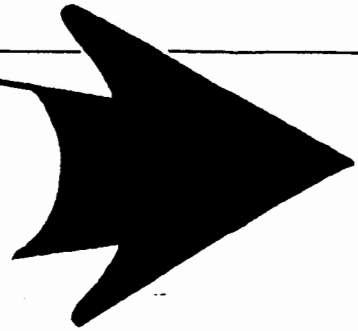


THE ARROW

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Part I of II:

Chapter 13 Bankruptcies – What Creditors Should Know

Chapter 13, or “wage earner,” bankruptcies are intended as an alternative to simple liquidation under Chapter 7 of the Bankruptcy Code. In a Chapter 13 proceeding, the debtor prepares a plan to pay his secured or unsecured debts.

Unlike in a Chapter 7 bankruptcy, creditors do not vote to confirm the plan. Rather, if the Bankruptcy Court determines that the plan conforms to the statutory requirements, the plan will be confirmed. The debtor is discharged upon completion of the payments under the plan. The purpose of this article is to provide creditors with some insight as to what they should look for when one of their debtors files for Chapter 13 protection.

A creditor is usually first made aware of a debtor’s Chapter 13 proceeding when it receives the bankruptcy notice which is mailed to all scheduled creditors. A copy of the debtor’s plan or plan summary should accompany the bankruptcy notice.

The plan should provide the creditor with the following information: (a) the length or duration of the

plan; (b) the amount the debtor proposes to pay the trustee each month to fund the plan; (c) the respective amounts of the debtor’s secured and unsecured debts that are to be paid within the Chapter 13 plan; (d) the amount that will be paid to unsecured creditors.

Objections to the proposed plan must be made prior to confirmation of the plan. While the practice varies from district to district, in the Western District of Kentucky confirmation hearings on Chapter 13 plans are conducted on the same day as the meeting of creditors. Once a plan is confirmed, unless a creditor can show fraud, nonpayment under the plan, or bad faith, the creditor’s rights are limited. Accordingly, it is important that a creditor decide early in the proceeding whether an objection to the plan must be made.

In reviewing a plan, a secured creditor will probably be most interested in the following:

(1) Is the secured claim to be paid within the plan? A debtor preparing a plan may decide to pay some of his debts outside of the plan. Usually, creditors paid outside of the plan will receive their regular contractual pay-

ments and interest rate. If the secured claim is to be paid outside the plan, the creditor should try to obtain a stipulation from the debtor’s attorney providing for automatic relief from the stay in the event the debtor defaults on the payments to be made outside the plan.

(2) Does the plan provide for payment of the secured claim at the contract rate, or at a reduced rate? A debtor may modify payment amounts on claims, including secured claims, except those claims secured only by a mortgage on the debtor’s principal residence. For example, a \$300.00 monthly car payment may be reduced to \$200.00 per month.

The debtor, however, may not reduce the payment of a secured claim to such an extent that the creditor is denied “adequate protection.” This means that if the value of the secured creditor’s collateral is depreciating, the debtor’s payments must be sufficient to insure that the debt is being reduced at a rate equal to or greater than the rate of depreciation in value of the collateral. If it does not, an objection to the plan should be filed.

(3) Does the plan indicate that the claim is over secured or under secured? If a plan indicates that a secured creditor’s claim is unsecured, that creditor will certainly want to object to the plan. If the plan indicates that a claim is only partially secured, the creditor will want to obtain the debtor’s bankruptcy petition to

review the values set forth therein for the collateral in question. If the debtor has improperly valued the collateral, the creditor will want to submit a request for a valuation hearing. (Continued next month.)

Editor's Note: Although this article uses the popular expressions "inside the plan" and "outside the plan" to describe how payments go to creditors, these terms are somewhat loose. Remember that a Chapter 13 debtor makes all payments *pursuant* to the plan; it is only the *method* of payment that varies. The trustee receives payments made "inside" the plan; payments "outside" go directly to creditors.

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