

“But I Don’t WANT To Have To Attend A Hearing!!”
Reaffirmation Agreements Under BAPCPA Re-Visited

Lou Jones Breakfast Club
April 8, 2008
Hon. Susan V. Kelley
Hon. Pamela Pepper

I. When Will There NEVER Be A Hearing?

- * When the debtor is represented by counsel, and the debt to be reaffirmed is owed to a credit union—§ 524(m)(2)¹
- * When the debt to be reaffirmed is secured by real property—§ 524(c)(6)(B)
- * When the debtor is assuming a lease—Some courts apparently have treated these like reaffs, but we haven’t

II. When Will There ALWAYS Be A Hearing?

- * When the debtor is not represented by counsel at all and the debt to be reaffirmed is not secured by real property
- * When the debtor does not appear to have been represented by counsel at the negotiation of the reaff—in other words, no attorney signed the Form 240A—and the debt to be reaffirmed is not secured by real property

III. Why Do I (Or My Clients) Have To Show Up For THIS? (Or, Common Problems with Reaff Agreements that Lead to Hearings)

- * Person filling out the reaffirmation agreement forgets to indicate that the debt is with a credit union (box to check on the very first page of the agreement);
- * Person filling out the agreement neglects to put in the monthly amount the debtor will be paying (somewhere in Part I of the agreement);

¹ The question of whether the debt to be reaffirmed is owed to a credit union relates solely to whether the presumption of undue hardship arises, such that the court cannot disapprove the agreement without notice and a hearing. If the debtor is *pro se*, and the debt to be reaffirmed is owed to a credit union, the court holds a hearing § 524(c)(6).

- * Debtor's Schedule J indicates that the monthly payment is \$500, but reaffirmation agreement indicates that it's \$100, and there's no explanation in Part B(2) of the reaffirmation agreement indicating whether the agreement has changed the payment/interest rate/whatever;
- * No one has marked any box under Part C: Certification of Debtor's Attorney to show whether the agreement does or does not give rise to a presumption of hardship;
- * **The numbers in Part D do not match the numbers on Schedules I and J, and there's no explanation, OR there are NO numbers in Part D AT ALL;**
- * **When one subtracts the debtor's expenses from her income, it appears that she does not have enough money to make the reaffirmed payment, and there is NO EXPLANATION of how she can make the payment—not on the blank lines on Part D, not in an attached letter, not anywhere.**

IV. What Can I Do To Avoid Having to Show Up, or Having My Client Having to Miss Work and Show Up?

- * Check the reaffirmation agreement before it gets filed;
- * Make sure that Part D has been filled out completely, including any explanation of additional income or reduction in expenses;
- * If the numbers on Part D are different than the numbers on Schedules I and J, give a short explanation of why (on the form, or on an attached letter);
- * If your client's budget looks, from the schedules or Part D, as if the client can't make the reaffirmation payment, give an explanation somewhere—Aunt Ethel will lend money, will work additional hours, have surrendered car, won lottery, whatever.

V. Other Odds and Ends

- * Consider the item securing the debt your client wishes to reaffirm. If it is their 1994 Pontiac and they need it to get back and forth to work, good. If it is the big-screen TV and they think that reaffirming the debt will somehow cure their credit woes so that they can buy a house

the week after their discharge, a discussion may be in order.

- * Do not call chambers and demand to know why you or your client are being made to show up. The judges schedule hearings when the statute requires that they do—when the budget does not seem to support the payment. If you demonstrate how your client plans to make the payment, we won't schedule the hearing.
- * We don't want your clients to miss work, either!!!