Bankruptcy Judges' Panel

Friday, June 7, 2019

The Honorable Rebecca B. Connelly

Chief Judge, U.S. Bankruptcy Court for the Western District of Virginia

The Honorable Paul M. Black

Judge, U.S. Bankruptcy Court for the Western District of Virginia

Materials Outline:

I. Motions to Sell Free and Clear of Liens; 11 U.S.C. § 363(f)

A. Section 363(b) and section 363(c) of the Bankruptcy Code permit the sale of property of the estate. *See* 11 U.S.C. § 363(b)–(c).

B. Property of the estate may be sold under section 363(b) or (c) free and clear of any interest in such property of the estate of any entity other than the estate.

   a. Such a sale may occur only if one of five conditions are met as provided in § 363(f):

      i. Applicable nonbankruptcy law permits sale of such property free and clear of such interest; 11 U.S.C. § 363(f)(1).

         1. This condition is often absent. Non-bankruptcy law rarely permits sale of property free and clear of interests in that property. *See, e.g.*, *In re Silver*, 338 B.R. 277, 280 (Bankr. E.D. Va. 2004) ("Section 363(f)(1) is inapplicable in this case because there is no nonbankruptcy law that permits sale of the property free and clear of interests"). *But see In re Collins*, 180 B.R. 447, 450 n.3 (Bankr. E.D. Va. 1995) ("[W]e can find no prohibition under Virginia law rendering this type of sale impermissible and therefore, the requirement under § 363(f)(1) has been met.").

      ii. Such entity consents; 11 U.S.C. § 363(f)(2).

         1. This is perhaps the easiest and least frequently litigated condition given the consent of the party who has the interest in property.

         2. Silence or failure to respond may not constitute consent for purposes of this subsection. *See, e.g.*, *In re DeCelis*, 349 B.R. 465, 467 (Bankr. E.D. Va. 2006); *Silver*, 338 B.R. at 280–81 ("I am reluctant to accept silence as consent where, as here, the proceeds are not sufficient [to pay the liens]."); *In re Takeout Taxi Holdings, Inc.*, 307 B.R. 525, 534–35 (Bankr. E.D. Va. 2004). *But see In re Peanut Corp. of Am.*, No. 09-60452, 2009 WL 8757732, at *2 (Bankr. W.D. Va. Oct. 2, 2009).

      iii. Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; 11 U.S.C. § 363(f)(3).

1. Some courts define "value" as the face amount of the liens. *See, e.g.*, *In re Riverside Inv. P'ship*, 674 F.2d 634, 640 (7th Cir. 1982).
2. Other courts, however, "[u]tilizing an analysis which focuses on § 506(a)," have "approved sales where the price is lower than the face amount of liens, but greater than the secured value of the claims." *Collins*, 180 B.R. at 450; *King v. Bd. of Supervisors of Fairfax Cty. (In re A.G. Van Metre, Jr., Inc.)*, 155 B.R. 118, 120 (Bankr. E.D. Va. 1993).

iv. Such interest is in bona fide dispute; 11 U.S.C. § 363(f)(4).

1. A common standard is that courts must determine "whether there is an objective basis for either a factual or legal dispute as to the validity of the debt." *In re Octagon Roofing*, 123 B.R. 583, 590 (Bankr. N.D. Ill. 1991) (citing *In re Busick*, 831 F.2d 745, 750 (7th Cir. 1987)).
    a. "[T]his standard does not require the Court to resolve the underlying dispute, just determine its existence." *Collins*, 180 B.R. at 452.
    b. "Courts utilizing this definition have held the parties to an evidentiary standard; evidence must be provided to show factual grounds that there is an "objective basis" for the dispute." *Id.*; *see also Takeout Taxi Holdings, Inc.*, 307 B.R.at 533 ("The secured creditor is entitled to some information as to why the lien is challenged so that he may defend his interests appropriately. Merely reciting this conclusion does not suffice to apprise the secured creditor of the basis for that conclusion. Nor is it immediately clear that questioning the validity of a lien rises to the standard set out in § 363(f)(4), that there be a 'bona fide dispute.' This motion would not survive a motion under F.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief could be granted as incorporated into F.R.Bankr.P. 7012(b).").

v. Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest; 11 U.S.C. § 363(f)(5).

1. Section 363(f) "specifies a *money* satisfaction, which suggests that the interest must be reducible to a claim." *In re WBQ P'ship*, 189 B.R. 97, 106 (Bankr. E.D. Va. 1995).
    a. "For this reason, § [363](f)(5) would not permit a bankruptcy trustee to sell the land free of the restrictive covenant." *Id.*
2. Example: In *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 585 (4th Cir. 1996), the Fourth Circuit found no reason to disagree with the district court's adoption of the bankruptcy court's proposed finding that a chapter 11 debtor could, pursuant to section 363(f)(5), move the bankruptcy court to extinguish Coal Act successor liability.
3. It could be argued that this subsection makes the others irrelevant. *Cf. Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25 (B.A.P. 9th Cir. 2008).

C. What Are "Interests in Property"?

a. "The Code does not define the kinds of interests in property that [§ 363(f)] is intended to encompass." *Leckie Smokeless Coal Co.*, 99 F.3d at 581.

b. The Fourth Circuit has rejected an "unduly broad interpretation" of this phrase to interests in property. *Id.*

c. A "lien" is clearly such an interest in property. *See* 11 U.S.C. § 363(f)(3)

d. In general, "courts have recognized that general, unsecured claims do not constitute 'interests' within the meaning of § 363(f)." *Hutchinson v. McGee (In re Hutchinson)*, 5 F.3d 750, 756 n.4 (4th Cir. 1993).

e. The Fourth Circuit has rejected the argument that section 363(f) is limited to in rem interests. *Leckie Smokeless Coal Co.*, 99 F.3d at 582; *see also P.K.R. Convalescent Ctrs. v. Va., Dep't of Med. Assistance Servs.* (*In re P.K.R. Convalescent Ctrs*), 189 B.R. 90, 92–94 (Bankr. E.D. Va. 1995).

f. A categorical definition is difficult and impracticable; a court must make the determination on the facts of each case. *Leckie Smokeless Coal Co.*, 99 F.3d at 582.

D. Appeal of Orders Authorizing Sale; 11 U.S.C. 363(m)

a. Section 363(m) provides that "reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale . . . of property does not affect the validity of a sale . . . to an entity that purchased . . . in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal."

b. A district court ruled that an appeal was moot in a case in which a party appealing an order authorizing a sale pursuant to section 363 did not seek a stay of the order pending appeal and the purchaser was a good-faith purchaser. *Key Bank, N.A. v. Internal Revenue Serv. (In re Lake Placid Co.)*, 78 B.R. 131, 134 (W.D. Va. 1987).

E. Filing Fee; When Required

a. The Bankruptcy Court Miscellaneous Fee Schedule requires payment of a $181 fee for a motion to sell property of the estate free and clear of liens under 11 U.S.C. § 363(f).

i. Accordingly, this fee is not collected if the sale is not free and clear of liens and if the sale is not a sale of property of the estate.

II. Upcoming Amendments to the Federal Rules of Bankruptcy Procedure; Effective December 1, 2019

A. Rule 4001(c)—Obtaining Credit in Chapter 13

a. Rule 4001(c)'s proposed amendment will specifically exclude chapter 13 debtors from the requirements of Rule 4001(c).

b. New Rule subdivision (c)(4) would state the rule does not apply in chapter 13 cases.

i. The Committee Note notes, however, that "[t]his amendment does not speak to the underlying substantive issue of whether the Bankruptcy Code requires or permits a chapter 13 debtor not engaged in business to request approval of post-petition credit."

B. Rule 2002(g), Rule 9036, and Official Form 410 (Proof of Claim)—electronic noticing

a. The amended Proof of Claim form (Official Form 410) will permit claimants to opt in to electronic noticing at a specified e-mail address.

i. In Part 1, in the box questioning "Where should notices and payments be sent?" under the space for contact e-mail there will be a check box which

states "Check this box if you would like to receive all notices and papers by email instead of by regular mail."

b. To provide for this email noticing, other rules are proposed to be amended.

i. Rule 2002(g)(1)(A) & (B) are to be amended to change "a mailing address" and "to mail notices to that address" to "an address" and "to receive notices at that address," respectively.

ii. Rule 9036 will be amended to provide that the clerk or "other party" may send electronic notice to registered users of ECF systems or electronically to those who have consented in writing.

iii. The rule explicitly excludes complaints and motions to be served in accordance with Rule 7004.

c. Rule 9036 authorizes service by electronic means to registered users who have consented in writing, excluding service required under Rule 7004.

C. Rule 6007(b)—process for abandoning property under section 554

a. The proposed amendment is to clarify that the process of abandonment is complete upon entry of an order granting a motion to compel abandonment.

b. Proposed amended Rule 6007(b) tracks the language of current Rule 6007(a) concerning service, the objection period, and when the court will set it for hearing.

c. The proposed amendment adds the clarification that the order granting a motion to compel will affect the abandonment without further notice.

D. Rule 9037(h)

a. The proposed amendment would add a new subsection (h) for redacting personal identifiers in documents already filed in bankruptcy courts.

b. The new subsection would require that the movant (i) attach to the motion a document showing proposed redactions; (ii) include docket number or proof of claim number of previously filed document; and (iii) serve the debtor, debtor's attorney, trustee if any, U.S. Trustee, the filer of the unredacted document, and any individual whose information was not redacted.

III. Recent Supreme Court Decisions

***Taggart v. Lorenzen*, No. 18-489, 2019 WL 2331303 (U.S. June 3, 2019).**

Background: Bradley Taggart filed a voluntary chapter 7 bankruptcy petition and ultimately received a discharge. Following the discharge, some of Taggart's creditors resumed prosecution of a state court action against Mr. Taggart. Mr. Taggart's attorney moved to dismiss the action in light of the discharge, but the state court denied the motion. During litigation on liability of attorney's fees in part against Mr. Taggart, Mr. Taggart moved to reopen his bankruptcy case and filed an action to hold the creditors in contempt for violation of the discharge injunction by seeking attorney's fees against him.

Procedural Background: The bankruptcy court denied Mr. Taggart's contempt motion, and Mr. Taggart appealed. The district court reversed and remanded for a determination whether the creditors "knowingly" violated the discharge injunction in seeking the attorney's fees. On remand, the bankruptcy court found the creditors in contempt. The creditors appealed to the bankruptcy appellate panel, which reversed the finding of contempt based on the creditor's good faith belief that the discharge injunction did not apply to the attorney's fee action. Mr. Taggart appealed the BAP decision, and the creditors cross-appealed the earlier district court decision. The Ninth Circuit found no error in the BAP's decision that the creditors' good faith belief that the discharge injunction did not apply insulated the creditors from a finding of contempt. The Ninth Circuit accordingly affirmed the BAP decision, and thus found it need not address the appeal of the district court decision.

Issue Before the Supreme Court: Whether, under the Bankruptcy Code, a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of a civil contempt.

Holding: The U.S. Supreme Court concluded "that neither a standard akin to strict liability nor a purely subjective standard is appropriate" in determining whether to hold a creditor in civil contempt for violations of the discharge injunction. The Court determined that it is in a court's discretion to hold a creditor in contempt for violating the discharge injunction "if there is *no fair ground of doubt* as to whether the order barred the creditor's conduct," or stated differently "if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful."

***Mission Product Holdings, Inc. v. Tempnology, LLC (In re Tempnology, LLC)*, 2019 WL 2166392 (May 20, 2019).**

Background: Mission Product Holdings entered a trademark licensing agreement with Tempnology which allowed Mission to use Tempnology's trademarks in connection with the distribution of clothing and accessories. When Tempnology later filed Chapter 11, it sought to reject its licensing agreement pursuant to section 365 of the Bankruptcy Code.

Procedural Background: The bankruptcy court approved Tempnology's rejection of the agreement and held that such rejection terminated Mission's license to use the trademarks. Upon appeal, the Bankruptcy Appellate Panel reversed, holding that rejection of a trademark licensing agreement does not terminate the licensee's rights, as those rights would survive a breach of contract outside of bankruptcy. The First Circuit again reversed, suggesting that continued use of a trademark after rejection "would frustrate 'Congress's principal aim in providing for rejection': to 'release the debtor's estate from burdensome obligations.'" The Supreme Court granted certiorari.

Issue: Whether a debtor-licensor's rejection of a trademark licensing agreement pursuant to 11 U.S.C. § 365(a) deprives the licensee of its rights to use the trademark.

Holding: The Supreme Court held that rejection of a contract under section 365 has the same effect as a breach outside of bankruptcy and therefore does not rescind rights that the contract previously granted. Accordingly, a debtor-licensor's rejection of a trademark licensing agreement does not revoke the trademark license.

***Obduskey v. McCarthy & Holthus LLP*, 2019 WL 1264579 (U.S. Mar. 20, 2019).**

Background: The law firm of McCarthy & Holthus LLP was hired to conduct a nonjudicial foreclosure action on a home in Colorado. Following the foreclosure, the mortgagor brought an action against his mortgage loan servicer and McCarthy which represented the servicer. Among other claims, the counts included an action alleging violations of the Fair Debt Collection Practices Act, more specifically failure to comply with the verification procedure pursuant to section 1692(g) of the FDCPA.

Procedural Background: The district court granted a motion to dismiss for failure to state a claim, because it found that McCarthy was not a "debt collector" within the meaning of the

FDCPA. The mortgagor appealed, and the Tenth Circuit Court of Appeals affirmed. On further appeal, the Supreme Court granted certiorari.

Issue: Whether the definition of "debt collector" under section 1692a(6) of the FDCPA excludes (with the limited exception for section 1692(f)) entities principally involved in the enforcement of security interests, such as McCarthy's role in the nonjudicial foreclosure.

Holding: The Supreme Court ultimately determined that a business engaged in no more than nonjudicial foreclosure proceedings is not a "debt collector" under the FDCPA, except for the limited purpose of section 1692f(6) of the FDCPA. Accordingly, McCarthy's actions fell outside of the scope of the FDCPA, and the Supreme Court affirmed the decision of the Tenth Circuit.

IV. Pending Supreme Court Case

Opinion on Appeal: *Ritzen Grp. Inc. v. Jackson Masonry LLC*, 906 F.3d 494 (6th Cir. 2018) (*cert. granted* May 20, 2019).

Background: A prospective purchaser, Ritzen Group, moved for relief from the automatic stay to pursue its breach of contract claims against a Chapter 11 debtor in state court. The United States Bankruptcy Court for the Middle District of Tennessee denied the motion and then later resolved the breach of contract claims in the debtor's favor. The prospective purchaser appealed both the order denying relief from the automatic stay and the breach of contract determination. The district court found that the first appeal was untimely and rejected the appeal regarding the breach of contract on the merits. Ritzen Group then appealed that decision.

Procedural Background: Under 28 U.S.C. § 158(a), a bankruptcy court's order may be immediately appealed if it is a "final judgment[], order[], and decree[]" entered in "cases and proceedings." The Appeals Court held that an order denying relief from the stay terminates a proceeding, so it is a final order that must be appealed within fourteen days of the ruling. As Ritzen Group did not appeal the denial of the stay relief within fourteen days, the Court of Appeals held that the appeal was untimely and affirmed the judgments of the district court and the bankruptcy court.

Issue Before the Supreme Court: Whether an order denying a request for relief from the automatic stay is a "final" and immediately appealable order.

V. Small Business Reorganization Act

- **Increases Opportunity to Pursue a Successful Reorganization.**
  - Compared to Chapter 11, the SBRA provides that only the small business debtor may propose a plan of reorganization, thus removing some creditor pressures.
  - The owner of the small business debtor may retain a stake in the company so long as the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests. In a traditional Chapter 11, a debtor must comply with the "absolute priority rule", which requires that any equity holder seeking to reorganize under Chapter 11 must also contribute to the plan to maintain their equity interest. The SBRA removes this constraint, giving small business debtors more flexibility to propose a plan with continuity of ownership.
  - If a trustee or a holder of an unsecured claim objects to the plan, the court cannot approve the plan unless the plan provides that all of the small business debtor's projected "disposable income" to be received during the plan will be applied to make payments under the plan for a period of 3-5 years. Disposable income is income that is not reasonably necessary for the continuation, preservation, or operation of the business debtor.
- **Reduces Procedural Burdens and Costs.**
  - The SBRA eliminates the automatic appointment of an official committee of unsecured creditors. Instead, a committee will only be appointed upon a showing of cause. Because appointed creditors' committees are funded by a debtor, this elimination will dramatically reduce the costs associated with a reorganization.
  - A disclosure statement is also not required unless the court for cause orders otherwise.
- **Increases Oversight and Facilitates Quick Reorganization.**
  - A standing trustee would be appointed in every small business debtor case to perform duties similar to those performed by a Chapter 12 or Chapter 13 trustee and help ensure the reorganization stays on track.
  - The small business debtor must file a plan within 90 days of commencement, which may be extended under limited circumstances. The new timing restriction will

reduce bankruptcy overhead and streamline the process, which may result in reduced costs for the small business debtor.

- An initial status conference would be required in every case within 60 days of commencement "to further the expeditious and economical resolution" of a SBRA case.

VI. The Honoring American Veterans in Extreme Need (HAVEN) Act of 2019

Senators Tammy Baldwin (D-WI) and John Cornyn (R-TX) introduced the HAVEN Act (S. 679) to "secure the economic well-being of veterans and dependents who rely on disability compensation and may be experiencing financial hardship." The Bill would exempt from the calculation of monthly income certain benefits paid by the Department of Veterans Affairs and the Department of Defense. Currently, disability benefits paid by the Department of Veterans Affairs and the Department of Defense are included in the calculation of a debtor's disposable income, increasing the debtor's income subject to the reach of creditors. However, current bankruptcy law exempts Social Security disability benefits from this disposable income calculation. The HAVEN Act seeks to eliminate this unequal treatment of disability benefits and would exclude VA and DoD disability payments made to veterans or their dependent survivors from the monthly income calculation used for means testing. According to the proponents of the Act,

> Disabled veterans have earned their disability-related benefits in defense of our nation, and these disability-related benefits honor their service and the sacrifices that they have made. Forcing debtor beneficiaries to dip into these funds to pay off creditors not only dishonors their service and sacrifice, but also puts taxpayers at risk by increasing the likelihood that the beneficiary and his or her dependents will require public assistance.
>
> The HAVEN Act also complements recent congressional efforts to combat servicemember and veteran mental health issues, addiction, suicide, poverty, and homelessness – all of which are exacerbated by financial hardship.

See Attachment A for a copy of the Proposed Bill.

VII. New Procedures in the Western District and Local Issues

1. Local Rule Amendments

a. Local Rule 1007-1 is amended to make the use of a new Local Form mandatory. The new form is the Certification Regarding Balance of Schedules. The new form is on the Court's

website and was recently revised so that attorneys no longer certify service under penalty of perjury. See Attachment B.

b. Local Rule 1009-1 is similarly amended to make the use of a new Local Form mandatory. The new form is the Certification Regarding Amended Schedules or Statements. The new form is on the Court's website and was recently revised so that attorneys no longer certify service under penalty of perjury. See Attachment C.

c. Local Rule 3015-2 is amended to require the use of the Amended Chapter 13 Plan Cover Sheet and Notice of Hearing. Its use was previously voluntary. See Attachment D.

d. Local Rule 9072-1(E) required counsel who submitted an order to the Court for entry to mail copies of the order to all parties directed by the Court and to certify the same to the Clerk. Counsel is no longer required to certify the mailing to the Clerk under the revised rule.

2. Local Rules 3015-3 and 4004-1

Prior to Confirmation: Local Rule 3015-3(A) requires that prior to a debtor's confirmation hearing or the entry of an initial confirmation order, the debtor must sign the "Affidavit of Debtor(s) Requesting Confirmation of Plan." This Affidavit requires the debtor to affirm that (1) he/she has made all payments to secured creditors, personal property lessors and taxing authorities which have come due since the date the case was filed and that he/she was required to make directly to such creditor; (2) that since the filing of the case, he/she has not been required to pay any domestic support obligation or that he/she has paid all amounts that first became due and payable after the filing of the case that he/she was required to pay under a domestic support obligation; and (3) he/she has filed all federal, state and local tax returns required to be filed for all taxable periods ending during the four year period ending on the date of the filing of the case and for which a return is due as of the date of the Affidavit. The Affidavit must be filed with the Court with a copy delivered to the Chapter 13 Trustee. See Attachment E for Local Form 3015-3A.

Post Confirmation: Local Rule 4004-1(A) requires the debtor to file a "Debtor's Certification of Compliance with 11 U.S.C. §1328" within 60 days of the date the Chapter 13 trustee files the notice of completion of plan payments. The failure to timely file this certification may result in the case being closed without the entry of a discharge. This certification requires the debtor to certify, under penalty of perjury, that he/she has completed an instructional course concerning personal financial management; has not received a discharge in a Chapter 7, 11 or 12

case that was filed within 4 years or a Chapter 13 case filed within 2 years prior to filing of the current Chapter 13 bankruptcy; did not have equity in excess of the statutory amount in the property described in section 522(p)(1) (debtor's homestead); there is no pending proceeding which the debtor may be found guilty of a felony as described in section 522(q)(1)(A) or liable for debt described in section 522(q)(1)(B); and that he/she has paid all amounts due under any domestic support obligation including amounts due before the case was filed and provided for in the Chapter 13 plan or due at any time after the filing of the case. *See* Attachment F for Local Form 4004-1A.

3. Formation of Local Rules Committee

In January 2019, the Court formed a Local Rules Committee which is to be comprised of no fewer than 5 and no greater than 7 voting members, including the clerk of court, the assistant U.S. Trustee (or designee), a member of the WDVA chapter 13 trustee panel and a member of the WDVA chapter 7 trustee panel. The clerk of court and assistant U.S. Trustee would be permanent members, while the other members generally rotate every 2 years.

4. Big Stone Gap Hearings

Effective May 2019, all cases assigned to Big Stone Gap will be set for hearing initially in Abingdon on the Court's regularly scheduled dates in the Abingdon courthouse. For good cause shown, any interested party may request that future hearings in a given case be held in Big Stone Gap.

5. Harrisonburg and Lynchburg Offices No Longer Accepting Cash and Checks

Effective March 2019, the Harrisonburg Clerk's office stopped accepting cash. The Lynchburg Office stopped accepting cash effective May 1, 2019. Any payments (other than electronic payments through CM/ECF) relating to a case filed in Harrisonburg or Lynchburg must be mailed to the Roanoke Clerk's Office.

6. ChapMobile App

Free mobile app that displays hearings and 341 Meetings in a user-friendly format for attorneys and trustees who want to track their hearings while on the go. ChapMobile will allow you to:

- View each judge's Hearing Calendar (for a range of days)
- Search hearings by Case Name or Case Number
- View 341 Meetings by Trustee (for a range of days)
- Search 341 Meetings by Attorney, Case Name, or Case Number
- View Court Locations and Contact Information
- Create your own list of attorneys to view upcoming hearings
- Navigate to another U.S. Bankruptcy Court's Public Mobile Calendar

For instructions on how to download the App, please see the Court's website under News & Announcements category.

7. Court Notifications through GovDelivery

In November 2018, the Court began using a free subscription service through GovDelivery. This service allows subscribers to receive certain notifications by email and/or text message. If you subscribe, you will receive notifications only on the topics that you choose. The options are:

- News and Announcements
- Court Closings/Changes to Court Hearing Schedule
- Memorandum Opinions (*notified when new opinion added to website)*
- CM/ECF Maintenance and Updates

To subscribe, go to the Court's website and click on the Court Notifications button in the center of the page. There you will find instructions on how to subscribe to receive email and/or text message notifications – basically you enter your cell phone number and/or email address and select the topics that you would like to receive notifications on.

8. E-Orders Implementation

All proposed orders must now be uploaded through e-Orders. For instructions on how to upload an order and the required format, see the Court's website under the ECF/Training E-Orders tab.

Attachment A

II

116TH CONGRESS
1ST SESSION

S. 679

To exempt from the calculation of monthly income certain benefits paid by the Department of Veterans Affairs and the Department of Defense.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 2019

Ms. BALDWIN (for herself, Mr. CORNYN, Mr. TESTER, Mr. ISAKSON, Mr. JONES, Mr. TILLIS, Mrs. FEINSTEIN, Ms. ERNST, Mr. LEAHY, Mr. GRASSLEY, Ms. SMITH, Mr. CRAMER, Mr. DURBIN, Mr. MORAN, Ms. KLOBUCHAR, Mr. COTTON, Ms. DUCKWORTH, Mr. RUBIO, Mrs. SHAHEEN, and Mr. ROUNDS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To exempt from the calculation of monthly income certain benefits paid by the Department of Veterans Affairs and the Department of Defense.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Honoring American Veterans in Extreme Need Act of 2019'' or the ''HAVEN Act''.

Attachment A

SEC. 2. DEFINITION OF CURRENT MONTHLY INCOME.

Section 101(10A) of title 11, United States Code, is amended by striking subparagraph (B) and inserting the following:

"(B)(i) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent); and

"(ii) excludes—

"(I) benefits received under the Social Security Act (42 U.S.C. 301 et seq.);

"(II) payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;

"(III) payments to victims of international terrorism or domestic terrorism, as those terms are defined in section 2331 of title 18, on account of their status as victims of such terrorism; and

"(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a dis-

Attachment A

ability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title.''.

○

Attachment B

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

In re: **Chapter**

Case No

Debtor(s)

CERTIFICATION REGARDING BALANCE OF SCHEDULES

On , the Debtor(s) filed the balance of schedules pursuant to FRBP 1007(c) and Local Rule 1007-1. I have reviewed the balance of schedules and certify that (check the applicable box below):

☐ These schedules do not list any creditors or parties not listed on the matrix originally filed with the petition in this case.

☐ These schedules do list creditors who are not contained on the original matrix filed with the petition, and

I have filed a notice of amendment to debtor's schedules of creditors and/or matrix to add these creditors to the matrix; and

I have paid the filing fee to add these creditors to the matrix; and

I have sent a copy of the Notice of Bankruptcy and § 341 Meeting to these creditors. The names and method of service are described as follows (add extra pages if necessary):

Creditor Name	**Method of Service**

I hereby certify that the foregoing is true and correct.

Date: _____

_____
Counsel for Debtor(s)

I hereby certify under penalty of perjury that the foregoing is true and correct.

_____ _____
Debtor (if applicable) Joint Debtor (if applicable)

Attachment C

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

In re: **Chapter**

Case No

Debtor(s).

CERTIFICATION REGARDING AMENDED SCHEDULES OR STATEMENTS

On , the Debtor(s) filed amended schedules or statements (check the applicable box below):

☐ These amended schedules or statements do not list any creditors or parties not listed on the matrix originally filed with the petition in this case.

☐ These amended schedules or statements do add creditors but the creditors are listed on the mailing matrix previously filed with this Court. I have paid the related filing fee for adding these creditors. As of the date of this certification the mailing matrix in this case includes all creditors listed on the bankruptcy schedules, as amended.

☐ These amended schedules or statements do add creditors, and the creditors were not listed on the mailing matrix previously filed with this Court. Accordingly I have taken the following actions: (a) I have updated the mailing matrix to add all creditors not previously listed on the mailing matrix, and as of the date of this certification the mailing matrix in this case includes all creditors listed on the bankruptcy schedules, as amended, (b) I have paid the related filing fee for adding these creditors, and (c) on , I sent the Notice of Bankruptcy and §341 (a) creditors' meeting notice to the following creditors in the manner described as follows (add extra pages if necessary):

I hereby certify that the foregoing is true and correct.

Date: _____

_____
Counsel for Debtor(s)

I hereby certify under penalty of perjury that the foregoing is true and correct.

_____ _____
Debtor (if applicable) Joint Debtor (if applicable)

Attachment D

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

In re: Debtor(s).	Chapter **13** Case No.

AMENDED CHAPTER 13 PLAN COVER SHEET AND NOTICE OF HEARING

The attached plan is an amended plan that replaces the ☐ confirmed or ☐ unconfirmed plan dated .

The Court shall hold a hearing on confirmation of the attached plan and any timely filed objections on **, at , at**

The following describes the section(s) of the plan being amended, the change in treatment, the affected creditor(s), and the impact of the change:

Section of Plan	Change in Treatment	Creditor	Impact of Change

Counsel for the debtor shall file a separate certification of mailing and/or service of the amended chapter 13 plan and this cover sheet, unless the Court orders otherwise.

Attachment E

U. S. BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
FORM 3015-3A

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

IN RE:

CHAPTER 13

Case No._____

Debtor(s)

AFFIDAVIT OF DEBTOR(S) REQUESTING CONFIRMATION OF PLAN

1. The undersigned affirm(s) that the statements below are true as of the date hereof and certifies that they will be true as of the date of confirmation of my/our chapter 13 plan and may be relied upon by the court unless notice in writing to the contrary is given to the trustee and the court at or prior to such time.

2. I/We have made all payments to secured creditors, personal property lessors and taxing authorities which have come due since the date on which this case was filed and which I/we were required to make directly to such creditor, lessor or taxing authority. I/we understand that such payments include all mortgage payments, car payments or other secured debts being paid directly, personal property leases, real estate taxes, personal property taxes, federal income taxes, and state income taxes which have come due since this case was filed.

3. Select either A. or B.:

A. Since the filing of this bankruptcy case, I/we have not been required by a judicial or administrative order, or by statute, to pay any domestic support obligation [as that term is defined in 11 U.S.C. section 101(14A)].

B. I/We have paid all amounts that first became due and payable after the filing of this bankruptcy case which I/we were required to pay under a domestic support obligation [as that term is defined in 11 U.S.C. section 101(14A)] required by a judicial or administrative order or by statute.

4. I/we have filed all federal, state, and local tax returns required by law to be filed for all taxable periods ending during the four year period ending on the date of the filing of this bankruptcy case and for which a return is due as of the date of this affidavit.

Attachment E

By signing this affidavit requesting confirmation of chapter 13 plan, I/we acknowledge that all of the above statements are true and accurate and that the Court may rely upon the truth of each of these statements in determining whether to confirm my/our Chapter 13 Plan. I/We understand that the Court may revoke confirmation of the Chapter 13 Plan if the statements relied upon are not accurate.

Signed:

/s/_____
Debtor

/s/_____
Debtor

Subscribed and sworn to before me, a Notary Public, by the debtor(s) named in this affidavit this _____ day of _____, 20___.

/s/_____
Notary Public

My commission expires: _____

Attachment F

U. S. BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
FORM 4004-1A

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

In re:	CASE NO. CHAPTER 13

DEBTOR'S CERTIFICATION OF COMPLIANCE WITH 11 U.S.C. §1328

The Chapter 13 Trustee has filed a notice of completion of payments in my case and I am hereby requesting that the court issue a discharge. I testify, under penalty of perjury, to the following:

1. I/We have completed an instructional course concerning personal financial management as described in 11 U.S.C. §111.

2. I/We have not received a discharge in a Chapter 7, 11, or 12 bankruptcy case that was filed within 4 years prior to the filing of this Chapter 13 Bankruptcy.

3. I/We have not received a discharge in another Chapter 13 bankruptcy case that was filed within 2 years prior to the filing of this Chapter 13 bankruptcy.

4. I/We did not have, either at the time of filing this bankruptcy or at the present time, equity in excess of the statutory amount in the type of property described in 11 U.S.C. §522(p)(1) [generally the debtor's homestead].

5. There is not currently pending any proceeding in which I may be found guilty of a felony of the kind described in 11 U.S.C. §522(q)(1)(A) or liable for a debt of the kind described in 11 U.S.C. §522(q)(1)(B).

6. If applicable, I/we certify that as of the date of this certification that I/we have paid all amounts due under any domestic support obligation [as that term is defined in 11 U.S.C. §101(14A)] required by a judicial or administrative order, or by statute, including amounts due either (i) before this bankruptcy case was filed and provided for in the Plan, or (ii) due at any time after the filing of this bankruptcy case.

I/we certify under of penalty of perjury that the foregoing is true and correct.

Debtor:_____ Date:_____

Debtor:_____ Date:_____