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Federal Bar Association

Bankruptcy Section Newsletter
April 2008

This newsletter is published by the Federal Bar Association, Bankruptcy Section, for the Western District of Michigan. Prepared by lawyers with busy practices, every effort is made to publish on a quarterly basis. For your records, here are the dates of newsletters for the recent past: January 2008, October 2007, August 2007, April 2007, January 2007, October 2006, July 2006, February 2006, October 2005, June 2005, February 2005, October 2004, May 2004, January 2004, October 2003, July 2003, April 2003 and January 2003.

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Twilight for the "Zone of Insolvency" and for "Deepening Insolvency?", by Thomas P. Sarb

"Zone of insolvency" sounds like a bad episode from a 1960s television series. But if you have provided legal counsel to an officer or director of a corporation, particularly one that has

Upcoming dates:

1. 20th Annual FBA Summer Seminar: July 24-26, 2008, Boyne Highlands, Michigan.

2. FBA Steering Committee meets typically on the 3rd Friday for lunch at the Peninsular Club in downtown Grand Rapids. Check in advance with President Dan Kubiak @ DKubiak@mmbjlaw.com

3. Sixth Circuit Judicial Conference - May 7-10, 2008 in Chattanooga, Tennessee. See our court's

been challenged by Michigan's troubled economy, sometime in the past 15 years or so you probably have cautioned your client about the fiduciary duties that may be owed to creditors of a corporation in the zone of insolvency. The phrase entered business and legal vocabulary following the 1991 Delaware Chancery Court decision in Credit Lyonnais Bank Nederland, N.V. v. Pathe Communications Corp., 1991 WL 277613 (Del Ch.), 17 Del. J. Corp.L. 1099 (1991). In famous (at least to corporate and insolvency lawyers) footnote 55, the court observed that directors of a corporation may owe fiduciary duties to creditors as well as shareholders of a corporation in the "vicinity of insolvency." Id. at 1991 WL 277613, at 34. Because Delaware is the state of incorporation for so many major corporations in America, when its courts speak on corporate issues, directors, officers, and their legal advisors pay close attention.

So, following the Credit Lyonnais decision, many legal cases have raised the question whether creditors may bring direct claims against corporate directors for breach of fiduciary duties in the zone of insolvency (as it came to be called). The Delaware Supreme Court had not spoken on this issue since the Credit Lyonnais decision, but in 2007 it issued an important opinion in North American Catholic Educational Programming Foundation v. Gheewalla, 930 A.2d 92 (Del. Supr. 2007). That opinion provides some welcome news for corporate officers and directors.

The plaintiff in Gheewalla was a creditor of Clearwater Holdings, which was unable to pay its creditors when the wireless spectrum market collapsed after WorldCom announced its accounting problems. In addition to suing Clearwater to collect its debt, plaintiff named as defendants two of Clearwater's directors, both of whom served as directors at the behest of Goldman Sachs, which had funded Clearwater. The suit alleged that those directors had breached their fiduciary duties by using their power as directors to favor Goldman Sachs's interests rather than those of the corporation and its creditors. Instead of asserting a derivative claim on behalf of the corporation against the directors (as would a shareholder), the plaintiff made a direct claim against the directors for breach of fiduciary duty. The plaintiff's complaint alleged that since Clearwater was insolvent or in the zone of insolvency at the time the directors made the challenged decisions, they owed fiduciary duties to plaintiff as a creditor of Clearwater and had breached them by favoring Goldman Sachs.

The Delaware Supreme Court affirmed the Court of Chancery's decision dismissing the direct claim for breach of fiduciary duties against the two directors. It first held that Delaware corporate law did not recognize claims by creditors for breach

webstie for more information.

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Quick Links...

United States Bankruptcy Court, Western District of Michigan

Local filing statistics

United States Trustee Program, including means test tables and other BACPA data

United States Bankruptcy Courts

Chapter 13 Trustee Brett N. Rodgers

Chapter 13 Trustee Mary K. Viegelahn Hamlin

of fiduciary duties against directors of a corporation operating in the zone of insolvency:

> In this case, the need for providing directors with definitive guidance compels us to hold that no direct claim for breach of fiduciary duties may be asserted by the creditors of a solvent corporation that is operating in the zone of insolvency. When a solvent corporation is navigating in the zone of insolvency, the focus for Delaware directors does not change. Directors must continue to discharge their fiduciary duties to the corporation and its shareholders by exercising their business judgment in the best interests of the corporation for the benefit of its shareholder owners.

Id. at 101.

However, the court then went on to observe that when a corporation is insolvent, its creditors take the place of the shareholders as the residual beneficiaries of any increase in value. Therefore, it held, the creditors of an insolvent corporation have standing to maintain derivative claims against directors on behalf of the corporation for breaches of fiduciary duties, in the same way shareholders would. Individual creditors of an insolvent corporation, however, have no right to assert direct claims for breach of fiduciary duties against corporate directors.

Although not the final word on this issue, the Gheewalla decision is likely to be given serious consideration by other courts that will be deciding these issues. In short, it reaffirms for corporate directors that whether the corporation is solvent, in the zone of insolvency, or in fact insolvent, they still qualify for the "business judgment" rule as they make decisions. Their decisions must be made for the good of the corporate enterprise, and, by the same token, enforced on behalf of the corporate enterprise, not an individual creditor that may be trying to cut the best deal for itself.

The direction set by the Delaware Supreme Court continued in a decision entered on August 14, 2007. In Trenwick America Litigation Trust v. Ernst & Young, L.L.P., 2007 WL 2317768 (Del. Supr. 2007), it went one step further and refused to recognize a cause of action against directors of a Delaware corporation for "deepening insolvency." In its two-page order, the Court adopted the reasoning of the lower court, the Delaware Court of Chancery, in Trenwick America Litigation Trust v. Billet, 906 A.2d 168 (Del. Ch. 2006).

Federal post judgment rate of interest

State Bar of Michigan

American Bankruptcy Institute

National Association of Bankruptcy Trustees

National Conference of Bankruptcy Judges

National Association of Consumer Bankruptcy Attorneys

National Association of Chapter 13 Trustees

Federal Bar Association of Western Michigan

Pro bono procedures and client retainer agreement

US District Court civility plan

New dollar amounts in bankrutpcy

Information on reporting bankrutpcy fraud

A short excerpt from the Court of Chancery's lengthy opinion in Trenwick is illustrative of the holding:

> Delaware law does not recognize this catchy term [deepening insolvency] as a cause of action, because catchy as the term may be, it does not express a coherent concept. Even when a firm is insolvent, its directors may, in the appropriate exercise of their business judgment, take action that might, if it does not pan out, result in the firm being painted in a deeper hue of red. The fact that the residual claimants of the firm at that time are creditors does not mean that the directors cannot continue the firm's operations in the hope that they can expand the inadequate pot such that the firm's creditors get a greater recovery. By doing so, the directors do not become a guarantor of success. Put simply, under Delaware law, 'deepening insolvency' is no more of a cause of action when a firm is insolvent than a cause of action for 'shallowing profitability' would be when a firm is solvent. Existing equitable causes of action for breach of fiduciary duty, and existing legal causes of action for fraud, fraudulent conveyance, and breach of contract are the appropriate means by which to challenge the actions of boards of insolvent corporations.

Id. at 174.

Although Trenwick, like the Gheewalla decision, is binding only as to Delaware corporations, Delaware decisions on the obligations of corporate directors and officers have significant influence outside that narrow realm. This duo of Delaware decisions should make the path for corporate directors clearer in these challenging economic times.

Thank you to Thomas P. Sarb for writing this article. sarbt@millerjohnson.com; 616.831.1748

From the clerk of the court / procedural changes

1. Any entities that are interested in entering into separate arrangements with creditors for delivery services comparable to those provided through the Bankruptcy Notice Center program's National Creditor Registration Service (NCRS) may apply for approval as a third-party notice provider. The application is available on the Western Michigan Bankruptcy Court website, in the NEWS section. Please fax the completed application to the Administrative Office of the U.S. Court,

Bankruptcy Court Administration Division (BCAD) at (202) 502-1511. A list of approved notice providers will be posted on the Judiciary's public website at www.uscourts.gov. If you have any questions regarding the status of your application, please contact BCAD at (202) 502-1540.

2. Effective January 1, 2008, quarterly fees on disbursements paid by chapter 11 debtors have increased due to the Consolidated Appropriations Act of 2008. Bankruptcy Form B200 has been revised to incorporate the new fees.

3. The IRS's National Standards for Allowable Living Expenses and Local Standards for Transportation and Housing and Utilities Expenses were updated. The revised standards will apply to cases filed on or after March 17, 2008. The Census Bureau's Median Family Income Data and Administrative Expense Multipliers were updated. The U.S. Trustee Program will apply this updated data to cases filed on or after February 1, 2008. Most software programs provide updates for these changes, and hopefully your program already integrated the changes for your work.

Upcoming Summer Seminar

The Summer Seminar will be held at Boyne Highlands, Michigan from July 24-26, 2008. Lori Purkey is the chair of that event and reports that it will be very special seminar. It is the 20th anniversary of the summer gathering. This year Judge Gregg took on the substantial responsibility to organize the speakers. We will have more than a dozen judges from all over the country addressing various topics. Many of these speakers are returning from prior years in remembrance of our anniversary year.

Look for registration materials in mid May 2008. They will be sent by regular mail, placed in courtrooms and hearing rooms and posted on the court website. Register early - this one may go fast!

Recent events/announcements

Interested in serving on the steering committee for the bankruptcy section of the Federal Bar Association? There are openings to be filled this summer. If you are interested or wish to nominate someone else, contact Dan Kubiak, present chair, or anyone else on the steering committee. See the list on the right side of this newsletter.

Summaries of recent cases

BANKRUPTCY CASES: December 21, 2007 - March 31, 2008

Published Sixth Circuit Opinions

In re Davis, 512 F.3d 856 (6th Cir.2008) - Petition for direct appeal to the 6th Circuit from the bankruptcy court. Chapter 13 debtors claimed vehicle ownership expense as allowable expense to which the trustee objected, arguing that debtors had no vehicle lease or loan payments. The bankruptcy court confirmed the plan, and the trustee appealed to the district court. The parties filed a joint request for certification of appeal under 28 U.S.C. 158(d)(2), but failed to timely petition the 6th Circuit for leave to take a direct appeal. The district court remanded the certification issue to the bankruptcy court, which ordered that the joint request be docketed as an Official Form 24 Certification. The parties did not appeal to the district court or the Bankruptcy Appellate Court, but instead filed a timely joint petition to the 6th Circuit after the bankruptcy court docketed the certification. The Court of Appeals denied the petition for leave to take a direct appeal, noting that the matter would remain pending in the lower court.

In re Long, --- F.3d ---, 2008 WL 564798 (6th Cir.2008) - Whether the bankruptcy court in a Chapter 13 consumer case properly ruled that surrender of vehicle to creditor wiped out the debtors' remaining indebtedness. The Sixth Circuit reversed and remanded, holding that (1) deficiency claims had to be allowed as they were before the creation of the "hanging paragraph" in 11 U.S.C. 1325, (2) there needed to be a national rule for how to treat such situations, and (3) the hanging paragraph had to be interpreted in a way that yields results which conform the purpose of the Bankruptcy Code and intent of Congress. The Sixth Circuit declined to adopt a literal interpretation of the hanging paragraph, noting (a) the lack of Congressional intent to eliminate all deficiency claims upon surrender of collateral, and (b) the illogical results of a literal interpretation, which creates a gap when applying § 506 and 1325. Given the statutory gap, the Court employed the "equity of the statute" and concluded that the best solution is, in effect, to ignore the 2005 amendments with respect to 910 claims. Judge Cox concurred in the judgment, but would resort to state law and contractual language to allow an unsecured deficiency claim. Judge Clay dissented on the grounds that the majority opinion rewrites the statute.

In re Triple S Restaurants, Inc., --- F.3d ---, 2008 WL 697401 (6th Cir.2008) - Whether the bankruptcy court erred in dismissing a claim against the trustee for intentional infliction of emotion distress and sanctioning the complaining party. Former debtor's counsel sued the bankruptcy trustee in state court,

alleging that the trustee threatened to report counsel for criminal investigation if he refused to settle regarding proceeds from a life insurance policy which counsel received. Counsel filed a complaint in state court, alleging outrage and intentional infliction of emotional distress. The trustee removed the case to the bankruptcy court and moved for dismissal and sanctions pursuant to Rule 9011. The bankruptcy court granted both motions, and the district court affirmed. On appeal, the 6th Circuit held that the bankruptcy court had jurisdiction over the claims under Barton v. Barbour, 104 U.S. 126, 127, 26 L.Ed. 672 (1991), which requires leave of the bankruptcy court before a party can assert claims in state court against a trustee for acts done in the trustee's official capacity and within the trustee's authority. The trustee was acting in his official capacity and within the scope of his authority because the settlement negotiations related to recovering assets for the estate. Second, counsel failed to plead facts in support of his claims and did not allege emotional distress of any kind. Finally, sanctions were proper where any reasonable attorney would have noticed that the facts pleaded in the complaint did not support the claims asserted. Affirmed.

Published Sixth Circuit Bankruptcy Appellate Panel Opinions

In re St. Clair, 380 B.R. 478 (6th Cir.BAP 2008) - Whether the bankruptcy court erred in granting summary disposition to mortgagee where Chapter 7 trustee filed complaint to avoid mortgage based on defective certificate of acknowledgment. The trustee filed an adversary proceeding to avoid a mortgage because debtors were not present before the notary when they executed documents. The trustee argued that Kentucky law allowed him to avoid the mortgage as a bona fide purchaser because the mortgage was not recordable and failed to provide notice. The bankruptcy court determined that Kentucky law prevented any attack on the notary's acknowledgement since there were no allegations of fraud or mistake, and the trustee appealed. On appeal, the BAP noted that it had previously held that facially improper acknowledgements in recorded documents do not provide constructive notice. In this case, however, the acknowledgement was facially valid. Kentucky Revised Statute § 61.060 allows a notary's acknowledgment to be attacked only by (a) a direct action and prayer for relief against the notary, (b) a fraud claim against the party benefited, or (c) a mistake by the notary. Although the trustee obtained a default judgment against the notary, the first exception did not apply because the trustee failed to seek recovery from the notary. With respect to fraud, the complaint contained only one of six required elements. Finally, the Panel concluded that the facts alleged by the trustee did not constitute mistake as required by the Kentucky statute. Affirmed.

In re Bailey, 380 B.R. 486 (6th Cir.BAP 2008) - Whether bankruptcy court properly ordered debtors to turn over federal income tax return received post- petition but based on prepetition numbers. Chapter 7 debtors appealed, arguing that (a) they had relied on the advice of their attorney that $1600 of the refund was exempt, and (b) they no longer had the allegedly nonexempt portion of the refund, which they gave to their former attorney. The Panel affirmed, noting the lack of valid defenses. The Panel first held that the mistaken legal advice which debtors allegedly received was no defense to the motion for turnover. State law only permits certain exemptions, which did not apply to the tax refund. Second, the Panel held that the debtors could be held liable for turnover of the nonexempt portion of the refund, despite the fact that they were no longer in possession, since they had been in possession of it at some time during the pendency of the case. Affirmed.

In re Wells, 382 B.R. 355 (6th Cir.BAP 2008) - Whether the bankruptcy court erred in granting summary judgment against a creditor on preferential transfer claim. Chapter 7 trustee sought to avoid prepetition payments which the debtor made to one credit card company using convenience checks from another credit card company. The bankruptcy court granted the trustee's motion, rejecting the creditor's arguments that the debtor lacked sufficient dominion and control of the monies to render them property of the debtor for purposes of 547 and that the payments did not diminish the estate. The creditor appealed, arguing that (1) the debtor had no property interest in funds that are transferred from one bank to another, (2) the earmarking doctrine applied so that the transferred funds were not property of the debtor, and (3) there could be no preferential transfer because there was no diminution of the estate. The Panel affirmed, holding first that the payments were subject to avoidance given that the debtor had an interest in the funds and exercised control over them, since she could have used them to purchase assets instead of paying debt. The Panel rejected the creditor's earmarking argument and substitution of creditors argument given the debtor's control over the funds to pay debt. Finally, the Panel concluded that avoidance advanced the purposes of the preference statute, promoting equal distribution and discouraging asset- grabbing by creditors. Affirmed.

In re Sterba, 383 B.R. 47 (6th Cir.BAP 2008) - Whether 28 U.S.C. § 1409(b) requires a trustee to bring a preference action to recover of prepetition transfer only in the district where the defendant resides. The Chapter 7 trustee filed preferential transfer action, and the creditor stipulated to entry of judgment against it if venue was proper. The creditor moved to dismiss for improper venue, and the bankruptcy court denied the motion and entered the money judgment. The Panel dismissed the appeal as moot since there was no actual controversy. The exception to the mootness doctrine - i.e., cases that are capable

of repetition, yet evading review - did not apply since there was no reasonable expectation that the creditor would be subjected to the same action again. Speculation alone could not suffice to establish an ongoing controversy. Appeal dismissed as moot.

In re Dilworth, 2008 WL 649064 (6th Cir.BAP 2008) - Whether the bankruptcy court erred in granting the chapter 7 trustee's motion for summary judgment on the ground that the debtor's balance transfer from one credit card company to another did not constitute a transfer of property of the estate. The trustee sought to avoid as a preferential transfer a credit card balance transfer in the 90-day preference period. The creditor argued in response that the transaction merely substituted one creditor for another and did not diminish the estate, and that there had been no transfer of property under earmarking doctrine. The bankruptcy court rejected the creditor's arguments, noting that the debtor had control over the distribution of the funds and could have decided how to use the funds and which, if any, creditor to pay. The Panel affirmed the judgment, noting that the only issue was whether there had been a transfer of an interest of the debtor in property. Relying on and adopting in its entirety In re Wells, supra, the Panel concluded that the earmarking doctrine did not apply since there were no restrictions on use of the loan proceeds and the debtor had complete discretion regarding use of the funds. Because the debtor exercised the necessary dominion and control over the credit by choosing to pay the creditor, the transfer fell within the scope of 547(b). Affirmed.

In re Nolan, --- B.R. ---, 2008 WL 649063 (6th Cir.BAP 2008) - Whether the bankruptcy court erred in ruling that "witness my hand" was not the substantial equivalent of "acknowledged before me" under Ohio law governing acknowledgements and that the trustee was a bona fide purchaser. Chapter 7 trustee filed action to avoid a mortgage, arguing that a defect in the notary acknowledgment rendered the mortgage ineffective as against bona fide purchasers. The bankruptcy court granted the trustee's motion for summary judgment. On appeal, the Panel held that the acknowledgement did not comply with Ohio law. The phrase "witness my hand", even if taken into consideration with the notary seal and other language, could not satisfy the statutory definition for "acknowledged before me" since there was no proof that the notary either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument. The Panel further held that even if the phrases were substantially equivalent, the acknowledgment was still defective and permitted avoidance of the mortgage since it failed to recite the names of the mortgagors. Finally, the Panel held that the creditor could not rely on the debtors' fraudulent acts to defeat the trustee's action to avoid the transfer. Affirmed.

In re Swegan, --- B.R. ---. 2008 WL 761081 (6th Cir.BAP 2008)

- Whether the bankruptcy court erred in granting summary judgment to the debtor on creditor's complaint seeking a denial of the discharge based on alleged fraudulent concealment of assets pursuant to 11 U.S.C. § 727(a)(2)(A). Judgment creditor brought adversary proceeding to deny discharge in Chapter 7 case based on debtor's alleged concealment of assets. The bankruptcy court restrictively interpreted "concealment" to only apply where a debtor transfers assets while retaining an undisclosed interest therein and granted the debtor's motion for summary judgment (denying the creditor's cross motion). The creditor appealed. The Panel held that the term "concealed" in the discharge exception was broad enough to include situations where a debtor withholds knowledge of an asset by failing or refusing to divulge information that the law requires disclosed. Therefore, the debtor "concealed" insurance proceeds from the judgment creditor when he falsely stated under oath at a state court debtor's examination that he had not received any insurance proceeds following his wife's death and he denied owning insurance himself. Finally, there was a genuine issue of fact as to whether the false testimony was the result of mere confusion or of a fraudulent intent to conceal asserts. Reversed and remanded for trial on the issue of intent.

W.D. Michigan Bankruptcy Cases

In re Cyberco Holdings, Inc., 382 B.R. 118 (Bkrtcy.W.D.Mich. 2007) (Judge Hughes) - Chapter 7 trustee brought adversary proceeding to set aside prepetition transfers on preferential and fraudulent transfer theories, as well as to impose a constructive trust. Lender moved to dismiss instead of filing an answer. The trustee amended thereafter amended the complaint, and the lender filed an amended motion to dismiss rather than filing an answer, based in part upon the 546 statute of limitations. The Court held first that the lender would have to plead the statute of limitations as an affirmative defense before it can move to dismiss on that basis, since it is not one of the grounds in Fed.R.Civ.P. 12(b)(1-6). Second, the Court held that the trustee failed to state a claim for constructive trust, noting that the complaint did not identify specifically any res against which to impose a trust. Third, the Court held that the trustee lacked standing to assert an unjust enrichment claim, noting that the complaint lacked any claim that the debtor was injured as a result of the lender's alleged gains and further noting the debtor's complicity in funneling fraudulent funds to the lender. Finally, the Court held that the trustee's complaint did not state a cause of action for fraudulent transfer, noting that the lender had a security interest in the deposit accounts which it swept and that the debtor never had an interest in those accounts. Original motion to dismiss granted as to certain counts, denied to certain counts. The amended motion to dismiss was denied without prejudice since the lender had not filed an answer.

In re Cormier, 382 B.R. 377 (Bkrtcy.W.D.Mich. 2008) (Judge Gregg) - Chapter 7 debtors were successful high bidders at an auction sale of their stock in a closely-held corporation and objected to the trustee's auction sale, arguing (1) the trustee failed to observe restrictions in the corporate bylaws, and (2) the stock was no longer an estate asset since they claimed an exemption in it which the trustee did not challenge. Debtors valued stock at $1.00 on their Schedule C and took a $14,150 exemption in it, to which the trustee did not object. The trustee thereafter moved to sell the stock, and the debtors were the high bidders at $47,000. The Court overruled the debtors' objection to sale procedure, noting that the debtors had no standing to object to the sale. After a trustee is appointed, a chapter 7 debtor only has standing to object to claims if (a) there will be a surplus or (b) there will be an adverse impact on a debtor's discharge. Since there would be no surplus and approval of the auction sale would not affect the debtors' discharge, the debtors lacked standing. Moreover, the auction procedure satisfied the requirements in the corporate bylaws. The Court also ruled that the claimed exemption was inadequate to indicate that the debtors were claiming the stock as entirely exempt and to remove the stock from the estate. As such, the trustee had authority to sell the stock.

In re Quality Stores, Inc., 383 B.R. 67 (Bkrtcy.W.D.Mich. 2008) (Judge Gregg) - Whether Chapter 11 debtors are entitled to a turnover from the Internal Revenue Service of payments made for FICA taxes attributable to severance payments to debtors' employees. Chapter 11 debtors made severance payments to employees who were terminated both prepetition and postpetition pursuant to severance plans, for which payments the debtors paid its share of FICA taxes and withheld the employee's share of the FICA tax. Debtors thereafter filed refund claims with the IRS seeking to recover over $1,000,000 in allegedly overpaid FICA taxes and brought adversary proceeding to compel turnover. Both parties filed motions for summary judgment. The Court held that the payments to debtors' employees were not wages for purposes of FICA taxes and ordered the IRS to refund the overpaid taxes to the estate. In light of the nearly identical statutory definition of wages and the Supreme Court's decision in Rowan Cos. v. United States, 452 U.S. 247, 101 S.Ct. 2288, 68 L.Ed.2d 814 (1981) (holding that Congress intended "wages" to mean the same thing under FICA and income tax withholding), the Court concluded that "wages" should be interpreted the same for both FICA and income tax purposes. Because supplemental unemployment compensation benefits are not wages for income tax purposes, but are merely treated as if there were wages under 26 U.S.C. 3402(o)(1), they are not "wages" under FICA. While a decoupling provision permits the IRS to distinguish between the statutory definitions, there must be regulations to effectuate such distinctions, which regulations do not exist. Debtors'

motion granted; IRS's crossmotion denied.

In re Novak, --- B.R. ---, 2008 WL 726133 (Bkrtcy.W.D.Mich. 2008) (Judge Hughes) - Chapter 7 trustee sought reconsideration of order denying her motion for court approval of settlement with debtors. Trustee and debtors stipulated that debtors could prosecute prepetition cause of action with unknown value, without the trustee's involvement, provided that the trustee recovered 40% of any net recovery, which portion the debtors could not claim as exempt. The trustee served the motion on the creditors and moved for an order approving the stipulation after nobody objected. The Court denied the motion as procedurally and substantively defective. Procedurally, the trustee did not include an estimate of what she would obtain if she prosecuted the matter to judgment and that such information was necessary so that other creditors could make an informed decision. Substantively, the trustee was asking the court to sanction an unlawful delegation of the trustee's duty to administer estate assets by allowing the debtors to oversee the cause of action. Motion denied.

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