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U.S. COURTS

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EDWARD J. BURKE  
CLERK IDAHO

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO

IN RE: )  
 )  
 ) CASE NO. 93-02385  
SILVA, DAVE )  
SELMASSKA, SHARON ) STATUS REPORT OF THE  
DEBTOR(S) ) BANKRUPTCY ESTATE  
\_\_\_\_\_ )

JOHN H. KROMMENHOEK, the undersigned trustee, state as follows:

1. The petition was filed on August 13, 1993 as a Chapter 13 and converted to a Chapter 7 on January 5, 1994.
2. Previous trustee Barry Zimmerman obtained a default judgement in the amount of \$45,330.70 in August 1995 on proceeds held in an auto dealer reserve account. The judgement has been served on the First Fidelity Bank N.A. New Jersey. Per rule 60-B of Federal Rules of Civil Procedures, the bank has one year to file a motion to set aside and the time elapsed in August 1996. The bank failed to file a motion to set aside.

Trustee's attorney made demand on First Fidelity Bank N.A. of New Jersey for payment of the default judgement. The bank refused payment and appealed to the Bankruptcy Court. Judge Pappas ruled in favor of the trustees position, and the bank and has now appealed his decision.

3. Adversary 94-6203 Wussler - Silva.  
Order dated 2-1-95 stayed adversary proceeding, pending an opportunity for the parties to take action in California State Court seeking to set aside, amend or to obtain state court default judgement against defendant. Estate special legal counsel is pursuing to set aside, amend or obtain State Court default judgement.

As of 2-1-97 the following litigation status is pending in connection with the adversary. There are three (3) plaintiffs motions scheduled to be heard on 2-14-97. The defense has five motions pending to be heard. A brief synopsis of the pending motions is contained in a Interoffice Memorandum dated 1-21-97 from Charles D. Richmond, Esq. Attorney. Mr. Richmond is the current California council employed by trustees special council and he also has a motion pending to withdraw as local council.

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The Wusslers filed a First Amended Cross Complaint on January 21, 1997 against debtor Silva, John Krommenhoek, Successor Trustee, Don Rinaldo and Roes 1 through 50. They did not obtain "Stay Relief" from Bankruptcy Court to do so. On April 30, 1997, a Motion was filed by, Trustee Krommenhoek and the bankruptcy estate, requesting sanctions against Wusslers for violation(s) of the automatic stay. A hearing was held in Boise by Judge Pappas to consider the matter.

Judge Pappas on July 29, 1997 issued a Memorandum of Decision and Order in favor of Trustee Krommenhoek's Motion.

The California Judge of the San Diego Superior Court denied the Wusslers Motion for Summary Judgment to confirm the underlying Default Judgment. The Court found thirty-eight triable issues of material fact, and set a trial for September 17, 1997, which has been rescheduled for March 1998.

Subsequent to Judge Pappas, Order, Wussler's have filed a "Motion for Clarification and to Amend or Set Aside Judge Pappas's Order".

Additionally, trustee's California attorney has filed a motion in the Idaho Court seeking an Injunction and a Civil Contempt against the Wusslers, and requesting that the Bankruptcy Court impose a punishment against the Wusslers. The mandatory mediation hearing scheduled on August 18, 1997 was rescheduled to September 22, 1997. The mediation hearing and a subsequent follow up mediation hearing in October, 1997, yielded no results or movement between the parties.

An attempt was made by trustee to abandon the Cause of Action to debtor Silva and Judge Pappas disallowed without prejudice.

Currently, compromise discussions are going on between all parties, however, it does not look promising.

The animosity and stakes are such in this case that neither the debtor(s) Silva or creditor Wussler are willing to give up.

As trustee I am caught in the middle. Dave Silva is adamant that the judgement against him is fraudulent, and wants the case to go to trial. Further, that he will oppose any attempt by the trustee to compromise with the creditor because of the significant amount involved and the possibility of a non-dischargeable debt.

The creditor, Wussler on the other hand are just as adamant, and have and will oppose and abandonment to the debtor Silva.

The California trial was completed in June 1998. Judge Thomas R. Murphy denied the plaintiff's (Silva) request to set aside the 1984 Judgement. He further stated that the 1984 default judgement and punitive damages was vague, in the disjunctive and unintelligible---and therefore did not fall within the federal standards of Nondischargeability.

Concerning, the Judgement Renewable Motion, the judge made no finding on whether proper service was made on the Courtroom, Inc. (Silva's business in California), to renew the judgement.

The bottom line is that this estate continuous to remain open for the following reasons (1) The decision by the First Fidelity Bank N.A. of New Jersey's appeal, (2) Determination of Sanction awarded to the estate from Wusslers which is also on appeal and (3) Development and court approval of same type of a "Global Settlement" between all parties in order to close the estate.

The same issues are still pending 7-19-99 as follows:

1. **Trustee's judgement against Fidelity Bank N.A. of New Jersey** - The bank appealed to the District Court of Idaho which had affirmed the Bankruptcy Courts decision in favor of the trustee. Fidelity Bank has now appealed to the 9<sup>th</sup> Circuit. All briefs have now been submitted. We are awaiting a decision.
2. **Sanction Awarded Against Wusslers** - Wusslers appealed to District Court of Idaho which affirmed the Bankruptcy Court decision. They have also appealed to the 9<sup>th</sup> Circuit. Wusslers have requested another time extension to file their brief.
3. **Settlement** - Until the above appeals have been decided, there is no possibility of a settlement, or closure to this estate. We continue to explore the possibilities of a settlement, but neither party in either issue is interested at this time.

UP DATE, AS OF 1-19-2000, ON THE 3 ISSUES PENDING ON THE LAST REPORT IS PROVIDED.

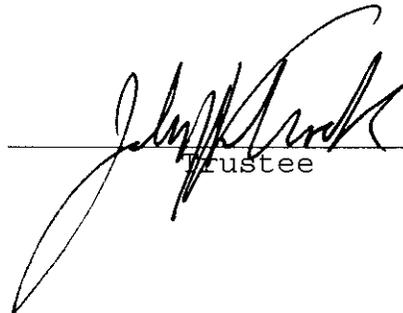
1. **Trustee's Judgement against Fidelity Bank, N.A. of New Jersey** has been settled. The Bank has paid to the Trustee a total of \$75,642.72.

2. **Sanction Awarded Against Wusslers.** This matter is still on appeal. The matter has been assigned to a Circuit Mediator. Several status conferences have been held between the Wusslers attorneys, the Trustee, trustees bankruptcy attorney and trustees E&O attorney. See comments in paragraph 3.
3. **Settlement.** A Compromise Settlement Agreement & Mutual Release discussions are in process. On December 20, 1999 the Circuit BAP issued an Order for inclusion of the above appeal in the Mediation Program. The parties, having reached a tentative settlement to the disputes. Within 60 days a motion or stipulation to dismiss the matter pursuant to Fed R. App. P. 42(6), or shall contact the Circuit Mediator.

One other matter is also now pending. The proposed settlement reserves the right for the Wusslers to continue to seek a decree from the Idaho Bankruptcy Court to declare the debtors obligation to her, to be non-dischargeable. This is being vigorously apposed by the debtor(s).

4. The projected Final Accounting is July 1, 2000.

DATE: January 19, 2000

  
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Trustee

cc: Office of US Trustee