

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

PRESIDENT

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By Facsimile

September 22, 2005

The Honorable James Sensenbrenner, Chairman
Committee on the Judiciary
2449 Rayburn Building
Washington, DC 20515-4905

Dear Chairman Sensenbrenner:

We write on behalf of the Association of the Bar of the City of New York and its Committee on Bankruptcy and Corporate Reorganization to add our support to the movement to amend, or in a limited fashion delay the effectiveness of, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Act") in light of the recent tragedies caused by Hurricane Katrina.

Most of the substantive provisions of the Act are scheduled to go into effect on October 17, 2005, only 49 days after Hurricane Katrina first made landfall off the coast of Louisiana. The need for relief is dictated by the staggering amount of damage that Hurricane Katrina has wrought all along the Gulf Coast. The sheer geographic expanse of the devastation has ensured that victims who may require the benefits of the Bankruptcy Code will have no realistic ability to comply with the requirements of the Act -- or arguably certain existing provisions of the Bankruptcy Code -- or to assess the current status of their assets and liabilities. Additionally, hundreds of thousands of displaced Americans will have no effective way of accurately projecting a household budget beyond the next few days or weeks. Those who have seen their lives as they know it completely altered by this natural disaster should be afforded an opportunity to stabilize their situations rather than be forced to prematurely and, more importantly, incorrectly, assess the need for bankruptcy relief.

The United States bankruptcy system was created to give those who are most in need of a fresh start an opportunity to rebound from hardship. These hardships could include the loss of a home, the loss of a job or the incurrence of unexpected medical or other bills. We do not comment here on the Act's general ability to fulfill that goal. Rather, we wish to highlight the particular difficulties that victims of a natural disaster face when overnight they become the victim of all such circumstances at one time while being displaced hundreds or thousands of miles away. After discussing the matter with

our colleagues in the affected areas, we have gained an even greater understanding of the magnitude of the crises these communities and these individuals face -- the loss of permanent records, the lack of knowledge of whether homes are irreparably damaged and whether insurance recoveries are forthcoming -- and we stand ready to assist Congress in any way that we can in order to alleviate the concerns of the victims of this horrible tragedy.

One possible solution, at least in the short term, would be to postpone the effective date of the provisions in the Act that affect the groups hardest hit by Hurricane Katrina and its aftermath, namely individual consumers and small businesses. Alternatively, the Act could be amended to provide a temporary exception to those small businesses and residents in the affected geographical areas. Either option would prove effective for relieving the needs of those currently struggling in Katrina's wake. However, these alternatives would only provide relief to the victims of this current natural disaster and would not address the needs of those victims of any future natural disaster that may occur. Therefore, we believe that a more substantive and long lasting amendment to the Act is justified.

It is our understanding that Congressman Conyers and several of his colleagues introduced the Katrina Bankruptcy Relief and Community Protection Act (the "Conyers Amendment") for consideration by the House Judiciary Committee. We have reviewed the Conyers Amendment and believe it is a very positive step towards addressing our concerns. In order to assist the legislature in expeditiously enacting the proposed Conyers Amendment, we offer the following observations and comments.

As a general matter, the application of natural disaster provisions throughout the Act as proposed by the Conyers Amendment should be limited to cases commenced within one or two years of the natural disaster. Such a deadline could be extended for cause shown, but otherwise, as currently proposed in the Conyers Amendment, the protections afforded by the Amendment would be available to victims in perpetuity regardless of the cause of their then financial condition.

As to specific sections of the Conyers Amendment, we offer the following comments:

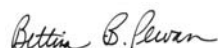
- The proposed amendment to Section 362(b)(22) adds a provision which shields a debtor who is a victim of a natural disaster from the continuation of any eviction, unlawful detainer action or similar proceeding brought by a lessor against a debtor involving residential property where a judgment of possession was obtained. Similar protection for a limited period of time should be provided for non-residential real property leases in the natural disaster zone that is operated by a small business owner who is a victim of a natural disaster. Small businesses in hard hit areas that may still be displaced and therefore receive no notice of dispossession proceedings need protection as much as individual debtors if communities are going to be able to rebuild after a natural disaster. Of course, displacement would be appropriate where the subject premises must be vacated for health and safety reasons.

- Page 4, Line 22 of the Conyers Amendment should be limited in application to the "means test" set out in section 707(b)(2). The current reference to 707(b) rather than 707(b)(2) suggests that a bankruptcy court is prevented from converting or dismissing a case for other types of abuse and could be overbroad.
- Subsections (1) and (2) found at the top of page 6 of the Conyers Amendment grant a court in a small business case the authority to extend any deadline in the case if the extension is necessary to protect the best interests of the creditors and the estate or if such an extension is warranted by a natural disaster. The connector should be changed from "or" to "and" in order to limit the ability of the court to extend the deadlines only to those situations when it is necessary as well as warranted by a natural disaster.
- The Conyers Amendment proposes to add a subsection (b) to section 1408 of title 28 which would allow a person who is a victim of a natural disaster to commence a case "in the district court for the district in which such person resides." See page 7, line 12 of the Conyers Amendment. Since the term "resides" may not be considered broad enough for displaced victims of a natural disaster, the language should track the pre-Act language found in section 1408 (a)(1). The new provision should read, "in the district court for the district in which such person maintains its domicile, residence, or principal place of business in the United States."
- Finally, the Effective Date of the Amendment should be on October 17, 2005 instead of October 18, 2005 as currently proposed. The Amendment should become effective at the same time as the Act itself.

In the event the Conyers Amendment is modified prior to vote to eliminate the exclusion of the "means test" found in section 707(b) for victims of a natural disaster, we would recommend that the calculation of the debtor's monthly expenses expressly include an amount for contingent costs associated with recovering from the natural disaster. Similarly, a victim of a natural disaster should be able to include in his or her projected monthly expenses for purposes of proposing a chapter 13 plan, the reasonable anticipated costs associated with recovering from a natural disaster. As noted above, the short term effects of a natural disaster on an individual or a small business can be dramatic and any financial tests set forth in the Act need to allow for the extreme fluctuations a natural disaster may cause with respect to financial needs.

In conclusion, the Committee on Bankruptcy and Corporate Reorganization of the Association of the Bar of the City of New York fully supports members of Congress in passing legislation that minimizes the anguish of the Katrina victims. We hope that you find our input helpful and we reiterate that our Committee stands ready to assist in any way to ensure that the proposed legislation is fair and reasonable and best constructed to serve the needs of the victims of this American catastrophe.

Very Truly Yours,



Bettina B. Plevan

Letter also sent to:

Hon. John Conyers, Jr.

Hon. Christopher B. Cannon

Hon. Melvin L. Watt

Hon. Jerrold Nadler