U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-00628

Order

The relief set forth on the following pages, for a total of 17 pages including this page, is hereby ORDERED.

FILED BY THE COURT
06/18/2008

US Bankruptcy Court Judge
District of South Carolina

Entered: 06/18/2008

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE: Mark Alan Steinmetz and Karen McNeil Steinmetz, Debtors.	C/A No. 07-00628-HB Chapter 11
ACC Builders, LLC, Debtor.	C/A No. 07-00579-HB Chapter 11 **ORDER**

THIS MATTER came before the Court for hearing on the Motion Requesting Court to Reconsider *Order Authorizing Settlement of Claims* entered on March 25, 2008, and the objections thereto.

FINDINGS OF FACT

1. Debtor ACC Builders, LLC, filed for voluntary Chapter 11 protection on February 4, 2007. Debtors Mark Alan Steinmetz and Karen McNeil Steinmetz voluntarily filed for Chapter 11 protection on February 5, 2007. The Steinmetzs disclosed ownership interests in a number of businesses, including Mr. Steinmetz's sole ownership of ACC Builders.

2. May 31, 2007 was the claims bar date established in both cases for nongovernmental creditors.

3. On May 15, 2007, the U. S. Trustee filed a motion to convert the Steinmetz case to a proceeding under Chapter 7, and a hearing was scheduled. At the hearing on June 26, 2007, the Steinmetz case was not converted to Chapter 7 but instead

a Chapter 11 trustee was appointed by consent of the parties. Jackson L. Cobb was thereafter named as trustee in the Steinmetz case.[1]

4. On May 31, 2007, Economy Drywall Inc. filed a general unsecured claim in both of the bankruptcy cases in the amount of $121,775.

5. On May 30, 2007, Sareault Plumbing Inc. filed a general unsecured claim in the ACC Builders case only in the amount of $64,945.48. That claim was amended on January 18, 2008 to change the amount to $55,640.

6. On May 1, 2007, Steele Construction of S.C., Inc., filed a general unsecured claim in the ACC Builders case only in the amount of $475,089.06.

7. On October 22, 2007, on motion of the trustee the Court entered an Order Authorizing Joint Administration and Procedural Consolidation of the Steinmetz and ACC Builders cases, which directed that the lead case would be the Steinmetz case, No. 07-00628-hb.

8. The record in these cases includes the Steinmetz's schedules, which list a contingent debt to Economy Drywall as a "possible personal guarantee for business debt" in the amount of $121,775, a debt of $55,640 scheduled in the same manner in favor of Sareault, and a debt of $475,089 to Steele, including the same contingency designation. The schedules of ACC Builders list the same debt amounts as "disputed" claims.

9. On December 27, 2007, the Court confirmed the trustee's plan of reorganization. The plan established a liquidating trust and liquidating trustee to fund payment to unsecured claims. The parties have stated on numerous occasions that there

[1] The Steinmetzs recognized and acknowledged that the Chapter 11 trustee in their case replaced them in all business and ownership matters, including controlling the Debtor ACC Builders, solely owned by Mr. Steinmetz.

may be assets in the estates in excess of the amount needed to pay claims in full with interest.

10. The claims of these creditors arise out of a housing development project involving Debtors. Steele was the general contractor; Sareault and Economy were subcontractors. Before the filing of this case, litigation was pending between the parties wherein claimants attempted to collect their claim amounts from Debtors. Also pending before the South Carolina Department of Labor, Licensing and Regulation's State Licensing Board for Contractors was a complaint against Steele allegedly initiated by Debtor Mark Steinmetz claiming that Steele lacked the appropriate license to perform the work that resulted in the alleged charges.

11. The docket in this case evidences the fact that counsel for the trustee noticed the depositions of numerous parties having knowledge of facts related to the claims of Economy, Sareault and Steele.

12. In January of 2008 the trustee filed objections to the above-referenced claims. The reason stated was that Steele lacked a proper license to perform the construction work that led to the charges set forth in its proofs of claim. The trustee asserted that therefore as a matter of law the claims should be disallowed. These issues involve state statutory law and regulatory authorities. The trustee also asserted on behalf of the individual debtors' estates as a separate ground for disallowance that those debtors had not committed themselves to pay the debts by personal guarantee and that if they were owed, they were only owed by Debtor ACC Builders.

13. Each creditor responded to the trustee's objections with facts and law contrary to the trustee's position and reasserted entitlement to the claims in question via various legal theories. Each creditor is represented by separate counsel.

14. A hearing on the objection to the Steele claim was held on February 20, 2008. At that hearing the trustee and the three creditors requested that the hearing be continued to March 20, when hearings on the objections to the Economy and Sareault claims were also scheduled. The purpose of the continuance was to allow the claimants and trustee time to circulate notice of a global settlement of these related claims. At that hearing Debtors' bankruptcy counsel represented to the Court that the Debtors would object to the proposed settlement and therefore the hearing on the settlement proposal would be contested. Debtor Mark Steinmetz was present at the February 20 hearing along with his bankruptcy counsel.

15. On February 26, 2008, the trustee filed a Notice of Settlement and Opportunity for Hearing relating to the claims (the "Notice of Settlement"). The notice of the hearing on the matter as required by Fed. R. Bankr. P. 2002(a)(3) was contained in that pleading and it stated a hearing date of March 20, 2008. The trustee filed a certificate of service indicating that his staff mailed the Notice of Settlement via first-class mail, postage prepaid on February 26, 2008 to:

ACC Builders, LLC
15 Hickory Hollow Court
Greenville, SC 29607-5812

Mark Alan Steinmetz
15 Hickory Hollow Court
Greenville, SC 29607-5812

Karen McNeil Steinmetz
15 Hickory Hollow Court
Greenville, SC 29607-5812

Kevin Kenison
Kenison, Dudley & Crawford, LLC
704 East McBee Ave
Greenville, SC 29601-3027

Robert H. Cooper
3523 Pelham Road
Suite B
Greenville, SC 29615-4191

Kenison & Dudley LLC
704 East McBee Ave
Greenville, SC 29601-3027

16. There was no evidence offered that any of these addresses were incorrect or any direct challenges to the averments in the certificate of service.

17. Debtors, through their bankruptcy counsel, filed an objection to the Notice of Settlement on March 10, 2008, raising the licensing and payment or partial payment defenses and reserving the right to present additional arguments at the hearing. The certificate of service filed by Debtors' bankruptcy counsel indicates that he served a copy of that objection on his clients by first-class mail at the same address used by the trustee for service of the Notice of Settlement.

18. At the hearing on March 20, 2008, each creditor was represented by separate counsel – several with expertise in state construction law – and several witnesses were present to support the settlement. Also present were the Debtors' bankruptcy counsel, trustee Jackson Cobb and his attorney. Neither Mr. nor Mrs. Steinmetz appeared at the hearing or any other party representing the Debtors' interests other than bankruptcy counsel.

19. The parties at the hearing presented their cases as to why the settlement should be approved over the objections of the Debtors. Debtors' bankruptcy counsel, without his clients present, presented his arguments on the licensing and payment issues, asserting that the creditors were completely precluded from recovering on their claims.

After consideration of the proffered facts, legal authorities, and arguments and after consideration of the benefits of the settlement to the estate, the Court entered its Order Authorizing Settlement of Claims on March 25, 2008.

20. The Order includes the following:

> *The Trustee proffered testimony concerning the claims: all of the claims arise out of a failed low-income housing development for which Steele was the general contractor; Sareault and Economy were subcontractors on that project. While Economy has filed claims in both the Steinmetz case and the ACC Case, it is owed for only one claim. Any payments to Sareault and Economy by the Estates would be deducted from any payment to Steele.*
>
> *The Trustee further proffered testimony that he had taken three days of Rule 2004 Examinations concerning the three claims; that he believed that both Sareault and Economy were owed for their work; that he believed that any trial on the claim of Steele would take at least one, if not two, days of testimony concerning the amounts that were, or were not, paid Steele by Steinmetz; and that it would take at least one day of testimony to dispose of the claims of Sareault and Economy.*
>
> *The Trustee opines that he believes that the expense of litigation would quite probably equal any reduction in the claims; and pointed out to the Court that – since these are solvent Chapter 11 Cases – the claimants would be entitled under their contracts to interest at the legal rate and attorney's fees, all of which were being waived in this Settlement.*
>
> *The Trustee recommends that the claim of Economy be allowed as a general, unsecured claim, without priority, in the reduced amount of $115,900.00, without interest and without attorney's fees; that the claim of Sareault be allowed as a general, unsecured claim, without priority, in the reduced amount of $61,750.00, without interest and without attorney's fees; and that the claim of Steele be allowed a general, unsecured claim, without priority, in the reduced amount of $217,350.00 (after deduction of the allowed Economy claim, and after deduction of the allowed Sareault claim), without interest and without attorney's fees.*
>
> *Steinmetz objects to the settlement, alleging that the Trustee should litigate the matters to a final resolution.*

21. As stated in the Order, Steele was the general contractor, so its claim was inclusive of the claims of the other two creditors. Further, the Economy claim was filed in both cases and the creditor is only entitled to a single payment. The Order reduced the overall claims from $774,279 on the books to $395,000. However, as the former amount contained duplications, the settlement was essentially an overall reduction from $475,089 to $395,000, along with the waiver of the right to interest and attorneys' fees.[2]

[2] If this is in fact a solvent estate, waiver of interest and attorneys' fees on these claims could be significant.

22. On March 25, 2008, the undersigned judge received a letter via e-mail from Debtor Mark Steinmetz. The full text is set forth below:

Mark A. Steinmetz
15 Hickory Hollow Ct
Greenville, SC 29607
864-304-7777

Certified Mail
Return Receipt Requested
Email

March 25, 2008

Honorable Judge Burris [judgeburris_porders@scb.uscourts.gov]
US Bankruptcy Court – District of South Carolina
1100 Laurel Street
Columbia, SC 29201-2423

Dear Judge Burris:

I do not know of any other way in which to contact you and I do not want to run out of time for this process. I am therefore using these means of correspondence.

On March 20, 2008 a hearing was held in reference to Case 07-00628. I ***was not*** notified by my attorney of this hearing or by other means. I had information available to the court that shows I had paid Mr. Steele or on his behalf the sum of $1,131,109.60. I have the cancelled checks and Invoices. Additionally, Mr. Jack Cobb (Trustee) knew of my intentions to present and have Mr Kenison Represent me. I have never missed any motion or hearing at any time. Mr. Cobb Stated he was shocked that I was not there.

My attorney Mr. Bob Cooper had a meeting with myself a couple of weeks prior to the hearing. The discussion topic was his knowledge of South Carolina Contractor Law and Lien Rights. I had given the analogy to him that you would not get an Orthopedic Surgeon to go into heart surgery. You would want a Cardiovascular Surgeon. This inference was made because Mr. Cooper practices Bankruptcy. I needed an attorney already acquainted with the case, Mr. Keven Kenison, and a Construction Law specialist.

Based on this meeting, Mr. Cooper was to motion the court to allow Mr. Kenison to be my counsel when the hearing was to take place. Also, Mr. Kenison was not made aware of the Court Hearing date.

With information not presented to the court and not having the expertise of Mr. Kenison, my estate has been adversely impacted.

I request another Hearing in which the facts can be presented and have Mr. Kenison represent me in these hearings. The only other avenue I understand is to appeal the decision. In an effort to expedite some level of closure, I'm requesting another Hearing.

Sincerely:

Mark Steinmetz
Cc: Keven Kenison
Bob Cooper

23. The Court entered an order denying without prejudice any motion or request set forth in the e-mail and indicating that as this party was represented by counsel, counsel could renew the motion if appropriate.

24. On March 26, 2008, Debtors through their bankruptcy attorney filed an Application to Employ Kevin Kenison as their attorney for the purpose of challenging the claims and settlement. The application included a verified statement from Mr. Kenison signed on March 25, 2008. At the hearing on the present Motion to Reconsider Mr. Kenison represented to the Court that he was not yet retained to represent any party in this bankruptcy case prior to the mailing of the Application for Settlement.

25. On March 28, 2008, the Debtors' counsel withdrew the application to employ Mr. Kenison, and later explained that it was administratively unnecessary to seek approval of his employment.

26. On March 28, 2008, Debtors' bankruptcy counsel filed this Motion. The Motion relies on Rule 59 and 60 of the Federal Rules of Civil Procedure, and states that "the debtor alleges he was unaware of the hearing on the matter of the Trustee's proposed settlement with claimants." The Motion requests that the Debtors be allowed to present new evidence regarding why the claims are not valid.

27. Economy and Sareault filed objections to the Motion to Reconsider including considerable authorities and arguments.

28. The following parties appeared at the May 15 hearing on the Motion to Reconsider: Steele Construction and Sareault Plumbing (both represented by counsel and with a corporate representative present), Economy Drywall and the trustee (both represented by counsel only), Debtor Mark Steinmetz along with his bankruptcy counsel and his counsel in the area of construction law, Mr. Kenison.

29. Mr. Steinmetz testified as to his reasons for failing to attend the March 20 hearing. He testified that he did not receive any notice by mail of the March 20 hearing nor was he notified of the hearing by his attorney. There was no testimony offered specifically on behalf of addressee/Debtor Karen Steinmetz.

30. Debtors asked the Court to reconsider the Order Authorizing Settlement and allow them to present evidence to prove that the claims in question should be disallowed. Creditors and the trustee objected to the presentation of any additional evidence that could have been presented at the hearing on March 20, unless and until the Court decided it was appropriate to reconsider its prior order under Rules 59(e) and/or 60. Creditors further stated that the Debtors' position was presented at the prior hearing by bankruptcy counsel, and ultimately overruled. Creditors objected to any proceeding similar to a trial on the merits of the claims, as to allow such would raise costs that they intended to avoid as a result of the settlement. Creditors represented to the Court that the costs of defending the settlement itself for a second time – in addition to the March 20 hearing seeking approval thereof – simply because Mr. Steinmetz failed to appear at that hearing, made the settlement less favorable, resulting in prejudice to the claimants.

31. At the hearing the Court limited testimony to a presentation of any grounds for reconsidering, altering or amending the prior order under Fed. R. Civ. P. 59(e) and 60(b), made applicable to this case by Fed. R. Bankr. P. 9023 and 9024.

DISCUSSION AND CONCLUSIONS OF LAW

Fed. R. Civ. P. 60(b)

In support of Debtors' motion for relief from a judgment or order pursuant to Rule 60(b), Debtors must show the Court why they should be excused from the failure to appear at the March 20 hearing. At that hearing, they could have presented the evidence and arguments that they now wish to offer in opposition to the settlement. Debtors assert lack of sufficient notice of the settlement hearing.

Fed. R. Bankr. P. 2002(a) provides that "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 20 days' notice by mail of: … (3) the hearing on approval of a compromise or settlement of a controversy...." SC LBR 9019-1 delegates this notice to the movant, and the notice of hearing in this case is found within the Notice of Settlement filed on February 26, 2008 by the trustee. Fed. R. Bankr. P. 7004 – the most stringent service rule governing adversary proceedings – allows service by mail to the address of record in this case. Fed. R. Bankr. P. 7004(b)(1). The notice was served in this manner, so there can be no arguments about the *method of service*.

Fed. R. Bankr. P. 7005(b)(2)(C) provides that service of a notice may be made by "mailing it to the person's last known address—in which event service is complete upon mailing." In this case, proof of service of the Notice of Settlement is part of the record. The effect of such proof is that a presumption of receipt arises:

> [F]ederal cases clearly reiterate the standard expressed in Cozza, that a presumption of receipt may be established by a showing of proper mailing. See, e.g., In re Alexander's, Inc., 176 B.R. 715, 721 (Bankr. S.D.N.Y. 1995); In re Horton, 149 B.R. 49, 57 (Bankr. S.D.N.Y. 1992); In re Bicoastal Corp., 126 B.R. 613, 615 (Bankr. M.D. Fla. 1991). "Mail properly (1) addressed (2) stamped and (3) deposited in the mail system is presumed to have been received by the party to whom it was addressed." In re Randbre Corp., 66 B.R. 482, 485 (Bankr. S.D.N.Y. 1986). Many of these cases show that an affidavit of service is sufficient evidentiary material to raise the presumption. See In re Horton, 149 B.R. at 57 (stating that the debtor may invoke the presumption of receipt after proper mailing based on a certificate stating that a notice was mailed to every creditor on a list, including the creditor in question); In re Alexander's, Inc., 176 B.R. at 721 (raising the presumption by submitting an affidavit by the employee who mailed the letter that she did so on a particular date and sent it to a particular address).

In re O.W. Hubbell & Sons, Inc., 180 B.R. 31, 34 (N.D.N.Y. 1995) (citing United States v. Jack Cozza, Inc., 106 F.R.D. 264, 267 (S.D.N.Y. 1985)). The person mailing the material does not have to testify for the presumption to arise. In re Rayborn, 307 B.R. 710, 722 n.10 (Bankr. S.D. Ala. 2002) (mailing employee need not testify); In re American Properties, Inc., 30 B.R. 247, 250 (Bankr. D. Kan. 1983). Testimony that the addressee did not receive or does not remember receiving the mailing is not conclusive for the purposes of rebutting the presumption. Benner v. Nationwide Mut. Ins. Co., 93 F.3d 1228, 1234-35 (4th Cir. 1996) (decided under Maryland law and involving presumption of sending and receipt arising after testimony of ordinary business practices concerning mailing of notices by insurance company employee); In re Ware, No. 02-12262C-11G, 2003 WL 1960454, at *5 (Bankr. M.D.N.C. Apr. 24, 2003); In re Robinson, 228 B.R. 75, 82 (Bankr. E.D.N.Y. 1998); O.W. Hubbell & Sons, 180 B.R. at 34-35.

In this case, Mr. Steinmetz did not directly rebut the evidence that the notice was mailed to the correct address with the proper postage on the date stated in the certificate of service. He merely denied that he had received notice of the hearing. This general

denial is insufficient to rebut the presumption of receipt. Therefore, Debtors had adequate notice of the hearing.

This conclusion is further justified by (1) the fact that the certificate of service indicates three separate pieces of mail to the Steinmetz's home directed to three different addressees; (2) the lack of testimony from Mrs. Steinmetz as to whether or not she received any of the notices; (3) the service of three other copies of the notice on two different attorneys who currently represent the Debtors in prosecuting this Motion; and finally, (4) the fact that there was a response to the Notice of Settlement filed on behalf of the Debtors in this matter and an appearance by their attorney at the noticed hearing.[3] Taking all of these factors together, the Court finds that even if Mr. Steinmetz was not actually aware of the hearing, he and his counsel were given and had *adequate notice* of the hearing to satisfy applicable rules and due process requirements. Debtors therefore have not shown excusable neglect based on a lack of notice.

Fed. R. Civ. P. 60(b)(1) provides for relief from an order for "mistake, inadvertence, surprise, or excusable neglect." Carelessness or ignorance of the rules of procedure do not necessarily constitute excusable neglect warranting relief, and deliberate or willful conduct or inadvertent conduct that does not demonstrate diligence is not excusable neglect within the meaning of the rule. Owens-Illinois, Inc. v. T & N Ltd., 191 F.R.D. 522, 525-26 (E.D. Tex. 2000). It is within the discretion of the trial court to

[3] Fed. R. Bankr. P. 2002(a)(3) states that notice should be given to "the debtor, the trustee, all creditors and indenture trustees." This rule does not specifically mention service on the debtor's attorney. Fed. R. Bankr. P. 7005(b)(1) provides for service of motions and notices in contested matters after service of the initial summons and complaint as follows: "[i]f a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party." Therefore, there is an argument that service on Debtors' bankruptcy counsel alone satisfies the requirements of Rule 2002(b)(3) and Rule 7005(b)(1).

allow or deny a motion for relief from judgment for excusable neglect. In re Reserve Production, Inc., 190 B.R. 287, 289 (E.D. Tex. 1995).

The Court notes an important fact distinguishing this case from many other Rule 60(b) motions: this is not a request for relief by a defaulting party who now seeks to offer a new defense or objection to the application to the Court. Rather, Debtors are asking the Court to allow supplementation of the evidence and arguments previously presented to the Court at the original hearing. The effect would be to revisit matters already considered. Debtors have not met their burden pursuant to Rule 60(b) indicating that such relief is appropriate.

Fed. R. Civ. P. 59(e)

Debtors have also asked the Court to alter or amend its judgment under Fed. R. Civ. P. 59(e), which allows the court to correct a manifest error of law or fact or to receive newly discovered evidence, but does not allow introduction of new evidence or discussion of new legal theories or arguments that could have been offered in the original proceeding. In re Hupton, 287 B.R. 438, 445 (Bankr. N.D. Iowa 2002); In re Hodes, 239 B.R. 239, 242 (Bankr. D. Kan. 1999); In re Gates, 214 B.R. 467, 470 (Bankr. D. Md. 1997); Matter of Pothoven, 84 B.R. 579, 582 (Bankr. S.D. Iowa 1988).

Three grounds justify relief under Rule 59(e): (1) an intervening change in the law, (2) the availability of new evidence not previously available, and (3) a need to correct a clear error of law or prevent manifest injustice. Matter of No-Am Corp., 223 B.R. 512, 513 (Bankr. W.D. Mich. 1998). Such a motion does not allow an opportunity to reargue a case. In re Tama Beef Packing Inc., 284 B.R. 889, 891 (Bankr. N.D. Iowa 2002).

On the facts of this case, relief under Rule 59(e) would only be appropriate if the Court made a clear error of law in approving the settlement. The Court has identified two legal issues that will be re-examined to determine if any clear error of law has occurred: (1) whether these creditors are absolutely forbidden from receiving a distribution in this case as a matter of law based on the licensing issues raised by the trustee and the Debtors; and (2) whether the Court applied the standards for approving a settlement correctly.

Are these creditors absolutely forbidden from receiving a distribution in this case as a matter of law based on the licensing issues raised by the trustee and the Debtors?

If the answer to this question is unambiguously "yes," the previous approval of the settlement could be a clear error of law. The Court invited briefs from the parties on the licensing issue. Both Debtors' and creditors' counsel presented vigorous arguments couching the facts in the light most favorable to their clients, and presented credible legal and factual arguments to support their positions. The parties set forth varying interpretations of the facts relating to the licensing issue. They disagreed as to the legal effect of any licensing failure based on any set of facts argued to the Court. After a careful review of the arguments made at both hearings along with the briefs filed in this case, the testimony and proffer of testimony, the Court cannot conclude that it made a clear error of law in approving the settlement after again considering the licensing defense. There is a legitimate dispute as to whether there was a licensing violation of a type and magnitude which would prohibit any of these creditors from filing and collecting on a claim in this bankruptcy case as a matter of law. It appears that there are credible positions to be taken on both sides, which is generally what leads to settlement discussions.

Did the Court correctly apply the standards for approving a settlement?

To approve a settlement, "the Court must make an informed and independent determination that the Settlement is fair and equitable and in the best interest of the Debtors' estate." In re Roman, No. 04-13373-jw, slip op. at 2-3 (Bankr. D.S.C. Oct. 4, 2006) (citing Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); and St. Paul Fire & Marine Ins. Co. v. Vaughn, 779 F.2d 1003, 1010 (4th Cir. 1985)). "In essence, the court must determine whether the settlement falls 'below the lowest point in the range of reasonableness.'" In re Austin, 186 B.R. 397, 400 (Bankr. E.D. Va. 1995) (quoting Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983)). See also U.S. ex rel. Rahman v. Oncology Associates, P.C., 269 B.R. 139, 149-50 (D. Md. 2001); In re Austin, 186 B.R. 397, 400 (Bankr. E.D. Va. 1995); In re Roman, No. 04-13373-jw, slip op. at 3. Courts may consider: (1) the probability of success in litigation; (2) the difficulties, if any, to be encountered in collection; (3) the complexity of the litigation, including expense, inconvenience and delay; and (4) the paramount interest of the creditors and a proper deference to their reasonable views. U.S. ex. Rel. Rahman, 269 B.R. at 149; In re Roman, No. 04-13373-jw, slip op. at 3.

Debtors assert that after application of payments and credits the claims in question have been paid, a fact contested by claimants. Debtors assert that there is an issue regarding the sufficiency of the licensing of the contractors, but the facts surrounding that issue are disputed. Finally, even if a significant licensing deficiency is proven, there remains a legal controversy as to the effect of any such deficiency on the creditors' rights

to make claims against this estate. There is a hotly contested dispute as to the merit of the claims and objections thereto.

The approved global settlement ensures that the claims are counted only once and reduces the overall claims of these three creditors from $475,089 to $395,000, along with the waiver of the right to interest and attorneys' fees. The settlement avoids the uncertainty and delay of litigation. While it is true that if the objections to the claims are sustained estate liabilities would be reduced, it is certain any benefit from continuing the litigation would be diminished by additional fees and costs. A legitimate controversy exists making settlement appropriate, and the court had no facts before it from which it could find that the terms of the settlement were "below the lowest point in the range of reasonableness."

After re-examining the legal standards applicable to the approval of the settlement, the Court cannot find that there was a clear error of law in applying those standards.

IT IS THEREFORE, ORDERED:

That the Motion Requesting Court to Reconsider Order Authorizing Settlement of Claims is **DENIED,** and the Order Authorizing Settlement of Claims, entered March 25, 2008, stands as filed.