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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re ) Case No. 08-92380-E-7  
) Docket Control Nos.  
NICHOLAS GRIGGS and ) KJL-4  
KATHRYN B. GRIGGS, ) P&A-2  
)  
Debtors. )  
\_\_\_\_\_ )

**This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.**

**MEMORANDUM OPINION AND DECISION  
STIPULATION RE PERSONAL INJURY CLAIM PROCEEDS  
DOCKET ENTRY NO. 207**

On May 7, 2013, the court filed a Scheduling Order in connection with the Trustee's Objection to Claim of Exemption, DCN MGO-7, and the Motion for Attorneys' Fees filed by Special Counsel, DCN KJL-4. With respect to the Objection to Claim of Exemption, the court previously entered an order disallowing the Debtors' claim of exemption in the Personal Injury Claim and Proceeds specified in the exemption ("Personal Injury Claim") to the extent that the amount (unstated on the Amended Schedule C) exceeded the exemption permitted under California Code of Civil Procedure § 703.140(b)(11)(E). Order, Dckt. 126. No proceedings for either contested matter are pending.

1       The Scheduling Order specified two time periods for the  
2 parties. With respect to the exemption in an unstated amount  
3 claimed in the Personal Injury Claim, the Debtors were required to  
4 file and serve by June 1, 2013, an appropriate proceeding for the  
5 court to determine what specific amount, if any, could properly be  
6 claimed as exempt. Further, the Trustee, Special Counsel for the  
7 Trustee, and any other parties in interest were required to file  
8 and serve by June 30, 2013, an appropriate proceeding, if any,  
9 asserting any right for the Debtors' exempt portion of the  
10 \$120,000.00 Personal Injury Claim settlement proceeds to be liable  
11 for the costs of prosecuting that claim. Failure to timely file  
12 such respective proceeding would be deemed a determination that no  
13 such exemption or liability for costs existed.

14       On May 13, 2013, the Debtors, Chapter 7 Trustee, and Special  
15 Counsel for the Trustee filed a Stipulation resolving their  
16 competing interests in the remaining \$90,000.00 of the settlement  
17 proceeds (\$30,000.00 having been used to pay medical and other lien  
18 claims). Stipulation, Dckt. 207. The Stipulation provides for the  
19 interests in the remaining \$90,000.00 of settlement proceeds to be  
20 disbursed as follows:

- 21       A.   \$35,541.28 to be paid to the Debtors as the total amount  
22           of the exemptions that they claim in the Settlement  
          Proceeds.
- 23       B.   \$44,028.00 is to be paid to Scott VanWagenen, Special  
24           Counsel to the Trustee, for fees previously approved by  
          the court.
- 25       C.   The parties shall bear their own attorneys' fees, costs,  
26           and expenses in connection with the claims of exemption,  
          Special Counsel Fee Application, Counter-Motion for  
27           Turnover of Monies the Debtors, and the Stipulation.
- 28       D.   The Court's May 7, 2013 Scheduling Order is to be  
          vacated.

1       The court first notes that the Trustee has represented he is  
2 holding \$90,000.00 in settlement proceeds. The Stipulation  
3 expressly accounts for \$79,569.28 of the settlement proceeds. It  
4 appears that implicitly the Stipulation provides that the Debtors  
5 will be allowed an exemption of \$35,541.28 in the settlement  
6 proceeds and that \$54,458.72 of the proceeds belongs to the  
7 bankruptcy estate free and clear of any exemption claim. Of this  
8 amount, \$44,028.00 is to be paid to Special Counsel for his allowed  
9 fees (presuming the estate is administratively solvent) and the  
10 balance of the proceeds, \$10,430.72, are unencumbered monies of the  
11 estate to be disbursed by the Trustee.

12                   **PRESENTATION OF STIPULATION TO THE COURT**

13       The Stipulation has been filed with the court and it is not  
14 connected to any pending motion seeking relief from the court. No  
15 notice of the Stipulation has been provided to creditors or the  
16 United States Trustee. No copies of the Stipulation have been  
17 served on the United States Trustee or any parties requesting  
18 special notice.

19       The substance of the Stipulation is for the Debtor to waive  
20 the exemption previously asserted under California Code of Civil  
21 Procedure § 704.140(b)(11)(E) in 100% of the Personal Injury Claim  
22 and Proceeds thereof. The Debtors continue to claim the \$35,541.28  
23 of the Personal Injury Claim exempt pursuant to California Code of  
24 Civil Procedure §§ 703.140(b)(5) and (11)(D). Amended Schedule C  
25 filed February 16, 2010, Dckt. 115. No objection to this  
26 \$35,541.28 in exemptions was filed by the Trustee, creditors, or  
27 any other party in interest. The time for objecting to this  
28 exemption claimed on February 16, 2010 has expired.

1 While at first blush it may appear that the parties are  
2 entering into a settlement to compromise their respective rights  
3 for which court approval is required (Fed. R. Bankr. P. 9019), such  
4 is not the case. The Trustee is not waiving or compromising any  
5 rights or interests of the Estate. The Debtors have claimed  
6 \$35,541.28 in exemptions in the remaining \$90,000.00 of proceeds  
7 from the settlement of the Personal Injury Claim. No objection  
8 having been filed, the Debtors are entitled to the monies claimed  
9 as exempt. *Schwab v. Reilly*, 130 S.Ct. 2652, 2657 (2010).

10 The court has set a deadline of June 30, 2013, in the event  
11 that the Trustee, Special Counsel, or other party in interest  
12 designated by the court, believed that a *bona fide* legal theory  
13 existed by which the portion of the Personal Injury Claim  
14 settlement proceeds claimed exempt by the Debtors could be  
15 surcharged or otherwise be called upon to pay for the expenses of  
16 obtaining the Settlement. At the point in time of the Scheduling  
17 Order, given that the Debtors were claiming all of the settlement  
18 proceeds exempt, there existed the possibility of such claims being  
19 asserted.

20 Under the terms of the Stipulation, the Debtors have waived  
21 any exemption in all amounts in excess of \$35,541.28, which is the  
22 dollar amount of exemption which the Trustee, Special Counsel, and  
23 all creditors were on notice when the estate embarked upon  
24 asserting the Personal Injury Claim. The court interprets the  
25 Trustee's and Special Counsel's participation in the Stipulation to  
26 be a statement that they have determined that no legally reasonable  
27 basis exists for asserting claims against the Debtors' \$35,541.28  
28 in exempt proceeds in light of the estate receiving all amounts in

1 excess of the exemption. In this case, electing not to pursue a  
2 possible expense recovery under the circumstances is not  
3 compromising the rights of the estate as part of a settlement.

#### 4 **Scheduling Order Dates**

5 The Stipulation provides that the court shall vacate the  
6 June 1, 2013 and June 30, 2013 dates in the Scheduling Order. The  
7 court vacates the Scheduling Order, Dckt. 203, it having been  
8 rendered moot by the Stipulation.

#### 9 **Ruling**

10 Because the Chapter 7 Trustee is holding the \$90,000.00 of  
11 settlement proceeds and cannot disburse them without further order  
12 of the court (Order Approving Compromise, Dckt. 170), the present  
13 motion merely requests a supplemental order for the release of the  
14 monies. Pursuant to the Stipulation, Order Approving Compromise  
15 (DCN:KJL-3, Dckt. 170), Order on Objection to Claim of Exemptions  
16 (DCN:MGO-7, Dckt. 126), and Order on Application for Attorneys Fees  
17 by Scott A. VanWagenen, Special Counsel to the Trustee, (DCN: KJL-  
18 4, Dckt. 200); the court shall enter an order authorizing the  
19 Trustee to disburse the \$90,000.00 of proceeds from the Personal  
20 Injury Claim as follows:

- 21 1. \$35,541.28 to the Debtors in full satisfaction of all  
22 claims of exemption in the Personal Injury Claim and all  
23 proceeds thereof; and
- 24 2. The balance of the Personal Injury Claim settlement  
25 proceeds as provided under Chapter 7 of the Bankruptcy  
26 Code, including the immediate payment of \$44,028.00 to  
27 Scott A. VanWagenen allowed as Special Counsel Fees.

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The court shall issue an order consistent with this Ruling. This Memorandum Opinion and Decision constitutes the court's findings of fact and conclusions of law with respect to the Stipulation and the order entered pursuant hereto.

Dated: May 24, 2013

/s/  
RONALD H. SARGIS, Judge  
United States Bankruptcy Court