



Opinion 536

Published on District of Utah (<https://www.utb.uscourts.gov>)

Opinion Title: 03/01/2010 PUBLISHED In re Underhill, Case No. 09-30745, Judge Mosier.

Body: Chapter 13 debtor filed three bankruptcy petitions within a one year period and the automatic stay did not go into effect in the third case. The debtor proposed a plan that would cure his prepetition default on a secured claim. The secured creditor objected to confirmation arguing: (1) the presumption under § 362(c)(4)(D) establishes that the debtor's petition was not filed in good faith and the plan can not be confirmed, and (2) confirming the chapter 13 plan that proposes to cure the debtor's prepetition default with the debtor is a de facto reinstatement of the automatic stay and impermissibly circumvents the statutory scheme established by Congress to reinstate the automatic stay. The court held; (1) the presumption under § 362(c)(4)(D) is limited in application to § 362(c)(4)(B), (2) even if there is no automatic stay in effect the court may confirm a chapter 13 plan that cures a prepetition default on a secured claim, and (3) if a secured creditor objects to confirmation the chapter 13 debtor has the burden to establish that his petition was filed in good faith and the plan is proposed in good faith. The debtor failed to carry his burden on these issues and confirmation was denied.

File:  [536.pdf](#) [1]

Judge: [Chief Judge R. Kimball Mosier](#) [2]

Date: Monday, March 1, 2010

Source URL: <https://www.utb.uscourts.gov/opinions/opinion-536#comment-0>

Links

[1] <https://www.utb.uscourts.gov/sites/default/files/opinions/536.pdf>

[2] <https://www.utb.uscourts.gov/content/chief-judge-r-kimball-mosier>