

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
	:	
AMERICAN BANKNOTE	:	Case No.: 05-10174 (PJW)
CORPORATION,	:	
	:	
	:	Objection Deadline: July 15, 2005, 4:00 p.m. ET
Debtor.	:	Hearing Date: July 22, 2005 at 10:30 a.m.

**MOTION FOR ORDER APPROVING COMPROMISE
AND SETTLEMENT OF OBJECTION TO
CLAIMS OF MACIEL, NORMAN & ASOCIADOS**

American Banknote Corporation (“Debtor” or “ABN”), by and through its counsel, hereby moves pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, for an order approving a compromise and settlement between the Debtor and Maciel, Norman & Asociados (“MNA”), successors in interest to Maciel, Norman, Martelli & Beretta (“MNMB”), and as grounds therefore respectfully states:

BACKGROUND

A. The Chapter 11 Case

1. On January 19, 2005 (the “Petition Date”), the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court.

2. Prior to the Petition Date, the Debtor was a holding company, which, through its subsidiaries in the United States, Brazil, France, and Argentina, was a provider of secured printed documents, printer and personalized secured and non-secured transition and identification cards and systems, and a wide array of document management and transition services and solutions.

3. Prior to the Petition Date, the Debtor was plagued by several unfavorable economic factors, most notable of which were: (i) the high degree of dependence on its Brazilian operations, which operate in a highly volatile economic environment that has caused

significant foreign currency exchange rate variations and thereby directly impacted cash dividends available to be repatriated to the Debtor; (ii) declining markets at ABNCo in the United States as a result of diminishing overall demand for secure paper-based documents and ABNCo's inability to find sufficient new opportunities to completely offset this decline; (iii) competitive pricing and the loss of market share in France; and (iv) the political and economic instability that has occurred in Argentina, which as resulted in tight credit markets and left uncertainty as to the ongoing stability of the Debtor's Argentine operations.

B. The MNA Proof of Claim

4. On or about March 15, 2005, MNA filed a proof of claim in the case (Claim No. 92), asserting a general, unsecured claim in the amount of \$115,746.00 (the "MNA Proof of Claim").

5. The Debtor disputes the amount of the MNA Proof of Claim and has entered into negotiations with MNA to settle all issues concerning the MNA Proof of Claim.

SETTLEMENT AGREEMENT

6. After substantial negotiation, on or about May 24, 2005, the Debtor reached a compromise and entered into a settlement with MNA, in its capacity as successor in interest to MNMB, upon the terms and conditions set forth in the Settlement Agreement, a copy of which is attached hereto as Exhibit A.

7. The key provisions of the Settlement Agreement are:

(a) Within thirty (30) days after the date the Bankruptcy Court enters a final order approving the Settlement Agreement, the Debtor will pay MNA FORTY THOUSAND DOLLARS AND NO CENTS (\$40,000.00) (the "MNA Settlement Payment").

(b) On the date the Debtor pays the MNA Settlement Payment to MNA (the "Payment Date"), the MNA Proof of Claim shall be disallowed with prejudice.

(c) On the Payment Date, the Debtor and MNA hereby release each other from any and all actions, causes of action, suits, debts, controversies, judgments, claims, demands, damages, costs, liens and liabilities whatsoever in law or equity, known or unknown, existing or hereafter arising (the “Claims”), including but not limited to Claims which were asserted, could have been asserted, or might in the future be asserted in the MNA Proof of Claim (the “Releases”). The Releases shall be effective on the Payment Date, *provided however*, the Releases shall not affect the Debtor’s and MNA’s rights and obligations arising from the Settlement Agreement. For the purposes of the release set forth in the Settlement Agreement, the definition of Debtor and MNA shall include its respective predecessors, successors, parents, subsidiaries, segments, units, divisions, affiliates, partners, officers, directors, employees, agents, representatives, independent contractors, shareholders, and/or any person or entity acting or purporting to act on its behalf.

(d) MNA has represented and warranted that is fully authorized to enter into and perform the Settlement Agreement without any further or other consents or authorization from any person or entity, and that it has the authority to settle for MNMB as successor in interest.

8. Given the costs and uncertainties of litigation, the Debtor believes that the Settlement Agreement is in the estate’s best interests. The Settlement Agreement was negotiated in good faith and at arm’s length by the Parties after evaluating the merits of the claims and defenses asserted by the Parties, along with the attendant risks associated with litigation.

ARGUMENT

9. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure provides that “on motion by the trustee and after a hearing, the bankruptcy court may approve a compromise or settlement.” Settlements are favored in the bankruptcy context “[t]o minimize litigation and expedite the administration of a bankruptcy estate.” *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996). The Supreme Court has recognized that “in administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims in which there are substantial and reasonable doubts.” *In re Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968).

10. Approval of a proposed settlement is within the “sound discretion” of the bankruptcy court. *Jeffrey v. Desmond*, 70 F.3d 183, 185 (1st Cir. 1995). The bankruptcy court must determine whether the proposed settlement is in the “best interests of the estate.” *See In the Matter of Energy Cooperative, Inc.*, 886 F.2d 921, 927 (7th Cir. 1989). In determining whether to approve an application to settle a controversy, a bankruptcy court must determine whether it is fair, reasonable, and adequate by examining 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 it;
- and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Official Comm. Of Unsecured Creditors v. Pa. Truck Lines, Inc. (In re Pa. Truck Lines, Inc.), 150 B.R. 595, 598 (E.D. Pa. 1992), *aff’d* 8 F.3d 812 (3d Cir. 1993). The bankruptcy court should not substitute its judgment for that of a trustee or debtor in possession. *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985); *In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). *See also In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr.

D. Colo. 1985). The bankruptcy court “is not to decide the numerous questions of law or fact raised by [the litigation], but rather [should] canvas the issues [to] see whether the settlement ‘falls below the lowest point in the range of reasonableness.’” *See Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 822 (1983). Accordingly, the court need not conduct a mini-trial. *See Port O’Call Inv. Co. v. Blair (In re Blair)*, 538 F.2d 849, 851 (9th Cir. 1976).

11. For the foregoing reasons, the Debtor respectfully submits that the approval of the Settlement Agreement with MNA is in the best interest of the estate and that the settlement falls well within the range of reasonableness and otherwise satisfies the factors identified herein.

NOTICE

11. Notice of this Motion has been given to the United States Trustee, parties requesting notice pursuant to FED. R. BANKR. P. 2002, MNA, and its counsel. The Debtor believes that such notice is sufficient for entry of an Order on this motion.

WHEREFORE, the Debtor respectfully requests that this Court enter the Order attached hereto as and grant it such other and further relief as this Court deems just and proper.

Dated: Wilmington, Delaware
June 15, 2005

AMERICAN BANKNOTE CORPORATION

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