

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

TRIGON CAPITAL CORP. f/k/a
National Home Products, Inc.

Case No. 90-12711 K

Debtor

WILLIAM E. LAWSON, as Trustee in
Bankruptcy for TRIGON CAPITAL CORP.
f/k/a NATIONAL HOME PRODUCTS, INC.

Plaintiff

-vs-

AP 92-1050 K

MAHONEY, BERG AND CORNELL

Defendant

WILLIAM E. LAWSON, as Trustee in
Bankruptcy for TRIGON CAPITAL CORP.
f/k/a NATIONAL HOME PRODUCTS, INC.

Plaintiff

-vs-

AP 92-1052 K

F. STEVEN BERG, SUSAN B. BERG and
MARCY A. BERG

Defendants

WILLIAM E. LAWSON, as Trustee in
Bankruptcy for TRIGON CAPITAL CORP.
f/k/a NATIONAL HOME PRODUCTS, INC.

Plaintiff

-vs-

AP 92-1274 K

BISHOPSGATE, LTD. and SANDRA B. BERG

Defendants

MEMORANDUM AND ORDER

The Court is persuaded by the case of *In re Tidewater Group*, 8 B.R. 930 (Bankr. N.D. Ga. 1981) that the defendants are entitled to hear, on the record, the basis for the Trustee's

decision not to recommend this compromise for approval. Pursuant to *Tidewater*, however (and contrary to the Defendants' insistence) the Trustee is permitted to oppose his own motion.

This is the opposite context from that addressed in the *TMT Trailer Ferry* line of cases -- there a fiduciary sought to extinguish any further claims on behalf of the estate, while here he asks release from his intention to extinguish them. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1962).

Thus the issue to be resolved is not whether or not the settlement was a "good deal" but whether or not the Trustee is acting in good faith and in furtherance of his trust,¹ in seeking

¹The "punctilio of an honor the most sensitive," which the defendants claim the Trustee owes them, is owed instead to the estate he serves. Attention is called to this Court's decision in *In re Present Co., Inc.*, 141 B.R. 18 (Bankr. W.D.N.Y. 1992) which also involved insiders' claims that they were being "shaken down" and that the Court was obliged to protect them by approving a compromise:

Finally, the Funds suggest that the Committee is simply trying to "shake down" the Funds, demanding money to settle baseless allegations that would be litigated with the Funds money. Unless this Court were to approve the compromise, they argue, they will have to incur substantial inconvenience and expense to prove their innocence while the estate (76% of which is "their money") will be eroded in wasteful pursuit of them. Apart from the fact, explained immediately above, that denial of this compromise does not guarantee the result they fear, there is also the fact that if the Court (as opposed to creditors) must choose between precipitously extinguishing any

to withdraw from the settlement.²

This matter is restored to calendar. On July 28, 1993 at 10:00 a.m., counsel shall appear to select a hearing date.

In addition, the Defendants' Motion for a More Definite Statement is continued until that time.

SO ORDERED.

Dated: Buffalo, New York
July 6, 1993



U.S.B.J.

rights of non-insiders, on the one hand, and causing inconvenience and expense to the insiders in such a case, the Court chooses the latter. The transactions at issue here involved tens of millions of dollars. Several millions of dollars of trade debt may never be paid. The Funds may have lost many millions as well. That the Funds may suffer some inconvenience and expense to establish that there has been no unfair dealing as between them and the trade creditors is not unjust.

²For example, the Defendants claim that the Trustee's attorneys have not fulfilled their promise to permit the Defendants to examine the documents which constitute the "new information" leading to withdrawal of the settlement. The Defendants are entitled to see these documents.