UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:	)	
	)	
JEREMY WADE LAWSON	)	CASE NO. 05-42271
STACI JO LAWSON	)	
	)	
Debtors	)	

DECISION AND ORDER

At Fort Wayne, Indiana, on October 3, 2007.

On September 12, 2007, the court held a continued hearing regarding confirmation of the debtors' proposed chapter 13 plan and the trustee's objection thereto. Shortly prior to the hearing, on August 31, 2007, the debtors filed an amended chapter 13 plan, which they then modified on September 11, 2007. At the hearing the court was advised that the only creditor whose rights were adversely affected by the new proposal was Washington Mutual. Accordingly, on September 19, 2007, the court entered an order indicating that the August 31 plan, as modified, could be confirmed without further hearing following twenty days notice to Washington Mutual of the opportunity to object thereto. This order was based upon the court's impression that since only Washington Mutual was being adversely affected by the proposal – and other creditors continued to be treated in the same fashion as set forth in the prior plan – only Washington Mutual needed to be given notice of the opportunity to object to confirmation. See, In re Gibson, 2007 WL 1467221 *1 (Bankr. N.D. Ind. 2007).

On September 25, 2007, Chrysler Financial filed an objection to confirmation of the debtors' new plan. This objection complains that the interest rate at which its secured claim is to be paid is less than what the parties had previously agreed to. Given that Chrysler had not objected to the

debtors' previous plan and the court had been advised that the current plan did not adversely affect its treatment – or the treatment of any creditor other than Washington Mutual – the court was initially inclined to overrule the objection, based upon the proposition that it had been waived or forfeited by virtue of the failure to object to the prior plan. Cf., Matter of Wright, 340 B.R. 774 (Bankr. N.D. Ind. 2006); Matter of Lawson, Case No. 05-42271, Decision dated March 1, 2006. Before doing so, however, the court took the opportunity to compare the August 31 plan with its predecessor. Upon doing so the court discovered that the interest rate Chrysler Financial is to receive on account of its secured claim is a full point lower in the debtors' most recent plan than in its predecessor – 8.25% versus 9.25%.

A decrease in the rate of interest which will be paid to a creditor is a material change in that creditor's treatment and adversely affects that creditor's rights. See, In re Gibson, 2007 WL 1467221 *1 (Bankr. N.D. Ind. 2007). Accordingly, the court was apparently misinformed concerning the nature of the changes set forth in the debtors' most recent plan and it should not have limited the opportunity to object thereto to only Washington Mutual. Instead, all of the creditors whose rights were adversely affected by the August 31 plan, as modified, should have been given notice of that plan, the changes which were made in the treatment they would receive, and the opportunity to object thereto. Id.

It is clear that more than just Washington Mutual was entitled to the opportunity to object to the debtors' most recent plan. Chrysler Financial was as well. Additionally, there might be other creditors that were also entitled to notice. The court does not know because it has not made a line-by-line comparison of the currently proposed plan with its predecessor. Nonetheless, the court is concerned that the currently proposed plan might adversely affect the rights of other creditors who

either did not receive notice of it or, in light of the court's order of September 19, did not believe that they were entitled to object.

The court also has concerns about whether the notice that the debtors served upon Washington Mutual contains the information required by the court's local rules. See, N.D. Ind. L.B.R. B-2002-2. Although a copy of the plan and the modification accompanied that notice, the notice does not specifically indicate how the plan changes the rights of any particular creditor or class of creditors. Under the circumstances presented by this case, it should have done so. See, N.D. Ind. L.B.R. B-2002-2(c)(3). Furthermore, the court's order of September 19, 2007, specifically required debtors' counsel to serve notice in accordance with the provisions of paragraph (e) of the court's local rule 2002-2. Therefore, in addition to all of the other information required by the local rule, e.g., N.D. Ind. L.B.R. B-2002-2(c), the notice must also be accompanied by a copy of the order authorizing the procedure. N.D. Ind. L.B.R. B-2002-2(e). The court's order of September 19 did not accompany the notice that was served. Accordingly, even if Washington Mutual had been the only creditor entitled to be served with notice of the opportunity to object, the notice that has been served is insufficient.

Under the circumstances presented by this case, where the court was misinformed concerning the nature of the changes made by the debtors' amended plan, as modified, and therefore limited the scope of creditors who were to be served with notice of it and of the opportunity to object thereto, and where the notice that has been served does not comply with the court's local rules, the court believes the most appropriate solution is to, in essence, start the entire confirmation process over. Accordingly, by separate order, the court will schedule a hearing at which it will consider confirmation of the amended plan filed on August 31, 2007, as modified on September 11, 2007,

together with any objections thereto, and giving all creditors and parties in interest the opportunity to file objections to confirmation. Since Chrysler Financial has already objected to confirmation of the currently proposed plan, it need not renew that objection or file it again. It will be considered at the forthcoming hearing along with any other objections that might be filed.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court