

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
WIESTAW B SZMUC,) CASE NO. 13-22372 JPK
) Chapter 7
Debtor.)

ORDER CONCERNING MOTION TO RE-OPEN CASE
AND MOTION FOR RELIEF FROM STAY [“MOTION”]

The Motion was filed as Record No. 13 on December 30, 2013, by Allstate Insurance Company, by counsel. The Motion is a near textbook case on how not to procedurally practice in this court.

First, the Motion violates N.D.Ind.L.B.R. B-9013-1(a) by combining a request to reopen the case with a motion for stay relief. Secondly, the movant’s counsel did not comply with N.D.Ind.L.B.R. B-9010-2(a)(1) concerning entry of appearance – the court has issued a separate order in this regard. Third, while the required fee to reopen the case was paid, no separate fee was paid for the motion for relief from stay, and thus there is presently outstanding an unpaid fee which is not in an insignificant amount. Fourth, the Motion seeks relief from the stay in a Chapter 7 case, a matter which is governed by N.D.Ind.L.B.R. B-2002-2(a)(4), which requires the utilization of a “drop-dead” notice format in accordance with that rule.

The foregoing are the procedural problems with respect to the Motion. Now let’s address the Motion’s substance.

The Motion appears to concern a common circumstance in which a Chapter 7 debtor is the defendant or the potential defendant in an action for personal injury and/or property damage with respect to which the debtor may have had insurance coverage. The Motion on its face seeks to limit its scope to the debtor’s insurance coverage. It is first an arguable proposition as to whether or not the action contemplated by the Motion implicates 11 U.S.C. § 362(a) et al, so long as the creditor does not in any manner seek to assert a claim against the debtor

individually but only seeks to assert a claim to the extent of available insurance coverage. Next, in the context of this case, by operation of 11 U.S.C. § 362(c)(2)(C), the 11 U.S.C. § 362(a) stay is no longer operative because the debtor has been granted a discharge. As a result of the discharge, the post-discharge injunction provided by 11 U.S.C. § 524(a)(2) is now operative – if the Motion means what it says and limits the contemplated action to potential insurance coverage, that action will not contravene the post-discharge injunction.

The bottom line is the Motion presents a claim to the court in a totally improper procedural manner, and requests relief which is not necessary if the Motion accurately states the scope of the proposed action. Because the reopening fee has been paid, the court will grant that portion of the Motion, and will reopen the case. Because the Motion is otherwise improper/unnecessary, the court will deny the request for stay relief.

IT IS ORDERED as follows:

1. The Record No. 13 Motion is granted to the extent of its request to reopen Case No. 13-22372. The case is reopened for the purpose of the court proceeding with respect to the balance of that Motion.
2. Any other request for relief in the Motion – apart from reopening of the case – is denied.
3. Upon the docketing of this order of record, the clerk shall close Case No. 13-22372.

Dated at Hammond, Indiana, on January 17, 2014.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor
Trustee, US Trustee
Robert G Grant, 3529 N. Washington Blvd., Indianapolis, IN 46205