

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: May 11 2006

Mary Ann Whipple
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re) Case No. 04-30085
)
James D. Nielsen, Sr.) Chapter 13
)
Debtor(s)) JUDGE MARY ANN WHIPPLE

ORDER RE OBJECTION TO CLAIM

The court held a hearing on the Debtor’s objection to the claim of Daimler Chrysler North America L.L.C. [Doc. #83]. At the commencement of this case, Daimler Chrysler had a lien on Debtor’s motor vehicle. It filed a claim in the total amount of \$20,622.09, asserting that \$20,000.00 was secured with a contract interest rate of 15.75%. Debtor objected to the claim initially, arguing that it should be allowed at an interest rate of 10% on the secured portion. That objection was sustained. *See* Doc. #25. This was consistent with Debtor’s confirmed plan, which proposed to have the Chapter 13 Trustee pay the claim through the plan as a secured claim in the amount of \$20,000 at 10% interest, with the \$622.09 balance treated as unsecured. Under the confirmed plan, unsecured creditors will be paid a dividend of 22 cents on the dollar.

When Debtor fell behind on his plan payments, Daimler Chrysler moved for and on January 11, 2006, eventually obtained relief from the automatic stay to repossess and sell the motor vehicle. Apparently it has now done so. Debtor filed another objection to the claim, arguing that the original secured claim should be disallowed, and that any deficiency remaining after disposition of the vehicle should be allowed as an unsecured claim to be paid at a 22% dividend under the plan. The court finds

that these facts are indistinguishable from the Sixth Circuit's binding precedent in *Ruskin v. Daimler Chrysler Servs. N. Am, L.L.C. (In re Adkins)*, 425 F.3d 296 (2005). Under *Adkins*, Debtor is not permitted to have Daimler Chrysler's secured claim under the confirmed plan reclassified as unsecured, even though Daimler Chrysler obtained relief from stay and sold the collateral.

The only arguable distinction from *Adkins* to which Debtor points is the terms of the order granting Daimler Chrysler relief from the automatic stay. *See* Doc. # 71. The order as submitted to the court and signed on January 11, 2006, is in the form required by this court in its General Order 99-1 for motions for relief from stay for secured creditors in Chapter 13 cases. Specifically, the standard form provision to which Debtor points is the following:

The Chapter 13 Trustee shall discontinue payments to Movant on its claim under the Chapter 13 Plan filed by the Debtor(s). Movant is directed to file a report of sale promptly following liquidation of the Collateral if any excess proceeds have been received and Movant is given leave to file an unsecured deficiency claim within 60 days after liquidation of the Collateral, if such claim exists.

This provision predates the Sixth Circuit's decision in *Adkins* by more than 5 years. The direction to terminate payments on the secured claim is appropriate from the standpoint of the Chapter 13 Trustee's administration of the estate, so as to prevent double payment of the secured claim under the plan without the secured creditor accounting for the application of the proceeds of sale to the debt. *See* 11 U.S.C. § 1329(a)(3)(a confirmed plan may be modified to "alter the amount of the *distribution* [emphasis added] to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan," such as through application of the proceeds of sale of collateral).

Contrary to Debtor's argument, however, the court does not view this provision as effecting a now clearly impermissible reclassification of Daimler Chrysler's secured claim to an unsecured claim under the plan. The language is too vague to effect a sub rosa modification of a confirmed plan and the order of confirmation that the Sixth Circuit has now repeatedly emphasized is res judicata. Indeed the paragraph assumes, admittedly somewhat unrealistically where the collateral is a motor vehicle (although not necessarily where the collateral is real estate), that the disposition of the collateral may produce a surplus. Under 11 U.S.C. § 506(a), the secured portion of Daimler Chrysler's claim at confirmation was the value of the collateral. The court can envision other *unsecured* amounts under a contract and state law that might become liquidated upon the sale of collateral, with leave to assert same by amendment thereby permitted by this paragraph. In the absence of an amended claim asserting any such amounts in any particular case, the court declines

to speculate what those amounts might be.

While the court is bound by *Adkins* and disagrees with Debtor's attempt to effect a reclassification of Debtor's secured claim under the confirmed plan to unsecured by virtue of relief from stay and disposition of the collateral, the court agrees that Daimler Chrysler must account for receipt, and more importantly application, of the proceeds of sale. *Adkins* does not address these issues, and there may very well be significant disputes as to how those proceeds have been applied and whether there are other reasons under state law why the claim may not be enforceable, e.g., a commercially unreasonable disposition of the collateral or lack of proper notice to Debtor. The court again is expressing no opinion as to these kinds of issues in the absence of a specific set of facts. Nevertheless, even given the res judicata effect of the plan confirmation order, the court cannot envision that the Sixth Circuit would countenance both payment of a secured claim as originally allowed through the plan and retention of the proceeds of sale of the collateral outside of the plan. The provision in the stay relief order for discontinuance of payments prevents this potential double payment from happening. The Sixth Circuit in *Adkins* thus expressly anticipates the need for the filing of an amended claim, while also expressing its concern that the secured creditor not "run up" a deficiency. *Adkins*, 425 F.3d at 296, 305, n.17. Like this court, however, the Sixth Circuit expressly declined to discuss how such potential issues might evolve in the absence of a specific set of facts in issue.

Daimler Chrysler shall therefore file any amended claim it intends to assert by the deadline set below. This order is without prejudice to Debtor's right to object to the amended claim. For the sake of clarity of administration, the court notes that its January 11, 2006, order directing the Chapter 13 Trustee to discontinue payments on the claim remains in effect until an amended claim is filed.

For the foregoing reasons, and as otherwise stated on the record at the hearing,

IT IS ORDERED that Debtor's objection [Doc. #83] is granted in part and denied in part as stated in this order; and

IT IS FURTHER ORDERED that Daimler Chrysler must file any amended claim on or before **May 30, 2006**.