

United States Bankruptcy Court
Northern District of Texas
1100 Commerce Street, Suite 12A24
Dallas, Texas 75242

Chambers of
Barbara J. Houser
United States Bankruptcy Judge

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November 6, 2001

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Re: *In re Monroe*, Case No. 99-45508-BJH-13

Dear Counsel:

Before the Court is the Motion to Distribute Insurance Funds (the "Motion") filed by Steven and Karen Monroe (the "Debtors") on July 19, 2001. General Motors Acceptance Corporation ("GMAC") opposes the Motion. At the conclusion of the September 6, 2001 hearing, the Court agreed that GMAC could file a post-hearing brief in support of its opposition and that once GMAC's post-hearing brief was filed, the Motion would be under advisement. GMAC filed that brief on September 14, 2001. This letter contains the Court's ruling on the Motion.

After careful consideration of the Motion, GMAC's opposition, and the arguments of counsel, the Court concludes that the Motion must be denied without prejudice. The Court's analysis is set forth below.

I. Factual Background

The Debtors filed their Chapter 13 case (the "Case") on October 21, 1999. The Debtors' final Chapter 13 plan (the "Plan") was confirmed on June 22, 2000. The Debtors claimed a

Chevrolet C1500 truck (the "Truck") as exempt in the Case. GMAC financed the Debtors' purchase of the Truck prepetition. The prepetition agreement between the Debtors and GMAC provided for interest to be paid to GMAC at a rate of 14.9% per annum. During the Case, the Debtors and GMAC agreed that the Truck was worth \$16,200.00; and thus, GMAC was oversecured. The Plan provided for GMAC's secured claim to be paid over time with interest at 9% and monthly payments of \$274.30. The Standing Chapter 13 Trustee's records reflect that GMAC is currently owed \$8,128.00 under the Plan.

After the Plan was confirmed, the Debtors and GMAC negotiated and signed an Agreed Order Conditioning Automatic Stay that was entered by the Court on February 9, 2001. In that Order the Debtors agreed to maintain physical damage insurance coverage on the Truck and to name GMAC as a "loss payee" on that insurance policy "until GMAC's secured claim is paid in full."

In June 2001, the Truck was involved in an accident. Progressive Insurance has declared the Truck a total loss and has agreed to pay \$9,540.98 on the insurance claim (the "Insurance Proceeds"). The Debtors seek authority to pay GMAC's remaining secured claim under the Plan (\$8,128.00) and to exempt the balance of the Insurance Proceeds (\$1,412.98) which they would then use to purchase another vehicle.

GMAC objects to this disposition of the Insurance Proceeds and contends that as a beneficiary under the insurance policy, it has a contractual relationship with the insurer that is unaffected by confirmation of the Plan and requires that all of the Insurance Proceeds be applied to reduce the balance owed under the terms of its prepetition agreement with the Debtors (approximately \$9,893.00 with interest calculated at the prepetition rate). Thus, GMAC contends that all of the Insurance Proceeds must be paid over to it. Alternatively, if the Court determines that all of the Insurance Proceeds do not belong to GMAC, GMAC requests that its remaining secured claim under the Plan (\$8,128.00) be paid in full and that the balance of the Insurance Proceeds (\$1,412.98) be paid into the bankruptcy estate for the benefit of the unsecured creditors under the Plan.

II. Analysis

GMAC's arguments here are identical to those made (and rejected) in *In re Feher*, 202 B.R. 966 (Bankr. S.D. Ill. 1996). As the *Feher* court noted, the starting point in resolving this dispute is a determination of whether the Insurance Proceeds are property of the Debtors' bankruptcy estate. To make this determination, the Court must analyze the terms of the insurance policy at issue here.

Unfortunately, unlike the facts in *Feher* where the court was provided with a copy of the insurance policy, the Debtors did not seek to introduce a copy of the insurance policy into evidence at the hearing on the Motion. Thus, the only information that the Court has regarding

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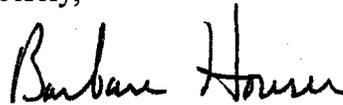
the insurance policy at issue here is the damage assessment prepared by Progressive Insurance which is attached to the Motion. That damage assessment identifies Steven Monroe as the "insured." However, pursuant to the Agreed Order Conditioning Automatic Stay entered on February 9, 2001, the Debtors were required to name GMAC as "loss payee" on this policy "until GMAC's secured claim is paid in full."

On this record, the Court has no way of knowing if, in fact, GMAC is named as a loss payee under the insurance policy, who else may be entitled to receive collision loss benefits payable under the policy, or the relative rights of those parties to the Insurance Proceeds under the terms of the policy (*i.e.*, is GMAC the primary or sole beneficiary under the policy as in *First Fidelity Bank v. McAteer*, 985 F.2d 114 (3rd Cir. 1993) or are the collision loss benefits payable jointly to the Debtors and GMAC "as its interests may appear" as in *Feher?*).

Without an evidentiary basis upon which to answer these (and potentially other) questions, the Court simply cannot grant the Motion. Accordingly, the Motion will be denied without prejudice.

A copy of the Court's Order denying the Motion without prejudice is enclosed. This letter ruling and the Order were forwarded to the Clerk's office today for filing.

Sincerely,



Barbara J. Houser
United States Bankruptcy Judge

Enclosure

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re

STEVEN JACK MONROE and
KAREN SUE MONROE,

Debtors

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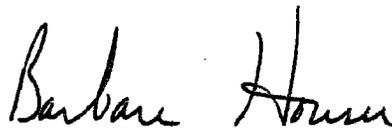
Case No. 99-45508-BJH-13

ORDER DENYING MOTION TO DISTRIBUTE INSURANCE FUNDS

Before the Court is the Motion to Distribute Insurance Funds (the "Motion") filed by Steven and Karen Monroe (the "Debtors") on June 19, 2001. For the reasons contained in the Letter Opinion entered concurrently herewith, the Court concludes that the Motion should be DENIED without prejudice.

SO ORDERED.

Signed: November 6, 2001.



Barbara J. Houser
United States Bankruptcy Judge