

CURRENT TOPICS OF INTEREST FROM A CREDITOR'S PERSPECTIVE

Chapter 13

- I. Adequate protection payments
 - a. Monthly payment amounts
 - b. Equal payments
 - 1. Attorney fees
 - c. Standing Orders and Local Rules
 - d. Accounting for direct payments from debtor

- II. Relief from the Automatic Stay
 - a. Motions to confirm termination of the stay
 - b. Motions to Extend the Automatic Stay
 - c. Agreed Motions for Relief
 - d. Motions based upon payment or failure to provide insurance.
 - e. Motions based upon vehicle not being necessary for Debtor's reorganization.
 - 1. Luxury vehicles
 - 2. Recreational vehicles
 - 3. Debtor has more vehicles than necessary
 - f. Motions for insurance proceeds

- III. Objections to Confirmation
 - a. Value – retail or near retail still the rule for non 910 claims
 - b. Interest rate – *Till* case is still the law(prime plus a risk factor)
 - 1. Low interest contracts such as 0% - how are they handled?
 - c. Equal Payments
 - d. Lien retention (where secured value is paid prior to Discharge)
 - e. 910 claim issues
 - This the famous “hanging paragraph” that causes all the controversy
 - For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.
 - 1. Negative equity issues.
Courts are handling these in three different ways.

- i. Negative equity is included and the creditor receives the full contract payoff as it claim.
 - ii. Claim is bifurcated and negative equity portion is treated as an unsecured claim and the remainder of the claim is paid in full.
 - iii. Claim is treated as non 910 claims and the vehicle is valued at the time of filing and the claim is based upon this amount.
 - 2. Additional contracts such as mechanical breakdown insurance, credit life, and gap insurance.
 - 3. Exemption for work vehicles
 - 4. Is the vehicle used by the debtor?
 - f. Leases treated as retail purchase agreements.
- IV. Surrender in Full Satisfaction
 - a. In full satisfaction of the claim or the debt – majority of cases are now disallowing this practice.
 - 1. *In re Wright* – 7th Circuit decision – July 3, 2007
- V. Claims filing issues
 - a. Who has standing to file the claim?
 - b. What needs to be attached?
 - c. How to defend an attack
 - d. Securitization of loan portfolio issues
- VI. Plan modification - post confirmation surrender cases.
 - a. Unsecured proof of claims may not be allowed, unless claim was drawn up properly on the front end.
- VII. Stay violation issues
 - a. Prevention strategies

Chapter 7

- I. Reaffirmation and redemption
 - a. Reaffirmation Agreements and Motions
 - 1. Filing issues
 - 2. When is a hearing necessary?
 - 3. Is the Attorney's signature necessary?
 - 4. Presumption of Undue Hardship (what are the implications)
 - b. Redemption following conversion
 - 1. Valuation

2. Challenge valuation and challenge the fact that counsel for the debtor is now representing the redemption company.

3. Some lenders are modifying the terms of the original agreement in reaffirmation agreements.

II. Leases

- a. Assumption
- b. Stipulation and Order Approving Lease Assumption
- c. Rejection and Stay Termination

III. Termination of the stay

- a. Termination of the stay as to the debtor/property of the estate
- b. State law issues

Sid Scheinberg
Glast, Phillips & Murray PC
www.glastphillips.com
2200 One Galleria Tower
13355 Noel Road LB 48
Dallas, TX 75240-1518
(972)419-7177 direct dial
(972)419-8329 fax
(214)769-2759 mobile
sid@gpm-law.com