

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

In Proceedings
Under Chapter 13

WILLIAM A. DILL, II

Case No. 99-32568

Debtor(s).

ORDER

This matter is before the Court on an objection to confirmation filed by the Chapter 13 trustee.

The debtor's plan proposes to pay one-half the net proceeds from a workers' compensation claim to the trustee for distribution to creditors. The trustee objects, citing In re Watters, 167 B.R. 146 (S.D. Ill. 1994), in which the court ruled that the entire amount of the Chapter 13 debtor's personal injury recovery was required to be paid to the trustee for distribution to creditors when such recovery was not reasonably necessary for the debtor's support.¹ In this case, the trustee contends, even though the debtor's plan proposes to pay one-half the net proceeds of his claim to the trustee, the debtor is required, under both Watters and § 1325(b) on which Watters was

¹In Watters, the district court affirmed this Court's decision compelling the debtor to pay the entire amount of his personal injury recovery to the trustee in order to have a confirmable plan. See 167 B.R. at 147. Watters was decided under § 1325(b), which requires a debtor to submit to the trustee all income which is not reasonably necessary for the support and maintenance of the debtor or the debtor's dependents. See 11 U.S.C. § 1325(b).

based, to pay all proceeds from the debtor's workers' compensation claim, if any, into his Chapter 13 plan.

The Court finds the reasoning of Watters to be sound and reiterates the rule of that case. A Chapter 13 debtor must submit all disposable income arising from a prepetition cause of action to his Chapter 13 plan. The Court further finds, however, that a debtor may, in order to be compensated for his contributions in pursuing such an action, reserve to himself a portion of the recovery if the debtor can affirmatively demonstrate that he will expend time and effort to prosecute the cause of action.

The exact amount of the reserved portion of the debtor's recovery will depend upon the facts of each case. For example, in a case in which the recovery is expected to be minimal and the amount of effort to obtain such recovery will likely be substantial, the debtor may reserve a majority of the recovery or award obtained. Likewise, in a case in which the recovery is anticipated to be substantial and the effort to obtain that recovery will be minimal, the debtor would be entitled to a lesser amount.

To be eligible to reserve a portion of the recovery from a prepetition cause of action, the debtor must submit to the trustee information on the debtor's potential recovery within

thirty days after the filing of his case. The following factors shall be considered in determining the appropriate split in the projected recovery. These factors are not exclusive and may vary depending on the type of cause of action. The debtor must submit to the trustee as much information as possible regarding these factors:

1. Has the debtor hired an attorney? If so, what is the attorney's name, address, and telephone number?

2. What is the type and severity of injury/damages suffered by the debtor?

3. When did the injury/damages occur?

4. What is the amount estimated to be recovered from the debtor's case? I.e. \$5,000 - \$10,000; \$10,000 - \$20,000; etc. (This estimate should be made with the understanding that it is an estimate only and any actual recovery may be different.)

5. What tasks are remaining to be accomplished by the debtor or his attorneys before the case goes to hearing or is settled? I.e. Continuing medical treatment; depositions of the debtor and physicians; medical records depositions; etc.

6. In what stage of litigation is the debtor's cause of action at present? I.e. Case/claim filed, discovery performed, etc.

7. Does the debtor anticipate a difficult defendant? Is the defendant insured, insolvent, or in bankruptcy?

8. Does the debtor foresee any major problems that might delay a settlement or a favorable judgment? I.e. Potential counterclaims, affirmative defenses, etc.

9. Have any offers of settlement been tendered? What was the last offer and by whom was it made?

10. Has the debtor's case/claim been settled or is it close to settlement? What are the terms of the settlement, if any?

11. Has the debtor's earning capacity been reduced as a result of the injury giving rise to the claim or action?

12. Will the debtor incur future expenses for treatment of the injury sued on? I.e. Therapy, prosthetics, etc.

Upon receipt of this information, the Chapter 13 trustee may recommend to the Court a split of the potential recovery. There are various reasons for allowing such a split in a future recovery. First, a split will encourage the debtor to actively prosecute his case and seek a maximum recovery. In turn, the debtor's efforts will benefit his creditors who will receive a portion of the recovery. In addition, a split may dissuade a Chapter 13 debtor from dismissing his case prior to receipt of a recovery and thus provide an incentive to remain in the case and finish paying his debts.

In the present case, the debtor has a workers' compensation claim for a back injury. This injury appears to be a LS-S1 herniation. He has hired an attorney and filed a workers' compensation claim.

At this time, the debtor's damages are estimated at 10% to 15% of a man as a whole.² The debtor's estimated recovery ranges from \$11,969.50 to \$17,954.25. The debtor is still undergoing

²This estimation of damages is for purposes of determining the debtor's split in his potential recovery only. It is not a determination by this Court of the debtor's damages and should not be used by any other court as a res judicata finding on the issue of damages.

treatment and is under the care of his neurosurgeon. There are no depositions set nor will there be further activity in his workers' compensation case until the debtor is released from his doctor's care. At that point, his attorney will obtain medical records and make a demand for settlement. If no settlement is reached, the case will be litigated. The claim is against Schnucks Markets, a local food retail chain. There appear to be no concerns about the potential defendant's insolvency or ability to pay.

Based on these facts, the debtor's original request to retain one-half of any settlement or recovery is appropriate. It appears the debtor has suffered an injury with a modest expected recovery. In addition, it appears the debtor is only half-way through litigating his case, and there remains substantial work to be performed before any settlement or trial.

Therefore, the trustee's objection to confirmation of the debtor's Chapter 13 plan is denied. An order of confirmation of the debtor's plan will enter.

See written order.

ENTERED: March 22, 2000

/s/ Anthony J. Metz
United States Bankruptcy Judge