

OFFICE OF THE CHAPTER 13 BANKRUPTCY TRUSTEE
HERBERT L. BESKIN, TRUSTEE
401 EAST MARKET STREET, SUITE 202
P. O. BOX 2103
CHARLOTTESVILLE, VIRGINIA 22902

Angela M. Scolforo, Staff Attorney
Valorie J. Norford, Financial Officer
Robert C. Johnson, Paralegal
Catherine E. Herrington, Senior Case Administrator
Cassandra Carey, Case Administrator
Ryan L. Bryant, Case Administrator
Danielle Carey-Ferguson, Case Administrator

Telephone 434-817-9913
Facsimile 434-817-9916
E-mail ch13staff@ntelos.net

RE: Payment of insurance proceeds for vehicle being paid for through a
Chapter 13 Bankruptcy plan

To Whom It May Concern:

It is my understanding that you are a representative of an insurance company that has contacted my office concerning a motor vehicle insured by your company. The owner of the vehicle is a debtor in a Chapter 13 bankruptcy case filed in the Western District of Virginia and being administered by my office. The debtor's plan provides that my office is to pay either the entire claim or, if the vehicle is being "crammed down," the *secured* portion of the secured creditor's claim (that is, the value of the collateral plus interest). The vehicle has been involved in an accident, and you are contacting my office to find out what should be done with the proceeds and what the process will be once my office receives those funds. This letter is to answer those questions.

If you send the insurance proceeds to my office, those proceeds (less the Trustee's statutory commission of no more than 10%) will be applied to the claim if we are paying it in full or to the secured portion of the secured creditor's claim if the vehicle is being crammed down. If the amount of the insurance proceeds is more than enough to pay the above in full, my office will promptly notify the debtor's attorney of the amount of the excess. The debtor will then have a choice of either (i) having us apply the excess to the balance of the plan payments, which we can do without any further court order, etc., or (b) asking that the excess be refunded to him or her. In that event, I will need for the attorney to file a simple motion and order authorizing me to distribute the excess directly to the debtor.

For example, let's say that a debtor was purchasing a car from GMAC before this bankruptcy case was filed. The balance owed when the case was filed was \$20,000.00, and the car was determined to be worth \$15,000 at that time. The debtor's plan is "cramming down" the vehicle and calls for the debtor to pay GMAC \$15,000 plus 9%/year interest, a total of \$17,172, over a 36 month period. GMAC therefore has a secured claim for \$15,000 plus interest, a total of \$17,172, and an unsecured claim for the balance of \$5,000. Thirty months into the plan the car is totaled. At that point my office has already paid GMAC \$14,000. The insurance company sends my office \$8,000,

representing the fair market value of the vehicle. We would apply the proceeds to pay off the \$3,172 balance of the secured claim (\$17,172 - \$14,000 = \$3,172). The \$4,828 balance of the proceeds would then be applied toward the debtor's plan payments and paid to other creditors (including a pro rata portion on GMAC's unsecured claim) unless the debtor obtained a court order instructing us to refund the balance to him or her. If the plan calls for my office to pay the entire claim rather than cramming it down, the principle of how the insurance funds would be applied is the same except that there would be no unsecured deficiency involved.

There are three questions that commonly arise in these situations:

- (1) Will the Trustee's office provide the insurance company with a "payoff amount" on the creditor's claim? As outlined above, we can advise the insurance company as to the balance owed on the creditor's secured claim, and how any insurance funds will be applied.
- (2) Will the Trustee's office guarantee that the secured creditor will promptly send the insurance company the title to the vehicle? My office cannot issue any such guarantee, since we have no control over the creditor. All I can assure you is that the funds will be distributed as I have outlined above. It is my recommendation that the insurance company contact the debtor's attorney or the secured creditor directly regarding the vehicle title and any other related matters. My office can provide the insurance company with the name and address of both the attorney and the secured creditor if need be. If a certificate of title marked "satisfied" is sent to my office by the secured creditor, my policy is to advise the debtor's attorney that I will forward the title to the insurance company after ten days unless the attorney advises me that the debtor objects. If the debtor does object, I will ask the debtor's attorney to have the matter put on the Court's docket so that it can be resolved
- (3) Must the insurance company send the policy proceeds to the Trustee's office, or can they be sent directly to the secured creditor? While I cannot require that such funds be sent through my office, I ask that they be processed through my office as contemplated by the debtor's confirmed plan. It has been my experience that fewer problems arise later on if such funds are sent to my office and distributed by us. If the funds *are* sent directly to the secured creditor, ***my office must be promptly advised of the amount sent***, and the creditor's proof of claim and subsequent plan payments from my office must be adjusted accordingly.

If you have questions about any of this, you are welcome to contact my office.

Sincerely,

Herbert L. Beskin