

Motion to Settle and Compromise
California law: Bad Faith Failure
to Settle
A & C Properties

Cedar Warren, Case No. 07-60674-fra7

3/22/2010 FRA

Unpublished

While driving his parents' automobile, Debtor was involved in a car accident for which he was determined to be at fault. The driver of the other car ("Creditor") was badly injured and permanently disabled.

Debtor was insured by Deerbrook Insurance Co. with a policy limit of \$15,000. Because he was on his way to work at the time of the accident, Creditor filed a worker's compensation claim with the appropriate carrier as well as a claim with Deerbrook (and against other entities as well). Deerbrook was notified by the worker's compensation carrier that a claim had been filed with it. Because a worker's comp carrier has subrogation rights under California law to payments made by other insurance carriers, Deerbrook informed Creditor that, while it would tender the \$15,000 policy limit, the check would need to be in the names of both Creditor and the workers comp carrier. Creditor rejected this proposal, stating that his workers comp claim had been denied. Despite repeated requests from Deerbrook, Creditor failed to provide proof of the rejection. The workers comp carrier later provided a sizable award to Creditor after evidence of the accident was provided. The matter eventually went to trial and a \$16 million judgment was awarded.

Debtor thereafter filed bankruptcy in Oregon and Creditor filed a claim for \$18 million. Debtor listed as an asset, with an undetermined amount, a bad faith failure to settle claim against Deerbrook. After considerable discussion with the Creditor, the Trustee eventually reached an agreement with Deerbrook whereby Deerbrook would buy the claim for \$125,000 after first buying and withdrawing all unsecured claims filed in the bankruptcy, other than Creditor's, and would pay all administrative costs of the estate. Creditor filed an objection to the settlement, arguing that it would be prepared to make a better offer.

The Court approved the settlement with Deerbrook. It analyzed the settlement using the guidelines set by *A & C Properties*, 784 F.3d 1377 (9th Cir. 1986) to determine that the settlement was "fair, equitable and reasonable." It specifically

found that the bad faith claim being promoted by Creditor had little to no merit, and that the settlement was fair and equitable to all creditors. In responding to Creditor's argument that he should be allowed to buy the claim and take his chances in court, the Court stated that exposing Deerbrook to costly and unfounded litigation would not be equitable to Deerbrook, which is also entitled to equitable treatment.

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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON

10 In Re:) Bankruptcy Case
11 CEDAR S. WARREN,) No. 07-60674-fra7
12 _____) MEMORANDUM OPINION
Debtor.)

13 I. INTRODUCTION

14 Cedar Warren, the Debtor, is indebted to Robert and Barbara
15 Dorroh, based on a judgment from a California Superior Court for over \$16
16 million. Debtor scheduled as an asset a "bad faith" claim against his
17 insurer, Deerbrook Insurance Company ("Deerbrook"), based on Deerbrook's
18 failure to settle the claim prior to trial in California.

19 The Trustee proposes to sell the bad faith claim to Deerbrook.
20 Dorrohs object, asserting that the claim is equal in value to the
21 judgment awarded in the Superior Court, and that, by accepting
22 Deerbrook's proposal the Trustee ensures that the Dorrohs' ultimate
23 recovery is limited to \$125,000, the net value of the sale to the estate.

24 The matter came on for trial on January 4, 2010, with closing
25 arguments on February 11. After considering the evidence and arguments
26 of the parties, the Court concludes that the bad faith claim is of

1 limited, if any, value, and that the Trustee's proposal should be
2 allowed.

3 II. BACKGROUND

4 On March 13, 2000, Debtor and Robert Dorroh were involved in a
5 serious traffic accident in Tuolumne County, California. Dorroh was
6 grievously injured, and permanently disabled. Documents available at
7 trial indicate that Warren had spilled a cup of coffee while driving,
8 thereby precipitating the accident, and that he freely admits his
9 liability.¹

10 Dorroh ultimately pursued claims against the Debtor, Ford Motor
11 Company, which manufactured the vehicle he had been driving, Tuolumne
12 County, and the State of California. Since he had been on his way to
13 work at the time of the accident, he also filed a workers' compensation
14 claim.

15 Debtor had been driving a vehicle owned by his parents. His
16 family was insured by Deerbrook, under a policy containing a \$15,000
17 limit. Given the circumstances of the case, Deerbrook agreed to settle
18 all claims against Debtor for the policy limits. Since the workers'
19 compensation carrier had notified Deerbrook that it claimed subrogation
20 rights to the proceeds of the Deerbrook policy, Deerbrook advised
21 Dorrohs' counsel that its check would have to be made payable to both
22 Dorroh and the workers' compensation carrier.

23 Dorrohs' attorneys rejected the proposal, stating to Deerbrook
24 that the workers' compensation carrier had denied coverage. Deerbrook
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26 ¹ Mr. Warren did not appear at the trial before this Court.

1 asked for verification of the denial, but never received it. In fact,
2 the carrier had initially denied coverage, based on Dorrohs' failure to
3 provide required documentation. While the letter denying the claim,
4 dated July 11, 2000, seemed absolute in its terms, it was accompanied by
5 letters also dated July 11 encouraging Mr. Dorroh to submit information
6 substantiating his claim. Reading the letters together, it is clear that
7 the denial of the claim was not absolute, but premised solely on the
8 state of the record at that point.

9 Dorroh insisted that the \$15,000 be paid to him free of any
10 competing claim. Deerbrook countered that it was legally bound to honor
11 the workers' compensation carrier's subrogation rights. The impasse
12 persisted and the matter eventually went to trial before the Superior
13 Court in Tuolumne County.² After a bench trial, the Dorrohs were awarded
14 a judgment of \$16,530,169.66. Deerbrook took the judgment up on appeal,
15 arguing that a greater proportion of the overall liability should have
16 been attributed to Ford Motor Company (which had settled prior to trial).
17 The judgment was affirmed on appeal.

18 Although the Debtor scheduled a claim against Deerbrook as an
19 asset, it is essentially the Dorrohs who assert in the bankruptcy
20 proceeding that Deerbrook is indebted to the Debtor (and hence his estate
21 in bankruptcy) in an amount equal to the judgment entered in the Superior
22 Court. Their theory is that Deerbrook had a duty to the Debtor to settle
23 within its policy limits, and failed to do so. It follows that, under

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25 ² Dorrohs had sought and received an order from this Court allowing
26 the matter to go forward in order to liquidate Dorrohs' claim against
Warren. The motion for relief from the stay made no mention of the
dispute between Dorroh and Deerbrook.

1 California law, the insurer is liable to the insured for the amount
2 awarded at trial. After considerable discussion, and some dickering,
3 between the Trustee and the Dorrohs, the Trustee finally reached an
4 agreement with Deerbrook wherein Deerbrook would acquire the claim for
5 \$125,000. Dorrohs objected, and in objecting indicated they were
6 prepared to make a better offer. The Court instructed the parties to set
7 their "bottom line" offers out in writing, and file them with the Court:
8 Deerbrook's offer is attached to this opinion as Appendix A, and Dorrohs'
9 as Appendix B.

10 III. ANALYSIS

11 The Trustee proposes to sell an asset of the estate - the
12 Debtor's bad faith claim against Deerbrook - pursuant to Code § 363. The
13 sale is the means of concluding a compromise of the disputed claim
14 itself. As the criteria governing the Court's review of asset sales and
15 compromises are slightly different, or at least described differently, a
16 review of both lines of authority in this Circuit must be undertaken to
17 ascertain the standards applicable here.

18 In In re A & C Properties, 784 F.2d 1377 (9th Cir. 1986), the
19 Court of Appeals held that the Bankruptcy Court must determine that a
20 proposed settlement be fair, equitable and reasonable. The criteria to
21 be considered in this analysis include:

- 22 • The probability of success in the litigation;
- 23 • The difficulties, if any, to be encountered in the matter of
24 collection;
- 25 • The complexity of the litigation involved, and the expense,
26 inconvenience and delay necessarily attending it; and

1 • The paramount interest of the creditors and a proper deference
2 to their reasonable views in the premises.

3 Id. at 1381. Courts reviewing the fairness of a proposed compromise
4 generally accord deference to the Trustee's business judgment in deciding
5 whether to settle a matter. In re Mickey Thompson Entertainment Group,
6 292 B.R. 415, 420 (9th Cir. BAP 2003). The trustee, however, "has the
7 burden of persuading the bankruptcy court that the compromise is fair and
8 equitable and should be approved." Id.

9 "The opposition of the creditors of the estate to approval of a
10 compromise may be considered by the court, but is not controlling and
11 will not prevent approval of the compromise where it is evident that the
12 litigation would be unsuccessful and costly." Official Unsecured
13 Creditors' Comm. v. Beverly Almont Co. (In re The General Store of
14 Beverly Hills), 11 B.R. 539, 541 (9th Cir. BAP 1981). The court observed:

15 The function of compromise is to avoid litigation
16 involving delay and expense unless there appears to be
17 a sound legal basis for the litigation and a
18 likelihood of substantial benefit to the estate
19 (citation omitted). Approval of compromise is
20 appropriate if the court finds that the outcome of the
litigation is doubtful, but even when a compromised
dispute was based on a substantial foundation and was
not clearly invalid as a matter of law, approval of
compromise is not an abuse of the court's discretion.

21 General Store of Beverly Hills, 11 B.R. at 541.

22 Approval of a sale of an asset requires the court to consider
23 the sale provisions of Bankruptcy Code § 363, as implemented by
24 Fed.R.Bankr.P. 6004 and the 'compromise' procedure of Fed.R.Bankr.P.
25 9019(a). Mickey Thompson Entertainment Group, Inc. at 421. Thus, "[w]hen
26 confronted with a motion to approve a settlement under Rule 9019(a), a

1 bankruptcy court is obliged to consider, as part of the 'fair and
2 equitable' analysis, whether any property of the estate that would be
3 disposed of in connection with the settlement might draw a higher price
4 through a competitive process and be the proper subject of a section 363
5 sale." Id. at 421-22.

6 This case presents, as the Court noted at trial, a hybrid: a
7 disputed claim belonging to the estate is sought to be compromised by way
8 of a sale of the claim itself. In order to assess whether the Trustee's
9 proposed disposition is appropriate, the Court must evaluate the asset -
10 that is, determine the likely judgment if the matter goes to trial, and
11 whether it can be collected.³ The gross value of the case must be offset
12 by the likely costs of the litigation, which in turn will be a function
13 of the amount at stake and the complexity of the issues. Finally, the
14 Court must give deference to, while not being controlled by, the interest
15 of creditors. As discussed below, the interest of creditors must be
16 viewed objectively by the Court, rather than based solely on the claims
17 of the creditors themselves.

18 Approval of a compromise is appropriate if the court finds that
19 the outcome of the litigation is doubtful. General Store of Beverly
20 Hills, 11 B.R. at 541. The Court finds that the estate, if it were to
21 bring the bad faith claim to trial, would not be likely to prevail.

22 The loss that precipitated this controversy, and the actions of
23 the claimants and insurers that followed, and the ensuing trial all took
24 place in California. It follows that any claim the Debtor might have
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26 ³Not thought to be factor in this case.

1 against Deerbrook is governed by California law. In California, an
2 insurance contract is subject to an implied covenant of good faith, which
3 requires that an insured will do nothing to injure the rights of the
4 insured. In light of this covenant, an insurer which wrongfully refuses
5 to defend the insured, or without justification refuses to settle a
6 claim, may be liable to the insured for any judgment that results. See
7 Comunale v. Traders and General Ins. Co., 50 Cal.2d 654, 328 P.2d 198
8 (1958).

9 In this case, recall that Deerbrook was presented with
10 conflicting claims: Dorroh rejected any tender of the \$15,000 policy
11 limits unless free of any third party claim. On the other hand, the
12 workers' compensation carrier had put the insurer on notice that it
13 claimed a right to the proceeds to the extent it made any payment to Mr.
14 Dorroh. At the time, Dorrohs insisted to Deerbrook that the workers'
15 compensation carrier had denied the claim, but refused to document that
16 assertion. (As it turned out, an Administrative Law Judge eventually
17 found that the workers' compensation claim was valid, and ordered an
18 award in excess of \$400,000. Had the \$15,000 been paid, the workers'
19 compensation carrier would have had first right to it.)

20 California law provides that a workers' compensation carrier
21 liable on a claim to an insured is subrogated to any proceeds that the
22 insured may receive from other sources. See State Farm General Ins. Co.
23 v. Wells Fargo Bank, N.A., 143 Cal.App.4th 1098, 1106 n.5, 49 Cal.
24 Rptr.3d 785 (2006) (citing West's Ann.Cal.Lab.Code § 3852). Had Deerbrook
25 paid its policy to Dorrohs without the workers' compensation carrier's
26 // // //

1 consent, Debtor may himself have been exposed to a recoupment action by
2 the carrier.

3 Similar circumstances existed in Coe v. State Farm Mutual
4 Automobile Ins. Co., 66 Cal.App.3d 981, 66 Cal.Rptr. 331 (1977). In that
5 case, the insurer rejected a demand for its policy limits which made no
6 provision for the consent of an involved workers' compensation carrier.
7 The Court of Appeals held that the settlement, as conceived by the
8 claimant, could not have been effective without the fund's written
9 consent: "In the absence of reasonable provisions for the legal rights
10 of the fund, we conclude that State Farm cannot be held liable for bad
11 faith 'rejection of a reasonable settlement offer'." Coe, 66 Cal.App.3d
12 at 993 (Internal citations omitted.)

13 Coe is controlling in this case. Since the Dorrohs refused to
14 settle in a manner that gave appropriate consideration to the workers'
15 compensation claim, Deerbrook cannot be said to have violated any duty to
16 its insured by failing to settle prior to trial. It follows that the
17 claim now held by the estate is of little to no value, and the Trustee's
18 disposition of the claim for \$125,000, plus payment of all claims other
19 than Dorrohs', is appropriate. Moreover, it is clear that the bad faith
20 claim would be vigorously defended by Deerbrook, and would entail
21 considerable expense to the estate. The most likely result of the
22 scenario would be a defense verdict, and an administratively insolvent
23 estate.

24 Dorrohs argue, at least implicitly, that the principal failing
25 of Deerbrook's proposal is that it is less advantageous to the estate and
26 creditors than their own. Under the two proposals, the estate's

1 administrative expenses would be paid, as would creditors other than the
2 Dorrohs themselves.⁴ The Dorrohs' proposal calls for their acquisition
3 of the claim, with their stated intention to initiate an action against
4 Deerbrook. The outcome would be no different than if the Trustee brought
5 the action: a defense verdict, after considerable expense to both
6 Dorrohs and Deerbrook.⁵ Dorrohs argue that they are entitled, if they
7 see fit to do so, to take their chances in court. If the outcome of a
8 sale of the claim to the Dorrohs had no impact on anyone else, there
9 might be something to the argument; however, the litigation will cost
10 Deerbrook and its shareholders a considerable amount of money.
11 Notwithstanding Dorrohs' argument at trial ("You can favor the insurers
12 if you like. . . .") the insurer is just as entitled to equitable
13 treatment as anyone else. It is not equitable to subject Deerbrook to
14 unfounded litigation, and the Dorrohs to a defense verdict and liability
15 for the costs associated with the case. It cannot be said that the
16 Dorroh proposal is superior to Deerbrook's.

17 Dorrohs argue that Deerbrook's proposal is unlawful, because it
18 violates the distribution scheme mandated by Code §726(b). All claims,
19 other than the administrative claims of the Trustee and his professional,
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21 ⁴ The Dorrohs filed a proof of claim in the amount of
22 \$18,273,762.90. All other unsecured claims (no secured claims have been
23 filed) total \$19,637.43, after elimination of a duplicate claim.

24 ⁵The Trustee asserts that the Dorrohs' planned action against
25 Deerbrook would also force the estate to incur significant costs when
26 discovery is sought from the trustee. It is not clear what information
the trustee could provide respecting events occurring before the
bankruptcy case was commenced, or why he would be unreasonably
inconvenienced by a Dorroh-Deerbrook action.

1 share the same priority. Under Deerbrook's proposal, all creditors other
2 than Dorrohs would receive 100% of their claims; Dorrohs would receive
3 \$125,000, or less than 1% of their claim. Deerbrook responds to the
4 objection by pointing out that it intends to buy the claims from the
5 other claimants (and then withdraw them), so that there will be,
6 technically, no distribution from the estate other than to priority
7 claimants and to the Dorrohs. Dorrohs would be alone in their class of
8 creditors, and receive 100% of the funds available for distribution.

9 Assume for argument's sake that the Court should find that
10 Deerbrook's proposed treatment of claims other than Dorrohs' is an
11 impermissible evasion of §726(b), and that the matter should be resolved
12 simply by payment to the estate of \$125,000, plus an amount equal to the
13 estates' administrative expenses. The result would be a dividend of
14 roughly \$124,865 to the Dorrohs, with the remaining \$135 divided between
15 the remaining creditors.

16 Accepting Dorrohs argument on this point, whatever its
17 technical merits, exalts form over substance in a manner that benefits
18 nobody. Creditors other than Dorroh would be deprived of payment in full
19 of their claims (admittedly a windfall), and Dorrohs would receive
20 slightly less than proposed. The treatment of creditors other than the
21 Dorrohs is not so inequitable as to invalidate the offer, or render it
22 inferior to Dorrohs' offer.

23 IV. CONCLUSION

24 The Trustee's proposed liquidation of the claim held by the
25 estate is fair and equitable to all creditors, and the proposed
26 consideration equals or exceeds the value of the asset. In disposing of

1 an otherwise contested claim by the estate, the Trustee avoids
2 unnecessary costs and the likelihood of an adverse outcome. Creditors
3 contesting the proposed disposition have not presented a superior
4 alternative. The Trustee's motion should be allowed.

5 Counsel for the Trustee shall lodge an order allowing the
6 motion, and directing the Trustee and Deerbrook to carry out the terms of
7 the Deerbrook proposal.

8 This Memorandum Opinion constitutes the Court's findings of
9 fact and conclusions of law.

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12 FRANK R. ALLEY, III
13 Bankruptcy Judge
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APPENDIX A
to
Memorandum
opinion

CLERK U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

JAN 11 2010

LODGED _____ REC'D _____
PAID _____ DOCKETED _____

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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON

10 In re CEDAR S. WARREN,
11
12 Debtor.

Case No. 07-60674-fra7

13 STATEMENT OF OFFER (to be docketed on
14 January 11, 2010)

15 **STATEMENT OF OFFER OF DEERBROOK INSURANCE COMPANY**

16 In response to the Court's request, Deerbrook Insurance Company submits its best offer for
17 settlement of the bankruptcy estate's potential claims for bad faith against Deerbrook Insurance
18 Company.

19 A. **Summary of Deerbrook's Offer**

- 20 1. \$125,000 for prepetition claims not acquired by Deerbrook Insurance
21 Company. This sum is currently on deposit with the Trustee.
- 22 2. The cash sum necessary to pay in full the bankruptcy estate's allowed
23 administrative expenses.¹
- 24 3. Acquisition by assignment to the extent possible of all allowed general
25 unsecured claims of creditors other than Robert and Barbara Dorroh or their
26 agents or attorneys after use of Deerbrook's best efforts to acquire assignment

27 ¹ Deerbrook is informed and believes that administrative expenses are now approximately \$75,000 but will
28 increase until the case is closed. Deerbrook will pay the total amount of current *and future* administrative
expenses *in full*.

1 of those claims; for the assignment, Deerbrook agrees to pay an amount
2 equivalent to 100 percent of the face amount of each claim plus post-petition
3 interest accruing at the rate of 5 percent from the petition date through the date
4 of payment.

5 B. Prepetition Debt

6 The payment of \$125,000 for prepetition debt will not change. Deerbrook will ensure that the
7 sum of \$125,000 will be available for payment by the Trustee of prepetition debt regardless of the
8 amount of administrative expenses. The sum of \$125,000 is currently on deposit with the Trustee.

9 C. Administrative Expenses

10 Deerbrook will pay the amount necessary to cover Chapter 7 administrative expenses that are
11 allowed by the Court. Deerbrook is informed and believes that administrative expenses are now
12 approximately \$75,000 and recognizes that administrative expenses will increase until the case is
13 closed. Deerbrook waives any right it might have to object to the fees and expenses of the Trustee and
14 his professionals.

15 D. Acquisition of Unsecured Claims

16 It is Deerbrook's intent to acquire all general unsecured claims other than the claim of Robert
17 and Barbara Dorroh or any claim asserted by them or their agents or attorneys. Deerbrook will use its
18 best efforts to acquire each of those claims. According to the Court's claims register as of January 7,
19 2010, there are 17 general unsecured claims asserted against the estate other than the claim of Robert
20 and Barbara Dorroh. One of those claims (Claim No. 8) has previously been disallowed as a duplicate
21 claim and will not be acquired by Deerbrook. The allowed general unsecured claims other than the
22 Dorroh claim total approximately \$20,300.

23 Deerbrook intends to pay each creditor 100 percent of the face amount of each allowed general
24 unsecured claim plus interest accruing at the rate of 5 percent from the date on which the bankruptcy
25 petition was filed through the date of payment. Deerbrook is informed and believes that the applicable
26 rate of interest according to 28 U.S.C. § 1961 on the petition date (March 16, 2007) is 4.93 percent.
27 Deerbrook is agreeing to pay the slightly higher interest rate of 5 percent. Once Deerbrook receives a

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1 valid assignment of each claim, and after the time period under Rule 3001(e) of the Federal Rules of
2 Bankruptcy Procedure has expired, Deerbrook will withdraw each assigned claim.

3 To the extent Deerbrook is unable to obtain assignment of a claim, its counsel will file a
4 declaration describing Deerbrook's efforts to acquire the claim. Given the very small amount of some
5 claims, Deerbrook anticipates that some creditors will not respond to Deerbrook's offer.

6 E. Conclusion

7 Deerbrook estimates that its offer has a cash value of about \$250,000 in cash payable to the
8 estate and additional cash value of \$20,300 (plus interest) to the unsecured creditors other than Robert
9 and Barbara Dorroh.

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15 DATED: January 8, 2010

GARTLAND, NELSON, MCCLEERY, WADE &
WALLOCH, P.C.

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By: 

PHILIP SCOTT MCCLEERY

Co-counsel for Deerbrook Insurance Company

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APPENDIX B to
Memorandum Opinion

CLERK U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

JAN 11 2010

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10 IN THE UNITED STATES BANKRUPTCY COURT
11 FOR THE DISTRICT OF OREGON

12 In re Case No. 07-60674-fra7
13 Cedar S. Warren, ROBERT AND BARBARA DORROHS'
14 Debtor. FINAL BID FOR THE "BAD FAITH"
CLAIM

Trial Date: January 4, 2010
Time: 10:00 a.m.
Courtroom: 6

17 Robert and Barbara Dorroh (the "Dorrohs") want to first note that the following bid is
18 meant to be a simple exchange. The Dorrohs are giving up **any and all** further interest in this
19 bankruptcy proceeding. They will take **no** money at all on their claim from these proceedings,
20 and will have **no** standing in these proceedings. They will be foregoing their entire \$19
21 million-plus claim against the bankruptcy estate. In consideration, they will be taking
22 assignment of the "bad faith" claim against Deerbrook. If the Court finds that any of the
23 language used does not adequately communicate the intent of that proposal, then the Dorrohs
24 ask that they be allowed to modify that language as necessary.

25 Further, the Dorrohs have attempted to respond to each and every objection raised by
26 the Trustee, but unfortunately cannot anticipate the new objections that the Trustee intends to
27 raise. Along these lines, the Dorrohs ask that the Court consider their proposal in its simplest
28 form, that is an offer to create a surplus estate. To accomplish this, the Dorrohs offer to pay all

1 of the claims of this estate (other than the Dorrohs' claim itself) and its administrative costs,
2 plus one dollar (\$1.00) With respect to the Dorrohs' claim, the Dorrohs give up all interests
3 and rights to obtain money from the bankrupt estate thereby creating a surplus estate. In
4 exchange for Dorrohs' payments and giving up interests in the bankruptcy proceeding and
5 creating a surplus estate, the Dorrohs ask only for the assignment of the bankrupt estate's bad
6 faith claim against Deerbrook Insurance Company ("Deerbrook").

7 The Dorrohs bid is as follows:

8 1. Robert and Barbara Dorroh (the "Dorrohs") offer to take assignment of any and
9 all of the estate's legally assignable claims that it may have, or hereinafter may acquire, against
10 Deerbrook, based on Deerbrook's alleged failure to comply with the implied covenant of good
11 faith and fair dealing (the "Claims").

12

13 2. In consideration of the assignment as provided in paragraph 1 above, the
14 Dorrohs will covenant and agree not to further pursue their claims in this bankruptcy
15 proceeding. By this, it is agreed that the Dorrohs will receive no payment on their claim in the
16 bankruptcy estate, and the Dorrohs shall no longer have standing in this bankruptcy proceeding
17 as a result of their claim. For purposes of closing the bankruptcy estate, the Dorrohs' claim
18 shall be treated as if it has been withdrawn. It is further agreed that this clause is not intended
19 to limit or obviate Deerbrook's obligations to the Trustee, the Debtor or the Dorrohs, and it is
20 the intent of the parties that Deerbrook's obligations to the Trustee, the Debtor or the Dorrohs
21 not be affected at all by this clause.

22

23 NOTE: The Dorrohs prefer that their agreement to remove themselves from the
24 bankruptcy proceeding be worded as stated above; however, if the Court is
25 going to require that the language proposed by the Trustee be used, then those
26 words should be used in place of paragraph 2 as follows:

26

27 Upon assignment by the Trustee as provided in paragraph 1 above, the claim of the
28 Dorrohs shall be deemed withdrawn and the Dorrohs shall no longer have standing in this
bankruptcy proceeding.

1 3. In further consideration of the assignment as provided in paragraph 1 above, the
2 Dorrohs would pay the Trustee a sum of money sufficient to cover in full: (a) all valid and
3 timely filed unsecured claims, plus interest thereon at the legal rate pursuant to 11 USC §
4 726(a)(5); (b) the Trustee's commission and all allowed administrative expenses, including the
5 Trustee's attorneys fees; and (c) one additional dollar, so as to ensure that the subject estate is a
6 surplus estate.

7 NOTE: The Dorrohs are unaware of the total amount that would cover the
8 allowed unsecured claims with interest as well as all of the administrative
9 expenses. Once this amount can be ascertained, the Dorrohs will immediately
10 deposit sufficient funds with the Trustee.

11 4. The Dorrohs and their counsel warrant, represent, and agree to ensure that the
12 funding of the moneys to be deposited with the Trustee does not violate any of the applicable
13 Rules of Professional Conduct for either the State of California or the State of Oregon.
14 Towards this end, the Dorrohs and their counsel will submit, *in-camera* to the Court, any and
15 all information necessary for the Court to make its determination in this regard.

16 5. The assignment under paragraph 1 above of the Claims is without warranty,
17 express or implied. The Trustee does not make any warranty or representation as to his ability
18 to assign the Claims, and does not make any warranty or representation as to the validity of the
19 Claims.
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21 6. The Trustee agrees to provide all documents evidencing any communications
22 between himself or his counsel in this bankruptcy on the one part, and Deerbrook or their
23 counsel on the other part, which documents post-date the September 3, 2009 production. This
24 shall be a one-time production in the same form and manner that the documents were
25 previously produced, and upon that production of documents, the Trustee and his counsel have
26 fulfilled any and all obligations under this clause.
27

28 7. The Dorrohs agree that neither the Dorrohs nor their attorneys, representatives,

1 heirs, or assigns, will seek the deposition of the Trustee or his counsel, David Mills, Esq., in
2 any proceeding. Further, the Dorrohs will agree to indemnify the Trustee and his counsel,
3 David Mills, Esq., for all reasonable costs and expenses arising therefrom, if Deerbrook takes
4 the deposition of either the Trustee or his counsel, David Mills, Esq. in any proceeding
5 involving the Dorrohs.

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7 8. The Dorrohs and the Trustee agree that it is the unambiguous express intent of
8 the parties to create a valid assignment of the estate's rights to pursue claims arising out of
9 Deerbrook's alleged failure to comply with the implied covenant of good faith and fair dealing.
10 In interpreting any terms in this agreement, they must be interpreted in a manner that would
11 promote litigation on the merits relative to those claims.

12 Dated: January 11, 2010

CARCIONE, CATTERMOLE, DOLINSKI,
OKIMOTO, STUCKY, UKSHINI,
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15 By: /s/ Joshua S. Markowitz, Esq.
16 Attorney for Robert and Barbara Dorroh
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