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Tuesday, April 11, 2000

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## UNITED STATES BANKRUPTCY COURT

### NORTHERN DISTRICT OF CALIFORNIA

In re

JOHN ROBERTSON JONES, JR.,

No. 95-13208

[Debtor](#) (s).

### **Final Memorandum on Remand**

**I. Introduction** When debtor John Robertson Jones filed his [Chapter 7](#) petition, he had a [claim](#) against his former counsel for malpractice and infliction of emotional distress. Jones claimed the cause of action exempt, to which the [trustee](#) objected. On March 30, 1998, the court approved two compromises: the attorney agreed to pay \$217,000.00, and Jones and the trustee agreed to split the money evenly. One [creditor](#), Joan McNair, objected and appealed. On September 21, 1998, the district court vacated approval of the compromises and remanded them for further consideration regarding the split of the settlement between the trustee and Jones. <sup>(u)</sup> The court directed the court to consider the extent to which the claim against the attorney was for personal injury and the extent to which Jones had need of the funds for his support. The court notes that the district court has directed this court to

consider the two factors, not adjudicate them. In considering a compromise, the court is not supposed to hear a "mini-trial" on the merits. *In re Blair*, 538 F.2d 849, 851-2 (9<sup>th</sup> Cir. 1976); *In re Drexel Burnham*, 134 B.R. 493, 496 (Bkrcty.S.D.N.Y.1991). Rather, the role of the court is to "canvass" the issues and determine whether or not the settlement "falls below the lowest point in the range or reasonableness." *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2<sup>nd</sup> Cir.1983). The court's responsibility is to consider the two issues and decide if they make the settlement unreasonable, not decide their merits.

## **II. Personal Injury**

The district court determined that the court did not adequately consider the extent to which the claims against the attorney were personal injury claims (and therefore subject to exemption), as opposed to purely economic damages. Here again, the role of the court is not to decide the dispute between the trustee and Jones, but to determine if the even split of the funds falls below the lowest point in the range of reasonableness. In support of the compromise, the trustee has produced several demand letters written by Jones' counsel to [defendant](#)'s counsel in the course of the state court litigation. These demand letters demonstrate that emotional distress damages constituted \$250,000.00 of the \$444,000.00 sought. The court agrees with the trustee that the total claims can be fairly allocated evenly between economic loss and personal injuries, and that an even split is therefore well within the range of reasonableness. Creditor McNair objects on hearsay grounds to the court's consideration of the demand letters. The court finds no merit to this argument. There is no more reliable way to allocate the settlement than to consider the litigation posture taken by the parties before the settlement. The letters have been verified by the attorney who wrote them as quantification of the economic and emotional distress portions of Jones' claim.

The court also notes that in determining the fairness of a settlement, the court may give weight to the opinions of the parties and their attorneys. *In re Blair*, *supra*, at 851. The court may give weight to the trustee's informed judgment that the compromise is fair and equitable, and can also consider the competency and experience of counsel who support the settlement. *In re Drexel Burnham*, *supra*, at 496. In this case, counsel for the trustee is very experienced and has handled many disputes with debtors over claimed exemptions. The court sees no basis for second-guessing the trustee and his counsel as to this compromise.

## **III. Necessary for Support**

Because only a cause of action existed on the day of the bankruptcy filing, the court assumed that California Code of Civil Procedure § 704.140(a) was applicable to this case, as exemptions are ordinarily determined as of the date of the bankruptcy filing. The district court has ruled that this was error, and that § 704.140(b) is applicable. This subsection, unlike subsection (a), limits the exemption to the amount necessary for the debtor's support. The court must therefore add Jones' financial situation to the mix of factors to be considered in determining if the settlement was reasonable. Jones is a quadriplegic. His only income is \$646.50 per month in Social Security benefits, plus rental income from the apartment building in which he resides. The apartment building is in foreclosure, and Jones is attempting to sell it before he loses it. Jones has lifetime medical care, but no other income or benefits from the settlement of his claims from the accident which left him in his current condition. If the compromise is approved, Jones will have total assets, including the sale of the building and the proceeds of the settlement, of about \$160,000.00. Even with all of these funds, Jones faces a very bleak financial future. The court therefore has no difficulty finding the settlement reasonable applying either § 704.140(a) or § 704.140(b).

## **IV. Conclusion**

After reconsidering all of the issues and factors, including the nature of the claim against

the attorney and the financial situation of Jones as directed by the district court, this court is more convinced than ever that the compromise between Jones and the trustee is fair, reasonable and just. McNair's objection will accordingly be overruled, and the compromise approved. Counsel for the trustee shall submit an appropriate form of order forthwith.

Dated: April 11, 2000

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Alan Jaroslovsky

United States [Bankruptcy Judge](#) 

1. The parties did not make the court aware of the district court ruling, or bring the matter back before the court, until late

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