

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: November 03 2006

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 06-31751
)	
Craig Morrow)	Chapter 13
Angela Morrow)	
)	
Debtors.)	JUDGE MARY ANN WHIPPLE

ORDER GRANTING OBJECTION TO CLAIM

Debtors filed two objections [Doc. ## 18, 19] to claims filed by DaimlerChrysler in this case. The court held hearings on both objections on October 17, 2006. The within objection [Doc. #18] pertains to Claim Number 3 for a loan secured by a 2005 Jeep Liberty. The total claim amount is \$25,438.62, of which \$18,325 is asserted as a secured claim.

Debtors object to Claim No. 3 because they state that Craig Morrow is surrendering his property interest in the Jeep, *see* 11 U.S.C. § 1325(a)(5)(C), and providing in the proposed amended plan that the non-debtor co-debtor to Debtor Craig Morrow will pay DaimlerChrysler. Cf. 11 U.S.C. Although not explicitly stated in the objection, Debtors argued at the hearing that the Jeep was a so-called 910 vehicle, referring to the “hanging paragraph” provision at the end of 11 U.S.C. §1325(a)(9) governing certain debts secured by motor vehicles incurred within 910 days before the filing of a petition. At the hearing, DaimlerChrysler did not contest that the Jeep Liberty and the associated debt fall within the ambit of the hanging paragraph. As shown by DaimlerChrysler’s uncontested Motion for Relief from Stay pertaining to the Jeep [Doc. #32], the debt was incurred on June 8, 2005, within the 910 day period before the filing

of the petition in this case.

The significance of the debt as falling within the ambit of the hanging paragraph is that the provisions of 11 U.S.C. § 506(a) bifurcating claims into secured and unsecured claims where collateral valuation is less than the total claim amount is inapplicable. The majority of the cases so far that have analyzed this provision in the context of “910” collateral surrender, as Debtor Craig Morrow is doing with respect to his interest in the Jeep, have held that such creditors are not entitled to assert an unsecured deficiency claim to be paid through the plan. *E.g.*, *In re Moore*, 2006 Bankr. LEXIS 2867, No. 6:05-bk-90056M (Bankr. W.D. Ark. Oct. 24, 2006); *In re Maggett*, 2006 Bankr. LEXIS 2756, No. BK06-80573 (Bankr. D. Neb., Oct. 19, 2006); *In re Evans*, 2006 Bankr. LEXIS 2215, No. 06-40957-R (Bankr. E.D. Mich., Sept. 13, 2006); *In re Pool*, 2006 Bankr. LEXIS 2420, No. 306-30965-tmb-13 (Bankr. D. Ore., Sept. 27, 2006); *In re Brown*, 346 B.R. 868, 877 (Bankr. N.D. Fla. 2006); *In re Ezell*, 338 B.R. 330, 342 (Bankr. E.D. Tenn. 2006); *In re Osburn*, 348 B.R. 500, 504-05 (Bankr. W.D. Mo. 2006); *In re Payne*, 347 B.R. 278 (Bankr. S.D. Ohio 2006). *Contra In re Duke*, 345 B.R. 806 (Bankr. W.D. Ky. 2006). The court generally finds the holdings in these cases to be persuasive, and agrees that is the correct result here.¹ Debtors’ objection is therefore well taken.

DaimlerChrysler would prefer that the claim be allowed, but that it simply be noted on the Chapter 13 Trustee’s administrative records as a claim to be paid directly outside the plan. At the hearing, the court indicated that it believed that the clearer treatment from the standpoint of the court record and the plan is that the claim should simply be disallowed. However, the court agrees with DaimlerChrysler that Debtor Craig Morrow’s discharge from personal liability on the debt is conditioned upon a plan being confirmed and performed and ultimately his receipt of a discharge. *Cf.* 11 U.S.C. § 502(b)(1). Should the case be dismissed, Debtor Craig Morrow will continue to have personal liability for the Jeep Liberty debt. Disallowance of the claim under 11 U.S.C. § 502(b)(1) might imply otherwise. So although perhaps it is more a matter of procedural semantics than substance, on further consideration, the court agrees with Daimler Chrysler that outright disallowance is not the proper procedural outcome. Instead, the court will

¹ To the extent the second paragraph in the court’s order terminating the automatic stay [Doc. #47] suggests that DaimlerChrysler otherwise has the right to assert an unsecured deficiency claim upon any sale of the Jeep that occurs, that paragraph is hereby vacated. That paragraph is part of the court’s standard form relief order required in Chapter 13 cases, and was entered as it was submitted by DaimlerChrysler. There was nothing in that motion that raised the issue of whether the Jeep was a 910 day vehicle. And as the plan does not propose any payment by Debtor or the Chapter 13 Trustee to DaimlerChrysler on the Jeep debt in any event, that paragraph is unnecessary surplusage in the order.

determine the amounts of the Jeep Liberty allowed secured claim and unsecured claim only for purposes of Debtor Craig Morrow's case under Chapter 13 each as zero. 11 U.S.C. § 1325(a)(5)(C)[allowed secured claim amount due to surrender] and (a)(9)("hanging paragraph")[unsecured claim amount due to inapplicability of § 506]. If the case is then converted, the provisions of 11 U.S.C. § 348(f)(1)(C) will clearly apply and DaimlerChrysler's Claim Number 3 can be amended as appropriate. For good cause shown,

IT IS ORDERED that Debtors' Objection to Claim of Chrysler Financial Services [Doc. # 18] be, and hereby is, **GRANTED** only to the extent provided in this order, with the court hereby determining the amount of DaimlerChrysler's Claim No. 3 in lawful currency of the United States only for purposes of the within Chapter 13 case as zero for both its allowed secured claim and unsecured claim.