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3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
5 SACRAMENTO DIVISION  
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8 In re: )  
9 ) Case No. 05-24367-B-7  
10 RODNEY MARTIN, )  
11 Debtor. ) Docket Control No. HSM-6  
12 ) Date: October 11, 2006  
Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued  
14 the following ruling. The official record of the ruling is  
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of  
16 the court's decision under the E-Government Act of 2002 (the  
"Act"), a copy of the ruling is hereby posted on the court's  
17 Internet site, [www.caeb.uscourts.gov](http://www.caeb.uscourts.gov), in a text-searchable  
18 format, as required by the Act. However, this posting does not  
constitute the official record, which is always the ruling  
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 This matter came on for hearing on October 11, 2006, at 9:30 a.m.  
21 Appearances are noted on the record. The following constitutes the  
22 court's findings of fact and conclusions of law, pursuant to Federal  
23 Rule of Bankruptcy Procedure 7052.

24 Neither the respondent within the time for opposition nor the  
25 movant within the time for reply has filed a separate statement  
26 identifying each disputed material factual issue relating to the  
27 motion. Accordingly, both movant and respondent have consented to the  
28 resolution of the motion and all disputed material factual issues

1 pursuant to FRCivP 43(e). LBR 9014-1(f)(1)(ii) and (iii).

2 The court has great latitude in approving compromise agreements.  
3 In re Woodson, 839 F.2d 610, 620 (9<sup>th</sup> Cir. 1988). The court is  
4 required to consider all factors relevant to a full and fair  
5 assessment of the wisdom of the proposed compromise. Protective  
6 Committee For Independent Stockholders Of TMT Trailer Ferry, Inc. v.  
7 Anderson, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The court  
8 will not simply approve a compromise proffered by a party without  
9 proper and sufficient evidence supporting the compromise, even in the  
10 absence of objections.

11 Those factors a court considers in its analysis include: (a) the  
12 probability of success in the litigation; (b) the difficulties, if  
13 any, to be encountered in the matter of collection; (c) the complexity  
14 of the litigation involved, and the expense, inconvenience and delay  
15 necessarily attending it; and (d) the paramount interest of the  
16 creditors and a proper deference to their reasonable views in the  
17 premises. In re A & C Properties, 784 F.2d 1377, 1381 (9<sup>th</sup> Cir. 1986).  
18 The party proposing the compromise has the burden of persuading the  
19 bankruptcy court that the compromise is fair and equitable and should  
20 be approved. Id.

21 This motion involves two intertwined compromises. The first  
22 compromise arises from an ongoing dispute between Jerome James Regan  
23 ("Regan") and the debtor. Regan is the plaintiff in a three year old  
24 state court action against debtor and his non-debtor spouse. Debtor  
25 filed a pre-petition counterclaim against Regan that became property  
26 of the estate. Each side seeks substantial amounts from the other.  
27 Regan, Robert Kingslan, and George Crum also are plaintiffs in

1 Adversary Proceeding 06-2160 seeking to deny debtor a discharge. The  
2 Regan, Kingslan and Crum on one hand and the trustee on the other  
3 propose to compromise as follows:

4 Pursuant to the first compromise (A) Regan will pay the estate  
5 \$117,500; (B) the trustee will dismiss the state court counterclaim  
6 against Regan with prejudice; (C) The trustee will not object to the  
7 claims filed by Regan (\$399,234.19), Kingslan (\$39,000) and Crum  
8 (\$68,230), which claims "shall be allowed for purposes of distribution  
9 only in this case;" (D) The Regan, Kingslan and Crum claims will be  
10 subordinated to all other creditors in the case; (E) Regan shall be  
11 authorized, but not required, to prosecute estate claim to "Other  
12 Estate Property" (defined in paragraph F on page 1 of settlement  
13 agreement) in the name of the trustee; (F) from the \$117,500, the  
14 trustee shall pay chapter 7 administrative claims in full, priority  
15 claims in full, chapter 11 administrative claims in part pursuant to  
16 the second compromise, and general unsecured claims (excluding Regan,  
17 Kingslan, and Crum) a dividend estimated at 32% of their claims; (G)  
18 the trustee will assist Regan in connection with the denial of  
19 discharge adversary proceeding and with prosecution of the "Other  
20 Estate Property" claims; (H) The trustee, Regan, Kingslan & Crum agree  
21 not to object to the fees of Austin Cooper ("Cooper"), C. Patrick  
22 Stoll ("Stoll"), and Mason & Thomas ("Mason") to the extent that they  
23 conform to the terms of the second compromise.

24 The second compromise is between (1) trustee and (2) Cooper,  
25 Stoll, and Mason. Cooper is general counsel for the debtor. Stoll is  
26 special litigation counsel for the debtor. Mason is the chapter 7  
27 trustee's special litigation counsel. Cooper has yet to file an  
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1 application for approval of fees. Stoll has two such applications  
2 pending elsewhere on this calendar seeking a total of \$86,641.01.  
3 Both Cooper and Stoll hold potential chapter 11 administrative claims.  
4 Mason also has yet to file a fee application in this case. He is  
5 employed by the trustee and holds a potential chapter 7 administrative  
6 claim. Mason is also employed on a contingency fee basis. In an  
7 effort to limit administrative expenses, the parties have proposed to  
8 compromise as follows:

9 Pursuant to the second compromise: (A) Together Cooper, Stoll,  
10 and Mason have agreed to accept a combined total of \$30,000 from the  
11 monies paid to the trustee by Regan (see compromise 1 above); (B) The  
12 trustee, Regan, Kingslan & Crum agree not to object to those fees and  
13 agree not to seek disgorgement of previously paid fees provided the  
14 payments have been disclosed previously; (C) Cooper shall be entitled  
15 to retain any retainer and compensation received to date and disclosed  
16 in connection with his employment as general counsel for the then  
17 debtor in possession, but he shall receive nothing further from the  
18 fund; (D) Stoll shall be entitled to retain any retainer and  
19 compensation received to date and disclosed in connection with his  
20 employment as special counsel for the then debtor in possession, and  
21 he shall be entitled to an additional \$10,000 in final compensation  
22 from the fund; (E) Mason shall be entitled to compensation of \$20,000  
23 from the fund (Mason is employed on a contingency basis and this is a  
24 reduction from the percentage in his fee agreement with the trustee);  
25 (F) Cooper and Mason will be required to file motions seeking approval  
26 of their compensation by dates set forth in the settlement. Stoll's  
27 compensation will be addressed through his pending motions.

1        A&C factor (a) weighs in favor of the first compromise. The  
2 trustee asserts that it is difficult to assess the likelihood of  
3 success in defending the action filed by Regan and of prevailing on  
4 the counterclaim against Regan. The debtor's lack of appropriate  
5 records hinders both side because missing or non-existent records are  
6 not available to either party to prove his or her case. The trustee  
7 believes that she would ultimately prevail and emerge with a net  
8 judgment in her favor but that outcome is not certain. Trustee is  
9 however convinced that Regan has the will and means to litigate this  
10 matter through appeals and re-trials. The trustee does believe that  
11 the claims of Regan, Kingslan and Crum may be subject to disallowance  
12 in whole or in part, but in what part is uncertain.

13        A&C factor (b) is neutral. Collection of any eventual judgment  
14 is concededly not problematic.

15        A&C factor (c) weighs in favor of the first compromise. The  
16 state court action is three years old and total attorneys' fees to  
17 date exceed several hundred thousand dollars. The estate has limited  
18 resources to continue litigating at that pace. The trustee is  
19 convinced that Regan has the will and resources to litigate through  
20 appeals and any retrials necessitated thereby. The estate lacks such  
21 resources. Trustee believes that litigating the claim issues would  
22 also be costly. Resolution of the remaining portion of the state  
23 court action will liquidate Regan's claim but the timeline for that to  
24 occur is unknown. The delay in litigating the claim issues would also  
25 result in an inability to administer the case or make timely  
26 distributions to creditors.

27        A&C factor (d) weighs in favor of the first compromise. No  
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1 creditor has opposed these compromises and they are in the best  
2 position to judge their own interests. According to the motion, the  
3 payment by Regan will pay all chapter 7 administrative expense claims  
4 in full, pay all priority claims in full, pay chapter 11  
5 administrative expenses pursuant to the second compromise, and pay an  
6 approximate 32% dividend to general unsecured claims (excluding those  
7 owed to Regan, Kingslan, and Crum).

8 The second compromise also satisfies the A&C factors. The  
9 trustee argues that limitation of administrative expenses as part of  
10 the total compromise maximizes the benefit to creditors. The post-  
11 petition fees requested by Stoll to date total \$86,641.01. Those fee  
12 applications have been vigorously opposed by the trustee and Regan.  
13 Litigating that issue would take a great deal of time and expense  
14 although trustee believes that only a portion of the requested amount  
15 would ultimately be awarded. Cooper has yet to file a fee application  
16 and the compromise limits him to amounts already received and nothing  
17 more from the estate. Mason's claim is different as it is a chapter 7  
18 administrative expense and thus entitled to higher priority. Applying  
19 the contingency provision, a sliding scale starting at 33 1/3% and  
20 topping off at 50% based on total recovery, would result in payment of  
21 approximately \$42,000 based on the \$117,500 fund. The compromise  
22 limits it to \$20,000.

23 The debtor filed opposition to the above compromises. His  
24 opposition is unpersuasive. It is little more than a series of  
25 conclusory statements with no analysis in support. The only evidence  
26 filed in support of the opposition was debtor's self serving  
27 declaration. The two compromise agreements are unquestionably  
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1 settlements. Debtor's own definition does not require that all  
2 disputes be included in one single agreement. These agreements  
3 resolve some of the more contentious issues currently before the  
4 court.

5 Debtor provides no analysis for his conclusion that the  
6 probability of success is high. His conclusion that a higher sum can  
7 be obtained if the parties are "forced" to trial lacks any evidentiary  
8 support. The trustee's motion does agree that the probability of  
9 success on the issue of Regan, Kingslan, and Crum's claims is high,  
10 but the estate lacks the resources to litigate those issues to their  
11 necessary conclusion. The likelihood of success on the state court  
12 actions is both less certain and plagued by the same issue of estate  
13 solvency.

14 Debtor's arguments as to the complexity of the litigation are  
15 both unsupported by the record and ignore the other portion of this  
16 A&C prong, expense to the estate. The state court litigation has been  
17 pending for over three years. Both sides vigorously litigated the  
18 issues. Discovery disputes in that case have been fought in state  
19 court and in this court. In addition, the trustee argues without  
20 dispute that she has no funds in the estate with which to prosecute or  
21 defend any appeals or re-trials ordered in the state court. She has  
22 obtained counsel to litigate the current trial on contingency, but  
23 that agreement does not extend to subsequent appeals or re-trials.  
24 Presently, the estate is administratively insolvent. The compromise  
25 solves that problem and delivers a 32% dividend to unsecured  
26 creditors.

27 Finally, debtor's argument that the settlement will yield nothing  
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1 to general unsecured creditors does not stand up under scrutiny.  
2 Debtor points to the court's claims register asserting that "after  
3 adjusting for duplicate claims, the proposed settlement appears to  
4 yield nothing to unsecured creditors based on filed claims." This  
5 statement ignores the provisions of the settlement itself. There are  
6 only \$3,580.25 in priority claims and \$189,494.68 in general unsecured  
7 claims after the claims owed to Regan, Kingslan, and Crum, which are  
8 subordinated by the compromise, are removed. The amount of general  
9 unsecured claims may be further reduced because the claim filed by  
10 Stoll in the amount of \$151,709.68 states on its face that it includes  
11 amounts incurred from February 14, 2005 to "present." The claim was  
12 executed on July 24, 2006; over one year post-petition. It appears,  
13 although the court makes no findings on the issue at this time, that  
14 the claim may include post-petition amounts. Under the terms of the  
15 second compromise, Cooper, Stoll, and Mason will share no more than  
16 \$30,000 from the estate. The trustee's compensation is capped at  
17 \$9,100 under Section 326. Deducting the these amounts and the  
18 priority tax claim leaves \$74,819.75 to fund the dividend to general  
19 unsecured claims and the administrative claim of the trustee's general  
20 counsel. It is nearly certain that creditors will receive a dividend  
21 in this case. As such, that portion of In re Woodson, 839 F.2d 610  
22 (9<sup>th</sup> Cir. 1988) cited by debtor is entirely distinguishable.

23 On the whole, the A&C factors favor the approval of the  
24 compromise.

25 Accordingly, the court finds that the trustee has carried his  
26 burden of persuading the court that the proposed compromises are fair  
27 and equitable, and the motion is granted.



1           The court will issue a minute order.

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