

STATEMENT IN SUPPORT OF HB 6070-Testimony of Joel M. Grafstein

Under the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the procedures for dealing with loans secured by vehicles has been changed. Under Bankruptcy Code Section 521(6) at the time of the filing of the petition the Debtor must disclose their intention as to secured assets: (1) reaffirm; (2)redeem or (3) surrender. The Debtor cannot elect to merely continue to make payments; and the Debtor must choose one of these alternatives and perform within 45 days. The New Bankruptcy Code specifically overruled the fourth alternative, which as the "continuation to pay" alternative under the Second Circuit Court of Appeals. Capital Communications FCU v. Boodrow (In re Boodrow), 126 F.3d 43 (C.A.2 1997). The legal impact of a reaffirmation agreement is to make the debtor liable for a deficiency in the event that the vehicle is sold. In the event of a reaffirmation of the debt any deficiency will not be discharged by their bankruptcy.

The problem that has a direct impact on consumers in Connecticut happens in the case of a Debtor whose income is less than their expenses and under the provisions of Bankruptcy Code Section 524(m). A presumption hardship exists if the budget reflects a negative cash flow within 60 days of filing. The Courts are not approving a Reaffirmation Agreement in that case even if the Debtors are current on their vehicle payments.

The purpose of HR 6070 is to permit the Debtors to continue to make their car payments and prohibit the auto finance company to repossess the vehicle, absent some other default (such as delinquent payments) without the creditor having the protection of a reaffirmation agreement.

The following is a case directly on point. My clients Mr. and Ms. B have filed a bankruptcy petition under the New Bankruptcy Code. They have a car loan secured by a 2004 Chevrolet Impala with a present value of \$9,010.00. The amount of the loan is \$16,459.72 is owed to a Credit Union. If the Impala is repossessed and sold, it is estimated that the Credit Union will suffer a loss of \$7,702.88. The car is used by Ms. B for her personal use and Mr. B uses an older car that has no car loan to commute to work.

The Debtors are current on their car payments of \$362.00 per month. The Credit Union is demanding that the Debtors sign a Reaffirmation Agreement and it has indicated that it is their intention, to repossess the vehicle in the event that the Reaffirmation Agreement is not signed and approved by the Bankruptcy Court. The Debtors' income is insufficient to pay all of their current bills because Ms. B is disabled and collecting Social Security Disability (she has Multiple Sclerosis and has a difficult time walking), Mr. B is working full time and attempting to supplement his income with a part-time lawn care business. Because of their poor credit as a result of a bankruptcy, they will have difficulty obtaining financing for a replacement vehicle that they can afford.

The purpose of HR 6070 is to permit the Debtors to continue to make their car payments and ultimately repay the loan to the Credit Union without concern that their car will be repossessed, unless they fail to make their payments. If they fail to make their payments, and the vehicle is repossessed, the loss suffered by the Credit Union will remain the same or less depending on how many additional payments have been made through the date of default.

Joel M. Grafstein, Esq. practices law in Farmington and Manchester Connecticut. He was appointed as the initial member of the Panel of Bankruptcy Trustees in 1978. He has co-authored the 1984, 1988 and 1990 revisions in Caron, *Connecticut Foreclosures*. He also authored the bankruptcy section of the Connecticut Bar Association's *Basic Legal Practice Manual*. He has spoken numerous times on Bankruptcy issues, Connecticut collection law, Connecticut foreclosure law and Unfair Trade Practices. He is a member of the executive committee of the Connecticut Bar Association Commercial Law and Bankruptcy Section and he was a Member of the American Bar Association Subcommittee on the U.S. Trustee System for the Business Law Section. He is a member of the Connecticut Bar Association and the National Association of Consumer Bankruptcy Attorneys. He is admitted to practice in Connecticut and New York.

Respectfully Submitted



Joel M. Grafstein