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January 23, 2004

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

It is our understanding that next week, when the House takes up S. 1920, the Senate-passed bill extending family farmer bankruptcy relief for six months, you and your colleagues plan to offer an amendment incorporating into that bill the language of H.R. 975, the comprehensive bankruptcy reform measure previously approved by the House in March 2003. As you and your colleagues prepare to offer your amendment, the American Bar Association ("ABA") respectfully urges you to delete several provisions from H.R. 975 that we believe unfairly increase the liability and administrative burdens of bankruptcy attorneys under the Bankruptcy Code.

Although the ABA has not taken a position on H.R. 975 in its entirety, the ABA strongly opposes those provisions in the bill that would require attorneys to: (1) certify the accuracy of the debtor's bankruptcy schedules, under penalty of court sanctions; (2) certify the ability of the debtor to make payments under a reaffirmation agreement; and (3) identify and advertise themselves as "debt relief agencies" subject to a host of new intrusive regulations.

Significantly, these provisions are strongly opposed not just by the debtor bankruptcy attorneys in our association but also by the ABA's *creditor* bankruptcy attorneys.

The ABA and its bankruptcy attorneys believe that the three attorney liability provisions outlined above, if enacted, will have disastrous, if unintended, consequences for the entire bankruptcy court system. These provisions will discourage many attorneys from agreeing to represent debtors at all, while dramatically increasing the fees and expenses of individual debtors who are able to

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obtain legal representation. In addition, because the new liability standards involving certification of schedules apply to all attorneys for individual debtors, whether or not they charge a fee, these provisions would strongly discourage attorneys from providing essential *pro bono* bankruptcy services.

Although these new attorney liability standards and “debt relief agency” regulations may appear to favor creditors on their face, we believe that the practical effect of these provisions will be to harm all parties to the bankruptcy, including creditors and creditors’ attorneys. By dramatically increasing the cost and risk of representing individual debtors in bankruptcy, these provisions are likely to drive many debtor lawyers from the practice altogether, creating a flood of unrepresented *pro se* debtors in the courts. As a result, even simple bankruptcy cases will take much longer to move through the bankruptcy courts, resulting in substantial delays and higher legal expenses for all parties, including creditors.

To avoid these problems, the ABA has crafted proposed amendments that would replace the current attorney liability provisions in H.R. 975 with tough new *non-dischargeable* sanctions against debtors who lie on their bankruptcy schedules and new language urging the bankruptcy courts to vigorously enforce existing Rule 9011 of the Federal Bankruptcy Rules when misconduct by any party is shown. These reforms will reduce bankruptcy fraud and abuse without unfairly harming honest debtors or the overall bankruptcy system, and we urge you to add these amendments to H.R. 975 before that measure is attached to S. 1920. A copy of the ABA’s proposed amendments is enclosed for your consideration. The text of our proposed amendments is also available on our website at the following address:
<http://www.abanet.org/poladv/priorities/hr975april.pdf>.

Thank you for considering the views of the ABA on these important matters. If you would like more information regarding the ABA’s positions on these issues, your staff may contact our legislative counsel for bankruptcy law issues, Larson Frisby, at (202) 662-1098.

Sincerely,



Robert D. Evans

Enclosure

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cc: The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, D.C. 20515
(w/out enclosure)

The Honorable Tom DeLay
Majority Leader
U.S. House of Representatives
Washington, D.C. 20515
(w/out enclosure)

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515
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The Honorable Steny Hoyer
Minority Whip
U.S. House of Representatives
Washington, D.C. 20515
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All members of the House Judiciary Committee
(w/out enclosure)