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6 IN THE UNITED STATES BANKRUPTCY COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 In re ) Chapter 7  
10 GREGORY LEO EHMANN, )  
11 Debtor. ) CASE NO. 2-00-05708-RJH  
12 \_\_\_\_\_ )  
13 LOUIS A. MOVITZ, Trustee, )  
14 Plaintiff, ) ADVERSARY NO. 04-00956  
15 v. )  
16 FIESTA INVESTMENTS, LLC, ) ORDER WITHDRAWING THIS COURT'S  
17 Defendant. ) OPINION AND ORDER DATED  
18 \_\_\_\_\_ ) DECEMBER 7, 2005, AND APPROVING  
THE TRUSTEE'S MOTION TO APPROVE  
THE COMPROMISE AND SETTLEMENT

19 Shortly after issuance of this Court's Opinion and Order dated December 7, 2005,  
20 the parties conditionally agreed to a settlement of this adversary proceeding. Under the  
21 settlement, Defendant Fiesta Investments, LLC would pay to the Trustee \$85,000, an amount  
22 which the parties believe is sufficient to pay the administrative expenses of the bankruptcy case  
23 and the unsecured claims, virtually in full. The condition of the settlement, however, is the  
24 Court's withdrawal of its December 7 Opinion. Both parties have moved for approval of the  
25 compromise and settlement pursuant to Bankruptcy Rule 9019, and for the Court's withdrawal  
26 of its December 7 Opinion.  
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1           The Ninth Circuit has held that when a lower court is asked to vacate its own  
2     opinion, it should make that determination by weighing the equities *even if* the party seeking  
3     vacatur voluntarily mooted the case by settling.<sup>1</sup>

4           Here, it is essentially conceded that the general manager of Defendant Fiesta  
5     Investments is particularly interested in eliminating any precedential effect this Court's  
6     December 7th Opinion might have, because his principal occupation is as a tax lawyer who  
7     frequently advises clients in the use of limited liability companies for estate planning purposes.  
8     In the balancing of the equities this counts against vacatur because it is in effect the "buy and  
9     bury" strategy that the Ninth Circuit has criticized.<sup>2</sup> It also raises the Seventh Circuit's  
10    objection to the right of private parties to obtain expungement of a public act of the  
11    government.<sup>3</sup>

12           Nonetheless, in weighing the equities, the Court must be mindful of the interests of  
13    unsecured creditors in this case who are understandably much more interested in getting their  
14    debts paid than in the law of executory contracts as applied to family planning LLCs. Their  
15    interests weigh heavily in favor of the settlement and vacating the Opinion. There is little equity  
16    on the other side because a bankruptcy court opinion has essentially no precedential value  
17    beyond law of the case and the inherent logic of its analysis. And, regardless of what the Court  
18    does here, it cannot disagree with Judge Easterbrook's observation that "History cannot be  
19    rewritten."<sup>4</sup>

20           For these reasons,

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22           <sup>1</sup>*National Union Fire Ins. Co. v. Seafirst Corp.*, 891 F.2d 762, 767 (9th Cir. 1989), citing  
23    *Ringsby Truck Lines, Inc. v. Western Conference of Teamsters*, 686 F.2d 720 (9th Cir. 1982) and *Allard*  
24    *v. DeLorean*, 884 F.2d 464 (9th Cir. 1989).

25           <sup>2</sup>*American Games, Inc. v. Trade Products, Inc.*, 142 F.3d 1164, 1170 (9th Cir. 1998), citing  
26    *Mancinelli v. International Business Machines*, 95 F.3d 799, 800 (9th Cir. 1996) (Kleinfeld, J.,  
dissenting).


27           <sup>3</sup>*Seafirst*, supra note 1, 891 F.2d at 768, citing *In re Memorial Hospital*, 862 F.2d 1299 (7th Cir.  
28    1988).

<sup>4</sup>*Memorial Hospital*, supra, 862 F.2d at 1300.

1 IT IS ORDERED withdrawing this Court's Opinion and Order of December 7,  
2 2005, and

3 IT IS FURTHER ORDERED granting the Trustee's motion to approve the  
4 compromise and settlement.

5 DATED this 25th day of January, 2006

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8 Randolph J. Haines  
United States Bankruptcy Judge

9 Copy of the foregoing e-mailed  
10 this 25th day of January, 2006, to:

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