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**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE NORTHERN DISTRICT OF TEXAS**  
**FORT WORTH DIVISION**

**IN RE:** § **Case: 06 – 40127-DML-13**  
§  
**HOWARD L. MCCARTHY, JR.** §  
§  
**Debtor.** §  
§  
§

**DEBTOR’S BRIEF IN SUPPORT OF MOTION FOR CHAPTER 13 DISCHARGE**  
**FOR EN BANC CONSIDERATION**

**TO THE HONORABLE BANKRUPTCY JUDGES OF THE NORTHERN**  
**DISTRICT OF TEXAS:**

**Issue Presented:**

Whether **Howard L. McCarthy, Jr.**, a Chapter 13 debtor, who made all plan payments and is otherwise entitled to a discharge, may be discharged prior to the expiration of the “applicable commitment period” in 11 U.S.C. §§ 1325 (b)(1)(B), -(b)(4), where allowed unsecured claims have not been paid in full.

**Howard L. McCarthy, Jr. respectfully represents:**

As reflected fully in the First Amended Stipulations, **Howard L. McCarthy, Jr.**  
filed for relief under the United States Bankruptcy Code as amended.

**Howard L. McCarthy, Jr.**'s plan was confirmed on April 13, 2006. **Howard L. McCarthy, Jr.** sold a nonexempt asset and with the proceeds has tendered to the Chapter 13 Trustee monies sufficient to complete his confirmed Chapter 13 plan.

According to the records of the Chapter 13 Trustee **Howard L. McCarthy, Jr.** has completed all payments under the confirmed chapter 13 plan. (Notice of Chapter 13 Plan Completion dated September 10, 2007). **Howard L. McCarthy, Jr.** now moves the Honorable Bankruptcy Court for an Order Granting Discharge pursuant to 11 U.S.C. §1328.

**“Applicable Commitment Period”**

As the Court takes this matter under consideration an exploration of what the term “applicable commitment period” means (or is intended to mean) under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) is necessary.

**Howard L. McCarthy, Jr.** would respectfully assert that the term “applicable commitment period” is expressly to be utilized only in subsection (b) of 11 U.S.C. § 1325 “Confirmation of Plan”.

In support of this argument **Howard L. McCarthy, Jr.** would point to 11 U.S.C. § 1325 (b) that speaks to the procedure to be applied in the event of an objection by either the trustee or the holder of an allowed unsecured claim to the confirmation of a Chapter 13 plan. Therefore, “applicable confirmation” period is to only be utilized in this limited subsection<sup>1</sup>.

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<sup>1</sup> 11 U.S.C. § 1325 (b)(4) For the purposes of this subsection, the “applicable commitment period” - (A) subject to subparagraph (B), shall be – ...

Furthermore, 11 U.S.C. § 1322 (d)(1)<sup>2</sup> sets a temporal limit to an above-median income **Howard L. McCarthy, Jr.’s** plan (specifically 60 months) sets a maximum limit to the length of a plan. It does not set a minimum.

If § 1325 set the length of the plan, § 1322(d)(1) would be superfluous language<sup>3</sup> The applicable commitment period is used to determine the amount to be paid for unsecured claims, the statute requires no more.

*In re Frederickson* dealt with the confirmation of a plan of an above median family income debtor. The Debtor as reflected by his household size and geographical location was found to be above the applicable median family income. However according to the debtor’s Form 22C the debtor’s monthly expenses exceeded his current monthly income by \$95.49 resulting in a negative disposable income. Due to the fact that the debtor had negative disposable income, at confirmation, the debtor proposed a plan that was less than 60 months, specifically a 48 month plan.

The United States Bankruptcy Appellate Panel for the Eighth Circuit reasoned that Section 1325 containing the term “applicable commitment period” functioned as a multiplier and not a temporal requirement. Due to the negative disposable income there were no unsecured creditors to be paid and therefore the 48 month plan as proposed was confirmed.

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<sup>2</sup> “if the current monthly income of the Debtor and the debtor’s spouse combined, when multiplied by twelve, is not less than – (A) in the case of a debtor in a household, the median family income of the applicable state for one earner; (B) in the case of a debtor in a household of two, three, or four individuals, the highest median family income of the applicable state for a family of the same number or fewer individuals; or (C) in the case of a debtor in household exceeding four individual, the highest median family income of the applicable state for a family of four or fewer individuals, plus \$525 per month for each individual in excess of four, the plan may not provide for payments over a period that is longer than five years”

<sup>3</sup> *In re Frederickson* 375 BR 829 ( 8<sup>th</sup> Cir. B.A.P. 2007)

**Howard L. McCarthy, Jr.** would respectfully assert that that the term “applicable commitment period” is used in Form 22C to calculate out a debtor’s allowable expenses. For example a debtor’s allowable expenses for secured debt and priority claims determine a debtor’s allowable deductions under line 57 of Form 22C.

This would hold true under the *Hardacre*<sup>4</sup> decision as well as any other interpretation of the term “projected disposable income” and how to determine an unsecured pool, the applicable commitment period is utilized to determine the allowable deductions, not to calculate the actual term of the plan.

Section 1325 only applies on an objection by the trustee or a qualified creditor - McCarthy did not have an objection by the trustee or any qualified creditor, however if the court should deem that § 1325 should be applied, it should be interpreted as follows:

Under an objection by either the trustee or the holder of an allowed unsecured claim, a debtor who proposes to pay less than the amount of an unsecured claim must pay all of the debtor’s projected disposable income to be received in the “applicable commitment” period.

The language of § 1325 (b)(1)(B) is substantially unchanged from pre-BAPCPA. BAPCPA substituted “applicable commitment” period for “three-year” period. Under pre-BAPCPA such a debtor’s dividend to unsecured creditors was calculated by multiplying the debtor’s projected disposable income by three years (or 36 months).

It was necessary for “three year” period to be removed as BAPCPA now requires that the debtor’s projected disposable income be multiplied by either three years or five years. This determination depends upon the debtor’s current monthly income multiplied by 12, pursuant to § 1325(b)(4).

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<sup>4</sup> In re Hardacre (Memorandum Opinion 05 – 95518 – DML – 13)

Under this subsection, a debtor's projected disposable income will be multiplied by either 36 or 60. Pre-BAPCPA, a debtor's projected income could only be multiplied by 36.

Once a debtor's current monthly income multiplied by 12 exceeds the applicable median family income for the debtor's household the debtor's projected monthly income will no longer be multiplied by 36 (pre-BAPCPA) but will now be multiplied by 60.

Upon the filing of an objection by the trustee or an applicable allowed unsecured creditor, pre-BAPCPA a debtor would pay into the plan an amount arrived at by the following computation:

$$\textit{Projected Disposable Income} \times \textit{Three Years} = \textit{Payments to Unsecured Creditors under the Plan}$$

Under BAPCPA, such a debtor will now pay into the plan an amount arrived at by the following computation:

$$\textit{Projected Disposable Income} \times \textit{Three Years} \textbf{OR} \textit{ Not Less Than 5 Years} = \textit{Payments to Unsecured Creditors Under the Plan}$$

To determine if you multiply the projected disposable income by three years or five years, you then look to the definition provided by 1325(b)(4) for "applicable commitment period". The Howard McCarthy, Jr. respectfully represents that under a proper interpretation of §1325, he is entitled to a discharge and that this particular provision does not serve as a bar to his completion of the plan.

### Applicable Commitment Period – Temporal Requirement or Multiplier?

Despite, **Howard L. McCarthy, Jr.**'s position that BAPCPA does not create a temporal requirement, some have specifically interpreted “applicable commitment period” as a temporal requirement for a debtor, requiring that some debtors remain in bankruptcy for five years. However, this flies in the face of § 1328 requiring that a court discharge a debtor.....as soon as possible as well as § 1322 defining the length of the plan.

In addition the temporal interpretation flies in the face of well settled law reflected by *In re Smith*<sup>5</sup> wherein a debtor completed the payments due under the plan prior to the expiration of 36 months and was granted a discharge. This Court (as affirmed with no opinion by the Fifth Circuit) defined “three year”, not as temporal requirement, but as a multiplier to obtain the amount of debt that must be paid under a chapter 13 plan. It is important to note that Congress replaced “three year” with “applicable commitment period” and did not further alter the language, the plain reading of the statute shows that Congress did not wish to alter the formula contained in this section, but instead altered the definition of an important multiplier.

Congress did not intend to undo or replace § 1325(b)(1)(B) as evidenced by the minor changes made to the subsection, instead it modified the subsection. Congress did not alter the formula or even introduce a new way of computing the amount to be paid, instead Congress now delineates whether or not a debtor's projected disposable income is multiplied by three years or five years based upon the debtor's income level as applied to the relevant median family income.

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<sup>5</sup> *In re Smith* 237 B.R. 621 (Bankr. E.D.Tex. 1999); 1999 Bankr. LEXIS 1133; affirmed without opinion by *Bayshore Nat'l Bank v. Smith*, 252 F.3d 1357, 2001 U.S. App. LEXIS 8317 (5<sup>th</sup> Cir. Tex. 2001)

Had Congress intended to change the meaning of § 1325(b)(1)(B) from a multiplier to a temporal element it would have also have been necessary to redraft or modify the language of § 1322 to set out a minimum temporal requirement for debtors who exceed the applicable median family income – no such alterations were made.

When Congress amended § 1322 it set out maximum temporal periods, but did not set out minimum temporal periods. It therefore can be inferred due to the planned changes, if Congress wished to establish a minimum it would have done so. Congress had ample opportunity to do so, but chose not to implement a minimum length for a Chapter 13 plan. It is an interpretational mistake to rob the language contained in §1325(b)(4) for use in § 1322 to establish a false minimum temporal period.

From an application standpoint if “applicable commitment period” is temporal, how can it then be used to determine the payments to be applied to unsecured creditors under the plan? In order for the subsection to function, it must be a multiplier.

Howard McCarthy, Jr. would respectfully assert that those who wish to use §1325(b)(4) as a requirement that certain debtors remain in bankruptcy for five years, put the cart before the horse. The definition contained in § 1325(b)(4) is to be used by § 1325(b)(1) for the purpose of confirming a plan over the objection of a trustee or the holder of an allowed unsecured claim who is not being paid in full. Section 1325(b)(4) does not exist to set a timeframe for a bankruptcy plan but exists to define an important term in the calculation of the payments to unsecured creditors under the plan over such an objection.

If § 1325(b)(4) set out a time requirement for a debtor whose current monthly income multiplied by 12 exceeds the applicable median family income, it could only be

triggered when there is an objection by the trustee or the holder of an allowed unsecured claim who is not being paid in full. If this were a proper application, then a debtor whose current monthly income multiplied by 12 exceeds the applicable median family income that “slipped under the radar” without an objection could be confirmed with a plan less than five years. If Congress intended to force debtors whose current monthly income multiplied by 12 exceeds the applicable median family income into bankruptcy for five years, certainly it would not have relied upon the trustee or certain creditors to file an objection to force them into a five year bankruptcy.

**In re Smith**

Having argued the foregoing may be a moot point - *In re Smith* established that § 1325 no longer applies once a plan has been confirmed<sup>6</sup>. The Court (as affirmed with no opinion by the Fifth Circuit) ruled that the confirmation hearing is the time for the parties to contest the accuracy of the projected disposable income of the debtor. Once a confirmation order becomes final, the provisions of § 1325(b)(1) are no longer applicable. At confirmation, creditors are bound by the provisions of the confirmed plan and are entitled to receive the amount of payments designated by the confirmed plan<sup>7</sup>.

*In re Smith*, addressed a debtor who tendered the full amount of her confirmed plan prior to the expiration of 36 months - The debtor’s confirmed plan provided for 56 monthly payments, however in the 27<sup>th</sup> month, due to a gift from her family, she tendered the remaining monies due under the plan. A partially unsecured creditor filed an objection arguing, among other issues, that the debtor had not made payments for a minimum of 36 months.

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<sup>6</sup> *In re Smith* 237 B.R. 621 (Bankr. E.D.Tex. 1999); 1999 Bankr. LEXIS 1133 [\*\*8]

<sup>7</sup> *In re Smith* 237 B.R. 621 (Bankr. E.D.Tex. 1999); 1999 Bankr. LEXIS 1133 [\*\*7]

The Court looked to § 1328(a) and ruled that under the plain language of the statute that when a debtor tenders lump-sum payment which satisfies all amounts under a confirmed chapter 13 plan, such payment entitles the debtor to a discharge as of that time.

In the matter before the Honorable Court, the Howard McCarthy, Jr. has tendered lump-sum all monies due under his confirmed plan and he is therefore entitled to a discharge. Nothing can be inferred from Congress's amendments that would make the ruling of the court under *In re Smith* inapplicable to the case at hand.

If Congress had intended for a Debtor to spend a certain amount of time in bankruptcy it would have certainly inserted language into § 1328 requiring a temporal minimum for debtors to receive a discharge, Congress did not do so. In addition, if Congress now intended for the methods contained in § 1325 to spill over into other sections of the code (specifically § 1322 dealing with contents of the plan and § 1328 dealing with discharge), it would have cross referenced these sections or stated that § 1325 should now dominate the interpretation of these sections. Instead, Congress expressly crafted the language of 1325(b)(4) specifically stating "for the purposes of this subsection, the "applicable commitment period" - ...Therefore it is clear that this language/definition is utilized for the sole purpose of confirming a plan over the objection of a trustee or a qualified unsecured creditor, not to establish a minimum temporal length to a chapter 13 plan.

The Court (as affirmed with no opinion by the Fifth Circuit) did not rule that a minimum temporal period existed pre-BAPCPA (as reflected by the *Smith* decision) and BAPCPA does not create any such minimum temporal requirement today.

*In re Smith* stated that a debtor post-confirmation may tender lump sum the monies due under the plan without notice to a debtor's creditors<sup>8</sup>.

### **Modification of the Plan is Barred**

The plan cannot be modified; the final payment has been made. It has been held that once a debtor has paid his plan balance, or base, in full the plan cannot be modified, pursuant to *Meza*<sup>9</sup>.

In *Meza* a debtor filed a Chapter 13 pre-BAPCPA, the trustee received the debtor's tax return and filed a modification to include the proceeds of the return and to credit them towards the debtor's chapter 13 plan. After the modification was filed, but prior to the modification hearing, the debtor tendered the remaining base. If the remaining base had been tendered prior to the filing of the modification, the modification could not be granted. However in *Meza*, the trustee filed the modification prior to the tendering of the remaining base and therefore it could be heard, and if meritorious, granted. The Fifth Circuit held that a modification must be filed prior to the payment of the monies owed in order to be granted. Most importantly the Fifth Circuit ruled that if the base has been paid in full prior to the filing of a modification, any such request for a modification is barred and cannot be granted.

In the matter before the Court, a modification was not filed prior to the tendering of the full payment of the amount to be paid under the plan. It is well settled in the Fifth Circuit that a modification cannot now be filed; the plan has been completed and cannot be modified<sup>10</sup>. As Tim Truman, Chapter 13 Trustee was a litigant in the *Meza* decision he is aware that the only instrument left to be filed by the Trustee in the present case is

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<sup>8</sup> *In re Smith* 237 B.R. 621 (Bankr. E.D.Tex. 1999); 1999 Bankr. LEXIS 1133 [\*\*11,12]

<sup>9</sup> *In the Matter of Meza v. Truman*, No. 05 – 10739, 2006 U.S. App. LEXIS 26304 (5<sup>th</sup> Cir. Oct. 16, 2006)

<sup>10</sup> No. 05 – 10739, 2006 U.S. App. LEXIS 26304

the trustee's report and not a modification. As a matter of fact, the only appropriate relief to be granted in this matter is an order of discharge; in that the full amount due to be paid under the confirmed plan has been tendered and a certificate of completion has been filed by the trustee.

### **In re Clinton – An Opposing Opinion**

It is important to note that there is at least one leading opinion that has held that §1325(b) is a temporal requirement; the United States Bankruptcy Appellate Panel for the Ninth Circuit has held in a BAPCPA case that there is a minimum time requirement for a debtor to remain in a bankruptcy<sup>11</sup>. In the *Clinton* decision, the debtor was a “below MFI” (median family income) debtor and therefore his “applicable commitment period” pursuant to § 1325 was three years. The debtor funded his plan base prior to the expiration of three years and did not file a modification.

The court reasoned that the language concerning applicable commitment period contained in the BAPCPA § 1325 should not be interpreted any differently than the United States Bankruptcy Appellate Panel for the Ninth Circuit had previously interpreted the pre-BAPCPA language of § 1325<sup>12</sup>. The *Clinton* case followed the pre-BAPCPA reasoning reached in *Sunahara*<sup>13</sup> and applied it to the BAPCPA § 1325(b).

*Sunahara* stated that the 36 month disposable income test under pre-BAPCPA §1325(b) is a temporal period. It stated that the only way a debtor may receive a discharge prior to the expiration of 36 months is if the debtor filed a modification under § 1329 giving notice to all creditors and the trustee<sup>14</sup>, in direct contradiction to the Fifth

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<sup>11</sup> *In re Clinton* 380 B.R. 538; 2007 Bankr. LEXIS 4418

<sup>12</sup> *In re Clinton* 380 B.R. 538; 2007 Bankr. LEXIS 4418 [\*\*9,10]

<sup>13</sup> *In re Sunahara* 326 B.R. 768; 1005 Bankr. LEXIS 1270

<sup>14</sup> *In re Sunahara* 326 B.R. 768; 1005 Bankr. LEXIS 1270 [\*\*41-43]

Circuit interpretation of the pre-BAPCPA § 1325 disposable income test. **Howard McCarthy, Jr.** would respectfully argue that *Smith*, not *Sunahara* is the proper interpretation to be followed by the Court.

As stated previously, *In re Smith* determined that this term was a multiplier utilized to determine the amount of unsecured debt that a debtor must pay into the plan. *In re Smith* stated that although confirmation is binding upon all parties, once the plan is completed § 1325(b) no longer applies.

*In re Smith* does not require a debtor to file a modification in order to complete a plan prior to the expiration of 36 months. The statutory language of BAPCPA does not suggest that Congress intended any other interpretation of § 1325 than the pre-BAPCPA law. Section 1325 is simply an important method to determine the appropriate multiplier to determine the amount of unsecured debt a debtor must repay, not a temporal requirement.

The *Sunahara* decision held that pursuant to § 1325(b) a debtor must remain in a bankruptcy for at least three years, however such a holding directly conflicts with the law in the Fifth Circuit as reflected by the *Smith* decision which clearly states that the debtor can be entitled to a discharge prior to three years. Therefore Howard McCarthy would respectfully assert that the *Clinton* decision is not the law in the Fifth Circuit.

### **Chapter 11 and Chapter 13 – Parallel Laws Within BAPCPA**

At least one commentator has found it useful to explore Chapter 11 as related to Chapter 13 under BAPCPA. The Honorable Randolph J. Haines evaluated the term “applicable commitment period”<sup>15</sup>. Under his interpretation he points out that

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<sup>15</sup> Hon. Randolph J. Haines, *Chapter 11 May Resolve Some Chapter 13 Issues*, 8 Norton Bankr. L. Adviser 1 (Aug. 1007)

“applicable commitment period” is a necessary element of a formula to obtain a dollar amount, not to obtain a temporal minimum.

The Honorable Haines explains that an exploration of what is required of an individual debtor in Chapter 11 will guide interpretation of what is required of a Chapter 13 debtor in relation to the amount of annualized disposable income to be received during the term of the plan.

If a creditor objects, Chapter 11 requires an individual debtor to distribute his annualized disposable income to be received in five years or the term of the plan, whichever is longer<sup>16</sup>. As his Honor pointed out, in a Chapter 11 there is no “applicable commitment period” § 1129 (a)(15) only discusses the value of the property that would be distributed to creditors under the plan. This section does not require a minimum length for a plan; it determines the amount to be distributed to creditors<sup>17</sup>.

The Honorable Judge Haines further explains that the law pertaining to an individual Chapter 11 and a Chapter 13 are intended to achieve the same results. Therefore individual Chapter 11 and Chapter 13 are parallels<sup>18</sup>.

Under Chapter 11 a plan that distributes the number of dollars derived by multiplying the annualized disposable income by three or five years ought to be confirmable<sup>19</sup>. Therefore due to the parallel structure Chapter 11 helps illuminate the meaning of “applicable commitment period” in Chapter 13 – as the Honorable Judge Haines states - it is merely the number of years to multiply by the annualized disposable

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<sup>16</sup> 8 Norton Bankr. L. Adviser 1

<sup>17</sup> 8 Norton Bankr. L. Adviser 3

<sup>18</sup> 8 Norton Bankr. L. Adviser 4

<sup>19</sup> 8 Norton Bankr. L. Adviser 4

income to generate the required plan payment, just as the multiplier functions in Chapter 11<sup>20</sup>.

Furthermore, the Honorable Judge Haines points out that an individual Chapter 11 does not create a minimum time period to be spent in an individual Chapter 11. As parallels, why would Congress create a situation in which completing a Chapter 13 plan would be more difficult than completing a Chapter 11 plan<sup>21</sup>? A debtor could simply convert from a Chapter 13 to a Chapter 11 and easily avoid a temporal requirement. Such a result is clearly not Congress's intent.

### **Discharge**

**Howard L. McCarthy, Jr.** is entitled to a discharge.

As the Honorable Judges are aware, § 1328 governs discharge and in relevant part reads:

“... as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter [[11 U.S.C. §§ 1301 et seq.](#)], the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this [title \[11 U.S.C. § 502\]](#)...”

**Howard L. McCarthy, Jr.** would respectfully argue that pursuant to § 1328 he is entitled to a discharge now and in support he would respectfully show that under the code he is entitled.

It is important to note that BAPCPA did not alter or remove the language “as soon as practicable after completion by the debtor of all payments under the plan... the court

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<sup>20</sup> 8 Norton Bankr. L. Adviser 4

<sup>21</sup> 8 Norton Bankr. L. Adviser 4

shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502...”.

The language was left unaltered from pre-BAPCPA. The language could have easily been altered or modified to include language requiring that a discharge can only be granted after the expiration of 36 months or 60 months, however the language was left verbatim as compared to earlier versions of the statute.

Looking to the House and Senate Judiciary reports there is clear intent from Congress that subsection (a) of 11 U.S.C. §1328 requires that the Court grant the debtor a discharge as soon as practicable after the completion of all payments under the plan<sup>22</sup>. There is no modification or alteration of the language in the current statute, so it can be inferred that Congress had no intent to alter this directive.

Furthermore, 11 U.S.C. § 1328(f)(2) speaks to circumstances under which the Court shall not grant a discharge to a Chapter 13 debtor – specifically if a Debtor in a Chapter 13 has received a discharge “in a case filed under chapter 13 of this title<sup>23</sup> during the 2-year period preceding the date of such an order. Clearly Congress envisioned circumstances in which a debtor could have completed a Chapter 13 plan and received a discharge in a period of less than 24 months. Howard McCarthy would respectfully assert that his is one such circumstance.

### **Positive Public Policy Encourages Granting Discharge**

Denying **Howard L. McCarthy, Jr.** a discharge and requiring that he remain in his bankruptcy until the expiration of five years will discourage other debtors who though able to do so, from tendering the full amount of monies to be paid under their plan early.

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<sup>22</sup> (H. Rept. No. 95-595 to accompany H.R. 8200, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1977) pp. 430, 431.) and (s. Rept. No 95-989 to accompany S. 2266, 95<sup>th</sup> Cong., 2d Sess. (1978) pp. 142, 143).

<sup>23</sup> 11 U.S.C. §§ 1301 et seq.

Not only would it benefit the debtor to receive a discharge, but in addition it is of significant benefit to a creditor to receive its funds earlier rather than later<sup>24</sup>.

If a debtor should receive no benefit from lump sum payment of the monies owed or even from “increasing payments”, a debtor will not do so. If a debtor must remain in bankruptcy for a full three or five year period the debtor will simply pay the least amount necessary and force the creditors to wait to receive their funds until the last possible moment.

To deny debtors a discharge prior to the expiration of three or five years would also constitute an inequitable burden and increased cost upon Chapter 13 Trustees who would be forced to hold open cases and file activity reports on cases that have no activity.

Prayer

WHEREFORE, Debtor **HOWARD L. MCCARTHY, JR.** prays that this Honorable Court grant him an order of discharge.

Respectfully submitted,

/s/ Craig D. Davis

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<sup>24</sup> (H. Rept. No. 95-595 to accompany H.R. 8200, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1977) pp. 430, 431.) and (s. Rept. No 95-989 to accompany S. 2266, 95<sup>th</sup> Cong., 2d Sess. (1978) pp. 142, 143).

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Debtor's Brief in Support of Motion for Chapter 13 Discharge for En Banc Consideration was this the 10<sup>th</sup> of March 2008, forwarded to all parties-in-interest listed via ECF.

/s/ Craig D. Davis

/s/ Jeffrey W. Ermis

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