

SURVEY: BANKRUPTCY FILINGS ON THE RISE AGAIN, LIKELY TO RETURN TO PRE-2005 LAW LEVELS DURING NEXT YEAR

NACBA Surveys 700 U.S. Bankruptcy Attorneys on Eve of October 17, 2006 Anniversary of Controversial Law Change; Over Nine Out of 10 Say Law Has “Simply Increased the Costs of Bankruptcy,” With No Benefits.

WASHINGTON, D.C.//October 4, 2006//As the controversial federal bankruptcy overhaul approaches its first anniversary, a new survey of 700 members of the National Association of Consumer Bankruptcy Attorneys (NACBA) is the latest proof that the ill-conceived law is failing on an across-the-board basis. More than two-thirds (68.5 percent) of those surveyed said that their bankruptcy filings are up in the third quarter of 2006, compared of the first half of the year. Almost three out of five bankruptcy attorneys (57.5 percent) now expect filings to reach their pre-overhaul levels by or before the law’s second anniversary in 2007.

According to the NACBA survey, the primary impact of the new law appears to be more paperwork hassles and higher expenses for already cash-strapped consumers. More than three quarters of bankruptcy attorneys said that the time involved in preparing a bankruptcy filing has gone up by 50 percent or more. Respondents variously estimated the extra time at 50-75 percent (26.5 percent), 75-100 percent (23.1 percent), and “more than 100 percent in increased time” (27.1 percent). When asked if “the increased paperwork required under [the new law] changed the results or simply increased the costs of bankruptcy,” more than nine out of 10 (92.8 percent) said “mostly increased the costs” while fewer than one in 100 (0.7 percent) said “mostly improved the results.”

Henry Sommer, president of the National Association of Consumer Bankruptcy Attorneys (NACBA) and a Philadelphia bankruptcy attorney, said: **“The bankruptcy law changes were premised on the faulty assumption, promoted by the credit card industry, that there was massive abuse going on by thousands and thousands of people who could pay their debts. In reality, the vaunted means test of the new bill has revealed that the creditors lobby was dead wrong -- virtually none of the people who file chapter 7 cases are able to pay more. Bankruptcy is still very much available and still very much needed, even though consumers now have to pay more and go through more paperwork to get the required help.”**

NACBA Officer Ike Shulman, a bankruptcy attorney in San Jose, Calif., said: **“In practice, the new bankruptcy law changes have proven to be a nearly total bust in terms of what the proponents of the changes forecast. The only good news here is that the law is so flawed and has been interpreted in such a way that some of the dire consequences many of us feared fortunately have not come to pass. Unfortunately, this is of no comfort to the consumers who legitimately need bankruptcy relief and now are forced to clear more arbitrary and pointless hurdles in the process.”**

Key findings of the survey include the following:

- *Contrary to what proponents of the law projected, fewer than a third of bankruptcy attorneys are seeing an increase in forced Chapter 13 repayment filings. Only 31.4*

percent of attorneys have seen an increase in filings since the bankruptcy law changes went into effect last year. Fewer than one in 20 (4.5 percent) reported seeing a “major increase.”

- ***More than three out of five bankruptcy attorneys report a jump in consumer inquiries about bankruptcy.*** Comparing the third quarter to the first half of the year, 71.6 percent of those surveyed are seeing increased demand, with more than one in five (21.7 percent) reporting a “major increase.”
- ***Very few filings are about “wasteful spending.”*** In the vast majority of cases, consumers are forced into bankruptcy by major and unforeseen expenses (joblessness at 39.6 percent and medical expenses/other medical costs at 33 percent) or combinations of factors (mortgage/home-related debt at 64 percent and increased credit card interest rates at 41.1 percent). Fewer than one in 10 cases (8.1 percent) handled by bankruptcy attorneys were linked to “discretionary spending” habits, according to the survey. (Note: Two responses were permitted to this question, which is why the reported total exceeds 100 percent.)

The NACBA survey of 3,000 U.S. bankruptcy attorneys resulted in a strong response rate of 24 percent (714 completed surveys). The survey was conducted on a secure, Web-based site from September 25-28, 2006. Only one response was permitted per individual. Full survey findings are available online at <http://www.thehastingsgroup.com/NACBASurvey/Summary.html>.

The new survey is the latest NACBA look at the practical impact of the 2005 bankruptcy law. On February 22, 2006, NACBA released the first analysis of tens of thousands of consumers seeking protection since a new federal bankruptcy law went into effect in October 2005. The data showed that of 61,355 of the earliest consumers seen by credit counseling firms – the required first stop under the new bankruptcy law – nearly all (97 percent) were unable to repay any debts and that an overwhelming majority were forced into dire financial straits by circumstances beyond their control, such as the loss of a job, catastrophic medical expenses or the death of a spouse.

On September 7, 2006, NACBA reported that the United States Bankruptcy Court for the Northern District of New York had reluctantly interpreted the controversial U.S. bankruptcy reform law to mean that those going through bankruptcy may not tithe to their church or make other charitable donations ... until after they have paid off credit card companies and other creditors. Before the new law went into effect, bankruptcy court judges were required to permit debtors to tithe a portion of their income on a regular basis. On September 29, 2006, the U.S. Senate acted to clarify that the concern raised by NACBA was not intended to be a change made under the poorly crafted 2005 amendments.

ABOUT NACBA

The National Association of Consumer Bankruptcy Attorneys (<http://www.nacba.org>) is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA now has more than 3,000 members located in all 50 states and Puerto Rico.

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EDITOR'S NOTE: A streaming audio replay of the news event will be available on the Web at <http://www.nacba.org> as of 6 p.m. ET on October 4, 2006.