

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re

Case No. 6:99-bk-08433-KSJ
Chapter 7

JOSE LUIS WACZEWSKI,

Debtor.

MEMORANDUM OPINION DENYING
DEBTOR'S MOTION TO SET ASIDE
ORDER APPROVING THE SECOND
COMPROMISE

The debtor in this case, Jose Waczewski, together with his wife, Susan Waczewski, who is a debtor in a related Chapter 13 case, Case No. 6:06-bk-00620-KSJ, were joint plaintiffs in litigation filed prior to 1999. Upon the filing of this Chapter 7 case, the Chapter 7 trustee, Leigh Meininger, settled this litigation in two separate segments. Jose does not object to the first settlement; however, both Jose and Susan strenuously objected to the second settlement agreement.

The litigation surrounding the second settlement has encompassed numerous pleadings and appeals over several years. The history of the litigation is described more completely in the Memorandum Opinion Denying Debtor's Motion for Reconsideration and Emergency Motion for Stay (Doc. No. 219 in Case No. 6:06-bk-00620-KSJ). Briefly, however, the Court simply notes that the Chapter 7 trustee obtained a settlement of litigation involving worker's compensation and wrongful termination claims in the amount of \$10,800, which settlement the Waczewski's have opposed since the Court initially approved it in November 2002 (Doc. No. 49).

Now, Jose raises a new attack on the second settlement in his Motion to Set Aside Order Approving the Second Compromise under Fed. R. Civ. P. 60 (Doc. No. 217). He now asserts that the order approving the second settlement, which was affirmed by the Eleventh Circuit Court of Appeals, was inappropriate because his estate received no portion of the settlement proceeds.

First, the debtor's assertion is incorrect. Pursuant to a related order entered in the case of

Susan Waczewski,¹ the Court has allocated \$1,404 of the second settlement to the estate of Jose Waczewski and has directed the Chapter 13 trustee in Susan Waczewski's case to transmit those funds to the Chapter 7 trustee, Leigh Meininger, for administration. Therefore, Jose Waczewski's estate *did* benefit from the settlement. The only reason for the belated allocation of a portion of the proceeds to Jose's estate is that no party, including the debtor, previously had asked the Court to do so.

The debtor also argues that one particular aspect of the litigation, Jose's loss of consortium claim, was not settled in the second compromise and therefore remains open for prosecution. This assertion is also incorrect. The debtor's loss of consortium claims, included in all three counts of the Second Amended Complaint (Doc. No. 220, Exhibit C, pp.13, 17 and 19) filed by the debtors in the state court litigation, were fully and finally settled in connection with the second settlement. (See Doc. No. 220, Exhibit B, p.3, discussing the controversies contained in the three count complaint, and p. 5, discussing the compromise, specifically, the agreement "to pay \$10,800.00 in settlement of all the Waczewskis' claims [plural] asserted in the premises liability/employer's liability case", and Exhibit A, the order approving the compromise of controversy, which was subsequently affirmed on appeal to the Eleventh Circuit Court of Appeals).

Further, reconsideration is not appropriate here for the same reasons the Court refused to reconsider the approval of the compromise articulated in the Memorandum Opinion entered in Susan Waczewski's case (Doc. No. 219, Case No. 6:06-bk-00620-KSJ). The Eleventh Circuit Court of Appeals completed a full appellate review of the compromise and affirmed this Court's decision approving the compromise. Therefore, the Court shall not reconsider the compromise relating to the second settlement. Accordingly, the Motion (Doc. No. 217) is denied. A separate order consistent with the Memorandum Opinion shall be entered.

DONE AND ORDERED in Orlando,
Florida, this 27th day of October, 2006.

/s/ Karen S. Jennemann
KAREN S. JENNEMANN
United States Bankruptcy Judge

¹ See Memorandum Opinion Partially Granting and Partially Denying Motion by Debtor for Sanctions Against Chapter 7 Trustee and Chapter 7 Counsel (Doc. No. 265), In re Susan Waczewski, Case No. 6:06-bk-00620-KSJ.