IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

IN RE:	**CHAPTER 7**
JOSEPH E. KIRKLAND, III	**CASE NO. 8800480JC**
AETNA	**PLAINTIFF**
VS.	**ADVERSARY NO. 920279**
JOSEPH E. KIRKLAND, III	**DEFENDANT**

Hon. Eileen Shaffer Bailey
P. O. Box 1177
Jackson, MS 39215-1177

Attorney for Debtor

Hon. Michael J. McElhaney, Jr.
P. O. Box 1407
Pascagoula, MS 39567

Attorney for Aetna

Edward Ellington, Judge

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court on the Debtor's *Motion to Dismiss* the *Complaint to Determine Dischargeability of Debt* which was filed by Aetna. After considering the pleadings, stipulations and briefs filed by the parties, the Court finds that the motion to dismiss should be granted.

FINDINGS OF FACT

On February 25, 1994, and May 5, 1994, the parties submitted *Stipulation(s) of Facts*. In addition to stipulating that the Court take judicial notice of the court files in adversary

proceeding number 920279 and case number 8800480JC, the following is a synopsis of the stipulated facts and information contained in the court files:

On February 12, 1988, Joseph E. Kirkland, III (Debtor) filed for relief under Chapter 11 of the Bankruptcy Code. Aetna was listed on the Debtor's *Schedule of Assets and Liabilities, Schedule A-3 -- Creditors having unsecured claims without priority*, a total of five (5) times at the following three (3) addresses:

(1) Aetna
151 Farmington Avenue
Hartford, Connecticut 06156

(2) Aetna
Post Office Box 1993
Jackson, Mississippi 39205 (3 times)

(3) Aetna
c/o Collection Control Services
Post Office Box 1000-A
94 Wells Avenue
Newton, Massachusetts 02166

In addition to being listed on the Debtor's schedules, all of the above addresses were included on the Debtor's master address list.

On February 17, 1988, the Bankruptcy Clerk's office mailed the *Notice for Meeting of Creditors* (Ch. 11 § 341 Notice) to all creditors listed on the Debtor's master address list. May 20, 1988, was stated as the deadline for filing 11 U.S.C. § 523(c)[1] complaints. The bar date for the filing of proof of claims was set for June 20, 1988.

---

[1]Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

The Debtor converted his Chapter 11 bankruptcy to a case under Chapter 7 of the Bankruptcy Code on November 28, 1988. Robert G. Nichols, Jr. was appointed the Chapter 7 Trustee. On November 30, 1988, the Bankruptcy Clerk's office mailed the *Notice for Meeting of Creditors* (Ch. 7 § 341 Notice) to all creditors listed on the Debtor's master address list. March 13, 1989, was stated as the deadline for filing § 523(c)/§727 complaints. The bar date for the filing of proof of claims was set for April 10, 1989.

Aetna filed three (3) *Proof of Claims*[2] with the Clerk's office as follows (date filed and amount claimed):

a) Proof of Claim Docket No. 2
February 24, 1988
$2,673.30[3]

b) Proof of Claim Docket No. 63
December 9, 1988
$2,673.30

c) Proof of Claim Docket No. 97
November 6, 1992[4]
$146,611.00

Aetna is a creditor of the Debtor's estate pursuant to a fidelity bond that it executed on behalf of the following Mississippi Limited Partnerships in which the Debtor held an interest:

---

[2]The parties stipulated that Aetna had filed three (3) *Proof of Claims*. Actually, Aetna filed four (4) *Proof of Claims*. Aetna filed another *Proof of Claim* on June 6, 1988, for $2,673.00 (Proof of Claim Docket No. 40). When the Trustee filed his motion to allow/disallow claims, claim number 40 was allowed for $2,673.00. Claim number 63 which was filed on December 9, 1988, was disallowed as it was a duplicate of claim number 40.

[3] The parties stipulated to $673.30, however, the *Proof of Claim* was actually filed for $2,673.30.

[4]The parties stipulated that this *Proof of Claim* was filed on December 6, 1992, however, the *Proof of Claim* was actually stamped filed on November 6, 1992.

Pine Shadows, Ltd.; Waveland, Ltd.; Pea Ridge Farms, Ltd.; Magee, Ltd.; and Bay St. Louis & Associates, Ltd. (collectively, the Partnerships).

On January 9, 1989, the Chapter 7 Trustee, Robert G. Nichols, Jr., (Trustee) noticed to all creditors his intention to sell the Debtor's general partnership interests in the above listed Partnerships. The sale was subject only to the FmHA's required reserve deficiencies, tax deficiencies, insurance deficiencies and FmHA's required funding. Aetna did not file an objection to the Trustee's sale. Orders were subsequently entered in February 1989 and June 1989 approving the sales.

After having been duly noticed to all creditors, the *Order on Motion to Allow and to Disallow Certain Claims* was entered on December 17, 1992. The order approved the *Proof of Claims* filed by Aetna for $2,673.30 (claim #2) and $2,673.00 (claim #40). At the time the motion to allow/disallow claims was filed, the *Proof of Claim* (claim #97) filed by Aetna on November 6, 1992, had not been filed.

On October 21, 1992, the Debtor filed an amended *Schedule A-3 --Creditors having unsecured claims without priority* and a *Notice of Amendment of Schedules*. The Debtor's amendment added the following:

Name of creditor and complete mailing address including zip code	Indicate if claim is contingent, unliquidated, or disputed	Amount of claim
Aetna c/o Michael J. McElhaney, Jr. P. O. Box 787 Pascagoula, MS 39567	disputed	unknown

The *Notice of Amendment of Schedules* which was sent out by the Debtor complies with the form notice which is required by Uniform Local Rule 10 whenever a debtor is adding a creditor to

his or her schedules. In addition to other information, the notice states that the "affected creditors have sixty days from the date of this notice to file a complaint objecting to the debtor's discharge under §727(a) . . . or a complaint to determine dischargeability of a debt under § 523(c) of the Code . . . ." Within sixty (60) days of the date of the notice, on November 6, 1992, Aetna, through Michael J. McElhaney, Jr., Esquire, filed its *Complaint to Determine Dischargeability of Debt* pursuant to § 523(a)(4) and (6). Aetna also filed claim #97 on November 6, 1992.

In response to the complaint, the Debtor filed his *Motion to Dismiss*. The Debtor seeks to have the complaint dismissed on two grounds. First, the Debtor alleges that March 13, 1989, was established as the date that all objections to discharge were due, and Aetna's complaint is time barred because it was not filed before the deadline. Secondly, the Debtor states that the October 21, 1992, amendment to the Debtor's schedules was simply done to reflect an additional address for Aetna and was done at the request of Aetna's attorney. Furthermore, the amendment did not set out a new indebtedness on behalf of Aetna, and therefore, Aetna was not entitled to another sixty (60) day period in which to file a complaint objecting to the Debtor's discharge. Consequently, the Debtor argues that Aetna's complaint filed on November 6, 1992, was untimely filed and should be dismissed.

Although not stated in his motion, both the Debtor and Aetna address the issue of the timeliness of *Proof of Claim* #97 in the briefs which were submitted to the Court. The Debtor objects to the allowance of Aetna's claim #97 due to the fact that it was filed after the deadline to file proof of claims had passed. However, this issue does not need to be addressed by the Court because the Debtor states the following in his *Rebuttal Brief of Defendant, Joseph E.*

Kirkland, III: "Kirkland has no objection to the Court giving Aetna an equitable extension to file an amended proof of claim reflecting its entire indebtedness in this bankruptcy proceeding." Rebuttal Brief, p. 5. Consequentially, the Court will not rule on the timeliness of *Proof of Claim* #97.

In its brief, Aetna acknowledges that it did file the *Proofs of Claim* for the claims listed by the Debtor in his schedules. However, Aetna argues that its complaint and claim #97 should not be time barred because:

> It is inconceivable that Aetna should or could file Proofs of Claim for debts of which it absolutely had no knowledge. The misappropriation of funds and subsequent loss by Aetna was not discovered by the Farmers Home Administration nor was it reported to Aetna until several years after the bar dates for filing Proofs of Claims and Objections to Discharge.

Reply Brief of Plaintiff Aetna, p. 6.

A synopsis of the pertinent dates follows:

02-12-88	Ch. 11 petition filed
02-24-88	1st proof filed (#2)
05-20-88	deadline for objection to dischargeability
06-06-88	2nd proof filed (#40)
06-20-88	deadline to file Ch. 11 proof of claim
11-28-88	conversion to Ch. 7
12-09-88	3rd proof filed (#63)
03-13-89	deadline for objection to discharge/dischargeability
04-10-89	deadline to file Ch. 7 proof of claim
09-23-92	motion to allow/disallow claims filed
10-21-92	notice of amendment to schedules filed
11-06-92	4th proof filed (#97)
11-06-92	§ 523 complaint filed
12-17-92	order entered--allow/disallow claims

CONCLUSIONS OF LAW

I.

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A), (B) and (I).

II.

Since the Debtor has no objection to Aetna amending its timely filed *Proof of Claims* to reflect the amount it has claimed in *Proof of Claim* #97, the Court will not address the question of whether Aetna's claim #97 was timely filed. Therefore, the issue before the Court is whether Aetna's complaint to determine the dischargeability of its debt was timely filed.

The Debtor alleges that Aetna's complaint to determine the dischargeability of its debt must be dismissed due to the fact that it was untimely filed.. The procedure which must be followed in order to have a debt determined nondischargeable under § 523 is outlined in Federal Rule of Bankruptcy Procedure 4007.[5] Rule 4007(c) establishes the time frame for the filing of an objection to the dischargeability of a debt pursuant to § 523. Rule 4007(c) states:

> **Rule 4007. Determination of Dischargeability of a Debt.**
>
> **(c) Time for Filing Complaint Under §523(c) in Chapter 7 Liquidation. . . .** A complaint to determine the dischargeability

---

[5]Hereinafter, all Rules refer to the Federal Rules of Bankruptcy Procedure unless specifically noted otherwise.

> of any debt pursuant to §523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to §341(a). The court shall give all creditors not less than 30 days notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. **The motion shall be made before the time has expired.** (emphasis added)

Rule 4007(c) must be interpreted in conjunction with the aid of Rule 9006. Rule 9006(b) provides for the enlargement of the time for the filing of an objection to the dischargeability of a debt pursuant to § 523. Rule 9006 states in pertinent part:

> **Rule 9006. Time.**
>
> **(b) Enlargement.**
>
> **(1) In General.** Except as provided in paragraph(s) . . . (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Subparagraph (3) of Rule 9006(b) then limits the authority of the court to enlarge the time periods provided in Rule 4007(c), stating:

> **(3) Enlargement Limited.** The court may enlarge the time for taking action under Rule(s) . . . 4007(c) . . . only to the extent and under the condition stated in those rules.

Interpreting Rule 4007(c) with the aid of Rule 9006(b)(3), the court can extend the time under Rule 4007(c) **only** if the creditor has filed a motion before the sixty (60) day period has expired, and then, only *for cause*. The Fifth Circuit Court of Appeals has stated that the procedure embodied in Rule 4007(c):

> (E)vince(s) a strong intent that the participants in bankruptcy proceedings be assured that, within the set period of 60 days, they can know which debts are subject to an exception to discharge. This fixed, relatively short limitation period enables the debtor and creditors to make better-informed decisions early in the proceedings. . . .
>
> Moreover, § 523(c) of the Code, which Rule 4007 is designed to implement, places a heavy burden on the creditor to protect his rights: a debt of the type presented here is automatically discharged unless the creditor requests a determination of dischargeability.

Neeley v. Murchison, 815 F.2d 345, 346-47 (5th Cir. 1987). "This strict limitation on the extension of time reflects the overall goal of the bankruptcy process to provide individual debtors a fresh start." In the Matter of Ichinose, 946 F.2d 1169, 1172 (5th Cir. 1991). *See also*, In the Matter of Sam, 894 F.2d 778 (5th Cir. 1990); In the Matter of Compton, 891 F.2d 1180 (5th Cir. 1990); In the Matter of Little, 161 B.R. 164 (Bankr. E.D. La. 1993); In re Curtis, 148 B.R. 465 (Bankr. N.D. Tex. 1992); In re Booth, 103 B.R. 800 (Bankr. S.D. Miss. 1989); In re Boyle, 1994 WL 90326 (E.D. La. March 17, 1994).

As stated previously, Aetna was listed a total five (5) times on the Debtor's schedules. Three (3) separate addresses for Aetna were included on the Debtor's master address list. Aetna was mailed two meeting of creditors notices, one for the Chapter 11 and one for the Chapter 7, both of which established the bar dates for the filing of § 727 and/or § 523 complaints. Prior to the expiration of the March 13, 1989, Chapter 7 bar date, Aetna filed three (3) separate *Proof*

of Claims. Therefore, it is this Court's opinion that there is no doubt that Aetna had received notice of the Debtor's bankruptcy petition. To its detriment, Aetna simply failed to timely file its complaint or to timely file a motion for extension of time prior to the March 13, 1989, deadline as required by Rule 4007(c) and Rule 9006(b).

Aetna acknowledges that it was listed in the Debtor's schedules and on his master address list, however, Aetna argues and cites cases to support its position that it is not bound by the March 13, 1989, deadline because Aetna had not been properly noticed prior to the deadline. Aetna asserts that the "claim was handled completely out of the Gulfport, Mississippi office." Reply Brief of Plaintiff Aetna, p. 7. Aetna goes on to state that "(t)he Debtor knew he had misappropriated the funds and knew that Aetna would be required to make good its obligation under its bond." Id. Aetna then argues that since the Debtor did not list the Gulfport, Mississippi, office on his schedules, Aetna had not received notice of the Debtor's bankruptcy prior to the March 13, 1989, and therefore, Aetna's complaint is not time barred.

To support this argument, Aetna cites United States, Small Business Administration v. Bridges, 894 F.2d 108 (5th Cir. 1990) in which the Fifth Circuit affirmed the lower court's finding that the Small Business Administration's (SBA) debt was not discharged due to the fact that the SBA had not received notice nor did it have actual knowledge of the individual debtor's bankruptcy petition. In Bridges, Loris C. Bridges initiated two separate bankruptcy petitions: Gulf Hills Development Corporation (the corporation) and her own personal bankruptcy case (the individual). Both the corporation and the individual were indebted to the SBA. The Biloxi, Mississippi, office of the SBA (later moved to Gulfport, Mississippi) originated and serviced a loan to the corporation. The Jackson, Mississippi, office of the SBA originated and serviced a

loan to the individual. The SBA's testimony was that the Jackson office is autonomous from the Gulfport office. The Biloxi, Mississippi, office was listed in the corporation's bankruptcy. However, the SBA was never listed as a creditor in the individual case. Therefore, the SBA office in Jackson, Mississippi, had no knowledge of any bankruptcy petition involving the individual. Based on the individual's failure to list the SBA in her schedules, the Fifth Circuit found that the SBA's debt in the individual case had not been discharged. Aetna argues that the same reasoning applied by the Fifth Circuit to declare that the SBA's debt was not discharged applies to the case at bar because Aetna's Gulfport, Mississippi, office was not listed on the Debtor's schedules. The Court disagrees.

Bridges can be distinguished from the case at bar because in Bridges the corporation listed the SBA in its bankruptcy case, but the individual **did not** list the SBA in her case even though she personally owed the SBA approximately $250,000. In the case at bar, the Debtor did not fail to list Aetna as a creditor. Rather, Aetna was listed in the Debtor's schedules five (5) times at three (3) different addresses. The Debtor listed Aetna at its Jackson, Mississippi, office, its Hartford, Connecticut, office and its Collection Control Services office in Newton, Massachusetts. Aetna has not provided any proof to show that the Debtor had any contact with the Gulfport, Mississippi, office. In addition, the Debtor's properties in which Aetna had an interest were not all located on the Mississippi Gulf Coast. With the bankruptcy notices going to three (3) separate offices of Aetna, someone should have acted to protect Aetna's interests. The Debtor will not be forced to suffer because of Aetna's failure to timely act. "(W)hether notice to an agency is adequate depends upon the facts and circumstances of a given case."

Bridges, 894 F.2d at 111. This Court finds that Aetna was properly notified of the Debtor's bankruptcy petition.

In an unpublished opinion of the United States District Court for the Southern District of Mississippi, In re Philip Morris Temple, Civil Action No. J89-0724(B), (S.D. Miss. April 11, 1990), the creditor missed the deadline for the filing of an objection to the debtor's discharge. Like Aetna, the creditor argued that it did not discover the debtor's alleged conduct which could lead to the denial of his discharge until after the deadline had passed. The Honorable William H. Barbour, Jr., Chief Judge, held that "a motion for extension of time to file a complaint objecting to a discharge must be filed before expiration of the 60-day period prescribed in Rule 4004(a) (the Rule for § 727 which is equivalent to Rule 4007), and no discretion is allowed to courts in the matter." Temple, p. 4 (explanation added).

In support of his ruling, Judge Barbour cited the case of In re Klein, 64 B.R. 372 (Bankr. E.D.N.Y. 1986) in which the creditor also argued that it did not discover the debtor's alleged fraud until after the deadline had passed. The court in Klein stated:

> Movant protests mightily that to deny his motion for procedural reasons is improper, particularly in light of his belief that Debtor engaged in serious acts of misconduct which should bar any discharge. Such emotional contentions are understandable. As a general rule, justiciable controversies should be substantively decided and not barred by procedural technicalities, unless some important policy or purpose is served. However, Bankruptcy Rules . . . 4007(c) and 9006(b)(3) do indeed reflect an important policy or purpose and their enforcement is basic to proper bankruptcy administration.
>
> Fundamental to our insolvency laws is the notion that bankruptcy in the life of an individual is a passing phenomenon, after which life must go on. The viability and rapidity of that process is the essence of the discharge in bankruptcy and related fresh start doctrine. . . . Bankruptcy Rules . . . 4007(c) and 9006(b)(3) are

> the means utilized to achieve this objective. They reflect a considered determination that a final cut-off date insuring that debtors will be free after a certain date, outweighs individual hardship to creditors that may be caused by rigid adherence to the rules.

Temple, p. 5 (quoting In re Klein, 64 B.R. 372, 375 (Bankr. E.D. N.Y. 1986)(citations omitted). Consequentially, even though the result may seem inequitable to Aetna, strict compliance with Rules 4007(c) and 9006(b) requires the Court to find that Aetna's complaint should be dismissed as time barred. Neeley v. Murchison, 815 F.2d 345 (5th Cir. 1987).

Amendment of Schedules

Aetna's next argument is that the October 21, 1992, *Notice of Amendment to Schedules* which was issued in accordance with Uniform Local Rule 10 gave Aetna sixty (60) days from the date of the notice to file its complaint objecting to the dischargeability of its debt. Uniform Local Rule 10 states:

> Rule 10. Amendments to Schedule Additional Creditors
>
> If a schedule is amended to include an additional creditor, the . . . debtor's attorney shall send a copy of the amended schedule to the affected creditor, to the trustee and to the U.S. trustee. In addition, the . . . debtor's attorney shall give notice by mail to the affected creditor that the said creditor has . . . sixty (60) days within which to file a complaint objecting to discharge under § 727(a) . . . or to the dischargeability of any debt under § 523(c) of the Code or to file a motion to seek an extension of time for filing a complaint, unless a longer period of time is provided by Rules 4004, 4007 and 9006 . . . .

The Court acknowledges that Aetna filed its complaint within sixty (60) days of the October 21, 1992, notice. However, because Aetna was not entitled to an additional sixty (60)

days, its complaint is untimely. Judge Edward R. Gaines, United States Bankruptcy Judge for the Southern District of Mississippi, has rendered two separate opinions on this matter.

In Trust Leasing Company, Inc. v. Hughes (In re Hughes), Case no. 9107906HEG, Adversary no. 910911HEG (Bankr. S.D. Miss. September 14, 1993), the debtor failed to list several creditors in his schedules. Pursuant to Uniform Local Rule 10, the debtor filed a notice of amendment to his schedules giving the affected creditors sixty (60) days to file any objections to discharge. The court found that Trust Leasing Company had timely filed its objection to dischargeability of its debt within the time frame allowed by Uniform Local Rule 10. (Note: Trust Leasing Company filed a motion for extension of time before the sixty (60) days had run. The court granted the extension, and Trust Leasing Company filed its complaint before the extended deadline arrived.) Unlike Aetna in the case at bar, Trust Leasing Company previously had not been listed on the debtor's schedules. Therefore, Trust Leasing Company was an additional creditor being added to the schedules and was entitled to the sixty (60) days in which to file its complaint as provided in Uniform Local Rule 10.

In another opinion involving the same debtor and the same notice of amendment to schedules, Judge Gaines ruled that the complaint filed by a creditor was time barred. In Resolution Trust Corporation v. Hughes (In re Hughes), Case no. 9107906HEG, Adversary no. 910928HEG, (Bankr. S.D. Miss. July 20, 1994), the Resolution Trust Corporation (RTC) alleged that it did not discover the debtor's alleged misconduct until after the bar date had passed. The court found that the RTC was originally listed in the debtor's schedules and was properly mailed a notice of the first meeting of creditors. The court stated that "even though the full extent of the debtor's actions or conduct may not have been learned or discovered until

after the deadline for complaints," Id. p. 6, the RTC was put on notice of the debtor's bankruptcy which should have alerted it, at the minimum, to file a request for an extension of time to file a complaint.

Judge Gaines then addressed the affect of Uniform Local Rule 10 on a creditor which is listed in the debtor's original schedules:

> The Court recognizes that upon an amendment to the debtor's schedules, debtor's counsel gave notice that affected creditors had sixty days to file complaints under § 523 and § 727, utilizing language similar to that provided by Uniform Local Rule 10 dealing with adding creditors to the debtor's schedules. . . . A clear purpose of this rule is to notify creditors who have been added to the debtor's schedules by way of amendment of time limitations imposed for filing complaints. See, Trust Leasing Company, Inc. v. Hughes, Adversary No. 910911 HEG (Bankr. S.D. Miss. 1993). Southeastern was not added to the debtor's schedules by amendment but was listed in the original schedules, and, therefore, the notification of filing deadline pursuant to Local Rule 10 was not applicable to this creditor. Southeastern was listed in the original schedules, was sent notification of the debtor's bankruptcy, and of the July 2, 1991, deadline for filing complaints pursuant to § 523 and § 727. Southeastern was obliged to comply with the deadline or to timely request an extension of time.

Resolution Trust, p. 6-7. Likewise, Aetna was also listed in the Debtor's original schedules, was sent notification of the Debtor's bankruptcy, and of the March 13, 1989, deadline for filing complaints pursuant to § 523 and § 727. As stated previously, Aetna did not comply with this deadline nor did Aetna file a timely motion for extension of time. The amendment only added the address of Aetna's attorney to the schedules. Consequentially, Aetna was not entitled to an additional sixty (60) days to file an objection to the dischargeability of its debt as stated in the *Notice of Amendment to Schedules*. Therefore, the complaint it filed on November 6, 1992, is timed barred and should be dismissed.

CONCLUSION

Aetna was listed on the Debtor's original schedules and master address list. Aetna failed to file a motion for an extension of time, and it failed to file its complaint objecting to the dischargeability of its debt before the March 13, 1989, deadline. Based upon the clear wording of Rules 4007(c) and 9006(b) and the Fifth Circuit's ruling in Neeley v. Murchison, 815 F.2d 345 (5th Cir. 1987), the motion to dismiss the complaint filed by Aetna on November 6, 1992, should be granted as the complaint was untimely filed.

A separate judgment consistent with this opinion will be entered in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

SO ORDERED this the 5th day of August, 1994.

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI JACKSON DIVISION

IN RE:	**CHAPTER 7**
JOSEPH E. KIRKLAND, III	**CASE NO. 8800480JC**
AETNA	**PLAINTIFF**
VS.	**ADVERSARY NO. 920279**
JOSEPH E. KIRKLAND, III	**DEFENDANT**

FINAL JUDGMENT

Consistent with the opinion dated contemporaneously herewith Debtor's *Motion to Dismiss* should be granted and the complaint to determine dischargeability filed by Aetna should be dismissed.

IT IS THEREFORE ORDERED THAT the *Motion to Dismiss* is granted and that the *Complaint to Determine the Dischargeability of Debt* is dismissed.

This is a final judgment for purposes of Federal Rules of Bankruptcy Procedure 7054 and 9021.

SO ORDERED this the 5th day of August, 1994.

UNITED STATES BANKRUPTCY JUDGE