

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

IN RE: )  
 )  
CLINTON E. GRIFFIN and ) Case No. 14-057  
VICKI L. GRIFFIN, )  
 )  
Debtors. )

ORDER

This case is before the Court on debtors' "Amended Motion for Instructions, or in the Alternative, to Retain Special Counsel Nunc Pro Tunc" (doc. 133).

The debtors filed this case under Chapter 13 on January 8, 2014. Debtor Vicki Griffin was involved in a motor vehicle accident on January 17, 2014. On May 23, 2014, the Court (the undersigned's predecessor Margaret Mahoney) converted the case to Chapter 7 at the confirmation hearing. Absent bad faith, pursuant to Bankruptcy Code § 348(f)(1)(A), a converted Chapter 7 estate consists of property of the estate as of the date of the original Chapter 13 petition. Harris v. Viegelaahn, 135 S. Ct. 1829, 1837 (2015). Postpetition personal injury claims arising during the pendency of the case are included in a Chapter 13 estate pursuant to Code § 1306(a)(1), In re Waldron, 536 F.3d 1239 (11th Cir. 2008), but not a Chapter 7 estate. See In re McIntosh, Case No. 11-03417 (Bankr. S.D. Ala. 11/25/14 and 1/27/15). There is no evidence here of bad faith conversion; in fact, the conversion did not take place on the debtors' motion but at the request of the Chapter 13 trustee and a creditor.

At the hearing on the motion at hand, the Chapter 7 trustee raised the issue of whether the case was converted to Chapter 7 to preserve the personal injury claim<sup>1</sup> for the benefit of creditors. The undersigned judge has reviewed the audio recording of the May 22, 2014 confirmation hearing at which Judge Mahoney ordered conversion and has provided an unofficial transcript of the hearing to the trustee and debtors' counsel. At the May 22, 2014 hearing, the parties did not bring to the Court's attention the fact that the personal injury claim arose postpetition, which they may not have realized (the accident occurred only nine days after the petition). Judge Mahoney did not rule that the personal injury claim would belong to the Chapter 7 estate despite the fact that it arose postpetition. The undersigned is thus not bound by any prior determination to that effect in this case.

The Court rules on the debtors' motion as follows:

1. The debtors' claim arising out of the postpetition, pre-conversion accident on January 17, 2014 is not property of the Chapter 7 estate.
2. The motion to retain special counsel is denied without prejudice as moot, since the claim does not belong to the bankruptcy estate and debtors do not need court approval to retain counsel for themselves outside the bankruptcy.

Dated: February 18, 2016

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE

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<sup>1</sup> It is not clear to the Court whether Mr. Griffin has his own claim for injury or loss of consortium; the term "claim" is meant to encompass any claims either of the debtors have arising out of the January 17, 2014 accident.