Chapter XIII Wage Earner Plans--Forgotten Man Bankruptcy

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The Chapter XIII petitions, familiarly spoken of as "wage earner's plans," can best be understood when it is realized that this part of our law came into being as a separate chapter in the Bankruptcy Act with the rest of the Chandler Act in 1938. Chapter XIII is part of the "Forgotten Man" program which Franklin Delano Roosevelt promised the country in the presidential campaign of 1932. In construing and administering this part of the bankruptcy law, we should keep in mind that it is necessarily flavored by an era which also produced the Social Security, Public Utilities, Securities and Exchange, and Wagner Acts.

I. THE LAW RESTATED

This article will not be an attempt to write a short textbook pertaining to Chapter XIII of the Bankruptcy Act. A number of excellent articles of this kind are readily available in the law reviews. In addition to such articles summarizing the law involved

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1 The citations in this article are to the official bankruptcy statute. The Chandler Act was given the official title, "Bankruptcy Act" by the Act of December 20, 1950. Prior to that date the formal title was the "Bankruptcy Act of 1898 as amended." See Bankruptcy Act ch. 1138 (1950).

2 See Allgood, Operations of the Wage Earner's Plan in the Northern District of Alabama, 14 Rutgens L. Rev. 578 (1960). This article is an excellent review of the law in operation as seen by a referee (now a federal district judge) who has handled thousands of Chapter XIII cases. See also Nadler, Rehabilitation of the Insolvent Wage Earner Under the Bankruptcy Act: A Challenge to Minnesota, 42 Minn. L. Rev. 377 (1957). Apparently Nadler's challenge has gone unheeded. The Bankruptcy Annual Report from the Administrative Office of the United States Courts, and the population and per capita income sections of THE WORLD ALMANAC, 1966, show that in 1965, of the 2,567 employee bankruptcies in Minnesota, only 549 employed Chapter XIII. In the same year in Alabama, of the 9,522 employee bankruptcies, Chapter XIII was employed in 7,804. See also Woodbridge, Wage Earners' Plans in the Federal Courts, 26 MINN. L. Rev. 775 (1942).
in Chapter XIII, the law reviews also contain a number of student comments.\(^3\) There is also a leading treatise\(^4\) which extensively treats wage earner's plans. Of the small texts available, the best is Professor Nadler's *The Law of Debtor Relief*.\(^5\)

Nevertheless, for purposes of continuity and clarity, the early pages of this article will briefly summarize the law. Chapter XIII follows the pattern of most statutes which attempt to create a new idea in the law. The Chapter first states that its provisions shall apply exclusively\(^6\) except that other provisions of the Bankruptcy Act may apply when they are not inconsistent or in conflict.\(^7\) This needed clarification is then followed by definitions of "claims," "creditors," "debtor," "debts," "executory contracts," "petition," "plan," and "wage earner." The last term is defined to be an individual whose principal income is derived from wages, salary, or commissions. A "claim" is defined as including all claims of whatever character against the debtor or his property, whether provable under section 63 of the act and whether secured or unsecured, liquidated or unliquidated, fixed or contingent, but not including claims secured by estates in property or chattels real. A creditor is defined as any holder of any claim.\(^8\) The law then says that a creditor is concerned with a plan only if his interest shall be materially and adversely affected thereby.\(^9\)

The act gives the court exclusive jurisdiction of the debtor, his property wherever located, and his earnings and wages during the consummation period of the plan. This subsection illustrates the basic difference between a voluntary petition filed in straight bankruptcy and a Chapter XIII petition, since in the latter instance, the court was given jurisdiction over earnings and wages only for a period of time following the filing of the petition. The basic intent of the law is to permit a wage earner to pay existing debts out of future earnings without being harrassed by creditors.

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\(^4\) See, 10 *Collier, Bankruptcy* (14th ed. 1965); 9 *Remington, Bankruptcy* 417-38 (Henderson ed. 1955).


The underlying basis for the statute was Congress's belief that a wage earner's only asset might be his earning power and that he should be able to turn this asset over to his creditors for a period of time, if he so desired. To carry out its intent, Congress provided that the court may enjoin, or stay until final decree, the commencement or continuation of any suit except those to enforce liens upon the property of the debtor. Where cause is shown, a court may also enjoin, or stay until final decree, suits to enforce such liens.

Proceedings under Chapter XIII may be commenced by filing a section 622 original petition or by filing a section 621 petition in a pending bankruptcy, either before or after adjudication. The petition must state that the debtor is insolvent or unable to pay his debts as they mature. It must state that the debtor desires to effect a composition or an extension of time on his debts with payment to be made out of future earnings or wages. Most Chapter XIII petitions are original petitions requesting an extension.

Along with the petition, the debtor must file a statement of affairs which shows his executory contracts, his creditors and their addresses, and a summary of his assets and liabilities. He must also deposit fifteen dollars; ten dollars of this is distributed to the treasurer of the United States for deposit in the referee's salary and expense fund, and five dollars goes to the clerk. Later, at the first meeting of creditors, the debtor must submit his plan and deposit an additional fifteen dollars. This sum also eventually reaches the referee's salary and expense fund.

The referee will often suggest that a wage earner's plan be filed with the bankruptcy petition and its related papers. Although not mandatory, such early filing of the plan is frequently advantageous because it allows the referee to study the petition, to decide whether to confirm or deny it, and to take the appropriate action at the first creditors' meeting.

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15 Bankruptcy Act, 11 U.S.C. § 1053 (1938). This section provides that alternatives or modifications of a plan may be proposed in writing by a debtor with leave of court at any time before confirmation. This implies that the plan itself may be proposed at any time.
Frequently, referees who handle an appreciable number of these plans require the filing of a simplified statement of affairs, which better presents the true picture of a wage earner's affairs than the official bankruptcy form. These statements usually state the petitioner's marital status, the spouse's name, and the marital state as regards separation, divorce, alimony, and dependents. The question of alimony becomes extremely important when a man is paying alimony to a former wife and is now married a second time. Referees often find that the effort to support two families is responsible for the wage earner's problems. Among other factual data contained in the simplified statement is a history of the debtor's employment, his social security number, and the total amount of wages earned by the family unit. All these facts are important, as they have a bearing on the amount which may be allocated for the payment of debts. The special statement of affairs forms usually request information as to the debtor's equity in a home or the family car and all related financial details, such as the amount of monthly payments. This information is needed by the referee so he may decide, in advance, whether to confirm the plan at the first creditors' meeting. One referee stated that the first thing he tells the debtor is to get rid of his car since it is impossible to support both the family and a car.\(^\text{16}\)

As already mentioned, the court has exclusive jurisdiction over the debtor, his property wherever located, and his earnings and wages during the period of consummation of the plan. Further, the court may enjoin any action that interferes with effectuation of the plan.\(^\text{17}\) One court has even refused to permit a secured creditor to subject his security to the payment of the debt, if the plan providing for payment of the debt in accordance with the contract repossession of the property would interfere with the feasibility of the plan. In that instance, the property, an automobile, was used by the debtor in his livelihood.\(^\text{18}\) The plan filed contained a provision for payment in accordance with the contract, but not for delinquent payments.

\(^{16}\) A statement as to the equity in the family car and the size of the payments is normally included. In regard to this, at least one referee requires that a debtor sell his car before the plan will be confirmed. See Bundscher, Administration of Wage Earner's Plans in the Bankruptcy Court, 18 Ref. J. 55 (1944). See Appendix H to this article for a sample Statement of Affairs.


However, a similar case held that a referee could not stay the enforcement of the conditional sales contract unless the plan provided for payment consistent with the contract terms. Dictum in the case indicated that if this property, an automobile, were actually needed by the debtor to earn his wages, the referee could enjoin repossession, even though the account was delinquent at the time the petition was filed, if the plan filed provided for payment.19 In 1960, a seventh circuit decision went even further. It held that, since all property of the debtor is within the jurisdiction of the court, the referee has a duty to protect the equity owned by the debtor in property, subject to a lien, which calls for time payments. This duty existed even though the plan did not provide for payment to secured creditors who did not accept the plan. If the plan actually is adequate to handle these payments, then the holder of the conditional sales contract will not be allowed to reclaim the property. In this case, the property, an automobile, might have been necessary for the earner's continued earning power. Another item involved was a television set.20 A different question is presented when the security is real property, since section 606 does not cover claims secured by estates in property or chattels real.21 Obviously, this particular claim is not a part of the plan. However, since section 614 gives the court jurisdiction over all property of the debtor without qualification and the power to enjoin or stay any proceeding to enforce any lien on the property of the debtor upon notice and for cause shown, there seems to be little doubt that the court can enjoin the foreclosure of a lien on real property, unless it abuses its discretion.

The fourth circuit has used this approach in upholding injunctions when they are necessary to preserve the debtor's estate or to carry out the plan if the issuance of the injunction does not impair the security of the lien. Of course, the owner of the secured indebtedness is never required to accept less than the total of the periodic payments specified in the contract.22

After the petition is filed, the law requires the clerk im-

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20 In re Clevenger, 282 F.2d 756 (7th Cir. 1960).
mediately to refer the case to a referee. After giving ten days notice the referee calls a creditors' meeting at which he presides in much the same manner as he does at the first meeting of creditors in a straight bankruptcy. In this first meeting, the court receives written acceptances of creditors on the proposed plan. The law permits the debtor to obtain these acceptances either before or after filing of the petition. After the plan has been accepted, a trustee is appointed to receive and distribute the money to be paid under the plan. The referee then sets a time for filing of the application to confirm the arrangement and for a hearing on the confirmation. However, the law clearly states that these times can be set in the original notice; thus confirmation can take place at the first meeting of the creditors. Confirmation can also be accomplished even without notice if all creditors affected by the arrangement have accepted it.

In some jurisdictions, attorneys, aware that the referee would like to dispense with the necessity of a second hearing, file a plan with the petition and provide notice to the creditors that confirmation will be considered at the first meeting. Since the referee has a statement of affairs filed with the petition, he has a chance to study the whole case in advance and is able to conduct the creditors' meeting by accepting the claims, by asking for objections to the plan, and finally by confirming it with any modification that he wishes to make. In many instances where a plan calls for payments which the referee feels are more than the debtor can pay consistent with care of his family, the plan will be modified. Under other circumstances, larger payments may be required.

Creditors' claims must be filed and proved to be allowed. In the usual situation, they will be filed at the first meeting of creditors, and a creditor will not be entitled to participate in the plan, "as a matter of right," unless he has filed this claim within

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24 Bankruptcy Act, 11 U.S.C. § 1033 (1938). The section states that these times may be set by the letter of notice to the creditors. Thus confirmation may be had at the first meeting if the creditors consent. Using this procedure, referees in the District Court for the Northern District of Alabama have been able to dispose of as many as fifty cases in one morning.
25 Bankruptcy Act, 11 U.S.C. § 1053 (1938). Alterations or modifications may be proposed at any time before the plan is confirmed. Referees are careful to modify the amount to be paid to the trustee to a figure that the debtor can pay and still adequately provide for his family.
six months after the date of the first meeting.26 This follows because all-nonconflicting provisions of the Bankruptcy Act are incorporated into Chapter XIII27 and section 57 (n) of the Bankruptcy Act provides that claims which have not been filed within six months after the first date set for the first meeting of creditors shall not be allowed. At one time, section 57 (n) excepted from this six months provision proceedings under Chapter XIII, but the exception was eliminated from the Act on July 7, 1952.28

This does not mean, however, that the referee, in his discretion, cannot amend the plan to include a late-filing creditor or a subsequent creditor. In order to avoid the necessity of sending notices to creditors and having a hearing,29 the referee could require that an additional amount be allocated to the trustee from the debtor's wages to take care of this payment.30 This would not affect the rights of the original creditors to the plan.31

For purposes of analysis, let us assume that there is a supplemental creditor whose right accrued after the plan was filed. Assume also that the debt arose from the purchase of necessities and that the referee, having absolute control of the debtor's wages, authorized the payment of this debt out of wages. The payment of this debt might make it impossible for the debtor to support his family and still pay into court the amount provided for the plan, thereby resulting in a default. If this occurred, then the court would be required to enter an order dismissing the wage earner's

29 An alternative solution to the subsequent creditor problem would be to notify the other creditors, hold a hearing, and reduce the amounts payable to the other creditors. Authority for this action could be found in the section which provides that the contents of a plan "shall" include provisions authorizing the court to increase or reduce the amount of any of the installment payments provided by the plan, to extend or shorten the time for any such payments where it shall be made to appear, after hearing upon such notice as the court may designate, that the circumstance of the debtor so warrant or require. Therefore, in order to reduce the amount to be received by any creditor, the referee should show that the reduction is necessary for the debtor to carry out his plan.
30 Because the court has the discretionary power to enjoin, or stay until final decree, the commencement of suits or attachments against any of the property of the debtor, the referee could free some portion of the debtor's wages from the stay order and allow the subsequent creditor to recover through garnishment proceedings. However, the simple way to handle this is merely to instruct the trustee to pay this amount to the subsequent creditor.
31 See In re Heger, 180 F. Supp. 147, 151 (D.C. Minn. 1959) for the proposition that a creditor who has not proved his claim within a reasonable time has no right to participate.
proceeding. If the proceeding had arisen out of a prior bankruptcy, the referee would be required to adjudicate the debtor a bankrupt. If the proceeding arose out of an original petition and if the debtor consented, the referee could adjudicate him a bankrupt. In the absence of consent, the referee merely dismisses the proceeding. Obviously, the continuation of the proceeding will depend upon the satisfactory disposition of supplemental obligation based upon necessity.\textsuperscript{32}

If the amount paid to the original creditors must be reduced to satisfy the claims of subsequent creditors, the referee should give notice of and the reason for the reduction. If a majority of the prior creditors do not consent to the change, the plan should be discontinued. On the other hand, if the wage earner has enough equity in his wages to satisfy the new obligation, the referee may order that any portion of these funds be distributed for any purpose agreeable to the debtor so long as it does not interfere with the plan.\textsuperscript{33}

The problem of subsequent creditors, whether their obligation existed at the time of the petition or came into existence after the filing of the petition, takes on a new light in view of the recent Supreme Court case of \textit{Perry v. Commerce Loan Co.}\textsuperscript{34}

There, the Court held that a wage earner's petition under Chapter XIII was not to be looked upon as a bankruptcy and thus was not barred when filed within six years of a discharge. Under this holding, a wage earner who finds that he must obligate himself in an amount large enough to interfere with a confirmed plan could, by the process outlined in the preceding paragraph, give the referee the right to dismiss the existing plan. The wage earner could immediately file a new plan scheduling the old and new debts, and if a majority of the creditors consented, the referee could confirm this new plan.

Since the plan and its confirmation are the hub of a wage earner's petition, care should be taken to submit a plan to the court which satisfies the statutory requirements. The chapter states that a plan:

\textsuperscript{33} Bankruptcy Act, 11 U.S.C. § 1007 (1938). The section states that a creditor shall be affected by a plan only where his interest is "materially and adversely" affected.
\textsuperscript{34} 383 U.S. 392 (1966)
1. shall include provisions dealing with unsecured debts generally, upon any terms;
2. may include provisions dealing with secured debts severally, upon any terms;
3. may provide for priority of payment during the period of extension as between the secured and unsecured debts affected by the plan;
4. shall include provisions for the submission of future earnings or wages of the debtor to the supervision and control of the court for the purpose of enforcing the plan;
5. shall provide that the court may from time to time during the period of extension increase or reduce the amount of any of the installment payments provided by the plan, or extend or shorten the time for any such payments, where it shall be made to appear, after hearing upon such notice as the court may designate, that the circumstances of the debtor so warrant or require;
6. may include provisions for the rejection of executory contracts of the debtor;
7. may include any other appropriate provisions not inconsistent with this chapter.35

In connection with "the subsequent creditor problem" discussed above, it was stated that the authority for treating it rests upon provision five, which is mandatory. In addition to provision five, provisions four and one are also mandatory, while provisions two, three, six, and seven are within the discretion of the debtor.

The first provision of the plan is obviously necessary since all of the unsecured debts must be dealt with if the plan is to be feasible. The wording here, though not express, clearly implies that all unsecured debts must be dealt with. Even though the second provision is optional with the creditor, it has been held that a plan which did not provide for payments of a secured claim still "dealt" with the secured creditor's claim since the plan would "materially and adversely affect [the] creditor's interest."36 In

35 The jurisdiction and authority of the referee to issue an order instructing the trustee to pay a late-filing creditor is supported by the statutory sections which give the court exclusive jurisdiction over the debtor, his property wherever located, and his earnings and wages during the consummation period of the plan. The broad discretion given the referee is also exhibited in the power to extend any time period which, under the Bankruptcy Act, the court could originally have set.
connection with the third provision, it has previously been stated that a secured creditor within the plan is protected by the jurisdictional sections and, even if a creditor refuses to accept the plan, he is still subject to the jurisdiction of the court. If the court in its discretion enjoins the enforcement of the security without affecting the creditor's contractual rights, the creditor does not have any complaint. However, this does not mean that the plan should be confirmed over the creditor's objection if his rights are not protected. The fourth provision of the plan is obviously necessary and requires that future earnings or wages of the debtor must be submitted to the supervision and control of the court for the purpose of enforcing the plan. The fourth provision does not say that it is adequate to submit only a portion of the wages; rather it impliedly makes submission of all wages a mandatory part of any plan. The sixth provision, which is optional, deals with the rejection of the debtor's executory contracts. The seventh section, also optional, is a catch-all section. Some referees may use it to permit the inclusion of subsequent creditors if the obligations were created for necessities.

A central problem in drafting a plan is to anticipate its confirmation. Under the Bankruptcy Act, confirmation is a two-step process. First, when the plan has been accepted in writing by all creditors "affected thereby," it is to be confirmed if the court is satisfied that the plan and its acceptance have been made in good faith and not procured by any means, promises, or acts forbidden by the Bankruptcy Act. The key to this provision lies in the statutory words "affected thereby." This terminology is expanded in an earlier section of the Bankruptcy Act which states that a creditor shall be deemed affected by a plan only if his interest shall be "materially and adversely affected thereby." (Emphasis added.) The question arises whether a secured creditor is so "affected" by the plan that his consent is a prerequisite. This question is partially dealt with by the General Orders in Bankruptcy promulgated by the United States Supreme Court. They provide that the reclamation sections applicable to straight bank-

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40 General Orders and Forms in Bankruptcy, 80 U.S. 681f (1939).
ruptcy are not applicable to Chapter XIII petitions. For this reason, a secured creditor whose security interest failed to qualify under the "materially and adversely affected" test would not be a creditor whose acceptance was necessary in order to have an acceptance by all creditors.

If a plan is not accepted by all creditors, then the second confirmation part of the Bankruptcy Act controls. This requires an acceptance in writing by all of the secured creditors whose claims are dealt with by the plan. It further requires an acceptance in writing by a majority of all the unsecured creditors whose claims have been proved and allowed, if this number represents a majority in amount of such claims. The troublesome words here are those which require that the plan be accepted by all of the secured creditors whose claims are "dealt with by the plan." A 1961 district court case held that a secured creditor whose debt was not scheduled for payment in the plan was "dealt with" and that his acceptance must be obtained. True, a secured creditor who is not provided for in the plan has lost the availability of a portion of the debtor's earning power; since the secured creditor is within the jurisdiction of the court, it certainly could be argued that his claim has been "dealt with." On the other hand, it might be argued that the term "dealt with" has the same meaning in the law as the term "affected thereby" in the previous section, and if the plan provides for payment of the obligation in conformance with, or in a manner more advantageous than, the secured creditor's contract, his interest has not been "materially and adversely" affected by the plan. Therefore, in such situations it is not surprising to find that other courts generally do not require his acceptance as a prerequisite to confirmation by the referee. In a 1960 case, In re Clevenger, the seventh circuit held that a secured creditor was not "dealt with" by the plan even though the conditional sales contract was in arrears and the plan provided

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41 Ibid. See General Orders No. 28 and No. 55.
46 282 F.2d 756 (7th Cir. 1960).
only for payment of future installments. The court found the
delinquency was not caused by filing the plan and that the rights
of the secured creditor had not been diminished. The implicit
rationale was that the particular plan required substantially the
same payments as those provided in the security device.

Since the Bankruptcy Act calls for acceptance by all secured
creditors and only a majority of unsecured creditors, the standing
of a creditor as secured or unsecured becomes extremely im-
portant. In many localities loan companies, while lending es-
sentially upon the general unsecured credit of the debtor, take a
blanket mortgage on his furniture in order to achieve the status of
a secured creditor. This tactic undoubtedly caused difficulties in
obtaining acceptance of all secured creditors until the 1956 de-
cision of the tenth circuit in *City National Bank & Trust Co. v.
Oliver.* There, a secured creditor with an unrecorded chattel
mortgage objected to the confirmation of the plan. The court
held that the invalidation provisions of section 70 (c) of the Bank-
ruptcy Act applied in a Chapter XIII proceeding and that the
trustee could rely on them to negate the status of the secured
creditor and the requirement of his consent.

It follows that an attorney drafting a plan for a debtor should
be careful that the rights of secured creditors are not "materially
and adversely affected thereby." By avoiding this bottleneck, only
a majority of the unsecured creditors will be required before the
referee can confirm the plan. Obviously, satisfaction of this re-
quirement should be relatively easy since they will fare far better
under a wage earner plan than under straight bankruptcy.

If there has been acceptance in writing by all creditors affected
by the plan, section 651 of the Bankruptcy Act would seem to
make confirmation mandatory, but there are further requisites in
the Act that might be construed to limit this mandatory effect.
These state in section 656 that the court shall confirm a plan if
satisfied that: (1) the provisions of this chapter have been com-
plied with; (2) it is feasible and for the best interest of the
creditors; (3) the debtor has not been guilty of any act or omis-
sions to act which would bar discharge in bankruptcy; and (4) the

47 230 F.2d 686 (10th Cir. 1956).
48 Bankruptcy Act, 11 U.S.C. § 110 (1938). This is the so-called 'strong arm clause' which gives the trustee in bankruptcy standing as a lien creditor.
proposal and its acceptance were made in good faith and were not secured by any means, promises, or acts forbidden by the law.\textsuperscript{49}

There is some disagreement as to whether section 656 requisites are to be applied only to the confirmation of plans accepted by a majority of the unsecured creditors under section 652, or whether section 656 requisites must also be applied to plans accepted by all the creditors under section 651. Collier takes the former position and Nadler the latter.\textsuperscript{50} One thing becomes clear. If there is an acceptance under either section 651 or 652 and the requisites for confirmation set out in section 656 are met, then the court must confirm the plan.\textsuperscript{51}

According to the better view, a referee confronted with an application to dismiss on the grounds that one of the requisites has not been met should dismiss the action, even though the plan has been unanimously accepted. It seems obvious that Congress meant to include all requirements of the Chapter in listing the first requisite. The second requisite certainly applies to a plan accepted by either unanimous or majority vote since the referee must decide feasibility, taking into consideration the debtor's financial ability to carry out the proposals in the plan. As previously discussed, where the debtor has agreed to pay more than is feasible, the practice of most referees is to suggest that the proposed plan be altered before confirmation. Since the fourth requisite is a prohibitive one, it rightfully applies to an acceptance by either route. The rationale is that where a debtor or creditor is guilty of practices forbidden by the Act the court should not be forced to take a plan merely because all creditors have accepted it.

The final requisite, that each creditor must file proof that his claim is free from usury, would be of little value if a unanimous vote of the creditors could deny the referee authority to question the usurious nature of a claim. The history of the usury clause indicates that congressional intent was to have this requirement apply to every claim, regardless of whether the plan was unani-

\textsuperscript{50} Collier takes the position that § 656 applies only to plans accepted by a majority of the creditors. See 10 Collier, Bankruptcy § 29.06 (14th ed. 1965); but see also Nadler, The Law of Debtor's Relief § 547 (1954), in which the author argues that even if all creditors have accepted the plan in compliance with § 651, the requisites for confirmation set out in § 656 must be complied with.
\textsuperscript{51} Nadler, The Law of Debtor's Relief § 547 (1954).
mously accepted. The original House bill did not contain this requirement, but was amended by the Senate to include it. The reason for the amendment is found in the testimony before the Senate Committee by Judge Vallentine J. Nesbit, Special Referee in Bankruptcy, Birmingham, Alabama. Referee Nesbit testified that the experiments under former sections 12 and 74 established that the distressed circumstances of wage earners were a result of usurious claims and that the bill which passed the House could not adequately protect the debtor unless the amending clause was added.\textsuperscript{52}

For purpose of convenience, the preceding discussion of the requisites of confirmation has omitted the third requisite, since it requires an examination of case law. The third requisite is that the debtor has not been guilty of any act or omission to act which would bar discharge in bankruptcy. This provision automatically brings section 14 (c) into the confirmation requisites.\textsuperscript{53}

An examination of the various grounds for denial of discharge under section 14 (c) shows that most of the provisions would seldom affect a wage earner. The first ground is that the bankrupt

\textsuperscript{52} 83 CONG. REC. 8705 (1938) (remarks of Senator O'Mahoney).
\textsuperscript{53} Bankruptcy Act, 11 U.S.C. § 32(c) (1938) reads as follows: The court shall grant the discharge unless satisfied that the bankrupt has (1) committed an offense punishable by imprisonment as provided under section 152 of Title 18; or (2) destroyed, mutilated, falsified, concealed, or failed to keep or preserve books of account or records from which his financial condition and business transactions might be ascertained, unless the court deems such acts or failure to have been justified under all the circumstances of the case; or (3) obtained money or property on credit, or obtained an extension or renewal of credit, by making or publishing or causing to be made or published in any manner whatsoever, a materially false statement in writing respecting his financial statements; or (4) at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property, with intent to hinder, delay, or defraud his creditors; or (5) 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 a wage earner's plan by way of composition confirmed under this title; or (6) in the course of a proceeding under this title refused to obey any lawful order of, or to answer any material question approved by the court; or (7) has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities: \textit{Provided}, that if, upon the learning of an objection to a discharge, the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which, under this subdivision, would prevent his discharge in bankruptcy then the burden of proving that he had not committed any of such acts shall not be upon the bankrupt.
KENTUCKY LAW JOURNAL

has committed a criminal offense punishable under Title 18, U.S. Code, Section 152. It is unlikely that a wage earner would violate this criminal law. Neither the second nor the third ground normally apply in a wage earner's petition. The second ground is that he has destroyed or failed to keep accounts of records from which his financial condition might be ascertained, unless the court deems such failure to have been justified under the circumstances. The third involves the making of a false financial statement while engaging in business, and usually the wage earner does not engage in business. Nor would the fourth ground apply to wage earner petitions since it is the removal or concealment of property with intent to defraud his creditors. The sixth and seventh grounds for denial of discharge could conceivably, but seldom do, arise in a wage earner's plan. The major problem lies with the fifth ground, which is that the debtor "has been granted a discharge within six years prior to the commencement of the bankruptcy proceeding, or had a composition or an arrangement by way of composition or a wage earner's by way of composition confirmed under the act."\

Because of the frequent existence of prior discharges occurring within six years, the question whether the fifth ground is applicable to a wage earner's petition and comes within the requisites for confirmation is serious and debatable. The issue arises because the great majority of plans filed ask for extension, not composition. The early cases on whether a discharge in a former bankruptcy was a bar to the confirmation of a wage earner plan were in conflict, but this conflict was settled by a recent Supreme Court decision. Perry v. Commerce Loan Co. held that a discharge in bankruptcy granted within six years of the filing of the petition was not grounds for dismissal or refusal to confirm the plan; the Court reasoned that the fifth ground of section 14 (c) of the Bankruptcy Act was in conflict with the provisions of the sections in Chapter XIII and, therefore, not controlling.

54 Id. at § 32(5).
The Court, relying on the *Congressional Record*, found the intent of Congress in passing Chapter XIII was "to give the wage earner a reasonable opportunity to arrange installment payments to be made out of the future earnings." Rather than to have them go into straight bankruptcy, Congress intended "to encourage wage earners to pay their debts in full by offering two inducements: (1) Avoidance of an adjudication of bankruptcy with its attendant stigma; and, at the same time, (2) temporary freedom, during the extension, from garnishment, attachments and other harassment by creditors." The Court said that, in view of the purposes of Chapter XIII, it did not think Congress intended to apply the six-year bar of section 14 (c) (5) to the confirmation of wage earner extension plans. The Court stated that the "unmistakable purpose of the six-year provision was to prevent the creation of a class of habitual bankrupts—debtors who might repeatedly escape their obligations as frequently as they chose by going through repeated bankruptcy." But the Court said, "an extension plan has no escape hatch for debtors, it is a method by which, without resorting to bankruptcy proceedings, in the usual sense a wage earner may meet the claims of creditors." The Court continued, "it is true, that section 660 provides for a discharge after compliance with the provisions of Chapter XIII plan," and further commented that, "while this section applies to wage earner compositions as well as to extensions, a 'discharge' thereunder has a wholly different impact where an extension is involved. In the latter case a discharge is little more than a mere formality." The Court concluded that, if at the end of three years the debtor has not paid all his obligations under the plan and the referee is contemplating granting a discharge under section 660, then at that time an objecting creditor may raise section 14 (c) (5) as a bar to relief.\(^5\)

In a recent seventh circuit case, the court, citing the *Perry* case, held that the dismissal of a straight bankruptcy petition could not be based upon a discharge which had been granted at the completion of an extension plan under Chapter XIII. Even though this discharge was granted within six years of the filing of the straight bankruptcy petition, the court pointed out that the

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wording of section 14 clearly indicated that the only discharge under Chapter XIII which would bar a petition brought in straight bankruptcy was one that called for composition rather than extension. The court pointed out that the Supreme Court had termed a discharge granted at the end of an extension plan a "formal one."°°

This result may be supported by considering the Act's history. When the Chandler Act was being enacted, question was raised whether the reorganization sections came within the constitutional power of Congress to establish uniform laws on the subject of bankruptcy throughout the United States.°°° An essential to past legislation and thinking on the "subject of bankruptcy" had been the giving of a discharge, and it could be argued that the authors of the Chandler Act and section 74 of the Bankruptcy Act, to settle any question, provided for discharge even though it was a mere formality in a Chapter XIII petition where the plan was for extension only and all the debts had been paid.°°

Assuming that a debtor complies with the provisions of a confirmed plan, the court enters an order discharging him from all debts and liabilities provided for by the plan. However, this does not affect the debts which are not dischargeable under section 17 of the Bankruptcy Act, unless the creditors concerned accepted the plan.°°°° After three years, if the court is satisfied that the failure of the debtor to complete his payments is due to circumstances for which he could not be justly held accountable, it will enter an order discharging his debts, exclusive of the above mentioned debts, provided that the creditors involved have accepted the plan.°°°° This discharge feature of Chapter XIII petitions might seem to be in conflict with Perry. However, as the Court mentioned in Perry, if the plan is an extension-type and the payments are made in accordance with it, there are no debts to be discharged.°°°° If, on the other hand, the plan filed is a composition-type, then it

°° Barnes v. Maley, 360 F.2d 922 (7th Cir. 1966).
°° Id. at 924.
°°°°° The majority opinion in Perry calls a discharge under a Chapter XIII extension a "mere formality" even though a creditor who does not file a claim may lose his right to recover the debt. Perry v. Commerce Loan Co., 383 U.S. 392, 403 (1966).
is classified as a bankruptcy proceeding. Finally, if the plan started out as an extension-type which was subsequently converted at the end of three years into a composition-type, then, at that time, the creditor could challenge the discharge if it would be received within six years of the previous discharge. Of course, after the discharge has been granted under either section 661 or section 660, the final step is for the court to issue an order discharging the trustee and closing the estate.66

II. THE HISTORY OF CHAPTER XIII

In Perry, Justice Clark stressed the history and background of Chapter XIII in ascertaining the intent of Congress.67 The history of Chapter XIII begins even before the date cited in the Perry case. In 1933, the year spoken of as the "depth of the depression," there were so many no-asset petitions filed by wage earners in Birmingham, Alabama, that alarm spread through not only the business community but the bar as well. After consulting with Valentine J. Nesbit, a prominent Birmingham attorney, and some of the Birmingham creditor associations, Federal District Judge W. I. Grubb apparently decided that a partial solution might lie in a liberal interpretation of section 74 of the Bankruptcy Act.68 As a beginning, Judge Grubb appointed Mr. Nesbit as referee in bankruptcy to handle only section 74 petitions. After Judge Nesbit's death, Clarence W. Allgood was appointed as referee to handle these particular petitions. Judge Allgood is now judge of the Federal District for the Northern District of Alabama. In response to my letter asking him about the early history of these proceedings in Birmingham, he wrote the following:

Your letter of June 10, with regard to Chapter 13 proceedings in this district prior to 1938, has been called to my attention upon my return to the city.

You are correct as to the early use of Sections 12 and 74, in the Northern District of Alabama. Judge W. I. Grubb, United

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States District Judge for the Northern District of Alabama, due to considerable concern shown to him by local businessmen over the ever-increasing volume of bankruptcy at that time, became convinced that something could and should be done in order to lessen the pressure of bankruptcies on the business community as a whole in the Birmingham area.

Judge Grubb, so I am informed, consulted with credit managers, lawyers and representatives of the larger employers of labor in this district and came to the conclusion that the wage earners (who filed most of the bankruptcy petitions), if given an opportunity to do so, would pay their debts in full. He, therefore, appointed the Honorable Valentine J. Nesbit as a Special Referee in Bankruptcy to set up a separate court in an effort to work out some solution to the problem.

Lawyers and business men cooperated with Judge Nesbit, and many wage earners were encouraged to file petitions under Sections 12 and 74.

As you know, Section 12 was not effective because the jurisdiction of the court was terminated upon the confirmation of a composition and the court was left with no procedure for the enforcement of the terms of settlement during the period of extension or modification in the terms of settlement that sometimes becomes necessary in order to meet unforeseen and unavoidable changes in the wage earner's earnings and circumstances. It was also found that administration costs in this type of proceeding were entirely too high and all costs and priorities had to be deposited in cash in advance of confirmation. Section 74 did provide for retention of jurisdiction by the court during the period of extension for the purpose of enforcing the terms. Here also, however, the administration costs were entirely too high and certain cash deposits also had to be made in advance of confirmation.

To be perfectly frank, Judge Nesbit, with the advice and consent of the creditors and the District Judge, manufactured procedures in an attempt to eliminate the objections to Sections 12 and 74. Judge Nesbit primarily took the position that once a plan had been worked out for a wage earner and accepted by his creditors it then became the duty of the court to see that the debtor or bankrupt carried out the plan by making prompt payments of the amount agreed upon. When a debtor failed to make payments as agreed upon, the Referee would issue an order on this individual's future earnings which in effect caused the employer to either make a deduction of the monthly payments or send the employee's entire earnings into court where the deduction was made.
This procedure was frowned upon by the appellate courts. However, it was desirable and everyone felt that it was necessary in order to successfully conclude a reasonable percentage of the cases filed. Therefore, when the Chandler Act was written, many of the special procedures developed by the Referees in Birmingham were adopted and written into the new Chandler Act.

As you know, I was appointed a Referee just a few months before the enactment of the Chandler Act into law. I was thoroughly familiar with the provisions of Chapter 13 and put most of them into effect prior to the actual effective date of the Act.

Due to the tremendous increase in the volume of Chapter 13 cases in this district and to the highly efficient manner in which Referees Herbert Maulitz and William R. Vance are operating in Birmingham, I would suggest that you let me set up an appointment for you to visit with them for as many days as you might see fit. Really it is difficult for one to visualize the size of the operation here and the highly efficient manner in which it is being conducted. All of the bookkeeping, including disbursement to creditors, is accomplished by IBM equipment.69

The early use of section 74 as a makeshift is more easily understood if it is remembered that the conferences held by Judge Grubb with employers, credit managers, and lawyers were conducted in the depression era of 1933. Section 74 had only recently been added to the Bankruptcy Act on March 3, 1933.70 As originally passed, section 74 contemplated that a businessman should be permitted to pay an amount less than the actual debt as a composition or, alternatively, be granted an extension of time. This law provided that, if a debtor defaulted on any payment and the court had retained jurisdiction, it would appoint a trustee, nominated by either the creditors or the court, to liquidate the estate. However, no order, liquidation, or adjudication was to be instituted by or against a wage earner or a person engaged chiefly in farming. This last exclusion was probably the one that was liberally interpreted by Judge Grubb and Referee Nesbit.71 Without such an interpretation, the law did not

69 Judge Allgood is presently judge of the federal district court for the Northern District of Alabama.


71 Ibid.
protect the debtor from repeated garnishment proceedings, and in 1935 a bill for the relief of harassed wage earners was introduced. It led to a three-year study of the Bankruptcy Law, which culminated in the 1938 Chandler Act.\textsuperscript{72}

From this historical perspective, it seems obvious that the congressional intent of Chapter XIII was to provide a solution that would allow the wage earner an opportunity to pay his debts, without being subjected to garnishment and other harassment by his creditors. In both section 74 and Chapter XIII, the petitioner is called a debtor and is not adjudicated a bankrupt unless he defaults in the payments required to be made under the terms of the extension. It seems clear that this is not so much a bankruptcy proceeding as it is an insolvency proceeding for the relief of poor debtors, similar to that used in England.\textsuperscript{73}

Perhaps the true intent of Congress in passing this piece of "forgotten man" legislation can best be summed up in the statement made on the floor of the House by Alabama Congressman Sam Hobbs on August 10, 1937. In answer to a question the Congressman said:

There are thousands of wage earners all over this land who desire to pay their honest debts but who cannot. For the first time we have the machinery set up in this bill whereby a court order is issued to stay all creditors' action against wage earners. A hearing is had, he sits at the table with his creditors and the judge and they decide how much he and his family need to live on during the pendency of the settlement and then, in the most friendly way, they arrive at how much he can pay into the treasury for the benefit of his creditors to be distributed week by week. That has been done under a voluntary system that has grown up in Birmingham, Alabama, under the blessing of the late Judge Grubb and the directing hand, brain, and heart of Judge Valentine J. Nesbit, wherein some two thousand cases it has worked out and the creditors have gotten dollar for dollar of what was due.\textsuperscript{74}

\textsuperscript{73} Act for the Relief of Insolvent Debtors in England, 1813, 53 Geo. 3, c. 102. Amended, 1818, 54 Geo. 3, c. 23. In the early part of the nineteenth century, England had two courts, the Court of Bankruptcy and an Insolvency Court for the relief of poor debtors who, not being traders, could not be adjudged bankrupt.
\textsuperscript{74} 81 CONG. REC. 8647 (1937) (remarks of Representative Hobbs).
III. The Use of Chapter XIII

Since Chapter XIII was the result of experiments carried on cooperatively by the bench, the bar, the large employers, and creditor groups of Birmingham, it is not surprising that from the beginning wage earner plans have been more operative there than in the rest of the country. Birmingham has developed a reputation for being the Chapter XIII capital of the country. A study of the articles dealing with this part of the law and the letters to this author from interested officials nation-wide shows the impression is still prevalent that Birmingham is "the place" where Chapter XIII is used and that the use made in other areas is inconsequential. However, this opinion is not shared by people who are informed of recent facts. In 1948, only ten years after the passage of Chapter XIII there were 3,315 wage-earner petitions filed in the whole country, and 3,006 of these were filed in Alabama. The same result would probably hold true if the years between 1938-48 were examined. However, in 1965 there were a total of 28,000 of these petitions filed in the United Stats, only 7,804 of which were filed in the state of Alabama. Thus the increase has been rather rapid in the rest of the country while the percent increase in Alabama has been quite low.\(^7\) The figures and charts which are appended to this article\(^6\) indicate rather clearly that the nationwide need for Chapter XIII is becoming more recognized, but that Birmingham recognized the need for Chapter XIII procedure even before the law was passed, thereby effecting a rather uniform use over the years charted. The line representing Chapter XIII petitions and the line representing the total voluntary bankruptcy petitions filed in Alabama have followed very parallel patterns over these years.

The chart which compares the growth of the use of Chapter XIII petitions with the growth of voluntary bankruptcy petitions indicates that the nation has not made as effective use of Chapter XIII in relationship to the total number of voluntary petitions as has the state of Alabama.\(^7\) In examining these charts, which are

\(^7\) All statistics as to the number of petitions filed are based upon tables found in the annual report of the Director of the Administrative Office of the United States Courts.

\(^6\) Chart B of the appendix to this article. See Maulitz, *Operations Under Chapter XIII*, 27 Ref. J. 268 (1953).

\(^7\) Chart A of the appendix to this article.
compiled from the number of petitions filed, it should be borne in mind that there has been a 47% increase in population during this same period of time. There should be a larger total number of petitions filed since there are more people in the country. However, it might be alarming to realize that, with 47% increase in population during this time, we have had an increase in voluntary bankruptcy petitions filed from just under 18,000 in 1948 to an all time high of 178,980 filed in 1965. Compare this increase with the statistics in Alabama where Chapter XIII has been effectively used over the same period of time. Voluntary petitions in Alabama have increased from just under 4,000 to just under 10,000. It might be assumed from these facts that the effective use over the years of wage-earner plans has resulted in a wage-earner-debtor-society more stable than any found elsewhere.

This assumption, however, loses its support when a series of other tables are considered and Alabama is compared to North Carolina. From the chart which ranks the states according to the ratio of employee bankruptcies per population figure, it is observed that in the state of North Carolina, which ranks number 51 on this chart, there is one employee bankruptcy filed for every 36,743 people. And additional charts show that in Alabama there is a Chapter XIII petition for every 418 people in the state, while in North Carolina there is a Chapter XIII petition for every 53,119 people,78 and that of the employee bankruptcies that are filed as Chapter XIII petitions, 72% of the employees chose this route in Alabama, whereas in North Carolina only 14% of the insolvent wage-earners chose Chapter XIII. Thus North Carolina has both a much lower total of employee bankruptcies and a lower percentage of Chapter XIII petitions than Alabama. There might be some way to explain this in terms of numbers of petitions filed in these two states in proportion to the earning power of the population. The argument would be that there are more poorly paid wage-earners in Alabama than in North Carolina. However, this argument seems to lose validity when it is noted that both Alabama and North Carolina are in the lower group of states when ranked by per capita income. In a table included in the appendix,79 the states are ranked in this fashion and are divided into

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78 Chart F of the appendix to this article.
79 Table G of the appendix to this article.
four groups, the first including the 12 states that have a per capita income under $2,000, the second an income from $2,000 to $2,500, the third from $2,500 to $3,000, and the fourth from $3,000 to $3,544. Yet of the twelve states ranking at the top in the ratio of employment bankruptcy to population, only three of these states are in the lowest group of per capita income.

It would seem, then, that we cannot look to low pay as the reason for the increase in employee bankruptcies. Rather, the literature on Chapter XIII petitions and the replies to questionnaires which were distributed nationwide to clerks of the federal district courts reveal that the adequacy of state laws freeing wages from garnishment are thought to decrease employee bankruptcies. In a Quarterly Report article, Professor Max Siporon states that in every wage-earner petition he examined, there existed pressure from the creditors in the form of continuous phone calls, wage garnishments, lawsuits, and other forms of harassment.  

In order to examine the premise that adequate state laws freeing wages from garnishment will eliminate the need for the use of Chapter XIII petitions, this article contains a chart of the various state laws exempting wages from garnishment to ascertain whether there is a pattern which would support this thesis. A problem here is that garnishment laws and the exemption of wages under them are so variable that it becomes almost impossible to classify or rank the states. For example, in some instances where the state law seems to protect the wage-earner in this fashion, the simultaneous allowance of multiple garnishments would seem to foster rather than dissuade the filing of Chapter XIII petitions. The limited studies which might permit ranking states by leniency toward exemption of wages seem to show that only four states had statutes providing for the appointment of a trustee to receive the nonexempt portion of a debtor’s wages and to pay this to the creditor. These statutes are so similar to a wage-

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80 Siporon, A Study of Bankruptcy Court Debtors, 20 Q. Report 92 (1966); see also Nadler, Rehabilitation of the Insolvent Wage-Earner Under the Bankruptcy Act: A Challenge to Minnesota, 42 Minn. L. Rev. 377, 386 (1958). See Walker, Is Chapter 13 a Milestone on the Path to the Welfare State, 33 Ref. J. 7, 8 (1959). In this article, Referee Walker states: “State statutory exemptions furnish a strong motivation against Chapter XIII. This is particularly true where the state exemptions are very liberal as they are in California.”

81 Chart C in the appendix to this article.

earner's petition that they would probably be used instead of the petition since they are considerably cheaper.\footnote{Brunn, Wage Garnishment in California: A Study and Recommendations, 53 CALIF. L. REV. 1214, at 1226 (1965). In addition to Ohio and Wisconsin which are cited in this article, see Mich. Stats. Ann. §§ 27.2441-53 and Code of Virginia §§ 8-441-449.3 (1966). A study of this subject in California was made by the Center for the Study of Law and Society, University of California at Berkeley. It later became the basis for an article by Mr. George Brunn of the California Bar. Mr. Brunn describes a situation that exists in San Francisco, which would seem to indicate that the California law exempting wages is far from adequate and that the use of these laws by creditors in the San Francisco area would certainly cause people to file a Chapter XIII petition.}

The testing of this thesis is inconclusive when we again consider the table ranking states by percentage of employee bankruptcies filed under Chapter XIII. Examining the first 22 of these states, which include all of the states where more than 10% of the employee bankruptcies are filed under Chapter XIII, we find that 12 of the 22 states would be classified as having laws which adequately protect the wage-earner's salary from excessive garnishment. In defining "adequate" protection, a dividing point has been used of a $75 exemption of a $100 salary per week. Indeed, it would be a rare situation where a referee in bankruptcy would approve a plan allocating less than 25% of the wage-earner's pay to his creditors.\footnote{For a mathematical approach to the percentage of a wage-earner's wages which can be allocated to his creditors with feasibility, see Meth, Ethical and Economic Considerations in Chapter 13 Proceedings, 36 Ref. J. 41 (1962).} It is interesting to note that of the 22 high-ranking states two had laws which seemed more favorable than Chapter XIII protection and that the other two states having such laws are ranked 23rd and 25th.

It would be fair to categorize a state as a "non-Chapter XIII state," if less than 10% of its employee bankruptcies are filed under Chapter XIII. Texas, Florida, Pennsylvania, and Oklahoma would be included in this group. This is to be expected. In Texas current wages are not subject to garnishment if they are the wages of a head of a family. In Oklahoma the earnings received for services rendered within thirty days cannot be garnished if it is shown that the money is necessary for the upkeep of the debtor's family. And in Pennsylvania all wages are exempt.

The picture becomes quite clouded, however, when it is realized that Indiana is included in the "non-Chapter XIII states" and that Indiana protects only $25 at any one time and even then the wage-earner must be a householder. Similarly North Dakota
protects only $35 a week for the head of a family, and Wyoming
and Nevada protect 50% of the earnings.

In summary, a study of these charts indicates some correlation
between the relative nonuse of Chapter XIII petitions and the
existence of a state statute which exempts wages from garnishment.
However, there are many states which have adequate protection
for wages, but which also have many employee bankruptcies and
many Chapter XIII petitions. Clearly, the adequacy of state pro-
tection against wage garnishment is not a complete answer to the
problem.

Chart "C" represents an attempt to list the average amount of
attorney fees in Chapter XIII proceedings. Of course, the attorney
cannot receive more than the reasonable fee approved by the
Referee. It would seem, however, that the varying attitudes of
the bar toward Chapter XIII might be reflected in the high or low
amount set in the local bar's minimum fee schedule. Further, it
would seem that in places where the attorney's fee for filing a
Chapter XIII petition was considerably lower than the fee for
filing a straight asset or nonasset bankruptcy case then this would
tend to decrease the number of Chapter XIII petitions filed.
Data on the usual fee allowed should also indicate the attitude of
the referee, which, in turn, should also have bearing on the filing
of Chapter XIII petitions.

Seeking this and other information, the author wrote letters
to the clerks of the various Federal District Courts and to the
"standing trustees" on Chapter XIII petitions. The data obtained
is not complete. In some instances the fee shown is given in two
different figures because different answers were received in the
same state from different locations. For example, the minimum fee
for filing a Chapter XIII petition and for filing a straight bank-
ruptcy in Utica, New York, which is in the Western District, is
$150. However, in one city in the Eastern District, there is no
recommended minimum fee for filing a Chapter XIII petition,
although the schedule calls for a $300 fee for a voluntary petition.

Bankruptcy Act, 11 U.S.C. § 1059 (1938) provides that prior to distribu-
tion to creditors certain priorities shall first be paid in full out of the money paid
in by or for the debtor. After listing the first three priorities, the act states, "or
such reasonable fee to the attorney for the debtor as the court may allow for
the professional services rendered by such attorney to the debtor in connection
with the proceedings under this Chapter."
Obviously there will be few wage-earner petitions filed under Chapter XIII in those areas where the local bar exacts a high fee.

At the beginning of the Alabama experiment in 1933, prior to the Chandler Act, the court appointed a special referee to handle only wage-earner cases, and now in the Northern District of Alabama two referees handle nothing but Chapter XIII cases. The effectiveness of wage-earner plans in the Birmingham area indicates the value of having specialized referees. At the present time, the Alabama referees are the only two in the country handling solely Chapter XIII cases, although in Georgia’s middle district (Atlanta) virtually all cases arising under Chapter XIII are handled by Referee W. Homer Drake. Clearly, the attitude of the referee has a great deal to do with the success of Chapter XIII in a particular locality. A lawyer is not apt to advise a client to file such a petition if he knows that the referee who will be called upon to confirm the plan is hostile to it. In Northern California 16% of the employee bankruptcies filed in 1964-65 were Chapter XIII petitions, while in Southern California only 13% were Chapter XIII petitions. The state as a whole, averaged a little better than 14%. The 3% difference between the Northern and the Southern parts of the state certainly cannot be explained by saying that there are less people in Southern California who are Chapter XIII prospects. Referee Rollo Walker of Los Angeles has stated that he had no personal hostility toward the utilization of Chapter XIII where circumstances were appropriate and the debtor’s choice of remedy was voluntarily made. However, Referee Walker made other statements which might be indicative of hostility toward Chapter XIII petitions.

Another example of the impact of a referee’s attitude might be indicated by the experience in Georgia. While there has been no hostility in the Northern or Middle Districts, the referee for the Southern District definitely favors Chapter XIII petitions. As a result of this publicized attitude of Referee McDuffey, it is

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86 See Snedecor, Chapter XIII Wage Earners’ Plans, 14 Ref. J. 83 (1939), for the statement that referees generally thought Chapter XIII a noble experiment, yet some still opposed it. One referee reportedly stated that a lawyer who advised a client to take Chapter XIII ought to be disbarred.
possible that attorneys felt more inclined to file Chapter XIII petitions in the Southern District. Last year there were 609 Chapter XIII petitions filed in the Northern District, 1,001 in the Middle District, and 1,140 in the Southern District. This is even more impressive when it is realized that Atlanta is in the Middle District. In an article by Referee McDuffey, another referee is quoted as saying that he was "firmly convinced that Chapter XIII would be successfully used only where the referee is thoroughly trained in its use and is willing to dedicate himself towards doing a real job that will benefit both himself and his community," and that much to his surprise, "I have found that some referees have never read Chapter XIII, do not have the faintest idea of its purpose, and probably have not read the Bankruptcy Act." Since the Atlanta district now has a referee practically specializing in Chapter XIII petitions, it is probable that the number of petitions filed in the Middle District of Georgia will increase rapidly in the next few years.

It is surprising to note that, in 1965, 799 Chapter XIII petitions had been filed in the state of Maine out of 1,481 employee bankruptcies. There do not seem to be any economic reasons for this relatively high use of Chapter XIII petitions in Maine. Surely, the reasons for the high number of the Chapter XIII petitions in Alabama, as given by some text-writers, would not be applicable in Maine. In answer to the form letters addressed to the clerks of the U.S. District Courts, Judge Richard E. Poulos, referee in bankruptcy in Portland, Maine gave an informative reply. He enclosed a copy of a talk he had made to the Maine State Bar Association in 1963. Some of the statements made it clear that the success of Chapter XIII in Maine was due almost entirely to the attitudes of Referee Poulos and his predecessor, Justice Charles A. Pomeroy. In his talk, he pointed out that Chapter XIII proceedings were first used in Maine in 1952 and that Justice Pomeroy had initiated these despite initial opposition and skepticism from various creditors. Referee Poulos stated that "one of the most tragic features of this pressing problem is that the

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80 Id. at 177.
90 Hanna & Maclachlan, Cases on Creditor's Rights and Corporate Re-organization 34 (5th ed. 1957). Attention is called to the fact that a "large portion of the applicants reportedly are Negroes, a group which generally cannot afford legal relief in numbers proportionate to its share of the population."
American public, commendably, is very honest and wishes to pay its bills provided a reasonable system exists. . . . It 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.” Judge Poulous went on to say that under the present structure of the laws in this country the only satisfactory remedy is the Chapter XIII petition. By reading his speech, one easily sees that Judge Poulous is proud that Maine was by far the leading state in New England in the use of Chapter XIII petitions. The 1962 statistics showed Maine with 757 Chapter XIII petitions and the other northeastern states with a combined total of only 50. The situation has remained approximately the same because the 1965 statistics show Maine with 799 petitions and 15 in the other New England states. Judge Poulous claimed that “as a result of this program, Maine has successfully arrested the spiraling volume of straight bankruptcy matters which prevails in all other parts of the nation.”

Judge Poulous informed the members of the Maine bar that this procedure was not unduly burdensome on the referee if a knowledgeable “standing trustee” is appointed. To lessen the work of the referee in Maine, there are two “standing trustees,” one in the Southern Division in Portland, Mr. J. S. Cope, and one in the Northern Division in Bangor, Mr. Glen Ray Mooney. Both of these trustees are members of the Maine Bar and perform nearly all of the legal work required after the filing of the proceeding. The Maine experience should be considered by referees in other parts of the country, especially referees who have been laboring under the misconception that this proceeding is one for people in the southern states only. The referee and the standing trustees in Maine can be justifiably proud of the record they have set in making this procedure available to the harassed wage earners in their state.91

To make effective use of Chapter XIII, a special referee should

91 Evidently, Judge Poulous does not think a full-time referee is necessary if the trustee is an attorney “skilled in the art of bankruptcy law.” Of the 63 standing trustees, 18 are attorneys. In Kansas, the standing trustee, Attorney Claude L. Rice, located in Kansas City, with 2,961 cases pending, undoubtedly makes decisions which, in Birmingham, would be handled by the referee.
be appointed to handle these cases where potentially 1,000 wage-earner petitions may be filed in a year. Although in few areas would 70% of employee petitions be filed as wage-earner petitions, as is now the case in Alabama, it would seem that at least a third of the employee petitions would be Chapter XIII petitions, if the choice were adequately put to the wage earner and the cost of filing the petition were not unreasonable. Using one-third as a test, it would seem feasible and practical to have a referee appointed to handle nothing but wage-earner petitions in New York, Virginia, Georgia, Kentucky, Michigan, Ohio, Tennessee, Illinois, Indiana, Wisconsin, Missouri, Oregon, Washington, Colorado, and California. There would be 1,000 wage-earner petitions filed in Kansas, Oklahoma, Arizona, and Minnesota, if a 40% rule were used.

New York, of course, is a prize example of non-use. Out of 4,765 employee petitions, only 38 were Chapter XIII petitions. This could be caused by lack of encouragement from the referees, and the high suggested minimum fee set by the Bar for filing one of these petitions. The fee could be held down by a referee interested in making this service more available to the debtors of New York State.

An economic reason for using 1,000 petitions as a guideline for the appointment of a special referee for Chapter XIII petitions is that a $35 filing fee on each petition would produce $35,000 to cover the expense of this office. The expense of the trustee appointed to handle the plans is in turn borne entirely by the debtor, and with 1,000 petitions a year the procedure would be self-supporting. Referee McDuffey has listed the elements of a formula for Chapter XIII success:

(1) a referee dedicated to rehabilitation; (2) use of full injunctive powers against the creditor; (3) use against the debtor of full injunctive powers forbidding the creation of any credit obligations without the consent of the Court; (4) methods of assuring control over the debtor's paycheck; (5) maximum deposits by debtor; (6) a dedicated trustee: (a) full-time or justified (b) adequately compensated (c) prompt in remittance to creditors; (7) a bankruptcy bar sharing the qualities of dedication suggested for the referee and trustee; (8) a type of debtor who seeks out the court of bankruptcy not as a sanctuary, asylum or place of refuge, but
as a means of learning (perhaps for the first time) the hard
test of self-discipline; (9) prompt dismissal where the case
justifies it; (10) continuing education workshops, seminars,
forums. Chapter XIII is a rehabilitation device. Therefore,
while we have stressed here the advantages of our economy
of increased use of Chapter XIII, the rehabilitation of the
debtor continues to be the prime objective in all appropriate
and proper cases.92

Chapter XIII should be used with a curative purpose in mind.
However, there are "credit drunks" who cannot resist buying on
credit if items are offered to them. These people need more of a
permanent trusteeship to solve their problems. Dr. M. R. Neifeld,
who for thirty-five years was vice-president and economist for the
Beneficial Finance System, one of the largest finance companies in
the world, states that since 1941 the "credit drunk" has been
recognized as a neurotic who can no more resist buying on credit
than can a compulsive gambler resist gambling, or a narcotic
addict resist drugs, or an alcoholic resist drink. Dr. Neifeld cites
books by professional psychiatrists who have recognized and
isolated these maladjusted people as a class. He states that these
people deliberately involve themselves because of psychiatric
compulsions, but that, on the other hand, there are many normal
people who also find themselves involved with excessive debts be-
cause of changes in income, unexpected illnesses, or simply mis-
management of their finances. These people can be rehabilitated,
but the credit drunk cannot be, at least on a one-shot basis.93

IV. REHABILITATION AND SANCTUARY

In light of Referee McDuffey’s formula, it is tempting to con-
clude that, if debtors are using Chapter XIII as an "asylum or
place of refuge," the injunctive power forbidding the creation of
credit obligations is perhaps being overlooked. An injunction,
however, is difficult to effectuate since the enforcement procedure
depends upon holding the debtor in contempt. This would dis-
rupt the plan. The only other alternative would be to dismiss the
proceeding. As a practical matter, it seems that the debtor should

92 McDuffey, The Wage Earners' Plan in Practice, 15 Vand. L. Rev. 173,
be cautioned against new obligations, but enjoining him from creating more debts without permission of the Court would be asking for trouble.

An attempt should be made to rehabilitate the "credit drunk" if possible, but if it is found that he cannot be cured, society should not completely abandon him. Unlike the situation in bankruptcy, if a wage earner files a petition under Chapter XIII and his plan is terminated by payment of all of his debts in less than three years, it is hard to see any reason why he should not be given this sanctuary a second time. In fact, courts have recognized that an extension plan under Chapter XIII and the resulting discharge are not to be considered as a discharge in bankruptcy which would bar a second discharge within the six-year limitation. Should a second petition come before a referee, his only grounds for refusing to confirm it would be that it is not feasible. Merely because a man has previously participated in a similar plan does not make a second plan less feasible. Indeed, the contrary would seem to be true. Of course, if final rehabilitation is the only purpose of Chapter XIII, then another plan would not be feasible. But the history of Chapter XIII and the intent of Congress indicate that the purpose was not merely to rehabilitate, but also to protect the wage-earner from harassment while affording him an opportunity to pay his debts.

A recent sampling of 300 petitions filed in Birmingham during one year indicated that 66% of the wage earners filing petitions were repeaters. Of these 300, 4 had previously gone through straight bankruptcy and the petition was their first under Chapter XIII; 72 of the 300 had filed a Chapter XIII petition before, and this was their second petition; 22 were currently on their third petition; 28 on their fifth; 23 on their sixth; 15 on their seventh; 1 on his eighth; 5 on their ninth; 1 on his tenth and 1 on his twelfth petition. A referee in Birmingham said he remembered one man who had filed thirteen petitions.

This test sampling shows that the referees in Birmingham who handle Chapter XIII petitions exclusively are furnishing a sanctuary, asylum, or place of refuge as well as rendering the desired rehabilitation service. This is a service which was certainly within the intent of Congress when it enacted the law. The only question is whether the extent of asylum is necessary in this particular
federal district. Anyone who questions the need for the service should first ask himself how many times in the last twenty years he has become overloaded with debts and borrowed enough to pay off everyone. In our present economy, where it seems unpatriotic to be out of debt, stones should not be thrown at Chapter XIII repeaters when typical upper-class procedure is to borrow a lump sum at the bank. Many wage-earners' petitions are made under the pressure of several thousand dollars of debt. The debtor cannot go to the bank and borrow this much money. He must use the only device open to him.94

When it was found that the number of repeaters ran as high as 66% in the Birmingham district, it was thought that data on repeater experience in other districts would be valuable. The Bankruptcy Section of the Director of the Administrative Office of the United States Courts retained the names of all Chapter XIII standing trustees who would have enough accounts to give meaningful repeater statistics. There were 63 of these standing trustees, all of whom were questioned. They were asked to provide information on accounts similar to the information gathered in Birmingham.

In answer to the questionnaires, 43 replies were received. The majority indicated a very small number of repeaters. However, most of these standing trustees had been working less than five years. It cannot be expected that many repeaters will be found until a trustee has been operating for at least ten years. It is interesting to note that while there were practically no Chapter XIII repeaters in Los Angeles Mr. William R. Martin estimated that approximately 15% of all Chapter XIII petitions were filed by people who had been in straight bankruptcy within six years. A similar situation was indicated by Mr. Ronald W. Williams, trustee in Danville, Virginia. Mr. Williams stated that he had been trustee since 1963 and there were few repeaters. He estimated, however, that 50% of his Chapter XIII petitioners had previously filed petitions in straight bankruptcy.

The standing trustee in Kansas City, Mr. Claude L. Rice, stated that all of his accounts were on IBM cards, making it

94 This sampling was accomplished by examining the last 100 petitions filed, the first 100 petitions one year ago, and lastly, 100 petitions filed at the midpoint of the year. By actual count, the per cent of repeat petitions proved to be 65.4%.
possible to provide an accurate count of repeaters over a period of ten years. The result of this data processing study showed that out of a total of 9,524 petitions filed there were 8,860 first time petitions, 535 second time petitions, 101 third time petitions, 19 fourth time petitions, 5 fifth time petitions, 1 sixth time petition and 1 ninth time petition—a total of 664 repeaters in the ten year period.

The trustee in Wichita, Mr. Royce E. Wallace, along with Mr. Rice, also estimates his present repeaters to be about 10% of the petitions filed. On the assumption that there would be relatively few repeaters in the first five years, the following theoretical experience chart was drawn based on the Kansas City study. It is founded on the assumption that after the first five years the repeat petitions will amount to 1% a year for each of the ten years. It was then assumed that the number of repeaters would remain a constant percent of the potential repeaters. By using the actual petitions filed in the last fifteen years and 1% as a constant proportion of the number of potential repeaters who file in each year, the final result is a total of 666. This is remarkably close to the 664 which were actually discovered. Unfortunately, the statistical data was not programmed to the point where it could be told exactly how many of these repeaters filed petitions in the particular years. To be mathematically accurate, the increase in potential repeaters should be reduced by the year’s repeaters.

THEORETICAL KANSAS CITY EXPERIENCE

<table>
<thead>
<tr>
<th>Year</th>
<th>Percent</th>
<th>Petitions Filed</th>
<th>Equals Number of Repeaters</th>
<th>Potential Repeaters In Year</th>
<th>1% of Potential Repeaters Each Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>10</td>
<td>1,245</td>
<td>124</td>
<td>12,826</td>
<td>128</td>
</tr>
<tr>
<td>1964</td>
<td>9</td>
<td>1,375</td>
<td>124</td>
<td>11,451</td>
<td>114</td>
</tr>
<tr>
<td>1963</td>
<td>8</td>
<td>1,406</td>
<td>112</td>
<td>10,045</td>
<td>100</td>
</tr>
<tr>
<td>1962</td>
<td>7</td>
<td>1,122</td>
<td>114</td>
<td>8,423</td>
<td>84</td>
</tr>
<tr>
<td>1961</td>
<td>6</td>
<td>1,852</td>
<td>111</td>
<td>6,571</td>
<td>65</td>
</tr>
<tr>
<td>1960</td>
<td>5</td>
<td>1,257</td>
<td>62</td>
<td>5,314</td>
<td>53</td>
</tr>
<tr>
<td>1959</td>
<td>4</td>
<td>1,140</td>
<td>45</td>
<td>4,174</td>
<td>41</td>
</tr>
<tr>
<td>1958</td>
<td>3</td>
<td>1,175</td>
<td>35</td>
<td>2,999</td>
<td>29</td>
</tr>
<tr>
<td>1957</td>
<td>2</td>
<td>645</td>
<td>13</td>
<td>2,356</td>
<td>23</td>
</tr>
<tr>
<td>1956</td>
<td>1</td>
<td>440</td>
<td>5</td>
<td>1,916</td>
<td>19</td>
</tr>
</tbody>
</table>

\[ \text{Total: } 745 \text{ repeaters} \quad \text{666 repeaters} \]

As contained in the above assumptions and chart, the theoretical Kansas City experience was sent to Mr. Claude Rice, the Standing Trustee in Kansas City. He was asked to compile figures which would support this chart or indicate its fallacy. Mr. Rice's figures provided the basis for the following chart:

### ACTUAL KANSAS CITY EXPERIENCE

<table>
<thead>
<tr>
<th>Year</th>
<th>Petitions Filed</th>
<th>Repeaters</th>
<th>% Repeaters</th>
<th>Potential Repeaters in Year</th>
<th>Actual Repeaters Were % of Potential</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965</td>
<td>1,245</td>
<td>67</td>
<td>5.38</td>
<td>12,826</td>
<td>.52%</td>
</tr>
<tr>
<td>1964</td>
<td>1,375</td>
<td>63</td>
<td>4.58</td>
<td>11,451</td>
<td>.55</td>
</tr>
<tr>
<td>1963</td>
<td>1,406</td>
<td>75</td>
<td>5.33</td>
<td>10,045</td>
<td>.75</td>
</tr>
<tr>
<td>1962</td>
<td>1,122</td>
<td>76</td>
<td>6.77</td>
<td>8,423</td>
<td>.90</td>
</tr>
<tr>
<td>1961</td>
<td>1,852</td>
<td>79</td>
<td>4.27</td>
<td>6,571</td>
<td>1.20</td>
</tr>
<tr>
<td>1960</td>
<td>1,257</td>
<td>78</td>
<td>6.21</td>
<td>5,319</td>
<td>1.47</td>
</tr>
<tr>
<td>1959</td>
<td>1,140</td>
<td>75</td>
<td>6.58</td>
<td>4,174</td>
<td>1.79</td>
</tr>
<tr>
<td>1958</td>
<td>1,175</td>
<td>81</td>
<td>6.89</td>
<td>2,999</td>
<td>2.70</td>
</tr>
<tr>
<td>1957</td>
<td>645</td>
<td>54</td>
<td>8.37</td>
<td>2,356</td>
<td>2.29</td>
</tr>
<tr>
<td>1956</td>
<td>440</td>
<td>42</td>
<td>9.55</td>
<td>1,916</td>
<td>2.19</td>
</tr>
</tbody>
</table>

Reexamination of the original data supplied by Mr. Rice showed 690 repeaters over the ten year period instead of the 664 used in the first chart. The actual count indicated a higher percentage of repeaters in the earlier years and a lower percentage of repeaters in the later years than had been expected. The column to the far right in the actual experience chart indicates that in the first few years the repeater percentage of the potential repeaters increased each year. But beginning with the year 1959 the percentage decreased each year. It would seem that the early experience pointed to the accuracy of the mathematical probability rule mentioned in a following paragraph of this article.

Mr. Rice feels that the probability would have carried through if he had not changed his method of operation in 1958. He stated:

Starting in 1958 I adopted the practice of making available to the debtor in every case a complete periodic report of his account. This report to the debtor indicated each payment which he made to the trustee (or which was taken from a check sent in by his employer) the amount of cost which he
has been charged, the amount of cost which he will be charged, and the amount of fee paid to his attorney. . . .

It is my conviction that this type of reporting to the debtor enables him to learn the process of an intelligent planning of his financial affairs to the end that when his plan is completed, he is aware of how his credit problems can be intelligently budgeted. The result of this type of education seems to have been more effective in rehabilitating debtors than any other type of administration.95

Mr. Rice included a copy of the reports given to the debtor. They show that the debtor will be made aware of the cost to him of this method of settling obligations. Without reports of this kind, the debtor would never realize the tremendous expense which has actually been borne by him to satisfy the claims of his creditors.

After studying this table and visualizing a pool of wage earners of a given size in a given area, one must conclude that the longer Chapter XIII is used in an area, the greater proportion of the potential pool will be repeaters. Conversely a decreasing proportion of this pool will be first-time filers. Thus, after 10 years experience, it might be that more than 1% of the potential would be expected repeaters. This result would seem to be borne out by the only district which has had a substantially longer experience than the 10 years studied in Kansas City.

As has been noted, the experience in Birmingham actually started before the passage of Chapter XIII and may be considered as having lasted some thirty years. For this reason the wage earner pool, to a large extent, is composed of potential repeaters. Statistics furnished by the administrative office of the United States Courts show that from 1939 to 1965, inclusive, there have been 114,812 Chapter XIII cases filed in the Northern District of Alabama. By actual count it was found that the 1965 petitions totaled 4,200 and included 2,750 repeaters or 2% of the total number of petitions filed in the past 26 years. Of course, while 114,812 petitions have been filed, this does not mean that there is a pool of this many potential repeaters. Many of these were repeat petitions. Assuming this number actually represents 60,000 people, we then have a figure indicating that 4½% of the true potential filed repeat petitions in 1965. This is a logical result

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95 Unpublished work of Mr. Claude L. Rice, Standing Trustee for the Federal District Court, Kansas City, Kansas.
when it is realized that the potential repeater pool is always growing and the potential first-time petition pool is always being reduced. By a reasonable rule of mathematical probability, it should be expected that if 1% is the proper percentage to expect in the first 10 years, this would double for the second 10 years, and double again for the third 10 years to give us a possible proper percentage of the potential repeaters of some 4 to 6%. This prediction fits the situation as it has evolved in Birmingham. This would remain a constant percentage since in thirty years the pool will stop increasing because the earning span of the group is ending.

An actual count of wage earner petitions filed in 1965 in Birmingham is shown in the following chart:

<table>
<thead>
<tr>
<th>Petition</th>
<th>2nd</th>
<th>3rd</th>
<th>4th</th>
<th>5th</th>
<th>6th</th>
<th>7th</th>
<th>8th</th>
<th>9th</th>
<th>10th</th>
<th>11th</th>
<th>12th</th>
<th>13th</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1450</td>
<td>855</td>
<td>573</td>
<td>659</td>
<td>357</td>
<td>229</td>
<td>144</td>
<td>72</td>
<td>40</td>
<td>9</td>
<td>7</td>
<td>3</td>
<td>2</td>
<td>4200</td>
</tr>
<tr>
<td>35%</td>
<td>20.4%</td>
<td>14%</td>
<td>11%</td>
<td>5.3%</td>
<td>3.4%</td>
<td>1.76%</td>
<td>.09%</td>
<td>.02%</td>
<td>.013%</td>
<td>.608%</td>
<td>.004%</td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

Total repeat petitions in year, 2750 or 65.4%.\(^6\)

The role of the attorney in these proceedings has not been stressed. There must be a cooperative bar in order for Chapter XIII petitions to be successful. Referees contend that the debtors' lawyers in some sections have never heard of a Chapter XIII petition and have no idea of its use. Referee Vance, in Birmingham, stated that lawyers from other states have asked him, "What is this wage-earner plan that you use in your state?" Of course, his answer is that if the lawyer has a copy of the Bankruptcy Act he should look at the sections beginning with section 601 and simply follow the Act.

Referee Rufus W. Reynolds, in Greensboro, North Carolina, has solved this problem by having a printed legal size sheet entitled "Suggestions for Attorney for Debtor Filing Under Chapter XIII of the Bankruptcy Act." This form is so clear, precise, and

\(^6\) The statistics for this Table were compiled by Miss Waverlyn Foust, an employee in the referee's office in Birmingham. 4,200 petitions were compiled, this being an estimated number filed in the last twelve months. Of the 4,200, only 25 had filed a straight bankruptcy in the past. Of this 25, 2 were now under their first wage earner's petition, 7 their second, 4 their third, 2 their fourth, 4 their fifth, 3 their sixth, 2 their seventh, and 1 his eighth.
helpful to the attorney that it is included in the appendix of this article.\footnote{Exhibit I in the appendix to this article.} It will be noted that there are nine steps following the initial paragraph briefly explaining a wage-earner plan. Where a form is to be filed in connection with the step, a copy of a proposed form is also given the attorney. Referee Reynolds's instruction sheet has followed the procedure suggested in this article that along with the petition there should be filed a plan, an application for confirmation, and an order confirming the plan. Moreover, since he gives the attorney a form for each of these, he is thus in a position to confirm the plan at the first creditors' meeting if there are no objections. He also provides the attorney with a printed form with which he can file for his fee and furnishes the attorney a copy of a circular letter to be sent to creditors asking for approval of the plan in advance of the first creditors' meeting. If a majority of the unsecured and secured creditors approve the matter in advance, it may be disposed of at the first meeting and sent to the standing trustee. The last thing on this instruction sheet is a statement that for further information as to the actual working of the wage-earner plan, the attorney should contact the standing trustee. In states that do not have specialized referees, the standing trustee undoubtedly finds that he must act as somewhat of an advisor to attorneys and creditors in order to relieve the referee of excess duties.

An examination of the casebooks used in the majority of law schools indicates that law teachers and writers must accept a large portion of the responsibility for the fact that the bar is not knowledgeable in this area. Most of the casebooks devote a paragraph to Chapter XIII, with little more than a brief statement that it is an alternative to straight bankruptcy for the wage-earner and gives the wage-earner an opportunity to pay his debts out of future earnings. This is followed in one text by the statement that it is not frequently used outside of Birmingham and the neighboring districts.\footnote{\textit{Hanna & MacLachlan, Creditors' Rights and Corporate Re-organization}, 5th ed., 1957; Moore, \textit{Debtors and Creditors' Rights}, 282; Nadler, \textit{Credit and Debtor Relations} 692.} The usual course in bankruptcy is a two hour, non-required course, and the professor finds himself pushed for classroom time to cover the straight bankruptcy sections. He is quite apt to omit from his course the pages which even mention
Chapter XIII. It is safe to say that if the professor had as one of his questions on the bankruptcy or creditors' rights examination, "State the purpose and briefly outline the procedure in a Chapter XIII wage-earner petition," virtually all of the students would say, "I don't know what you are talking about."

V. Need for Greater Use of the Law

In 1963 Professor Max Siporin of the School of Social Work, Tulane University, while a member of the faculty of the University of Kansas, made a study of 30 families who had filed Chapter XIII petitions in Kansas City, Kansas. This work was done by Professor Siporin in cooperation with two of his graduate students, John P. Edwards and Lowell E. Jenkins, who submitted the study to the graduate school of the University of Kansas in partial fulfillment of the requirements for a degree of Master of Social Work. Professor Siporin then did a second study of 23 families who had filed a straight bankruptcy proceeding in the Federal District Court in New Orleans, Louisiana. In Professor Siporin's article in the Quarterly Report of the Conference on Personal Finance Law, he published a table of characteristics of these two groups as to age, religion, race, school completed, income and official indebtedness. The two groups show very much the same characteristics except for the last figure. In the wage-earner petition group, the mean family official indebtedness was $2029 as against $7680 in the bankruptcy families. Professor Siporin stated that the interviewers gained the impression that the bankrupt debtors who refused to cooperate seemed more hostile and more ashamed than those who participated in the bankruptcy study or those who participated in the wage earner plan study. The impression of the interviewers was that "the fact and stigma of bankruptcy is for many people still a very shameful matter." In the thesis filed at the University of Kansas, Mr. Edwards and Mr. Jenkins supply a number of tables showing that the great majority of the Chapter XIII petitions were filed by families which had the following characteristics: children under 13 years old, parents under 40 years old, more than two children, husbands who are semiskilled or unskilled workers, and average

monthly income of under $400 per month. Very few of these families were skilled or semi-professional workers.

These studies also rated the families as to adequate or inadequate level of family functioning. It was found that family size often increased between the time of filing the wage-earner's petition and the time of the study. The families who fell into the very low average level, or poor level, of money management or competency were families who either disagreed about the handling of money or families in which the husband had control of the income and made the decisions concerning its disposition. Most of these husbands engaged in self-indulgent or compulsive spending for alcohol, gambling, or purchasing non-essential merchandise. In families showing good level of money management, the responsibility for spending was divided between the spouses. Major purchases were discussed, and there was a minimum of impulsive spending.

The study reported 76 types of problems which led to filing a wage-earners' petition. These were broken down into marital conflict and separation, 11; other family conflicts, 12; personal maladjustment, 10; physical health, 13; vocational problems, 10; income insufficiency, 10; and other problems, 10. The other problems included mechanical breakdown of auto, washing machine, or other items.

Professor Siporin states in his article that 22 of the 28 wage-earner's petition families and all 23 of the bankrupt families became indebted to finance companies. In every case pressure from the creditors became severe in the form of harassing phone calls, garnishment of salaries, and lawsuits. These 30 families who for one reason or another found themselves in a rather desperate situation were then asked the source from which they learned of Chapter XIII as a possible solution. In an unpublished study, Professor Siporin divides the answers in the following fashion: fellow worker, 7; employer, 7; creditor, 5; relative or friend, 5; attorney, 4; self, 4; minister, 1; unknown, 1. It should be noted that in the 30 cases more than one source of information was given in 4 and in only 4 cases was the source of information an attorney. In 4 cases, the petitioner indicated that he simply had general knowledge of the existence of such a solution. It is quite significant that in two-thirds of the situations knowledge of Chapter
XIII was first gained from the place of employment or from the creditor.\textsuperscript{100}

In one article a Referee in the Los Angeles area stated that the stigma of bankruptcy was of little importance since our population now is so mobile that the neighbors do not know whether you have gone through bankruptcy and could care less. This idea is also contained in the one-page treatment of Chapter XIII in the most widely used creditor's rights casebook in this country. At page thirty-four of Hanna and McLachlan,\textsuperscript{101} there is the statement that Chapter XIII is not frequently used "for the obvious reason that those who feel the need of proceeding in a bankruptcy court usually wish to be relieved of their debts without drawing upon their subsequent earnings." On the same page is the statement that "even though Chapter XIII has been described as enabling the debtor to avoid the stigma of bankruptcy, it is probably difficult for most debtors or their friends to understand why the stigma, if any, is averted or eradicated by use of high chapter or section numbers." Whichever of the two editors of this casebook is responsible for that statement has obviously never gone through bankruptcy.

From Professor Siporin's article it can be gathered that the stigma is still a very real thing. If the author of the Reader's Digest article, "We Went Bankrupt—On the Installment Plan,"\textsuperscript{102} is, as she describes herself, a member of an average middle-class family, it seems that the stigma is certainly a real thing in our country today. This author had the feeling that her family was cheating its creditors when it went into bankruptcy. She says that the "freeze that prevails at church gatherings, P.T.A. meetings or just on the

\textsuperscript{100} I wish to express my appreciation to Professor Siporin and to Mr. Claude T. Rice, Standing Trustee, Federal District Court, Kansas City, Kansas, who made available to me their various unpublished works, some of which had been loaned to the Brookings Institution and in turn were loaned to me by the Brookings Institution. See also Herrmann, \textit{Consult Factors in Consumer Bankruptcy: A Case Study}, Occasional Paper Series No. 6, \textit{Institute of Governmental Affairs}, University of California. He found that "almost all the debtors accumulated a heavy load of unsecured debts for expenses of the type which should not be met out of current income. The amount of debt bears no clear relation to income."


\textsuperscript{102} Reader's Digest, January, 1961, p. 31. See also Abbott, \textit{Bankruptcy—A National Disgrace}, 322 \textit{Banker} 10 (1966), where a former Staff Judge Advocate says, "It was during these days that I learned that straight bankruptcy is not the answer because there is something terribly disgraceful about it."
street comes not only from your creditors but from their friends and relatives, and from your own friends, too. Your children are no longer welcome in homes they have frequented for years. Try explaining this to a ten year old!" Yet, if we are to believe the author of another Reader's Digest article, "Ready Help for People in Debt," the wage-earner petition family described therein felt that it had paid its debts in an honorable fashion. If neighbors learn about the wage-earner plan at all, they should not hold the Chapter XIII petitioner in contempt.

In The Waste Makers, Vance Packard makes this statement: "The average American family is about three months from bankruptcy." This general debt-ridden condition of the average family is borne out by statistics indicating that in the last twenty years consumer credit increased from about five billion to over seventy-five billion, or fifteen times the original figure. The national income has a little more than doubled. Convincing evidence of the need of a guardianship for the over-extended creditor and a sanctuary for the "credit drunk" may further be found in Hillel Black's book, Buy Now, Pay Later. In this excellent report of our consumer credit situation Mr. Black describes the high pressure salesmanship of the "debt merchants". It is undoubtedly true that various types of "loan shark" legislation over the country has kept down the cost of borrowing money. In most instances, however, this does not keep down the over-extension of credit.

Various methods intended to regulate the granting of credit have failed. Even efforts to forbid welfare families from buying on time have been found merely to give the creditor a new method of harassment. David Caplovitz, in his book, The Poor Pay More, which is actually a report of the Bureau of Applied Social Research at Columbia University, states that although ninety per

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103 Reader's Digest, June 1961, p. 68. This article led to the filing of the first Chapter XIII petition in the Southern District of Ohio in 1961. This led to thirty-four others in 1961, 263 in 1963, 1,042 in 1964, and 1,002 in 1965. The Northern District of Ohio has never had over 362. See also Schumacher, A Wage Earners' Plan that Works, 19 Q. REPORT 64 (1965).


105 Chart D in the appendix to this article.

106 Mr. Black states that in New Jersey a customer cannot borrow more than $500 from a small loan company at one time, and this keeps the illegal loan shark in business. Black, Buy Now, Pay Later, 125 (1961).

cent of a person's wages are free from garnishment in New York, there is little protection for the over-extended debtor. It would seem that this fact merely spurs the "debt merchant" to use ingenuity in arriving at other types of harassment. Nor did the protection of eighty-five percent of the wage-earner's wages in Illinois protect William Rodriquez from harassment which led to his suicide.  

A number of the national associations of credit men are making efforts to educate the public in the intelligent use of credit. These groups have been able to persuade some schools to give courses based on materials they have compiled. An example of the interest being taken in the serious consumer credit situation is the study being carried on by the Family Service Association of America. This is supported by contributions from labor unions, bankers, credit bureaus, and small loan companies, as well as by the large stores widely using the 18% interest revolving credit plans. This project was organized by the general credit manager of the J. C. Penney Company. The working committee includes legal aid officials, officials of the Family Service Association of America, directors of various national consumer finance associations, the American Bar Association, various officials of labor unions, and specialists in this field associated with banks and banker associations.

These efforts at education of the public and at self-regulation will undoubtedly aid in stabilizing our consumer credit situation. The experience of various efforts of this kind have shown, however, that when the more conscientious and ethical "debt merchants" curb their activities they automatically open up a large field for the less ethical "loan shark" type of "debt merchant" as both a lender and merchandizer. The educational approach to this overall problem is certainly sound, but it is a slow process which will fail to reach the large segment of our population most in need of protection from such practices. In states where a wage earner's earnings are exempt from garnishment, the wage-earner

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is still not free from the threats of wholesale repossession of everything he has; in these states a merchandizer or a lender almost always takes a chattel mortgage over the buyer or borrower's total worldly possessions.

Chapter XIII does not give complete protection to the wage-earner who has mortgaged all of his personal property since the secured creditors must adopt the plan unanimously. Nevertheless, in order to vote as a secured creditor, evidence must be introduced by the secured creditor that there is not usury hidden in the debt. In a recent case at the lower court level, a referee in Birmingham held that an eighteen percent revolving account of a national merchandizer was usurious.

In addition to the study being made by the Family Service Association of America, a $500,000 grant from the Ford Foundation has been made to finance a five-year study of consumer debt behavior by the Survey Research Center of the University of Michigan's Institute for Social Research. An overall study of bankruptcy financed by a $314,000 grant from the Ford Foundation is being carried on by the Brookings Institution. In his description of the study, the director stated, "We are giving considerable attention, for example, to how Chapter XIII is being used and why it is not used."111

VI. THE PROPOSED CHANGES IN THE LAW

Installment buying was introduced to this country by Issac Merritt Singer in order to sell the early Singer Sewing Machine.112 While the installment selling device was not new in the 1930's its broad use has grown and developed since the "Hoover Depression." Outstanding installment credit has risen from approximately 2.5 billion dollars in 1945 to approximately 63 billion dollars in 1966, while non-installment credit has risen from approximately 3 billion dollars to 17 billion dollars.113 The increase in consumer debt and installment selling began in the early 1940's and by 1946 had attracted considerable attention.114 These statis-

tics indicate the change in the consumer credit situation since the time of the first study which led to the passage of Chapter XIII in 1939.\textsuperscript{115}

Our entire consumer credit approach has undergone a complete change in the last thirty years. Creditor interests now rely more on future earnings as an asset to repay debts and would like to include future earnings as an asset in straight bankruptcy. In the alternative, it is not surprising that the creditor groups would be in favor of requiring the bankrupt wage earner to use Chapter XIII and deny him the use of straight bankruptcy. Two bills are now pending in Congress which would virtually require a wage earner to go into a Chapter XIII proceeding and pay his creditors in full if it is feasible for him to do so.\textsuperscript{116} These bills now pending have generally been opposed and criticized by the legal aid groups, but they are supported by the American Bar Association. The over-all purpose of these bills is to introduce into Chapter XIII an involuntary petition and to require that the feasibility of an extension under Chapter XIII be considered before a discharge is granted in a voluntary straight bankruptcy petition.\textsuperscript{117} This, of course, would put the wage earner in a position unique in the history of bankruptcy, unless we view his earning power as an asset, an attitude which leads us back to the basic idea of debtor's prisons.

\textsuperscript{115} The Hastings-Michener bills of 1932 seem to be the first federal effort to study the possibility of legislation which would enable the debtor to avoid the stigma of bankruptcy. See \textsc{Hanna & MacLachlan, Creditor's Rights Cases and Materials} 34 (5th ed. 1957).


\textsuperscript{117} I wish to express my appreciation to Referees Herbert R. Maulitz and William R. Vance of Birmingham for the co-operation given me in this study and to the many federal court clerks, standing trustees, and referees across the country who have taken time from their busy day to answer my questions.
Chart A

Total Voluntary in Nation

Total Chapter XIII in Nation

Population Increase during this time 47%

Thousands

150-

140-

130-

120-

110-

100-

90-

80-

70-

60-

50-

40-

30-

20-

10-

0-

CHART B

HUNDREDS

TOTAL CHAPTER XI IN NATION

TOTAL ALA. VOLUNTARY

ALA. CHAPT. XI

## Chart C

### Wage Free from Garnishment

<table>
<thead>
<tr>
<th>State</th>
<th>Attr. Fee for Straight</th>
<th>Attr. Fee for Colli.</th>
<th>Wages Free from Garnishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wyo.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Dc.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ark.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Calif.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Tex.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ga.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Me.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Fl.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>La.</td>
<td>100</td>
<td>100</td>
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</tr>
<tr>
<td>Pa.</td>
<td>100</td>
<td>100</td>
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<td>100</td>
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</tr>
<tr>
<td>Ind.</td>
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<td>100</td>
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</tr>
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<td>Ky.</td>
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<td>100</td>
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</tr>
<tr>
<td>Mo.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ne.</td>
<td>100</td>
<td>100</td>
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</tr>
<tr>
<td>N.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ok.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Co.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ne.</td>
<td>100</td>
<td>100</td>
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</tr>
<tr>
<td>Wyo.</td>
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<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ar.</td>
<td>100</td>
<td>100</td>
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</tr>
<tr>
<td>Cal.</td>
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<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Tex.</td>
<td>100</td>
<td>100</td>
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</tr>
<tr>
<td>Ga.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Me.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Fl.</td>
<td>100</td>
<td>100</td>
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</tr>
<tr>
<td>La.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Pa.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ill.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ind.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ky.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Mo.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ne.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>N.</td>
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<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ok.</td>
<td>100</td>
<td>100</td>
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</tr>
<tr>
<td>Co.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ne.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Wyo.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ar.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Cal.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Tex.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ga.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Me.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Fl.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>La.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Pa.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ill.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ind.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ky.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Mo.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ne.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>N.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
<tr>
<td>Ok.</td>
<td>100</td>
<td>100</td>
<td>$250 per year</td>
</tr>
</tbody>
</table>

* See Table from Brum Article at 54.4

† These states have a state statute providing for the appointment of a trustee to receive the non-exempt part and pay it to creditors. Trustee fee is 5%. Creditors act during period. Creditor participation compulsory. See Brum, Wage Garnishment in California, 35 Cal.L.Rev. at 1216 (1948).

‡ It would seem that the actual amount on percentage of exempt wages would be adequate protection if multiple layoffs were not allowed. Multiple layoffs are not allowed in Connecticut, Delaware, Illinois, Kansas, Louisiana, New York, New Jersey and West Virginia. See Brum article, page 1234.
CHART D
<table>
<thead>
<tr>
<th>Rank</th>
<th>State</th>
<th>Bankruptcy Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ala.</td>
<td>302</td>
</tr>
<tr>
<td>2</td>
<td>Nev.</td>
<td>383</td>
</tr>
<tr>
<td>3</td>
<td>Tenn.</td>
<td>414</td>
</tr>
<tr>
<td>4</td>
<td>Ga.</td>
<td>515</td>
</tr>
<tr>
<td>5</td>
<td>Colo.</td>
<td>547</td>
</tr>
<tr>
<td>6</td>
<td>Ariz.</td>
<td>548</td>
</tr>
<tr>
<td>7</td>
<td>Ore.</td>
<td>574</td>
</tr>
<tr>
<td>8</td>
<td>Calif.</td>
<td>614</td>
</tr>
<tr>
<td>9</td>
<td>Ohio</td>
<td>653</td>
</tr>
<tr>
<td>10</td>
<td>Maine</td>
<td>654</td>
</tr>
<tr>
<td>11</td>
<td>Wash.</td>
<td>788</td>
</tr>
<tr>
<td>12</td>
<td>Ill.</td>
<td>788</td>
</tr>
<tr>
<td>13</td>
<td>Kan.</td>
<td>817</td>
</tr>
<tr>
<td>14</td>
<td>Ky.</td>
<td>821</td>
</tr>
<tr>
<td>15</td>
<td>Utah</td>
<td>822</td>
</tr>
<tr>
<td>16</td>
<td>Wyo.</td>
<td>901</td>
</tr>
<tr>
<td>17</td>
<td>Ind.</td>
<td>909</td>
</tr>
<tr>
<td>18</td>
<td>Okla.</td>
<td>921</td>
</tr>
<tr>
<td>19</td>
<td>Idaho</td>
<td>924</td>
</tr>
<tr>
<td>20</td>
<td>N.H.</td>
<td>935</td>
</tr>
<tr>
<td>21</td>
<td>Va.</td>
<td>979</td>
</tr>
<tr>
<td>22</td>
<td>Mo.</td>
<td>1,020</td>
</tr>
<tr>
<td>23</td>
<td>N. Mex.</td>
<td>1,027</td>
</tr>
<tr>
<td>24</td>
<td>Va.</td>
<td>1,177</td>
</tr>
<tr>
<td>25</td>
<td>Minn.</td>
<td>1,329</td>
</tr>
<tr>
<td>26</td>
<td>Mich.</td>
<td>1,331</td>
</tr>
</tbody>
</table>
**CHART F**

**RANK BY RATIO OF CHAPTER XIII PETITIONS TO STATE POPULATIONS**

<table>
<thead>
<tr>
<th>State</th>
<th>Petitions</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ala.</td>
<td>0.618</td>
<td>25,266</td>
</tr>
<tr>
<td>Tenn.</td>
<td>875</td>
<td>25,399</td>
</tr>
<tr>
<td>Maine</td>
<td>1,213</td>
<td>28,188</td>
</tr>
<tr>
<td>Ga.</td>
<td>1,310</td>
<td>28,226</td>
</tr>
<tr>
<td>Kan.</td>
<td>1,749</td>
<td>31,043</td>
</tr>
<tr>
<td>Ky.</td>
<td>3,532</td>
<td>31,697</td>
</tr>
<tr>
<td>Colo.</td>
<td>3,995</td>
<td>33,214</td>
</tr>
<tr>
<td>N.Mex.</td>
<td>4,081</td>
<td>33,563</td>
</tr>
<tr>
<td>Calif.</td>
<td>4,257</td>
<td>41,639</td>
</tr>
<tr>
<td>Ark.</td>
<td>5,132</td>
<td>43,280</td>
</tr>
<tr>
<td>Wash.</td>
<td>5,834</td>
<td>53,119</td>
</tr>
<tr>
<td>Va.</td>
<td>5,911</td>
<td>62,232</td>
</tr>
<tr>
<td>Minn.</td>
<td>6,218</td>
<td>62,544</td>
</tr>
<tr>
<td>Idaho</td>
<td>6,671</td>
<td>63,863</td>
</tr>
<tr>
<td>Ohio</td>
<td>7,121</td>
<td>65,033</td>
</tr>
<tr>
<td>Ariz.</td>
<td>7,797</td>
<td>67,476</td>
</tr>
<tr>
<td>Wis.</td>
<td>9,733</td>
<td>73,903</td>
</tr>
<tr>
<td>Hawaii</td>
<td>11,718</td>
<td>78,983</td>
</tr>
<tr>
<td>Alaska</td>
<td>13,083</td>
<td>81,692</td>
</tr>
<tr>
<td>S.D.</td>
<td>13,419</td>
<td>81,979</td>
</tr>
<tr>
<td>Iowa</td>
<td>13,856</td>
<td>87,142</td>
</tr>
<tr>
<td>Ill.</td>
<td>19,461</td>
<td>389,881</td>
</tr>
<tr>
<td>Utah</td>
<td>19,791</td>
<td>606,921</td>
</tr>
<tr>
<td>N.Y.</td>
<td>22,856</td>
<td>632,446</td>
</tr>
<tr>
<td>Del.</td>
<td>23,146</td>
<td>none filed</td>
</tr>
<tr>
<td>Mich.</td>
<td>23,778</td>
<td></td>
</tr>
</tbody>
</table>

*Example: 1 filed for every 418 people in the state of Alabama.*
### Chart G

**Per Capita Income**


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<th>Rank</th>
<th>State</th>
<th>Income</th>
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</thead>
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</tr>
<tr>
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<td>S.C.</td>
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</tr>
<tr>
<td>3</td>
<td>Ark.</td>
<td>1,655</td>
</tr>
<tr>
<td>4</td>
<td>Ala.</td>
<td>1,749</td>
</tr>
<tr>
<td>5</td>
<td>Ky.</td>
<td>1,830</td>
</tr>
<tr>
<td>6</td>
<td>Tenn.</td>
<td>1,859</td>
</tr>
<tr>
<td>7</td>
<td>La.</td>
<td>1,877</td>
</tr>
<tr>
<td>8</td>
<td>S.D.</td>
<td>1,879</td>
</tr>
<tr>
<td>9</td>
<td>N.D.</td>
<td>1,913</td>
</tr>
<tr>
<td>10</td>
<td>N.C.</td>
<td>1,913</td>
</tr>
<tr>
<td>11</td>
<td>Ga.</td>
<td>1,943</td>
</tr>
<tr>
<td>12</td>
<td>W.Va.</td>
<td>1,965</td>
</tr>
<tr>
<td>13</td>
<td>Idaho</td>
<td>2,020</td>
</tr>
<tr>
<td>14</td>
<td>N.Mex.</td>
<td>2,041</td>
</tr>
<tr>
<td>15</td>
<td>Okla.</td>
<td>2,083</td>
</tr>
<tr>
<td>16</td>
<td>Vt.</td>
<td>2,119</td>
</tr>
<tr>
<td>17</td>
<td>Maine</td>
<td>2,132</td>
</tr>
<tr>
<td>18</td>
<td>Utah</td>
<td>2,156</td>
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<tr>
<td>19</td>
<td>Tex.</td>
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</tr>
<tr>
<td>20</td>
<td>Ariz.</td>
<td>2,233</td>
</tr>
<tr>
<td>21</td>
<td>Va.</td>
<td>2,239</td>
</tr>
<tr>
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<td>Fla.</td>
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</tr>
<tr>
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<td>Mont.</td>
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</tr>
<tr>
<td>24</td>
<td>Kan.</td>
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<tr>
<td>26</td>
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</tr>
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<td>28</td>
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<tr>
<td>30</td>
<td>Wis.</td>
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<tr>
<td>31</td>
<td>R.I.</td>
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</tr>
<tr>
<td>32</td>
<td>Ind.</td>
<td>2,544</td>
</tr>
<tr>
<td>33</td>
<td>Colo.</td>
<td>2,566</td>
</tr>
<tr>
<td>34</td>
<td>Mo.</td>
<td>2,600</td>
</tr>
<tr>
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<td>Penn.</td>
<td>2,601</td>
</tr>
<tr>
<td>36</td>
<td>D.C.</td>
<td>2,606</td>
</tr>
<tr>
<td>37</td>
<td>Hawaii</td>
<td>2,622</td>
</tr>
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<td>Wash.</td>
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</tr>
<tr>
<td>39</td>
<td>Ohio</td>
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<td>Mich.</td>
<td>2,755</td>
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<tr>
<td>41</td>
<td>Md.</td>
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</tr>
<tr>
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<td>Mass.</td>
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</tr>
<tr>
<td>43</td>
<td>N.J.</td>
<td>3,005</td>
</tr>
<tr>
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<td>Ill.</td>
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</tr>
<tr>
<td>45</td>
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</tr>
<tr>
<td>46</td>
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<tr>
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<td>N.Y.</td>
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</tr>
<tr>
<td>48</td>
<td>Nev.</td>
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</tr>
<tr>
<td>49</td>
<td>Conn.</td>
<td>3,281</td>
</tr>
<tr>
<td>50</td>
<td>Del.</td>
<td>3,460</td>
</tr>
<tr>
<td>51</td>
<td>D.C.</td>
<td>3,544</td>
</tr>
</tbody>
</table>
# Chart H

**Statement of Affairs**

(EACH BLANK ON THIS STATEMENT MUST BE FILLED IN, EVEN NEGATIVE ANSWERS, OR THE PETITION WILL NOT BE ACCEPTED BY THE CLERK)

<table>
<thead>
<tr>
<th>Debit's Name</th>
<th>Debtor's Home Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Married? ____________________________ Wife's or Husband's Name: ____________________________

Separated or Divorced? ____________________________ Do you pay or receive alimony or child support? ____________________________

How much per month? ____________________________ Other dependents (list by name and relationship): ____________________________

Name and Address of Employer: ____________________________

Type of Work You Do: ____________________________ No. years so employed: ____________________________

Plant & Badge or Card Number: ____________________________ Soc. Sec. No: ____________________________

Previous Employment: ____________________________

| Gross Wages or Salary: $________________ per ____________________________ | Is your employer deducting for any Credit Union? ____________________________ |
| Net Wages or Salary: $________________ per ____________________________ | Store Account, or Other Debt? ____________________________ |
| (After deductions for income taxes, social security, insurance and union dues only) | If so, give principal balance and amount of payment: ____________________________ |

Spouse's Earnings: $________________ per ____________________________

Other Income: ____________________________

Own or Buying Automobiles? ____________________________ Own or Buying Home? ____________________________

Make and Model: ____________________________ Monthly Payments: ____________________________

Monthly Payments: ____________________________ Cost of Home $________________

To Whom: ____________________________ Equity $________________

Amount of debts secured by auto $________________

Rent? ____________________________ $________________ per month.

Have you ever filed bankruptcy? ____________________________ When was last time? ____________________________

Have you ever filed Debtors Court Case? ____________________________ When was last time? ____________________________

Do you owe any debts not listed on Schedule "A" of your petition? ____________________________ If so, state name of each creditor, amount due, and reason said creditor is not scheduled: ____________________________

Signed and Sworn to on ____________________________ 19 ____________________________ (Date)

______________________________

**Debtor**
What is commonly referred to as a "Wage Earner Plan" can be either an extension ( postponement) or a composition (compromise) or a combination of both, of a wage earner's debts under the supervision of the Bankruptcy Court. The basic requirements are that the Plan should not exceed 36 months in duration from its inception and that the wage earner cannot incur additional debts during the period of the existence of the Plan in excess of those authorized by the Court. The debtor is not a bankrupt; however, the payment and satisfaction of his debts represented in his Petition will be under the supervision of the Bankruptcy Court under a duly appointed trustee.

In order to initiate and carry out a petition the following are necessary:

(1) Petition. Petition should be filed with the Clerk of the U. S. District Court with the original and two signed copies and a $15.00 filing fee ($30.00 if man and wife file). Attached is an acceptable, simplified copy of a petition. These forms may be used by completing the same or a commercial set of bankruptcy petitions may be purchased.

(2) Circular Letter and Proposed Plan. After the petition is filed a circular letter should be sent to each of the creditors listed on the petition explaining the proceeding and enclosing with the letter a copy of a claim to be executed and returned to the attorney for the debtor or the Referee in Bankruptcy. A copy of the proposed Plan should be enclosed. Suggested forms for circular letter, modified claim and plan are attached.

(3) Certificate of Service. After the mailing of the above instruments to the creditors, the attorney for the debtor should execute the attached certificate of service and file it with the Referee.

(4) Official Notice of First Creditors' Meeting. The Referee in Bankruptcy notifies the creditors of the first meeting at which time additional claims are received and the Plan voted upon. If a majority in number and amount vote in favor of the Plan, it is "approved." The approved Plan is submitted to the Referee at the first creditors' meeting before the voting. If approved, a Trustee is designated to receive the funds.

(5) Application For Confirmation and Order Confirming Plan. The application for Confirmation of Plan, together with the Order confirming the plan, one copy of each, should be ready and available at the First Creditors' Meeting. A form for each of the above is hereto attached for your convenience.

(6) Payments and Distributions. It is highly desirable that the debtor start making his weekly or monthly payments to his attorney as soon as he files his petition. These funds to be later turned over by the attorney to the Trustee. These moneys are referred to as "initial payments." After the confirmation of the plan, the debtor shall make payment to the Trustee on a monthly or weekly basis or as the Court may direct and may be deducted from the wage earner's salary and sent direct to the Trustee. The Trustee shall then disburse in accordance with the Plan and order as confirmed the money at intervals as directed to the creditors.

(7) Composition and/or Extension. If a combination extension and composition is called for in the Plan, once the debtor pays the monthly or weekly payments called for the total number of months requested, or sooner, the debts are then discharged in accordance with the accepted Plan and the proceeding terminated.

(8) Attorney's Fee. Attorney's fee should come from the funds paid in by the debtor to the Trustee. The average fee is $50.00 from the first moneys paid in plus five percent of the balance of the moneys paid in to the Trustee not to exceed a total of $200.00. The percentage is paid and disbursed along as other creditors are paid. Attached is a petition for attorney's fee. Only the original is required to be filed with the Referee.

(9) Copy of Documents. Any documents which require more than an original may be reproduced by any accepted office duplicating method.

Additional sets of these forms enclosed and attached hereto may be obtained without charge by contacting Rufus W. Reynolds, Referee, Southeastern Building, Greensboro, North Carolina, or Jordan J. Frassineti, Standing Trustee for Wage Earner Plan, Southeastern Building, Greensboro, North Carolina.

(For further information as to the actual workings of the Wage Earner Plan, contact Jordan J. Frassineti, the Standing Trustee for the Wage Earner Plan.)