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2019 Mid-Atlantic Bankruptcy Workshop

Consumer Bankruptcy Trends

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What's Going On: A Discussion of Recent Trends in Consumer Bankruptcy

I. Chapter 13 Developments – Selected Case and Rule Highlights

1. Developing potential circuit split on the definition of “all payments under the plan” in § 1328(a).

Issue: Chapter 13 debtors may provide for certain long-term debts to be paid directly to a lender and not through the trustee (and thus subject to commission). In order to receive a chapter 13 discharge, a debtor must complete all payments under the plan. The question is whether direct payments, not administered by the trustee, are nevertheless payments under the plan.

Majority: Direct Payments are “Under the Plan”

Dating back as far as the Fifth Circuit’s decision in In re Foster, 670 F.2d 478 (5th Cir. 1982), the majority of cases find that post-petition direct payments are “under the plan.” Foster specifically considered those secured debts where the debtor is curing a default through the plan, but paying the ongoing payments directly. In Foster, the Fifth Circuit held that when a plan cures a default, post-petition payments, whether through the trustee or not, were under the plan. The Fifth Circuit precedent in Foster has been followed in reported cases by bankruptcy and district courts in Texas, Virginia, and Colorado. (Admittedly, this list is not exclusive.)

Potential Minority View: Direct Payments are Not “Provided For” and therefore not “Under the Plan”

In Dukes v. Suncoast Credit Union (In re Dukes), the Eleventh Circuit considered not specifically the issuance of a chapter 13 discharge, but whether a chapter 13 discharge applied to debt associated with a direct payment included in a plan. Relying on the Supreme Court case of Rake v. Wade, 508 U.S. 464 (1993), the Eleventh Circuit found that “provided for” requires that a debt actually have a provision for or “stipulate to” something in the plan – not simply stating that

the secured debt will be paid outside the plan. In a footnote, the court also noted that providing for adequate protection payments is separate and distinct from providing for the actual underlying debt to the same creditor. In addition, the court utilized the reasoning from Rake to state that *even if* the plan provides for curing a prepetition default, that does not result the remaining portion of the loan (wholly governed by the original loan instruments and not the bankruptcy plan) to be paid by direct payments to be provided for by the plan. Any such outside payments are not “provided for” but simply “maintained” by the debtor during the pendency of the chapter 13 case. Therefore, because the plan did not make any changes to the lender’s payments, the debtor’s liability on the loan remained governed only by the original loan documents, and the plan neither stipulated to or made provision for the mortgage, the plan did not “provide for” the debt. A plan may only “provide for” a claim when it supplies payment terms that would govern the repayment of the claim. Thus, for § 1328 purposes, there is an argument to be made that if a debt is not “provided for” but simply “maintained” during the term of the plan, such payments are not included in “all payments under the plan.”

2. Proposed Changes to Rule 2002 in Chapter 13 – Proposed Effective Date December 1, 2020

There are three proposed rule changes to Rule 2002, specifically related to consumer cases and chapter 13. The comment period has closed, but the proposed rules would (1) require service of notice of entry of a confirmation order in chapter 13 cases, but also (2) limit service lists in some circumstances in chapter 13 cases for other motions except the notice of 341 hearing, confirmation hearing, and (if adopted) confirmation of plan. Finally, the proposal would shorten

the notice period for a confirmation hearing in a chapter 13 case from 28 days to 21 days. Full redline rule proposals attached.

3. *Hope for those with income from state-legal marijuana businesses? – Garvin v. Cook Invs. NW, SPNWY, LLC, 2019 U.S. App. LEXIS 13235 (9th Cir., May 2, 2019).*

With the legalization by states of marijuana sales and use, a consistent position by the Office of the United States Trustee in bankruptcy cases is that if a debtor derives income from such businesses, they are unable to utilize the federal courts for relief as it would violate federal laws. The door to access to bankruptcy relief for business, and arguably individuals under chapter 13, may have opened slightly with the Ninth Circuit’s recent decision in Garvin.

The corporate debtor in Garvin obtained a small part of its income from a lease to a marijuana grower. Very carefully and intentionally through its proposed chapter 11 plan, the debtor reserved its marijuana profits to use for “operations” or other “non-plan” payments, instead utilizing all other income to fund and consummate its plan. The United States Trustee objected to confirmation of the plan arguing that by the debtor having income from marijuana, even if not used as part of the proposed funding, the plan nevertheless violated § 1129(a)(3)’s requirement that the plan be proposed in good faith and not by any means forbidden by law. The basis of the objection was that any plan funded by federally illegal activities was proposed by a “means forbidden by law.”

Considering the issue *de novo*, the Ninth Circuit determined that § 1129(a)(3) does not look to the substance of a proposed plan, but merely the manner of the proposal of the plan. The court held to read otherwise would render other subsections of § 1129(a) redundant. The court further

noted that by confirming a plan, even if illegal activity is part of the plan itself, does not insulate a debtor from prosecution for criminal activity.

Notably for consumer debtors the language found in § 1129(a)(3) is the exact same language found in § 1325(a)(3) – “proposed in good faith and not by any means forbidden by law.” Does this hint that, if a chapter 13 debtor has multiple sources of income and can direct “clean” income towards plan payments, while utilizing marijuana income for personal expenses or other outside payments, that there is an argument that such debtor MAY find relief under the bankruptcy code? There is a solid argument for this interpretation given the Ninth Circuit’s analysis in Gavin.

II. Student Loan Issues¹

A. Discharge of Student Loan Debt: Since 1998, discharge of student loan debt has been limited to instances where repayment would “impose an undue hardship on the debtor and the debtor’s dependents” pursuant to 11 U.S.C. § 523(a)(8) (previously, the Bankruptcy Code also provided that student loans could be discharged after seven years from when the repayment obligation arose).

The Bankruptcy Codes does not define the term “undue hardship.” For years, Courts have widely applied the following three-part test established by the Second Circuit in *In re Brunner v. N.Y. State Higher Educ. Servs., Corp.*, 831 F.2d 395 (2d Cir. 1987) for determining whether student loan debt can be discharged for undue hardship.

- 1) The debtor cannot maintain, based on current income and expenses, a minimal standard of living for herself and her dependents if forced to repay the loans;

¹ Portions of this section were originally included as part of materials produced for the New Jersey State Bar Association’s 21st Annual William H. Gindin Bankruptcy Bench Bar Conference and have been reprinted with permission.

- 2) Additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period; and
- 3) The debtor has made good faith efforts to repay the loans.”

Each of the three factors must be established by a preponderance of the evidence. *See In re Brightful*, 267 F.3d 324, 327 (3d Cir. 2001). If the debtor fails to prove any of the elements, “the inquiry must end there, and the student loans cannot be discharged.” *Id.* at 327-28.

For years, the *Brunner* test was strictly applied, with discharge of student loan debt for undue hardship occurring in rare and extreme situations. Recently, however, courts have exhibited an increased willingness to more flexibly apply the *Brunner* test and provide some relief to the debtor/borrower, including allowing for partial discharge of student loan debt. *See, e.g., Hunter v. New Jersey Higher Education Student Assistance Authority*, adv. pro. no. 15-02052-JKS (Bankr. D.N.J. April 27, 2018) (based on having a monthly surplus of approximately \$450, the court discharged all of the debtor’s student loan obligations maturing before June 2037, reducing the debtor’s monthly student loan bill from \$2,609.24 to \$414.26).

i. **Recommendations from the ABI Commission on Consumer**

Bankruptcy: The ABI Commission on Consumer Bankruptcy released its report at the ABI’s 2019 Annual Spring Meeting. Student loans in bankruptcy were identified as one of the most pressing issues to be addressed, and the Commission recommended that statutes be revised to allow for discharge of student loans that are:

- Made by non-governmental entities;
- Incurred by a person other than the person receiving the education;
- Being paid through a five-year chapter 13 plan; or
- First payable more than seven years before a chapter 7 case is filed.

The Commission also recommended certain streamlining of procedures and interpretations of law to “facilitate reasonable relief from student loan indebtedness.”

B. Trustee Avoidance Actions to Recover Student Tuition or Loan Payments: In recent years, chapter 7 trustees have increasingly sought to avoid student tuition or loan payments made by debtor parents on behalf of their children as fraudulent transfers under 11 U.S.C. § 548 or state fraudulent conveyance statutes. Trustees argue that debtors did not receive “reasonably equivalent value” in exchange for the payments. The trustee may sue the debtor, the institution that received the payments, and the child for whose education the payments were made. While the results have been mixed, with disposition often turning on applications of state law or societal obligations to educate children (including to what age), or on interpretations of whether an economic benefit was conferred on the debtor, the majority of courts have been reticent to avoid such payments. The following is a survey of cases on the topic:

a. Payments Cannot be Avoided

i. **Payment Cannot be Avoided if Funds Were Held in Trust for Child** – *In re Leonard*, 454 B.R. 444 (Bankr. E.D.Mich. 2011): Payments for the college tuition of the debtor’s son could not be avoided to the extent they originated from funds held in trust for the son (in this case, from student loan disbursements originally made by Chase and temporarily deposited in the debtor’s account), but could be potentially avoided if made from the debtor’s funds. *See also In re Lewis*, 574 B.R. 536 (Bankr. E.D.Pa. 2017) (loan proceeds obtained specifically for payment of child’s college tuition and paid directly by Department of Education to School, were not property of the estate and could not be avoided).

1. **Payments from 529 accounts Cannot be Avoided** – *In re Dunston*, 566 B.R. 624 (Bankr. S.D.Ga. 2017): Tuition paid from a 529 account in a child’s name cannot be avoided because the funds are held in trust and are expressly not property of the estate pursuant to section 541(b)(6). However, funds may be avoided to extent traceable to the debtor’s personal funds as there is no legal duty

under state law to pay for adult child's college education and doing so does not provide the debtor with an economic benefit.

- ii. **Payment Satisfied Legal Duty to Provide Education for Minor Children** - *In re Karolak*, 2013 WL 4786861 (Bankr. E.D.Mich. Sept. 6, 2013): The debtor received reasonably equivalent value in exchange for private school tuition payments for her minor children as such enabled the debtor to fulfill her statutory duty to educate her minor children. The court distinguished the case from *In re Leonard* because the debtor had a legal obligation to educate her minor children, whereas in *Leonard*, there was no such legal obligation for the debtors' college-age child.
- iii. **Not for Trustee to Determine Reasonableness of Payment for Private School Tuition** - *In re Akanmu*, 502 B.R. 124 (Bankr. E.D.N.Y. 2013): The trustee argued that paying for private school was "not reasonably necessary" and that the debtors' legal obligation to send their children to school could have been fulfilled through public school attendance. The court found that the tuition payments enabled the debtors to satisfy their statutory obligation to education their children, thereby providing reasonably equivalent value. The fact that the debtors could have spent less was irrelevant as the trustee is not authorized to review the reasonableness of the debtor's expenditures. To hold otherwise would enable trustees to insert their own judgment of what is reasonably necessary in a variety of situations. *See also In re Michel*, 573 B.R. 46 (Bankr. E.D.N.Y. 2017).
- iv. **Inferred Obligation to Provide Undergraduate Education (though not graduate) Even if Not Required Under State Law** - *In re Cohen*, 2012 WL 5360956 (Bankr. W.D.Pa. Oct. 31, 2012): While the court acknowledged that there was no statutory duty to provide post-secondary education for children, the Court found that such expenses are "reasonable and necessary for the maintenance of the Debtor's family for purposes of the fraudulent transfer statutes only." The court, however, limited its holding to payments for undergraduate educations given that children are well into adulthood by the time of graduate school. *See also In re Lewis*, 574 B.R. 536 (Bankr. E.D.Pa. 2017) (Parent receives reasonably equivalent value in exchange for payment of child's college tuition because such is "a reasonable and necessary expense for maintenance of the family and for preparing family members for the future.").
- v. **Inferred Economic Benefit to Paying for Undergraduate Education** - *In re Palladino*, 556 B.R. 10 (Bankr. D.Mass. 2016): Even if there is no legal obligation to provide college education, parents receive economic benefit and reasonably equivalent value in making tuition payments based on belief that doing so would contribute to the financial self-sufficiency of the child.

- vi. **Societal Expectation to Assist with College Expenses** - *In re Oberdick*, 490 B.R. 687 (Bankr. W.D.Pa. 2013): Debtors paid \$82,536.22 in college tuition payments for their children. Like *In re Cohen*, the court found that even though there is no statutory obligation to provide children with a college education, there is “something of a societal expectation that parents will assist with such expenses if they are able to do so.”

b. Payments May be Avoided

- i. **No Moral Obligation to Pay College Tuition, as Debtor must Receive an Economic Benefit** – *In re Dunston*, 566 B.R. 624 (Bankr. S.D. Ga. 2017): Satisfying a moral obligation to pay college tuition for one’s child “does not provide an ‘economic’ benefit to the debtor.” Further, no legal obligation was satisfied and there was no evidence that the debtor received any economic benefit from the payment. *See also In re Dunston*, 566 B.R. 624 (Bankr. S.D.Ga. 2017); *In re Lindsay*, 2010 WL 1780065 (Bankr. S.D.N.Y. May 4, 2010);
- ii. **Payments May be Avoided if College or Graduate School was Initial Transferee** – *Pergament v. Brooklyn Law School*, 595 B.R. 6 (E.D.N.Y. 2019): If tuition payment to a college or graduate school is made after the period that it would be refunded should the student withdraw, the school has dominion or control over the funds and is an initial transferee under section 550(a) and the payment may be recovered by the trustee. However, if the payment was made early enough that if the student withdrew it would be refunded to the student (even if paid by a third party), the school is a mere conduit. *See also Mangan v. University of Connecticut*, adv.pro.no. 17-02090-JJT (Bankr. D.Ct. Jan. 31, 2019).



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2019 Annual Spring Meeting

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Hosted by the Consumer Bankruptcy
Committee

Hot Topics: The Final Report of the ABI Commission on Consumer Bankruptcy

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McGlinchey Stafford, PLLC; New Orleans

Hon. Randall L. Dunn

U.S. Bankruptcy Court (D. Ore.); Portland

Tara Twomey

National Consumer Law Center; San Jose, Calif.

CONCURRENT SESSION

2019

ABI Commission on Consumer Bankruptcy

Fact Sheet on Final Report and Recommendations

- Created by the Executive Committee of the American Bankruptcy Institute's (ABI) Board of Directors in December 2016, this two-and-a-half-year study examined the consumer bankruptcy system with a goal of issuing a report containing recommended improvements to be implemented within the existing structure. The Commission was supported by grants from the ABI Endowment Fund and the National Conference of Bankruptcy Judges Endowment for Education.
- ABI is uniquely situated to the task as the largest nonprofit and nonpartisan association dedicated to insolvency. Its nearly 11,000 insolvency professionals practice in all areas of bankruptcy, including the judiciary and academia. ABI does not lobby Congress but serves as a resource for expert analysis of bankruptcy matters, including participation at Congressional hearings.
- 22 Commissioners (17 voting), comprised of leading consumer practitioners, academics and government officials, volunteered to serve. The Commission was co-chaired by retired Bankruptcy Judges William Houston Brown and Elizabeth Perris, who have a combined 50 years of judicial experience.
- The Commission Reporter is Robert Lawless, the Max L. Rowe Professor of Law and co-director of the Program on Law, Behavior & Social Science at the University of Illinois College of Law.
- The Commission was supported by three committees: The Committee on Case Administration and the Estate, the Committee on Chapter 7, and the Committee on Chapter 13. Each committee was comprised of five commissioners and ten additional bankruptcy experts. The three committees met a total of 45 times throughout the process.
- The Commission utilized an open information-gathering process: Through its website, the Commission received 131 topics for consideration. Six public meetings were conducted, during which a total of 72 speakers addressed areas of the bankruptcy system potentially in need of reform.
- The Final Report provides recommendations focused on 48 discrete issue areas to improve the consumer bankruptcy system. Its more than 250 pages are supported by nearly 700 footnotes, with the basis for each recommendation fully documented. Each recommendation was considered individually and approved by at least a two-thirds majority of the Commission. The final report was approved by the commissioners unanimously.

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- Key themes of the recommendations center on achieving a financial fresh start for debtors, improving certainty for creditors, lowering costs for all parties, making chapter 13 work for all stakeholders, facilitating access to the bankruptcy system, and improving its overall effectiveness.

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Summary of Selected Recommendations by ABI’s Commission on Consumer Bankruptcy

The Bankruptcy Code is more than 40 years old, and its last major amendments, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, are 14 years old. In that time, the amount of debt Americans now hold has increased, how they incur that debt has changed, and the types of problems that debt can create have evolved. Technological changes also have transformed how Americans find information about legal options and professional services available to them.

The ABI Commission on Consumer Bankruptcy was created in December 2016 to research and recommend improvements to the consumer bankruptcy system that can be implemented within its existing structure. The Commission’s Final Report contains recommendations for amendments to the Code and Rules designed to make the consumer bankruptcy system more accessible and efficient for both financially struggling Americans and the professionals who serve them. After soliciting public feedback, Commission members identified nearly 50 discrete issues for study and divided these issues among three advisory committees composed of 52 bankruptcy professionals. The commissioners and committee members represent all diverse stakeholders in the bankruptcy system.

Some of the issues and recommendations addressed in the Final Report include:

Issue	Recommendation
Student Loans	<p>Student loan debt significantly depresses U.S. economic activity, and current bankruptcy law ineffectively addresses it. The Commission recognizes that recent graduates should generally be required to repay government-made or guaranteed student loans, but it recommends statutory amendments to discharge student loans that are</p> <ul style="list-style-type: none">• made by nongovernmental entities;• incurred by a person other than the person receiving the education;• being paid through a five-year chapter 13 plan; or• first payable more than seven years before a chapter 7 bankruptcy is filed. <p>In addition, the Commission recommends administrative procedures and interpretations of current law to facilitate reasonable relief from student loan indebtedness.</p>

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<p>Remedies for Discharge Violation</p>	<p>Current law presents difficulties both in enforcing the discharge injunction and in determining its scope. Most courts allow enforcement of the discharge only through contempt proceedings, which may not provide effective relief. The Commission recommends:</p> <ul style="list-style-type: none"> • the creation of a statutory private right of action for violations of the discharge, like the action for violations of the automatic stay, which would provide the full range of sanctions, including costs, attorney fees, and punitive damages; and • amendments to the Bankruptcy Rules allowing motions to determine whether particular creditor conduct would violate the discharge.
<p>Protection of Interests in Collateral Repossessed Prepetition</p>	<p>The circuit courts are divided on the question of whether collateral seized by a creditor before a bankruptcy filing must be returned to the party entitled to possession afterward. To balance the need of the debtor for return of the collateral, often a vehicle, and the need of the creditor for adequate protection, the Commission’s principal recommendation is:</p> <ul style="list-style-type: none"> • § 362(a)(3) should be amended to provide expressly that a creditor’s retention of estate property violates the automatic stay, but only if proof of insurance or other security is provided for property subject to loss of value.
<p>Chapter 7 Attorney’s Fees</p>	<p>Current law largely prohibits collection, after the bankruptcy case is filed, of unpaid attorney fees for a chapter 7 debtor’s representation. This often leads either to delayed filings so that the anticipated fee can be paid in advance, or to the filing of chapter 13 cases simply to ensure fee payment. The Commission recommends:</p> <ul style="list-style-type: none"> • several steps to reduce the overall fees needed for chapter 7 representation, allowing prompter advance payment; and • consideration of changes in the debtor’s discharge to allow the collection of unpaid fees postpetition, including: <ul style="list-style-type: none"> — delay of discharge to allow collection of attorney fees; and — an exception from discharge, with judicial oversight.
<p>Attorney Competency and Remediating Lawyer Misconduct</p>	<p>There are well-established rules of conduct governing attorney conduct in bankruptcy cases. The Commission recommends:</p> <ul style="list-style-type: none"> • vigorous enforcement of these rules by the responsible entities; • the formation of committees or other bodies at the local level to investigate and resolve complaints against offending attorneys; • the publication of all disciplinary orders; and • the award of enhanced fees, as authorized by § 330(a)(3)(E), for board-certified or otherwise demonstrably skillful and experienced practitioners.

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<p>Credit Counseling and Financial Management Course</p>	<p>The Commission recommends:</p> <ul style="list-style-type: none"> • eliminating prepetition credit counseling, because requiring individuals to receive a credit counseling briefing as a prerequisite for any bankruptcy filing imposes costs in money, time, and complexity that are not outweighed by any benefit in helping them avoid unnecessary filings; • eliminating the requirement for a course in financial management in chapter 7, but retaining it in chapter 13, with further study of its effectiveness.; and • amending the Fair Credit Reporting Act to require consumer reporting agencies to report the debtor’s successful completion of a financial management course, so that the effectiveness of the course may be measured by changes in the debtor’s credit rating.
<p>Means Test Revisions & Interpretations</p>	<p>The means test assesses a debtor’s ability to repay debt by calculating the debtor’s disposable income—total income less defined living expenses. The means test determines both whether a debtor should be presumed to be abusing chapter 7 and so barred from relief under that chapter, and whether a debtor’s chapter 13 plan may be denied confirmation because it provides for inadequate payments on unsecured claims. The test incorporates numerous detailed provisions for determining both income and allowed deductions. The Commission recommends retaining the means test, but amending it</p> <ul style="list-style-type: none"> • to require reduced documentation from debtors with below-median income; • to exclude from income public assistance, government retirement, and disability benefits, capped by the maximum allowed Social Security benefit; • to remove the presumption of abuse if the debtor shows special circumstances, even if the circumstances arose voluntarily; and • to allow certain statutory expense deductions from income only to the extent actually incurred by the debtor and necessary for the support of the debtor and debtor’s dependents.
<p>Chapter 13 Debt Limits</p>	<p>To expand the availability of relief under chapter 13 and reduce the need for individuals to file under chapter 11, the Commission recommends:</p> <ul style="list-style-type: none"> • increasing the chapter 13 debt limit to \$3 million, eliminating the distinction between secured and unsecured debts; and • for married couples, applying the limit separately to each spouse and not aggregating the spousal debt, even in joint cases.

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<p>Racial Justice in Bankruptcy</p>	<p>The Commission finds, based on substantial empirical evidence, that African Americans are both disproportionately more likely to file chapter 13 cases than debtors of other races and disproportionately less likely to obtain a discharge. To ensure that all individuals have equal access to justice, the Commission recommends several actions, including:</p> <ul style="list-style-type: none"> • organizational training programs for bankruptcy professionals aimed at reducing implicit racial bias; • amendment to 28 U.S.C. § 159 requiring both the collection of race and ethnicity information on bankruptcy petitions and the dissemination of that data by the Administrative Office of U.S. Courts; and • in the absence of such an amendment, consideration of collecting race and ethnicity information on bankruptcy filers through official bankruptcy forms, with appropriate privacy protections.
<p>Reserve Fund in Chapter 13 Cases</p>	<p>Reflecting the advice of nearly all financial management professionals, the Commission finds that chapter 13 debtors should be allowed and encouraged to maintain a reasonable reserve fund, held by the trustee, to address unanticipated expenses. The Commission recommends:</p> <ul style="list-style-type: none"> • amendments to § 1322(b) to allow such a reserve fund, not to exceed one month of scheduled expenses, subject to restoration to the extent drawn upon, excluded from disposable income, and payable to meet unanticipated expenses on notice and an opportunity to object; and • consistent amendments to the relevant bankruptcy rules and forms. <p>In the absence of these amendments, the Commission recommends that current law be interpreted to allow the creation of such a limited reserve fund through the debtor’s plan, with provisions for disbursement from the fund on notice and opportunity to object, and for differing disposition of the fund at the conclusion of the case depending on the debtor’s income level: payment of the fund balance to debtors with below-median income, and for above-median debtors, payment to the unsecured creditors.</p>
<p>Chapter 7 Trustee Compensation</p>	<p>The Commission finds that chapter 7 trustees are substantially undercompensated. The Commission recommends statutory amendments that would:</p> <ul style="list-style-type: none"> • increase the trustees’ base compensation from \$60 to \$120 in each case, with the increase coming from existing fees rather than an increase in filing fees or a reduction in payments to creditors; and • increase the commission allowed under § 326(a) by increasing the levels of distributions to creditors at which lower percentages of the distributions are paid to the trustee.

Foreword

A. Commission Creation & Charge

Creation. The Bankruptcy Code is over forty years old. Its last major amendments, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, are fourteen years old. Changes in the bankruptcy law come slowly. Changes in American society have happened rapidly during those years.

According to Federal Reserve and Census data, the country's population increased by 46% during the past 40 years, while, after adjusting for inflation, mortgage debt grew by 238%, and consumer credit grew by 256%. In 1978, the median home price was \$218,000 in inflation-adjusted dollars (or \$58,300 in 1978 dollars) as compared to \$325,000 in 2018.

Even since the 2005 amendments, there have been large social and economic shifts. For one, the country experienced one of its deepest financial crises in the Great Recession. The Affordable Care Act brought massive changes in health care finance. As a symbol of how Americans' use of technology has rapidly shifted, consider that, in 2005, Blockbuster Video was only one year past its peak employment level, and video stores have all but disappeared in 2019. In 2005, the most prevalent mobile devices were keypad-based flip phones. Student loan debt was small enough that it was not part of the Federal Reserve's monthly statistical release of consumer debt. The first release of Bitcoin was still four years into the future. The whole financial technology, or "fintech," industry had yet to develop.

The amount of debt Americans hold has increased, how they incur that debt has changed, and the types of problems that debt can create have evolved. The technological changes also have transformed how Americans find information about the legal options and professional services available to them. These same technologies have changed how bankruptcy professionals work and how courts operate.

Shortly before he became president-elect of the ABI in April 2016, Judge Eugene Wedoff approached Samuel Gerdano, ABI's executive director, about the possibility of ABI sponsoring a commission on consumer bankruptcy to propose reforms. The model for such a commission would be the ABI's successful Commission to Study the Reform of Chapter 11. The ABI convened an exploratory committee to consider the idea, and that committee — composed of Judge Wedoff and Gerdano as well as Judge William Brown, Ariane Holtschlag, Richardo Kilpatrick, Professor Lois Lupica, and Ronald Peterson, met two months later.

The exploratory committee concluded both that an examination of consumer bankruptcy was timely and that ABI was in the best position to advance it. The committee also determined that the project should be limited to a consideration of discrete issues arising in consumer bankruptcy cases under chapters 7 and 13, culminating with a set of findings and recommendations much like those produced by the chapter 11 commission. To advance the project, the exploratory committee proposed a commission composed of skillful bankruptcy professionals representing all major constituencies affected by bankruptcy, who would work toward consensus rather than seeing their roles primarily as advocates for an interest group. The exploratory committee discussed several examples of issues that the commission might address,

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including student loan debt, regulation and compensation of professionals, exemption law, and the effectiveness of chapter 13. The committee proposed that the commission be headed by two retired bankruptcy judges as co-chairs and that its initial work be conducted through supporting committees of professionals with relevant experience for the issues treated by the committees. Finally, the exploratory committee noted the need for the project to be supported by a well-qualified reporter.

Based on the exploratory committee's recommendations, the ABI contacted a number of individuals to determine their willingness to serve on the proposed commission. Judges William Brown and Elizabeth Perris agreed that they would serve as the commission's co-chairs, and Professor Robert Lawless agreed to serve as reporter. With these individuals identified as the potential project leaders, Judge Wedoff presented on behalf of the exploratory committee a formal proposal for creation of the commission to ABI's Executive Committee in December 2016. It was unanimously adopted. Between then and the first meeting of what became the ABI Commission on Consumer Bankruptcy in April 2017 and consistent with the board's instructions, the leadership team completed the Commission's membership.

Charge and Scope of Work. The resolution of the ABI board of directors creating the Commission stated:

The Commission is charged with recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure. These changes might include amendments to the Bankruptcy Code, changes to the Federal Rules of Bankruptcy Procedure, administrative rules or actions, recommendations on proper interpretations of existing law, and other best practices that judges, trustees, and lawyers can implement.

The Commission took its charge seriously and emphasized a pragmatic, problem-solving approach. Legislative change can take years, if it comes at all. Although it did not avoid recommendations for statutory amendments, the Commission proposed, where possible, solutions that could be implemented through the bankruptcy rules; through best interpretations of the existing statutes; through actions by other governmental actors such as the Administrative Office of U.S. Courts or the U.S. Trustee Program; or through the efforts of private organizations of bankruptcy professionals, like the ABI and other associations.

Caveats. Statutory drafting is a difficult, time-consuming task. Soon after its formation, the Commission decided that it did not have the resources or time to engage in statutory drafting. In a number of places, the Commission's recommendations suggest or imply specific language that might go into a statute, but readers should understand all of these instances as examples rather than as the Commission's recommendation of specific language in any statutory amendment.

All of the Commission's actions should be understood as applying only to consumer bankruptcy, consistent with its charge to consider "improvements in the consumer bankruptcy system." Thus, each recommendation should be read as if it began with the qualifier "In consumer cases . . ." The Commission takes no position whatsoever on whether its recommendations should be adopted in nonconsumer cases.

VIII

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FINAL REPORT OF THE ABI COMMISSION ON CONSUMER BANKRUPTCY

Finally, by “consumer,” the Commission does not mean the term in the same strict sense of the statutory definition for “consumer debt” in section 101(8) – incurred “primarily for a personal, family, or household purpose.” The Commission also does not mean “consumer” as a synonym for “individual.” For example, some individual chapter 11 cases might be considered consumer cases, whereas others might not. Although the distinction between a consumer case and a nonconsumer case is clear at the extremes, the distinction blurs in the middle. Consistent with its position on not drafting statutory language, the Commission decided it would leave the line-drawing on the scope of its recommendations to the legislative process.

B. Commission Procedures

Topic list. The Commission first needed to create a list of the topics it would study. The Commission cast a wide net and gathered suggestions from multiple sources. The principal work of generating topics went to the three committees, each of which came up with many ideas for areas of consumer bankruptcy in need of study. Through its website, the Commission also solicited public suggestions of topics. Most of the 131 written submissions the Commission received suggested topics for consideration. In addition, the Commission and its three committees conducted six public meetings at which a total of seventy-two speakers addressed areas of the bankruptcy system potentially in need of reform.

The Commission co-chairs and reporter drafted the initial topic list, then revised it after consultation with the committees. The Commission divided the topic list into roughly equal workloads for the three committees. As the Commission work proceeded, new topics were added to the list as appeared appropriate.

Not every topic suggested to the Commission made it on the list for study. Topics that went outside the Commission charge of “recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure” were excluded. The Commission also was mindful that it could not possibly address every issue facing the consumer bankruptcy system and prioritized topics that affected more people.

Committees. The three committees were the front line for consideration of each topic. The Commission provided the committees with the Committee Operating Procedures (see Appendix D), which provided ethical guidelines, confidentiality rules, and an encouragement to work by consensus. Generally, the committees could choose how to structure themselves and the procedures that worked best for each committee.

After receiving the topic list, the committees broke the topics into smaller subtopics and assigned these subtopics to working groups within the committee. The working group’s task was to develop a report for the committee to consider. The committee then would discuss the report at a meeting. The committee either would make a final decision on the working group’s report, or refer the matter back to the working group for revising the report in light of the committee’s discussion and for more consideration at a future meeting.

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The three committees met a total of forty-five times. Each committee had one in-person meeting. The rest of the meetings were conducted telephonically. After each committee meeting, the Commission's reporter circulated meeting notes that the committee chair had approved and that contained a record of the meeting. Thus, all committee members always knew what was discussed and decided at each meeting. The committees completed their work between March and May of 2018.

An affirmative committee vote was not a prerequisite to the Commission's consideration of a topic. The Commission's reporter prepared forty-nine cover memoranda that relayed the three committees' actions to the Commission. Each of these cover memoranda detailed the committee's action and included any opposing viewpoints. A few topics arose for the first time at the Commission level at a stage where the committee processes already had concluded. These topics obviously did not have the benefit of committee action or a cover memorandum from the reporter.

Commission. The Commission itself met twenty-eight times, including six in-person meetings and twenty-two telephonic meetings. The first Commission meeting occurred in April 2017 and was an organizational meeting at which the Commission adopted bylaws (see Appendix C). At the rest of its meetings, the Commission discussed whatever committee actions that the co-chairs had identified, in a previously circulated agenda, for Commission consideration.

The Commission discussed each committee recommendation separately. Sometimes, the Commission then asked the committee or a working group of commissioners to revise the committee's recommendation considering the Commission's discussions. These revised proposals then came back to the Commission later. For both in-person and telephonic meetings, the Commission used meeting software so all commissioners could see the precise wording of any recommendation on which the Commission might vote.

In accordance with the Commission bylaws, no recommendation was considered approved unless it carried a two-thirds majority of the commissioners present and voting at a meeting. (A commissioner who abstained from voting was not counted as present.) When the Commission discussion suggested there was no opposition to a recommendation, the co-chairs would ask if any commissioner would like a vote. On these occasions, if no one asked for a vote, the Commission considered the recommendation adopted by unanimous consent.

During its meetings, the Commission had the benefit of advice from its *ex-officio* members. *Ex-officio* members could comment on any matter before the Commission and received all Commission communications. *Ex-officio* members had no vote at the Commission meetings. The Commission had two *ex-officio* members who were representatives of the U.S. Trustee Program and Internal Revenue Service. These two *ex-officio* members provided technical assistance and institutional perspectives but took no position on proposals before the Commission.

After each meeting, the Commission's reporter circulated meeting notes that the co-chairs had approved and that recorded the Commission's actions. Each commissioner also had access to a cloud storage space in which the reporter stored these notes and other Commission and committee materials. Throughout

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FINAL REPORT OF THE ABI COMMISSION ON CONSUMER BANKRUPTCY

the process, commissioners thus always had access to whatever information they might need about the Commission's work. The Commission finished its review of the committees' actions in December 2018.

Report Drafting and Final Approval. After the Commission had approved a recommendation, the reporter finalized the recommendation's language and prepared a narrative discussing the Commission's reasoning. The reporter then made the proposed recommendation and draft narrative available electronically to the commissioners for a minimum of three weeks. The commissioners could leave edits and remarks for the reporter and others to review. The reporter and co-chairs together considered the commissioners' edits and remarks and finalized the recommendation and narrative.

The reporter then made the final draft available electronically to all commissioners. The Commission then approved the final draft as a whole by a unanimous vote and instructed the reporter to transmit the report to the ABI for printing and distribution.

In issuing its final report, the Commission considers itself to have spoken as a law-reform group. The report and its recommendations do not necessarily represent the views of any individual. Readers of the report should not understand membership on the Commission or its committees as endorsement of any particular recommendation. The Commission worked toward consensus whenever possible, but consensus was not always possible. The Commission's discussions were respectful, professional, scholarly, and robust. The Commission structured itself so its final report would be the product of an iterative and deliberative process in which many different ideas were heard and considered. The recommendations that follow result from that process. It is likely no one will agree with all of them, but together, they represent the Commission's collective professional judgment about the best ways to improve the consumer bankruptcy system for all its stakeholders.

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PROPOSED AMENDMENTS TO THE FEDERAL
RULES OF BANKRUPTCY PROCEDURE¹

1 **Rule 2002. Notices to Creditors, Equity Security**
2 **Holders, Administrators in Foreign**
3 **Proceedings, Persons Against Whom**
4 **Provisional Relief is Sought in Ancillary**
5 **and Other Cross-Border Cases, United**
6 **States, and United States Trustee**

7 * * * * *

8 (f) OTHER NOTICES. Except as provided in
9 subdivision (l) of this rule, the clerk, or some other person as
10 the court may direct, shall give the debtor, all creditors, and
11 indenture trustees notice by mail of:

12 * * * * *

13 (7) entry of an order confirming a chapter 9, 11,
14 ~~or 12~~, or 13 plan;

15 * * * * *

16 (h) NOTICES TO CREDITORS WHOSE CLAIMS
17 ARE FILED. ~~In a chapter 7 case, after 90 days following~~

¹ New material is underlined in red; matter to be omitted is lined through.

2 FEDERAL RULES OF BANKRUPTCY PROCEDURE

18 ~~the first date set for the meeting of creditors under § 341 of~~
19 ~~the Code,~~

20 (1) *Voluntary Case.* In a voluntary chapter 7
21 case, chapter 12 case, or chapter 13 case, after 70 days
22 following the order for relief under that chapter or the
23 date of the order converting the case to chapter 12 or
24 chapter 13, the court may direct that all notices required
25 by subdivision (a) of this rule be mailed only to:

- 26 • the debtor,
- 27 • the trustee,
- 28 • all indenture trustees,
- 29 • creditors that hold claims for which proofs of
30 claim have been filed, and
- 31 • creditors, if any, that are still permitted to file
32 claims because an extension was granted
33 under Rule 3002(c)(1) or (c)(2).

34 (2) *Involuntary Case.* In an involuntary chapter

35 7 case, after 90 days following the order for relief under
36 that chapter, the court may direct that all notices
37 required by subdivision (a) of this rule be mailed only
38 to:

- 39 • the debtor,
- 40 • the trustee,
- 41 • all indenture trustees,
- 42 • creditors that hold claims for which proofs of
43 claim have been filed, and
- 44 • creditors, if any, that are still permitted to file
45 claims ~~by reason of~~ because an extension was
46 granted ~~pursuant to~~ under Rule 3002(c)(1) or
47 (c)(2).

48 (3) Insufficient Assets. In a case where notice of
49 insufficient assets to pay a dividend has been given to
50 creditors ~~pursuant to~~ under subdivision (e) of this rule,
51 after 90 days following the mailing of a notice of the

4 FEDERAL RULES OF BANKRUPTCY PROCEDURE

52 time for filing claims pursuant to under
53 Rule 3002(c)(5), the court may direct that notices be
54 mailed only to the entities specified in the preceding
55 sentence.

56 * * * * *

57 (k) NOTICES TO UNITED STATES TRUSTEE.

58 Unless the case is a chapter 9 municipality case or unless the
59 United States trustee requests otherwise, the clerk, or some
60 other person as the court may direct, shall transmit to the
61 United States trustee notice of the matters described in
62 subdivisions (a)(2), (a)(3), (a)(4), (a)(8), (a)(9), (b), (f)(1),
63 (f)(2), (f)(4), (f)(6), (f)(7), (f)(8), and (q) of this rule and
64 notice of hearings on all applications for compensation or
65 reimbursement of expenses.

66 * * * * *

Committee Note

Subdivision (f) is amended to add cases under chapter 13 of the Bankruptcy Code to paragraph (7).

Subdivision (h) is amended to add cases under chapters 12 and 13 of the Bankruptcy Code and to conform the time periods in the subdivision to the respective deadlines for filing proofs of claim under Rule 3002(c).

Subdivision (k) is amended to add a reference to subdivision (a)(9) of this rule. This change corresponds to the relocation of the deadline for objecting to confirmation of a chapter 13 plan from subdivision (b) to subdivision (a)(9). The rule thereby continues to require transmittal of notice of that deadline to the United States trustee.

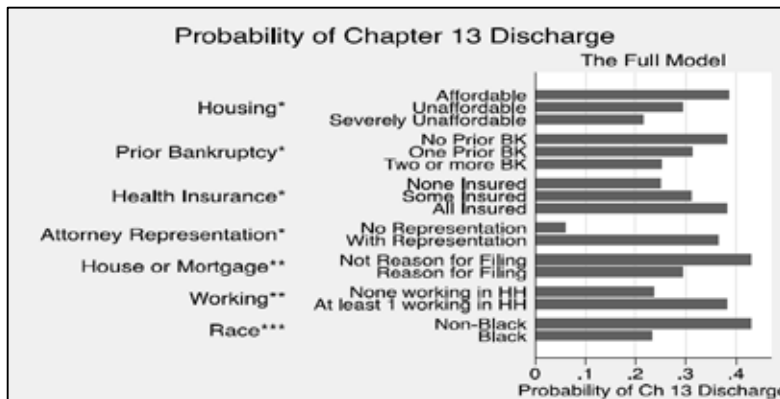
REVIEW: Sara S. Greene, Parina Patel, & Katherine Porter, *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, 101 Minnesota Law Review 1031 (2017).

Overview

Many have long believed that local legal culture accounts for plan failures in chapter 13 bankruptcy cases.¹ In their watershed article in the *Minnesota Law Review* entitled *Cracking the Code: An Empirical Analysis of Consumer Bankruptcy Outcomes*, Professors Greene, Patel, and Porter used the 2007 Consumer Bankruptcy Project (“CBP”) to study chapter 13 bankruptcy. The CBP is a random sample of households that filed for bankruptcy following the 2005 changes to consumer bankruptcy. The authors reject the notion that local legal culture eliminates the possibility to predict discharge on a nationwide scale. Instead, the authors posit that there are identifiable factors that more accurately predict case success. Local legal culture treats the problems that chapter 13 debtors suffer as individualized and geographically bound when, in actuality, the same subset of challenges affects debtors across district boundaries.

The authors found that debtors with both a high amount of unsecured debt and a household member participating in the labor market are two of the most influential predictors of bankruptcy success. In contrast, if a debtor files a chapter 13 bankruptcy in order to save their home, the likelihood of obtaining a discharge is much lower than those not trying to save their homes. African Americans are 17% less likely to receive a discharge than their non-African-American counterparts. Also, debtors with one or more minor children are 14% less likely to receive a discharge than those without minor children. Other key indicators that significantly improve outcomes are: affordability of housing, no prior bankruptcies, adequate health insurance coverage, and attorney representation.

The factors listed above are not traditionally identified by those trying to predict a filers’ discharge. The authors aim to “disrupt the idea that chapter 13 is impenetrably local and inexplicably varied;” they subscribe to the notion that chapter 13 reform can improve discharge rates. Indeed, the authors infer that the existing statutory structure may be part of the problem and not the putative inconsistent application thereof. While, local legal culture may partially explain success rates in chapter 13 cases, it cannot “obfuscate the measurable differences on debtor success.”



¹ Local legal culture is defined as the practice differences across districts. For example, judges in some districts always enter a wage order, while others only sparingly use the device.

Sampling of Statistics

- Mortgage debt makes up **74%** of all secured debt in that part of the sample that includes homeowners.
- A debtor with no prior bankruptcies has a **44%** chance of achieving discharge; one prior bankruptcy lowers that mark to **29%**, and two or more priors reduces it yet further to **17%**.
- An enormous **91.3%** of *pro se* cases were dismissed before confirmation, indicating that debtors in chapter 13 either need lawyers or a system better suited for *pro se* debtors.
- A household that filed for bankruptcy due to unaffordability of a rent or mortgage payment demonstrates only a **26%** likelihood of discharge.
- Households without health insurance coverage are **29% less likely** than insured counterparts to obtain discharge.

Summary of the Four Statistical Models

The authors used four different models to test their results—financial, demographic, system process, and household security. Each model included various independent variables that impacted the dependent variable, namely, a chapter 13 discharge. The independent variables are indicated in bold type.

1. Debtor Finances Model

The authors found that net household **income** is an insignificant predictor of discharge. But income *relative* to household expenses is obviously important and often reflects why debtors filed in the first place. The reason income reduces to irrelevance results from the chapter 13 requirement that debtors commit all disposable income to the plan. In sum, chapter 13 works for both lower- and higher-income households.

Another finding is that households with more **unsecured debt** are more likely to cross the finish line with a discharge. It is thought that they stand to gain much more than a debtor burdened primarily with secured debts. This is so inasmuch as unsecured debts can be discharged without full payment, whereas secured debts cannot. The benefit for those encumbered by the latter is the workout or catch-up options among others.

The inverse is also true -- a household with a high amount of **secured debt** is less likely to complete the chapter 13 plan. This finding is in tension with chapter 13 as a purported home-saving device. The study concludes that the workout or catch-up options are not robust enough to aid the distressed household in completing their chapter 13 plan. Indeed, the added burden of the chapter 13 plan for other debts can negatively impact a household that runs behind on a mortgage as the household may stop making chapter 13 plan payments to avoid losing their home.

One other factor that significantly aids discharge is **affordable housing**. The focus is on housing costs as a fraction of the debtor's income, rather than the traditional binary variable of homeownership. Affordability is more reliable because it reflects the burden on the household and indicates how potential income is left for unexpected expenses.

2. *Debtor Demographic Model*

Studying the demographics of court users is just as important as examining the legal processes they invoke. Past studies have shown that bankruptcy filers are often defined as middle class Americans. It is important, however, to ascertain the different social and personal markers that give rise to “middle class” status. The authors used CBP data to gather this demographic information inasmuch as official bankruptcy forms do not collect much of it. The demographic factors that were studied are: (1) marital status, (2) household age, (3) race, (4) education, (5) self-employment, (6) occupational prestige, and (7) the number of minor dependents.

There were 640 cases studied. The factor that stands out immediately is **race**. African-Americans debtors were 17% less likely to complete a chapter 13 bankruptcy than non-African-American debtors. The authors suggest that this could be caused by several factors including discrimination. Also, African-Americans have been shown in previous studies to be twice as likely to file under chapter 13 rather than chapter 7. The reasons are unclear, although there is speculation that they are steered into chapter 13 even though it does not fit their financial profile.

The next statistically significant characteristic is the **number of minor children** in the household. The more minor children in the household, the more likely there are going to be “financial shocks” in the form of unexpected medical problems or other challenges. None of these financial shocks are factored into a chapter 13 payment plan; their presence, however, alone or combined could hinder plan payment continuation.

The remaining factors—marriage, age, occupational prestige, and self-employment—were not found to be statistically significant.

3. *System Process Model*

The authors asked whether local legal culture might shoulder some of the blame for cross-district success. The variables used to study system processes were: (1) wage orders, (2) plan length, (3) prior bankruptcy filings, (4) mortgage payment plans, and (5) attorney representation. The authors hypothesized that factors increasing expert involvement and decreasing debtor’s discretion would improve completion rates. On the other hand, debtors with longer payment plans or more bankruptcy filings would be less likely to obtain a discharge.

The findings showed that the “cultural” aspects of bankruptcy, such as choices and preferences of local chapter 13 trustees and judges, have little influence on discharge. The study confirmed prior research that those with multiple bankruptcy filings and *pro se* filers are less likely to complete their plan when compared to those with no prior filings and those who have representation. So the two factors that make a significant difference are **past bankruptcies** and **attorney representation**. For example, a person with no prior bankruptcies has a 44% likelihood of discharge. With just one prior bankruptcy, the likelihood of success drops to 29%, and then down to just 17% if there are two prior bankruptcies.

4. *Household Security Model*

In this model, the authors examined whether the problems that resulted in filing correspondingly affected the debtors' abilities to complete their chapter 13 plans. The factors examined were household characteristics that affect financial security and the reasons why bankruptcy was filed. The important takeaway is that the factors that caused debtors to file bankruptcy are not reliable predictors of chapter 13 success.

The top three predictors are: (1) housing costs, (2) participation in the labor force, and (3) health insurance coverage. **Housing cost** is the most prominent predictor of chapter 13 success. As one might expect, it is not the size of the housing payment that matters but the percentage of monthly income that is being committed thereto. Active **membership in the labor force** also increases the likelihood of success. Households with at least one working adult were more likely to successfully complete chapter 13. The third factor is **health insurance coverage**. Although health insurance necessarily reduces household income, it also protects against large healthcare cost shocks to some degree. That increases the chance of completing the plan payments necessary for discharge.

Potential Role of the Legal Community Going Forward

Attorneys: Attorneys can might use the data to offer candid advice to their clients. They might also counsel their clients to take steps early in order to mitigate or change the factors that impair chances of reaching the finish line.

Judiciary: Judges can consider the proportion of income used to pay for housing and perhaps consider that factor in the process. They might also consider the possibility of a financial cushion, consistent with the Code, for unexpected expenses or shocks during plan life.

Legislature: Congress might permit a cushion fund to be earmarked by the trustee for unexpected expenses. This fund could ultimately redound to the benefit of the creditors if it is not used for emergency expenses. A requirement for attorney representation might also be considered for chapter 13 filers or, alternatively, the provision of clerical services to help *pro se* filers navigate the bankruptcy process.

Again, the reader is encouraged to read the reviewed article in its entirety as this synopsis only touches upon the information found therein. The article is available [here](#).

Just the Facts: Consumer Bankruptcy Filings, 2006-2017

Published on March 7, 2018

Just the Facts is a feature that highlights issues and trends in the Judiciary based on data collected by the Judiciary Data and Analysis Office (JDAO) of the Administrative Office of the U.S. Courts. Comments, questions, and suggestions can be sent to the [data team \(mailto:AODB_JDAO_datateam@ao.uscourts.gov\)](mailto:AODB_JDAO_datateam@ao.uscourts.gov).

Bankruptcy can provide a fresh financial start for consumers who cannot pay their debts, either because of insolvency or insufficient income to meet creditor demands. Bankruptcy generally works in one of two ways: liquidating assets to pay one's debts under Chapter 7 of the U.S. Bankruptcy Code, or establishing a repayment plan under Chapter 13 of the code.

Under a Chapter 7 liquidation, a debtor generally can achieve a fresh financial start more quickly than under a Chapter 13 repayment plan, which can last up to five years. However, under Chapter 13, a debtor may be able to save a home from foreclosure, reschedule secured debts and extend them over the life of a Chapter 13 plan (possibly lowering the payments), or consolidate debt payments to a trustee who then handles distribution to creditors.

- In the 12-year span from October 1, 2005 to September 30, 2017, about 12.8 million consumer bankruptcy petitions were filed in the federal courts. Of those, 8.7 million—68 percent—were filed under Chapter 7, and 4.1 million—32 percent—were filed under Chapter 13 (see [Table 1](#)). Nonbusiness filings (i.e., filings involving mainly consumer debt) constituted 97 percent of all Chapter 7 bankruptcies and 99 percent of all Chapter 13 bankruptcies.
- In 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), which among other things, instituted a means test for filers to move some away from filing for bankruptcy under Chapter 7 and towards filing under Chapter 13. The goal of the BAPCPA is to have petitioners in Chapter 13 devote disposable income over three to five years to pay unsecured creditors. A person may file for bankruptcy under Chapter 7 only if her or his monthly income over six months prior to filing for bankruptcy is below the state median for a similar household, or if the debtor's monthly disposable income falls below a threshold established by a statutory means test.
- Following the last recession (December 2007 to June 2009), overall bankruptcy filings peaked in 2010. Chapter 7 consumer bankruptcy filings have declined since 2010, (see [Chart 1](#)) and Chapter 13 filings have leveled off in the last few years (see [Chart 2](#)).
- The percentage of total filings that Chapter 7 filings accounted for has declined since 2010, whereas the percentage of total filings under Chapter 13 filings has increased (see [Chart 3](#)). We

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cannot say with certainty, however, that BAPCPA caused this phenomenon.

- [Table 2](#) shows the 25 federal judicial districts in which Chapter 13 consumer bankruptcy filings constituted the highest percentage of total consumer bankruptcy filings from 2006 to 2017. Of these districts, 23 (92%) are in southern states. [Map 1](#) also shows that the districts with the highest numbers of Chapter 13 consumer bankruptcies per 1,000 inhabitants were concentrated in the South.
- In 2016, the five states with the highest rates of Chapter 13 bankruptcy were Alabama (1 in 112 households), Tennessee (1 in 119), Georgia (1 in 135), Louisiana (1 in 179), and Mississippi (1 in 190). The state with the lowest rate was Alaska (1 in 4,359 households). Nationally, there was one Chapter 13 filing for every 405 households in 2016. (see [Table 3 \(/file/document/just-facts-consumer-bankruptcy-table-3\)](#)).

TABLE 1
NONBUSINESS BANKRUPTCY FILINGS BY YEAR

Fiscal Year	Total Nonbusiness Bankruptcies	Chapter 7 Nonbusiness Bankruptcies	Nonbusiness Chapter 7 Filings as a Percentage of Total Nonbusiness Filings	Chapter 13 Nonbusiness Bankruptcies	Chapter 13 Nonbusiness Filings as a Percentage of Total Nonbusiness Filings
2006	1,085,209	814,850	75.09%	269,699	24.85%
2007	775,344	467,248	60.26%	307,521	39.66%
2008	1,004,171	653,319	65.06%	350,015	34.86%
2009	1,344,095	949,002	70.61%	393,786	29.30%
2010	1,538,033	1,105,534	71.88%	430,583	28.00%
2011	1,417,326	1,001,813	70.68%	413,699	29.19%
2012	1,219,132	845,470	69.35%	372,132	30.52%
2013	1,072,807	730,592	68.10%	340,807	31.77%
2014	935,420	623,349	66.64%	310,914	33.24%
2015	835,197	533,572	63.89%	300,528	35.98%
2016	781,123	483,176	61.86%	296,824	38.00%
2017	767,721	472,135	61.50%	294,500	38.36%
TOTAL	12,775,578	8,680,060	67.94%	4,081,008	31.94%

Source: Table F-2 for the 12-month periods ending September 30, 2006 Through 2017.

Chart 1 – Monthly Chapter 7 Filings

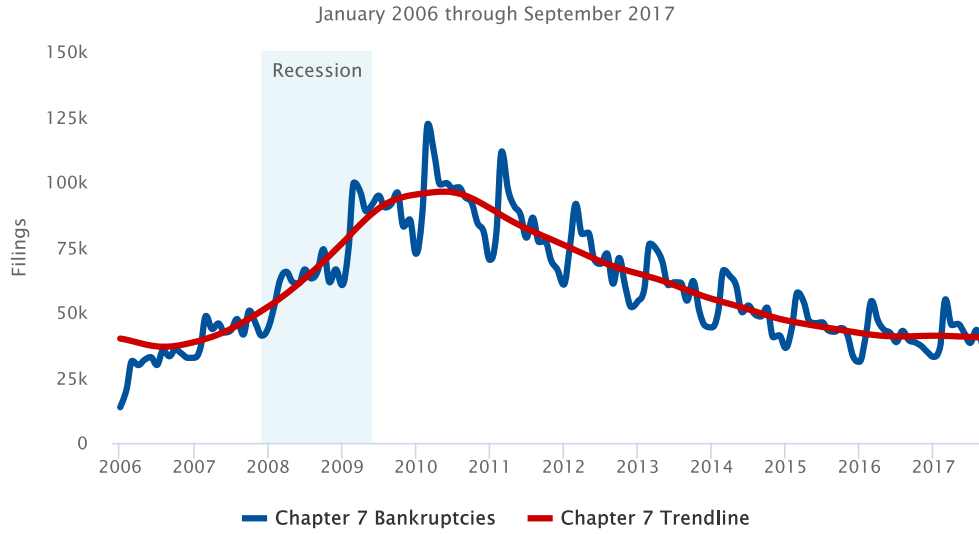


TABLE 2. NONBUSINESS BANKRUPTCY FILINGS IN 25 FEDERAL JUDICIAL DISTRICTS WHERE CHAPTER 13 FILINGS CONSTITUTED THE HIGHEST PERCENTAGE OF TOTAL NONBUSINESS FILINGS, FY 2006-2017

	District	Total Nonbusiness Filings	Total Nonbusiness Chapter 13 Filings	Percentage
1	Georgia, Southern	104,160	81,285	78.0%
2	Alabama, Middle	88,951	66,417	74.7%
3	Louisiana, Western	121,720	89,541	73.6%
4	Tennessee, Western	207,042	151,992	73.4%
5	Alabama, Southern	57,701	39,659	68.7%
6	Puerto Rico	117,500	76,763	65.3%
7	Georgia, Middle	120,307	77,022	64.0%
8	North Carolina, Eastern	101,163	64,543	63.8%
9	South Carolina	91,931	53,863	58.6%
10	Texas, Southern	142,263	81,862	57.5%

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11	Texas, Northern	182,979	101,877	55.7%
12	North Carolina, Middle	65,532	34,846	53.2%
13	Mississippi, Northern	64,654	34,052	52.7%
14	Alabama, Northern	187,511	98,408	52.5%
15	Arkansas, Eastern	95,974	50,163	52.3%
16	Texas, Eastern	69,983	34,389	49.1%
17	Texas, Western	119,132	57,107	47.9%
18	Louisiana, Eastern	43,624	20,161	46.2%
19	Mississippi, Southern	81,680	37,550	46.0%
20	Tennessee, Middle	132,518	59,440	44.9%
21	Georgia, Northern	467,406	208,131	44.5%
22	Louisiana, Middle	21,701	9,633	44.4%
23	Tennessee, Eastern	164,994	69,596	42.2%
24	Arkansas, Western	56,817	23,378	41.1%
25	Illinois, Southern	60,165	23,404	38.9%
Source: Table F-2 for the 12-month periods ending September 30, 2006 Through 2017.				

Chart 2 – Monthly Chapter 13 Filings



January 2006 through September 2017

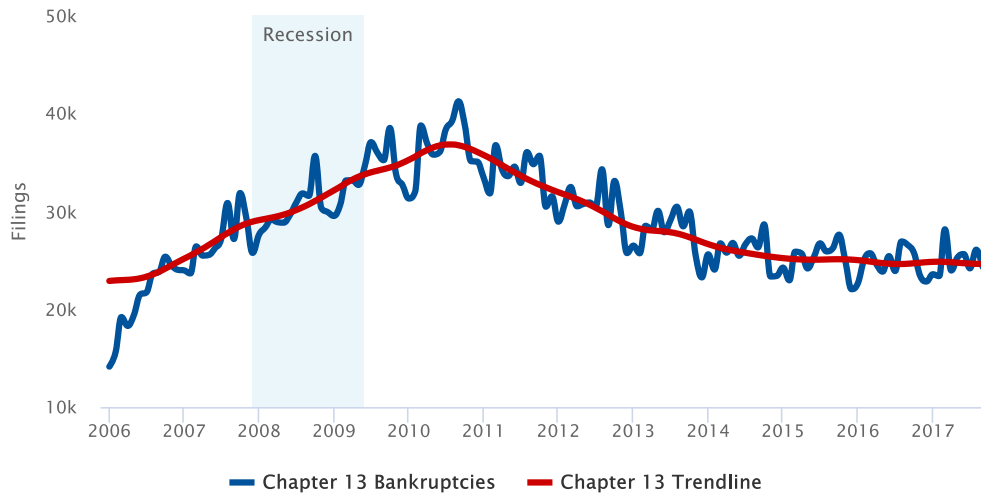
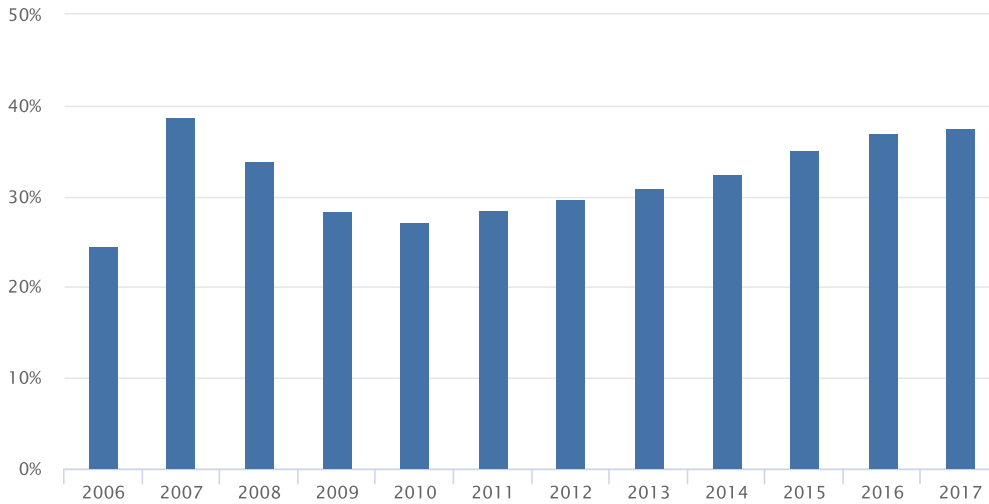


Chart 3 – Chapter 13 Bankruptcy Filings as a Proportion of All Bankruptcy Filings, FY 2006–2017



Map 1

2019 MID-ATLANTIC BANKRUPTCY WORKSHOP

6/11/2019

Just the Facts: Consumer Bankruptcy Filings, 2006-2017 | United States Courts

BANKRUPTCY COURTS--Chapter 13 Nonbusiness Bankruptcy Filings, per 1,000 of Population, by District, Years Ending December 31, 2006-2016

