

INSURANCE PROCEEDS IN CONSUMER CASES

Prepared for the 17th Annual University of Texas Consumer Bankruptcy Seminar

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“The best-laid schemes o’ mice an’ men. Gang aft a-gley.” Robert Burns, To a Mouse¹

INTRODUCTION

The Chapter 13 was filed. The 341 went smoothly. The case was confirmed on the first setting. The debtor paid regularly and on time for three and a half years. What could possible go wrong? Well, there’s a decent chance the debtor will get in a car wreck² or have some other damage to secured property that results in an insurance claim, which will in turn lead to competing claims with regard to the insurance proceeds. Does the secured creditor have a lien on the proceeds? What happens to the secured claim? Can the debtor use the proceeds to buy a replacement car/house? Can the trustee take the proceeds to pay the unsecured creditors and/or take their fee from the proceeds? This paper attempts to answer some of these questions.

CHARACTER OF INSURANCE PROCEEDS

Whenever there are insurance proceeds which are payable to a debtor or which are related to the business or property of the debtor or the estate, the first question which needs to be asked is: “Are the insurance proceeds property of the estate?” As with almost every legal question, the answer is: “It depends.”³

¹ For those of you who are not Scottish: “The best laid plans of mice and men often go astray.”

² According to the National Highway Traffic Safety Administration, there were 6,756,000 motor vehicle traffic crashes in 2019. According to statistica.com, there were approximately 280 million vehicles operating on the roads in the United States in the fourth quarter of 2019. Thus, the average vehicle had approximately a 1 in 41 chance of being in a car wreck. This doesn’t include damage to vehicles from non-traffic sources like floods, fire, or hail.

³ The author has long opined that the first answer to any legal question is “It depends” followed by a series of questions to determine the facts and circumstances surrounding the issue. Indeed, it is hard to go wrong always starting with “it depends” if for no other reason than it gives the attorney time to think about the correct answer.

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