

# NOTE

## CHAPTER XIII OF THE BANKRUPTCY ACT: AS MAINE GOES, SO *SHOULD* THE NATION\*

### I. INTRODUCTION\*\*

There is a staggering number of consumer bankruptcies being filed in the United States today. It is generally believed that this is an unavoidable corollary to the upsurge in consumer credit, and that consumer credit, in turn, is the bulwark of our modern economy. Assuming the validity of these conclusions, the best method of dealing with the consumer who is unable to pay his debts remains unsettled. Unknown to many attorneys, *two* statutory remedies exist under federal bankruptcy law. The first, straight bankruptcy, is widely used; the other, Chapter XIII Wage Earner Plans, is essentially ignored. It is the position of this note that a substantial percentage of straight bankruptcies could and, *from the standpoint of the debtor's best interest*, should be filed as Wage Earner Plans. Furthermore, by filing straight bankruptcies where Wage Earner Plans should be utilized, numerous attorneys are being derelict in their duty to safeguard their clients' interest. This dereliction is a result of several factors—lack of knowledge in the legal community about Wage Earner Plans, fallacious conclusions as to the advantages of straight bankruptcy, and administrative hindrances in the operation of Wage Earner Plans. A survey of possible alternatives will demonstrate that the Wage Earner Plan, if improved, would be the best solution to the problem of consumer bankruptcy.

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\*\* For research data, legal sophistry is no substitute for the opinions and ideas of the day-to-day practitioner. Therefore, in order to make this note a useful tool, the authors solicited the views of experienced bankruptcy attorneys. One hundred and sixty-five questionnaires, soliciting reasons for recommending either straight bankruptcy or a Wage Earner Plan, were sent to referees for distribution in every sector of the country.

The answers to this questionnaire are not intended as authoritative documentation, but merely as representative of general areas of agreement [hereinafter cited as *San Diego Law Review Questionnaire*].

### A. *Straight Bankruptcy and Chapter XIII: Discussed*

Of the two remedies available to the debtor-consumer, the first, and undeniably the easier, is a petition for a discharge in bankruptcy.<sup>1</sup> Any person is entitled to obtain such a discharge once every six years<sup>2</sup> provided he has not committed any one of several prohibited acts.<sup>3</sup> Except for specific nondischargeable debts,<sup>4</sup> a debtor may thus rid himself of all prior financial obligations.<sup>5</sup> Unfortunately, there are numerous repercussions attending such a discharge: continuation of secured debts, difficulty in obtaining credit, and imposition of the stigma of bankruptcy. Moreover, the debtor is vulnerable to creditors for the next six years. From 1898 until the Chandler Act amendments of 1938,<sup>6</sup> "straight"<sup>7</sup> bankruptcy was the sole remedy available to the insolvent wage earner.

Although the early bankruptcy acts stressed payment to creditors,<sup>8</sup> recently, this emphasis has become impractical since many personal bankruptcies are either no-asset or nominal asset cases.<sup>9</sup> When bankruptcy emerged as a national problem during the depression, the President and Congress initiated several investigations<sup>10</sup> which, among other findings, indicated that wage earners had a sincere desire to pay their debts.<sup>11</sup> As a result, Referee Valentine Nesbit<sup>12</sup> of Birmingham, Alabama prepared a comprehensive draft of Chapter XIII<sup>13</sup> which was enacted into law in 1938.<sup>14</sup> The key provisions of this second remedy sought to:

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<sup>1</sup> Bankruptcy Act, 11 U.S.C. § 32 (1964), *as amended*, (Supp. II, 1967) [discharge in bankruptcy hereinafter referred to as straight bankruptcy].

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 35 (1964), *as amended*, (Supp. II, 1967).

<sup>5</sup> *Id.* This discharge applies only to debts provable under Section 103 of the Bankruptcy Act. *id.* § 103 (1964).

<sup>6</sup> Ch. 1138, 64 Stat. 1113 (1950) (codified amongst sections of 11 U.S.C.).

<sup>7</sup> See material cited note 1 *supra*.

<sup>8</sup> *In re Feinberg*, 287 F. 254, 256 (E.D. Pa. 1923). See also F. GILBERT, COLLIER ON BANKRUPTCY § 1, at 5 n.11 (1927); C. NADLER, THE LAW OF DEBTOR RELIEF § 1 (1954).

<sup>9</sup> Countryman, *The Bankruptcy Boom*, 77 HARV. L. REV. 1452, 1453 (1964).

<sup>10</sup> A brief synopsis of the Donovan Investigation of bankruptcy conditions in New York City and the Thacker Investigation undertaken by the Justice Department in 1930-31 appears in *In re Perry*, 272 F. Supp. 73, 77-80 (D.C. Me. 1967).

<sup>11</sup> *Id.* at 79.

<sup>12</sup> Referee Nesbit was a special referee appointed in 1933 to develop a rehabilitation program for wage earners in Birmingham, Alabama. Two years later, in order to obtain the benefit of Nesbit's experience, Congressman Chandler recruited him to help prepare the draft of Chapter XIII.

<sup>13</sup> Bankruptcy Act, 11 U.S.C. §§ 1001-86 (1964) [hereinafter referred to as Chapter XIII].

<sup>14</sup> Act of June 22, 1938, ch. 575, 52 Stat. 930.

- (a) Grant the debtor the protection of the court and free him from harassment (including garnishment) of creditors;
- (b) Afford the debtor an opportunity to amortize his debts voluntarily by making payments out of future earnings;
- (c) Enable the debtor to avoid the stigma of a straight bankruptcy discharge;
- (d) Prevent the accrual of interest on present unsecured liabilities during the operation of the plan.<sup>15</sup>

Debtors eligible for this relief have been statutorily limited to individuals "whose principal income is derived from wages, salary or commissions."<sup>16</sup> A debtor so qualified may either file an original petition<sup>17</sup> or convert a pending bankruptcy<sup>18</sup> into a Chapter XIII, provided that he states in the petition that he "is insolvent or unable to pay his debts as they mature."<sup>19</sup> In addition to depositing fees,<sup>20</sup> he must file schedules setting forth a statement of affairs, a list of his creditors, his executory contracts, and a summary of his assets and liabilities.<sup>21</sup> Subsequent to, or simultaneous with filing, the debtor must also submit a plan, to be confirmed by the referee, making provision for payment to his creditors.<sup>22</sup> All claims to be included within a Wage Earner Plan must be *proved* by the creditor and *allowed* by the court.<sup>23</sup> In order to protect the plan from adverse creditor action, the court has the power to issue restraining orders.<sup>24</sup> Upon completion of all payments, the debtor "is entitled to be discharged from all debts except those nondischargeable under the Bankruptcy Act."<sup>25</sup> If the debtor is unable to complete the plan, he may convert to straight bankruptcy and obtain a discharge.<sup>26</sup>

There are two types of Wage Earner Plans: extension plans,<sup>27</sup> which provide for complete payment of all debts, and composition

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<sup>15</sup> 52 REP., MAINE STATE BAR ASS'N 136, 137-38 (1963); L. TWINEM, GUIDE TO WAGE EARNER PLANS UNDER CHAPTER XIII OF THE BANKRUPTCY ACT 11 (1968) (soon to be published by the ABA).

<sup>16</sup> Bankruptcy Act, 11 U.S.C. § 1006(8) (1964).

<sup>17</sup> *Id.* § 1022 (1964).

<sup>18</sup> *Id.* § 1021 (1964).

<sup>19</sup> *Id.* § 1025 (1964).

<sup>20</sup> *Id.* § 1024 (1964).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* § 616 (1964).

<sup>23</sup> *Id.* § 1044 (1964). See *id.* § 103 (1964).

<sup>24</sup> *Id.* § 1014 (1964).

<sup>25</sup> *Id.* § 1060 (1964).

<sup>26</sup> *Id.* § 1066 (1964).

<sup>27</sup> *Id.* § 1023 (1964). See also C. NADLER, *supra* note 8, at § 390.

plans,<sup>28</sup> which schedule payment of only a percentage of the debtor's liabilities. If otherwise feasible, an extension plan is preferable because the six-year limitation on successive filings is inapplicable.<sup>29</sup> Ultimately, the success of a Chapter XIII turns on the ability of the wage earner to pay his debts from future earnings. For this reason it is necessary that a plan make provision for unforeseen emergencies, such as sickness or temporary loss of employment.<sup>30</sup>

Chapter XIII relief is not suitable for every wage earner who qualifies under the Bankruptcy Act, for an individual capable of completing a Wage Earner Plan must have a sincere desire to honor his debts, steady future employment, and strong family support, as well as a responsible attitude toward future purchases of luxury goods.<sup>31</sup> Voluntariness<sup>32</sup> is the critical factor.<sup>33</sup>

### B. *Underlying Economic Considerations*

Highlighting the burgeoning number of bankruptcies filed in the past two decades,<sup>34</sup> 92 percent, or 191,729 of all bankruptcy petitions in 1967 were filed by consumers.<sup>35</sup> Yet, it is not the present number of consumer filings which poses a threat to the economy, but rather, the trend which the increase in filings represents.<sup>36</sup>

<sup>28</sup> Bankruptcy Act, 11 U.S.C. § 1023 (1964); see also C. NADLER, *supra* note 8, at § 390.

<sup>29</sup> Perry v. Commerce Loan Co., 383 U.S. 392 (1966).

<sup>30</sup> Bankruptcy Act, 11 U.S.C. § 1046(5) (1964) (allows petitioner to make provisions for such contingencies).

<sup>31</sup> D. COWANS, BANKRUPTCY LAW AND PRACTICE § 96 (1963).

<sup>32</sup> Hearings on H.R. 1057 and H.R. 5771 Before a Subcomm. of the House Comm. on the Judiciary, 90th Cong., 1st Sess., ser. 10, at 74 (1967) [hereinafter referred to and cited as 1967 Hearings].

<sup>33</sup> For a more detailed presentation of Chapter XIII procedures, the following works are informative: D. COWANS, *supra* note 31; L. TWINEM, *supra* note 15; Hilliard & Hurt, *Wage Earner Plans under Chapter XIII of the Bankruptcy Act*, 19 BUS. L. 271 (1963).

<sup>34</sup> See 1967 ADMIN. OFF. OF THE U.S. COURTS, ANN. REP. OF THE DIR. (DIV. OF BANKRUPTCY AD.) V-2 [hereinafter referred to and cited as 1967 BANKRUPTCY TABLES]. In less than two decades bankruptcy filings have increased from 18,510 petitions filed in 1948 to 208,329 in 1967. The number of petitions filed for that period totals 1,941,778.

<sup>35</sup> 1967 BANKRUPTCY TABLES, V-5 (table). In 1967 of the 208,329 bankruptcy petitions, 191,729 were filed by consumers. This total represents an increase of more than 15,000 petitions from the 175,924 filed in 1966.

<sup>36</sup> When analyzed in terms of the population of the United States, which is now over 200 million, THE WORLD ALMANAC 41 (1968), only  $\frac{1}{10}$  of 1% of the American public declared bankruptcy in 1967. Perhaps, a more valid ratio, the proportion of bankruptcy filings to the national labor force, reveals only a  $1\frac{1}{4}$ % minimal bankruptcy rate. But, the trend represented by the 1100% increase in bankruptcies during the 1948-1967 period is the threat to the economy. See 1967 BANKRUPTCY TABLES, V-2 (table); Cowans, *Present Bankruptcy Act Defective Changes*

The upsurge in consumer bankruptcy cannot be attributed to the growth in population, unemployment, gross national product or expenditures. Instead, consumer credit appears to be the decisive factor.<sup>37</sup> Paralleling the increase in consumer bankruptcies the extension of consumer credit has developed so vigorously as to become the mainstay of our modern economy.<sup>38</sup> Clearly, consumer credit will continue to flourish, and as a result, consumer bankruptcies can be expected to multiply.

Surprisingly, straight bankruptcy might appear to be a boon to the economy. Discharged of his debts, the former bankrupt is in a favorable position either to replace repossessed goods or to purchase new

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*Currently Proposed are Unsuitable For Dealing with Insolvent Individuals New Solution Advocated Including Credit Counseling*, 22 PERSONAL FINANCE L.Q. REP. 40 (1968). See generally Dolphin, *Consumer Bankruptcy: A Continuing Problem*, 41 REF. J. 27 (1967). In a 1964 doctoral dissertation Mr. Robert Dolphin, currently Assistant Professor of Finance, School of Business, Florida State University, commented: "[T]he past growth rate [of consumer bankruptcy] should be viewed as a danger signal of the development of an important problem of potentially immense magnitude." Dolphin, *Thesis Reports on Causes of Consumer Bankruptcies*, 18 PERSONAL FINANCE L.Q. REP. 130 (1964) [hereinafter cited as DOLPHIN].

<sup>37</sup> 1967 *Hearings* 73, where Mr. Vern Countryman, Professor of Harvard Law School and Chairman of the Committee on Chapter XIII and Consumer Bankruptcy of the National Bankruptcy Conference, testified:

[T]he reason for the increase in consumer bankruptcies . . . cannot be attributed to the increase in population, which has increased by about one-third (from 141,936,000 in 1946 to about 196,000,000 in 1966). Nor can it be attributed to unemployment, which was 2,270,000 in 1946 and 2,875,000 in 1966 and has ranged between 1.6 and 4.7 million during the interim period. Neither is there a direct relation between rising bankruptcies and increasing gross national product or expenditure, which has slightly more than tripled (from \$211.1 billions in 1946 to \$739.6 billions in 1966).

Precipitating the dominant factor in the rise of consumer bankruptcy, Professor Countryman continues:

. . . As reported by the Federal Reserve Board, consumer credit, exclusive of home mortgages, has increased tenfold, from \$8.38 billions in 1946 to \$94.8 billions in 1966, and so have home mortgages, from \$23 billions in 1946 to \$225.4 billions in 1966. When we add to this the fact that disposable personal income after taxes has only slightly more than trebled, from \$147 billions to \$505.3 billions, it is apparent that consumer resources have not kept pace with consumer credit commitments.

This, it seems to me, is a pretty fair indication of the reason for the rise in consumer and employee bankruptcies. *Id.* (emphasis added).

<sup>38</sup> The assistant general counsel of J.C. Penney Company maintains that [c]redit has contributed to the prosperity of the American economy. . . . Our consumer industries could not operate at their present high production levels if it were not for the mass markets created by the availability of credit." Driver, *To Amend the Bankruptcy Act to Require that Consideration Be Given to the Use of Chapter XIII*, 18 PERSONAL FINANCE L.Q. REP. 41, 42 (1964). See generally Mahon, *Preparing Your Client for Voluntary Bankruptcy*, 41 REF. J. 83 (1967); Hilliard & Hurt, *supra* note 33.

Statistics representing the increase in the extension of consumer credit and consumer credit outstanding from 1956-66 are reported in 1967 *Nat'l Consumer Finance Ass'n, FINANCE FACTS* 38-41.

luxuries. It is arguable<sup>39</sup> that the resulting increase in purchasing power stimulates production and is therefore, conducive to a thriving economy. However, creditors, who are unable to offset the "bad debts" attending a consumer bankruptcy filing, suffer a direct loss in earnings. An even more significant casualty of straight bankruptcy is the consumer. Credit-oriented businessmen make the provision for these "bad debts" by raising retail prices and finance charges,<sup>40</sup> thus preserving their profit margin. These creditors do not lose money; instead nonbankrupt consumers absorb the loss. Since solvent consumers must compensate for the prior "bad debts" of bankrupts, they are constrained to allocate a greater portion of their income toward purchases, the net effect being a redistribution of income. Because the increase in demand stimulated by the bankrupt is probably insufficient to offset the decrease in purchasing power suffered by other consumers, the existence of this alleged boon is questionable.

## II. THE CASE FOR CHAPTER XIII

### A. *Illusory Advantages of Straight Bankruptcy*

The preceding economic discussion reveals the prospective vulnerability of the credit economy. Of more immediate concern, however,

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<sup>39</sup> However, some authorities suggest that the economy is adversely affected by straight bankruptcy, Countryman, *supra* note 9, at 1456:

Perhaps the best way to measure the total impact of the bankruptcy discharge is to attempt to estimate the amount of unpaid balances discharged—a figure not included in the official statistics. In nominal and no asset cases, where nothing is paid to creditors and 98% of the bankrupts received discharges, liabilities have averaged \$445,300,000 per year. Due allowance for nondischargeable claims probably means that 95% of this amount, or \$423,000,000 per year, is covered by bankruptcy discharges. In 1962 liabilities in such cases were \$971,560,000 of which probably \$923,000,000 was discharged.

In the asset cases, where 80% of the bankrupts received discharges, total claims average \$195,000,000 and unpaid balances average \$160,000,000 per year. Probably 75% of this amount, or \$120,000,000, is covered by bankruptcy discharges. In 1962 unpaid balances were \$223,000,000 of which probably \$167,000,000 was discharged.

In summary then, in all straight bankruptcy cases, an average of \$50,677,000 per year is realized, of which an average of \$35,474,000 is distributed to creditors with total claims of \$640,300,000. Total unpaid balances covered by the bankruptcy discharge average \$543,000,000 per year. In 1962, total realization was \$73,300,000, of which \$52,400,000 was distributed to creditors with claims totaling \$1,246,000,000; about \$1,190,000,000 was unpaid but discharged (emphasis added).

1967 *Hearings* 3 where Congressman Poff of Virginia stated that: "Dollarwise, the loss [caused by consumer bankruptcies], once counted in thousands, now runs into hundreds of millions." Moreover, Mr. Carroll R. Wetzel, Chairman of the Section of Corporation, Banking and Business Law of the American Bar Association, testified:

The problem [of the increase in consumer bankruptcies] continues to be a growing concern. In the fiscal year ending June 30, 1967, it is anticipated that . . . nearly \$1,500,000,000 will be washed down the bankrupt drain in no-asset bankrupt estates. *Id.* at 8.

<sup>40</sup> Driver, *supra* note 38, at 42.

is the relief available for the improvident recipients of consumer credit. Only where the debtor's income is inadequate and attempted repayment of liabilities futile, is straight bankruptcy a valuable remedy.<sup>41</sup> Despite this limitation, many practicing attorneys and referees, as well as theoreticians,<sup>42</sup> in suggesting that straight bankruptcy is beneficial to the debtor, cite three apparent advantages: immediate discharge of debts; exclusive control of personal finances; and low cost of relief.

### 1. *Immediate Discharge*

Straight bankruptcy results in an immediate discharge of many unsecured debts. On the other hand, the following exceptions substantially delimit the categories of dischargeable debts:<sup>43</sup> payment of

<sup>41</sup> *Id.* at 46. See Hilliard & Hurt, *supra* note 33, at 274-75.

<sup>42</sup> *San Diego Law Review Questionnaire*; Interview with Professor William T. Laube, University of California School of Law in Berkeley, Calif., Feb. 19, 1968 [hereinafter cited as Interview: Professor Laube].

<sup>43</sup> Bankruptcy Act, 11 U.S.C. § 35 (1964), as amended, (Supp. II, 1967):

§ 35. *Debts not affected by a discharge.*

(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are taxes which became legally due and owing by the bankrupt to the United States or to any State or any subdivision thereof within three years preceding bankruptcy: *Provided, however,* That a discharge in bankruptcy shall not release a bankrupt from any taxes (a) which were not assessed in any case in which the bankrupt failed to make a return required by law, (b) which were assessed within one year preceding bankruptcy in any case in which the bankrupt failed to make a return required by law, (c) which were not reported on a return made by the bankrupt and which were not assessed prior to bankruptcy by reason of a prohibition on assessment pending the exhaustion of administrative or judicial remedies available to the bankrupt, (d) with respect to which the bankrupt made a false or fraudulent return, or willfully attempted in any manner to evade or defeat, or (e) which the bankrupt has collected or withheld from others as required by the laws of the United States or any State or political subdivision thereof, but has not paid over; but a discharge shall not be a bar to any remedies available under applicable law to the United States or to any State or any subdivision thereof, against the exemption of the bankrupt allowed by law and duly set apart to him under this title: *And provided further,* That a discharge in bankruptcy shall not release or affect any tax lien; (2) are liabilities for obtaining money or property by false pretenses or false representations, or for obtaining money or property on credit or obtaining an extension or renewal of credit in reliance upon a materially false statement in writing respecting his financial condition made or published or caused to be made or published in any manner whatsoever with intent to deceive, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; (5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankruptcy due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or retained by this employer to secure the

taxes not more than three-years old; alimony and support payments; unscheduled claims; and debts incurred as a result of a material false statement on a credit application are nondischargeable. Moreover, secured creditors, to the extent that their security interest is at least equivalent to the debtor's liability, remain unaffected by a bankruptcy adjudication.<sup>44</sup> As a matter of practice, homes as well as automobiles, refrigerators, stoves, and other durables subject to chattel mortgages or conditional sales contracts are open to repossession. Yet, secured creditors do not generally want used goods; they want money. Realizing that the resale value of the secured property may not equal the payment due, the creditor may offer the debtor an opportunity to avoid repossession by reaffirming the contract at a discount. When those goods which the debtor deems "necessary" become vulnerable, there may be no discount. Regardless of the motivation for reaffirmance, the result is inconsistent with the ostensible advantage of straight bankruptcy—immediate discharge.

Supplementing the benefits of immediate discharge, exemption statutes in several states<sup>45</sup> allow debtors to protect certain assets from consignment to the court for pro rata distribution to creditors.

These statutes protect only that property in which the debtor is vested with complete and unencumbered title, *and then only to a limited extent*. When the debtor's interest exceeds the amount statutorily protected,<sup>46</sup> there is a loss of personal and real property. Where, instead, the value of the property is equivalent to or less than the exemption, the debtor would be induced to file a straight bankruptcy in order to retain the exempted items.<sup>47</sup> Because the debtor seldom holds

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faithful performance by such employee of the terms of a contract of employment.

<sup>44</sup> *Id.* § 96 (1964). Although the secured creditor is protected against discharge of the debtor's obligation, he may be "affected by the adjudication" in those jurisdictions which do not allow for deficiency judgments unless the "fair market value" of his interest is equivalent to the debt owed.

<sup>45</sup> E.g., CAL. CIV. PRO. CODE §§ 690-90.26 (West 1955) & CAL. CIV. PRO. CODE §§ 690-690.27, 690.50-90.52 (West Supp. 1967). See also CAL. CIV. CODE § 1240 (West 1954) (Homestead Exemption); COLO. REV. STAT. ch. 77, art. 1-8 (1963), as amended, (Supp. 1967); KY. REV. STAT. § 427.010 (1966).

<sup>46</sup> Bankruptcy Act, 11 U.S.C. § 110(a) (1964). For an excellent discussion of federal and state exemptions, see D. COWANS, *supra* note 31, at §§ 551-631.

<sup>47</sup> Karp, *Bankruptcy . . . or Chapter XIII Plan?*, 12 *DICTA*, Oct. 1965 (San Diego County Bar Ass'n) at 6, 7-8. Compare Walker, *Is Chapter XIII a Milestone on the Path to the Welfare State*, 33 *REF. J.* 7, 8 (1959), where Referee Walker of the Central District, California, states that: "state statutory exemptions furnish a strong motivation against Chapter XIII" with Countryman, *supra* note 9, at 1455, where it is observed that "[w]e do know that state exemption laws are typically obsolete . . . [which] will frequently mean that debtor retains little when his exemptions are set apart in bankruptcy."



full title,<sup>48</sup> these items are rarely exempt from attachment by the court. Thus, the existence of the exemption statute, even where inappropriate, may cause the debtor to be misled in his choice of remedies.

In addition to legally secured claims, there are medical bills together with debts owed to friends, relatives, employers, and credit unions, which are socially secured.<sup>49</sup> Although legally dischargeable as unsecured claims, these debts are frequently paid by the debtor subsequent to discharge as a result of "community" pressure.

## 2. *Exclusive Control*

It is possible that once the debtor obtains a discharge, and is adjudicated a bankrupt, he is free to spend his money as he wishes. To the extent that he is relieved of his past financial burden, he is no longer obliged to budget his income or impose emotional and physical hardships on his family. Furthermore, he is not legally restricted in the management of his personal finances nor constrained by the continual harassment of zealous creditors. Unfortunately, this independence is largely illusory. The measure of the debtor's freedom is directly proportional to the sum of his dischargeable debts and the number of previously secured debts which he is not compelled to reaffirm.

## 3. *Low Cost*

Straight bankruptcy expenses may, at first, appear to be small—limited to filing fees and attorneys' compensation.<sup>50</sup> However, this analysis of bankruptcy costs is deceptive for it fails to take cognizance of accompanying financial charges imposed upon the debtor. Because bankruptcy does not relieve the debtor of his entire fiscal burden,

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<sup>48</sup> Interview with the Hon. Daniel R. Cowans, Referee in Bankruptcy, Northern District, California, in San Jose, Calif., Feb. 19, 1968 [hereinafter referred to and cited as Interview: Referee Cowans]. See Jacobs, *Personal Bankruptcy a Class Problem Sociologist Concludes*, 19 PERSONAL FINANCE L.Q. REP. 111, 114 (1965):

Despite the lack of substantial equity held by most of the home owners in the sample, it is still apparent that the chances are almost 3 to 1 that the bankrupt is not a home owner, and when those with equities which are insignificant are taken into consideration, the chances that the bankrupt is not a home owner (in a substantial sense) becomes better than 9 to 1. This would appear to be significant.

<sup>49</sup> Cowans, *supra* note 36, at 43.

<sup>50</sup> Bankruptcy Act, 11 U.S.C. §§ 68(c)(1), 76(c), 80(a) (1964). The filing fee for straight bankruptcy is \$50.00, which accompanied by an affidavit of poverty can be paid in installments. *Id.* § 68(c)(1) (1964).

For an interesting survey of "usual" attorneys' fees for straight bankruptcy see Haden, *Chapter XIII Wage Earner Plans—Forgotten Man Bankruptcy*, 55 KY. L.J. 564, 611 (1967).

legally nondischargeable debts, for example, should be considered as an additional expense. Moreover, reaffirmed secured contracts, and repossessed necessities which must be replaced are encumbered with interest charges. Similarly, socially secured debts will continue to add to the debtor's post discharge expenditures. Accordingly, in order to assess the aggregate cost of a bankruptcy discharge the initial fees must be viewed in this larger perspective.

The foregoing analysis of the advantages of straight bankruptcy should distinguish the real from the apparent. It should also be evident that straight bankruptcy is not a universal remedy, but rather, a valuable, though limited form of relief for the debtor who cannot pay his debts and is resigned to facing the stigma of bankruptcy, and the possible loss of future credit standing. Employer concern regarding the prospective employees' financial stability is reflected by many employment applications which require statements as to indebtedness and prior bankruptcy.<sup>51</sup> The bankrupt may also lose self-respect since only the most courageous or "callous person can approach bankruptcy without feeling"<sup>52</sup> that he is about to avoid a moral or legal obligation.

It is debatable, in a society geared to "deficit spending," whether the stigma of bankruptcy is viable with respect to credit standing. A Utah bankruptcy survey reveals that of the former bankrupts studied, "all" were able to obtain credit.<sup>53</sup> Moreover, some consumer finance companies seek out the "new" bankrupt, who being unable to file a subsequent bankruptcy petition for six years, is a "good" credit risk.<sup>54</sup> However, with the exception of highly mobile communities, credit standing may be a critical factor in the bankrupt's quandary. The stigma generates problems with banks, finance companies, retailers, and other financial institutions who may not extend credit to the bankrupt.<sup>55</sup> "His credit on major obligations is likely to be determined by the amount of real security he can thereafter offer."<sup>56</sup>

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<sup>51</sup> Hilliard & Hurt, *supra* note 33, at 274.

It is interesting to note that the application for the California Bar Examination under the heading of moral character requires information as to past bankruptcy adjudication or insolvency. The Committee of Bar Examiners of the State Bar of California, Application for Examination for Admission to Practice Law, Question 21 d.

<sup>52</sup> Hilliard & Hurt, *supra* note 33, at 274. See generally Bloom, *Ready Help for People in Debt*, READER'S DIGEST, June 1961, at 68-71.

<sup>53</sup> Misbach, *Personal Bankruptcy in the United States and Utah*, 30 (1964).

<sup>54</sup> *Id.*

<sup>55</sup> Hilliard & Hurt, *supra* note 33, at 274.

<sup>56</sup> *Id.*

### B. *Benefits of Wage Earner Plans*

Arguably, straight bankruptcy creates as many problems for the debtor as it solves. As an alternative, Chapter XIII of the Bankruptcy Act<sup>57</sup> affords relief without being subject to many of the shortcomings attending straight bankruptcy. An individual who files under a Chapter XIII is referred to, and subsequently discharged as a *debtor*, and not a bankrupt.<sup>58</sup> Not only does this enable the debtor to escape the emotional repercussions of the bankruptcy stigma, but it also protects the debtor's future credit standing.<sup>59</sup> Although some authorities argue that the bankruptcy stigma attaches to a debtor under a Wage Earner Plan,<sup>60</sup> three distinguishing features are noteworthy. First, by electing a Wage Earner Plan, the debtor makes no attempt to avoid his present financial obligations. Second, creditors are more likely to receive full or partial payment of debts.<sup>61</sup> Third, during the course of a Chapter XIII plan, the debtor must adhere to a strict budget, thereby avoiding the irresponsibility of money mismanagement associated with the stigma.

Besides reducing the stigma associated with insolvency, Wage Earner Plans offer certain additional benefits to creditors and debtors.

(1) Since extension of credit is primarily governed by business motives,<sup>62</sup> creditors favor the eighty percent recovery rate obtainable under Chapter XIII as opposed to the negligible straight bankruptcy distribution.<sup>63</sup> During the operation of a Wage Earner Plan, court approval, and subsequent incorporation into the plan, may be required of all credit purchases.<sup>64</sup> Relying on this judicial "guarantee"

<sup>57</sup> Bankruptcy Act, 11 U.S.C. §§ 1001-86 (1964).

<sup>58</sup> *Id.* § 1006(3) (1964). Chapter XIII defines debtor as "[a] wage earner who filed a petition under this Chapter."

<sup>59</sup> L. TWINEM, *supra* note 15, at 11; Hilliard & Hurt, *supra* note 33, at 274.

<sup>60</sup> Cowans, *supra* note 36 at 41; *San Diego Law Review Questionnaire*.

<sup>61</sup> L. TWINEM, *supra* note 15, at 9. See Countryman, *supra* note 9, at 1461.

<sup>62</sup> Misbach, *supra* note 53; Interview with Mr. Harry Heid, Chapter XIII Trustee, in San Diego, Calif., Feb. 8, 1968 [hereinafter referred to and cited as Interview: Trustee Heid]; Countryman, *supra* note 9, at 1458-59.

<sup>63</sup> L. TWINEM, *supra* note 15, at 9. See Hilliard & Hurt, *supra* note 33, at 273, where it is stated that:

In the areas in which the use of Chapter XIII is widespread, the creditors are getting nearly 100% of their accounts; whereas in straight bankruptcy proceedings throughout the whole country less than 10% of the cases produce anything at all for the creditors, and even in those cases only small dividends are paid.

Professor Vern Countryman concludes *The Bankruptcy Boom*:

With an expectation of nothing in 87% of the straight bankruptcy proceedings and an expectation of 8% in the others, 95% under a wage earner plan seems well worth waiting for. Countryman, *supra* note 9, at 1461.

<sup>64</sup> Bankruptcy Act, 11 U.S.C. § 1058 (1964).

of payment, retailers have no reason to question the debtor's credit standing. Having completed the plan and proved his ability and desire to pay his debts, the former debtor should encounter little difficulty in procuring credit.

(2) A debtor seeks bankruptcy relief from overburdening financial pressures and for protection against harassing creditors.<sup>65</sup> Although a bankrupt is subject to litigation on any nondischargeable debt,<sup>66</sup> a Chapter XIII debtor is immune from legal action by creditors for the duration of the plan.<sup>67</sup> Thus, the debtor can pay both dischargeable and nondischargeable debts without incurring the additional expense of defending lawsuits.

Because employers customarily fire employees upon receipt of a third wage garnishment,<sup>68</sup> debtors often attempt to procure job insurance by filing straight bankruptcies.<sup>69</sup> However, the debtor obtains court protection only until discharge after which he is again "free game" for creditors. Since the court can bar wage attachments based on claims filed both prior and subsequent to commencement of the plan,<sup>70</sup> adequate job protection can be furnished the debtor during a Chapter XIII proceeding.

(3) Another equally important advantage of Wage Earner Plans is the cessation of interest payments. Since the average insolvent is obligated to pay twelve to sixteen creditors, the amount of interest charged frequently is oppressive.<sup>71</sup> Under Chapter XIII, no interest

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<sup>65</sup> Siporin, *A Study of Bankruptcy Court Debtors*, 20 PERSONAL FINANCE L.Q. REP. 92 (1966); Driver, *supra* note 38, at 43-44.

<sup>66</sup> Hilliard & Hurt, *supra* note 33, at 274.

<sup>67</sup> Bankruptcy Act, 11 U.S.C. § 1014 (1964).

<sup>68</sup> M.S. Turner & R.A. Floren Jr., *Employer and Union Wage Attachment Policies in San Diego County*, May 5, 1967 (unpublished thesis on file in the San Diego Law Review Office, University of San Diego School of Law) at 2-3:

Seventy-one of the 72 firms with a policy, or 98.6% of firms reporting on [employer practices relating to wage attachments] . . . give a warning on the first wage attachment. On the second attachment, those willing to rely on a warning dropped to 80.3%, and twelve firms or about 17% fired the employee. For a third attachment, 35 additional firms reported they would fire the employee, which means that cumulatively 2/3 of employers would fire an employee with as many as three wage attachments (emphasis added).

<sup>69</sup> M.S. Turner & R.A. Floren Jr., *supra* note 68.

R.O. Hermon, *Causal Factors in Consumer Bankruptcy: A Case Study*, December, 1965 (unpublished thesis on file in the San Diego Law Review office, University of San Diego School of Law); Brunn, *Wage Garnishment in California*, 53 CALIF. L. REV. 1214, 1246 (1965). See Driver, *supra* note 38, at 43. See generally Larkin, *Statewide Consumer Credit Counseling Service Being Set-Up In California*, 19 PERSONAL FINANCE L.Q. REP. 53, 54 (1965).

<sup>70</sup> Bankruptcy Act, 11 U.S.C. § 1014 (1964).

<sup>71</sup> DOLPHIN, *supra* note 36, at 131.

is allowable on unsecured claims;<sup>72</sup> and in some jurisdictions, the same restriction is applied to the unsecured portion of any secured claim.<sup>73</sup> This allows the debtor to allocate future earnings to payment on the principal of his debts, whereas a bankrupt, who must use credit to reaffirm debts or repurchase necessities is once again burdened with accruing interest charges over which he has no control.

(4) Chapter XIII affords the debtor an opportunity to stay repossessions, retain non-exempt assets, and save property in which he has equity greater than the maximum allowed by exemption statutes. Wage Earner Plans provide for full payment of outstanding debts; therefore, except for financial lenders holding assigned contracts with a ninety day limitation on recourse, secured creditors have no reason to initiate the costly process of repossession. However, the bankrupt must submit all nonexempt assets to the trustee in bankruptcy for pro rata distribution to creditors.<sup>74</sup> Moreover, where the debtor's interest exceeds the statutory exemption, he will lose the property. On the other hand, if Chapter XIII is utilized, application of the debtor's property to payment of liabilities is not required; the only assets germane to the plan are future earnings.

(5) In contrast to the condition-riddled discharge available in straight bankruptcy, there are no reaffirmed contracts, no legal or social nondischargeable debts, or pending legal actions by creditors to burden the former debtor. Therefore, a Chapter XIII debtor, who has completed all scheduled payments is discharged of debts *provided for by the plan* with the exception of those statutorily exempted.<sup>75</sup> It should be made clear, however, that under an extension plan,

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<sup>72</sup> See *United States v. General Eng'r & Mfg. Co.*, 188 F.2d 80 (8th Cir. 1951). The court construed Section 63(a)(1) of the Bankruptcy Act and held that after the filing date on the debtor's petition, no interest will accrue on unsecured claims (Social Security and withholding taxes in *General Eng'r*) in arrangement proceedings. This limitation has been applied to Wage Earner Plans for two reasons: (1) the provisions of Chapters I to VII (which include section 63(a)(1)) are applicable to Chapter XIII insofar as they are not inconsistent or in conflict therewith, and (2) if large corporations are exempted from interest payments, wage earners must be. *In re Richardson*, 34 REF. J. 60 (1960). See also *Nicholas v. United States*, 384 U.S. 678 (1966).

<sup>73</sup> See J. Lee, *Chapter XIII in Historical Perspective*, 4 SEMINAR FOR NEWLY APPOINTED REFEREES IN BANKRUPTCY (1967); 52 REP., MAINE STATE BAR ASS'N 143-44. This procedure is apparently in effect in other jurisdictions although citable authority is unavailable. The theory underlying this procedure is that the secured creditor is only entitled to interest, and priority payments on that portion of the secured debt equivalent to the value of the security. The difference between the value of the security and the secured obligation is a deficiency which would have been lost had the debtor filed a straight bankruptcy.

<sup>74</sup> Bankruptcy Act, 11 U.S.C. § 105 (1964).

<sup>75</sup> *Id.* §§ 1060-61.

discharge results from full payment of debts,<sup>76</sup> whereas a composition plan allows discharge only where failure to complete "payments was due to circumstances for which he could not be justly held accountable."<sup>77</sup>

(6) Straight bankruptcy can be filed only once every six years; therefore, if a debtor incurs financial difficulty subsequent to receiving a discharge, protection of the court from garnishment, wage attachments, and general creditor harassment is not available except in the form of a Chapter XIII extension plan. More importantly, initial selection of a Wage Earner Plan does not prevent switching to a straight bankruptcy nor does completion of an extension plan preclude filing another Wage Earner Plan or a straight bankruptcy. This manifest advantage was recently recognized by the United States Supreme Court which ruled that the six-year bar to a second straight bankruptcy filing was inapplicable to extension plans.<sup>78</sup>

(7) One of the necessary elements of the bankruptcy process is rehabilitation.<sup>79</sup> Indeed, consumer bankruptcy has reached critical proportions because debtors are often ill-equipped to manage their financial affairs. Straight bankruptcy, as an educational medium fails to alleviate the problem.<sup>80</sup> Conversely, Chapter XIII proceedings contain several instructional devices. While living under a judicially imposed budget the debtor learns to forego certain luxuries and to undertake only those obligations which his financial resources will allow. The viewpoint of one analyst who observed hundreds of Chapter XIII cases is illuminating:

This program [Wage Earner Plan] also can help the debtor to learn, possibly for the first time in his life, how to handle his finances. Often the helpful pressure of the bankruptcy court is just what is needed to assist the debtor in gaining the self-discipline which is required. Such plans are not meant to be strict and harsh. If unforeseen emergencies arise, the plans may be modified with court approval.<sup>81</sup>

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<sup>76</sup> *Id.* § 1060.

<sup>77</sup> *Id.* § 1061. See also *id.* § 32(c)(5):

The court shall grant the discharge unless satisfied that the bankrupt has . . . in a proceeding under this title commenced within six years prior to the date of the filing of the petition in bankruptcy had been granted a discharge, or had a composition or an arrangement by way of composition or a wage earner's plan by way of composition confirmed under this title . . . .

<sup>78</sup> 383 U.S. 392 (1966).

<sup>79</sup> D. COWANS, *supra* note 31, at § 1; C. NADLER, *supra* note 8, at §§ 1-11.

<sup>80</sup> See, e.g., Jacobs, *supra* note 48, at 115; Driver, *supra* note 38, at 42-43.

<sup>81</sup> Misbach, *supra* note 53, at 36.

(8) The differences between extension plans and composition plans under Chapter XIII often influences the debtor's choice of remedies. If a debtor can amortize his accrued liabilities within a three-year period, the foregoing benefits will be available to him through use of a Chapter XIII extension plan. Notwithstanding his inability to complete an extension plan, a debtor, burdened with many nondischargeable debts or debts likely to be reaffirmed after discharge, may still benefit from use of a composition plan because it offers the debtor the protection of the court, allows him to consolidate his debts, and requires only single monthly payments. Consequently, Chapter XIII provides a desirable form of relief. Straight bankruptcy should not be filed whenever convenient; the remedy is valuable to the debtor only in time of necessity. On the other hand, when a wage earner plan is practical, its use preserves the remedy of straight bankruptcy for a time when no other course of action is feasible.<sup>82</sup>

(9) Unfortunately, Chapter XIII is also encumbered with drawbacks, two being frequently mentioned. First, some attorneys and referees feel that requiring a debtor to live on a stringent budget for a three-year period greatly hinders the prospects for completion of a plan.<sup>83</sup> A plan should be feasible without resort to "poverty level" budgeting.<sup>84</sup> Accordingly, the amount allocated for payment to the trustee should be inversely proportional to the ability to pay without hardship. With respect to hardship, a family burdened with financial restraints often may encounter marital problems.<sup>85</sup> While lack of harmony is immaterial to a straight bankruptcy action, success of a Wage Earner Plan is dependent upon the motivation of both debtor

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<sup>82</sup> Interview with the Hon. Arlene Rossi, Referee in Bankruptcy, Southern District, California, in San Diego, Calif., Feb. 26, 1968 [hereinafter referred to and cited as Interview: Referee Rossi]. Referee Rossi remarked that use of a Chapter XIII, Wage Earner Plan, when the debtor has only a small amount of debts will preserve the remedy of straight bankruptcy for a day when needed. Bobier, *Chapter XIII—Mecca or Mirage*, 32 THE DETROIT LAWYER 25, 26 (1964).

<sup>83</sup> Cowans, *supra* note 36, at 43; *San Diego Law Review Questionnaire*; Interview: Professor Laube.

<sup>84</sup> See Dolphin, *An Analysis of Economic and Personal Factors Leading to Consumer Bankruptcy* (1965) (28% to 49% of all bankrupts in Genesee County, Michigan could pay debts); Brosky, *A Study of Personal Bankruptcy in the Seattle Metropolitan Area* (1965) (If 20% of bankrupt's monthly income applied to debts 39% of all Seattle bankrupts could pay debts; if 25% applied 56% could pay); Misbach, *Personal Bankruptcy in the United States and Utah* (1964) (25% to 50% of all Utah bankrupts could pay debts).

For a sample of studies which conclude that the causes of consumer bankruptcy must be researched further before any conclusions can be made, see Stabler, *The Experience of Bankruptcy* (1966); Brunner, *Personal Bankruptcies in Ohio* (1965); Schaber, *Voluntary Bankruptcy—A Growing Consumer Bankruptcy Problem* (1959).

<sup>85</sup> D. COWANS, *supra* note 31, at § 57.

and spouse. The debtor must weigh the momentary hardship of a Wage Earner Plan against the deleterious effects which follow a discharge in bankruptcy.

Second, it may appear that debtors, who are unable to complete the scheduled payments, may lose all of the money paid to the trustee if the Chapter XIII proceeding is dismissed.<sup>86</sup> Most Chapter XIII plans make provision for payment of secured before unsecured creditors.<sup>87</sup> If the plan has not progressed beyond this stage the debtor, by switching to straight bankruptcy, loses nothing. Payments made to secured creditors will reduce the amount due on any contracts which may have been reaffirmed. If secured creditors will not reaffirm but insist on repossession, this loss must be counter-balanced by the debtor's use of these goods during the course of the plan. If the plan has progressed to payment of unsecured creditors, the debtor will not lose the accrued equity. Since secured creditors have already been paid, there should be virtually no repossessions nor reaffirmed contracts to trouble the debtor. When unsecured debts have been partially paid, the debtor may appear to lose that sum since the debt would not have been paid had he initially filed straight bankruptcy. But, if the debtor becomes unable to complete payments, the court in its discretion, may allow conversion of the extension plan to a composition plan giving the debtor the full benefit of the wage earner process.<sup>88</sup> Where there is no conversion, and straight bankruptcy is filed, the debtor has at least made partial payment on a legal obligation, enjoyed the protection of the court against wage garnishments, legal actions, and accruing interest on unsecured claims, and has also been exposed to a form of rehabilitation.

If the disadvantages of Chapter XIII are contrasted with its many benefits, and the benefits compared to the deficiencies of straight bankruptcy, it should be evident that the debtor will fare far better under a Wage Earner Plan.

### III. LACK OF UTILIZATION

Despite the many advantages of Wage Earner Plans, they are clearly not in widespread use, and in fact, represent merely 17 percent of all the nonbusiness bankruptcies filed in 1967.<sup>89</sup> Yet, even

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<sup>86</sup> *San Diego Law Review Questionnaire*; Interview: Professor Laube.

<sup>87</sup> Bankruptcy Act, 11 U.S.C. § 1059(6) (1964).

<sup>88</sup> *Id.* § 1061 (1964).

<sup>89</sup> 1967 BANKRUPTCY TABLES, V-7 (table). Bankruptcy filings charted indicate that of 208,329 petitions filed in the district courts, 31,963 were Chapter XIII filings or less than 17%.



this percentage is misleading. Disregarding the filings in Alabama, Georgia, Kansas, Kentucky, and Tennessee, Wage Earner Plans represent only 91½ percent of the remaining nonbusiness bankruptcies.<sup>90</sup> This figure becomes more significant when compared to the findings of several recent studies which indicate that 25 to 50 percent of recent bankrupts were capable of paying their entire debts out of future earnings.<sup>91</sup> Numerous other surveys have explored this problem but have seemingly failed to reach the same conclusions.<sup>92</sup> Even if the more optimistic survey results are somewhat exaggerated, it is apparent that a higher percentage of Wage Earner Plans could be utilized. It is further contended that the use of a Chapter XIII should not be limited to any one sector of the country,<sup>93</sup> but rather should depend upon the ability of each debtor to divert a percentage of his future earnings to the liquidation of accrued liabilities. A successful Chapter XIII program is contingent upon the existence of four additional criteria:

- (1) Effective control over secured creditors;
- (2) Recognition of the outstanding benefits of such proceedings to debtors, creditors, and the community in general;
- (3) Simplification of work for the attorneys representing the debtor; and
- (4) Sound and efficient administration after confirmation, geared to effect voluntary compliance by the debtor.<sup>94</sup>

In order to demonstrate the benefits of this procedure, it is necessary to contrast this "formula" for success with the causes for lack of use.

So many attorneys have been influenced by arguments setting forth

<sup>90</sup> 1967 BANKRUPTCY TABLES, table F-2. The number of Chapter XIII filings of the five states, 17,371, and the total number of nonbusiness filings were respectively deducted from the total Chapter XIII and nonbusiness filings for all districts, and the percentage was then computed.

<sup>91</sup> See Dolphin, *supra* note 84, at 1-40; Brosky, *supra* note 84; Misbach, *supra* note 53.

<sup>92</sup> See 1967 Hearings 73. Professor Vern Countryman drew this conclusion from a study of the following surveys: Stabler, *The Experience of Bankruptcy* (1966); Juiobi, *The Family in Financial Crisis* (1965); Schaber, *Voluntary Bankruptcy—A Growing Consumer Bankruptcy Problem* (1959).

<sup>93</sup> 1967 BANKRUPTCY TABLES, table F-2. The figures for 1967 indicate that Chapter XIII represents more than 25% of all nonbusiness filings in only seven states; Alabama, Arkansas, Georgia, Kansas, Kentucky, Maine, and Tennessee, where it is being extensively used. In eighteen states, Chapter XIII represented less than 5% of all nonbusiness filings in 1967, and in eleven of these same states there were fewer than fifteen Chapter XIII filings. In ten states, in which there were 2,632 non-business filings, a combined total of ten Wage Earner Plans were filed.

<sup>94</sup> 52 REP., MAINE STATE BAR ASS'N 137 (1963). For convenience of this discussion, the order of the criteria has been rearranged.

the advantages of straight bankruptcy that Chapter XIII has been almost completely ignored. Contributing to a distorted understanding of the true benefits of Chapter XIII are the following: (1) the exemption inducement to file straight bankruptcy;<sup>95</sup> (2) the six-year refiling bar subsequent to completion of a composition plan;<sup>96</sup> and (3) the misleading notion that Wage Earner Plans result in loss of prior payments.<sup>97</sup> Four additional factors are responsible for lack of Chapter XIII use.

First, one of the major hurdles to be overcome before the referee can approve a Chapter XIII plan is the unanimous assent required of secured creditors *dealt with* by the plan.<sup>98</sup> A creditor *dealt with* by the plan means one who is adversely affected by it; that is, payment to the secured creditors under a Wage Earner Plan may be smaller and more protracted than had the plan not been approved. Undoubtedly, many attorneys reason that most secured creditors may indeed be unfavorably affected by the plan and consequently will file a rejection. Where the deficiency on the secured creditor's claim is minimal, this assessment may be accurate because the creditors would be able to obtain full payment immediately by foreclosing on the security. Since it is not uncommon for secured debts to comprise half of the debtor's obligations,<sup>99</sup> the task of obtaining consent may influence the attorney to file a straight bankruptcy.

However, two recent decisions have restricted the ability of the secured creditor to defeat the plan. *Cheetham v. Universal C.I.T. Credit Corp.*<sup>100</sup> signals a major change in the law. The court avoided application of the elusive term "adversely affected" by holding that "secured claims are dealt with only when the plan expressly limits

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<sup>95</sup> See text accompanying notes 45-47 *supra*.

<sup>96</sup> See text accompanying note 78 *supra*.

<sup>97</sup> See text accompanying notes 86-88 *supra*.

<sup>98</sup> Bankruptcy Act, 11 U.S.C. § 1052(1) (1964). In *Cheetham v. Universal C.I.T. Credit Corp.*, 390 F.2d 234 (1st Cir. 1968), the court found that "dealt with" is synonymous with "affected" as defined in Section 607 of the Bankruptcy Act, 11 U.S.C. § 1007 (1964), which provides that "[a] creditor shall be deemed to be 'affected' by a plan only if his interest shall be materially and adversely affected thereby." See also Haden, *supra* note 50, at 573-75.

<sup>99</sup> See Misbach, *supra* note 53, at 25. The Utah survey indicated that \$509,980 of debtors' total obligation of \$827,269 were secured. Referees and trustees have also indicated that more than half of the debtors' obligations are secured. Interview with the Hon. Louis Karp, Southern District, California, in San Diego, Calif., Feb. 1, 1968 [hereinafter referred to and cited as Interview: Referee Karp]; Interview with Mr. William Martin, Chapter XIII Trustee, in Los Angeles, Calif., Feb. 16, 1968 [hereinafter referred to and cited as Interview: Trustee Martin]; Interview: Referee Cowans; Interview; Trustee Heid.

<sup>100</sup> 390 F.2d 234 (1st Cir. 1968).

the amount recoverable on the claim, or restricts the creditor's security interest."<sup>101</sup> If neither occurs, then the secured creditor is not "*dealt with*" by the plan and his assent is immaterial.<sup>102</sup>

Furthermore, if the plan does not restrict the creditor's security interest, and he subsequently decides to foreclose on the secured item, the bankruptcy court "has power upon notice and for cause shown to enjoin or stay until final decree any action to enforce liens upon the property of the debtor."<sup>103</sup> In *Hallenbeck v. Penn. Mutual Life Insurance Company*,<sup>104</sup> the Circuit Court of Appeals held that this power may be exercised where:

(1) The injunction or stay must be necessary to preserve the debtor's estate or to carry out the Chapter XIII plan; (2) the granting of the injunction must not directly or indirectly impair the security of the lien; and (3) the owner of the secured indebtedness must not be required to accept less than the full periodic payments specified in his contract.<sup>105</sup>

Therefore, to eliminate the once formidable barrier which required the secured creditor's consent, a debtor need only construct a plan which accommodates the ruling in *Cheetham*.

Second, since a spouse is not subject to the order of the court in a Chapter XIII proceeding,<sup>106</sup> she is free to incur additional financial obligations and thus, add to the debtor's burden. If there is matrimonial discord, the chances for completion of the plan are substantially reduced and it may be advisable for the debtor to file a straight bankruptcy. However, there is a proposed bill before Congress which will enable the spouses to file a joint petition in a Chapter XIII proceeding.<sup>107</sup> This may alleviate some of the debtor's worries while he is completing a Wage Earner Plan. On the other hand, this proposal may be a futile attempt to legislate marital harmony.

Third, the most salient reason for this lack of use is ignorance of an alternative to straight bankruptcy amongst the creditor and debtor community, as well as in the legal profession.<sup>108</sup> Because many referees feel that Chapter XIII imposes an administrative burden on the

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<sup>101</sup> *Id.* at 238.

<sup>102</sup> *Id.*

<sup>103</sup> *Hallenbeck v. Penn. Mutual Life Ins. Co.*, 323 F.2d 566 (4th Cir. 1963).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 572.

<sup>106</sup> D. COWANS, *supra* note 31, at § 101.

<sup>107</sup> H.R. 4992, 90th Cong., 1st Sess. (1967).

<sup>108</sup> Misbach, *supra* note 53, at 37. See also Haden, *supra* note 50, at 601-03.

courts, they have never troubled to investigate the possibilities of developing a systematic wage earner procedure.<sup>109</sup> To a certain extent, this judicial attitude may be attributed to the erroneous belief that straight bankruptcy is a debtor's panacea. And this belief can also be ascribed to inadequate knowledge. If referees were more knowledgeable as to Wage Earner Plans, the number of Chapter XIII filings would reflect this judicial awakening.

Fourth, much of the ignorance imputed to attorneys pertains to the advantages and functioning of a Wage Earner Plan. However, the prevalence of bankruptcy actions would seem to impose a duty<sup>110</sup> on lawyers to obtain a thorough grounding in the legal remedies available to a distressed debtor.

Among those familiar with Wage Earner Plans, it is generally agreed that a Chapter XIII creates substantially more work for the attorney<sup>111</sup> than a straight bankruptcy.<sup>112</sup> This disparity is significant in view of the nearly identical fees charged by attorneys for both remedies. Furthermore, in straight bankruptcy cases, attorneys enjoy a payment status in preference to both secured and unsecured creditors,<sup>113</sup> while under a Chapter XIII, the attorney's fee is generally prorated over a period of time with other secured debts.<sup>114</sup> It seems likely that an attorney may allow this disparity to influence his judgment.

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<sup>109</sup> Chandler, *The Wage Earner Plan: Its Purpose*, 15 VAND. L. REV. 169, 170 (1961). Although Congressman Chandler's comment was intended as a causal factor for the initial unpopularity of Wage Earner Plans, the argument seems appropriately applicable to sectors which have never developed a Wage Earner procedure. See also 1967 *Hearings* 40 (Statement of Mr. Twinem).

<sup>110</sup> ABA CANONS OF PROFESSIONAL ETHICS No. 15. "The lawyer owes 'entire devotion to the interest of the client, warm zeal in maintenance and defense of his rights and the exertion of his utmost learning and ability,' to the end that nothing be taken or be withheld from him . . ." *Id.*

<sup>111</sup> *San Diego Law Review Questionnaire*. Better than sixty percent of the returned questionnaires indicated that a Wage Earner Plan involves substantially more work for the attorney. Except for a few isolated jurisdictions like Maine (discussed *infra*), most districts require the attorney to prepare and administer the plan, obtain the required consent of creditors, and handle the client's problems during the operation of the plan.

<sup>112</sup> See note 111 *supra*. Unlike those procedures, straight bankruptcy merely requires the attorney to prepare a schedule of assets and liabilities, deposit the fees, and file the petition for a discharge.

<sup>113</sup> Bankruptcy Act, 11 U.S.C. § 104(a)(1) (1964).

<sup>114</sup> Although Section 1059 of the Bankruptcy Act provides for priority payment to attorneys in a Chapter XIII proceeding, at least one San Diego attorney, Nelson Millsberg, indicated that he prorates his fee with other creditors in order to allow quicker payments to creditors. The sooner the debtor's future earnings are applied to payment of past liabilities, he will be more induced to continue the necessary payments scheduled under the plan. Interview with Mr. Nelson Millsberg, Attorney at Law, in San Diego, Calif., Feb. 7, 1968.

If courts and trustees can relieve attorneys of much of this work, Chapter XIII filings will enjoy considerably more success.<sup>115</sup> It is obvious that this method is preferable to raising attorneys' fees, which would impose a greater burden on the debtor and probably discourage Chapter XIII filings. The system developed by Referee Richard E. Poulos of the Southern District of Maine is worthy of attention because he succeeded in administering Wage Earner Plans without coercion while placing heavy emphasis on voluntary debtor action.<sup>116</sup> In Maine, "once a plan has been accepted [by the referee], the appointed trustee *fully controls the administration of the proceeding* and, is constantly available for advice, if needed."<sup>117</sup> Referee Poulos set forth the procedure in an address to the Maine Bar:

As a practical matter, therefore, the attorney representing the debtor merely initiates the proceeding and rarely thereafter is he called upon to render additional services. In presenting such proceedings, the following steps are generally followed: (1) interview the debtor to ascertain the essential facts; (2) prepare an original and three copies of the petition an standard forms; three sets of schedules, statement of affairs and statement of debtor's executory contracts; (3) file such documents along with a proposed plan . . . and (4) attend the first meeting of creditors.<sup>118</sup>

In effect, the attorney does little more than he normally would when filing a straight bankruptcy. His fees under the Maine system would be smaller,<sup>119</sup> but the service rendered, greater. Perhaps, the most important aspect of the Maine procedure relegates either to the trustee<sup>120</sup> for Wage Earner Plans or to the court the burdens of resolving disputed claims and dealing with secured creditors.<sup>121</sup> Since debts are not generally proved and allowed until after confirmation of the plan,<sup>122</sup> obtaining acceptances from unsecured creditors never poses a problem for the debtor's attorney. As Referee Poulos observed,

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<sup>115</sup> 1967 *Hearings* 92. Referee Poulos noted that simplification of the attorney's work largely contributed to the success of Wage Earner Plans in Maine, particularly in view of the method indicated by his statement, "[W]e try to leave it [selection of a Chapter XIII proceeding] entirely on a voluntary basis."

<sup>116</sup> 1967 *Hearings* 85-96. Only a perusal of Referee Poulos' testimony is necessary to glean this conclusion about the Chapter XIII procedures in his district.

<sup>117</sup> 52 REP., MAINE STATE BAR ASS'N 141.

<sup>118</sup> *Id.*

<sup>119</sup> Compare 1967 *Hearings* 88 (Statement by Referee Poulos) with Haden, *supra* note 50, at 611. A brief survey of the corresponding fees for Wage Earner Plans and straight bankruptcies indicates that most states allow attorneys' fees between \$150-\$200 for a Chapter XIII filing.

<sup>120</sup> 52 REP., MAINE STATE BAR ASS'N 141.

<sup>121</sup> *In re Perry*, 272 F. Supp. 73, 91 (S.D. Me. 1967).

<sup>122</sup> 52 REP., MAINE STATE BAR ASS'N 141.

[I]t has been my experience that initiating straight bankruptcy proceedings is generally one of the worst mistakes an individual can make because, as many of us know, such persons end up owing nearly as much money after bankruptcy as they did before bankruptcy.<sup>123</sup>

Concern for the debtor prompted the developments in Maine. Chapter XIII was designed to provide a service to insolvent wage earners. While most of the nation has been slow to act, Maine has taken a significant step towards effecting the initial purpose of this legislation. Although implementation of this procedure may deprive many attorneys of a substantial part of their practice, failure of the legal profession to make this remedy available to the lay community may necessitate congressional action in order to provide the proper mechanism to encourage use of Chapter XIII.

#### IV. OTHER PROPOSALS

The adequacy of present legal remedies under the Bankruptcy Act has been the subject of recent controversy. Some authorities believe that consumer bankruptcy has been, and others that it will become, a major problem and that revision of the Bankruptcy Act is the only solution.<sup>124</sup> Three recent proposals are worthy of mention: (a) amending Chapter XIII by conferring upon the referee discretionary power to refuse the issuance of a discharge where a Wage Earner Plan is feasible; (b) adapting the British and Canadian program of granting conditional discharges in bankruptcy; and (c) revising the Bankruptcy Act to provide a system of rehabilitation and counseling under the auspices of the court.

##### A. *Proposed Discretionary Power of Referee*

The most controversial, and apparently the most frequently mentioned alternative to the status quo is House Resolution 1057,<sup>125</sup> otherwise known as "involuntary" or "compulsory" Chapter XIII. Sponsored by the Consumer Bankruptcy Committee of the American Bar Association's Section of Corporation, Banking and Business Law,<sup>126</sup> the bill requires the referee to refuse any petition for a bankruptcy discharge where the petitioner fails to prove that he is unable

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<sup>123</sup> *Id.* at 136.

<sup>124</sup> See 1967 *Hearings* 75, 89, 122 (Recommendations of Prof. Countryman, Referee Poulos, and Mr. Twinem); Cowans, *supra* note 36, at 43.

<sup>125</sup> H.R. 1057, 90th Cong., 1st Sess. (1967).

<sup>126</sup> 1967 *Hearings* 121.

to obtain "adequate relief" under Chapter XIII.<sup>127</sup> The proponents of this legislation are genuinely concerned with the increase in consumer bankruptcies and its detrimental effect on the public. Creditors who unsentimentally support Wage Earner Plans are disturbed by its limited utilization which is in contrast to the rise in bankruptcy filings. As previously noted, numerous referees and attorneys are disenchanted with Chapter XIII. Adoption of this amendment will provide the desired implementation since all referees will then be statutorily required to "encourage" use of Chapter XIII plans.<sup>128</sup> Unquestionably, the strongest argument for enacting the proposed legislation is voiced by Mr. Linn K. Twinem,<sup>129</sup> Chairman of the ABA Committee. Mr. Twinem argues that the right to receive a discharge in straight bankruptcy is neither socially nor economically sound, since the consumer, who receives credit in good faith, has a responsibility to pay his obligations if able to do so.<sup>130</sup>

In answer to criticism that this legislation would make Wage Earner Plans compulsory and would place debtors under the harsh yoke of the court for the duration of the plan, the proponents contend that debtors are in no way coerced into a Chapter XIII but are only denied the protection of the court via bankruptcy proceedings.<sup>131</sup> This would be true if the term "compulsory" were literally applied. In practice, particularly where states have liberal garnishment statutes, the debtor would have no meaningful alternative to filing a Chapter XIII.<sup>132</sup> During Mr. Twinem's testimony before the House of Representatives Committee on the Judiciary, Congressman Jacobs<sup>133</sup> of Indiana analogized the situation when he said:

[A] man who is under a garnishee order and who needs some sort of relief, is a little bit like the fellow who is terribly thirsty, and is shown two cans of water, one with mud in it and the other clear, and told that he can do whatever he wants about his problem, but he cannot drink from the can of clear water.<sup>134</sup>

Others have been even more vehement in their criticism. Briefly,

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<sup>127</sup> *Id.* at 2.

<sup>128</sup> 1967 *Hearings* 85.

<sup>129</sup> Mr. Twinem is the Chairman, Consumer Bankruptcy Comm'n of the ABA, Editor, *Personal Finance L.Q. Rep.*, General Counsel, Beneficial Finance Corp., and author, *Guide to Wage Earner Plans Under Chapter XIII of the Bankruptcy Act*.

<sup>130</sup> 1967 *Hearings* 122.

<sup>131</sup> *Id.* at 122-28.

<sup>132</sup> *Id.* at 128-29.

<sup>133</sup> Congressman Jacobs of Indiana is a member of the House Committee on the Judiciary and Subcommittee No. 4, which is hearing testimony on H.R. 1057.

<sup>134</sup> 1967 *Hearings* 127-28.

they argue that the amendment, as proposed, is ambiguous. The standard of "adequate relief" would reflect the particular prejudices of the referee who would be required to adjudicate the matter and, therefore, suffer from the same lack of uniformity that the proponents allege to be one of the shortcomings of the current Chapter XIII.<sup>135</sup>

A second criticism points out that where creditors have initiated the bankruptcy petition, debtors could easily avoid the creditor's action by virtue of a "do nothing" defense. That is, the debtor may refuse to show why he could not obtain "adequate relief" under a Chapter XIII and the referee would be compelled to dismiss the proceedings.<sup>136</sup> This would render nugatory the right of creditors to commence an involuntary bankruptcy petition.

Several authorities question the constitutionality of the proposal because it subjects only wage earners to the discretion of the court as a precondition to receiving a discharge.<sup>137</sup> By denying the benefits of a discharge solely to wage earners as opposed to professionals, corporations, and nonsalaried individuals, application of the amendment would result in unconstitutional class legislation.<sup>138</sup> Though such arguments are undoubtedly valid, the proposal could be redrafted to meet this criticism. However, House Resolution 1057 must fail because of the following inherent defect. The success of Wage Earner Plans depends substantially on the willingness of the debtor to undertake the program. If the voluntary element were removed from Chapter XIII, the chances for completion would be virtually nil.<sup>139</sup> Furthermore, requiring a debtor to elect a Wage Earner Plan against his will, as the only means of obtaining judicial protection, "is contrary to the genius of our institutions."<sup>140</sup>

Extensive research and numerous interviews have revealed that, generally, House Resolution 1057 is advocated by businessmen and attorneys representing the creditor community since more money is repaid to creditors under a Chapter XIII than under straight bank-

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<sup>135</sup> Comment, *The Problem of Consumer Bankruptcy: Is Amendment of the Bankruptcy Act the Answer?*, 63 MICH. L. REV. 1449, 1455 (1965).

<sup>136</sup> Comment, *Should Chapter XIII Bankruptcy Be Involuntary*, 44 TEXAS L. REV. 533, 541 (1966).

<sup>137</sup> 1967 *Hearings* 9, 74 (Statement of Royal E. Jackson, Chief of the Bankruptcy Division, Administrative Office of the United States Courts; and statement of Prof. Countryman).

<sup>138</sup> *Id.*

<sup>139</sup> See, e.g., 1967 *Hearings* 11, 51, 74, 92, 124 (Statements of Mr. Jackson, Honorable Wesley E. Brown, Judge, United States District for Kansas, Prof. Countryman, Referee Poulos, Mr. Twinen).

<sup>140</sup> 1967 *Hearings*.



ruptcy.<sup>141</sup> Even if a wage earner does not complete all payments, initiating a Chapter XIII is still more beneficial to creditors.<sup>142</sup> However, referees and trustees, who daily observe debtors, seem uniformly convinced that only a voluntary Wage Earner Plan is practicable.<sup>143</sup>

### B. *Conditional Discharge*

A second alternative, somewhat analogous to an involuntary Wage Earner Plan, is the conditional discharge now utilized in Canada<sup>144</sup> and England.<sup>145</sup> This analysis will be limited to the discharge feature, which, in part, distinguishes British from American procedures.<sup>146</sup> Under the British system the debtor: (1) files a statement that he is unable to pay his debts;<sup>147</sup> and (2) is issued<sup>148</sup> a Receiving Order,<sup>149</sup> and then adjudicated a bankrupt.<sup>150</sup> Following such an adjudication, the debtor must file for a discharge.<sup>151</sup> The procedure which he must pursue to obtain that discharge is designed to discourage the debtor from fulfilling the statutory requirements for complete relief.<sup>152</sup> If the debtor has provable debts not satisfied at the time of the hearing,<sup>153</sup> the court either refuses or suspends the discharge. Such debts must be paid out of future earnings or after-acquired property.<sup>154</sup> Commenting on the British system, Professor MacLachlan<sup>155</sup> observed:

If the court feels that the creditors have suffered unduly, even in cases where the bankrupt has been guilty of no serious dereliction,

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<sup>141</sup> See material cited note 6 *supra*.

<sup>142</sup> See text accompanying notes 87-88 *supra*.

<sup>143</sup> See material cited note 139 *supra*.

<sup>144</sup> CAN. REV. STAT. c. 14 (1952).

<sup>145</sup> Bankruptcy Act of 1914, 4 & 5 Geo. 5, c. 59 [hereinafter cited as Act].

<sup>146</sup> Joslin, *Bankruptcy: Anglo-American Contracts*, 29 MODERN L. REV. 149, 154 (1966). Professor Joslin indicates three basic areas of difference: (1) The property administered in bankruptcy; (2) the exemption provisions; and (3) the discharge features.

<sup>147</sup> Act, § 6.

<sup>148</sup> *Id.* § 5(2). The court conducts a hearing at which time it determines whether facts have been shown justifying a bankruptcy. The debtor comes under the protection of the court, the order is published in the London Gazette, and the debtor is given an opportunity to clear himself before a bankruptcy adjudication ensues. Joslin, *English Bankruptcy*, 40 TUL. L. REV. 289, 293-94 (1966).

<sup>149</sup> "Receiving Orders" in England are tantamount to a petition in bankruptcy in the United States.

<sup>150</sup> Act § 16(16).

<sup>151</sup> *Id.* § 26(1).

<sup>152</sup> See Joslin, *supra* note 148, at 303-08.

<sup>153</sup> Act § 26(2)(iv).

<sup>154</sup> *Id.*

<sup>155</sup> The late James Angell MacLachlan, Professor of Law, Harvard Law School; author, *HANDBOOK OF THE LAW OF BANKRUPTCY*.

there may be a basis for using discretion to enforce what seems to the court as a better balance of inconvenience or detriment as between the creditors on the one hand and the bankrupt on the other.<sup>156</sup>

Conditional discharge takes especial cognizance of the creditor's rights and emphasizes distribution of present and future assets rather than providing the debtor with alternative remedies.<sup>157</sup> Justification for maintaining this system may be attributed to the large volume of mercantile bankruptcies filed in England,<sup>158</sup> which differs materially from the predominance of consumer bankruptcy in the United States. Even without the harsh procedures which dominate the British system, and despite the favorable support from creditors, conditional discharges would still be subject to the same deficiencies mentioned previously in respect to involuntary Wage Earner Plans.

### C. Court Sponsored Rehabilitation

Referee Danial H. Cowans suggests that not only the present system but also involuntary Wage Earner Plans, are inadequate to deal with the major problems of consumer bankruptcy.<sup>159</sup> Although the current number of bankruptcies poses no immediate economic threat, some experts fear that bankruptcy may become popular.<sup>160</sup> Cowans argues that existing procedures do not provide the requisite rehabilitation for the debtor who is ill-equipped to face the complexities of the "credit economy." While a potential bankrupt may attribute his plight to poor money management, his difficulties stem not so much from his dereliction as from his lack of sophistication.<sup>161</sup> Furthermore, rehabilitation advice may not be available from his

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<sup>156</sup> J.A. MACLACHLAN, HANDBOOK OF THE LAW OF BANKRUPTCY 113 (1956).

<sup>157</sup> Joslin, *supra* note 146, at 150.

<sup>158</sup> *Id.* at 149 n.4, 151-52. Ninety-two percent of the Receiving Orders in 1963 were filed by small merchants, contractors, and the trader class. It is not surprising, therefore, that the economic and social policy of the Commonwealth stresses distribution to creditors. Professor Joslin suggests that as personal bankruptcies increase in England, Great Britain's bankruptcy laws may need revision to reflect greater concern for the debtor's welfare.

<sup>159</sup> Cowans, *Present Bankruptcy Act Defective Changes Currently Proposed are Unsuitable For Dealing With Insolvent Individuals New Solution Advocated, Including Credit Counseling*, 22 PERSONAL FINANCE L.Q. REP. 40 (1968).

<sup>160</sup> *Id.* at 41. "[I]f bankruptcy ever becomes popular, then 1929 will be very mild by comparison." After analyzing the bankruptcy-population ratio and concluding that it does not cause him great concern, Referee Cowans continues:

The fact that as I look over the filings I see other members of a family file if one does or other employees of the same company file after the pioneering one does, concerns me a great deal. It is easy to see the possible progression to the point of popularity. *Id.*

<sup>161</sup> *Id.* at 42.

attorney who frequently is unfamiliar with the art of financial planning.<sup>162</sup> Unless society educates the debtor about money management, he is likely, once again, to plunge into financial doldrums immediately after obtaining a bankruptcy discharge. Accordingly, Referee Cowans believes that, as a prerequisite to securing judicial relief, a debtor should be subjected, for his own benefit, to a rehabilitation program, administered under the auspices of the court.<sup>163</sup> He suggests that the courts sponsor a credit counseling and budgeting program, utilizing professionally trained personnel to isolate the source of the debtor's troubles and provide him with armor to protect himself against future insolvency problems.<sup>164</sup> Referee Cowans has recommended the following procedural revisions: the debtor would initially file a petition for relief without specifying the desired remedy, and restraining orders would be immediately available. Both debtor and attorney would then be required to submit to a court directed examination procedure, at which time court-appointed credit and budget counselors would explain the feasible forms of relief. After considering the advice, the debtor would choose between a Wage Earner Plan and straight bankruptcy. Additionally, if the debtor elected to file under a Chapter XIII, the court-appointed counselors would be available to assist his attorney in dealing with the myriad difficulties which may arise while administering a Wage Earner Plan.<sup>165</sup>

Referee Cowans has indicated that classroom instruction for the debtor at the time of filing would be appropriate<sup>166</sup> in view of the extraordinary relief which the court has power to grant. Revamping the bankruptcy process to incorporate such a supplementary procedure would substantially aid the debtor, although organization may prove difficult and cost of administration, prohibitive. Private credit counseling services have been experiencing this very problem, although a few have enjoyed success in large urban communities.<sup>167</sup> Despite the possibility that private enterprise could effectuate a less expensive procedure without the usual administrative "red tape," its lack of the enforcement power necessary to compel consumer counseling would pose inherent defect.

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<sup>162</sup> *Id.* at 45.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

In response to foreseeable criticism that Referee Cowans' proposal is but another instance of the welfare state, it is sufficient to note that the immediate objective of this program is to equip the debtor with the know-how to compete within the "credit economy." The benefits would then accrue to creditor and debtor alike.<sup>168</sup>

Consumer education should begin at the grammar school level.<sup>169</sup> Since many state education acts presently have provisions which require mandatory instruction in other practical subjects,<sup>170</sup> those acts might be amended to include, within the required curriculum, a course in personal finance management, which would reduce the naivete of future consumers.

## V. CONCLUSION

In view of the manifest advantages of Wage Earner Plans, substantially more Chapter XIII proceedings should be initiated. Concomitantly, court sponsored rehabilitation would furnish debtors an opportunity to learn responsible money management. Under present conditions, the burden on attorneys would frustrate the purpose of such bankruptcy legislation by denying the distressed wage earner suitable relief. Shifting the workload to courts and trustees may prove to be the most desirable Chapter XIII procedure. Maine has accomplished this; so should the Nation.

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<sup>168</sup> *Id.* at 44, 47.

<sup>169</sup> *Id.* at 47.

<sup>170</sup> See, e.g., CAL. EDUC. CODE § 7901, *as amended*, (West Supp. 1967); OKLA. STAT. ANN. tit. 70 § 11-3 (1966); ILL. ANN. STAT. ch. 122 §§ 27-5, 27-11 (Smith-Hurd 1962); PA. STAT. ANN. tit. 24 § 16-1605 (1962).