



1 judgment assuming the trustee were to prevail. Meanwhile, the  
2 estate would be required to expend significant sums to not only  
3 pursue its claims but also to defend the complex counterclaims.  
4 The estate cannot afford to do so. So the structure of the  
5 settlement is essentially a stand-still agreement which provides  
6 that the estate's claims against Gaines and Abney will be  
7 dismissed, the balance of the litigation will be remanded to the  
8 state court from whence it came, and Gaines and Abney agree that  
9 their claims against the estate will be subordinated to all non-  
10 insider unsecured creditors and become an issue only if the  
11 estate recovers funds sufficient to reach their level of  
12 distribution. If that were to happen, the estate would be able  
13 to assert its claims against Gaines and Abney by way of set-off.

14 The Waltz Family Limited Partnership counters with the  
15 argument that the settlement is really no settlement because  
16 resolution of the disputes is just deferred, not concluded, and  
17 the trustee is giving up the estate's right to pursue Gaines and  
18 Abney on the estate's claims. Moreover, the estate is also  
19 giving up the right to object to the portions of Gaines and  
20 Abney's claims that relate to the sale of the La Mesa and  
21 Hillcrest facilities.

22 The Court has grappled with the arguments advanced by both  
23 sides. On the one hand, the Waltz Family Limited partnership is  
24 superficially correct in pointing to the illusion of a settlement  
25 when resolution is really just postponed. On the other hand, the  
26 trustee has made a business judgment - as he is obliged to do -

1 that pursuing the estate's claims against Gaines and Abbey will  
2 only cost the estate, not produce a recovery from impecunious  
3 defendants. At the same time, the estate faces substantial costs  
4 in defending against the claims of Gaines and Abney, which serves  
5 no purpose at least until sufficient monies have been brought  
6 into the estate that those claims would otherwise be in line to  
7 receive a distribution. Moreover, other unsecured creditors of  
8 the estate benefit if they are not insiders because Gaines and  
9 Abney have agreed as part of the settlement to subordinate their  
10 claims to non-insider unsecured creditors, instead of  
11 participating *pro rata* with them in any distribution.

12 In other words, the settlement is, in effect, an agreement  
13 to preserve the claims between the estate and Gaines and Abney to  
14 fight another day, but only if the estate somehow recovers  
15 adequate resources to pay all non-insider unsecured creditors and  
16 have enough left over that is worth fighting over. In this  
17 Court's view that is a wise judgment call by the trustee, and is  
18 slightly enhanced by the reciprocal releases which have the  
19 effect of defining the parameters of the claims that are  
20 preserved by the agreement.

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Conclusion

For the foregoing reasons, the Court is satisfied that the settlement agreement urged by the trustee meets the objectives of Rule 9019, Fed.R.B.P., as well as the instructions of In re A & C Properties, 784 F.3d 1377 (9<sup>th</sup> Cir. 1986). Therefore, the settlement between the trustee and Gaines and Abney is approved unless the District Court, upon timely *de novo* review, holds otherwise.

IT IS SO ORDERED.

DATED: FEB 26 2009



PETER W. BOWIE, Chief Judge  
United States Bankruptcy Court