

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)	
)	
LARRY RAY BEESON,)	Case No. 01-42214
)	Chapter 13
Debtor.)	
_____)	

**ORDER GRANTING TRUSTEE’S MOTION TO ALTER OR
AMEND ORDER OF DECEMBER 12, 2002**

This matter is before the Court on the Trustee’s Motion to Alter or Amend the Court’s Decision of December 12, 2002 (Doc. 58). The Trustee is seeking a modification of the Court’s ruling (Doc. No. 56) that would allow Johnson Control Battery Group, Inc. (“Johnson”) to withhold certain payroll and income tax amounts from the settlement.

On December 12, 2002, the Court issued an Order approving the settlement of an employment discrimination lawsuit between the Debtor and Johnson Control Battery Group, Inc., which lawsuit was pending before the United States District Court for the Western District of Missouri. Based on the evidence provided to the Court, it ordered the Debtor to settle the case for the sum of \$154,500.00. From that total sum, the Court authorized the payment of attorney fees and expenses in the amount of \$43,500.00 to The Popham Law Firm, which served as Debtor’s counsel in the employment case.

The Court ordered the remaining funds to be paid to the Trustee for disbursement to the creditors of the estate, with any remaining funds to be returned to the Debtor. No party raised the issue of whether Johnson should be allowed to withhold any amount of money from the settlement for the payment of FICA taxes and income tax withholding, and the Court did not address it. The Trustee has now raised the issue because in preparing to issue the settlement check, Johnson has indicated a concern that its failure to

withhold FICA taxes and income taxes could subject it to civil penalty by the Internal Revenue Service. Johnson is required by federal law to withhold an appropriate amount of FICA and income taxes from the Debtor's wages. *See* 26 U.S.C. § 3102 (requiring the employer to withhold FICA taxes from an employee's wages) and 26 U.S.C. § 3402 (requiring the employer to withhold income taxes from an employee's wages). The Debtor does not contest Johnson's obligation to withhold FICA taxes and income taxes from any amount that is attributable to back wages. Instead, the Debtor contends that none of the settlement amount is attributable to back wages.

The Debtor claims that statements made by Johnson at the hearing concerning the approval of the settlement show that none of the settlement is attributable to back wages. The attorney for Johnson testified that the company agreed to pay \$154,500 as a "cost of defense" settlement. In other words, Johnson agreed to pay the defendant that amount based on what it would cost to defend the case even if Johnson were successful.

The Court agrees with the Debtor that Johnson indicated its motive in agreeing to the settlement was based on the cost of defending the case. However, Johnson's motive in settling the case is a separate issue from the allocation of the settlement proceeds. The proceeds from the settlement must be allocated among the types of damages the Debtor sought in that case - which included a substantial claim for back wages.

After reviewing the limited evidence presented to the Court on this tax issue, the Court finds that the attorneys representing both Johnson and the Debtor in the employment lawsuit engaged in arms-length negotiations concerning what amount of the settlement proceeds should be considered back wages and subject to taxation. After examining the Debtor's rate of pay, other wages earned during the pendency of

the lawsuit and the possibility the Debtor would not have been completely successful in the litigation concerning back pay, both attorneys mutually determined that allocating \$31,588.82 of the \$154,500 settlement to back wages was reasonable and appropriate. The Debtor has presented no evidence to refute the conclusion reached by his own attorney, as well as opposing counsel, involved in that employment case. Therefore, the Court finds that \$31,588.82 of the settlement amount is fairly attributable to back wages.

Any amount of the settlement that is attributable to back wages is subject to the withholding of FICA taxes by the employer. *See North Dakota State University v. U.S.*, 225 F.3d 599, 603 (8th Cir. 2001). Therefore, Johnson is required to withhold FICA taxes on the \$31,588.82 portion of the settlement that constitutes back wages. The Court will authorize Johnson to withhold the appropriate amount of FICA taxes on the sum of \$31,588.82 from the settlement proceeds, before paying the net settlement to the Chapter 13 trustee for distribution.

The Trustee has also asked the Court to allow Johnson to withhold federal and state income taxes from the amount attributable to back wages. The Court finds that Johnson is legally required to withhold income taxes on the amount that is attributable to back pay. Therefore, Johnson is authorized to withhold the appropriate amount of federal and state income taxes on the sum of \$31,588.82 from the settlement proceeds, before paying the net settlement to the Chapter 13 trustee for distribution.

IT IS, THEREFORE, BY THE COURT ORDERED that the Trustee's Motion to Alter or Amend the Court's Decision of December 12, 2002 (Doc. 58) is granted.

IT IS FURTHER ORDERED that the Court's Order of December 12, 2002, is hereby modified to authorize Johnson Control Battery Group, Inc. to withhold the appropriate amount of FICA taxes,

federal income taxes and state income taxes on the sum of \$31,588.82, which is the portion of the settlement between the Debtor and Johnson Control Battery Group, Inc., that is attributable to back wages. Johnson is ordered to withhold any appropriate amount of taxes, as set forth in this order, along with the attorney fees previously ordered by the court, from the settlement amount of \$154,500.00 and pay the remaining amount to the Trustee to be distributed as previously ordered by the Court.

IT IS SO ORDERED this _____ day of May, 2003.

JANICE MILLER KARLIN, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the Order Modifying the Court's Order of December 12, 2002, was deposited in the United States mail, postage prepaid on this _____ day of May, 2003, to the following:

Patrick E. Henderson
Duncan-Senecal Law Office, Chtd.
817 Santa Fe
P. O. Box 349
Atchison, KS 66002

Jan M. Hamilton
PO Box 3527
Topeka, KS 66601

DEBRA C. GOODRICH
Judicial Assistant to:
THE HONORABLE JANICE MILLER KARLIN

BANKRUPTCY JUDGE