

NATIONAL BANKRUPTCY CONFERENCE

*A Voluntary Organization Composed of Persons Interested in the
Improvement of the Bankruptcy Code and Its Administration*

January 5, 2006

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By Facsimile

The Honorable James R. Langevin
House of Representatives
Washington, D.C. 210515

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Re: Proposed Amendment to
Bankruptcy Code Section 506(a)(2)

Dear Mr. Langevin:

The National Bankruptcy Conference¹ has studied the proposed amendment to Bankruptcy Code § 506(a)(2) that would provide an exception for valuations of goods to be redeemed by an individual debtor in a chapter 7 case. We believe that the proposed amendment would improve the Bankruptcy Code while maintaining an appropriate balance between the interests of debtors and creditors; however, the amendment still leaves some issues unresolved that a more extensive revision of the section could address.

As you know, Congress amended § 506 effective on October 17, 2005, inserting § 506(a)(2) into the Code. That amendment establishes the method of valuation of personal property in individual debtor cases in both Chapter 7 and Chapter 13. Under that section, the value of property securing such a claim is

determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal family or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value was determined.

11 U.S.C. § 506(a)(2).

This valuation method applies when consumer debtors in Chapter 7 cases wish to retain their property by redeeming the goods under § 722 of the Code. That section, amended only slightly in 2005, provides that the debtor may redeem exempt or abandoned property from liens securing dischargeable consumer debts "by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption." The final phrase was added to the section as a part of the 2005 Bankruptcy Amendments. The phrase

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¹ See the attached for a description of the National Bankruptcy Conference.

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reflects the overwhelming majority of the decisions under the section that had held that redemption required a lump sum payment by the debtor to the creditor.

Redemption essentially operates as a purchase of the goods by the debtor from the secured creditor. It is a transfer of the property in lieu of the creditor acquiring possession of the property followed by the sale of the goods under Article 9 of the Uniform Commercial Code. These sales must be conducted in a commercially reasonable manner, but they do not generate amounts anywhere near retail or replacement values. The 2005 amendment to § 506(a)(2) artificially inflates what a creditor would receive when its collateral is liquidated through the redemption process.

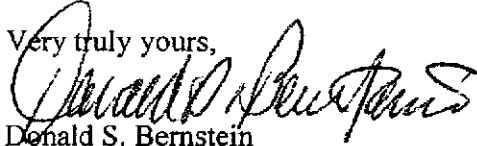
The National Bankruptcy Conference believes that an amendment to § 506(a)(2) that would establish liquidation value as the applicable standard for redemption is most consistent with generally accepted bankruptcy policy and would further the purposes of the proposed bill. Similarly, the right of redemption should be available to all individual debtors, regardless of the chapter in which their case is proceeding. This could be accomplished by relocating § 722 to chapter 5 of the Bankruptcy Code. This more extensive amendment is preferable to the proposal because it would set a redemption valuation standard for all cases under the Code.

This valuation standard would enhance the ability of debtors to redeem property while allowing their secured creditors to realize the value of their claims. Maintaining the valuation method set out in the current version of § 506(a)(2) unnecessarily discourages the use of redemption.

The National Bankruptcy Conference urges you to consider expanding the proposed amendment to § 506(a)(2) so that the positive change in the Code that would result from the proposal applies in cases under all of the chapters. Expanding the reach of the amendment to all chapters also will serve to discourage debtors from making the selection of the chapter for their case solely on the basis of the availability of redemption.

Please feel free to contact the undersigned at (212) 450-4092, or David Lander, Esq., the Chair of the Individual Debtor Committee of the Conference at (312) 552-6067, should you have any additional questions regarding this matter.

Very truly yours,


Donald S. Bernstein
Chair

Attachment

cc: The Honorable F. James Sensenbrenner
The Honorable John Conyers, Jr.
The Honorable Chris Cannon
The Honorable Melvin L. Watt