

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
PETER JOHN BAKAS) BANKRUPTCY NO. 05-62956 JPK
) Chapter 13
Debtor.)

ORDER ON MOTION FOR RELIEF FROM ORDER OF DISMISSAL
AND REINSTATEMENT OF CHAPTER 13

On September 20, 2005, the debtor and the Chapter 13 Trustee entered into an Agreed Entry That Debtor's Chapter 13 Plan Should Not be Confirmed and Leave to Amend and Order ("Agreed Entry"). This order provided the debtor with a deadline of October 15, 2005 to file an amended plan. On October 10, 2005, the debtor, by counsel, filed a request for extension of time to file the amended plan, which the Court granted by order entered on October 12, 2005, making the deadline for filing the amended plan November 1, 2005. Nothing was filed, and on November 17, 2005 the Court entered an order dismissing the case for failure to file an amended plan. On November 18, 2005, the debtor, by counsel, filed the Motion designated in the title of this order. The stated grounds for the motion are that an immaterial modification entered into or to be entered into with the Indiana Department of Revenue – apparently filed on November 29, 2005 – made the filing of an amended plan unnecessary.

This is a relatively common occurrence in this court. A Court order requires the filing of an amended plan, but for reasons unknown to the Court, debtor's counsel deems the filing of an amended plan to be unnecessary, and therefore fails to comply with a deadline for the filing of an amended plan. The Court then dismisses the case for failure to comply with an order, and then the Court is met with a motion to reinstate the case on the assertion that the amended plan was unnecessary due to certain alleged circumstances. This gets real old real quickly.

IF A DEBTOR'S COUNSEL DEEMS THE FILING OF AN AMENDED PLAN WHICH WAS PREVIOUSLY ORDERED TO BE FILED BY THE COURT TO BE NO LONGER NECESSARY,

THEN IT IS INCUMBENT UPON THE DEBTOR'S COUNSEL TO FILE SOMETHING OF RECORD PRIOR TO THE DEADLINE FOR THE FILING OF THE AMENDED PLAN WHICH ADVISES THE COURT OF COUNSEL'S VIEWS, AND REQUESTS THAT THE ORDER REQUIRING THE FILING OF THE AMENDED PLAN BE MODIFIED OR VACATED.

We are now confronted with a situation in which a case has been dismissed, resulting in release of the automatic stay. The debtor's counsel did provide notice to all creditors and parties in interest of the motion for reinstatement, and no objections were filed – although this is not the procedure which this Court follows, it will be acceptable in this instance. A separate order will be entered reinstating the case.

IT IS ORDERED that the above-designated motion is granted, by separate order.

IT IS FURTHER ORDERED that a hearing will be held on **February 6, 2006, at 3:00 P.M.** to determine if in fact the immaterial modification entered into with the Indiana Department of Revenue moots the need to file an amended plan addressed by the Agreed Order previously entered into between the Chapter 13 Trustee and the debtor. At that hearing the Court will impose a sanction upon debtor's counsel of a minimum of \$200.00.

Dated at Hammond, Indiana on January 12, 2006.

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

Distribution:
Debtor, Attorney for Debtor
Trustee, U.S. Trustee