
In Re:
Dreena Fieber
and Gary Fieber,

Debtors,

Case No. 04-34083

Chapter 7 Case

NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY

TO: Debtor(s) and other entities specified in Local Rule 9013-3.

1. PRIMUS Automotive Financial Services, Inc. DBA Subaru American Credit moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on October 6, 2004 at 9:30 AM o'clock, in Courtroom No. 228A, at the United States Courthouse, 316 North Robert Street, St. Paul, MN.
3. Any response to this motion must be filed and delivered not later than October 1, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on July 13, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d), §365(a) and (d), and Fed. R. Bankr. P. 4001 and 6006. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay of §362(a), to terminate the lease and to repossess the 2001 Subaru Wgn Outback VDC AWD leased to Debtors, and requests the court permit Movant to immediately enforce the order requested, without the 10 day

stay imposed by Rule 4001(a)(3).

6. Movant requests relief under §362(d)(2). Debtors have no equity in the vehicle and the vehicle is not necessary to an effective reorganization. Movant requests relief for cause under §362(d)(1). Failure to provide adequate protection or adequate assurance of future performance under the Lease constitutes cause.
7. If testimony is necessary as to any facts relevant to this motion, Heather Hendrix, or some other representative for Movant, from Movant's offices in Minnesota, will testify regarding the Lease terms and default.
8. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the property promptly upon the Court signing the Order.
9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

WHEREFORE, PRIMUS Automotive Financial Services, Inc. DBA Subaru American Credit moves the Court for an order modifying the automatic stay of §362(a) and such other relief as may be just and equitable.

Dated: September 10, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

MINNESOTA DEPARTMENT OF PUBLIC SAFETY
DRIVER & VEHICLE SERVICES DIVISION
445 MINNESOTA ST. ST. PAUL, MN 55101
CONFIRMATION OF LIEN PERFECTION - DEBTOR NAME AND ADDRESS

First Class
U.S. Postage
PAID
Permit No. 171
St. Paul, MN

SUBARU AMERICAN CREDIT
PO BOX 680030
FRANKLIN TN 37068

26644180 P *
GRNHAMA

01	SUBA	SWUDC	G0880N388
<small>Year</small>	<small>Make</small>	<small>Model</small>	<small>Title NR</small>
4S3BH896417648263		02/28/01	NO
<small>VIN</small>		<small>Security Date</small>	<small>Rebuilt</small>

1ST SECURED PARTY

LIEN HOLDER

RETAIN THIS DOCUMENT - See reverse
side of this form for removing this lien.

SUBARU AMERICAN CREDIT
PO BOX 680030
FRANKLIN TN 37068-0030

EXHIBIT A

Minnesota Motor Vehicle Lease Agreement

1-800-745-5414 Lease Date: 02/28/2001

SUBARU Lessee (and Co-Lessee) - Name and Address (including County):
DREENA RAE FIEBER
12545 DRIFTWOOD LANE APPLE VALLEY MN 55124 DAKOTA

SUBARU AMERICAN CREDIT MAR 5 2001

Lessor - Name and Address:
MORRIES SUBARU
12520 WAYZATA BLVD MINNETONKA MN 55305 HENNEPIN GK70

"Subaru Credit" is Subaru American Credit. The "Holder" is SUBARU AMERICAN CREDIT and its assigns. By signing "You" (Lessee and Co-Lessee) agree to lease this Vehicle according to the terms on the front and back of this lease.

New/Used	Mileage at Delivery	Year/Make/Model	GVW # (Truck Use)	Vehicle Identification Number	Vehicle Use
NEW	33	2001 SUBARU LEGACY OUTBA		4S3BH896417648263	Personal

Amount Due At Lease Signing or Delivery (Itemized Below): \$ 1179.29	Monthly Payments Your first monthly payment of \$ 579.29 is due on 02/28/2001, followed by 47 payments of \$ 579.29 on the 2nd date of each month. The total of Your monthly payments is \$ 27805.92	Other Charges (not part of Your monthly payment) Disposition fee (if You do not purchase the Vehicle) N/A Total N/A	Total of Payments (The amount You will have paid by the end of the lease) N/A N/A N/A Total \$ 27805.92
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* Itemization of Amount Due at Lease Signing or Delivery

Amounts Due At Lease Signing or Delivery:	How the Amount Due At Lease Signing or Delivery will be paid:
Capitalized cost reduction \$ N/A	Net trade-in allowance \$ N/A
First monthly payment 579.29	Rebates and noncash credits N/A
Refundable security deposit 600.00	Amount to be paid in cash 1179.29
Title fees N/A	N/A
Registration fees N/A	
N/A	
N/A	
N/A	
Total \$ 1179.29	Total \$ 1179.29

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the Vehicle (\$ 33591.00) and any items You pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) \$ 34494.00
Capitalized cost reduction. The amount of any net trade-in allowance, rebate, noncash credit, or cash that You pay that reduces the gross capitalized cost - N/A
Adjusted capitalized cost. The amount used in calculating Your base monthly payment = 34494.00
Residual value. The value of the Vehicle at the end of the lease used in calculating Your base monthly payment. = 16455.50
Depreciation and any amortized amounts. The amount charged for the Vehicle's decline in value through normal use and for other items paid over the lease term = 18038.50
Rent charge. The amount charged in addition to the depreciation and any amortized amounts + 8070.14
Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge. = 26108.64
Lease payments. The number of payments in Your lease + 48
Base monthly payment = 543.93
Monthly sales/use tax = 35.36
N/A = N/A
N/A = N/A
Total monthly payment \$ 579.29
Lease term in months. 48

Early Termination. You may have to pay a substantial charge if You end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier You end the lease, the greater this charge is likely to be.

Excess Wear and Use. You may be charged for excessive wear based on our standards for normal use. At the scheduled end of this lease, unless You purchase the Vehicle, You must pay to Lessor 15 cents per mile for each mile in excess of 48033 miles shown on the odometer. See Items 3 and 7 on back for additional excess wear and use terms.

Extra Mileage Option Credit. At the scheduled end of this lease, You will receive a credit of 10 cents per unused mile for the number of unused miles between 48000 and 49000 miles, less any amounts You owe under this lease. You will not receive any credit if the Vehicle is destroyed. If You terminate Your lease early, exercise any purchase option, are in default or the credit is less than \$1.00.

Purchase Option at End of Lease Term. \$ 6455.50 plus official fees and taxes is Your lease end purchase option price. You have the option to purchase the Vehicle from Lessor in cash for the purchase option price at the end of the lease term if You are not in default.

Other Important Terms. See Your lease documents for additional information on early termination, purchase option and maintenance responsibilities, warranties, late and default charges, insurance, and any security interests, if applicable.

WARRANTY The Vehicle is covered by any warranty, extended warranty or service contract indicated below:

Standard new Vehicle warranty provided by the Manufacturer or distributor of the Vehicle.

N/A

N/A

If the Vehicle is of a type normally used for personal use and the Lessor, or the Vehicle's manufacturer, extends a written warranty or service contract covering the Vehicle within 90 days from the date of this lease, You get implied warranties of merchantability and fitness for a particular purpose covering the Vehicle. Otherwise, You understand and agree that there are no such implied warranties, except as otherwise required by state law.



OFFICIAL FEES AND TAXES \$ 3434.28

The estimated total amount You will pay for official and license fees, registration, title and taxes over the term of Your lease, whether included with Your monthly payments or assessed otherwise. The actual total of fees and taxes may be higher or lower depending on the tax rates in effect or the value of the leased property at the time a fee or tax is assessed.

LESSOR SERVICES N/A
(See Item 2 on back) N/A

LATE PAYMENTS You will pay a late charge on each payment that is not received within 10 days after it is due. The charge is 7.5% of the full amount of the scheduled payment or \$50.00 whichever is less.

* * Itemization of Gross Capitalized Cost

Agreed Upon Value of the Vehicle \$ 33591.00	Sales/Use Tax and Other Applicable Taxes N/A	Title Fees \$ 5.50	License and Registration Fees \$ 422.50	Extended Warranty and Service Contract N/A	Lessor Services N/A
Acquisition Fee \$ 490.00	Documentation Fee \$ 25.00	N/A	N/A	N/A	Total Gross Capitalized Cost \$ 34494.00

SIGNATURES AND IMPORTANT NOTICES

Modifications: This lease sets forth all of the agreements of Lessor and You for this lease of the Vehicle. There is no other agreement. Any change in this lease must be in writing and signed by You and Subaru Credit.

Lessee: DREENA RAE FIEBER Title: _____
Co-Lessee: _____ Title: _____

NOTICE: (1) Do not sign this lease before You read it or if it has any blank space to be filled in. (2) You have the right to get a filled-in copy of this lease. You state that You have been given a filled-in copy of this lease at the time You sign it and notice of an assignment of this lease by the Lessor to Holder.

Lessee: DREENA RAE FIEBER Title: _____
Co-Lessee: _____ Title: _____

Lessor is hereby notified that Holder has assigned to "intermediary," as defined in the Subaru Credit Lease Assignment, its rights (but not its obligations) with respect to the purchase of this Vehicle and the sale of this Vehicle at lease termination.

Lessor accepts this lease and assigns it to Holder under the terms of the Subaru Credit Finance Plan for Dealers agreement between Lessor and Holder, unless otherwise indicated here.

Lessor: MORRIES SUBARU By: _____ Title: _____
BAC 18050-P Feb 00 Previous editions may NOT be used. MN

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION ORIGINAL

EXHIBIT B

VEHICLE MAINTENANCE, INSURANCE AND USE

1. VEHICLE USE AND SUBLEASING You will not use, or permit others to use the Vehicle (a) in violation of any law, (b) contrary to the provisions of any insurance policies covering the Vehicle, (c) outside the state where first titled or registered for more than 30 days without Subaru Credit's written consent, (d) outside the United States, except for less than 30 days in Canada or (e) as a private or public carrier. You will keep this lease and Vehicle free of all liens and encumbrances. You will not assign or sublease any interest in the Vehicle, or lease without Subaru Credit's written consent.

2. VEHICLE MAINTENANCE AND OPERATING COSTS Proper Vehicle maintenance is Your responsibility. You must maintain and service the Vehicle at Your own expense, using materials that meet the manufacturer's specifications. This includes following the owner's manual and maintenance schedule, documenting maintenance performed, and making all needed repairs. You are also responsible for all operating costs such as gas and oil. Lessor will provide the service(s), if any, identified in the Lessor Services section under the terms of a separate agreement. The manufacturer will invalidate warranty coverage on parts affected by a failure to maintain the Vehicle as required by the manufacturer. (See Lessor Services on the front of lease.)

3. DAMAGE REPAIR You are responsible for repairs of All Damage which are not a result of normal wear and use. These repairs include, but are not limited to, those necessary to return the Vehicle to its pre-accident condition, including repairs to Exterior Sheet Metal and Plastic Components, and to Vehicle Safety Bells, Seat Belts and Plastic Components, and bumper system components. Replacement of Sheet Metal must be made with Original Equipment Manufacturer Sheet Metal. All other repairs must be made with Original Manufacturer parts or those of equal quality. Discuss this requirement with Your insurance company prior to signing a collision repair estimate or before authorizing any collision repair work.

If You have not had the repairs made before the Vehicle is returned at the scheduled end of this lease, You will pay the estimated costs of such repairs, even if the repairs are not made prior to Holder's sale of the Vehicle.

4. VEHICLE INSURANCE You must insure the Vehicle during this lease. This obligation must be acceptable to Subaru Credit and protect You and Holder with (a) comprehensive fire and theft insurance with a maximum deductible amount of \$1,000; and (b) collision and upset insurance with a maximum deductible of \$1,000; and (c) automobile liability insurance with minimum limits for bodily injury or death of \$30,000 for any one person and \$60,000 for any one accident, and \$10,000 for property damage. If the state in which You title/register the Vehicle establishes or changes the minimum automobile liability insurance limits greater than those listed above for bodily injury or death and property damage insurance, You must insure the Vehicle and the Holder at the higher minimum limits established by the state. These amounts may not be sufficient to cover all Your liabilities. You may wish to consult Your insurance advisor about obtaining additional coverage. You will list the loss types and additional insured as requested by Lessor. You must give Subaru Credit evidence of this insurance.

You authorize Subaru Credit, on Your behalf, to receive and endorse checks or drafts, and settle or release any claim under the insurance related to Holder's ownership of the Vehicle. You also assign to Holder any other insurance proceeds related to this lease or Holder's interest in the Vehicle.

If You or Subaru Credit obtain a refund for amounts paid to third parties for insurance, service contracts, or any other amount paid to a third party, included in the Gross Capitalized Cost of this lease, You must pay to the Holder the entire amount of the refund and You authorize the Holder to subtract the refund from the amount You owe under this lease.

If You title/register the Vehicle in, or change the garage location of, the Vehicle to a state where Subaru Credit has established minimum automobile liability insurance limits greater than those listed above for bodily injury or death and property damage insurance, You must insure the Vehicle and the Holder at the higher minimum limits established by Subaru Credit.

LESSOR IS NOT PROVIDING VEHICLE INSURANCE OR LIABILITY INSURANCE

ENDING YOUR LEASE

5. TERMINATION This lease will terminate (end) upon (a) the end of the term of this lease, (b) the return of the Vehicle to Lessor, and (c) the payment by You of all amounts owed under this lease. Subaru Credit may cancel this lease if You default.

6. RETURN OF VEHICLE If You do not buy the Vehicle, at lease end You must return it to Lessor unless Subaru Credit specifies another place. If You fail to return the Vehicle, You must continue to pay the monthly payments plus other damages to Subaru Credit. Including amounts payable under default. Payment of these amounts will not allow You to keep the Vehicle.

7. STANDARDS FOR EXCESS WEAR AND USE You are responsible for all repairs to the Vehicle that are not the result of normal wear and use. These repairs include, but are not limited to those necessary to repair or replace: (a) Tires which are unrun-in, unsafe or have less than 1/8 inch of tread in any place; (b) Electrical or Mechanical defects or malfunctions; (c) Grease, Paint, Body Panels, Trim and Gilt Work that are broken, mismatched, chipped, scratched, pitted, oxidized, or if applicable, dented or rusted; (d) Interior rips, stains, burns or worn areas; and (e) All Damage which would be covered by collision or comprehensive insurance whether or not such insurance is actually in force. Replacements of Sheet Metal must be made with Original Equipment Manufacturer Sheet Metal. All other repairs must be made with Original Equipment Manufacturer parts or those of equal quality. Your use or repair of the Vehicle must not invalidate any warranty.

If You have not had the repairs made before the Vehicle is returned at the scheduled end of this lease, You will pay the estimated costs of such repairs, even if the repairs are not made prior to Holder's sale of the Vehicle.

8. ODOMETER STATEMENT Federal law requires You to complete a statement of the Vehicle's mileage at the end of this lease.

9. VOLUNTARY EARLY TERMINATION You may terminate this lease early, if You are not in default, by returning the Vehicle to Lessor and paying the following: (a) an early termination fee of \$200, plus (b) the difference, if any, between the Unpaid Adjusted Capitalized Cost and the Vehicle Fair Market Wholesale Value, plus (c) all other amounts then due under this lease.

Unpaid Adjusted Capitalized Cost is reduced on each payment due date. It is calculated by reducing the Adjusted Capitalized Cost each month by the difference between the Base Monthly Payment and the part of the Rent Charge earned in that month on an actuarial basis. Rent charges are earned when due. Lessor or Subaru Credit will provide You with a written explanation of the actuarial method upon Your request.

Fair Market Wholesale Value, at Your option, will be: (a) an amount agreed to by You and the Lessor, or (b) the value which would be realized at the wholesale sale of the Vehicle, as determined by a professional appraisal obtained by You at Your expense within 10 days from termination from an independent third party agreeable to Subaru Credit, or (c) if not established by agreement or appraisal, the net amount received by Subaru Credit upon the sale of the Vehicle at wholesale.

10. OPTION TO PURCHASE LEASED PROPERTY PRIOR TO THE END OF THE LEASE TERM You do not have an option to purchase the leased Vehicle prior to the end of the lease term.

DEFAULT AND LOSS OF VEHICLE

11. DEFAULT You will be in default if (a) You fail to make any payment when due, or (b) a bankruptcy petition is filed by or against You, or (c) any governmental authority seizes the Vehicle and does not promptly and unconditionally release the Vehicle to You, or (d) You have provided false or misleading material information when applying for this lease, or (e) You fail to keep any other agreement in this lease.

If You are in default, Subaru Credit may cancel this lease, take back the Vehicle and sell it at a public or private sale. You also give Subaru Credit the right to go on Your property to peacefully re-take the Vehicle. Even if Subaru Credit retakes the Vehicle, You must still pay at once: (a) the difference, if any, between the Unpaid Adjusted Capitalized Cost and the value which could be realized at the wholesale sale of the Vehicle, plus (b) all other amounts then due under this lease. The value which could be realized at the wholesale sale of the Vehicle at Your option will be: (a) the amount received by Subaru Credit upon the sale of the Vehicle at wholesale, or (b) as determined by a professional appraisal obtained

by You at Your expense within 10 days from default, from an independent third party agreeable to Subaru Credit. You must also pay all expenses, including reasonable attorney's fees, payable by Subaru Credit to obtain, hold and sell the Vehicle, collect amounts due and enforce Holder's rights under this lease. You authorize Subaru Credit to cancel Your insurance and apply any proceeds to Your obligation.

12. LOSS OR DESTRUCTION OF VEHICLE If the Vehicle is stolen or destroyed, You will pay to Subaru Credit: (a) the Unpaid Adjusted Capitalized Cost, plus (b) all other amounts then due under this lease, minus (c) any insurance proceeds received by Subaru Credit. Gas Waiver: If You had in effect the insurance required under this lease and Subaru Credit receives the full proceeds, You will pay to Subaru Credit: (a) any past due monthly lease payments, plus (b) the amount of the applicable insurance deductible, plus (c) all other amounts then due under this lease. Even if the Vehicle is insured, until Subaru Credit receives the appropriate amount above, You are responsible for the scheduled monthly payments.

ADDITIONAL INFORMATION

13. ASSIGNMENT AND ADMINISTRATION When You and Lessor sign this lease, Lessor will assign it to Holder. Subaru Credit or a substitute will administer this lease. You must then pay all amounts due under this lease to Subaru Credit. If Subaru Credit is not the Holder of this lease, Holder has appointed Subaru Credit as its agent. As agent for Holder, Subaru Credit has the power to act on Holder's behalf to administer, enforce, and defend this lease. If Lessor has agreed to repair or maintain the Vehicle, obtain any insurance or perform any other service, You will look only to the Lessor for these services.

14. TAXES You will promptly pay all fees, charges, and taxes relating to the lease or Vehicle (except for Lessor's or Holder's income taxes). You will pay these amounts even if they are assessed after lease end.

15. TITLING The Vehicle will be titled in the name of Holder. You will register the Vehicle as directed by Subaru Credit. You will pay all license, title and registration costs.

16. INDEMNITY You will indemnify and hold harmless Lessor, Subaru Credit and Holder and their assigns from any loss or damage to the Vehicle and its contents and from all claims, losses, injuries, expenses and costs related to the use, maintenance, or condition of the Vehicle. You will promptly pay all fines and tickets imposed on the Vehicle or its driver if You do not pay. You will reimburse Subaru Credit and pay a \$20 administration fee, unless prohibited by law, for every such fine, ticket, or penalty that must be paid on Your behalf.

17. SECURITY DEPOSIT Your security deposit may be used by Subaru Credit to pay all amounts that You fail to pay under this lease. You will not receive any interest, profits or other earnings on Your security deposit(s).

18. GENERAL Except as otherwise provided by the law of the state where You reside, the law that will apply to this lease is the law of the state where the Lessor's place of business is, as set forth on the front of the lease. If that law does not allow any of the agreements in this lease, the ones that are not allowed will be void. The rest of this lease will still be good.

SAC 18806-F-PRD 00
Previous editions may NOT be used.
MN

NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION

**Vehicle Summary With NADA Values
N.A.D.A Official Used Car Guide
Wednesday, September 08, 2004**

Guide Edition: Midwest Used Car Guide - September 2004

Vehicle Description: 2001 SUBARU
LEGACY-6 CYL. WGN OUTBCK VDC AWD

VIN: 4S3BH896417648263 **Weight:** 3735
Stock #: **MSRP:** \$31,895

N.A.D.A. Base Values:	Retail:	\$20,075	Trade:	\$17,350	Loan:	\$15,625
Mileage Value (N/A Miles)		N/A				
Accessories Values		\$0		\$0		\$0

N.A.D.A Adjusted Values:	Retail:	\$20,075	Trade:	\$17,350	Loan:	\$15,625
Appraiser Adjustment Value		\$0				

Adjusted Values:	Retail:	\$20,075	Trade:	\$17,350	Loan:	\$15,625
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Accessories:

	Retail	Trade	Loan
Alum/Alloy Wheels	w/body	w/body	w/body
Compact Disc Player	w/body	w/body	w/body
Leather Seats	w/body	w/body	w/body

EXHIBIT C

Appraiser Adjustments:

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any revisions or additions made by anyone on this report.
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04-03750-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Dreena Fieber
and Gary Fieber,

Debtors,

Case No. 04-34083

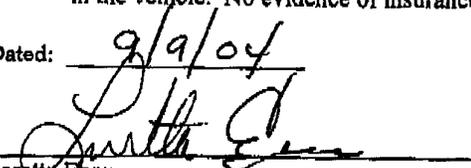
Chapter 7 Case

VERIFICATION FOR MOTION FOR RELIEF FROM STAY

I, Loretta Egan, Vendor Supervisor for PRIMUS Automotive Financial Services, Inc. DBA Subaru American Credit, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account no. 26644180.
2. The Debtor leases a 2001 Subaru Wgn Outback VDC AWD from the Creditor. The monthly lease payment is \$579.29. As of September 7, 2004, the lease payments are delinquent \$1,158.58 for payments owing since July 28, 2004. The Creditor owns the leased vehicle. The current NADA published retail value for the leased vehicle is \$20,275.00. The Debtor is believed to be in possession of the vehicle.
3. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the lease documents are attached as Exhibit "B".
4. The lease agreement requires insurance be maintained to protect the Creditor's ownership interest in the vehicle. No evidence of insurance has been provided since filing.

Dated: 9/9/04


Loretta Egan

Vendor Supervisor for PRIMUS Automotive Financial Services, Inc. DBA Subaru American Credit
National Bankruptcy Svc Center
PO Box 537950
Livonia, MI 48153-7950

1-830 P.02/02 Job-735

2145504097

SEP-10-04 08:27 From:RLS Dept

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Dreena Fieber
and Gary Fieber,

Debtors,

Case No. 04-34083

Chapter 7 Case

MEMORANDUM OF FACT AND LAW

PRIMUS Automotive Financial Services, Inc. DBA SubaruAmerican Credit ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

FACTS

Debtor is in possession of the vehicle subject to a lease agreement dated 2/28/01, and such agreement is a true lease, and not a retail installment contract, as defined by Minn. Stat. §336.2A - 103(j) and §168.66. Movant is the registered owner of the vehicle as reflected by the Certificate of Title. The terms of the lease agreement, require Debtor to make monthly payments of \$579.29 for use of the vehicle. Debtor must also pay for any excess mileage and excess wear and tear at termination of the lease. Debtor has the option to purchase the vehicle at the end of the lease agreement by paying the purchase option price in cash.

Debtor is delinquent on lease payments due since July 28, 2004. The NADA retail value of the vehicle is \$20,275.00. NADA pages for this vehicle value are attached as Exhibit "C".

Movant's interest is subject to depreciation in that the vehicle is being used, subjecting it to wear and depreciation, while Debtor is failing to make payments. There has been a further material default: Debtor has failed to provide Movant with evidence of collateral insurance.

ARGUMENT

Pursuant to §362(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. §362(d)(1).

Debtor has failed to make the Lease payments to Movant and has failed to provide adequate protection of Movant's interest in the vehicle or adequate assurance of future performance under the Lease. Such circumstances constitute cause, within the meaning of §362(d)(1), entitling Movant to relief from stay. In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991).

If a lessor is economically disadvantaged by a Debtor retaining leased property without making payments, the lessor can move for relief from the automatic stay under §362(d). In re Intran Corp., 62 B.R. 435, 436 (Bkrcty. D.Minn. 1986). Adequate protection is the "safeguard" to protect a lessor and moving for relief from the automatic stay or seeking adequate protection is the proper method by which a lessor may force the debtor to either surrender the leased property or make payments equal to the lessor's interest in the property. Id. at 436.

Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor has no equity in the vehicle and the vehicle is not necessary to an effective reorganization. 11 U.S.C. §362(d)(2). See, In re Gellert, 55 B.R. 970 (Bkrcty.D.N.H. 1983). In the present case the Debtor is merely the lessee of the vehicle and has no ownership interest in it. Debtor has no equity in the vehicle. No evidentiary hearing is required on the issue of equity unless the debtor disputes it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97 (N.D.N.Y. 1997). No reorganization is permitted in Chapter 7.

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion, order is not applicable so that Movant may immediately enforce and implement the order granting relief. Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: September 10, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Dreena Fieber
and Gary Fieber,

Debtors,

Case No. 04-34083

Chapter 7 Case

UNSWORN CERTIFICATE OF SERVICE

I, Linda Jeanne Jungers, declare under penalty of perjury that on September 10, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Dreena Fieber
12545 Driftwood Lane
Apple Valley, MN 55124

Gary Fieber
12545 Driftwood Lane
Apple Valley, MN 55124

Barbara J May, Esq.
4105 N Lexington Ave, #310
Arden Hills, MN 55126

Michael J. Iannacone
Chapter 7 Trustee
8687 Eagle Point Blvd
Lake Elmo, MN 55042

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Rosemount National Bank
c/o WILFORD & GESKE
7650 Currell Blvd, Suite 300
Woodbury, MN 55125

AmeriCredit
Attn: AmeriCredit Dept
Account: 422752584
PO Box 183853
Arlington, TX 76096

Executed on: September 10, 2004

Signed: /e/Linda Jeanne Jungers
Linda Jeanne Jungers
STEWART, ZLIMEN & JUNGERS
430 Oak Grove Street, #200
Minneapolis, MN 55403

04-03750-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Dreena Fieber
and Gary Fieber,

Debtors,

Case No. 04-34083

Chapter 7 Case

ORDER FOR RELIEF FROM THE STAY

PRIMUS Automotive Financial Services, Inc. DBA Subaru American Credit's Motion for an order granting relief from the stay came before the Court on October 6, 2004 at 9:30 AM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit PRIMUS Automotive Financial Services, Inc. DBA Subaru American Credit to terminate the Lease, and to repossess and sell the
2001 Subaru Wgn Outback VDC AWD, VIN 4S3BH896417648263
in accordance with applicable state law.
2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

United States Bankruptcy Judge