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2
3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
6

7 In re)
8) Case No. 04-29054-A-7
9 REYNARD THOMAS,)
10)
11 Debtor.)
12)
13 DONALD GERRING,) Adv. No. 04-2533
14)
15 Plaintiff,)
16 vs.)
17 REYNARD THOMAS,) Date: May 9, 2005
18) Time: 9:00 a.m.
19 Defendant.)
20)
21)
22)
23)
24)

25 *On May 9, 2005 at 9:00 a.m., the court considered its order*
26 *to show cause in the above-captioned adversary proceeding. The*
27 *text of the final ruling appended to the minutes of the hearing*
28 *follows. This final ruling constitutes a "reasoned explanation"*
for the court's decision and accordingly is posted to the court's
Internet site, www.caeb.uscourts.gov, in a text-searchable format
as required by the E-Government Act of 2002. The official record
of this ruling remains the minutes of the hearing.

24 **FINAL RULING**

25 The adversary proceeding will be dismissed.

26 This adversary proceeding was filed on December 3, 2004. It
27 seeks to deny the debtor's discharge pursuant to 11 U.S.C. § 727.
28 The summons was issued on December 6 and it has not been executed

1 and returned to the court. This likely explains why no answer
2 has been filed by the debtor/defendant.

3 Not only has this proceeding not been diligently prosecuted,
4 but the facts pleaded do not justify denial of discharge. The
5 complaint alleges that the debtor is indebted to the plaintiff in
6 an amount up to \$100,000 as the result of an automobile accident.
7 It is alleged that the debtor caused the accident and owned the
8 vehicle involved in the accident. The plaintiff seeks recourse
9 from the debtor's auto insurance. The complaint states that the
10 plaintiff will only proceed against the insurance and not the
11 debtor or the debtor's assets.

12 Assuming everything in the complaint is true and is proven,
13 the court would not deny the debtor's discharge. At best, these
14 facts may warrant relief from the automatic stay. The court
15 notes that the plaintiff filed a motion for relief from the
16 automatic stay but never set it for hearing. The court denied a
17 stipulated order for relief from the automatic stay only because
18 the debtor had not joined the trustee in the stipulation.

19 Even without relief from the automatic stay, and assuming
20 the debtor's discharge is entered, the plaintiff would not be
21 precluded from pursuing the debtor's insurance. A chapter 7
22 discharge will only discharge the debtor's personal liability.
23 11 U.S.C. § 524(a)(1). Consequently, neither the discharge, nor
24 the discharge injunction, nor the closing of this case will
25 affect the ability of the creditor to proceed against a debtor's
26 insurance. If applicable nonbankruptcy law requires that the
27 debtors be named as a defendant during the prosecution of the
28 state court case, the creditor may do so without violating

1 section 524(a) provided it is made clear that any judgment will
2 be satisfied solely from the available insurance coverage. 11
3 U.S.C. § 524(a)(2) provides that the discharge "operates as an
4 injunction against the commencement or continuation of an action,
5 the employment of process, or an act, to collect, recover or
6 offset any such debt as a personal liability of the debtor."
7 (Emphasis added.) Proceeding against the debtors' insurance
8 coverage is not an act to collect a debt as the personal
9 liability of the debtors. Green v. Welsh, 956 F.2d 30 (2d Cir.
10 1992); Patronite v. Beeney (In re Beeney), 142 B.R. 360 (B.A.P.
11 9th Cir. 1992); First Fidelity Bank v. McAteer, 985 F.2d 114 (3rd
12 Cir. 1993).

13 Therefore, given the failure to prosecute the adversary
14 proceeding and given its lack of substantive merit, it will be
15 dismissed.