal property taxes the debtor now asks the court to disallow are collectable, if at all, only from the debtor and not from any party now owning the inventory.

Id. (emphasis added). The court held that the cases cited by the debtor, including *Skinner*, *In re Spruill*, 78 B.R. 766, 768-69 (Bankr. E.D.N.C. 1987), and *Transco*, were inapplicable as they "all appear to deal with taxes that followed the taxed property into the hands of its eventual owner." *Duckwall-Alco*.

The Debtors seek to distinguish the instant case from *Duckwall-Alco* on the basis that *Duckwall-Alco* concerned inventory, and the instant case concerns real property. However, this is a distinction without a difference. It is clear that "§ 502(b)(3) does not distinguish between real and personal property taxes." *Precision Concepts*, 305 B.R. at 443. The fact that the taxes in *Duckwall-Alco* were assessed against the taxpayers individually and not merely against the personal property is equally irrelevant, as it was merely one of two arguments the *Duckwall-Alco* court advanced for the inapplicability of § 502(b)(3), the other being that the inventory tax claims were "collectable, if at all, only from the debtor and not from any party now owning the inventory."

This Court should follow the reasoning of *Precision Concepts* and *Duckwall-Alco* and hold that where, as here, the tax claim is not collectable from a subsequent owner of the property, the claim will not be disallowed under § 502(b)(3).

B. The Interpretation Of § 502(b)(3) Advanced By The Debtors Is Contrary To The Intentions Of Its Drafters And, Therefore, Unsupported By The Rules Of Statutory Construction Set Forth By The United States Supreme Court.

In construing provisions of the Bankruptcy Code, the plain meaning of the statute is conclusive, *except* when "the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *United States v. Ron Pair Enters.*, 489 U.S. 235, 240-41 (1989). The approach outlined in *Duckwall-Alco* and *Precision Concepts* is consistent with the intentions of the drafters of § 502(b)(3). The Debtors cite 3 *Collier on Bankruptcy* ["*Collier*"] ¶ 502.03[4][b][i] (15th ed. 2006) and *In re Damar Mach., Inc.*, 30 B.R. 256, 257 (Bankr. D. Me. 1983), a case which cites *Collier*, for the proposition that "the purpose of Section 502(b)(3) is to prevent the depletion of the debtor's estate." However, as is apparently their habit, the Debtors give only part of the story. *Collier* also states that § 502(b)(3) "is designed to prevent injustice to unsecured creditors and to prevent a windfall to mortgagees and other lienors who would unfairly benefit from the payment of property taxes *that would otherwise remain charges on the property.*" 3 *Collier* ¶ 502.03[4][a]. Section 502 and its predecessor, 11 U.S.C. § 64a(4) of the 1898 Bankruptcy Act, arose as

> Congress' response to a situation which often saw estates almost entirely depleted by taxes to the detriment of unsecured creditors in spite of the fact that such property was often thereafter abandoned to mortgagees or the taxing authorities. This was because such taxes were construed, under many state statutes, to be taxes legally due and owing by the bankrupt personally although they may have been liens on real estate as well.
>
> The injustice of such payments was apparent since the payment of taxes from the bankrupt estate would have the effect of clearing away tax claims which otherwise would have remained charges on the real estate in the hands of the mortgagees or the tax sale purchasers. After the amendment made in 1926, a trustee, by the simple process of abandonment

> of heavily encumbered real estate, could reduce the interest of the estate to nothing.

3 *Collier on Bankruptcy* ¶ 502.02[4] at 502-42 to -43 (emphasis added).

Thus, the purpose of Congress was to prevent depletion of the debtor's estate through the payment of taxes *when such depletion would be unjust because the taxes would be paid anyway by mortgagees or tax sale purchasers*. *See also Duckwall-Alco*; *Precision Concepts*, 305 B.R. at 442-43; *Skinner*, 35 B.R. at 32. Furthermore, "in examining the purpose of § 502(b)(3), this court must bear in mind Congress' historic concern for the collection of taxes due and owing to national, state and local governments." *Precision Concepts*, 305 B.R. at 443.

In the instant case, a literal application of § 502(b)(3) would produce a result demonstrably at odds with the intentions of its drafters by unfairly shielding unsecured creditors from taxes which are uncollectable from any other source. Because § 502(b)(3) is inapplicable to this case, it is not necessary to address the Debtors' argument that the claims should instead be rendered a general unsecured claim.

CONCLUSION

Because the Debtors have failed to meet their burden to refute the Milton Creditors' claims, the claims must be allowed.

Dated: January 12, 2008
Milton, Massachusetts

Respectfully submitted,

____

John J. Nesbitt
Nesbitt & Nesbitt, LLC
Suite 100
100 Shady Side Road
Milton, Massachusetts 09040
Telephone: (222) 535-0000
Facsimile: (222) 535-2222

Counsel to the City of Milton Gas & Electric Department