

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE: )  
 )  
JEROME GRAYSON, ) Case No. 18-00863  
 )  
Debtor. )

ORDER CONDITIONALLY GRANTING MOTION FOR RELIEF FROM STAY

This case is before the court on the motion for relief from stay (doc. 23) filed by Geraldine Carr in this chapter 13 bankruptcy filed by the debtor Jerome Grayson in 2018. For the reasons discussed herein, the court grants the motion and modifies the stay on certain conditions.

Carr filed a state court lawsuit filed in 2017 in Clarke County, Alabama, naming as defendants the debtor Jerome Grayson, non-debtor Gloria Slade, and Carr's uninsured motorist ("UM") carrier, Progressive Direct Insurance Company. Carr attached a copy of the state court complaint to her motion. In the complaint, Carr alleges that she was injured when the debtor, who was driving a vehicle owned by Slade, rear-ended her vehicle. The debtor's attorney has represented that the debtor did not have liability insurance at the time of the accident and does not have any applicable insurance. Carr seeks relief from stay "in order to determine liability and damages" in the state court action. (*See* mot., doc. 23). She is not contending that any judgment against the debtor would be non-dischargeable (and the deadline for filing a nondischargeability action has passed). The court confirmed the debtor's chapter 13 plan on June 15, 2018. (*See* doc. 35). Although Carr filed an "informational" proof of claim for \$1.00, if she recovers a judgment against Progressive for less than her UM limits, she cannot recover against the debtor. *See generally Cooper v. Aplin*, 523 So. 2d 339 (Ala. 1988). The tort claim thus does not appear likely to affect the bankruptcy case.

A bankruptcy court must consider several factors in deciding whether to grant relief from stay to pursue a state court action, including the debtor's cost of defense or other potential burden to the debtor. *See, e.g., In re Cummings*, 221 B.R. 814, 818-19 (Bankr. N.D. Ala. 1998). In the usual situation where a creditor seeks relief from stay to pursue a state court action, the debtor has liability insurance coverage and the insurance company is providing a defense. Bankruptcy courts routinely grant relief from stay to allow the state court action to proceed and the creditor to recover only from the debtor's liability insurance, not the debtor individually or the bankruptcy estate. In this case, though, the debtor does not have any liability insurance coverage, and the court's review of the debtor's bankruptcy schedules convinces it that the debtor does not have the financial means to defend himself in the state court action.

The Alabama Supreme Court recently held that an uninsured tortfeasor's bankruptcy does not bar the plaintiff from recovering against his own UM carrier. In *Easterling v. Progressive Specialty Insurance Co.*, No. 1150833, 2017 WL 4081097 (Ala. Sept. 15, 2017), the insured sued his UM carrier and the tortfeasor in Alabama state court. Prior to trial, the tortfeasor filed for chapter 7 bankruptcy. The UM carrier argued that "the automatic stay and ultimate discharge of a tortfeasor's personal liability for damages via bankruptcy proceedings effectively foreclose[d] the legal obligation to pay debts." *See id.* at \*3 (citation, quotation marks, and ellipses omitted). The Alabama Supreme Court disagreed and found that the bankruptcy discharge did not prevent the plaintiff from establishing he was "legally entitled to recover"<sup>1</sup> from the debtor and thus the plaintiff's UM carrier; the plaintiff was merely barred by the discharge from collecting against the debtor. *See id.* at \*4-5. "Any injunction against proceeding directly against the debtor, therefore, in no way extends to [the plaintiff]'s own insurer." *See id.* at \*5. Thus, the automatic

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<sup>1</sup> *See* Ala. Code § 32-7-23 (discussing uninsured motorist coverage).

stay currently in effect here and the debtor's potential discharge upon completion of his chapter 13 plan do not affect Progressive's potential liability for UM benefits to Carr.

The Alabama Supreme Court in *Easterling* noted several cases in which bankruptcy courts allowed a debtor to remain a "nominal" defendant in a civil action for UM benefits even after discharge. *See id.* It is difficult to see how that would work here, where the debtor as a practical matter does not have the means to defend himself in state court. However, Alabama UM law provides a straightforward solution. Under Alabama law, a UM carrier named in a lawsuit has the right "to elect *either* to participate in the trial (in which case its identity and the reason for its being involved are proper information for the jury), *or* not to participate in the trial (in which case no mention of its or its potential involvement is permitted by the trial court)." *See Lowe v. Nationwide Ins. Co.*, 521 So. 2d 1309, 1310 (Ala. 1988) (emphasis in original). If the carrier opts out, "it may, in its discretion, hire an attorney to represent the uninsured motorist defendant." *See Driver v. Nat'l Sec. Fire & Cas. Co.*, 658 So. 2d 390, 395 (Ala. 1995). Progressive thus has the option of defending the debtor in the state court action if it does not want the jury to know of its involvement.

Accordingly, the court grants Ms. Carr's motion for relief from stay on the condition that Progressive Direct Insurance Company hires an attorney to represent and defend the debtor Jerome Grayson in the Clarke County state court action. Subject to that condition being met, the stay is modified to permit Ms. Carr to pursue her claims against the debtor Grayson to judgment or settlement to the extent of available insurance coverage. Ms. Carr remains stayed from collecting against the debtor Grayson individually, his assets, or assets of the bankruptcy estate other than through the bankruptcy court.

However, if Progressive Direct Insurance Company does not provide an attorney to represent and defend the debtor Grayson in the state court suit, the automatic stay remains in effect as to him during the pendency of his bankruptcy case.

In either situation, Ms. Carr's state court claims against Progressive and Slade are not affected by the automatic stay and may proceed.

Dated: June 18, 2018

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE