

Settlement

First Interstate Bank of Or. v. Sherwood Adv. No. 89-3335

In re Latitudes Marine Towing and Salvage Case. No. 388-30337-S7

BAP No. OR-91-1941-MeAsJ

9/3/91 BAP affirming oral ruling of DDS Unpublished

The BAP affirmed Judge Sullivan in approving a compromise between the chapter 7 trustee and the defendant in a lawsuit to recover excessive compensation and fraudulent transfers from Thomas Sherwood. The panel concluded that the bankruptcy judge had not abused his discretion in concluding that the trustee's probability of success was low, and that the litigation would be complex and lengthy.



# NOT FOR PUBLICATION

# FILED

SEP - 3 1991 *C-A*

NANCY B. DICKERSON, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT  
U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
FILED

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

SEP - 3 1991 *led 10/3/91*

TERENCE H. DUNN, CLERK  
BY LT DEPUTY.

In re  
LATITUDES MARINE TOWING AND  
SALVAGE, INC.,  
Debtor.

BAP No. OR-91-1041-MeAsJ  
Bk. No. 388-30337-S7  
Adv. No. 89-3335

FIRST INTERSTATE BANK OF  
OREGON, N.A.,  
Appellant,  
v.  
THOMAS A. SHERWOOD, ROBERT K.  
MORROW, TRUSTEE, UNITED STATES  
TRUSTEE,  
Appellees.

### MEMORANDUM

Argued and Submitted  
June 18, 1991 in Portland, Oregon

Filed: SEP - 3 1991

Appeal from the United States Bankruptcy Court  
for the District of Oregon

Hon. Donal D. Sullivan, Bankruptcy Judge, Presiding

Before: MEYERS, ASHLAND and JONES, Bankruptcy Judges

1 This appeal challenges the settlement of an adversary  
2 proceeding filed by the Chapter 7 trustee to recover allegedly  
3 excessive compensation and fraudulent transfers made by Latitudes  
4 Marine Towing and Salvage, Inc. ("Debtor") to Thomas A. Sherwood  
5 ("Sherwood"). We **AFFIRM** the \$5,000 settlement.

6 The bankruptcy court's order approving the trustee's  
7 application to compromise the controversy is reviewed for an abuse  
8 of discretion. In re A & C Properties, 784 F.2d 1377, 1380 (9th  
9 Cir. 1986); In re MGS Marketing, 111 B.R. 264, 266-67 (9th Cir. BAP  
10 1990). The law favors compromise and not litigation for its own  
11 sake, and as long as the bankruptcy court amply considered the  
12 various factors that determined the reasonableness of the  
13 compromise, the court's decision should be affirmed. A & C  
14 Properties, supra, 784 F.2d at 1381.

15 In evaluating the proposed compromise, the court must  
16 consider: (a) the probability of success in the litigation; (b) any  
17 difficulties to be encountered in the matter of collection; (c) the  
18 complexity of the litigation involved and the expense,  
19 inconvenience and delay necessarily attending it; and (d) the  
20 paramount interest of the creditors and a proper deference to their  
21 reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir.  
22 1988); A & C Properties, supra, 784 F.2d at 1381; MGS Marketing,  
23 supra, 111 B.R. at 267.

24 The court determined the first factor, probability of success  
25 in the litigation, to be low. This determination is evidenced in  
26 the record, as the trustee considered the facts that Sherwood was

1 not related to Debtor's principals and that there would be  
2 testimony that Sherwood's employment with Debtor was an arm's  
3 length transaction and that his compensation was reasonable.  
4 Further, the trustee found that Sherwood's historical compensation  
5 was significant and approached the amount the Debtor paid him. An  
6 earlier court had found that Sherwood had not been excessively  
7 compensated during his prior employment when he earned about  
8 \$210,000 annually. Moreover, Sherwood had submitted an affidavit  
9 attesting to a great amount of complex work he had accomplished for  
10 the Debtor.

11 The second factor, ability to collect a successful judgment,  
12 was not mentioned by the court. However, according to the trustee,  
13 Sherwood had indicated he was experiencing financial difficulties.

14 The court did consider the third factor, the complexity of the  
15 litigation involved and the expense, inconvenience and delay  
16 necessarily attending it. It held that the trial of the complaint  
17 would be complex and lengthy and would probably keep the estate  
18 open for another one to two years. The court determined that the  
19 cost of litigation, if unsuccessful, would seriously reduce the  
20 estate.

21 These findings are supported in the record. The trustee also  
22 stated that a trial would be an expensive, fact-intensive  
23 undertaking. The trustee asserted that he would need three experts  
24 and noted that Sherwood had demanded a jury trial.

25 Finally, the court noted the objection by Appellant. While  
26 creditors' objections to a compromise must be afforded due

1 | deference, such objections are not controlling. A & C Properties,  
2 | supra, 784 F.2d at 1382.

3 |         Although a large creditor of the estate is aggrieved with the  
4 | terms of the settlement, the settlement is fair when compared to  
5 | the probable outcome of litigation. The litigation's probability  
6 | of success is not high, collection of a judgment might be difficult  
7 | and the litigation most likely would be complex, expensive and  
8 | time-consuming. Therefore the bankruptcy court's order approving  
9 | the settlement agreement is **AFFIRMED**.

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