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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

IN RE:

Shiryl T. White

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CASE NO. 07-40789-R

CHAPTER 13

**BRIEF OF AMICUS CURIAE UNOFFICIAL EASTERN DISTRICT  
OF TEXAS SHERMAN DIVISION DEBTORS' BAR**

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

COMES NOW THE UNOFFICIAL EASTERN DISTRICT OF TEXAS SHERMAN  
DIVISION DEBTORS' BAR, files this brief amicus curiae in response to the Objection to  
Confirmation of Chapter 13 Plan filed herein by creditor eCast Settlement Corporation  
(hereinafter "eCast"), and would respectfully show the Court as follows:

**I. STATEMENT OF INTEREST OF THE UNOFFICIAL EASTERN DISTRICT  
OF TEXAS SHERMAN DIVISION DEBTORS' BAR**

The Unofficial Eastern District of Texas Sherman Division Debtors' Bar (hereinafter "the  
Bar") is an organization of local counsel whose practices center, either exclusively or primarily,  
on the representation of consumer and business debtors in Texas bankruptcy proceedings. As  
such, the Bar has a vital interest in the outcome of the matter now before the Court. The issue  
presented by eCast's objection herein has generated a significant split of opinion and much

debate amongst courts, counsel and commentators alike. This case affords the Court an opportunity to address this debate as it pertains to the interpretation and application of 11 U.S.C. §707(b)(2)(A)(ii)(I) in a typical consumer debtor's case. The Bar believes that the Court's decision on this matter will have a great impact upon the extent to which local consumer debtors are able to obtain effective relief in consumer bankruptcy proceedings before this and other local courts.

## **II. ISSUE PRESENTED**

The core issue raised by eCast's objection filed herein is whether the Debtor is entitled to deduct the greater of the Internal Revenue Service Local Standard vehicle ownership allowance of \$471.00 or the Debtor's actual average monthly vehicle payment (\$260.05 as calculated in accordance with the requirements of Official Form B22C) or whether the Debtor should be forced to only deduct the lesser of these two figures based ultimately upon the application of certain non-statutory language contained in the Internal Revenue Manual and Financial Analysis Handbook (hereinafter "IRM") developed and utilized by the Internal Revenue Service.

## **III. ARGUMENT AND AUTHORITIES**

Counsel for the Debtor herein has previously submitted a well-reasoned responsive pleading which directs the Court to Judge Nelms' opinion in the well know case of In re Hardacre, 338 B.R. 718 (Bankr. N.D. Tex. 2006). As detailed by Debtor's counsel, the Hardacre opinion addresses the issue currently before the Court and reaches the conclusion that bankruptcy code section 707(b)(2)(A)(ii)(I) permits deduction of the greater of either the Debtor's actual monthly mortgage and/or auto ownership installment payments as calculated for purposes of Official Form B22C or the amounts provided in the IRS Local Standards. Hardacre,

338 B.R. at 727. Although the dispute in the Hardacre case centered around a slightly different issue (i.e. whether a debtor who owned a car free and clear of all liens could claim the ownership allowance under the Local Standards) Judge Nelms did still address and reject the same argument raised by eCast herein. Specifically, Judge Nelms rejected the argument that section 707(b)(2)(A)(ii)(I) must be interpreted in accordance with the IRM. His rejection of this argument was based in part upon an analysis of the language of the statute and in part based upon his belief that Congress intended to create a straightforward “mathematical protocol wherein the standard expenses under clause (ii)(I) are to be reduced by actual payments under clause (iii).” Hardacre, at 727, n.6.

Judge Nelms is not alone in his interpretation of the legislative intent behind section 707(b)(2)(A)(ii)(I). The recent case of In re Armstrong, 2007 Bankr. Lexis 2032 (Bankr. E.D. Wash. 2007) analyzes the statute and the legislative history behind it and arrives at the same conclusion regarding legislative intent. The Armstrong court was asked to rule upon the same issue that arose in Hardacre in the context of a Chapter 13 Trustee’s contention that the Debtors were not entitled to claim an ownership/lease expense for a vehicle which they owned free and clear of any liens. The court ultimately decided that the Debtors should be permitted to claim the ownership/lease expense despite the fact that their vehicle was paid for. In reaching this conclusion, the court examined the arguments both for and against utilizing the IRM to adjust the Local Standards utilized to complete Official Form B22C. The Armstrong court begins its analysis by noting and discussing the split of authority on the issues surrounding section 707(b)(2)(A)(ii)(I).

**It is an understatement to say that courts are split on this issue.** As of the date of this opinion, there are approximately a dozen reported decisions of various bankruptcy courts determining that if no payment or lease obligation relates to a vehicle, the debtors are not entitled to the full expense deduction. . . These cases would “adjust” the Local Standard. . . There are more than a dozen reported bankruptcy court decisions determining that, regardless of whether a payment or lease obligation exists, debtors are entitled to a full expense deduction under the Local Standard. These cases would

utilize the “unadjusted” Local Standard . . . **The recent opinion In re Lynch, 2007 WL 1387987 (Bankr. E.D. Va. 2007) lists the reported decisions and their holdings. . . The most interesting aspect of these conflicting decisions is that each line of authority relies upon the “plain meaning” of the statute. The line of authority which adjusts the Local Standards . . . concludes that the plain meaning of the statute requires an adjustment. The line of authority which does not adjust the Local Standard concludes that the plain meaning of the statute so requires. Both lines of authority reach conflicting results after application of well-recognized rules of statutory construction.**

Armstrong, 2007 Bankr. Lexis 2032 at \*4-\*6, emphasis added.

The Armstrong court goes on to note that “one is forced to conclude that the language of (ii) even when read in connection with other subparts of §707, is subject to different interpretations and that there is no plain meaning. If the words of the statute as written had plain, ordinary and literal meanings, there would not exist two evenly balanced lines of authority reaching contrary results. . . §707(b)(2)(A)(ii)(I) is ambiguous.” Armstrong, at \*7-\*8.

When faced with an ambiguous statute, courts are of course forced to attempt to ascertain Congressional intent by examining the statute’s legislative history. It has been widely acknowledged that at least part of Congress’ intent in enacting the myriad bankruptcy code changes that took effect on October 17, 2005 was to replace judicial discretion with a “mathematical formula.” Hardacre at 721. As phrased by the Armstrong court:

The purposes of §707(b) is to provide a mechanism to identify debtors who can afford to repay. If Congress had intended that such debtors be identified based on actual reasonable expenses, it would have so provided and, as to certain types of expenses, did so provide. The transportation expense is not one of them. With regard to housing and transportation expense, Congress intended that such debtors be identified by use of a uniform, easily applied formula, i.e. the Local Standards. It certainly could have, but did not state that application of the Local Standards should be applied in the same manner as described by the IRS’ internal policies. The intent was to require rote mathematical calculations based upon the geographic area in which the debtor resides and the number of vehicles.

Armstrong at \*11.

If one accepts the premise that part of Congress’ intent in enacting bankruptcy legislation centered around formulaic documents such as Official Form B22C was to reduce

judicial discretion, it seems unlikely that the statute at issue would be drafted in a manner that would encourage bankruptcy debtors, their counsel, and ultimately bankruptcy judges to pour through obscure inter-office publications of the Internal Revenue Service in order to correctly complete or interpret Official Form B22C. The portion of the IRM cited by counsel for Ecast as support for their position is only one part of the IRM. The IRM also directs IRS employees to consider multiple additional factors, including potential economic hardship that might result from imposing a certain monthly installment payment upon delinquent taxpayers. See, e.g. Internal Revenue Service Financial Analysis Handbook Section 5.15.1.1.6 (found at [www.irs.gov/irm/part5](http://www.irs.gov/irm/part5)). The IRM also treats the IRS national and local expense standards as “guidelines” that may be deviated from in making decisions regarding collection and repayment of taxes and references other expenses that may be considered if reasonable. Internal Revenue Service Financial Analysis Handbook Sections 5.15.1.7.7 and 5.15.1.7.5 respectively. As one court has noted:

To read section 707(b)(2)(A)(ii)(I) as permitting the courts to comb through the Internal Revenue Manual in order to pick and choose provisions to apply in a given case injects great uncertainty into the process of determining a debtor’s expenses for purposes of the means test.

In re Prince, 2006 Bankr. LEXIS 3404, 2006 WL 3501281 (Bankr. M.D.N.C. 2006) at page 3.

The uncertainty that results from allowing application of the IRM to the “means test” calculations seems to be directly contrary to Congress’ expressed intent in enacting the code section at issue.

Ultimately, there is little or no support, in the legislative history or elsewhere, for the position that the IRM should be used to modify the text of section 707(b)(2)(A)(ii)(I). Simply stated:

The IRM are not statutes. They are not promulgated as part of an administrative process. They are internal documents developed to assist IRS agents engaged in a non-bankruptcy process, i.e. the collection of past due taxes. Absent a reference in the “means test” to the IRM, which Congress chose not to do, one cannot conclude that

Congress intended courts to be bound by the IRM. The legislative history of the statute merely indicated the internet location at which the Financial Analysis Handbook may be found.

Armstrong at \*16-\*17, citing In re Naslund, 359 B.R. 781 (Bankr. D. Mont. 2006).

Finally, we would like to call the Court's attention to what we perceive to be the gross inequity of the statutory interpretation advocated herein by eCast. eCast's interpretation of section 707(b)(2)(A)(ii)(I) effectively rewards those debtors who have recently purchased vehicles and/or those debtors who have purchased more expensive vehicles while effectively punishing those debtors who have been more financially prudent. eCast's interpretation also punishes those debtors who continue to drive older vehicles as part of their plans of reorganization. This result seems contrary to the very spirit of Chapter 13 and of bankruptcy relief in general. It is simply "unfair (or at least unwise) to 'punish' debtors who choose to drive inexpensive automobiles they own rather than borrow money to purchase more expensive cars." In re Tousey, 2007 Bankr. LEXIS 36836 (Bankr. E.D.Wis. 2007) at page 15. Indeed, the court in one of the cases cited by eCast in support of its objection to confirmation expressed a similar opinion regarding the inherent unfairness of this approach. That court was required to determine whether the debtors' actual home ownership expenses were deductible. In the course of its analysis, the court stated: "The irony of this case is that the debtors must make larger plan payments because they moved into a too-small home in a valiant and commendable effort to pay their creditors." In re Rezendes, 2007 Bankr. LEXIS 1132, \*19, 2007 WL 988055, \*7 (Bankr. D.Hawaii 2007).

#### **IV. CONCLUSION**

The statutory interpretation advanced by eCast herein is unwarranted by the legislative history of the statute at issue and will result in unfairness and prejudice to honest debtors attempting to reorganize their debts in good faith. For the reasons stated above, this Court

should deny the relief sought by eCast and confirm the plan of reorganization proposed by the Debtor herein.

Respectfully Submitted:

/s/ Michael S. Mitchell

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