



513-645-3488
Telephone

Brian D. Flick, Esq.
bflick@dannlaw.com
Email

216-373-0536
Fax

OPPONENT TESTIMONY OF BRIAN FLICK ON BEHALF OF THE NATIONAL ASSOCIATION OF CONSUMER ADVOCATES AND NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS REGARDING HOUSE BILL 131

Good evening Chairman Jordan, Vice Chair Hillyer, Ranking Member Smith and members of the House Financial Institutions Committee. My name is Brian Flick and I appear today on behalf of the National Association of Consumer Advocates (“NACA”) where I serve as the Ohio State Chair; the National Association of Consumer Bankruptcy Attorneys (“NACBA”) to offer testimony in opposition of H.B. 131, legislation to enable debt settlement in Ohio; and as a private attorney who regularly litigates against Debt Settlement Companies who routinely violate the Ohio Debt Adjusters’ Act.

NACA and NACBA are both non-partisan trade groups comprised of consumer advocates and consumer bankruptcy attorneys, respectively. One area where the interests of NACA and NACBA overlap is in the area of debt settlement. NACA members could tell you nationwide of horror stories of persons who pay debt settlement companies and receive no benefits. NACBA members, including 107 Bankruptcy Attorneys here in Ohio, can each tell you of consultations we have all had with consumers who paid a debt settlement company, the settlement company failed to settle the debt, and a bankruptcy needed to be filed.

As a bankruptcy attorney for almost 12 years I’ve had countless calls and in-person consultations with Ohioans from every corner of the state who unsuccessfully attempted to resolve their debts via debt settlement. Not only are the vast majority of consumers unable to resolve their debts through debt settlement, many are harmed by the experience.

Debt settlement companies often fail to deliver on the promises they make to consumers. As the GAO noted in its 2010 Report less than 10% of consumers successfully complete a debt settlement program.¹ In my experience, that number has not changed much, if at all, in the nine years since. Many of the consumers who attempt to complete a debt settlement plan face collections lawsuits and harassment as a result of the long delay between payments into a debt settlement plan and negotiation. Many creditors refuse to work with debt settlement companies altogether. In other states, the fees charged by debt settlement companies are very high and further increase the financial strain on debt-burdened consumers.

¹ The full GAO Report can be accessed at <https://www.gao.gov/assets/130/124498.pdf>



Unlike debt settlement, bankruptcy offers certainty to consumers overwhelmed by debt. Bankruptcy is not the nuclear option as proponents of this bill may suggest nor is it a “black mark”. Bankruptcy allows a consumer to either obtain a “fresh start” in a Chapter 7 Bankruptcy or through a repayment plan in a Chapter 13. A common misconception about Chapter 13 is that a consumer is required to pay back all of their debt. In my experience, shared by my fellow NACBA members in Ohio, likely 1 in 15 consumers actually pay 100% of their debt back. The reality is the vast majority of consumers who file Chapter 13 pay as little as 0% and no more than 100% to their unsecured creditors. A Chapter 13 Plan, absent some very unique circumstances, never pays interest on the payments to the unsecured creditors.

Chapter 13 bankruptcies, unlike debt settlement programs, succeed. An article published in the April 2019 edition of the American Bankruptcy Institute Journal showed completion rates of Chapter 13s in the 6th Circuit as of 2013 to be right around 59%; which is 7th out of the 11 Circuit Courts of Appeals.² None of the Circuits had a completion rate of less than 45% and 4 out of 11 had completion rates of 60% or higher. The Ohio Debt Adjusters Act as currently written works for Ohioans. I urge you not to pass House Bill 131 and would be happy to respond to any questions you may have.

² See “Discharge Rates in Chapter 13”, Linda B. Gore and Bradford Caraway, American Bankruptcy Institute Journal April 2019, <https://www.abi.org/abi-journal/discharge-rates-in-chapter-13>