RECENT DEVELOPMENTS

BANKRUPTCY: SOCIAL SECURITY BENEFICIARY MAY QUALIFY FOR USE OF WAGE-EARNER PLAN

IN *In Re Bradford*,[1] the United States District Court for the Northern District of Alabama recognized an expansion of the class of persons who may utilize the Bankruptcy Act's wage-earners' plans,[2] holding that social security benefits are "income derived from wages" within the statutory definition of "wage-earner."[3] During the course of a proceeding brought pursuant to the Act,[4] John Bradford, Jr., filed a petition with the district court seeking an extended period of time in which to pay his debts. The evidence indicated that Bradford had worked for wages throughout his adult life, had never owned nor managed a business, had never depended upon investment or property income, and since retirement had lived solely on social security benefits of sixty-four dollars per month and a twenty-one dollar per month state pension. The debts which he had incurred were personal loans, typical of those commonly made by small loan companies to persons of limited financial means. Despite Bradford's modest income, there was no evidence that his proposed wage-earner plan was likely to fail. A majority of his thirteen creditors, both in number and in amount, approved the plan; but one firm objected, arguing that Bradford was not a "wage-earner" within the ambit of the statute. The appointed referee in bankruptcy rejected this contention and entered an order approving the plan submitted by Bradford. Upon petition for review by the dissenting creditor, the district court affirmed the decision, emphasizing that both public policy and legislative intent favored the use of the wage-earner plan to pay debts, rather than a procedure in straight bankruptcy to discharge them.[5]

Under the present wage-earner plan, a debtor "whose principal income is derived from wages, salary or commissions,"[6] and who is

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[1] 268 F. Supp. 896 (N.D. Ala. 1967).

[2] Bankruptcy Act §§601-86, 11 U.S.C. §§ 1001-86 (1964).

[3] *Id.* § 606 (8), 11 U.S.C. § 1006 (8) ("an individual whose principal income is derived from wages, salary or commissions.").

[4] *See id.* §§ 621-24, 11 U.S.C. §§ 1021-24.

[5] 268 F. Supp. at 897.

[6] Bankruptcy Act § 606 (8), 11 U.S.C. § 1006 (8) (1964).

insolvent or unable to meet maturing obligations,[7] is eligible to file in the United States District Court, for a nominal fee,[8] a petition proposing an extension and/or composition of his debts.[9] Thereafter, an appointed referee in bankruptcy, or the court,[10] holds a meeting of the debtor and his creditors to evaluate both the plan which the debtor submits and the creditors' claims.[11] If all "affected" creditors accept the plan, the referee, acting for the court,[12] confirms the plan without further inquiry[13] and appoints a trustee to administer it under court control.[14] If an affected creditor does not accept the proposed plan, however, the debtor must apply for confirmation,[15] for which he is eligible if the plan has been accepted by a majority, both in number and in amount, of his unsecured creditors and by all of his secured creditors whose claims are "dealt with" by the plan.[16] After review, the referee will grant confirmation if the plan is in the best interests of the creditors, is feasible, and is submitted in good faith and in conformity with other statutory provisions.[17] As an exercise of a judicial function, the referee's determination is always subject to review,[18] initially by the district court.[19] If a confirmation is not appealed or is affirmed on review, the original confirming court retains exclusive supervisory jurisdiction over the debtor's property and income during the life of the plan,[20] which may extend to three years.[21] Upon completion of the required installment payments, the court must discharge the debtor;[22] and it may discharge him at the expiration of three years even if the plan is incomplete where failure is attributable to "circumstances for which the debtor could not justly be held accountable."[23]

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[7] *Id.* § 623, 11 U.S.C. § 1023.
[8] *Id.* § 633, 11 U.S.C. § 1033 ("payment . . . not to exceed $15").
[9] *See id.* §§ 612, 2 (a) (1), 621-22, 11 U.S.C. §§ 1012, 11 (a) (1), 1021-22.
[10] *Id.* § 631, 11 U.S.C. § 1031 (unless judge otherwise directs, clerk to refer proceeding to referee).
[11] *Id.* §§ 632-33, 11 U.S.C. §§ 1032-33.
[12] *See id.* § 1 (9), 11 U.S.C. § 1 (9).
[13] *Id.* § 651, 11 U.S.C. § 1051.
[14] Bankruptcy Act § 633 (4), 11 U.S.C. § 1033 (4) (1964).
[15] *Id.* § 652, 11 U.S.C. § 1052.
[16] *Id.* § 652 (1), 11 U.S.C. § 1052 (1).
[17] *Id.* § 656, 11 U.S.C. § 1056.
[18] Weidhorn v. Levy, 253 U.S. 268 (1920); Bankruptcy Act § 38, 11 U.S.C. § 66 (1964).
[19] Bankruptcy Act §§ 1 (10), 2 (a) (10), 11 U.S.C. §§ 1 (10), 11 (a) (10) (1964).
[20] *Id.* §§ 611, 658, 11 U.S.C. §§ 1011, 1058.
[21] *See id.* § 661, 11 U.S.C. § 1061.
[22] *Id.* § 660, 11 U.S.C. § 1060.
[23] *Id.* § 661, 11 U.S.C. § 1061.

Studies have shown that the great majority of wage-earner plans function properly, and significantly increase a creditor's recovery above that which he might reasonably expect if a debtor were to to be subjected to straight bankruptcy.[24] Furthermore, although straight bankruptcy has a superficial and often ephemeral advantage in its total discharge of debts, the wage-earner plan is thought to have an instructive, rehabilitative effect on the individual debtor with concomitant social benefits, *i.e.*, teaching him the necessity and means of proper conduct of his financial affairs and protecting him from the loss of necessities by garnishment or attachment.[25] Despite its advantages, however, the wage-earner plan has not yet met extensive utilization,[26] though commentators and Congress have urged a more widespread usage in appropriate cases.[27] This attitude has resulted in expansion of the class entitled to utilize the procedure through periodic congressional addition to the permitted maximum income precedent to use of the plan.[28] In its most recent amendment to the wage-earner plan, Congress redefined "wage-earner" to eliminate monetary qualifications and changed the phrasing from "one who works" to "one whose principal income is derived from wages."[29] The committee reports articulated no reason for the apparent relaxation of the standard;[30] but the new wording, coupled with the clear congressional intent to foster greater use of the plan, has led some referees to approve wage-earner plans contemplating payment from friends, unemployment compensation, and retirement benefits.[31]

[24] *E.g.*, Dolphin, *The Economic Feasibility of Chapter XIII*, 20 BUS. LAWYER 477, 479 (1965); Hilliard & Hurt, *Wage Earner Plans under Chapter XIII of the Bankruptcy Act*, 19 BUS. LAWYER 271, 272 (1963); McDuffee, *The Wage Earner's Plan in Practice*, 15 VAND. L. REV. 173, 188 (1961); Comment, *The Wage Earner Plan—A Superior Alternative to Straight Bankruptcy*, 9 UTAH L. REV. 730, 736 (1965) [hereinafter cited as 9 UTAH L. REV. 730 (1965)].

[25] *E.g.*, Hilliard & Hurt, *supra* note 24, at 273-74; 9 UTAH L. REV. 730, 737 (1965).

[26] *E.g.*, Comment, 45 MARQUETTE L. REV. 582, 583 (1962); 9 UTAH L. REV. 730, 743 (1965); 64 W. VA. L. REV. 217, 218 (1962).

[27] *E.g.*, S. REP. No. 179, 86th Cong., 1st Sess. (1959); H.R. REP. No. 193, 86th Cong., 1st Sess. (1959); Hilliard & Hurt, *supra* note 24; 9 UTAH L. REV. 730 (1965); 64 W. VA. L. REV. 217 (1962). *But see* Walker, *Is Chapter XIII a Milestone on the Path to the Welfare State?*, 33 REF. J. 7 (1959).

[28] Bankruptcy Act § 606 (8), 11 U.S.C. § 1006 (8) (1964), *formerly* 64 Stat. 1134 (1950), *amending* 52 Stat. 930 (1938).

[29] *Id.*

[30] *See* S. REP. No. 179, 86th Cong., 1st Sess. (1959); H.R. REP. No. 193, 86th Cong., 1st Sess. (1959).

[31] *See* O'Neill, *Wage Earner's Plan*, in PROCEEDINGS OF THIRD SEMINAR FOR REFEREES IN BANKRUPTCY 399, 404 (1966); O'Neill, *Wage Earner's Plan*, in PROCEEDINGS OF SECOND SEMINAR FOR REFEREES IN BANKRUPTCY 433, 437 (1965).

Adopting this expansive approach, the referee in *Bradford* confirmed the retired debtor's plan for an extension of his debt payments, concluding that he was a "wage-earner" within the purview of the Act. On appeal, an examination of the historical development of the wage-earner plan convinced the district court of a continuing intent to promote the availability of the plan.[32] The court observed that in *Perry v. Commerce Loan Company*[33] the Supreme Court had also expressed an underlying policy of encouragement of wage-earner plans, lending support to a liberal interpretation of the Act in order to effectuate its beneficial purposes.[34] Furthermore, the court noted that petitioner's submission of stricter definitions of "wage-earner" from cases dealing with the statutory exemption from involuntary bankruptcy was unavailing, since the latest amendment to the wage-earner plan had significantly altered the statutory language.[35] Emphasizing the amended wording, the court held that since social security and other retirement benefits are financed largely by employee contributions which would otherwise have been received as wages or salary, such benefits are "income derived from wages" within the meaning of section 606 (8) of the Bankruptcy Act.[36] A contrary definition, the court concluded, would be an irrational denial of relief to a significant portion of the population which, although now retired, had always worked for a living.

It is generally accepted that the wage-earner procedure is beneficial to the individual debtor, his creditors, and society, and that former wage-earners should be able to take advantage of this demonstrably superior alternative to straight bankruptcy. Since no minimum financial requirement limits the use of the wage-earner plan, and since social security and other retirement benefits are at least as regular as wages, no reasonable basis exists for distinguishing between persons actively employed and those retired in the determination of the availability of the plan. However, because the income of pensioners and social security recipients would generally be substantially less than that of a typical wage-earner, close scrutiny of the feasibility of a plan presented by such a petitioner

[32] 268 F. Supp. at 897-98.
[33] 383 U.S. 392 (1966).
[34] 268 F. Supp. at 898.
[35] *Compare* Bankruptcy Act § 1 (32), 11 U.S.C. § 1 (32), *with* Bankruptcy Act § 606 (8), 11 U.S.C. § 1006 (8) (1964).
[36] 268 F. Supp. at 899.

seems necessary. Although there was no indication in the instant case that the plan was impracticable, the debtor's income was only eighty-five dollars per month—a figure suggesting that the debtor could find it difficult to meet both the installment payments and his normal living expenses. Also to be considered is whether a plan is sought merely to delay a straight bankruptcy, to which a debtor may convert his plan without penalty.[37] Such caveats apply equally, however, to all petitions for a wage-earner proceeding and are not reasons to prohibit appropriate use of the plan in cases of retirement beneficiaries. With conscientious analysis in each case of the relevant factors—interests of the parties, good faith, and feasibility—the wage-earner plan should be as beneficial to retired persons as it has proved to be for active wage-earners.

[37] Bankruptcy Act § 666, 11 U.S.C. § 1066 (1964).