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Sunday, December 12, 1999

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
In re

CARL SCHNEIDER,

No. 91-12917

[Debtor](#) (s).

Memorandum on Motion for Reconsideration

Debtor Carl Schneider filed his [Chapter 11](#) petition in 1991. In 1992, his former law firm, Hale, Skemp, Hanson & Skemp, filed a timely [proof of claim](#) for \$235,431.04. Schneider's [plan](#) of reorganization was confirmed in 1994. Instead of either objecting to [the claim or](#) paying it, as was his duty as a debtor in possession, Schneider just ignored it. Worse, he attempted to obtain a final decree closing the case without dealing with the [claim](#). Only when the law firm objected to the final decree in late 1998 did Schneider finally object to the claim. When the objection to the law firm's claim finally came before the court, it appeared to have little or no merit. The law firm produced detailed supporting invoices. Schneider's objection was based on the argument that he had a claim for malpractice against the firm and that the attorney who had worked on his cases, Bill Skemp, had entered into an agreement with him whereby in return for not asserting the claim the law firm's bill would "go

away." Schneider also alleged that he had failed to receive credit for payments he had made, that the law firm had failed to "charge the proper legal entity" for its services, and that the claim was barred by the statute of limitations. At the hearing on the motion, Schneider's objections seemed patently without merit. His proof of the "agreement" was a copy of a letter written by his controller to Skemp in late 1993 reciting what Schneider had told him about the agreement. However, Skemp had left the law firm two years earlier and accordingly had no authority to agree to compromise the law firm's claim. The other allegations in the controller's declaration were very vague, completely unsubstantiated, and based mostly on inadmissible hearsay. The statute of limitations argument completely ignored the open account nature of the debt. The court overruled the objection and converted the case to [Chapter 7](#). However, the court left the door open for the [trustee](#) to seek reconsideration.

After conversion, the trustee examined the law firm's claim and concluded that some portions of its billings were not well supported. She then reached a compromise whereby the claim would be reduced to \$125,000.00 and allowed in that amount. The only objection to the claim was from Schneider. The court overruled the objection. Schneider now seeks reconsideration. The court's task in considering a compromise is not to determine who would win if the dispute were litigated, but rather whether the compromise is fair and reasonable. *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988). Factors to be considered include the probability of success, the difficulties in collection, and the expense of litigation. The interests of the creditors are paramount. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). The court has never believed Schneider had much of a case. He argues that the court "refused to hear the evidence" and overruled his objection on procedural grounds, but that is not so. The court reviewed the declarations Schneider produced in support of his objection and found them to be substantially without merit. Schneider and his counsel seemed to be in deep denial of the fact that Skemp was not a member of the firm and had no authority to agree to waive the claim. The O'Meara declaration established nothing and was rife with hearsay to boot. Even though Skemp has submitted a declaration in support of Schneider's motion, he does not admit to any malpractice nor does he say that he entered into an agreement with Schneider. All he says is that the bills were the "subject of dispute." Thus, establishing "malpractice" would not be the easy matter Schneider thinks it would be. Even if it were proved, the most likely result would be a reduction of the amount due, not its total elimination. If this matter were litigated, Schneider's chances of prevailing would be very low. Despite three hearings, he has failed to produce any evidence that the billings are improper or that he has a setoff for malpractice. Even if he were to somehow prove malpractice, he has made no showing that the setoff would come close to cancellation of his debt. His other allegations are either unsupported or patently without merit. The compromise is a fair and equitable way of resolving the claim, given the length of time that has passed. It makes far more sense than litigating the issues so long after the fact. For the foregoing reasons, Schneider's motion for reconsideration will be denied. Counsel for the trustee shall submit an appropriate form of order.

Dated: December 12, 1999

Alan Jaroslovsky

United States [Bankruptcy Judge](#)

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