

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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DALE ELDON WILEY and  
DORIS JEAN WILEY

Bankruptcy No. 94-50752XS

*Debtor(s).*

Chapter 7

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### ORDER RE: TRUSTEE'S MOTION FOR COMPROMISE OR SETTLEMENT

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The matter before the court is the Trustee's motion for compromise or settlement of controversy. Hearing was held April 12, 1995 in Sioux City, Iowa. Donald H. Molstad appeared as Trustee. A. Frank Baron appeared for debtor Doris Wiley.

At the time of filing her Chapter 7 petition, Wiley had an interest in annuity payments provided under an agreement settling an automobile accident claim. Wiley had received \$14,000.00 in 1993 and was to receive \$25,000.00 in 1998 and \$35,000.00 in 2003. The Trustee objected to Wiley's claim of exemption in the annuity payments. The Trustee disputed Wiley's contention that the payments were "on account of" disability within the meaning of Iowa Code § 627.6(8)(e). After hearing, the court issued an order ruling that Wiley's interest in the payments was exempt to the extent of 10 per cent of the payments (docket no. 23). Wiley appealed that decision. The Trustee has now filed a motion to compromise the claim by accepting \$3,000.00 to relinquish the estate's interest in the annuity (docket no. 35).

In order to obtain approval of a compromise of a claim, the trustee must show that the compromise is in the best interests of the estate. This determination is made by considering the following factors:

- (1) The probability of success in the litigation;
- (2) The difficulties, if any, to be encountered in the matter of collection;
- (3) The complexity of the litigation involved, and the expenses, inconvenience and delay necessarily attending it;
- (4) The paramount interest of creditors and proper deference to their reasonable views.

In re Carson, 82 B.R. 847, 853 (Bankr. S.D. Ohio 1987), citing Drexel v. Loomis, 35 F.2d 800 (8th Cir. 1929). The court need not determine that a settlement is the best that could be obtained. Rather, the court must decide whether the settlement "falls below the lowest point in the range of reasonableness." In re W. T. Grant Co., 699 F.2d 599, 613 (2d Cir. 1983), cert. *denied sub nom Cosoff v. Rodman*, 464 U.S. 822, 104 S.Ct. 89 (1983).

The court concludes that it is not in the best interest of the estate to approve the proposed compromise. The court believes there is a substantial likelihood that the Trustee would be successful in the appeal. A recent ruling in the Southern District of Iowa supports the Trustee's position. The

district court for the Southern District of Iowa affirmed a bankruptcy court decision that payments under an annuity from settlement of a wrongful death claim were not payments "on account of . . . death" and were, therefore, not exempt under Iowa Code § 627.6(8) (e). Matter of Midkiff, No. 93-01444-WJ (Bankr. S.D. Iowa Apr. 22, 1994), *aff'd* No. 1-94-CV-80024 (S.D. Iowa Aug. 10, 1994). The value of the annuity payment due in 1998 alone would be sufficient to pay all the Wileys' filed claims and the costs of administration in full. The proposed compromise is unreasonable because it is based only on the Trustee's present lack of funds in the estate to pursue the appeal. The Trustee's motion to approve compromise will be denied.

The Trustee is concerned that if he must wait until 1998 to receive the next due annuity payment, the U.S. Trustee's office will request that the case be closed. The Trustee would then be required to pay a fee to reopen the case. The court will instruct the clerk that the case shall remain open until the Trustee is able to administer the asset.

### ORDER

IT IS ORDERED that the Trustee's motion for compromise or settlement of controversy is denied. The clerk shall allow the case to remain open until the Trustee has administered the annuity payment asset.

So ORDERED THIS 13<sup>th</sup> DAY OF APRIL 1995.

William L. Edmonds  
Chief Bankruptcy Judge