

HIGHLIGHTS: REPORT OF THE ABI COMMISSION ON CONSUMER BANKRUPTCY

(Judge Robinson appreciates ABI's granting permission to use its Report for this presentation.)

- Student loans: allow discharge if the loan is made by a non-governmental entity, or incurred by someone other than the student; or being paid through a 5-year chapter 13 plan; or first payable more than 7 years prepetition
- Discharge violation: create a private right of action, rather than pursuing as contempt
- Prepetition repossession: make it a stay violation to retain personal property repossessed prepetition, with some provision for proof of insurance
- Surrenders: define surrender to not include a requirement for the “immediate physical delivery” of the property, and to also not include a requirement that the debtor not take a position in state court that would be contrary to the “surrender” intent (aimed at 11th Circuit *Failla* decision at 838 F.3d 1170 (11th Cir. 2016))
- Repeat filers: remove the “extend stay” provisions of § 362(c)(3) while retaining the “impose stay” provisions of § 362(c)(4) and give the court the ability under § 109(g) to restrict future cases by repeat filers for cause
- Value the principal residence as of the petition date
- Rule 3002.1 payment change: file less frequently for small changes in HELOC payments
- Exemptions: give the court the ability to deny an exemption for knowing, fraudulent concealment of the exempt asset by statutory amendment to overcome *Law v. Siegel*, 571 U.S. 415 (2014).
- Attorney fees: allow unbundling of services in chapter 7, and either delay discharge or except the attorney fees from discharge and allow post-petition collection of attorney fees; also increase the use of negative notice procedures and telephone appearances to reduce the time an attorney spends in court
- Credit counseling: repeal that requirement across the board, and repeal the financial management course requirement for chapter 7 debtors while keeping it as a requirement for discharge in chapter 13
- Chapter 13 debt limit: set the limit at \$3,000,000 total debt without distinct secured or unsecured caps (for each spouse in a joint case) with adjustment for inflation
- Chapter 13 in general: allow the budgeting of a reserve fund for emergencies as an allowed deduction from CMI and not as part of the debtor’s disposable income; make loan modifications easier in chapter 13; and require conduit mortgage payments through the chapter 13 trustee in the absence of a compelling reason to pay directly (such as the trustee’s commission being an undue burden or fatal to feasibility, or if a non-filing codebtor is paying directly)
- Chapter 7 in general: increase the trustee’s base fee to \$120 without raising the filing fee (which means the court system and general treasury absorb that cost)
- Mediation: order when appropriate, recognizing its benefits and seeking to increase its use, but not to the point that every dispute is mediated
- After bankruptcy: standardized credit reporting