

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No. 02-90073 GFK

Charles D. Barnes and
Roberta D. Barnes,

Debtors.

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM STAY

1. Capital One Auto Finance ("Movant"), a secured creditor of the Debtor herein, by its undersigned attorney, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 10:30 o'clock a.m., on October 19, 2004, before the Honorable Gregory F. Kishel, Courtroom 228-B United States Courthouse, 316 North Robert Street, St. Paul, Minnesota, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than October 14, 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 October 7, 2004, which is seven days before the date 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 motion is filed pursuant to Bankruptcy Rule 4001 and Local Rules 9013-2 and 4001-1 and Movant requests relief from the automatic stay of 11 U.S.C. § 362(a) with respect to certain personal property subject to Movant's valid security interest.

5. This case was filed as a voluntary case under Chapter 13 of the United States Bankruptcy Code, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Local Rule 1070-1, Fed. R. Bankr. P. 5005 and applicable rules. This is a core proceeding.

6. Movant holds a valid, perfected security interest in a 1999 Ford Truck Econoline E350, VIN No. 1FBSS31L3XHB43134 (the "Vehicle").

7. Copies of Movant's Installment Sale Contract (the "Contract") and Confirmation of Lien Perfection, respectively evidencing creation and perfection of Movant's security interest, are attached hereto as Exhibits A and B and incorporated herein by reference.

8. The terms of the Chapter 13 Plan require payments to be made directly to Movant for installments coming due after the filing date. A delinquency of at least \$14,387.64 exists for the payments due for March 2002 and thereafter and has not been paid as of the date of this motion. The Chapter 13 Plan failed to provide Movant with adequate protection of its secured interest.

9. The balance due under the Contract is \$14,387.64 as of the date hereof. On information and belief, the fair market value of the Vehicle is approximately \$11,850.00.

10. Movant's security is depreciating in that Vehicle is being utilized, subjecting the same to wear, without payments as required by the Plan. Movant has been unable to verify physical damage insurance coverage on the Vehicle.

11. Movant does not have, and has not been offered, adequate protection of its interest in the Vehicle under the Chapter 13 Plan. Further, the failure to make the payments required by the Plan constitutes cause, within the meaning of 11 U.S.C. § 362(d)(1), entitling Movant to relief from the automatic stay.

12. If testimony is necessary as to any facts relevant to this motion, Marnie Baker of Movant, P.O. Box 260848, Plano, Texas 75026, will testify on behalf of Movant.

WHEREFORE, Movant, respectfully moves the Court for an order modifying the automatic stay imposed by the United States Bankruptcy Code and authorizing Movant to foreclose its security interest in the Vehicle and for such other relief as may be just and equitable.

Date: September 27, 2004.

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

Attorneys for Movant

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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MEMORANDUM IN SUPPORT
OF MOTION

Capital One Auto Finance ("Movant") submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a perfected security interest in a 1999 Ford Truck Econoline E350, VIN No. 1FBSS31L3XHB43134. The Chapter 13 Plan requires monthly payments directly to Movant for installments coming due after the filing date. Presently, there is a delinquency. The vehicle subject to Movant's security interest is depreciating with use. Movant has been unable to verify physical damage insurance coverage on the Vehicle.

ARGUMENT

Pursuant to Section 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. Section 362(d)(1). Here, the payments have not been made as required by the Chapter 13 Plan. Movant has been unable to verify physical damage insurance coverage on the Vehicle.

Movant does not have, and has not been offered, adequate protection of its interest in the vehicle. The Plan fails to provide Movant with the indubitable equivalent of its claim. Such circumstances constitute cause, within the meaning of Section 362(d)(1), entitling Movant to relief from the stay. See Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306-07 (8th Cir. 1991) (debtor's failure to comply with plan supports bankruptcy court's decision to grant relief from the automatic stay for cause); In re Wieseler, 934 F.2d 965, 967 (8th Cir. 1991) (debtor's failure to comply with stipulation provided cause for dissolving automatic stay). See also First Federal Savings and Loan Ass'n. of Minneapolis vs. Whitebread (In re Whitebread), 18 B.R. 192 (Bankr. D. Minn. 1982); In re Quinlan, 12 B.R. 516 (Bankr. W.D. Wis. 1981); In re Caulk, 9 B.R. 242 (Bankr. E.D. Penn. 1981).

CONCLUSION

For all the reasons set forth herein, Movant is entitled to an order terminating the automatic stay and authorizing it to take possession of and foreclose its security interest in the Vehicle.

Dated: September 27, 2004.

Respectfully submitted,

FOLEY & MANSFIELD, P.L.L.P.

By /s/ Ruth E. Honkanen

Thomas J. Lallier (#163041)

Ruth E. Honkanen (#175924)

Attorneys for Movant

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The Ramsey Law Firm PC

#7834 P.005/019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No. 02-90073 GFK

Charles D. Barnes and
Roberta D. Barnes,

Debtors.

VERIFICATION

I, MANNE BAKER, for Capital One Auto Finance, P.O. Box 260848, Plano, Texas 75026,

declare, under penalty of perjury, that the foregoing is true and correct to the best of my
knowledge, information and belief.

Executed on: 9-13-04

Signed: Manne Baker

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT		Seller WHITAKER LINCOLN MERCURY 1290 EAST 50TH STREET TOWER GROVE HEIGHTS, MN 55077		Buyer ROBERTA DAILEY BARNES CHARLES DARELL BARNES 1002 BLAIR AVE ST PAUL, MN 55104	
No. _____	Date JANUARY 13th, 2001	We and "us" mean the Seller above, its successors and assigns.		You and "your" mean each Buyer above and your guarantor, jointly and individually.	
<p>SALE: You agree to purchase from us, over time, the Motor Vehicle (Vehicle) and services described below. Your purchase is subject to the terms and conditions of this contract and security agreement (Contract). The Vehicle is sold in its present condition, together with the accessories and attachments.</p>					
Description of Motor Vehicle Purchased	Year 1999 Make FORD Model F350	VIN 1F85331L3X843134 Lic. No./Year _____ <input type="checkbox"/> New <input checked="" type="checkbox"/> Used	Other: ORIGINAL		

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessories, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract.

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ 21052.50 plus finance charges accruing on the unpaid balance at the rate of 17.95 % per year from today's date until paid in full. Finance charges accrue on a 365 day basis. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

LOAN ADMINISTRATION FEE: You agree to pay an additional, nonrefundable loan administration fee of \$25.00 that will be paid in cash. paid pro rata over the contract term. withheld from the proceeds (if this fee is withheld from the proceeds, the amount is included in the principal sum).

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES					
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	AMOUNT FINANCED	TOTAL OF PAYMENTS	TOTAL SALE PRICE	
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid when you have made all scheduled payments.	The total cost of your purchase of credit, including your down payment of cash.	
17.95 %	\$ 10988.70	\$ 21052.50	\$ 32041.20	\$ 2500.00	\$ 34541.20
Payment Schedule: Your payment schedule will be					
Number of Payments	Amount of Payments	When Payments Are Due			
60	534.02	MONTHLY, BEGINNING: FEBRUARY 12th, 2001			

Security: You are giving a security interest in the Motor Vehicle purchased.

Late Charge: If a payment is more than 10 days late, you will be charged \$ amount allowed by law under Minn. Stat. § 47.50. This amount may increase so as to always be the highest.

Prepayment: If you pay off this Contract early, you will not have to pay a penalty.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life Insured:
 Single Joint Prem. \$ N/A Term N/A

Credit Disability Insured:
 Single Joint Prem. \$ N/A Term N/A

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ <u>1423.50</u>)	\$ <u>23323.50</u>
Service Contract, Paid to:	\$ <u>N/A</u>
Cash Price	\$ <u>23323.50</u>
Manufacturer's Rebate	\$ <u>N/A</u>
Cash Down Payment	\$ <u>2500.00</u>
Deferred Down Payment	\$ <u>N/A</u>
a. Total Cash/Rebate Down	\$ <u>2500.00</u>
b. Trade-in Allowance	\$ <u>N/A</u>
c. Less: Amount owing	\$ <u>N/A</u>
Paid to:	\$ <u>N/A</u>
d. Net Trade-in (b. minus c.)	\$ <u>N/A</u>
e. Net Cash/Trade-in (a. plus d.)	\$ <u>2500.00</u>
Down Payment (e.; disclose as \$0 if negative)	\$ <u>2500.00</u>
Unpaid Balance of Cash Price	\$ <u>20823.50</u>
Paid to Public Officials - Filing Fees	\$ <u>204.00</u>
Insurance Premiums	\$ <u>N/A</u>
Amount to Finance Fee e. (if a. is negative)	\$ <u>N/A</u>
To: <u>WHITAKER LINCOLN MERCURY</u>	\$ <u>25.00</u>
To: _____	\$ <u>N/A</u>
To: _____	\$ <u>N/A</u>
Total Other Charges/Amounts Pd. to Others	\$ <u>229.00</u>
Less: Prepaid Finance Charges	\$ <u>N/A</u>
Amount Financed	\$ <u>21052.50</u>

Your signature below means you want (only) the insurance coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ N/A if you get insurance from or through us you will pay \$ N/A for _____ of coverage.

This premium is calculated as follows:

\$ N/A Deductible, Collision Coverage \$ N/A

\$ N/A Deductible, Comprehensive Cov. \$ N/A

Fee-Trait and Combined Additional Coverage \$ N/A

\$ N/A

Liability Insurance: coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

MOTOR VEHICLE SERVICE CONTRACT: With your purchase of the Vehicle, you agree to purchase a Motor Vehicle Service Contract to cover N/A. This Service Contract will be in effect for N/A.

ASSIGNMENT: This Contract and Security Agreement is assigned to CAPITAL ONE AUTO FINANCE. The Assignee, phone _____ This assignment is made under the terms of a separate agreement. under the terms of the ASSIGNMENT BY SELLER on page 2. This assignment is made with no consideration. Date 01/13/2001

We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge. (4) IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

Buyer: Roberta D. Barnes
 Signature ROBERTA DAILEY BARNES 01/13/2001 Date
Charles D. Barnes
 Signature CHARLES DARELL BARNES 01/13/2001 Date



ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price. The Total Sale Price is the total price of the Vehicle and any services that you buy from over time. You agree to purchase the Vehicle over time. The Total Sale Price shown in the TRUTH IN LENDING DISCLOSURE assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not intend to charge or collect, and you do not agree to pay, any finance charge of fee, that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, you have a right to a refund of the excess charge. If you agree, or if you do not make a timely request for a refund, we will apply the refund amount first to reduce the principal balance, and when the principal has been paid in full, refund it to you.

You understand and agree that some payments to third parties as a part of this Contract may involve money retained by us or paid back to us as commissions or other remuneration.

If any section or provision of this Contract is not enforceable, the other terms will remain part of this Contract.

PREPAYMENT: You may prepay this Contract in full or in part at any time. Any partial prepayment will not accelerate any later scheduled payments until you pay in full.

A refund of any prepaid, unearned insurance premiums may be obtained from us or from the insurance company named in your policy or certificate of insurance, but no refund will be paid if the amount of the refund would be less than \$5.00.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By giving us a security interest in the Property, you represent and agree to the following:

- A. Our security interest will not extend to consumer goods unless you acquire rights to them within 10 days after we enter into this Contract, or they are installed in or affixed to the Vehicle.
B. You will defend our interests in the Property against claims made by anyone else. You will do whatever is necessary to keep our claim to the Property ahead of the claim of anyone else.
C. The security interest you are giving us in the Property comes ahead of the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else. You will not do anything to change our interest in the Property.
D. You will keep the Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed on page 1 of this Contract.
E. You will not attempt to sell the Property (unless it is property identified in inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.
F. You will pay all taxes and assessments on the Property as they become due.
G. You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished lawfully, and without breaching the peace.

DEFAULT: You will be in default on this Contract if any one of the following occurs (except as prohibited by law):

- A. You fail to perform any obligation that you have undertaken in this Contract.
B. We, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Contract.
If you default, you agree to pay our costs for collecting amounts owing, including court costs, attorneys' fees, and fees for representation, repair, storage and sale of the Property securing this Contract. If this Contract is subject to Minn. Stat. § 188.71, the amount of our attorneys' fees and trust pay will not exceed 15% of the amount due and payable under this Contract.
In an event of default occurs as to any one of you, we may exercise our remedies against any or all of you.

REMEDIES: If you are in default on this Contract, we have all of the remedies provided by law and this Contract:

- A. We may require you to immediately pay us, less any refund required by law, the remaining unpaid balance of the amount financed, finance charges and all other agreed charges.
B. We may pay taxes, assessments, or other liens or make repairs to the Property if you have not done so. We are not required to do so. Any amount we pay will be added to the amount you owe us and will be due immediately. This amount will earn finance charges from the date paid at the interest rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.
C. We may require you to make the Property available to us at a place we designate that is reasonably convenient to you and us.
D. We may immediately take possession of the Property by legal process or self-help, but in doing so we may not breach the peace or unlawfully enter onto your premises. We may then sell the Property and apply what we receive as provided by law to our reasonable expenses and then toward what you owe us.
E. Except when prohibited by law, we may sue you for additional amounts if the proceeds of a sale do not pay all of the amounts you owe us.

By choosing any one or more of these remedies, we do not give up our right to later use another remedy. By declining not to use any remedy, we do not give up our right to consider the event a default if it happens again.

You agree that if any notice is required to be given to you or a transferee of the Property, notice is reasonable if mailed to your last known address, as reflected in our records, or sent to you by first class mail, or by any other means of delivery, or by any other means of delivery as long as it is required by law.

You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above.

RETURN CHECK CHARGE: You agree to pay a service charge for each returned check or returned automatic payment request. The amount of the service charge will generally be \$20.00, but if we use a law enforcement agency to collect payment and the service charge is used to reimburse the law enforcement agency, the amount of the service charge will be \$25.00.

INSURANCE: You agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section, or as we will otherwise require. You will name us as loss payee on any such policy. (Generally, loss payee is the one to be paid the policy benefits in case of loss or damage to the property.) In the event of loss or damage to the Property, we may require additional security or assurances of payment before we allow insurance proceeds to be used to repair or replace the Property if the insurance proceeds do not cover the amounts you owe on all. You will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in full force and effect until the Contract is paid in full.

If you fail to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. We will notify you if we do so. This insurance may include coverages not required of you. This insurance may be written by a company other than one you would choose; it may be written at a rate higher than a rate you could obtain if you purchased the property insurance required by this Contract. We will add the premium for this insurance to the amount you owe us. Any amount we pay will be due immediately. This amount will earn finance charges from the date paid at the interest rate described in the PROMISE TO PAY AND PAYMENT TERMS section until paid in full.

OBLIGATIONS INDEPENDENT: Each person who signs this Contract agrees to pay this Contract according to its terms. This means the following:

- A. You must pay this Contract even if someone else has also signed it.
B. We may release any co-borrower or guarantor and you will still be obligated to pay this Contract.
C. We may release any security and you will still be obligated to pay this Contract.
D. If we give up any of our rights, it will not affect your duty to pay this Contract.
E. If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WAIVER: To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not required to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid, or have not been paid in the appropriate amount, time or manner; (3) give notice that we intend to make, or are making, this Contract immediately due or; (4) obtain official certification of nonpayment.

THIRD PARTY AGREEMENT

By signing below you agree to give us a security interest in the Property described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be liable for the payments it requires, your interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may renew, extend, change this Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

Signature _____ Date _____

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

ASSIGNMENT BY SELLER

Seller sells and assigns this Retail Installment Contract and Security Agreement (Contract), to Assignee, its successors and assigns, including all of its rights, title and interest in the Contract, and any guarantees enclosed in connection with this Contract. Seller gives Assignee full power, sole in its own name or in the name of a separate agreement as indicated on page 1, the terms of the assignment are described in a separate writing(s) and not as provided below.

- A. This Contract represents a sale by Seller to Buyer on a time price basis and not on a cash basis.
B. The assignments contained in this Contract are true and correct.
C. The down payment was made by the Buyer in the manner stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was loaned or paid to the Buyer by Seller or Seller's representatives.
D. This sale was completed in accordance with all applicable federal and state laws and regulations.
E. The Contract is valid and enforceable in accordance with its terms.
F. The Contract and assignments on this Contract are not forged, fictitious or assumed, and are true and correct.
G. The Contract is valid in the Seller's face of all here, is not subject to any claims or defenses of the Buyer, and may be sold or assigned by the Seller.
H. A completely filled-in copy of this Contract was delivered to the Buyer at the time of execution.
I. The Vehicle has been delivered to the Buyer in good condition and has been accepted by Buyer.
J. Seller has or will perfect security interest in the Property in favor of the Assignee.
K. If any of these warranties is breached or untrue, Seller will, upon Assignee's demand, purchase this Contract from Assignee. The purchase shall be in cash in the amount of the unpaid balance (including finance charges) plus the costs and expenses of Assignee, including attorney's fees.
Seller will indemnify Assignee for any loss sustained by it because of judicial set-off or as the result of a recovery made against Assignee as a result of a claim or defense Buyer has against Seller.

Seller waives notice of the acceptance of this Assignment, notice of non-payment or non-performance and notice of any other remedies available to Assignee.

Assignee may, without notice to Seller, and without affecting the liability of Seller under this Assignment, compound or release any rights against and grant extensions of time for payment to be made to Buyer and any other person obligated under this Contract.

UNLESS OTHERWISE INDICATED ON PAGE 1, THIS ASSIGNMENT IS WITHOUT RECOURSE. WITH RECOURSE: If this Assignment is made "with recourse" as indicated on page 1, Assignee takes this Assignment with certain rights of recourse against Seller. Seller agrees that if the Buyer defaults on any obligation of payment or performance under this Contract, Seller will, upon demand, reimburse the Contract for the amount of the unpaid balance, including financial charges, due to that time.

Unsworn Affidavit of Service

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Jacquelyn J. LaVaque, declare under penalty of perjury that on September 27, 2004 , I mailed copies of the attached **Notice of Hearing and Motion for Relief From Stay, Memorandum of Law in Support of Motion, and proposed Order** by first class mail, postage prepaid, to each entity named below at the address stated below for each entity:

Charles Barnes
Roberta Barnes
1002 Blair Avenue
St. Paul, MN 55104

Wayne G. Nelson, Esq.
5500 Wayzata Blvd., Room 1025
Minneapolis, MN 55416

Jasmine Z. Keller
Chapter 13 Trustee
12 South Sixth St. #310
Minneapolis, MN 55402

U.S. Trustee
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Stewart, Zlimen & Jungers, Ltd.
Attn: Linda J. Jungers, Esq.
430 Oak Grove Street, #200
Minneapolis, MN 55403

Executed on: September 27, 2004

Signed: _____


Jacquelyn J. LaVaque
Foley & Mansfield, P.L.L.P.
250 Marquette Avenue
Suite 1200
Minneapolis, MN 55401

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 13
Case No. 02-90073 GFK

Charles D. Barnes and
Roberta D. Barnes,

Debtors.

ORDER FOR RELIEF
FROM STAY

The above-entitled matter came before the Court for hearing on the motion of Capital One Auto Finance ("Movant") seeking relief from the automatic stay of 11 U.S.C. 362(a) of the Bankruptcy Code. Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds that cause exists entitling Movant to the relief requested.

NOW, THEREFORE, IT IS HEREBY ORDERED that the automatic stay of 11 U.S.C. 362(a) of the Bankruptcy Code is immediately terminated as to Movant, and Movant is [authorized to enforce its security interest as provided by contract and state law in the subject:](#)

1999 Ford Truck Econoline E350, VIN No. 1FBSS31L3XHB43134

Notwithstanding Fed. R. Bankr. 4001(a)(3), this order is effective immediately.

Dated: _____

Gregory F. Kishel
United States Bankruptcy Judge