

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)

) Chapter 11

R.J. MANUFACTURING, INC.,)

) Bankruptcy No. 01-04214C

Debtor.)

**ORDER RE MOTION FOR APPROVAL OF COMPROMISE,
MOTION TO APPROVE COMPENSATION TO DEBTOR'S TRIAL ATTORNEYS, AND MOTION TO
APPROVE ADMINISTRATIVE PRIORITY COMPENSATION AND EXPENSE REIMBURSEMENT TO
RICHARD C. RANK**

This matter came before the undersigned on April 16, 2003 pursuant to assignment. Larry Eide appeared as Chapter 11 Trustee. Debtor R.J. Manufacturing, Inc. was represented by attorney Thomas Fiegen. Attorney Wes Huisinga appeared for Joseph Spreitzer. Attorney Bruce Erusha appeared for Altorfer, Inc. Attorney Renee Hanrahan represented Poclain Hydraulics, Inc. After the presentation of evidence and argument, the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (C).

STATEMENT OF THE CASE

Trustee seeks approval of a compromise of Debtor's litigation pending against Poclain in U.S. District Court. The compromise arises from mediation between the parties in the District Court. It calls for payment by Poclain of \$1 million. Included in the \$1 million are \$333,333 attorney fees for Debtor's trial attorney, and \$70,000 to Debtor's President, Richard Rank, for advances and employment benefitting the estate. Additionally, \$40,000 in fees are estimated for Debtor's bankruptcy attorney and the Chapter 11 Trustee.

Debtor objects to the compromise. It asserts the cause of action is worth much more than \$1 million and there is a high probability of success on the merits. The U.S. District Court action is based on a manufacturing defect in Poclain's wheel drives that Debtor used in making its crop sprayers. Debtor asserts Poclain's defective product and related misrepresentations forced it out of business. It argues Poclain is liable at least to refund the purchase price of \$2.05 million and damages could be as high as \$5.2 million because of Poclain's misrepresentations. Joseph Spreitzer joins Debtor's objection to compromise.

Altorfer objects to the extent Trustee intends to convert the case to Chapter 7 after the settlement, which would open a new 90-day period to file claims and would delay payment to creditors. The U.S. Trustee filed a comment regarding the Administrative Expenses. She questions the amount to be paid to Atty. Fiegen, Debtor's counsel. The Settlement proposes distribution of \$40,000 for Fiegen's fees and Trustee's fees. U.S. Trustee asserts Fiegen should submit a fee application which should be reviewed for reasonableness. At the hearing, Trustee and Mr. Fiegen agreed that the U.S. Trustee's recommendation is appropriate.

CONCLUSIONS OF LAW

The decision whether to approve a settlement is committed to the sound discretion of the Bankruptcy Court. In exercising its discretion, the Court must make an informed and independent judgment. In re Flight Transp. Corp. Sec. Litig., 730 F.2d 1128, 1135 (8th Cir. 1984). The Court should approve the settlement unless it falls below the lowest point in the range of reasonableness. In re New Concept Hous., Inc., 951 F.2d 932, 938 (8th Cir. 1991). The Court may approve a settlement over the objections of some parties so long as it is in the best interests of the estate as a whole. Flight Transp. Corp., 730 F.2d at 1138. The proponent, Trustee, has the burden of proof in establishing that the proposed settlement is appropriate. In re Hanson Indus.,

Inc., 88 B.R. 942, 945 (D. Minn. 1988). Compromise is a normal part of the reorganization process and is favored by the law. In re Trism, Inc., 282 B.R. 662, 668 (B.A.P. 8th Cir. 2002). "The major purpose of compromise is to avoid the expense, burdens and uncertainty associated with litigation." Id.

The Eighth Circuit has stated that the trial court must determine whether a settlement is fair, reasonable and adequate under all the circumstances. In making that determination, the Eighth Circuit has adopted a broadly accepted four-factor test. Those factors are:

- (a) The probability of success in the litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it;
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Flight Transp. Corp., 730 F.2d at 1135, quoting Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1929); Trism, 282 B.R. at 667.

The second factor, i.e. difficulties in collection, is not an issue in this case. It is undisputed that Poclain is financially able to pay either the proposed \$1 million settlement or any damages awarded in the litigation.

THE PROBABILITY OF SUCCESS IN THE LITIGATION

Debtor asserts success on the merits is almost guaranteed in its litigation against Poclain. It asserts at least \$2.05 million in damages will be gained if the litigation proceeds. This amount represents a refund of the purchase price of Poclain's defective wheel drives. Trustee, on the other hand, asserts that Debtor has miscalculated damages. He explains the total damages may be less than Debtor asserts based on discrepancies in calculating the cost of Poclain's defective part and the cost of Debtor's product. The \$1 million settlement amount constitutes approximately one-half of Debtor's lowest projection of damages. Punitive damages may be possible in the litigation, based on Debtor's accusation that Poclain engaged in misrepresentation. Such damages, if not aimed at the plaintiff, are payable to the State rather than to the plaintiff under Iowa law.

THE COMPLEXITY OF THE LITIGATION INVOLVED, AND THE EXPENSE, INCONVENIENCE AND DELAY NECESSARILY ATTENDING IT

Debtor's President Richard Rand has advanced litigation costs of \$20,000 to trial attorney Pat Roby. Further costs would accrue at trial. Mr. Roby indicates it is highly likely Poclain would appeal a verdict favorable to Debtor. The costs and delay associated with an appeal are substantial. Considering the underlying issue is a manufacturing defect, technical evidence and expert opinions will be necessary at trial, adding additional costs and complexity.

THE PARAMOUNT INTEREST OF THE CREDITORS AND A PROPER DEFERENCE TO THEIR REASONABLE VIEWS IN THE PREMISES.

The only creditor objecting to this compromise is Joseph Spreitzer. He holds that largest unsecured claim of \$797,000. Total unsecured claims equal approximately \$2.8 million. Creditor Altorfer, Inc. filed a response which objects to the opening of a new bar date for claims in the eventuality of conversion to Chapter 7. It does not specifically object to the compromise with Poclain. Debtor is the only entity which objects to settling the claim against Poclain, preferring instead to proceed with litigation.

CONCLUSIONS

Applying the Drexel factors to this case, the Court concludes the Compromise should be approved. There would be no problems with collecting from Poclain either the \$1 million in settlement or damages in the U.S. District Court litigation. Success in the litigation is not guaranteed, as Debtor seems to suggest. There are surprises which arise in jury trials. The damages Debtor asserts may be difficult to calculate, or calculations could be mistaken. Being based on a claim of manufacturing defect, the litigation is complex. Expenses will increase during trial and a probable appeal, as will inconvenience and delay. Although the trial is likely to start soon, the probability of an appeal will delay payment to creditors for quite some time. No creditors other than Joseph Spreitzer have objected to settling the litigation. Trustee has been specially appointed to monitor the litigation and advise the Court as to the progress of the litigation. Trustee recommends the Court approve the proposed compromise with Poclain. The Court concludes, under the Drexel factors, that approval of the compromise is in the best interests of the estate.

Trustee requests approval of compensation for Debtor's trial attorneys. No significant objections were asserted by any party. The compensation proposed is in line with the fee agreement earlier reviewed by the Court when approving employment of Debtor's trial attorneys. As such, the Court approves the proposed compensation for Debtor's trial attorneys, payable immediately, without further application, upon receipt of the settlement sum.

Trustee further requests approval of compensation and expense reimbursement to Richard C. Rank, Debtor's president. Again, no significant objections were asserted by any party. The record supports a finding that Mr. Rank expended money for litigation expenses and was instrumental in seeing the cause of action move forward. As such, the Court approves payment to Richard C. Rank of \$20,000 for reimbursement of advances to Debtor's trial attorneys and \$50,000 as compensation for actual, necessary costs and expenses of preserving Debtor's bankruptcy estate, namely the cause of action Debtor holds against Poclain.

This approval of the Compromise, trial attorney's fees and Mr. Rank's administrative claim does not encompass Trustee fees and bankruptcy attorney fees estimated at \$40,000 in the proposed distribution. Nor does it constitute approval of conversion to Chapter 7 as Trustee anticipates according to page 2 of the Motion. Trustee's fees and Mr. Fiegen's attorney fees remain subject to Court approval under § 330.

If Trustee intends to convert to Chapter 7, he must meet the requirements of § 1112(b), which provides that conversion may occur by motion with appropriate notice and a hearing.

WHEREFORE, the Motion for Approval of Compromise is GRANTED.

FURTHER, the Motion to Approve Compensation to Debtor's Trial Attorneys is GRANTED.

FURTHER, the Motion to Approve Administrative Priority Compensation and Expense Reimbursement to Richard C. Rank is GRANTED.

SO ORDERED this 22nd day of April, 2003.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE.