

ADDENDUM CONCERNING ATTORNEY'S FEES IN CHAPTER 13 CASES

The court expects the debtor's attorney to spend considerable time with the debtor **before** the case is filed to examine carefully the feasibility of the proposed Chapter 13 plan. With the attorney's assistance, the debtor must (1) often make difficult decisions to surrender property which the debtor cannot afford, (2) examine his/her lifestyle to eliminate unnecessary expenses, and (3) review necessary expenses to see if a Chapter 13 plan is feasible. An honest, thorough review of these items, coupled with appropriate adjustments, will generally result in a plan that the debtor can complete without unnecessary difficulty.

The typical Chapter 13 debtor is living on a very tight budget, while trying to pay as much as possible to his/her creditors. The slightest interruption in income, such as illness or loss of employment, or the slightest unusual expense, such as car repairs, washing machine failure, or attending the funeral of a close relative in a distant city, causes a dramatic disruption in the debtor's ability to make plan payments. Often debtors choose to omit direct payments to secured creditors (such as the home mortgage) rather than miss the Chapter 13 payments. When a debtor gets behind, it is difficult to catch up. The filing of a motion to lift stay by a secured creditor or a motion to dismiss for nonpayment by the Chapter 13 trustee signals that the debtor is in further trouble and should cause the debtor and his/her attorney to again review feasibility and make appropriate changes. If a debtor chooses to try to catch up in these instances, the debtor should not be penalized by having to pay additional attorney's fees.

It is the practice in many parts of Texas that the debtor's attorney gets a fee in the early part of the case and continues to represent the debtor throughout the case without further charge. In that situation, the debtor will not "fear" calling the attorney and thus, can often get problems resolved quickly and easily before they become disasters. This practice benefits the debtors, the attorneys, the creditors, the trustees, and the court. However, it seems to be the practice in Houston for debtors' attorneys to be paid additionally for post-confirmation services. As a visiting judge, this judge should follow the local practices. It is my understanding that prior orders of this court stated that \$250 was the maximum amount which would generally be allowed for such services. Thus, with reluctance, this judge will allow fees to debtor's attorneys for post-confirmation services, but will generally limit those fees to \$250.00 per event so as not to place an impossible burden on the already distressed debtor.

In order for a secured creditor to recover attorney's fees, it must be "over secured." 11 U.S.C. § 506(b). If, in an agreed order where the creditor is secured by real property, the parties provide for attorney's fees for the secured creditor, this judge is generally willing to assume that the creditor is over secured; however, to avoid taking unfair advantage of the struggling debtor, the court will generally limit those attorney's fees to \$500.00 plus reasonable expenses. The court will not make this assumption with respect to liens secured by personal property; consequently, the creditor requesting attorney's fees in this situation must submit proof of the value of the collateral and the amount of the debt (a recitation in the proposed order will not suffice).

John C. Akard, Visiting United States Bankruptcy Judge Prepared October 1, 2004.