

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

IN RE:)
)
BETTY LOU PUGH,) Case No. 17-4078
)
Debtor.)

ORDER GRANTING MOTION TO APPROVE COMPROMISE (DOC. 62)

The debtor's confirmed chapter 13 plan provided that the auto loan secured by her 2014 Dodge Avenger would be paid as secured for \$5,763 with the rest of the claim to be treated as unsecured. Unfortunately, her car did not make it to the end of the case, and the question now is what should be done with the insurance proceeds.

Debtor filed a motion to approve compromise stating that the Avenger has been totaled and that State Farm will settle the claim for \$7,440.46. The remaining secured balance on claim no. 6 of Santander Consumer is less than a dollar. The debtor can exempt only \$1,677.46 of the insurance proceeds but wants all of the proceeds (after payment of the miniscule remaining secured claim) to buy a replacement vehicle; she contends that since she has almost paid off the secured claim through her plan payments, she has "earned" that value and should not have to "pay it twice." The chapter 13 trustee does not oppose payment of the exempt amount but argues that at least some of the proceeds should come to the chapter 13 case because the debtor is behind on her plan payments.

The rationale for the court's decision here is outlined in its recent case of *In re Perine*, No. 16-4446, doc. 76. As in that case, this order does not deal with the lien retention provision of the plan since the secured creditor has not objected to the debtor's motion. In *In re Perine*, the court ordered all of the funds to be paid to the debtor, except for the portion necessary to pay off the secured claim. However, the court also stated: "As with unliquidated claims, the result

would be different if the insurance proceeds were more than the total of the secured claim and exemptible amount and had not already been fully accounted for in the § 1325(a)(4) liquidation analysis. Or if the debtor's plan payment record were bad, the court would consider ordering that some or all of the nonexempt surplus insurance proceeds be paid to the trustee for application to the case even if the percentage to unsecured creditors did not change." (emphasis added). That is what the court is going to do here.

Because the debtor is behind on her plan payments, the court grants the debtor's motion to approve settlement as follows: State Farm is directed to send \$6,448.76 directly to the debtor to use toward a replacement vehicle and \$992.00 to the Chapter 13 Trustee, P.O. Box 1779, Memphis, TN 38101. The amount to the trustee represents the two plan payments that the debtor is behind, plus her August plan payment. The court orders the trustee to apply the funds to the case (which should pay off the secured claim in full) with the percentage to unsecured creditors to remain the same.

After payment of its secured claim, Santander shall release the certificate of title to the vehicle to the insurer at the following address: State Farm Claims, Attn Claim # 01-20W5-11W, P.O. Box 52250, Phoenix, AZ 85072.

Dated: August 12, 2021


HENRY A. CALLAWAY
CHIEF U.S. BANKRUPTCY JUDGE