



PUBLIC NOTICE

NOTICE CONCERNING REAFFIRMATION AGREEMENTS UNDER 11 U.S.C. §524

THIS NOTIFICATION AFFECTS ONLY THOSE CASES ASSIGNED TO JUDGE J. PHILIP KLINGEBERGER IN THE HAMMOND DIVISION OF THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF INDIANA; IT DOES NOT AFFECT CASES ASSIGNED TO THE HONORABLE KENT LINDQUIST.

Since the inception of the BAPCPA, I have reviewed every filed reaffirmation agreement and have issued specific orders regarding my interpretation of the requirements of 11 U.S.C. §524 with respect to those agreements. Effective with reaffirmation agreements filed on and after December 1, 2006, this review will cease. As of that date, only reaffirmation agreements submitted by separate motion pursuant to subparagraph E of the Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Indiana, dated October 14, 2005 will be reviewed in any manner.

Pursuant to subparagraph E of the Order Adopting Interim Bankruptcy Rules and Amending Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Indiana, dated October 14, 2005, the Court will not hold a hearing concerning any reaffirmation agreement unless a motion requesting a hearing, signed by the debtor – and if the debtor was represented by counsel during the negotiation of the agreement, by that counsel – is filed as a separate document, **not incorporated into any other filing**. Unless a separate motion is filed in accordance with the foregoing Rule, no action apart from the mere docketing of the reaffirmation agreement will be undertaken by the Court, and the discharge of the debtor(s) will be entered in the ordinary course of case processing without consideration of the reaffirmation agreement. In addition, despite the filing of a separate motion, the Court will not hold a hearing unless Part D, as provided for by 11 U.S.C. §524(k)(6)(A), is fully completed. In completing Part D, please be mindful of the fact that the expenses stated in the form are **exclusive** of the amount to be paid pursuant to the reaffirmation agreement, and thus that this line in Part D will not mirror the sum of expenses in Schedule J if reaffirmation agreement payments are included in Schedule J.

The following is my interpretation of 11 U.S.C. §524, as modified by the BAPCPA. In order for a reaffirmation agreement to be effective, it must be approved by the Court after a hearing if:

(1) The debtor was not represented by an attorney during the course of negotiating the agreement, which will be conclusively presumed if the debtor's attorney of record does not sign Part C as provided by 11 U.S.C. §524(k)(5)(A); (2) A presumption of undue hardship arises under 11 U.S.C. §524(m)(1), as evidenced by the completed Part D, unless the creditor with whom the reaffirmation agreement is entered into is a credit union as defined by section 19(b)(1)(A)(iv) of the Federal Reserve Act. If the reaffirmed debt is a consumer debt secured solely by real property **and** the debtor was not represented by an attorney during the course of

negotiating the agreement, the hearing will be limited to the dictates of 11 U.S.C. §524(d)(1). The combination of the foregoing, FYI, leads to the seemingly inconsistent result that a debtor represented by counsel during the negotiation of an agreement concerning a consumer debt secured solely by real property, whose Part D raises the presumption of undue hardship, must have a hearing to overcome the presumption, while a debtor not represented by counsel during the negotiation of an agreement concerning a consumer debt secured solely by real property is only subject to the limited “awareness of consequence” hearing under 11 U.S.C. §524(d)(1). I didn’t write the BAPCPA – that’s what I construe §524 to dictate in its present form.

The Court’s hearing will be limited to the provisions of 11 U.S.C. §524(d) and 11 U.S.C. §524(m)(1); the Court will not review the adequacy of the disclosures required by 11 U.S.C. §524(k). If the disclosures are inadequate or inaccurate, the Court’s order approving the reaffirmation agreement cannot be construed as a judicial determination that the agreement complies with 11 U.S.C. §524(k); the alleged failure of the agreement to comply with 11 U.S.C. §524(k) will be an affirmative defense available to the debtor in an action brought by the creditor to enforce the agreement. Finally, the Court will never issue any order concerning a reaffirmation agreement unless a hearing is requested and a hearing is deemed necessary by the Court under the foregoing criteria, i.e., there will be no hearings seeking to obtain a “comfort” order. If a motion for a hearing is filed and no hearing is set, it means that the agreement is what it is and is as effective as it is without a hearing being necessary under 11 U.S.C. §524.

J. PHILIP KLINGEBERGER
JUDGE, U.S. BANKRUPTCY COURT

Dated: November 21, 2006