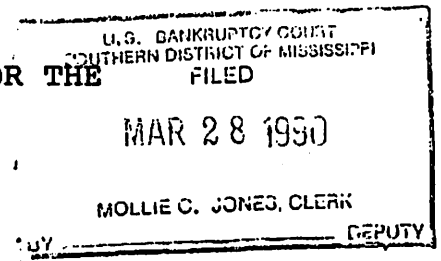


IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



IN THE MATTER OF:

TROY SLAUGHTER

CASE NO. 8700836JC

TROY SLAUGHTER

PLAINTIFF

vs.

ADVERSARY NO. 870183JC

AMERICAN GLOBAL INSURANCE COMPANY

DEFENDANT

Hugh W. Tedder, Jr.
McKinley and Tedder
P. O. Box 1669
Jackson, MS 39215-1669

Attorney for Debtor

Charles A. Brewer
Chapter 13 Trustee
P. O. Box 22943
Jackson, MS 39205

Trustee

Edward Ellington, Bankruptcy Judge

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON THE "MOTION FOR AUTHORITY TO RELEASE FUNDS"
FILED BY THE DEBTOR, TROY SLAUGHTER**

A petition seeking an Order for Relief under 11 U.S.C. Chapter 13 was filed by the Debtor, Troy Slaughter. This adversary proceeding was commenced by the filing of a "Motion for Authority to Release Funds" by the Debtor.

The parties agreed by written order that the Court could determine this adversary case upon the pleadings and the briefs. After having reviewed the pleadings and the briefs, having considered oral argument of counsel and having taken judicial notice of the Debtor's bankruptcy file, this Court finds that the

should be granted in part and denied in part.

FINDINGS OF FACT

The Debtor filed his petition for relief under Chapter 13 of the Code on April 9, 1987, and filed his required schedules on April 24, 1987.

In the schedule of assets the debtor made the following entry:

<u>HOUSEHOLD GOODS</u>	
Various household goods and furniture; none with a value exceeding \$200.00	\$2,000.00

In the exemption part of the schedules he elected to use federal exemptions pursuant to 11 U.S.C. § 522(b)(1) as opposed to claiming state exemptions. In the relevant part of the exemption section he claimed as exempt household goods in the amount of \$2,000.00.

On or about May 23, 1987, the home of the Debtor and his wife was completely destroyed by fire, together with all of the contents of the home. The home and the contents were insured and the insurance company paid the actual cash value of the home of the Debtor and his wife to Trustmark National Bank, which held a Deed of Trust on the home.

Shortly after the fire the Debtor and his wife filed a proof of claim with the insurance company showing that the contents had a value of approximately \$100,000.00. By previous order of this Court the insurance company has already paid to the Debtor and his wife \$2,000.00 for the loss of use of their home and \$3,000.00

toward the loss of contents. The Debtor and his wife and the insurance company have reached a compromise whereby the insurance company is willing to pay them an additional \$35,361.37, consisting of \$31,269.85 for contents, \$4,068.67 for living expenses and \$22.85 for certain repairs. This would allow the Debtor and his wife or the Trustee on behalf of the estate to realize a total figure of \$34,269.85 for loss of contents, \$6,068.67 for living expenses and \$22.85 for repairs.

The Trustee has objected to the Debtor's motion to receive the monies because the Trustee claims that the insurance proceeds are property of the bankruptcy estate and should be paid over to the estate for distribution to the creditors. The Debtor argues that since no one objected to his exemption for household goods that the household goods became his and he is entitled to the proceeds.

CONCLUSIONS OF LAW

The Court has considered all of the cases cited by both parties in their briefs, plus additional cases found by the Court.

The Court finds that the household goods shown in the assets and exemption portions of the schedules were not clearly described and identified with enough specificity to put the Trustee on notice to make inquiry as to the true value of the items of personal property. This case is controlled by Payne v. Wood, 775 F.2d 201 (7th Cir. 1985); Matter of Elliott, 31 B.R. 33 (Bankr.S.D. Ohio 1983); In re Hill, 95 B.R. 293 (Bankr.N.D.NY 1988); In re Fox, 80 B.R. 753 (Bankr.W.D.Penn. 1987); Hardage v. Herring National Bank, 837 F.2d 1319 (5th Cir. 1988).

The Court further finds that the household goods were jointly owned by the Debtor and his wife, share and share alike. Thus, one-half of the amount payable for household goods should be payable to the wife of the Debtor and the other one-half should be payable to the Trustee. From the one-half payable to the estate, the Debtor is entitled to the exemption which he claimed in the amount of \$2,000.00. However, since he and his wife have previously received a total of \$3,000.00 for loss of contents he has already been paid \$1,500.00 toward his exemption. He is, therefore, entitled to an additional \$500.00 from the Trustee in full satisfaction of the exemption which he claimed.

Additionally, the Debtor and his wife should receive the balance of \$4,068.67 for living expenses and \$22.85 for repairs. Neither of these two items are assets of the estate.

Therefore, the Trustee and the Debtor and his wife are entitled to settle with the insurance company for the amount of \$35,361.37. From this amount the Trustee on behalf of the estate is entitled to receive \$15,134.92 (\$15,634.92 - \$500.00) and the Debtor and his wife are entitled to receive \$20,226.45 (\$15,634.93 + \$500.00 + \$4,068.67 + \$22.85).

A separate judgment consistent with this opinion as required by Bankruptcy Rule 9021 will be entered this same date.

SO ORDERED this the 28 day of March, 1990.


UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE **MAR 28 1990**
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

MOLLIE C. JONES, CLERK

DEPUTY

IN THE MATTER OF:

TROY SLAUGHTER

CASE NO. 8700836JC

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PLAINTIFF

vs.

ADVERSARY NO. 870183JC

AMERICAN GLOBAL INSURANCE COMPANY


JUDGMENT

THERE CAME on to be heard the "Motion for Authority to Release Funds" filed by the Debtor and the Answer filed by Charles A. Brewer, Trustee. After having reviewed the pleadings and the briefs, having considered oral argument of counsel and having taken judicial notice of the Debtor's bankruptcy file, this Court finds that the Debtor's Motion should be granted in part and denied in part.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Trustee and the Debtor and his wife are entitled to settle with the insurance company for the amount of \$35,361.37.

IT IS FURTHER ORDERED AND ADJUDGED that from this amount the Trustee on behalf of the estate is entitled to receive \$15,134.92 (\$15,634.92 - \$500.00) and the Debtor and his wife are entitled to receive \$20,226.45 (\$15,634.93 + \$500.00 + \$4,068.67 + \$22.85).

ORDERED AND ADJUDGED this the 28 of March, 1990.



UNITED STATES BANKRUPTCY JUDGE