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CASE NO. BK81-86

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MEMORANDUM

In this adversary proceeding, the parties seek to compromise the dispute based on the complaint and have sought approval of this Court to the compromise. The compromise is opposed by the Creditors' Committee.

The parties have filed a stipulation which sets forth the compromise between the parties and the stipulation speaks for itself. At issue is a possible claim by the plaintiff against the defendants for approximately \$63,000. The stipulation provides for the defendant to pay to the plaintiff certain monies and for the allowance of claims by the defendant in the bankruptcy proceeding on a priority basis.

An initial problem which received minor attention by the parties at the hearing on the compromise but which may be of significance is the relationship prior to the filing of this Chapter 11 between the defendant Mr. Bruner and the debtor-in-possession. That relationship was a close relationship and there appear to have been fiduciary obligations, an observation I make for the purpose of this memorandum only. The debtor has claims against Mr. Bruner which it will separately assert. These claims may bring to consideration of this compromise an element which I have concluded should be eliminated. The parties' discussion before me in Court leads me to the conclusion that paragraph 7 of the stipulation reserves to the debtor claims against Mr. Bruner and his agencies which are unaffected by compromise of the present controversy.

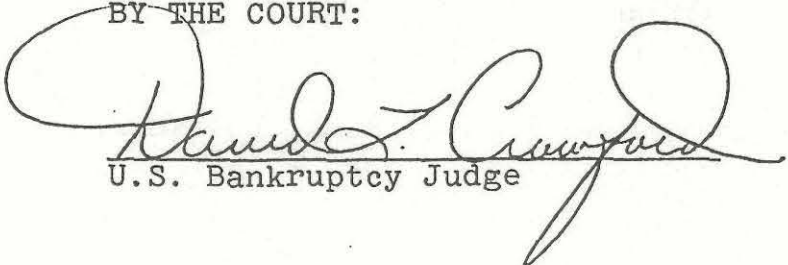
Consideration of whether the compromise of this proceeding should be approved must be done on the basis of commercial reasonableness which in the context of a Chapter 11 proceeding involves balancing the interest of the debtor in its rehabilitation and the interests of unsecured creditors in maximizing their return. The debtor suggests that it is prudent to forego litigation which may involve time-consuming appeals following initial litigation in this Court for the benefit of cash in hand. The Creditors' Committee suggests that the issues to be litigated are so clear-cut in favor of the plaintiff and against the defendant that this compromise is objectionable. I take it from assertions by the plaintiff that factual matching of payments and credits against various insurance policies poses problems of proof which it has concluded should be avoided, given the present offer of settlement. Considerations of commercial reasonableness in the context of this Chapter 11 and this compromise include my awareness that the debtor has made significant strides towards rehabilitation and has need of cash at the present time. In addition, consideration of approval of this compromise is different from approval of a compromise previously litigated in this Court which involved a major secured creditor of the debtor. In that litigation, the amount to be given up by the unsecured creditors was significant because the secured creditor's claim was so large that the compromise was not approved. Here, the amount involved, although not insubstantial, is not as large or as significant in terms of the entire debt structure of the debtor. It may be true, as asserted by the Creditors' Committee, that there are significant rights being given up by the debtor. Nevertheless, any compromise involves the relinquishment of rights by parties and the hazards of litigation are well known to courts and to lawyers.

All in all, my conclusion is that the judgment of the debtor and its management are to prevail in this litigation, particularly in view of present management's success in achieving significant steps towards rehabilitation.

A separate order is entered in accordance with the foregoing.

DATED: March 2, 1982.

BY THE COURT:


U.S. Bankruptcy Judge

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