Exhibit A - *Bankruptcy Abuse Prevention and Consumer Protection Act of 2003,* Hearing on H.R. 975 before House Judiciary Comm., 108th Cong., 1st Sess. 53-55 (2003)

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2003, AND THE NEED FOR BANKRUPTCY REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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These are just three examples of how abusive residents manipulate the Bankruptcy Code to live rent-free.

The bankruptcy system was established to give individuals a second chance, not to be manipulated as a tool by residents to avoid eviction and live rent-free at the expense of rental housing providers and depriving others from moving into that rental unit.

The undersigned organizations ask that the members of this Committee and the U.S. House of Representatives pass H.R. 975. We urge you to close the automatic stay loophole to ensure the viability of small business rental housing providers and the affordable and market-rate housing they provide.

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PREPARED STATEMENT OF DEAN SHEAFFER

Good afternoon. My name is Dean Sheaffer. I am Senior Vice President of Credit and CRM for Boscov's Department Stores and Chairman of the Pennsylvania Retailers' Association. Boscov's is primarily a Mid Atlantic department store chain. In addition to Maryland and New Jersey, we have 2 stores in Delaware, 3 stores in New York, and more than two dozen stores in our home state of Pennsylvania. I am testifying today on behalf of the National Retail Federation. I would like to thank Chairman Cannon and Ranking Member Nadler for providing me with the opportunity to testify before this distinguished committee.

The National Retail Federation (NRF) is the world's largest retail trade association with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalogue, Internet and independent stores. NRF members represent an industry that encompasses more than 1.4 million U.S. retail establishments, employs more than 20 million people—about 1 in 5 American workers—and registered 2002 sales of $3.6 trillion. NRF's members and the consumers to whom they sell are greatly affected by the recent surge in consumer bankruptcies.

Mr. Chairman, I have testified several times over the past three Congresses on the issue of bankruptcy reform. Today, I am here to let you know that Bankruptcies are still out of control. In fact, they are even more out of control than ever. Nationally, we reached a record high of more than 1.5 million consumer filings last year. In fact, between 1995 and 2002, consumer filings rose by seventy percent (70%). In Pennsylvania where we are based, consumer bankruptcies more than doubled in that same time period. As a business, we didn't even get a reprieve from filings in the late 1990s when the economy was registering record expansion and the nation was enjoying near full employment. In 1996, annual consumer bankruptcies topped 1 million for the first time in history and they have only continued to rise.

At Boscov's, we have approximately 500,000 billed credit accounts. In 2002 we closed or reduced the credit limit or took other pre-emptive action on about 40,000 accounts in direct response to increased bankruptcies. Notably, Boscov's combined January and February 2003 bankruptcy write-off was more than 22% higher than January and February of 2002.

Part of the problem is that higher income people, who do not really need Chapter 7 relief, are using that chapter to wipe out their debts regardless. These are not people at the margin. This is plain misuse. Tightening credit is a very blunt instrument. It hurts people at the margin by limiting their access to credit—but it does not get at the higher income individuals who are filing bankruptcies of convenience. That is why we need this legislation, to target bankruptcy misuse.

Mr. Chairman, I know that in 2003 we are living in tougher economic times than just a few years ago, but I would like the opportunity to put all the numbers in perspective. Consumer bankruptcy filings are almost five and one-half (5½) times higher than they were in 1980, a time of generally worse economic conditions. Interestingly, despite front-page headlines reporting the Enron collapse, the World.com bankruptcy and the K-mart reorganization, overall business bankruptcies have been down for nine of the last ten years. In fact, they have been cut in half from an all-time high of 71,000 in 1991. It does not, then, make sense that consumer bankruptcies have consistently continued to skyrocket. And, if the current rate of filings holds within the next decade, 1 in every 7 American households will have filed for bankruptcy. Mr. Chairman, the system is seriously, seriously flawed.

It is estimated that over $40 billion was written off in bankruptcy losses in 2000, which amounts to the discharge of at least $110 million every day of that year. This money does not simply disappear. The cost of these losses and unpaid debts are borne by everyone else. When an individual declares bankruptcy rather than pay the $300 they may owe to Boscov's, or the $1,000 dollars they may owe in state taxes or other bills, they force the rest of us to pick up their expenses. Everyone else's taxes are higher, everyone else's credit is tighter, and everyone else pays more for merchandise as a result of those who choose to walk away. Last year, to make up for these losses, it cost each of our Nation's 100 million households several hundred dollars. Estimates suggest this year's number will again be higher—it will be interesting to see the first quarter numbers from 2003 when they are published in the coming weeks. As I noted above, our internal numbers reflect that the tide is still rising.

Now, I want to be clear. We cannot eliminate all of these losses. Some of them are unavoidable. Bankruptcy must remain an option for those who have experienced serious financial setbacks and who have no other means of recovering, especially in these times of economic downturn. The bankruptcy system exists to help those who have suffered a catastrophic accident, illness or divorce, or those who have experienced the loss of a business or job from which they cannot otherwise recover. It is both the safety net and the last resort for people in trouble. The knowledge that the bankruptcy system exists to catch them in a financial fall, even though it might never be used, is important. Finally, most people who file for bankruptcy need relief. We must be very careful to distinguish the average filer, who uses the system properly, from that smaller, but important group of others who misuse the system for their benefit.

It is this trend with which we must be concerned. We believe changing consumer attitudes regarding personal responsibility and inherent flaws in our bankruptcy process have caused many individuals, who do not need full bankruptcy relief, to turn to the system regardless. They use it to wipe out their debts, without ever making a serious effort to pay. Some of this change in usage results from a decline in the stigma traditionally associated with filing for bankruptcy. Some of it results from suggestions by others who urge individuals to use bankruptcy to "beat the system." According to a poll conducted in November, 2002, by Penn, Schoen and Berland, 82 percent of voters say that filing for bankruptcy is more socially acceptable than it was just a few years ago. Whatever the cause, irresponsible filings must be curtailed and consumer attitudes should be altered.

My experience at Boscov's, and that of credit managers at other stores with whom I have spoken, further convinces me that the result of this poll is right on target. For example, for many years we tracked the payment history of those of our customers who carry and use the Boscov's card. The vast majority of our customers pay as agreed. In the past, we would occasionally see customers whose payment patterns were more erratic. This kind of payment history suggested to us that the customer was experiencing some sort of financial difficulty. We would then monitor the account and intervene as necessary, perhaps by suggesting consumer credit counseling or by limiting the customer's credit line to minimize the amount of damage, prior to their experiencing a financial failure.

Today, however, we see a very different picture. Often the first indication we get that an individual is experiencing financial difficulty is when we receive notice of his bankruptcy petition. A 1998/1999 study at Boscov's showed that almost half of the bankruptcy petitions we receive are from customers who are not seriously delinquent with their accounts. It appears that bankruptcy is increasingly becoming a first step rather than a last resort.

Mr. Chairman, consumers must have a good credit history to qualify for and continue to use a Boscov's card. Yet we, and other retail credit grantors, have been receiving bankruptcy filings without warning from individuals who have been solid customers for years. We all experience temporary financial reversals in life. Most of us learn that, if you grit your teeth and tighten your belt a notch, you can get through it. But many people no longer see it that way. The rising bankruptcy filings reflect this.

Part of it is trend can be attributed to increasingly aggressive lawyer advertising. We have all seen the ads on TV by lawyers promising to make individuals' debts disappear. Some do not even mention bankruptcy—they talk about "restructuring" your finances. I question whether these aggressive advertisers inform their clients about the serious downsides of filing for bankruptcy. There are also bankruptcy petition preparers: clerk typists who simply fill out forms for filers. The client may never meet a lawyer. And with the widespread use of the Internet, websites that proclaim "File bankruptcy for as little as $99" are multiplying. I firmly believe these low cost "bankruptcy mills" are part of the problem.

To some degree, the rise in bankruptcy filings can also be attributed to the events as they have played out here in Congress over the past seven years. Mr. Chairman, Ranking Member Nadler, each time this legislation comes close to final passage we see a spike in bankruptcy filings. Individuals are often counseled by attorneys or other bankruptcy professionals to "file quick, before bankruptcy reform becomes law" in order to reap the benefits of a full Chapter 7 discharge. In fact, distortions of this legislation run rampant in the press and elsewhere, and have caused many to believe that they won't be able to file for bankruptcy at all once this reform becomes law. As we all know, this is simply not correct.

At a time when 1 in every 80 households files for bankruptcy, everyone knows someone, or knows of someone, who has recently declared. Many of these individuals keep their house, their car or even their boat. Recent polling suggests that sixty-nine percent (69%) of voters who know someone who has declared bankruptcy support tightening the law. Among these people, another fifty-three percent (53%) support reform because they know that they are bearing the burden of the current system. Furthermore, the same poll shows that fifty-six percent (56%) of all voters strongly favor an income test to ensure that those bankruptcy filers who can afford to pay back part of their debt do so. Mr. Chairman, responsible consumers are clearly getting fed up.

I just want to spend a final few minutes detailing the retail industry's long-standing support for this bill. In 1998, during the 105th Congress, we strongly supported the bill introduced by Mr. Gekas and Mr. Moran, H.R. 3150. It provided a very simple, up front needs-based formula that allowed the overwhelming majority of those who needed bankruptcy relief in Chapter 7 to have it with virtually no questions asked. But for that subgroup of filers, for those higher income individuals who often use Chapter 7 to push their debts onto others regardless of the filer's ability to pay, the up front, needs-based test would have said, "No. Pay what you can afford."

In the 106th Congress we continued to support the conference report that passed both the Senate and House, but was pocket-vetoed by President Clinton during his final days in office. Again, in the 107th Congress, we supported the conference report for H.R. 333. Unfortunately, that bill fell victim to a politically motivated debate over essentially unrelated issues during the final days of the Congress. Like last year, we are deeply concerned that if this heavily negotiated bill is further watered down the intended benefits will be lost. We are also deeply concerned that some will again wish to attach amendments that will act as "poison pills" moving forward. While these issues may deserve consideration, they should stand on their own merit. In the context of this debate, their primary effect is to derail critical and needed changes to bankruptcy law as demonstrated by the November 13, 2002 vote on the House floor.

On behalf of the National Retail Federation, I urge members of Congress to take swift legislative action to address the problems confronting the nation's bankruptcy system. Otherwise, in the not too distant future, we may find that among a large segment of our society, bankruptcy filings will become the rule rather than the exception. If we are not careful, the costs of the rising tide of discretionary filings may tax society's compassion for those in genuine need. We must not allow that to happen. I believe that it is imperative for Congress to pass common sense bankruptcy reform legislation without further amendment, now.