

New Plan Case: Court held that Adequate Protection Payments are required even if the creditor is over-secured; and that the Justification line in Paragraph 3.5 (where applicable) must be completed in order to give the justification for the debtors to pay the claims direct. Confirmation denied.

Phillips 17-10450

Facts: Debtors proposed a “new” form Plan that failed to provide adequate protection on an over-secured vehicle claim and left blank the “justification” line as contained in Paragraph 3.5 concerning why the Debtors were paying direct a claim secured by a lien on a second vehicle.

Holding 1- AP on Over-secured Claim: The Court held that both 11 U.S.C. 1326 and the policy of the Court unequivocally requires adequate protection payments on all personal property claims. If a Plan fails to provide them at the rate (1.5%) as required by Local Rule of Bankruptcy Procedure 3015-1(c)(1), the Plan will be denied. Any subsequent Plan filed with adequate protection payments will begin retroactively to month 1.

Holding 2- Justification for Direct Payments: The Court held that when proposing to pay personal property directly as opposed to in the Plan, there must not only be sufficient justification but that justification must be noticed on the creditor body. Simply appearing in Court and announcing the justification will not provide adequate notice to the creditor body. The Court also noted that the Trustee could approve “third party pays” that were properly described in the justification section without such being called. However, if the justification section is blank or for any other justification other than a direct payment by a third party, that issue should be placed on the “call” docket for approval by the Court.

Note: The Trustee is maintaining all form-related objections concerning the new form Plan and the Court has supported him thus far. At the last docket in Beaumont, the Trustee requested the debtors to file an amended Plan (or, if applicable, an Amended Motion to Modify) thereby correcting all form-related objections thereby placing the amended Plan (or Amended Motion to Modify) on the “call” so that the debtors could request the Court to shorten the notice period. In such cases, the Court confirmed these types of amended Plans/Modifications with the shortened notice period.

The debtors’ attorney will need to be at the hearing in order to request the shortened notice period in order for the amended Plan/Modification to be approved by the Court. In that the Trustee does not represent the debtors in these cases, the Trustee will not appear at the hearing to make the request on behalf of the absent debtors’ attorney.