IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	**§**	
	§	
WILY J. COYOTE	**§**	**CASE NO. 02-00002-H8-7**
	§	**Chapter 7**
Debtor	**§**	

FINUS LAWYER'S MEMORANDUM OF LAW
REGARDING THE COURT'S LACK OF JURISDICTION
OVER THE FUNDS THAT ARE THE SUBJECT OF THE TRUSTEE'S MOTION TO COMPROMISE CONTROVERSIES WITH OFFSHORE ENTERPRISES, LTD., ET. AL.

To the Honorable E.H. Jurist,
United States Bankruptcy Judge:

Finus Lawyer, creditor in this case, files this Memorandum of Law regarding the Court's lack of jurisdiction over the funds that are the subject of the Motion of Charles Givmedamoney, Trustee (the "Trustee") to Compromise Controversies ("the compromise motion") with Offshore Enterprises, Ltd. ("Offshore")., CloudyStiff, L.L.C. ("CloudyStiff"), and CloudyWire.Com, L.L.C. ("CloudyWire").

Background

1. The material facts in this case are not in dispute. Mr. Lawyer holds a claim based on a $450,000 (not including all interest and attorneys' fees) state court fraud judgment that he obtained against C. Wily Coyote, the debtor in this case, in the 156th District Court of Harris County, Texas ("the state court") prior to the commencement of Coyote's bankruptcy case. Mr. Lawyer also holds fraud claims against CloudyStiff and CloudyWire—two defunct companies in which Coyote was an insider—in a commensurate amount (non-inclusive of possible exemplary damages).

2. Prior to the commencement of Coyote's chapter 7 case, Mr. Lawyer obtained a January 28, 2002 order ("the freeze order") from the state court in which the state court froze $495,000 ("the frozen funds") in a CloudyStiff account at a Houston bank. In freezing the funds, the

state court deemed those funds to be security for Mr. Lawyer's claims against Coyote, CloudyStiff and CloudyWire. That case remains pending in state court and the state court retains jurisdiction over the frozen funds.

3. Coyote filed this bankruptcy case on May 1, 2002. The Trustee was appointed shortly thereafter.

4. In November, 2002, Mr. Lawyer entered into a settlement with, among others, CloudyStiff, CloudyWire, and Coyote that provides that Mr. Lawyer will be paid $325,000 from the frozen funds. In late March, 2003, Mr. Lawyer requested that the state court approve the settlement.

5. Immediately before the state court hearing to approve the settlement in early April, 2003, the Trustee intervened in the state court case. On the same date, the Trustee filed a compromise motion with this Court in which he and Offshore collaterally attack the state court's jurisdiction over the frozen funds and proposes that this Court order the frozen funds split between the Trustee ($170,000) and Offshore ($325,000).

6. As noted in Mr. Lawyer's objection to the Trustee's compromise motion and accompanying memorandum on legal standards, the Trustee's compromise motion fails for a myriad of reasons, including:

- The frozen funds are not property of Coyote's bankruptcy estate under 11 U.S.C. § 541 and, thus, the Bankruptcy Court has no jurisdiction over disposition of the funds;
- The proposed compromise violates public policy because it benefits Offshore, which is conducting an illegal gambling operation in Texas and elsewhere in the United States;
- The proposed settlement is not in the best interests of creditors because Offshore does not even have an allowable claim in Coyote's bankruptcy case; and
- The creditors holding the largest claims in Coyote's bankruptcy case oppose the proposed settlement.

7. However, on an even more fundamental basis, the Trustee's compromise motion fails because it is an illegal collateral attack on the state court's jurisdiction over the frozen funds. Consequently, as explained below, the *Rooker-Feldman* Doctrine requires that this Court reject the compromise motion.

The *Rooker-Feldman* Doctrine

8. It is elementary law that no federal court—other than the United States Supreme Court—can entertain a proceeding to reverse, modify, or otherwise engage in appellate review of a state court case. *Matter of Reitnauer*, 152 F.3d 341, 343 (5th Cir. 1998); *Johnson v. DeGrandy*, 512 U.S. 997, 1005-1006 (1994); *Atlantic Coast Line Railroad Company v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 287, 296, 26 L. Ed. 2d 234, 90 S. Ct. 1739 (1970); *Brown v. Chastain*, 416 F.2d 1012, 1013-14 (5th Cir. 1969), *cert. denied*, 397 U.S. 951, 25 L. Ed. 2d 134, 90 S. Ct. 976. This is this jurisdictional rule which forms the basis of the *Rooker-Feldman* doctrine. This doctrine is named after two decisions of the U. S. Supreme Court, *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 415-16, 68 L. Ed. 362, 44 S. Ct. 149 (1923) (holding that the jurisdiction of the federal district courts is strictly original) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476, 482-83, 75 L. Ed. 2d 206, 103 S. Ct. 1303 (1983) (holding that the federal district courts do not have authority to review state court orders). The *Rooker-Feldman* doctrine has been described as the "jurisdictional transmutation of *res judicata* doctrine." See, *e.g.*, *Narey v. Dean*, 32 F.3d 1521, 1524 (11th Cir. 1994); *see also*: 18B J. A. Wright, et al., *Federal Practice and Procedure* 2d § 4469.1 (2002) at 152.

9. Under *Rooker-Feldman*, a federal district court simply lacks jurisdiction to entertain collateral attacks on a state court's jurisdiction over the subject matter of the state court case. *Liedtke v. State Bar of Texas*, 18 F.3d 315, 317 (5th Cir.), *cert. denied*, 513 U.S. 906, 130 L. Ed. 2d 189, 115 S. Ct. 271 (1994). This jurisdictional bar is not limited to actions in federal court that explicitly seek

review of a state court decision, but also extends to those claims that "are inextricably intertwined with the state court's grant or denial of relief." *Hale v. Harney*, 786 F.2d 688, 691 (5th Cir. 1986) (internal quotation marks and brackets omitted); see also *Johnson*, 512 U.S. at 1005-1006 (under *Rooker-Feldman*, "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a [federal] district court"). Moreover, the Fifth Circuit has repeatedly held that a plaintiff cannot circumvent the *Rooker-Feldman* doctrine merely by recasting a request for relief the form of a "federal" right, such as civil rights action. See *Chrissy F. By Medley v. Mississippi Department of Public Welfare*, 995 F.2d 595, 598-99 (5th Cir. 1993), [*25] cert. denied, 510 U.S. 1214, 127 L. Ed. 2d 684, 114 S. Ct. 1336 (1994); *Hale*, 786 F.2d at 690-91; *Reed v. Terrell*, 759 F.2d 472, 473 (5th Cir.), cert. denied, 474 U.S. 946, 88 L. Ed. 2d 290, 106 S. Ct. 343 (1985); *Hagerty v. Succession of Clement*, 749 F.2d 217, 220 (5th Cir. 1984), *cert. denied*, 474 U.S. 968 (1985); *Sawyer v. Overton*, 595 F.2d 252, 252 (5th Cir. 1979); *Williams v. Tooke*, 108 F.2d 758, 759 (5th Cir.), *cert. denied*, 311 U.S. 655, 85 L. Ed. 419, 61 S. Ct. 8 (1940).

10. In this case, Offshore does not like its chances of recovering any of the frozen funds in the state court case. Consequently, the Trustee's compromise with Offshore is nothing more than a thinly veiled attempt to circumvent the State of Texas judicial process and to mount a collateral attack—in the guise of a bankruptcy compromise motion—to the state court's jurisdiction over the frozen funds. *See*: *Chrissy F*., 995 F.2d at 599; *Hale*, 786 F.2d at 690-91; *Brinkmann v. Johnston*, 793 F.2d 111, 113 (5th Cir. 1986); *Kimball v. The Florida Bar*, 632 F.2d 1283, 1284 (5th Cir. 1980); *Almon v. Sandlin*, 603 F.2d 503, 506 (5th Cir. 1979). Consequently, the relief requested in the compromise motion is "inextricably intertwined" with the state court case so that this Court lacks subject matter jurisdiction to entertain such relief. See *Feldman*, 460 U.S. at 482 n. 16; *Hale*, 786 F.2d at 691; *Brinkmann*, 793 F.2d at 113.

Conclusion

11. Offshore—a company conducting an illegal gambling operation in Texas—understandably does not believe that it will recover any of the frozen funds in the state court case. Thus, Offshore has coaxed an avaricious Trustee into an ill-advised compromise that collaterally attacks the state court's jurisdiction over the frozen funds. Consequently, even before the Court addresses the numerous other reasons that the compromise motion should be rejected, the Court should deny the Trustee's compromise motion for jurisdictional reasons under the principles of the *Rooker-Feldman* doctrine.

Respectfully submitted,

Tom Kirkendall
LAW OFFICE OF TOM KIRKENDALL
State Bar No. 11517300/S.D.TX. No. 02287
65 Hollymead Drive
The Woodlands, Texas 77381
(281) 364-9946
(888) 582-0646 (fax)
bigtkirk@kir.com (email)
(Service of pleadings preferred via
facsimile or electronic transmission.)