



SO ORDERED.

SIGNED this 29 day of June, 2006.

Janice Miller Karlin

JANICE MILLER KARLIN
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)
)
CAROLE SUE COOL,) **Case No. 05-43658**
) **Chapter 7**
)
 Debtor.)
_____)

**MEMORANDUM AND ORDER GRANTING, IN PART, AND DENYING,
IN PART, TRUSTEE’S MOTION TO COMPEL**

This matter is before the Court on the Trustee’s Motion to Compel Documents and Commissions for Insurance Policies from Debtor.¹ The parties have submitted briefs in support of their positions, and the Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(E).

I. FINDINGS OF FACT

Debtor, Carole Sue Cool, filed a voluntary Chapter 7 bankruptcy petition on October 7, 2005. At all relevant times, Debtor was employed as an independent insurance agent. On

¹Doc. 16.

Schedule C of her petition, entitled Property Claimed as Exempt, Debtor claimed an exemption in 75% of “insurance commissions due and owing.” No detail regarding such commissions was provided anywhere else in her schedules, and the “current market value of property without deducting exemption” for this property was listed at “\$0.00.”

The meeting of creditors held pursuant to 11 U.S.C. § 341² was conducted and concluded in November 2005. At that meeting, the Trustee questioned Debtor concerning the insurance commissions. The Trustee chose not to file an objection to the claimed exemption.

In early March 2006, the Trustee made an informal request for documents related to renewal commissions to which Debtor might be entitled, in order to determine which of those commissions, if any, were property of the estate.³ The Trustee’s motion asserts that “Debtor was, at the filing of the case, contractually entitled to commissions on premiums paid on policies issued prior to October 7, 2005.” The purpose of the Trustee’s request is to enable him to determine “if there exist commissions for which the personal services required by the Debtor to earn commissions were completed prior to the order for relief and as to which payment subsequent to the order for relief was conditioned upon some event (generally, payment of premiums) other than the Debtor’s personal services.”⁴

²This case was filed before October 17, 2005, when most provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 become effective. All statutory references to the Bankruptcy Code are thus to 11 U.S.C.A. §§ 101-1330 (2004), unless otherwise specified, and all references to the Federal Rules of Bankruptcy Procedure are to Fed. R. Bankr. P. (2004), unless otherwise specified.

³Doc. 27. Ex. 1.

⁴Doc. 26, Trustee’s Brief at p.2. The issue of whether insurance renewal commissions are property of the estate is, at least in part, a factual determination that can only be decided after examining the nature of the commission and what postpetition work, if any, a debtor must perform to be entitled to the commissions. *See In re Wu*, 173 B.R. 411, 416 (9th Cir. BAP 1994) (holding that “whether and to what extent the renewal commissions are excluded from the estate depends upon whether the debtor’s postpetition services are a prerequisite to the right to the renewal commissions and, if so, the extent to which the commissions are attributable to the postpetition services as opposed to prepetition services”) and *In re Wicheff*, 214 B.R. 839, 841-42 (6th Cir. BAP 1998) (holding that insurance renewal commissions received

Debtor failed or declined to voluntarily comply with the Trustee's informal request for information. As a result, in late March 2006, the Trustee filed the instant Motion to Compel, generally seeking documents and payments related to policies issued by Debtor that were in effect at the time she filed her petition.⁵

II. ANALYSIS

Despite arguments by Debtor to the contrary, the sole issue before the Court at this time is whether the Trustee is entitled to obtain documents relating to insurance commissions that Debtor has received, or may be entitled to receive in the future, to determine if those commissions, or any portion thereof, are property of the estate.⁶ Debtor contends that because the Trustee failed to timely object to her declared exemptions, he is barred from ultimately obtaining any of the commissions for the estate, thus rendering his request for documents relating to those commissions futile. The Trustee admits that he did not timely object to the exemption, but contends that Schedule C did not, on its face, exempt all commissions in which the estate might have an interest, and that his failure to object thus does not bar the relief he now seeks. The Court agrees.

postpetition are property of the estate if all of the actions required to earn the commissions were completed prepetition).

⁵Doc. 16.

⁶Debtor states in her brief that she "agrees that the sole issue to be addressed ... is whether the Trustee is barred from challenging her exemption, given his failure to do so within 30 days following completion of the 341 hearing." The actual issue, however, as stated by the Trustee in his brief, is whether "the Trustee [is] precluded from claiming any commissions because he did not object to the exemptions within 30 days after the § 341 meeting." The Trustee is clearly not challenging the exemption, but is instead arguing that the estate might have an interest in at least a portion of the insurance commissions earned by the Debtor despite the amount claimed as exempt.

As Schedule C indicates, Debtor exempted 75% of insurance commissions due and owing with a market value of \$0.00.⁷ This representation on Schedule C, alone, is sufficient to grant the Trustee's motion. Clearly, 25% of the insurance commissions due and payable at the time the Debtor filed her petition were not exempted and, assuming any such commissions exist, are potentially property of the estate.

In addition, commissions that were not due and owing at the time Debtor filed her petition, but remained contingent on a future policy renewal, would not necessarily be exempt based upon Debtor's claimed exemption on Schedule C. The issue of whether those commissions that become payable in the future are property of the estate is not before the Court at this time.⁸ Even if that issue were before the Court, however, there is no question that the Trustee would be entitled to obtain the documents relating to those commissions so that he, and the Court, could make an informed decision as to their status.

Were the Trustee attempting to now object to the claimed exemption, or had Debtor claimed 100% of the insurance commissions that were payable at the time of filing or in the future as exempt, then the Trustee would likely not be entitled to view the documents. This is true because in that instance, the Trustee would be precluded from trying to bring any of the commissions into the estate, and the document request would be futile. However, that is clearly not the case here. Instead, the Trustee is simply asserting the estate's right to the non-exempt portion of commissions due and payable and other non-exempt commission, if any exist. For

⁷Doc. 1.

⁸Debtor argues that in order to receive the renewal commissions, she is required to perform post-petition services to policy holders in order to meet her contractual obligations with those insurers, and thus these renewal premiums are not property of the estate. If true, the commissions may not end up being property of the estate, but that factual issue is not today before the Court.

that reason, the Trustee is certainly entitled to see the documents that will determine if there are any commissions that fall within that limited category.

The Trustee also requested that Debtor provide payments “in the amount equal to the commissions payable on account of policies originally issued prior to the commencement of this case.” The Court denies this portion of the request at this time, without prejudice to re-filing, in the event after his review of the produced documents, or any other investigation he requires, the Trustee determines that a request for turnover of commissions is justified under the law.

III. CONCLUSION

The Court grants part of the Trustee’s Motion to Compel Documents and Commissions for Insurance Policies from Debtor. The Court finds that 25% of commissions exempted on Schedule C, if any such commissions exist, and perhaps non-exempted commissions, are potentially property of the estate. For that reason, the Trustee is entitled to receive and review all documents necessary to determine what amount, if any, the estate is entitled to collect.

Debtor shall, therefore, produce the following documents (to the extent they have not already been produced) to the Trustee by **July 25, 2006**:

- a. A list of all policies placed by Debtor that were in force as of the date of commencement of this case;
- b. The name of each company which is the issuer of a policy upon which Debtor was, as of the date of commencement of this case, the agent, including the name and business address as well as any account or other number by which Debtor is identified by that issuer; and

- c. The payment advices received from the issuers from the date of commencement of this case continuing forward until the conclusion of this case.

IT IS, THEREFORE, BY THE COURT ORDERED that the Trustee's Motion to Compel is granted in part, and denied in part. The motion is denied, without prejudice, to the extent it seeks payments in the amount equal to the commissions payable on account of policies originally issued prior to the commencement of this case. The motion is granted as to all other relief sought therein, and the documents noted above shall be produced by **July 25, 2006**. Debtor's request for costs and attorney fees, requested in his brief in opposition to the Trustee's motion, is denied.

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