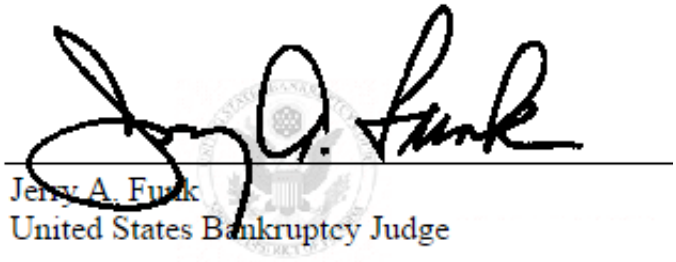
ORDERED.

Dated: June 22, 2017



UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

ROGER G. GIBSON,

Debtor,
_____/

Case No. 3:15-bk-5172-JAF
Chapter 7

ORDER DENYING TRUSTEE'S MOTION TO APPROVE COMPROMISE

This case is before the Court upon the Trustee's Motion to Approve Compromise (Doc. 40) and Creditor Harden & Associates Inc.'s ("Harden") Objection to the Motion to Approve Compromise (Doc. 43). A trial was held on February 16, 2016, at which time evidence was taken and argument was heard by the Court. (Docs. 49, 172). The parties filed pretrial and post-trial briefs. (Docs. 66, 75, 76). After reviewing the papers filed by the parties, taking evidence, and hearing argument of counsel, the Court determined it was in the interests of justice that the matter be referred to mediation. (Doc. 77). Ultimately, the parties reached an impasse. (Doc. 86). For the reasons discussed herein, the Court hereby sustains Harden's objection, denies the Trustee's Motion to Approve Compromise, and disapproves the Proposed Compromise in light of the present circumstances before the Court.

PROCEDURAL BACKGROUND

On November 25, 2015 (the "Petition Date"), Debtor filed a petition under Chapter 7 of the Bankruptcy Code. (Doc. 1). Debtor listed approximately $1.5 million in assets and $1.6 million in liabilities, with a take-home income of approximately $17,000 per month. (Doc. 1-1 at 6, 26). On November 27, 2015, Gordon Jones was appointed Trustee of the bankruptcy estate. Debtor's Schedule F valued Harden's claim at approximately $784,000. On March 7, 2016, Harden filed a proof of claim asserting approximately $910,000 was owed as of the Petition Date. (Claim 2-2 at 2). Harden is Debtor's largest creditor, followed by Debtor's homestead mortgagee, then consumer credit-card lenders, with taxing authorities rounding out the remaining liabilities.

Parties

Debtor is a licensed commercial property/casualty general lines insurance agent. He is married, but his wife is not a debtor. Debtor's wife filed for divorce over six years ago, in 2010. The dissolution action remains pending. The couple own separate homes and live apart. Debtor and his wife own a business called Integrated Risk Solutions LLC ("Integrated Risk"), held in tenancy by the entirety. Debtor is the sole employee of Integrated Risk; there is no arms-length employment agreement or restrictive covenant between Debtor and Integrated Risk.

Integrated Risk formed a relationship with Sihle Insurance Group ("Sihle") to take advantage of Sihle's contracts with commercial insurers; however, there are no written contracts between Integrated Risk and Sihle. Debtor acts as the "producing" insurance agent of record by securing clients for the insurers, while Sihle acts as Debtor's conduit to the insurers and provides back-office support. Integrated Risk and Sihle then split all commissions earned from the insurer 50/50 pursuant to a "handshake" deal. (Doc. 72 at 34).

Harden is a licensed insurance agency and is Debtor's former employer. Harden obtained a state-court judgment against Debtor for breach of a non-compete/non-solicitation agreement (more specifically, a non-piracy agreement in this context) that existed between Debtor and Harden. Debtor was found to have "pirated" clients from Harden, in violation of Debtor's employment agreement.

Proposed Compromise

On August 30, 2016, the Trustee filed a Motion to Approve Compromise (the "Proposed Compromise"). (Doc. 40). The Proposed Compromise seeks to settle all claims of the bankruptcy estate to Debtor's property in return for a $30,000 payment by Debtor to the estate. Three claims are pertinent, here.

First, the Trustee seeks to settle the estate's claim to Debtor's ownership in Integrated Risk. The Trustee does not dispute that Integrated Risk "is a TBE entity," but acknowledges "[c]ertain creditors contend" the customer account information or "expirations" held by Integrated Risk is property of Debtor individually because he is "identified as the agent of record" on those accounts. (Doc. 40 at 8). The Trustee states "[t]here is no clear legal answer as to whether the accounts are owned by [Debtor] individually, Integrated Risk Solutions, or even Sihle." (Doc. 40 at 8). Debtor's wife claims equitable ownership by virtue of her interest in Integrated Risk. Further, the Trustee contends there are no restrictions prohibiting Debtor from competing with any would-be purchaser of the expirations. Trustee contends this lack of exclusivity depresses the value of the expirations in comparison to the same expirations sold on an exclusive-use basis. (Doc. 40 at 9). Based on this, the Proposed Compromise allocates $15,000 of the $30,000 to resolve the estate's claim to Integrated Risk. (Doc. 40 at 14).

Second, the Proposed Compromise seeks to settle the estate's claim to $4,139.28 in renewal commissions payable to Debtor. Debtor would earn these commissions if/when his clients renew their commercial insurance policies. There is no guarantee the insureds will renew with Debtor. (Doc. 40 at 10). The Proposed Compromise allocates $2,500 of the $30,000 for allowing Debtor to retain the renewal commissions. (Doc. 40 at 14).

Third, the Trustee concedes most of Debtor's personal property is owned in tenancy by the entirety and is exempt. (Doc. 40 at 6-7). Additionally, "[t]he expense of administering the solely-owned assets . . . exceeds the value which could be realized." (Doc. 40 at 7). Therefore, the Trustee will "withdraw his objection to the claim of [exemption] for these assets," if the Proposed Compromise is approved and consummated. (Doc. 40 at 7).

The remaining settlement funds are allocated to Debtor's Porsche 911 and Debtor's individually-owned bank accounts. The Proposed Compromise calls for Debtor to pay the estate $11,300 to keep the Porsche 911, and $1,200 for his individually-owned bank accounts. (Doc. 40 at 14-15). In sum, the Proposed Compromise settles "all claims which the estate could assert against the Debtor, his wife, or any of their assets" in return for $30,000. (Doc. 40 at 14).

Harden's Objection to the Proposed Compromise

Harden objected to the Proposed Compromise as to: a) the customer account information or "expirations;" b) the policy-renewal commissions payable to Debtor; and c) the personal property claimed in tenancy by the entirety. (Doc. 43 at 3, 8, 10). Harden contends the Proposed Compromise is not reasonable, equitable, or in the best interests of the estate. It argues the expirations are Debtor's most valuable asset and are property of the estate. That is, absent agreement to the contrary, the licensed agent of record individually owns all expirations for

accounts he/she procures. Harden contends courts have recognized that expirations maintain value even when sold in bankruptcy on a nonexclusive-use basis.

As to the policy-renewal commissions, Harden alleges the Trustee's reasoning "falls short" in that the only basis for compromising this claim is "that the Debtor indicated one customer has placed insurance elsewhere and another may do so as well." (Doc. 43 at 9). Finally, Harden alleges Debtor's miscellaneous personal property is not held in tenancy by the entirety because it was purchased after Debtor and his wife separated and after his wife filed for dissolution.

Harden's Adversary Proceeding

Harden filed an adversary proceeding in January 2017; Adv. No. 3:17-ap-0030-JAF. In that proceeding, Harden seeks a declaration that Debtor individually owns the insurance expirations. The adversary proceeding was stayed pending the outcome of the instant matter.

Mediation

Following trial on this contested matter, on April 17, 2017, the Court referred all parties to mediation. (Doc. 77). On June 2, 2017, the mediator declared an impasse. (Doc. 86).

FINDINGS OF FACT[1]

A. Testimony of the Debtor

In 1981, Debtor began working for Harden. Debtor was a licensed insurance agent.[2] Debtor focused on commercial property/casualty insurance. In 1996, Debtor left Harden and went to work for Greene Hazel Insurance Group ("Greene Hazel"). In 2001, Harden filed a breach-of-contract action against Debtor, in state court. Harden claimed Debtor violated non-piracy clauses

[1] Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968) ("There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated.").

[2] § 626.015(5), Fla. Stat. (defining "general lines agent"); §§ 626.726-754, Fla. Stat. ("General Lines Agents Law").

in his employment agreement. Harden prevailed and was awarded $435,527 in damages, $73,515 in attorney fees, and $6,300 in costs, plus interest. (Claim 2-2 at 3, 7, 11). This judgment debt "shall be treated as a general unsecured debt for the purposes of distribution." (Doc. 46 at 2).

In 2004, Debtor left Greene Hazel and formed Integrated Risk with his wife. Debtor brought approximately two hundred fifty (250) clients from Greene Hazel. (Doc. 72 at 45). Debtor/Integrated Risk and Greene Hazel signed an agreement providing that Debtor would not solicit Greene Hazel's remaining clients and Greene Hazel would not solicit the two hundred fifty customers Debtor took from Greene Hazel. Thereafter, Integrated Risk formed a relationship with Sihle. Sihle had relationships with insurers and acted as a general managing agency, whereas Debtor was the producing agent.[3] Only Debtor holds an agent's license, and only Sihle holds an agency license. Neither Integrated Risk nor Debtor's wife holds a Florida insurance license. On these facts, Debtor testified as follows:

> Q. Okay. And you placed those 250 accounts with Integrated Risk, right?
>
> A. I placed them with Sihle Insurance Group.
>
> Q. Well, did you place them with Sihle as the servicer or as the purported owner of those accounts?
>
> A. You could take it both ways.
>
> Q. Well, as against Sihle, would it be Integrated Risk's position that it owns the accounts and it then pays Sihle a 50-percent share to service them?
>
> A. Let's go back. Integrated Risk has no insurance -- direct insurance contracts with insurance carriers. Sihle has the contracts with the insurance carriers.
>
> Q. And you have the relationship with the customers.
>
> **A. I have the relationship -- Integrated Risk -- I have the relationships with the customers, correct.**

[3] § 626.112(1)(a), Fla. Stat. ("No person may be, act as, or advertise or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the department . . . .").

> Q. Well, then what is it that Integrated Risk owns?
>
> A. The relationships.
>
> Q. The relationships. The relationships with the customers?
>
> A. Are you asking me what the ownership relationship is with the customers?
>
> Q. Correct.
>
> A. Does Integrated Risk own that book of business?
>
> Q. Correct.
>
> A. I would say, as I said earlier, Integrated Risk owns that book of business. But we don't have a contract between Sihle and Integrated Risk. Sihle has all the contracts with the insurance carriers. Integrated Risk only acts as an independent contractor in placing that business via Sihle for a split in the commission 50-50.

(Doc. 72 at 46-47) (emphasis added).

In 2010, Debtor's wife filed a marriage-dissolution action but no dissolution has yet been entered. In 2015, Debtor and his wife sold the marital residence, divided the funds, and purchased "separate homesteads." (Doc. 72 at 39). Debtor was asked whether his ownership of "substantial assets" in tenancy by the entirety had "anything to do with" the dissolution action remaining pending after six years. (Doc. 72 at 40). Debtor answered: "You could probably infer that, but, as with this bankruptcy and everything going on, I'm kind of like a procrastinator, and there's no telling what's going to happen in the future with Paula and I." (Doc. 72 at 40).

Eventually, Harden began collection efforts against Debtor. Debtor admits these efforts were the "primary reason" he filed the bankruptcy petition. (Doc. 72 at 38). Debtor acknowledges he and his wife formed Integrated Risk to prevent Harden from levying on his "business assets or income stream." (Doc. 72 at 12). Debtor understands the legal concept of tenancy by the entirety and the exemption tied thereto. (Doc. 72 at 43-46). Debtor's current bankruptcy attorney drafted the operating agreement for Integrated Risk. However, there is no employment agreement or any restrictive covenant between Debtor and Integrated Risk. (Doc. 72 at 46).

B. Testimony of Harden

M.C. Harden ("M.C.") testified on behalf of Harden, as its chief executive officer. Harden is a commercial insurance agency. M.C. defined "expirations" as "the name and contact information of all of the relationships throughout the organization, [ ] the risk characteristics of the prospect or client, [ ] the pricing of the [insurance] program, [ ] the design of the program, [ ] the nature of [the insured's] industry, [ ] claims history, . . . [i]t's essentially all of the customer information held by an agent or broker." (Doc. 72 at 132-33). The Court adopts the definition of expirations as stated in M.C.'s testimony.[4] Expirations create the "advantage of incumbency" and "gives us a decided advantage when given the opportunity to renew a particular program." (Doc. 72 at 133). M.C. described, in detail, how Harden monetizes the information to create "a future stream of earnings." (Doc. 72 at 134-37).

The customary industry practice or "rule of thumb" for valuing expirations is that they are generally worth "one to one and a half times annual revenue" produced by those accounts. (Doc. 72 at 141) ("It is calculated by capitalizing the future stream of earnings projected to be generated from that list of customers."). This "rule of thumb" assumes the information is purchased on an exclusive-use basis and that no other agent has access to (or use of) that information. If purchased on a nonexclusive basis, there "would be a dramatic discount, perhaps a 75 to 80 percent discount." (Doc. 72 at 142). A more precise valuation could be achieved with access to the information to quantify specific risk profiles and prospective pricing for the subject accounts. (Doc. 72 at 148).

[4] See also 88 A.L.R. 3d 1142 (1978) ("Within the insurance industry, the term 'expirations' has come to have a definite meaning and embodies information relative to an insurance policy such as the name and address of the insured, the location and description of the property insured, the value of the insurance policy, and most importantly, the date of expiration of the insurance policy. This last piece of information is of vital importance to the insurance agent. Since insureds tend to change policies only upon the expiration of their existing policy, knowledge of the expiration date of the policy permits the insurance agent to contact the insured prior to policy expiration in order to solicit his renewal of the existing policy or the procurement of a new policy issued by the same agent. A listing of an agent's expirations would also be of value to other agents as providing leads for solicitation of policies.").

M.C. explained how *non*exclusive expirations remain valuable, as follows:

> You would [ ] know the appropriate time to make contact. You would know the people [who] are involved with making the decision [on the client side]. **You would have [ ] the risk profile of that particular customer,** which oftentimes could be 20, 30, 40, 50 hours in development. You would know the pricing that that customer is paying to a carrier. You would know the insurance company or the underwriter who's underwriting it. You know their rating schemes. You would know the claims history, which gives you the part of the underwriting criteria by which one might price that [insurance] product prospectively.

(Doc. 72 at 143-44) (emphasis added). Nonexclusive-use expirations level the playing field against a competitor who "already has the customer information, the expirations, regarding that targeted customer." (Doc. 72 at 144). M.C. detailed prior instances in which Harden purchased nonexclusive-use expirations and successfully generated new revenue streams. (Doc. 72 at 146).

The revenue produced by these expirations was $418,000 in 2015. M.C., therefore, valued the information at $418,000 to $627,000 "plus or minus" if purchased exclusively, but discounted that to a rough range of $83,000 to $155,000 if purchased on a nonexclusive basis. (Doc. 72 at 145). Harden did not make any firm offer to purchase the expirations, but argued it was not included in or alerted to the negotiation of the Proposed Compromise. (Doc. 72 at 147-48).

Harden would use the expirations if sold to it nonexclusively and views the expirations as its "last chance to recover assets that we lost due to a violation of a non-compete agreement." (Doc. 72 at 148-49). M.C. argued the Proposed Compromise, in essence, allows Debtor to keep the expirations on an exclusive basis and, thereby, retain an asset worth $418,000 to $627,000 in return for only $15,000 to the estate. (Doc. 72 at 170). Harden "monitored the progress of [Debtor] through whatever means that we felt that we had access to, and [was] waiting for the opportunity for [Debtor] to acquire sufficient assets to discharge his obligation." (Doc. 72 at 138-39).

C. Harden's counterproposal

Harden is "willing to guarantee the payments that would be made to the creditors under the current compromise, and [ ] would be willing to guarantee the legal expenses of the Trustee for advancing our claim." (Doc. 72 at 165). Harden qualified this by saying it would not write a "blank check" and "there would be a limit" to the attorney fees it is willing to pay, but Harden believes the value of the expirations warrants further litigation. (Doc. 72 at 160, 166).

Harden would not make a specific offer on the expirations without assessing the customer information. (Doc. 72 at 163-64). Harden sought this information from Debtor, but those efforts were "the genesis of this bankruptcy." (Doc. 72 at 164, 168-69) ("If it didn't have significant value, I'm perplexed as to why Mr. Gibson would not be willing to disclose the information. It's clear that it has value to someone because . . . they have not been willing to disclose.").

D. Testimony of the Trustee

The Trustee was asked whether he attempted to market the expirations "to any third parties like Harden?" He explained, "trustees try to figure out what a value is to assets and what the risk allocation would be and what the cost to litigate it would be. And I think, looking at that, we had an offer from the Debtor and we felt like that was the only offer we had to deal with." (Doc. 72 at 101). The Trustee conceded he did not consult Harden or seek other offers. (Doc. 72 at 113).

The Trustee explained:

> I think if I had both offers at the time [ ] that I had to make the decision on the compromise, . . . I think that the risk/reward for the people involved under [Harden's] compromise is probably better, because the unsecured creditors are not going to receive very much under the existing compromise. Under your compromise, they're getting that same amount or they're getting a greater amount.
>
> . . . And I think that if [the Court] overrules the objections to the compromise [ ], then I'm willing to stick with it. If [the Court] sustains the objection, then I probably think that, from a risk/reward standpoint for the creditors involved in the case, that it's your client,

> if it was actually structured as I understand it to be, would be the better deal for the creditors.

(Doc. 72 at 118-19). The Trustee would pursue litigation so long as Harden's offer to pay fees and guarantee payments to other creditors was fulfilled. (Doc. 72 at 120).

CONCLUSIONS OF LAW

"It is a fundamental tenet of bankruptcy jurisprudence that the proponent of a settlement, such as the trustee in this case, bears the burden of demonstrating that the proposal is both reasonable and in the best interests of the bankruptcy estate." In re Vazquez, 325 B.R. 30, 35 (Bankr. S.D. Fla. 2005) (Utschig, J.). When evaluating a proposed compromise, a bankruptcy court is obligated to consider the circumstances in light of four factors:

a) The probability of success in the litigation.

b) The difficulties, if any, to be encountered in the matter of collection.

c) The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending to it.

d) The paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. (citing In re Justice Oaks II, Ltd., 898 F.2d 1544, 1549 (11th Cir.1990)).

"[T]he bankruptcy court must consider the 'paramount interest of creditors with proper deference to their reasonable views.'" Id. "While the desires of the creditors are not binding, a court should carefully consider the wishes of the majority of the creditors." Id. at 36. "The chapter 7 trustee is required to reach an informed judgment, after diligent investigation, as to whether it would be prudent to eliminate the inherent risks, delays, and expense of prolonged litigation in an uncertain cause." Id. "The court is neither to 'rubber stamp' the trustee's proposals nor to substitute its judgment for the trustee's, but rather to 'canvass the issues' and determine whether the settlement falls 'below the lowest point in the range of reasonableness.'" Id.

The case of In re Vazquez presents a somewhat similar, but chiefly distinguishable, fact pattern. 325 B.R. at 33. Vazquez was an involuntary Chapter 7 case, involving a state-court judgment-creditor who was willing to fund further litigation as to whether certain real estate was property of the bankruptcy estate. After the creditor obtained the judgment, it discovered real property titled to debtor Vazquez "as trustee." Id. at 34. In supplementary proceedings, the creditor "attempted to convince the state court that no real trust had been created" and that the debtor owned the property individually. Id.

"[T]he [involuntary] bankruptcy case became [the creditor]'s 'fall back' forum after the state court ruled in the debtors' favor." Id. The bankruptcy court likewise ruled against the creditor and concluded the real estate "was not property of the estate." Id. The bankruptcy trustee appealed, but "[w]hile that appeal was pending, the trustee and the debtors reached a settlement." Id. The creditor objected to the proposed compromise. "Boiled to its essence, [the creditor]'s argument is that it is the '800 pound gorilla' in this case, and that this litigation should not end unless and until [the creditor] thinks that it should." Id. at 35.

Vazquez framed the question as "whether this case reflects a scenario in which 'proper deference' to the creditor's views dictates rejection of the trustee's settlement proposal." Id. at 37. The court emphasized that no creditor has "'veto power' over approval of a settlement," but courts must give "proper deference" to the creditor's "*reasonable* views." Id. (italics in original). The court recognized "the challenge of approving a comprise [ ] over the objection of the only creditor (who is willing to fund litigation)." Id. However, "[t]he basic directive in this process is to compare the terms of the compromise with the likely rewards of litigation." Id. at 39. Ultimately, because the creditor was unlikely to prevail and further litigation would push the debtor farther

from the bargaining table, the court concluded the $400,000 settlement was reasonable. With this analysis in mind, the Court applies each of the Justice Oaks factors to the present case.

A. Probability of success in litigating ownership of commercial insurance expirations.

There does not appear to be any Florida law addressing ownership of expirations. The industry custom, however, is clear and uncontroverted. The licensed insurance agent of record owns the expirations absent an agreement to the contrary. See Heyl v. Emery & Kaufman, Ltd., 204 F.2d 137, 139 (5th Cir. 1953); In re Roy A. Dart Ins. Agency, Inc., 5 B.R. 207, 209 (Bankr. D. Mass. 1980) ("The modern insurance agent is no longer analogous to the traditional principal-agent relationship. The insurance agent is not an employee of the insurance company soliciting business on its behalf but rather is an independent businessman soliciting business on his own behalf. . . . The independent insurance agent has the property interest in the customers and business which he has cultivated and is indeed the rightful owner of the expirations."); 4 *Couch on Insurance* 3d § 57:59 (2017) ("Generally, an agent has a property right to expirations on business produced by him or her, subject to sale for the benefit of creditors in a bankruptcy proceeding of the agency [or agent]."); *Rights to Expirations as Between Insurer and Insurance Agent or Broker*, 88 A.L.R. 3d 1142 (1978) ("Within the insurance industry, there has arisen a custom and usage regarding the ownership of expirations. Under this custom, the independent insurance agent is regarded as the owner of the expirations of policies written by him, if the agent is not in default in remitting insurance premiums to the insurer. This custom and usage has been predicated upon the fact that the independent insurance agent, who normally represents contemporaneously several insurers, does not solicit on behalf of any particular insurance company but on behalf of, and at the expense of, the insurance agency."); Arbella Mut. Ins. Co. v. Comm'r of Ins., 921 N.E.2d 537, 557 (Mass. 2010) ("The American agency system is not free standing. It is a specialized canon of interpretative principles that applies to contracts between agents and

insurers, resolving in agents' favor any silences or ambiguities concerning the ownership of insurance expirations.").

The Fifth Circuit, in an opinion that is binding on this Court,[5] stated expirations are subject to sale as a part of a bankruptcy estate insofar as the expirations are property of the estate. Heyl v. Emery & Kaufman, Ltd., 204 F.2d 137, 139 (5th Cir. 1953). In Heyl, the specific question was whether the purchaser of the expirations was entitled to "exclusive use" of the expirations when sold as a part of a bankruptcy estate. The Heyl court held that exclusive-use rights did not transfer with the expirations when sold as a part of the bankruptcy estate; instead, only nonexclusive-use rights transferred. The court reasoned that nonexclusive-use expirations retain some value, even if less than exclusive-use expirations. Id. at 14.

More to the present point, the Heyl court stated:

> Because of the peculiar nature of the agency relationship, in that the [ ] insurance agent, in soliciting insurance business, does not solicit on behalf of any particular [insurance] company, but actually on behalf of the agency, and then allots the business to such one of the companies represented by him as he may determine, it is generally held that since the information obtained in such solicitation and in the preparation of the policies is gathered by the agent at his own expense, the expirations are the property of the agent.

Id. at 139. The Court finds this statement to be binding and, to the extent it is dicta, finds the Fifth Circuit's reasoning persuasive.

In Florida, an "insurance agency" is "a business location" at which the "agent" transacts insurance business. § 626.015(8), Fla. Stat. Florida law requires every "agency" to have a licensed "agent in full-time charge of the agency office." §§ 626.172(2)(e), 626.0428(4)(a), Fla. Stat. Most importantly, only a "natural person" can be a licensed "agent." § 626.731(1)(a), Fla. Stat. Lastly,

[5] Bonner v. City of Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc) (adopting as binding precedent all decisions of the former Fifth Circuit rendered prior to October 1, 1981).

it is unlawful to "be" or "act as" as an agent without a license. § 626.112(1)(a), (7)(a), Fla. Stat. The net takeaway is that, in Florida, a business entity does not act as an insurance agent. Rather, only a licensed *natural person* may act as an insurance agent and all agencies must have a licensed agent in full-time charge of each office. In light of these statutory provisions and the absence of any Florida judicial decision to the contrary, the Court holds that, in Florida, the licensed natural person who is the agent of record on the subject client account retains ownership of the attendant expiration unless that licensed agent of record has agreed to the contrary.[6]

Debtor presented no Florida case law holding to the contrary and has presented no evidence concerning contradictory industry custom in Florida. Consequently, the Court finds no reason the industry custom ought to be different in Florida. This is not to say that an unlicensed person or entity can never own insurance expirations, but there must be a valid agreement providing for such.

Debtor's counterargument is that the expirations should be treated as any other business asset owned by the entity. This argument, however, ignores the "peculiar" nature of expirations and the highly regulated nature of the insurance industry. Heyl, 204 F.2d at 139. On cross-examination, Debtor's counsel repeatedly asked M.C. to agree that Harden owned the expirations at issue in the underlying state-court suit brought by Harden. At each instance, M.C. explained "the fundamental difference, as I indicated, is the absence of a restrictive covenant," i.e., an agreement contrary to the default rule. (Doc. 72 at 156).

Debtor repeatedly represented that Integrated Risk and/or other entities own the expirations without any direct support for these contentions. The obvious benefit to Debtor is that, if the Court

[6] In 2014, the Florida Legislature made substantial changes to Florida's agency licensing law and brought Florida more in line with the national norm. See *Florida Implementing New Insurance Agency Licensing Law*, available at https://www.lexisnexis.com/legalnewsroom/insurance/b/insurancelaw/archive/2015/03/05/florida-implementing-new-insurance-agency-licensing-law.aspx. These amendments and the adoption of national industry norms buttress the conclusion that the independent agent retains individual ownership of the expirations absent agreement otherwise.

determines he does not own the expirations, the expirations would not go to the estate but would remain under the exclusive control of Debtor. By telling the Court he has no *de jure* ownership, Debtor thereby attempts to maintain *de facto* ownership and exclusive control over the expirations. This bears negatively on the credibility of Debtor's argument.

In sum, absent controlling law of which this Court has not been made aware, it appears almost certain that Debtor individually owns the expirations and the expirations are property of the estate. Therefore, this factor weighs in favor of disapproving the Proposed Compromise.

B. The difficulties, if any, to be encountered in the matter of collection.

Heyl specifically held that expirations sold on a nonexclusive basis retain some value, even though that value is less than when sold on an exclusive basis. Heyl, 204 F.2d at 140. Further, this case involves commercial insurance expirations rather than personal insurance expirations. As the testimony indicates, personal insurance expirations tend to be more fungible than commercial expirations. Commercial expirations provide the historic risk profile of the client business, which is used to model a prospective risk profile and price the insurance product for maximum profitability. Additionally, the expirations level the playing field between the incumbent agent and the prospective agent who can use the information contained in the expirations to aid his salesmanship. Therefore, in light of Heyl and the testimony presented, these expirations retain some value that could be realized by the estate. The more difficult issue is determining how much value could be realized and the difficulties therewith. The only testimony controverting M.C.'s valuations was Debtor's testimony (and that of his other witnesses) that the expirations had absolute zero value without exclusivity, which the Court discounts.

This factor is the closet of the four factors. The preponderance of the evidence shows the expirations are worth much more than the $15,000 attributed to them in the Proposed Compromise. Yet, the Court likewise doubts their value reaches the upper range suggested by Harden. In either

case, Harden has the experience and contacts needed to deal in these assets and to realize their value for the benefit of the estate. Further, the testimony indicates Harden is willing to purchase the expirations for itself. (Doc. 72 at 148). However, the Trustee failed to consult the 800-pound gorilla with the expertise needed in this case. Consultation with Harden should minimize, if not eliminate, the difficulties in realizing the value of the expirations for the benefit of the estate. Therefore, this factor favors disapproval of the Proposed Compromise.

C. The complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending to it.

Despite Debtor's attempt to obfuscate the complexity of the matter, the legal issue is clear. That is, absent an agreement to the contrary, the licensed agent of record owns the expirations. See supra Part A.[7] The only fact question is whether there is an agreement to the contrary, which the uncontroverted testimony shows does not exist. This does not constitute unusually complex litigation and any expense, inconvenience, or delay ought to be moderate. Therefore, this factor weighs in favor of disapproval of the Proposed Compromise.

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

"'Proper deference to [Harden's] reasonable views' is not the same as saying that the court must defer to the creditor simply because the only creditor (or a majority of creditors) does not think the settlement is fair." Vazquez, 325 B.R. at 37. While Harden does not have veto power over the Proposed Compromise, the paramount interests of the creditors require some consultation with Harden by the Trustee in light of Harden's specialized knowledge of the "peculiar" asset at issue. This factor favors disapproval in light of the Trustee's failure to consider Harden's views

[7] There is also an industry custom providing that, where an agent fails to remit premium payments to the insurer, the insurer takes ownership of the expirations. *Rights to Expirations as Between Insurer and Insurance Agent or Broker*, 88 A.L.R. 3d 1142 (1978); 4 *Couch on Insurance* § 57:59 3d (2017). It appears this industry custom is often written into an agreement between the insurer and the agent or agency. These facts are not present, here.

regarding the expirations during the negotiation process. This is buttressed by the fact that Harden's contentions on ownership and valuation have been shown to be supported by the facts and law. The legal correctness of Harden's views demonstrates reasonableness and a requirement for the Court to defer to those views. Further, and more tellingly, the Trustee appears to come to the same conclusion where he testified: "If [the Court] sustains the objection, then I probably think that, from a risk/reward standpoint for the creditors involved in the case, [Harden's proposal], if it was actually structured as I understand it to be, would be the better deal for the creditors." (Doc. 72 at 119). This factor favors disapproval of the Proposed Compromise.

CONCLUSION

Like in Vazquez, the chief question is "whether this case reflects a scenario in which 'proper deference' to the creditor's views dictates rejection of the trustee's settlement proposal." Id. at 37. Because the case law supports Harden's views as to ownership and general valuation of the expirations and because the Trustee did not consult Harden, the Court must disapprove the Proposed Compromise. The Court takes no issue with the Proposed Compromise as to the renewal commissions or the miscellaneous personal property. The Court denies approval in total because the Proposed Compromise was presented as a package deal. The narrow circumstances before the Court do not demonstrate the Proposed Compromise is in the best interests of the estate or that the Proposed Compromise meets the minimum level of reasonableness required. Accordingly, Harden's objection is SUSTAINED and the Trustee's motion to approve the Proposed Compromise is DENIED.