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APA 6th ed.

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Chicago 7th ed.

Gary Hammond; Jeffrey Tate, "Improper Tying: Not Just an Anti-Trust Issue Anymore," Oklahoma Bar Journal 73, no. 11 (April 6, 2002): 1027-1031

McGill Guide 9th ed.

Gary Hammond & Jeffrey Tate, "Improper Tying: Not Just an Anti-Trust Issue Anymore" (2002) 73:11 Oklahoma B J 1027.

MLA 8th ed.

Hammond, Gary, and Jeffrey Tate. "Improper Tying: Not Just an Anti-Trust Issue Anymore." Oklahoma Bar Journal, vol. 73, no. 11, April 6, 2002, p. 1027-1031. HeinOnline.

OSCOLA 4th ed.

Gary Hammond and Jeffrey Tate, 'Improper Tying: Not Just an Anti-Trust Issue Anymore' (2002) 73 Okla BJ 1027

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## SECTION NOTE

# OBA Bankruptcy and Reorganization Section: Improper Tying: Not Just an Anti-Trust Issue Anymore

By Gary Hammond and Jeffrey Tate

The Bankruptcy Code, 11 U.S.C. § 101 *et seq.*<sup>1</sup>, functions as a comprehensive rule book to which debtors and creditors must abide. While strictly curtailing most collection activities, the code does allow creditors to request that debtors re-obligate themselves to pre-bankruptcy debt. These agreements are known as “reaffirmation agreements,” and are generally governed by § 524(c). In a recent decision, however, the First Circuit Bankruptcy Appellate Panel issued a stern warning to all creditors seeking to obtain reaffirmation agreements from a bankruptcy debtor who owes both secured and unsecured debts to the creditor. In *In re Jamo*, 262 B.R. 159 (1<sup>st</sup> Cir. BAP 2001), the appellate court took issue with the manner in which a credit union used a secured loan to leverage reaffirmation agreements from the debtor on other, unsecured debts. The appellate court held that tying approval of a reaffirmation agreement covering debtors’ home to debtors’ reaffirmation of unrelated, unsecured debt may constitute an unlawful violation of the automatic stay.<sup>2</sup>

In *Jamo*, a husband and wife had extensive pre-bankruptcy dealings with a credit union. The credit union held a first mortgage on the debtors’ home. The debtors had also obtained other unsecured, unrelated loans from the credit union. The debtors eventually succumbed to their debts and filed for relief under Chapter 7 of the code. Because the debtors were in arrears on their home loan when they filed bankruptcy, the credit union refused to accept mortgage payments from them after the couple filed bankruptcy. The debtors then contacted the credit union in an attempt to reaffirm the home mortgage.

The credit union, however, refused to permit the debtors to reaffirm their home mortgage unless they also reaffirmed their outstanding unsecured obligations. The credit union also represented that if the debtors did not also reaffirm their unsecured debt, it would begin foreclosure

proceedings against their home. The debtors eventually filed nine proposed reaffirmation agreements, reaffirming both the secured and unsecured loans with the credit union. Thereafter, the debtors filed an adversary proceeding against the credit union, alleging that conditioning the reaffirmation of a home mortgage to the reaffirmation of other unsecured debts violated the code’s automatic stay provisions.<sup>3</sup> The bankruptcy court agreed with the debtors, and the credit union appealed.

In its opinion, the *Jamo* court first noted that a strict reading of the automatic stay provisions found in § 362 stand in direct conflict with the reaffirmation process set forth in § 524(c).<sup>4</sup> For example, the automatic stay expressly and comprehensively prohibits creditors from attempting to collect pre-petition debts. However, while unsecured debts are normally discharged in bankruptcy, the reaffirmation process specifically allows debtors to re-obligate themselves to pre-petition debt, thus allowing creditors to collect pre-petition debts. As aptly stated by the *Jamo* court:

Reaffirmation agreements do not spring into being fully formed, like Venus from the waves. A creditor’s willingness to enter into a reaffirmation agreement is certainly an effort on its part to collect or recover a claim. There is an obvious conflict between a strict reading of § 362 and the provisions relating to reaffirmation.<sup>5</sup>

Thus, while creditors are generally barred from trying to collect pre-petition debts under the automatic stay provisions of § 362, this rule must necessarily bend to allow for the code’s authorization of reaffirmation agreements, which are by definition an attempt to collect pre-petition debts. The *Jamo* court succinctly stated:

A creditor must be allowed some form of interaction with the debtor in the creation of



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Bankruptcy Institute, the Oklahoma County and OBA Bankruptcy and Reorganization Law Sections.

reaffirmation agreements, and to that extent the absolute bar of § 362(a)(6) must yield. "The option of reaffirming would be empty if creditors were forbidden to engage in any communication whatsoever with debtors who have pre-petition obligations."<sup>6</sup>

As evidenced by the court's remaining discussion, the amount of bending allowed, however, is an extremely gray area.

The *Jamo* court reasoned that while creation of a reaffirmation agreement necessitates communication between the debtor and creditor, some communications run afoul of the automatic stay.<sup>7</sup> Ultimately, the court reasoned that while no creditor is under a statutory duty to allow reaffirmation of any debt, linking reaffirmation of a home mortgage to the reaffirmation of other unrelated, unsecured obligations can transcend "the limited right of communication with the debtor permitted in connection with reaffirmation."<sup>8</sup>

Because the *Jamo* court affirmed the bankruptcy court's finding that the credit union's action was a willful violation of the automatic stay, it next set out to review the penalty imposed by the bankruptcy court. The bankruptcy court ordered the credit union to honor the reaffirmation agreement as to the mortgage, and enjoined it from foreclosing on the debtors' home.<sup>9</sup> In effect, the bankruptcy court erased debtors' default under the first mortgage on the condition that the debtors bring the loan current within twelve months.<sup>10</sup> The bankruptcy court also awarded the debtors' attorneys' fees as well.

The *Jamo* decision held that the bankruptcy court properly utilized § 105(a) to enjoin foreclosure and to effect the terms of the mortgage reaffirmation over the credit union's objection.<sup>11</sup> The

**JEFFREY E. TATE** received his undergraduate degree from OSU and obtained his law degree from OU's College of Law. Mr. Tate practices in the areas of bankruptcy, corporations, workers' compensation defense and general civil litigation in the Oklahoma City office of Groom, Hammond & Harris P.C. He is a member of the Bankruptcy sections of the Oklahoma and Oklahoma County Bar Association, as well as a member of the American Bankruptcy Institute.



reviewing court reasoned that the bankruptcy court's action was proper under the theory of equitable estoppel, that the credit union should be held to the bargain it agreed to, even if it was not the full bargain it had intended to receive.<sup>12</sup> In closing, the *Jamo* court justified the sanction of enforcing the mortgage reaffirmation agreement by stating:

The effect of the Order is to reimpose the *status quo ante* as to the mortgage, which both protects the rights of the Debtor's and leaves [the credit union] in the same position it would have held if the Debtors had never filed for relief under Title 11.<sup>13</sup>

The precise holding of *Jamo* dealt only with the coerced tying of reaffirmation of unsecured loans to the reaffirmation of a residential mortgage, while representing that should the reaffirmation package as a whole not be approved, debtors would lose their home through foreclosure.<sup>14</sup> It is likely, however, that the reasoning employed by the *Jamo* court could also be extended to secured loans such as automobile and other loans. In light of the potential ramifications of *Jamo's* holding, creditors attempting similar tying methods should carefully consider the potential consequences.

1. All statutory citations refer to Title 11 of the United States Code unless otherwise specifically noted.

2. *In re Jamo*, 262 B.R. 159 at 165.

3. § 362(a)(6).

4. *In re Jamo*, 262 B.R. at 165.

5. *In re Jamo*, 262 B.R. at 163.

6. *In re Jamo*, 262 B.R. at 164 (citing *In re Duke*, 79 F.3d 43,45 (7th Cir. 1996)).

7. *Id.*

8. *In re Jamo*, 262 B.R. at 165.

9. *In re Jamo*, 262 B.R. at 166.

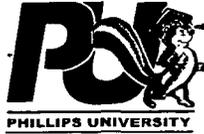
10. *Id.*

11. *In re Jamo*, 262 B.R. at 168.

12. *Id.*

13. *In re Jamo*, 262 B.R. at 168§.

14. *In re Jamo*, 262 B.R. at 165.



## NOTIFICATION OF PHILLIPS UNIVERSITY'S CONTINUED EXISTENCE

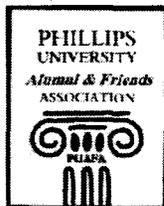
(October 2001)

Phillips University, Inc. is pleased to announce that it successfully concluded its Chapter 11 bankruptcy proceeding and fully paid all allowed claims against it, with interest. While Phillips University's bankruptcy and the circumstances leading to it led to significant changes, Phillips University remains a validly existing Oklahoma corporation with 501(c)(3) status under the Internal Revenue Code and continues to fulfill an educational mission. To fulfill this mission, Phillips University will endeavor to operate in the tradition of the university as it existed on April 1, 1998, and to engage in such educational activities as the university is authorized to engage under applicable state and federal law. Without limiting the scope of the activities in which Phillips University may engage to fulfill its educational purpose, Phillips University is expressly authorized by its articles of incorporation to make scholarships and/or grants, available to: (1) individuals pursuing a liberal arts curriculum and attending a private college or university; and (2) faculty and staff of private, liberal arts colleges or universities pursuing advanced educational studies.

Phillips University offered one-time educational grants of \$250 for the academic year 2001-2002 for students who were enrolled during the university's last two years (1996-97 and 1997-98), but did not graduate from the university. This grant program was established in recognition of the sacrifice of those students who remained at the University during these difficult years.

Phillips University can be contacted by: writing to P.O. Box 2127, Enid, OK 73702-2127; faxing (580) 548-2213; e-mailing to [admin@phillips.edu](mailto:admin@phillips.edu); or telephoning (580) 237-4433. Phillips University's website address is [www.phillips.edu](http://www.phillips.edu)

### PHILLIPS UNIVERSITY ALUMNI AND FRIENDS ASSOCIATION ORGANIZES A LEGACY FOUNDATION



The Phillips University Alumni and Friends Association (PUAFA), a 501(c)(3) organization, which serves as the collective voice of Phillips University's alumni and friends, recently organized the Phillips University Legacy Foundation (PULF). The Phillips University Legacy Foundation is a 501(c)(3) organization that will be awarding: (1) undergraduate scholarships for students attending private colleges or universities affiliated with the Christian Church (Disciples of Christ); (2) scholarships for Christian Church (Disciples of Christ) college and university faculty members who are pursuing continuing professional education; and (3) undergraduate and graduate scholarships to former full-time Phillips University faculty and staff employed during the period of September 1992 through August 1998. Ultimately, the Phillips University Legacy Foundation may fulfill its educational mission through pursuit of additional educational activities as authorized by its articles and bylaws.

The Phillips University Alumni and Friends Association can be contacted by: writing to Connie Cravens at P.O. Box 331, Enid, OK 73702-0331, or telephoning (580) 237-4433. The Phillips University Alumni and Friends Association's website address is [www.puafa.org](http://www.puafa.org)

The Phillips University Legacy Foundation can be contacted by: writing to Gene Challenner at P.O. Box 2127, Enid, OK 73702-2127, or telephoning (580) 237-4433.

# EIGHTEENTH ANNUAL BASIC BANKRUPTCY Chapter 13

	<u>TULSA</u>	<u>OKC</u>
<b>DATES &amp; LOCATIONS:</b>	April 12, 2002 Hilton Southern Hills (7902 S. Lewis)	April 19, 2002 Oklahoma Bar Center (1901 N. Lincoln Blvd.)

**CLE CREDIT:** This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 6 hours of mandatory CLE Credit, including 1 hour of ethics.

**TUITION:** \$150 for early-bird registrations received at least four full business days prior to the seminar date; \$175 for registrations received within four full business days of the seminar date.

**CANCELLATION POLICY:** Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. No requests for cancellations, refunds, or transfers will be accepted on or after the seminar date.

**PROGRAM:**

Planner/ Moderator  
**Herbert M. Graves**

Assistant United States Trustee, Department of Justice, Office of the United States Trustee  
Oklahoma City

**8:30 Registration and Continental Breakfast**

**9:00 Overview of the Bankruptcy Code**

Property of the Estate • Trustee's Duties • Preferences • Case Administration • Liquidation Test • Rights of Redemption • Chapter 13 Distinctions.

**David A. Kline**, Kline & Kline, Oklahoma City

**9:50 Break**

**10:00 Preparation of the Petition, Schedules, and Statement of Affairs**

Property Identification • Rule 2016(b) Disclosures • Venue • Joint Petitioners • Bifurcation of Petitioners • Debtor's Disclosure of Attorney's Fees.

**Herbert M. Graves**, Assistant United States Trustee, Dept. of Justice, Office of the U.S. Trustee, Oklahoma City

**10:50 Drafting the Plan, Confirmation, Modification, and Administration**

**Joseph W. Farber**, Farber Law Offices, Oklahoma City

**11:40 Lunch (included in registration fee)**

**12:00 Ethics and Bankruptcy Law (ethics)**

**Robert D. Garrett**, Attorney at Law, Oklahoma City

**12:50 Break**

Continued on next page

Program continued

**1:00 Duties of the Chapter 13 Trustee and Trustee's Administration of the Case**  
Trustee's Office Administration and Percentage Fee • Review of the Case • Meeting of Creditors  
• Confirmation of the Plan • Plan Objections • Objections to Claims • Plan Modification • Motions to  
Dismiss • Debtor's Discharge • Closing the Case.

**Tulsa Program**

**William Mark Bonney**, Chapter 13 Trustee, Eastern District of Oklahoma, Muskogee  
and

**Lonnie D. Eck**, Chapter 13 Trustee, Northern District of Oklahoma, Tulsa

**Oklahoma City Program**

**John T. Hardeman**, Chapter 13 Trustee, Western District of Oklahoma, Oklahoma City

**1:50 Break**

**2:00 A View from the Bench in the Judicial Administration of Chapter 13 Cases**  
Objections to Claims • Case Confirmation • Contested Hearings • Managing the Flow of Cases • How  
to Help the Court.

**Tulsa Program**

**The Honorable Terrence L. Michael**, United States Bankruptcy Chief Judge, Northern District of  
Oklahoma, Tulsa

**The Honorable Tom R. Cornish**, United States Bankruptcy Judge, Eastern District of Oklahoma,  
Okmulgee

**The Honorable Dana L. Rasure**, United States Bankruptcy Judge, Northern District of Oklahoma, Tulsa

**Oklahoma City Program**

**Leisa G. Mayberry**, Law Clerk, U.S. Bankruptcy Court, Western District of Oklahoma, Oklahoma City

**2:50 Adjourn**

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## 18<sup>th</sup> Annual Basic Bankruptcy Chapter 13

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**April 12, 2002**

**OKC**  
Oklahoma Bar Center  
**April 19, 2002**

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