APPENDIX SSS

APPENDIX E

MODEL CHAPTER 13 PLAN

The Revised Model Chapter 13 Plan that follows was drafted by groups of dedicated bankruptcy professionals as an exercise at Advanced Consumer Bankruptcy Practice Institutes sponsored by the National Association of Chapter 13 Trustees in San Juan, Puerto Rico, in July 2002 and in Chicago, Illinois, in July 2003. The Discussion Paper that follows the form makes arguments in favor of the Model Plan and invites action by the Judicial Conference and by individual courts.

UNITED STATES BANKRUPTCY COURT
_____ DISTRICT OF _____

IN RE: CASE NO.:
CHAPTER 13

SSN: X X X X X __ __ __ __

CHAPTER 13 PLAN AND MOTIONS

☐ Original ☐ Amended Date_____

YOUR RIGHTS WILL BE AFFECTED. You should read these papers carefully and discuss them with your attorney. Anyone who wishes to oppose any provision of this plan or any motion included below must file a timely written objection. This plan may be confirmed and the motions included below may be granted without further notice or hearing unless written objection is filed before the deadline stated on the separate Notice you should have received from the bankruptcy court. If you have a secured claim, this is notice that your lien may be voided or modified if you do not object to this plan.

THIS PLAN DOES NOT ALLOW CLAIMS. You must file a proof of claim to be paid under any plan that may be confirmed.

1. PAYMENT AND LENGTH OF PLAN

(a) Debtor shall pay $_____ per _____ to the Chapter 13 Trustee starting _____for approximately _____ months.

☐ A payroll deduction order will issue to the Debtor's employer:

☐ Debtor will pay directly to the trustee. _____
_____
_____
(Name & address of employer)

(b) Joint Debtor shall pay $_____ per _____ to the Chapter 13 Trustee starting _____ for approximately _____ months.

☐ A payroll deduction order will issue to the Joint Debtor's employer:

☐ Joint Debtor will pay directly to the trustee. _____
_____
_____
(Name & address of employer)

(c) Other payments to trustee: _____

(d) Total amount to be paid to Trustee shall be not less than $_____.

2. PRIORITY CLAIMS (INCLUDING ADMINISTRATIVE EXPENSES AND SUPPORT)

All allowed priority claims will be paid in full unless creditor agrees otherwise:

Creditor	Type of Priority	Scheduled Amount
<Filing Fees>		
<Debtor's Attorney>		

3. SECURED CLAIMS; MOTIONS TO VALUE COLLATERAL AND VOID LIENS UNDER 11 U.S.C. § 506

(a) Debtor moves to value collateral as indicated in the "value" column immediately below. Trustee shall pay allowed secured claims the value indicated or the amount of the claim, whichever is less. The portion of any allowed claim that exceeds the value indicated shall be treated as an unsecured claim. Debtor moves to void the lien of any creditor with "NO VALUE" specified below.

Creditor	Collateral	Scheduled Debt	Value	Interest Rate	Monthly Pmt.

(b) Debtor surrenders or abandons the following collateral. Upon confirmation, the stay is lifted as to surrendered or abandoned collateral.

Creditor	Collateral to be Surrendered or Abandoned

4. UNSECURED CLAIMS

(a) **Not Separately Classified.** Allowed non-priority unsecured claims shall be paid:

☐ Not less than $_____ to be distributed pro rata.
☐ Not less than _____ percent.
☐ Other: _____

(b) **Separately Classified Unsecured Claims**

Creditor	Basis for Classification	Treatment	Amount

5. CURING DEFAULT AND MAINTAINING PAYMENTS

(a) Trustee shall pay allowed claims for arrearages, and Trustee shall pay regular postpetition contract payments to these creditors:

Creditor	Collateral or Type of Debt	Estimated Arrearage	Interest Rate (Arrearage)	Monthly Arrearage Payment	Regular Monthly Payment

(b) Trustee shall pay allowed claims for arrearages, and Debtor shall pay regular postpetition contract payments directly to these creditors:

Creditor	Collateral or Type of Debt	Estimated Arrearage	Interest Rate (Arrearage)	Monthly Arrearage Payment	Regular Monthly Payment

6. EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Executory contracts and unexpired leases are assumed or rejected as follows:

Creditor/Lessor	Property Description	Assume	Reject
		☐	☐

7. OTHER PLAN PROVISIONS AND MOTIONS

(a) Motion to Avoid Liens under 11 U.S.C. § 522(f). Debtor moves to avoid the following liens that impair exemptions:

Creditor	Collateral	Amount of Lien to be Avoided

(b) Lien Retention. Except as provided above in Section 5, allowed secured claim holders retain liens until:

☐ Liens are released at discharge.

☐ Liens are released upon payment of allowed secured claims as provided above in Section 3.

☐ Liens are released upon completion of all payments under the plan.

(c) Vesting of Property of the Estate. Property of the estate shall revest in Debtor:

☐ Upon confirmation. ☐ Upon discharge. ☐ Other: _____

(d) Payment Notices. Creditors and lessors provided for above in Sections 5 or 6 may continue to mail customary notices or coupons to the Debtor or Trustee notwithstanding the automatic stay.

(e) Order of Distribution. Trustee shall pay allowed claims in the following order:

(1) _____

(2) _____

(3) _____

(4) _____

(5) _____

Signed: _____

Attorney for Debtor (or Debtor(s)
if not represented by an attorney)

DISCUSSION PAPER: REVISED MODEL CHAPTER 13 PLAN FORM

SUMMARY

I. THE ABSENCE OF AN OFFICIAL FORM FOR THE CHAPTER 13 PLAN HAS: 1) IMMENSELY COMPLICATED THE ADMINISTRATION OF CHAPTER 13 CASES; 2) CONTRIBUTED GREATLY TO THE DESTRUCTIVE LACK OF UNIFORMITY IN CHAPTER 13 PRACTICE; 3) PROMOTED INCONSISTENT OUTCOMES IN CHAPTER 13 CASES WITHIN AND ACROSS DISTRICTS; 4) ENCOURAGED CREDITOR OPPOSITION TO CHAPTER 13; 5) FOSTERED MISGUIDED GAME PLAYING BY DEBTORS' ATTORNEYS; AND 6) BROADLY FRUSTRATED THE GOALS OF INDIVIDUAL DEBTOR REHABILITATION.

A. The absence of an Official Form for the Chapter 13 plan has compelled local legal cultures to produce an anarchy of forms.

B. Adequate notice of the content of the Chapter 13 plan is a casualty of the diversity of plan forms.

C. Local and national creditors are confused, misled and put to great unnecessary expense by the diversity of plan forms; a national form for the plan would create efficiency and reduce the cost of Chapter 13 for creditors, bankruptcy courts and Chapter 13 trustees.

II. DESPITE THE GREAT VARIETY OF FORMS IN USE, THE CONTENT OF CHAPTER 13 PLANS IS FINITE AND PREDICTABLE; THE 2003 REVISED MODEL PLAN DEVELOPED AT INSTITUTES SPONSORED BY THE NATIONAL ASSOCIATION OF CHAPTER 13 TRUSTEES REPRESENTS A CONSENSUS WITH RESPECT TO A NATIONAL FORM FOR PRESENTING THAT CONTENT.

III. THE ADVISORY COMMITTEE ON BANKRUPTCY RULES SHOULD PROMULGATE AN OFFICIAL FORM FOR THE CHAPTER 13 PLAN; THE 2003 REVISED MODEL PLAN SHOULD BE THE WORKING DRAFT FOR THAT OFFICIAL FORM.

IV. IN THE ABSENCE OF ACTION BY THE JUDICIAL CONFERENCE, INDIVIDUAL BANKRUPTCY COURTS SHOULD BE ENCOURAGED TO ADOPT THE 2003 REVISED MODEL PLAN AS A LOCAL FORM PURSUANT TO BANKRUPTCY RULE 9029.

DISCUSSION

I. THE ABSENCE OF AN OFFICIAL FORM FOR THE CHAPTER 13 PLAN HAS: 1) IMMENSELY COMPLICATED THE ADMINISTRATION OF CHAPTER 13 CASES; 2) CONTRIBUTED GREATLY TO THE DESTRUCTIVE LACK OF UNIFORMITY IN CHAPTER 13 PRACTICE; 3) PROMOTED INCONSISTENT OUTCOMES IN CHAPTER 13 CASES WITHIN AND ACROSS DISTRICTS; 4) ENCOURAGED CREDITOR OPPOSITION TO CHAPTER 13; 5) FOSTERED MISGUIDED GAME PLAYING BY DEBTORS' ATTORNEYS; AND 6) BROADLY FRUSTRATED THE GOALS OF INDIVIDUAL DEBTOR REHABILITATION.

A. The absence of an Official Form for the Chapter 13 plan has compelled local legal cultures to produce an anarchy of forms.

There were 473,763 Chapter 13 cases filed in the 12 months ending September 30, 2003. In every one of those cases, § 1321 of the Code and Bankruptcy Rule 3015 required the debtor to file a Chapter 13 plan with the petition or within 15 days. Bankruptcy Rule 3015(d) then mandates, "[T]he plan or a summary of the plan shall be included with each notice of the hearing on confirmation."

Chapter 13 cases are different than other forms of reorganization. Unlike Chapter 11, in Chapter 13 there is no disclosure statement, there is no voting by creditors and the time and opportunity for advocacy is very limited. For most creditors, the Chapter 13 plan itself is the fundamental source of information. Creditors typically don't get involved in Chapter 13 cases except to file a proof of claim and to object to a plan provision that adversely affects them.

There is no Official Form for the Chapter 13 plan. Ironically, although the plan is arguably the most important document in a Chapter 13 case, it is the only document required by the Bankruptcy Code in every Chapter 13 case for which there is no Official Form.[1]

Existing packets of bankruptcy forms available from commercial printers sometimes contain a page designated as the "plan"; some publishers provide neither a separate form nor space for anything that might be denominated as the Chapter 13 plan.

There are more than 200 Chapter 13 programs. There are approximately 225 standing Chapter 13 trustees serving pursuant to 11 U.S.C. § 1302 and 28 U.S.C. § 586. In 1994–95, a survey was conducted of all judicial districts to collect local forms in Chapter 13 cases. More than 180 Chapter 13 trustees responded.[2] The data from this study show:

1. By local rule, general order or less formal local practice, some courts require or prefer a specific form for the Chapter 13 plan within the district.[3] Within some judicial districts,

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1 Contrast the other required documents such as schedules, 11 U.S.C. § 521(1), *see* Official Form 6, and the Statement of Financial Affairs, 11 U.S.C. § 521(1), *see* Official Form 7.

2 *See* Lundin, CHAPTER 13 PRACTICE GUIDE (John Wiley & Sons 1995).

3 *See, e.g., In re Stewart,* 290 B.R. 302 (Bankr. E.D. Mich. 2003) (Model Chapter 13 Plan for use in the district); *In re Sounakhene,* 249 B.R. 801 (Bankr. S.D. Cal. 2000) ("The debtors utilized the 'Chapter 13 (mandated form)' although the form is not, in fact, mandated

different bankruptcy judges require or prefer different forms for the Chapter 13 plan. There is no uniformity within districts or from one district to another with respect to these required or preferred forms for the Chapter 13 plan.

2. In districts where the bankruptcy judges have not identified a required or preferred Chapter 13 plan, many standing Chapter 13 trustees have a preferred or required form for the Chapter 13 plan. These trustee forms are typically available by request from the office of the standing trustee or by inquiry to an experienced local bankruptcy attorney. In districts with multiple standing Chapter 13 trustees, the preferred or required plan forms are not always the same from one trustee to the next. There is no consistency in the forms required or preferred by standing trustees from one judicial district to the next.

3. The plan forms required or preferred by local rules or local culture vary in every imaginable aspect. Some are as short as the front of a single piece of paper; others are as long as 14 single-spaced pages. There is no consistency or logic of organization. The treatment of secured creditors may appear on the first page of one form and on the last page of another. Some forms quote Code sections and Bankruptcy Rules; others restate provisions of the Code or Rules without citation or explanation. Some forms include motions, for example, to value collateral or avoid liens.

4. Many Chapter 13 plan forms contain shorthand and coded expressions that can be translated only by an expert in local Chapter 13 practice. The words used to describe key elements of the content of the Chapter 13 plan are different from one form to the next.[4] When the same words are used, the words often mean different things from plan to plan and from district to district.[5] These differences in words and meanings are often fundamental to the effect of the

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by the judges of this district."); *In re Barton,* 249 B.R. 561 (Bankr. E.D. Wash. 2000) (Court required form for Chapter 13 plan.); *In re McNichols,* 249 B.R. 160 (Bankr. N.D. Ill. 2000) ("Model Form Chapter 13 Plan . . . is available from the court's website."); *In re Walat,* 87 B.R. 408 (Bankr. E.D. Va. 1988) (Local bankruptcy rule requires Chapter 13 plans to conform to an approved form.).

[4] *See, e.g., In re Jones,* 271 B.R. 397 (Bankr. S.D. Ala. 2000) (Confirmed plan stated the value of collateral as "grossed up." This phrase was intended to mean that the value of collateral stated in the plan included all of the interest the debtor proposed to pay during the five-year life of the plan. Neither the creditor involved nor the Chapter 13 trustee precisely understood the meaning intended by the debtor.).

[5] For example, in *In re Abrams,* 305 B.R. 920, 922 (Bankr. S.D. Ala. 2002), the plan called for a "preference" payment to a secured claim holder. As the bankruptcy court explained, in the Southern District of Alabama a "preference" payment in a Chapter 13 plan means the payment of a specified amount each month to a secured creditor. "Preference" has an altogether different meaning for most bankruptcy practitioners. The bankruptcy court in *Abrams* explained that it is "the chapter 13 trustee's practice . . . to pay priority claims first, then preference claims, then after preference claims are paid, other secured claims being paid pro rata without a preference, and then unsecured claims." This ambiguous use of the word "preference" to mean something different than "priority" and to actually describe a second position in the distribution scheme is the sort of hidden meaning in a Chapter 13 plan that

plan on creditors.[6]

5. Diversity in the size and typeface render some plans readable and others not readable. Some Chapter 13 plan forms are easily reproduced by commercial copying equipment, other forms are not easily copied because of the size of type, the absence of uniform margins, the use of unusual lines and characters and other physical attributes.

At the 2002 Advanced Consumer Bankruptcy Practice Institute sponsored by the National Association of Chapter 13 Trustees, more than 200 different forms for the Chapter 13 plan were collected by practitioners from across the country. The diversity, complexity, inconsistency and problems identified in the 1995 survey data were confirmed by the hundreds of forms collected at the 2002 Institute. One general counsel for a national creditor remarked that her "library" of Chapter 13 plans contained more than 225 different forms and it took her six months to train each new paralegal to figure out the treatment of her creditor under the various forms of the plan they received.

B. Adequate notice of the content of the Chapter 13 plan is a casualty of the diversity of plan forms.

The requirement in Bankruptcy Rule 3015(d) that the plan or a summary of the plan be included with each notice of the hearing on confirmation is immensely complicated by the diversity of Chapter 13 plan forms. The diversity and length of plan forms make copying and mailing of the plan itself impracticable in most districts and in most cases. A summary of the content of the plan simply isn't always a good substitute for a copy of the plan itself.

In some districts, notice of the confirmation hearing together with the plan or plan summary is prepared by the clerk of the bankruptcy court. In other districts, the Rule 3015(d) responsibility is carried out by the standing Chapter 13 trustee. In still other districts, the debtor's attorney prepares the notice together with the plan or summary of the plan.

In some districts, the plan itself is copied and included with the notice of the hearing on confirmation. In other districts, a summary of the plan—sometimes confined to a few words or sentences; sometimes as long as a page—is prepared by the bankruptcy court clerk, by the standing Chapter 13 trustee or by debtor's counsel depending on to whom the noticing responsibility is assigned. Sometimes the decision whether to send the plan itself or a summary of the plan is exercised on a case-by-case basis by the trustee, debtor's counsel or by the clerk of the bankruptcy

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creditors' representatives can't begin to know without long and costly experience.

[6] For example, sometimes the word "base" or the word "pot" is used in a Chapter 13 plan form to describe to the initiated a plan in which the debtor will pay to the trustee a predetermined amount of money based on monthly contributions for a specified number of months. Sometimes the base or pot is "net" of amounts that will be paid to secured claim holders; sometimes the pot includes all payments to the trustee without regard to whom the money will be distributed. Sometimes use of the word "pot" or "base" also includes a requirement that a minimum percentage of allowed unsecured claims must be paid by the debtor before the plan is completed. Sometimes the base amount and the percentage amount are stated together; sometimes they are physically separated by paragraphs or pages within the plan.

court depending on the length and complexity of the particular plan form. Sometimes the summary of the plan is a summary of the entire plan including the treatment of all classes of creditors; other times, the summary of the plan is specific to the treatment of the creditor to whom the notice is sent.

The enormous diversity in forms for the Chapter 13 plan creates terrible problems of translation and summarization with respect to notices to creditors. In some districts, standing Chapter 13 trustees must train employees to summarize the content of dozens of different Chapter 13 plan forms. The quality of notice depends entirely on finding and summarizing plan provisions spread out in forms that vary in all of the ways described above.

Reported decisions confirm that the imprecise process of summarizing diverse Chapter 13 plans works to the prejudice of creditors and adds layers of complication and expense to the management of Chapter 13 cases.[7] Many of the appellate court decisions disrespecting the binding effect of confirmation of Chapter 13 plans lament the poor quality of the information in the debtors' plans and the inadequacy of notice to creditors that resulted.[8]

C. Local and national creditors are confused, misled and put to great unnecessary expense by the diversity of plan forms; a national form for the plan would create efficiency and reduce the cost of Chapter 13 for creditors, bankruptcy courts and Chapter 13 trustees.

Notices in Chapter 13 cases go everywhere—to local creditors within the district and to national creditors with centralized shops for processing Chapter 13 cases from across the country. Some notices are handled in Chapter 13 cases by creditors that are not sophisticated and that do not routinely use attorneys.

Most of the important decisions that creditors make in Chapter 13 cases are triggered by the content of the plan. For example, a secured claim holder's decision whether to accept the plan or object to confirmation typically turns on the value assigned to its collateral, the interest rate the debtor proposes to pay and the amount of the monthly payment the creditor can expect. The need for this information and the role of this information in the creditor's decision-making process do not vary from one judicial district to the next. Unfortunately, communication of this key information does vary dramatically from one case to the next and from one district to the next because enormous variations in plan forms impact the collection, summarization and noticing of information in Chapter 13 cases.

At the Advanced Consumer Bankruptcy Practice Institute in San Juan, Puerto Rico, in July 2002, sponsored by the National Association of Chapter 13 Trustees, 50 bankruptcy professionals from across the country representing creditors, debtors and trustees spent many hours in small group discussions of the diversity of Chapter 13 plans. The general counsel of several major creditors were

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7 *See, e.g., In re Harvey,* 213 F.3d 318 (7th Cir. 2000) ("Long form" of plan did not convey precisely the same information as single page "short form" used to give notice to GMAC; ambiguity between long form and short form was creditor's risk.).

8 *See, e.g., Deutchman v. IRS (In re Deutchman),* 192 F.3d 457 (4th Cir. 1999) (Chapter 13 plan cannot limit IRS lien "by merely camouflaging" the IRS's treatment; conflicting information in plan "is equivalent to no notice at all."); *Shook v. CBIC (In re Shook),* 278 B.R. 815 (B.A.P. 9th Cir. 2002) (Chapter 13 plan can determine value and avoid liens "only if the creditor receives clear notice that the plan will do so." Plan that listed a judgment lien creditor as unsecured did not provide sufficient notice to bind the lienholder.).

present as well as several dozen attorneys who represent creditors in many different districts.

The creditor representatives were unanimous in the view that a concise, uniform, predictable, understandable, national form for the Chapter 13 plan would be the single most important contribution that could be made to Chapter 13 practice today. Chapter 13 trustees echoed this sentiment: the staffs in Chapter 13 trustees' offices spend enormous resources interpreting, summarizing and noticing Chapter 13 plans, and then fielding innumerable inquiries from creditors when the content of plans cannot be adequately communicated.

The impenetrable diversity and complexity of Chapter 13 plan forms has played into the hands of especially aggressive debtor's attorneys. Creditors talk about "confirmation by ambush" to describe a confirmed Chapter 13 plan that contains a hurtful provision that was hidden somewhere in the plan. The practice of embedding a particularly aggressive plan provision has been variously described by courts as "traps for the unwary"[9] and "gamesmanship."[10] Some appellate decisions have perhaps unintentionally contributed to hiding the ball in Chapter 13 plans.[11]

A standard form Chapter 13 plan would isolate the everyday provisions of the plan from the aggressive or unusual (imaginative?) provisions. A form would make the game clearer to creditors by isolating the atypical provisions in the same place on the plan form in every case. A standard form would not eliminate the opportunity for aggression or imagination in the Chapter 13 plan, the form would simply eliminate hiding the ball. This would be a great improvement for creditors.

An official form for the Chapter 13 plan that would fit on two sides of one piece of paper could itself be used as the notice of the content of the plan in Chapter 13 cases in every judicial district. Creditors in Chapter 13 cases would quickly come to understand this single-page form. Information relevant to creditor decision-making would always be in the same place on the form without regard to where the Chapter 13 case was filed. The absence of critical information would be readily apparent without poring over a 14-page form to prove the absence of, for example, an interest rate or valuation. The opportunities for hiding the ball would be limited.

The absence of an official form for the Chapter 13 plan further complicates the already impossible task of processing pro se Chapter 13 cases. Bankruptcy courts across the country are facing an increase in pro se bankruptcy filings. Many pro se debtors come into bankruptcy court through petition preparers.[12] Sometimes there is a plan in the mangle of documents filed by a pro se Chapter 13 debtor, more often there isn't. An official form for the Chapter 13 plan would find its way into the forms sold by petition preparers and by commercial printers. It would be at least a small improvement in what is becoming a big management problem for the bankruptcy courts.

If you ask debtors' attorneys who file mostly Chapter 7 cases why they don't file more

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9 *In re Ives,* 289 B.R. 726, 729 (Bankr. D. Ariz. 2003).

10 *Altegra Credit Co. v. Dennis,* 286 B.R. 793, 795 (Bankr. W.D. Okla. 2002).

11 *See, e.g., Andersen v. UNIPAC-NEBHELP (In re Andersen),* 179 F.3d 1253 (10th Cir. 1999), and *Great Lakes Higher Educ. Corp. v. Pardee (In re Pardee),* 193 F.3d 1083 (9th Cir. 1999) (Even an illegal Chapter 13 plan provision that discharges student loans is binding if creditor has notice and fails to object to confirmation.). Other appellate courts have sustained due process objections to confirmation by ambush. *See Banks v. Sallie Mae Servicing Corp. (In re Banks),* 299 F.3d 296 (4th Cir. 2002) ("Due process entitles a student loan creditor to specific notice of the debtor's intent to discharge any portion of the debt.").

12 *See* 11 U.S.C. § 110.

Chapter 13 cases, one answer that comes up again and again is, "Chapter 13 is too complicated and time consuming." There is much truth buried here.

An official form for the Chapter 13 plan is not going to miraculously increase the percentage of Chapter 13 cases nationwide, but it is an important step toward undoing some of the nonproductive complexity that has come to characterize Chapter 13 practice. Chapter 13 has become too difficult to navigate in many districts, increasing the entry cost for new lawyers and dissuading new and old practitioners from recommending the Chapter 13 alternative. An official form for the plan would signal a move toward simplification of Chapter 13 cases—a step in the right direction.

II. DESPITE THE GREAT VARIETY OF FORMS IN USE, THE CONTENT OF CHAPTER 13 PLANS IS FINITE AND PREDICTABLE; THE 2003 REVISED MODEL PLAN DEVELOPED AT INSTITUTES SPONSORED BY THE NATIONAL ASSOCIATION OF CHAPTER 13 TRUSTEES REPRESENTS A CONSENSUS WITH RESPECT TO A NATIONAL FORM FOR PRESENTING THAT CONTENT.

In §§ 1322 and 1325, the Bankruptcy Code lists the mandatory and permissive provisions of the Chapter 13 plan. These statutory prescriptions for the Chapter 13 plan are comprehensive. The diversity in plan forms across the country does not reflect different legal standards—the required and permissive provisions of the plan are the same everywhere. It is the form in which plans present the statutory information that is the problem.

For example, there is indeed much disagreement with respect to the appropriate interest rate to provide present value at cramdown in Chapter 13 cases.[13] But there is no disagreement that the plan is the appropriate place for a Chapter 13 debtor to list each secured creditor that will be crammed down and to specify an interest rate with respect to each. Presenting the debtor's interest rate proposal in the same format and in the same place on every Chapter 13 plan would be a vast improvement in Chapter 13 practice at no obvious cost.

For another example, there is a consensus that the only kind of Chapter 13 plan that will always satisfy both the best-interests-of-creditors test in § 1325(a)(4) and the disposable income test in § 1325(b) is a "base or percentage, whichever is greater" plan.[14] The components of such a plan are simple: the total amount the debtor must pay to exhaust projected disposable income is the "base" amount; the minimum percentage of allowed unsecured (nonpriority) claims that must be paid to exceed the amount that would be paid on account of such claims in a hypothetical Chapter 7 case is the "percentage" in the formula. The greater of these two amounts is the minimum that the debtor must commit to satisfy the confirmation requirements in § 1325(a)(4) and § 1325(b).

Despite an easy consensus on these components of the plan, existing plan forms use a fantastic variety of words, lines, boxes, mathematics and shorthand to record base and percentage information. In some plans, the base amount is given as a specific dollar amount. In other plans, the base amount is described generically as "all projected disposable income." In some plans, the base amount can

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13 *See, e.g., In re Till,* 301 F.3d 583 (7th Cir. 2002), *rev'd,* 541 U.S. __, 124 S. Ct. 1951, __ L. Ed. 2d __ (2004).

14 *See, e.g., In re Bass,* 267 B.R. 812 (Bankr. S.D. Ohio 2001) (Percentage plan fails disposable income test in § 1325(b); base plan fails best-interests-of-creditors test in § 1325(a)(4).); *In re Pedersen,* 229 B.R. 445 (Bankr. E.D. Cal. 1999) ("Base or percentage plan, whichever is greater" satisfies confirmation tests.).

only be determined by multiplying numbers spread throughout the form. In some forms, payment to unsecured creditors is described as a specific percentage of allowed claims. In other forms, it is a specific dollar amount to be distributed pro rata among allowed unsecured claims. In still other forms, it is a percentage listed separately for each unsecured creditor. This diversity is not driven by the Code or by differences in judicial interpretation.

There are several components of the Chapter 13 plan about which bankruptcy and appellate courts have not reached a consensus but with respect to which the alternatives are well known and can be easily presented as options on a single form. The many forms currently in use do not signal the controversial options or alternatives forcing creditors to search out these issues through every plan at great expense and inefficiency.

For example, under § 1327(b), except as otherwise provided in the plan or in the order confirming the plan, confirmation vests all property of the Chapter 13 estate in the debtor. The exact meaning of this "vesting" consequence and the effects of vesting on property of the estate, on the automatic stay and on liens are controversial issues.[15]

In many districts, courts or trustees prefer or require that every Chapter 13 plan contain language that either vests all property in the debtor at confirmation or overcomes the vesting effect and delays the vesting of property in the debtor until some later time—typically until discharge.[16] To creditors, the issue is simple: what is the rule in the district and how and where is the rule stated in the Chapter 13 plan. A model plan that states options and requires the debtor to mark a box or fill in a blank would easily present the options in a readable form and present the needed information to creditors in a predictable fashion.

The standardization of concepts that are ambiguously used in Chapter 13 practice across the country would itself be a tremendous contribution to Chapter 13 practice. For example, the words "inside" and "outside" the plan are ubiquitous in Chapter 13 plans. These vestiges of practice under the former Bankruptcy Act at one time signaled that the plan did (inside) or did not (outside) deal with a creditor's claim.[17]

The words have morphed since 1979. Sometimes "outside" now means that the debtor will make payment directly to the creditor. Other times, "outside" takes on its historical meaning that the plan makes no provision whatsoever for that creditor. At least one reported decision finds in the phrase "outside the plan" that liability for the underlying debt is changed.[18]

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15 *See, e.g., Black v. United States Postal Serv. (In re Heath),* 115 F.3d 521 (7th Cir. 1997) (Vesting of property in debtor limits bankruptcy court jurisdiction after confirmation.); *Telfair v. First Union Mortgage Corp.,* 216 F.3d 1333 (11th Cir.), *cert. denied,* 531 U.S. 1073, 121 S. Ct. 765, 148 L. Ed. 2d 666, *reh'g denied,* 531 U.S. 1185, 121 S. Ct. 1173, 148 L. Ed. 2d 1030 (2001) (Payments by debtor to mortgage holder after confirmation are not protected by automatic stay.).

16 *See, e.g., In re Martinez,* 281 B.R. 883 (Bankr. W.D. Tex. 2002) ("In this district, the property of the estate is not revested in the debtor upon confirmation.").

17 *See* §§ 651 and 652 of the former Bankruptcy Act, 11 U.S.C. §§ 1051, 1052 (repealed).

18 *See In re Wallace,* 259 B.R. 646 (Bankr. E.D. Tenn. 2001) (Confirmed plan that provided for payment of a debt "outside the plan" by the debtor's daughter released the debtor from liability and rendered the daughter the only party responsible for payment.),

Ambiguous use of the phrase "outside the plan" could simply be eliminated by standardizing the options: the debtor can make payments to the trustee and the trustee then makes distribution to creditors; or the debtor can elect under § 1326(c) to make payments directly to specified creditors. This sort of standardization would easily be accomplished by a form Chapter 13 plan that does not use ambiguous words.

Proof that the diversity of forms is truly forms over substance lies in a grand experiment already conducted by the National Association of Chapter 13 Trustees. NACTT has twice tested the difficulty of drafting a model form for the Chapter 13 plan. At Advanced Consumer Bankruptcy Practice Institutes in San Juan in 2002 and again in Chicago in 2003, 50 consumer bankruptcy professionals representing all aspects of consumer bankruptcy practice were asked to consider the forms of Chapter 13 plans in use across the country.

Each session developed approximately the same dynamic: at first, various advocates argued that their plan was the "best" plan and others should use their plan. After an hour or so of discussion, the conversation changed as participants realized that a deeper comparison of the many forms revealed that virtually every form dealt with the same 10 or 12 issues. Superficial differences were not material to debtors' attorneys, creditors' attorneys or the trustees. The great diversity of forms was just that—form over substance.

The 50 participants in the San Juan conference successfully hammered out a consensus on the first model Chapter 13 plan. That model was further revised and refined by the 50 experts who attended the Advanced Consumer Bankruptcy Practice Institute in Chicago in 2003. The product of the Chicago meeting was the 2003 Revised Model Plan.

III. THE ADVISORY COMMITTEE ON BANKRUPTCY RULES SHOULD PROMULGATE AN OFFICIAL FORM FOR THE CHAPTER 13 PLAN; THE 2003 REVISED MODEL PLAN SHOULD BE THE WORKING DRAFT FOR THAT OFFICIAL FORM.

A request to consider promulgation of an Official Form for the Chapter 13 plan was submitted to the Advisory Committee on Bankruptcy Rules on February 26, 2003. The Advisory Committee declined to consider an Official Form for the Chapter 13 Plan by letter dated April 18, 2003. The Advisory Committee gave as its reason that a standard form for the Chapter 13 plan was "not practical at this time."

With respect to the practicalities of drafting an Official Form for the Chapter 13 Plan, NACTT has already done the heavy lifting. The Advisory Committee on Bankruptcy Rules has not penetrated the surface of the Model Chapter 13 Plan issue. The difficulty they see is a statement of the problem—there are more than 200 different forms for the Chapter 13 plan in use today. Just below that surface is the reality that a consensus is easily reached with respect to the mandatory and permissive content of the Chapter 13 plan. The Advisory Committee should be encouraged to revisit the Model Chapter 13 Plan issue.

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aff'd, 2002 WL 31055985 (6th Cir. Sept. 13, 2002) (unpublished).

IV. IN THE ABSENCE OF ACTION BY THE JUDICIAL CONFERENCE, INDIVIDUAL BANKRUPTCY COURTS SHOULD BE ENCOURAGED TO ADOPT THE 2003 REVISED MODEL PLAN AS A LOCAL FORM PURSUANT TO BANKRUPTCY RULE 9029.

At the 2003 Advanced Consumer Bankruptcy Practice Institute in Chicago, several participants reported successful efforts to adopt the Model Plan as a local bankruptcy rule. If the Advisory Committee cannot be inspired to act on an Official Form for the Chapter 13 Plan, individual courts should be encouraged to address the issue by local rulemaking. Any progress on this issue, even incrementally by districts, would be worth the effort.