UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

BRUNSWICK BAPTIST CHURCH, d/b/a HERITAGE BAPTIST CHURCH,	Case No. 03-13719 Chapter 11
Debtor.	

APPEARANCES:

DeGraff, Foy, Kunz & Devine, LLP *Attorneys for the Debtor* 90 State Street, Suite 1100 Albany, New York 12207	Amy F. Quandt, Esq.
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O'Connell and Aronowitz, P.C. *Of Counsel to Certain Unsecured Creditors* 54 State Street Albany, New York 12207-1885	Michael D. Assaf, Esq.
Martin, Harding & Mazzotti, LLP *Attorneys for Unsecured Creditor Ryan Pratt* P.O. Box 15141 Albany, New York 12212-5141	Rosemarie Riddell Bogdan, Esq.
Hodgson Russ LLP *Counsel to the Unsecured Creditors Committee and Special Counsel to Unsecured Creditor Ryan Pratt* 677 Broadway Albany, New York 12207	Richard L. Weisz, Esq.

Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

DECISION AND ORDER

On August 24, 2005, the court rendered an oral ruling granting the motion of Brunswick Baptist Church, d/b/a Heritage Baptist Church (the "Debtor") for approval of a settlement with

personal injury claimant Ryan Pratt ("Pratt") pursuant to Federal Rule of Bankruptcy Procedure 9019(a). *See Decl. of Amy F. Quandt in Supp. of Application for Approval of Settlement Pursuant to [Fed.R.Bankr.P.] 9019(a)* (Doc. 55) (the "Settlement Motion"). To supplement and clarify the court's oral ruling on the record, the court *sua sponte* renders this written decision.

The court has jurisdiction over the parties and subject matter of this core proceeding pursuant to 28 U.S.C. §§ 157(a), (b)(1), (b)(2)(A), (O), and 1334.

The relevant factual history of this case is set forth in the court's earlier decision, *In re Brunswick Baptist Church, d/b/a Heritage Baptist Church*, Chapter 11 Case No. 03-13719, slip. op. (Bankr. N.D.N.Y. July 29, 2005)(denying personal injury claimants'consolidated motion seeking to enlarge the period in which to file proofs of claim), *appeal filed* (Bankr. N.D.N.Y. Aug. 8, 2005). No additional facts are relevant to the court's analysis here, and familiarity with the court's July 29, 2005 Memorandum-Decision and Order (the "July 2005 Decision") is presumed.

The Debtor seeks to settle Pratt's pre-petition state court civil action, filed against the Debtor in New York State Supreme Court, Columbia County, Index No. 5033-02 (the "State Court Action"), on February 1, 2002, by compensating Pratt $450,000 in exchange for Pratt's abandonment of all claims against the Debtor (the "Settlement"). *See Decl. of Amy F. Quandt* ¶ 20. Pratt's demand in the State Court Action is $8,000,000, comprised in part of lost earnings in the amount of $81,180, estimated future earnings in the amount of $500,000, and a continually accruing workers' compensation lien in the minimum amount of $97,941.90. *Id.* ¶¶ 12, 17–18. The Debtor asserts that the Settlement is reasonable in light of the amount of damages sought by Pratt in the State Court Action and the amount that a jury could award if the litigation progressed to trial. *Id.* ¶ 20. The Settlement is also within the $1,000,000 policy limit of the Debtor's liability insurance

policy issued by Church Mutual Insurance Company ("Church Mutual"). *Id.* ¶ 21.

While the court acknowledges the appearance of O'Connell and Aronowitz, P.C. (Michael D. Assaf, Esq.) on behalf of its clients, Charles Borden, Diane Borden, Lewis E. McNamee, III, Susan D. McNamee, Rickey Vest, and Theresa Vest (collectively, the "O & A Clients"), at the August 24, 2005 hearing, the court concluded that they are, as a result of the July 2005 Decision, without standing to oppose the Settlement Motion. The court, therefore, will not consider their opposition filed July 1, 2004, *see Objection of Marc S. Ehrlich, Esq. to Settlement Agreement* (Doc. 74), or their oral arguments made August 24, 2005.

Generally, settlement motions may be granted on a default basis, *see* Local Bankruptcy Rule 9013-4(a) and (b)(4); however, in this case, the Settlement is premised on payment by a third party, Church Mutual. Thus, the court must first determine whether the insurance proceeds are property of the Debtor's bankruptcy estate as defined by 11 U.S.C. § 541(a). For the foregoing reasons, the court finds that they are and, thus, grants the Settlement Motion.

"Property of the estate" is broadly defined to include "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "Insurance *policies* are property of the estate under 11 U.S.C. § 541(a)(1), but the question of whether the *proceeds* are property of the estate must be analyzed in light of the facts of each case." *In re Sfuzzi, Inc.*, 191 B.R. 664, 668 (Bankr. N.D. Texas 1996) (emphasis in original). Courts have established a general rule that, "when the debtor has no legally cognizable claim to the insurance proceeds, those proceeds are not property of the estate," *Houston v. Edgeworth (In the Matter of Edgeworth)*, 993 F.2d 51, 56 (5th Cir. 1993), but this rule is subject to certain exceptions. The court in *Edgeworth* alluded to such exceptions when it noted that "no secondary impact [had] been alleged upon [the debtor's] estate,

which might have occurred if, for instance, the policy limit was insufficient to cover appellants' claims or competing claims to proceeds." *Id*. Of particular interest to this court is a line of cases holding that proceeds from liability insurance policies are property of the bankruptcy estate; the deciding courts were usually dealing with cases that involved mass torts or cases in which the major asset was the insurance policy. *Sfuzzi*, 191 B.R. at 668 (citing *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.*), 837 F.2d 89 (2d Cir.) (possible suits by tens of thousands of asbestos victims), *cert. denied*, 488 U.S. 868, 109 S.Ct. 176, 102 L.Ed.2d 145 (1988); *Tringali v. Hathaway Machinery Co.*, 796 F.2d 553 (1st Cir. 1986) (dollar amount of claim exceeded the policy limits); *A.H. Robins v. Piccinin*, 788 F.2d 994 (4th Cir. 1985) (insurance policy was considered "most important asset" of the estate), *cert. denied*, 479 U.S. 876, 107 S.Ct. 251, 93 L.Ed.2d 177 (1986); *In re Davis*, 730 F.2d 176 (5th Cir. 1984)). Thus, if the policy limit of the insurance policy is insufficient to cover all competing claims to the proceeds, then the insurance policy is an asset which may be marshaled in the context of the bankruptcy case.

In this case, Pratt's claim alone, if left unsettled, threatens the Debtor's estate over and above the limit of the liability insurance policy. The Debtor has only one other asset to draw from–real property– which is of inconsequential value in comparison to Pratt's state court damage claim. As the largest and single most important asset, use of the insurance proceeds is necessary for the effective reorganization of the estate.

Based on the foregoing, the court concludes that the proceeds of the Debtor's liability insurance policy with Church Mutual are property of the estate pursuant to 11 U.S.C. § 541(a).[1] The

[1] The court's holding that the proceeds, to the extent necessary to satisfy the claim of Pratt, are property of the estate in no way bars the O & A Clients from proceeding against the Debtor in state court to collect from Church Mutual the monies remaining in Church Mutual's

court further concludes that the Settlement is reasonable in light of the facts and circumstances before it.

The Settlement Motion is hereby granted.

It is SO ORDERED.

Dated: August 29, 2005
Albany, New York

/s/ Robert E. Littlefield, Jr.
Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Court

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coffer once the Settlement is paid. *See Royal Ins. Co. of Am. v. McCrory Corp.*, No. 94 Civ. 5734, 1996 WL 204482, at *1 (S.D.N.Y. Apr. 25, 1996) (a plaintiff need not file a proof of claim in order to bring a civil action to collect from the debtor's insurance company); *Green v. Welsh*, 956 F.2d 30, 33–35 (2d Cir. 1992) (discharge order does not bar continuation of state court action to determine liability of debtor solely as a prerequisite to recover from debtor's insurance carrier); *Jet Florida Sys., Inc.*, 883 F.2d 970, 976 (11th Cir. 1989) (same). Rather, as a result of their failure to timely file proofs of claim, the O & A Clients are barred only from asserting claims against the estate and from participating in a reorganization plan. *Royal Ins.*, 1996 WL 204482, at *1.