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ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: Samuel Joseph Jones, Mazda American Credit

CHAPTER: 13

ATTORNEYS:

DATE: 5/29/96

KEY WORDS:

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

SAMUEL JOSEPH JONES,

Case No. 95-12088-MAM-13

Debtor.

**ORDER REGARDING REFUND REQUEST OF MAZDA AMERICAN
CREDIT AND AMENDMENT TO CHAPTER 13 PLAN**

This matter came before the Court on the motion of Mazda American Credit (“Mazda”) seeking a refund of monies paid to creditors under a Chapter 13 plan and seeking amendment of the plan to accomplish this refund if necessary. No creditors objected to the relief sought by Mazda. The Debtor, at the filing of his bankruptcy case, was leasing a 1995 Mazda Millenia for \$467.93 per month. On January 19, 1996, the court confirmed Debtor’s Chapter 13 plan dated December 19, 1995. The plan provided “Mazda to be paid \$3,972.61 upon the first distribution.” The first distribution under the Chapter 13 procedures in this court occurs within the month after the deadline for filing proofs of claim. In this case, the deadline was January 24, 1996. On January 19, 1996, Mazda’s claim was allowed as a secured claim in the amount of \$12,000 and the remainder allowed as unsecured. On January 22, 1996, Debtor objected to the claim of Mazda. The objection was set for hearing on March 11, 1996. On March 12, 1996, an order was entered amending the allowance of Mazda’s claim to \$23,000 as a secured claim and the remainder as unsecured.

The Chapter 13 Trustee’s office does not pay any claims for which an objection is pending. Therefore, when the first distribution of funds was made to creditors in February 1996,

no payment of any kind was made to Mazda. No funds were reserved to pay Mazda the \$3,972.61 if and when the claim was allowed either.

Mazda seeks refund of amounts paid to other creditors which, but for the claim objection, would have gone to it. It also seeks a payment ahead of all other creditors until it is brought current.

The confirmation order at paragraph 3(c) provides that after costs, expenses and fees, including attorney's fees, the first items to be paid are "any claims entitled to priority under and in the order prescribed by § 507 of the Code." Priority expenses include administrative expenses under 11 U.S.C. § 503(b). 11 U.S.C. § 507(a)(1). Administrative expenses include cures of lease defaults as required under 11 U.S.C. § 365. *In re Klein Sleep Products, Inc.*, 78 F.3d 18 (2d Cir. 1996).

Therefore, since the plan and final confirmation order have always provided that administrative expenses would be paid before preference payments and unsecured claims, it is appropriate to require the Trustee to recover funds already paid to creditors from the initial distribution to the extent possible, to pay all funds presently held by the Trustee, and to pay all future funds, after payment of the expenses, costs and fees having the priority established in paragraphs 3(a) and (b) of the final confirmation order, to Mazda until its assumption claim is paid in full to date. At that time, payments to other creditors should be recommenced as set forth in the confirmation order and Mazda should be paid its monthly lease payment of \$467.93.

Therefore, it is ORDERED that:

1. The Chapter 13 Trustee shall pay to Mazda American Credit all sums he currently has on hand not necessary to pay expenses, fees and costs provided for in paragraphs 3(a) and (b) of the confirmation order; and

2. The Trustee shall recover all sums paid to other creditors from the first distribution under the plan and pay the sums to Mazda American Credit to the extent possible; and

3. After payment of any amounts due under paragraphs 3(a) and (b) of the confirmation order, the Trustee shall pay all future monthly sums collected to Mazda American Credit until all arrearages are paid in full; and

4. At such time as all arrearages are paid in full, the payments under the plan to creditors shall proceed as outlined in the plan dated December 19, 1995 and confirmed on January 19, 1996.

Dated: May 29, 1996

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE