TRANSCRIPT OF PROCEEDINGS

IN THE MATTER OF:)
)
BANKRUPTCY RULES COMMITTEE)
HEARING)

Pages: 1 through 90

Place: Washington, D.C.

Date: January 23, 2015

HERITAGE REPORTING CORPORATION
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ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

IN THE MATTER OF:)
)
BANKRUPTCY RULES COMMITTEE)
HEARING)

Mecham Conference Center
Thurgood Marshall Federal
Judiciary Building
One Columbus Circle, N.E.
Washington, D.C.

Friday,
January 23, 2015

The parties met, pursuant to the notice, at 9:56 a.m.

BEFORE: HONORABLE SANDRA SEGAL IKUTA
Judge

APPEARANCES:

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HONORABLE STUART M. BERNSTEIN
HONORABLE DENNIS R. DOW
HONORABLE A. BENJAMIN GOLDGAR
HONORABLE ARTHUR I. HARRIS
HONORABLE ROBERT JAMES JONKER
HONORABLE ADALBERTO JORDAN
PROFESSOR S. ELIZABETH GIBSON
PROFESSOR TROY A. McKENZIE
RAMONA D. ELLIOTT, ESQUIRE
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DIANE L. ERBSEN, ESQUIRE
JEFFREY J. HARTLEY, ESQUIRE
BRIDGET HEALY, ESQUIRE
RICARDO I. KILPATRICK, ESQUIRE
THOMAS MOERS MAYER, ESQUIRE
JILL A. MICHAUX, ESQUIRE

APPEARANCES: (Continued)

SCOTT MYERS, ESQUIRE
JAMES H. WANNAMAKER, ESQUIRE
JAMES J. WALDRON, CLERK OF BANKRUPTCY COURT, NEW JERSEY

WITNESSES:

JUDGE MARVIN ISGUR, U.S. Bankruptcy Court
JUDGE KEITH M. LUNDIN, U.S. Bankruptcy Court
RONDA WINNECOUR, Chapter 13 Standing Trustee
ALANE A. BECKET, Becket & Lee LLP
MICHAEL BATES, Wells Fargo Law Department
KAREN CORDRY, States' Association of Bankruptcy Attorneys
JUDGE BRIAN D. LYNCH, U.S. Bankruptcy Court
JUDGE REBECCA B. CONNELLY, Chief, U.S. Bankruptcy Court

P R O C E E D I N G S

(9:56 a.m.)

JUDGE IKUTA: Good morning, everyone, and welcome to this public hearing on the proposed amendments to the Federal Rules of Bankruptcy Procedure. I'm Sandra Ikuta, the Chair of the Advisory Committee on Bankruptcy Rules.

Today we are hearing eight witnesses who have requested to testify regarding the proposed official Form 113 for Chapter 13 plans and related amendments to the rules which were published in August 2014. We've also received a number of written comments on the official form and the rules.

So our procedure today, each of the witnesses will have five minutes to testify, and then there will be five minutes for questions by committee members. And the witnesses should be aware that the Committee has reviewed the written submissions by each of the witnesses, so the witnesses are encouraged to focus on the key points. We have a clock to help keep our hearing on schedule, and we'd appreciate the witnesses keeping an eye on the allotted time, and the Committee will try to do so as well so that everyone has the same opportunity to be heard.

At this point I'd like to ask the

Committee's reporters and the members of the Committee who are here today to introduce themselves. Elizabeth.

MS. GIBSON: I'm Elizabeth Gibson from the University of North Carolina, and I'm the reporter to this Rules Committee.

MR. McKENZIE: I'm Troy McKenzie. I'm at New York University School of Law, and I'm assistant reporter to the Rules Committee.

MR. ROSE: I'm Jonathan Rose, Chief of the Rules Committee Support Office.

JUDGE HARRIS: Art Harris, a Bankruptcy Judge from Cleveland, Ohio.

JUDGE BERNSTEIN: Stuart Bernstein, Bankruptcy Judge, Southern District of New York.

MR. KILPATRICK: Ricardo Kilpatrick, attorney from Detroit.

JUDGE GOLDGAR: Ben Goldgar, Bankruptcy Judge, Northern District of Illinois.

MS. MICHAUX: Jill Michaux, an attorney from Topeka, Kansas.

MR. WANNAMAKER: Jim Wannamaker, a consultant with the Committee.

MS. HEALY: I'm Bridget Healy. I'm staff support.

MR. MYERS: Scott Myers. I also am staff support for the committee.

JUDGE JONKER: I'm Bob Jonker, a District Judge from the Western District of Michigan.

JUDGE JORDAN: I'm Bert Jordan, a Circuit Judge on the Eleventh Circuit.

MR. WALDRON: I'm Jim Waldron, the Clerk of the Bankruptcy Court, New Jersey.

MR. MAYER: Tom Mayer, attorney, New York City.

JUDGE DOW: Dennis Dow, Bankruptcy Judge, Western District of Missouri

MR. HARTLEY: I'm Jeff Hartley. I'm an attorney for the State Bar in Alabama.

MS. ERBSEN: Diane Erbsen, Tax Division, U.S. Department of Justice.

MR. ENGLERT: Roy Englert. I'm a lawyer in private practice in Washington, D.C. I'm liaison from the Standing Committee to the Bankruptcy Rules Committee.

MS. ELLIOTT: Good morning. I'm Ramona Elliott. I'm deputy director and general counsel for the U.S. Trustee Program, which is part of the Department of Justice.

JUDGE IKUTA: Okay. Thank you.

We will have a transcript prepared of this hearing so that the members of the Committee who were not able to attend today will be able to review all the testimony, and the transcript will be posted on the U.S. Courts' Rules website.

I will call the witnesses in the order noted on the confirmed witness list, starting with Chief Judge Connelly, and could you please identify yourself for the record? Will you please come up to the podium?

JUDGE CONNELLY: Thank you, Judge Ikuta. My name is Rebecca Connelly. May I begin?

JUDGE IKUTA: Do we have the time? Okay, thank you.

JUDGE CONNELLY: Thank you. Thank you for this wonderful opportunity. Before becoming a Bankruptcy Judge I was a Chapter 13 trustee. I support the adoption of an official form plan for the Chapter 13 plan and I support the adoption of the proposed amended bankruptcy rules. An official form for the Chapter 13 plan will enhance access, will improve due process, will reduce costs, but it will not eliminate judicial discretion and judicial authority, nor will it result in or eliminate decentralization of case administration, local

flexibility, and local customization.

What an official form will do is it will provide a standard reporting of plan terms. That is critical in order for information sharing of those plan terms. Currently the only way Chapter 13 plan terms are provided to the court, the trustee, the creditors, the public is through a document. The document then requires someone to re-report that information. Through information sharing those plan terms can be immediately transferred. It can be accurate, efficient, and less expensively transmitted.

Currently the only way debtors can submit their plans and prepare their plans if they are not in a high volume Chapter 13 area is through a manual transmission. Those areas that are high volume Chapter 13 plans, Chapter 13 software programs are available, but they're not available to those debtors who don't reside in high volume areas. If the plan was consistent, the standard reporting of plan terms, all debtors could use the assistance of a software program to prepare, test, submit their Chapter 13 plan.

Four and a half years ago the United States Supreme Court issued a decision that had the effect of abrogating rulings in nearly every circuit regarding

Chapter 13, the decision of United Student Aid Funds v. Espinoza. The Ninth Circuit was upheld, but in doing so every other circuit's decision was abrogated, and in that case the United States Supreme Court identified that a Chapter 13 plan confirmation would be binding, notwithstanding procedural defects and the fact that the provision was improper.

It was a term we call "discharge by declaration". "I declared in my plan that I'm discharging my student loan, therefore it is." The law didn't permit that. Every circuit had said if you didn't comply with procedural, fundamental procedural processes you had a violation of due process, but the Supreme Court saw that differently and found that that plan was binding, and the defect in due process was remedied by the bankruptcy judge reviewing the plan, every term in that plan to verify that it did not contain any improper provisions.

Given the volume of Chapter 13, that task is nearly impossible. I believe it's irresponsible for us not to consider an official form for the Chapter 13 plan, in particular so that non-standard provisions are in one location. This will assist all bankruptcy judges, in particular new bankruptcy judges and any judge that has to travel among different districts and

different circuits to help out, as is currently the situation and will continue to be.

There are two important parts of the proposed rules that I would like to highlight and emphasize that I strongly encourage these rules for adoption, and the rules contemplate the use of an official form for the Chapter 13 plan.

The two areas are, first, the claims allowance process and the plan confirmation process today are two different procedures, time periods, and service requirements. The new rules have a compatible service requirements and time period so that rulings from the court which today are incompatible will no longer be incompatible because the Bankruptcy Code is not irreconcilable. It's the two different procedures.

But more importantly, the new rules address another aspect of Chapter 13, and that is secured claims, liens, and claims allowance and plan confirmation. Currently under the rules five different procedures: plan confirmation, one time period, one service requirement; claims allowance, a different time period service requirement; motion to allow a secured claim or determine a secured claim, different procedure, time period, service

requirements; and action to determine the extent, validity, and priority of a lien, different service requirements, time periods; and a motion to avoid a nonconsensual lien, different service requirements and time period.

What the new rules do is provide a compatible, consistent, coherent mechanism or procedure so that we have consistent service requirements, consistent, compatible time periods, and they provide an option, a very important option. Not a mandate. The rules use the term "may". A Chapter 13 debtor may collapse and combine these five different procedures into one when the debtor uses an official form for the Chapter 13 plan, that is, uniform reporting of the information, standard reporting of the information and certain standard minimum notice requirements, minimum notice requirements, not maximum. That is, there is no indication that there can't be additional terms, additional notices, additional procedures, but minimum procedures are provided in this official form.

I believe it's an enhancement to Chapter 13. It will aid Chapter 13 debtors, enhance the ability to use Chapter 13. It will improve due process. It will reduce costs, but it will not eliminate judicial

discretion, judicial authority, local case administration, flexibility, and customization.

I appreciate the opportunity to be heard and I'm grateful to this Committee to take seriously these enhancements to Chapter 13.

Finally, I'd just like to note that there have been a number of concerns raised. I believe that we can have an official form and the new rules, and we can address the concerns that have been raised. This project is so vital to solve the defect in due process, to enhance access to Chapter 13, to reduce costs. We should not simply abandon or disprove of the project at this point because of the opposition. I believe instead we can respond, we can enhance and improve the structure that has been set up so that we can accommodate the concerns. It's too important.

Thank you again for considering Chapter 13. Thank you for considering the proposed amended rules, and most importantly, thank you for considering the adoption of an official form for the Chapter 13 plan.

JUDGE IKUTA: Thank you. Let me see if the Committee has questions. Troy?

JUDGE DOW: I've got some questions.

JUDGE IKUTA: Judge Dow.

JUDGE DOW: In your written testimony, and

you didn't mention it here, you talked about -- one of the objections that's been raised is the form plan may not accommodate all the things that are going on in various districts and will create problems in individual cases. You talked in your letter about a sample that you did in looking at the form plan and actual cases under your own local plan. Can you tell us about that? How big was the sample? What did you discover in that process?

JUDGE CONNELLY: The first thing I did is I took my plan, and the plan that we have is in Virginia. Two different districts use the same form plan. I took that plan and I did a chart just simply using word processing where I provided on one column the plan provisions on the Virginia plan and in the second column I described exactly how the debtor would report those provisions under the official form plan, and I was able to do so with every provision that we have in our Virginia plan, could map to a provision in the form plan.

I then did the same thing, I attempted to do so, that is, by pulling up a sampling of form plans. I did review the plan for the District of Kansas, I reviewed the plan for -- I reviewed the plan, I looked at Judge Isgur's plan, and I can't recall now the

other plans that I did. It was a small number, but I did intentionally take certain plans and was able to identify the -- oh, Tennessee, I looked at the plans in the districts of Tennessee, and you may note that currently in the Middle District of Tennessee they now are using this official form plan, but I went ahead and looked at the other districts in Tennessee and I on one column put down the plan provisions and on the other column indicated where those provisions would be dealt with in the official form plan, and I was unable to find any provisions that I could not map.

Now the difference is there are some instructions, there are additional terms added to some plans. I don't see that as an inhibitant, in any way inhibiting the use of an official form. The fact that there may be some additional instructions to assist a creditor regarding certain disbursement terms doesn't prevent the ability for those disbursement terms to be in standard format or standard location.

JUDGE IKUTA: Other questions?

JUDGE DOW: I've got one other if nobody else has any.

JUDGE IKUTA: Go ahead.

JUDGE DOW: One of the arguments that's been made by people who oppose the plan form is that

rolling the lien avoidance and valuation processes into the form and into the confirmation process will make that more complicated and more expensive overall for debtors. What is your own particular view on that particular argument?

JUDGE CONNELLY: Debtors have the opportunity to determine amount of secured debts to address liens in Chapter 13 cases. Whether they do so in separate proceedings or they do so in one proceeding doesn't change the fact that they have that right, and how a judge decides how they're going to handle a contested matter is not indicated at all by these rules.

So the debtor already has the right to deal with liens in Chapter 13. I don't think that giving them the opportunity to do so through a plan changes that in any way. It simply just gives the opportunity to do so in one document or one format and thereby providing a more efficient sharing of that information. It's up to the Court then to decide whether it's appropriate to approve it and how to do so in the face of any contest, any contested matter.

JUDGE IKUTA: Thank you, Chief Judge Connelly, for your testimony. We appreciate your coming here.

JUDGE CONNELLY: Thank you. Thank you very much.

JUDGE IKUTA: Our next witness today is Chief Judge Keith Lundin.

JUDGE LUNDIN: Good morning. You can start this thing now. There it goes.

Madam Chairman and members of the Committee and friends and colleagues. I know most of the people in this room.

I'm Keith Lundin from the Middle District of Tennessee. I'm old, and I have a confession, an observation about a little history, and then a little bit of argument, and that's it.

My confession is I am a rules and forms junkie. I just am. It's geeky, I know. That's not a good confession to make. But I've been messing with this kind of thing since 1981. The first Advisory Committee argument discussion was with a guy named Alex Paskay. Some of you all remember Alex? And Bill Norton from the bankruptcy bench down in Atlanta. And it was a fight in 1982 about whether the Federal Rules of Civil Procedure were going to apply to adversary proceedings in Bankruptcy Court. Now think about it.

Why would I bring -- I lost that argument incidently. I argued they should, and instead we have

this mess of bankruptcy rules in adversary proceedings that are some federal rules, some not. Don't worry about it. That's not what we're here to talk about today. That's not what we're doing.

Here's the point. I've watched this process for 35 years, almost 35 years now. There has never -- and the allegation has been made that somehow the Advisory Committee has gone off the rails here with this official form for the Chapter 13 plan. It was on the agenda 30 years ago. We've been trying to get this done for three decades.

But more important than that, the claim has been made that the Committee hadn't done it right, that they didn't seek a consensus, that they didn't go out and talk to the bankruptcy community, that they didn't air the issues correctly, that they've made this thing up. They've made up a problem to solve.

Well, I've got to tell you nothing could be further from the truth, and it's important to make this point because some of you are new. Some of you are new to the Committee, and you haven't watched this process. I will tell you the Advisory Committee, there has never been an issue that was vetted as well as this one has been over the last four years. The people that reached out in the original group, Liz

Perris and Gene Wedoff and Peg Mahoney, and Ricardo came a little later and he started doing it, Larry Walters.

I mean, these people went all over the country. They talked to every public that there is that cares about bankruptcy, and the biggest single thing that's missing right now in consumer bankruptcy is the only thing that isn't a form is the Chapter 13 plan, and it's nonsense that we don't have one. We've got forms for everything else.

And the sort of crazy arguments that somehow a form is going to change Chapter 13 practice, it's not going to change practice. It's just going to give us a way to do it all on the same pieces of paper. It's a form for god sakes. We're not rewriting a bankruptcy code.

And if you hear some frustration, it is that for four years now we've been making it better and better and better and better, and it's gotten -- it's almost there. It needs a little tweaking here and there, but that's going to happen in the next few months, and it will happen because people like Wedoff and others went out, sat down with the publics, and some of them are here, and collected all their ideas. There's nothing wrong with this system and there's

every reason why we need to go ahead with this.

The second point that I want to make is that I'm doing this already. I'm the only one who is, and I hope you'll ask me about that. I implemented this form in the Middle District of Tennessee, the most recent iteration of it, about 50 days ago, and we're through our first cycle, and the sky didn't fall. The only thing that happened, the only thing that happened was this wonderful new thing. I only have to look at Part 9. I don't have to read the rest of that garbage. I know what's in there.

And when I say "garbage", you know what, look at this room. There's like how many? Four, four bankruptcy judges I think, maybe five here, a bunch over there. Every bankruptcy judge in this room has a form for the Chapter 13 plan, and yet what is this? We're here to tell you it's a mistake to have a form and we all have one? That's not the problem. The problem is -- and we've got 200 of them, and it's a mess, and we need to fix it. We need to have one. I don't care.

Marvin, I love your form. Now it's 11 pages long. It's a little hard to read. And, Brian, I like your form too. It's five pages long. Five pages, 11 pages. Over in Memphis it's one page. Thank God.

Now that's amazing. I'd like to have -- just give us one form, that's all, that's what we need, not 200. That's my whole message. I'm done and I've got 14 seconds left.

(Laughter.)

JUDGE LUNDIN: What can I tell you? Anything?

JUDGE IKUTA: Do we have some questions?

JUDGE DOW: Well, since you invited us to ask you.

JUDGE LUNDIN: Go for it. Go for it.

JUDGE DOW: What have you discovered in the process of implementing the form?

JUDGE LUNDIN: Two things. One, I already told you, and it is, God, it's just, it's a godsend to have all of the weirdness in one place. That's brilliant, putting paragraph 9 in there in that checkbox in the beginning where you've got to check it if you're going to do something different than the rest of the form because I get to find all of that weirdness that comes from the county lawyers that don't file bankruptcy very often, right? That's the first thing that we found.

The second thing that we found is is that, and it's that the software providers got ahead of us.

They instantaneously made available the national form and put it online so that the lawyers who use Best Case and use these other software providers instantly were able to do it in their offices. There was no disruption at all, none at all. It just happened seamlessly, and all of the sort of fears that this is going to be more expensive, that it's going to create disruption, none of that materialized, nothing. Just wasn't there. It was just it happened. One day it was an old form and the next day it was your form. That's it. And we're the biggest district in the country dollar-wise. I mean, we're not doing this in a small way, and we went cold turkey. We did it December 1, period, no more. Mandatory.

MS. GIBSON: Judge Lundin, has there been any confusion by people of selecting options that have already been rejected by your court? I know a lot of people think that just because it's on the form that means everybody can select these things.

JUDGE LUNDIN: Professor Gibson, I've been there so long. Everybody knows what I'm going to do already. They already know, and they're not going to put something in the plan that they know isn't going to work because they can't afford to do it. The expense of filing the case and litigating with the

Chapter 13 trustee or with the United States trustee prohibits the kind of behavior that you're talking about. It just doesn't happen.

The one thing they did physically have a little trouble with is that collapsing mechanism, you know, the little collapsing mechanism where a paragraph collapses if you don't use it, and some of the lawyers don't understand collapsing, and they've collapsed the whole damn form.

(Laughter.)

JUDGE LUNDIN: I mean, that's been a little -- that was a little tricky.

MR. McKENZIE: Judge Lundin, could I ask you about your thoughts on implementing the form as you have done without having the rules in place and in particular the changes, for example, when proofs of claim would be due under 3002? Do you think that it would be feasible to go ahead with one without the other, or do you think that they really do need to be a package?

JUDGE LUNDIN: Wow, that's a tough one. That's a tough one because I don't want to give anything away here. I really don't. The package is fantastic because I was there a couple of years ago when it was like a light bulb in the room when

everybody realized wait a minute, this form is a fabulous idea, but we need to tweak the claims allowance process and the confirmation process and the lien avoidance process and all this. We need to get them all to align.

Well, I have to tell you we aligned them 30 years ago in our district with local rules. That's exactly the way we've been doing it, so they're already together in some -- I'm a little biased. I've always done lien avoidance and all and valuation through the plan because I was a 13 trustee and I know that making people do those things separately is very expensive. So getting them all together is the way to do it.

Could you do it separately? If you -- you kind of throw away -- you throw away the synergy. I hate that word. You throw away the economics of this, the efficiency that comes from getting those processes together if you separate them. I hope you won't consider that. I hope you won't.

JUDGE HARRIS: Judge Lundin, we've got a petition from about 144 bankruptcy judges and another one from about 80 some Chapter 13 trustees around the country. How do you respond to the argument that with this much opposition we ought not to go forward?

JUDGE LUNDIN: I've got to be careful about this because I get mad and then I say things about my friends and I regret it afterwards.

I've talked to a fair number of those people. Some of them are my closest friends on the bench. I've got to tell you most of them haven't even looked at that official form. They don't know what's in it. And this was a lemmings moment. I don't know how else to describe it. It was just -- and I want to know where these folks have been for the last four years while we were having hundreds -- dozens and dozens of meetings all over the country and talking about all this stuff, and all of a sudden they show up like ninth inning and say you all haven't done this right. You haven't studied this correctly. You didn't develop a consensus.

I don't know what to make of it. I really don't. It's peculiar, it is, and it's dangerous. But I've got to say I think I know what's going on, I think I know what's going on, and it's something that Theresa Sullivan and Jay Westbrook and Elizabeth Warren, they saw it. They saw it 25 years ago, and they wrote about it, and they called it local culture. It's a wonderful phrase to describe what you can do is just fine, just don't do it in my back yard, the

old NIMBY idea. It is.

I know that Marvin, Brian and all of these 144 -- if you look at them, almost all of them have their own form. They believe in having a form. They just want their form. And if the Committee would just adopt their form, the whole issue would go away and everybody would be happy. We just can't do it because we've got 200 different forms.

I think it's a local culture manifestation, and if you've got about an hour, I'll tell you why it's bad. I will. I'll show you why it's bad. I'll show you districts like this right here where 19 percent of the cases are Chapter 13s in Brian's district. Sixty percent of them are Chapter 13 in Marvin's district. And I'm going to tell you that if you've got the hour I'm going to show you that it's this local culture that's doing this to us, and the last big piece that you can control -- you can't control whether Marvin's going to have an emergency fund and Brian isn't. You can't control that with a form.

But you can control where it appears on a piece of paper so that when Mike Bates back here -- where are you, Mike? I've lost him -- at Wells Fargo, when he has to open 400,000 plans a year, he can find

how he's treated, he can find it because it's always in the same place. That part you can control. The rest of it is this local culture thing. I think it's killing Chapter 13, but that's just my opinion.

JUDGE IKUTA: Thank you, Judge Lundin, for your testimony. We appreciate it.

JUDGE LUNDIN: I'm way over your time. I'll sit down.

JUDGE IKUTA: And we'll next hear from Chief Judge Brian Lynch.

JUDGE LYNCH: Good morning. Thank you for letting me participate.

A hundred forty-four judges did not sign our letter because they agreed with every jot and tittle of what we said in that letter. It's because overall they think the proponents of a mandatory form Chapter 13 plan haven't made the case for the clear disruption that will take place in local Chapter 13 practice, and they're concerned because they feel by and large that Chapter 13 works in their jurisdictions.

This process has been in my view cattywampus. Here we are at the end talking about whether we should have a national form plan when it should have been the first discussion, but we never had that discussion. There's been no effort to try it

out, a model plan. I shouldn't say that. Judge Lundin tried to get people behind a model plan in 2004 and he couldn't get people behind him. Now we've skipped the process of a model plan, trying it out in various places. We're going to mandate it, and we're going to mandate it on a plan that's not been tried out, all on a hypothesis that it will be better than the local plans that do work throughout our country.

And the thing that -- the last part of the cattywampus argument that I would like to make is it strikes me as an irrational process to come up with a solution before you've really analyzed the problem. This problem was posited somehow the lack of uniformity all by itself is the problem. What should have been done, and the data is there to check, is to say, okay, what kind of plans work well, have successful completion rates, are done cheaply around the country?

Analyze that and then say, okay, here's what we've seen the plan that works best. It's got a much better completion rate. That's when you get buy-in from local courts like my own. If you came to me and said, you know, if you do this, this, and this you're going to increase your completion rate from let's say on confirmed cases, from 40 percent or 50 percent up

to 75 percent, I listen. We're not irrational here.

That gets me to the second part of my argument, the rationales, which in my mind are either secondary or in some cases tertiary for drafting a national form plan and based largely on anecdote and intuition.

First of all, the Espinoza rationale. If you look since Espinoza was decided in 2010, on the appellate level there's six cases by my count, two of which have held that the provision in question was improper, but the creditor got due process. One held that there was due process but does not address whether the challenged provision was improper. That was involved -- excuse me -- there was not due process, and that was a lien strip interestingly. Two hold that the provisions are improper and the creditor was denied due process, and one held that the plan provision was improper and the Bankruptcy Court was right to deny confirmation.

What's my point? Two.

First of all, the Espinoza issue is an overblown issue. We are treating -- by and large local bankruptcy courts and trustees are catching improper provisions and stopping it. The Espinoza problem is a much smaller problem.

Secondly, if you really perceive Espinoza is the problem, all you have to do is to adopt a rule that says every plan, every local plan has to have a provision that requires that nonstandard provisions be located here. Call it out. You don't have to adopt a national mandatory form plan because of this little problem. It's an easy fix.

The second rationale is data enabling. You don't need a national mandatory form plan to data enable. Either in the petition or on a digital page you could require that certain data points from your local plan, most of which are located in every local form plan, be placed in some place where they're embedded and they can be drawn. There are lots of -- technology is not the problem. If we're talking about a mandatory national form plan because of data enabling, that is easily fixed.

The help the creditor argument. First of all, unsecured creditors -- any bankruptcy judge worth his or her salt would tell you unsecured creditors don't come, don't care, don't look. I shouldn't say -- don't care is too strong. They look, they get incredible data from the National Data Center in terms of what their claims are, what cases they have, how much they're paid on their claims. It's a treasure

trove of information which is given to them in a digitized fashion which they manipulate in many ways to their advantage. But the confirmation process, they're nonparticipants.

Regarding mortgage creditors, I would say two things. First of all, the most well represented constituency in all of Chapter 13 are mortgage creditors, and strangely enough, for instance, in Washington and Oregon, the second and third most active mortgage firms are located in southern California, and the most active firm in Washington and Oregon, a firm up in Seattle, operates in 17 states from as far away as South Carolina on the east coast to California on the west.

The problem is not mortgage creditors. The problem is debtors and the problem that we're -- the concern of the 144 judges is the disruption to the debtors that could be caused by a national form plan which sweeps away plans which they're comfortable with, that work, and puts in its place a new form plan which they have no buy-in for. All the judges -- right now judges, trustees, attorneys have buy-in to their local plans. You're basically taking them out of the process and you're giving the process of a national form plan to a national bureaucracy who will

consider changes in due course, and meanwhile our voice is left to try to figure out how to work around the national form plan to the extent it's inconsistent with our plans.

The real issue is whether we require a national mandatory form plan. These other rationales in my mind are tertiary for lack of a better term. They're just not that important to the situation.

Is uniformity that exalted a concept? If you were to attend the creditors' meeting in Portland or Seattle or in Memphis, like I have, what you would see is that Chapter 13 works quite differently in quite different ways and helps people in different ways with uniquely -- quite different circumstances. Local judges and trustees and attorneys have come up with local plans with local innovative approaches suited to their communities.

Who does it best? We don't know because people have never studied it, and here we are on a hypothesis. All I hear is anecdote and hypothesis. I don't hear empirical data to say, well, this plan -- I used to do that as a trustee. I used to give my judges -- every year I'd look back at the five years and I'd say, okay, here's what our completion rate on confirmed plans was and here's what our dismissal rate

and conversion rate. That information is available.

We're going to do this on the bet that this particular tracking, and I realize that their argument is, well, it's options. Yes, but it's set up so that you try to do it a certain way. It made choices. It pushes you, it funnels you into a certain process without any study about whether that's the best way to go.

Chapter 13 is the most fragile chapter. It's voluntary. Consumers have other choices. When the value of a Chapter 13 is reduced or the cost of administering it is increased, it makes it less desirable. The tipping point gets closer when we burden the debtors, and that's a concern, one of my greatest concerns about this whole process is we make them -- we go through this period of disruption as we force out all the old plans and bring in new plans and in the process just make it a little harder for debtors to file Chapter 13, and that is a bad idea.

I know there's a temptation among the influential few to treat this as an effort to somehow create order out of chaos. Is there really a problem? Are your local communities telling you Chapter 13 is not working? And what is the problem? Is the solution that's being offered here really the

solution, or is it just trading a national bureaucracy for the local buy-in and investment of judges, trustees, and attorneys?

Before this committee charts this path which will be nigh on impossible to reverse once it's adopted it must be certain that it's the best thing for the debtors. Something more than anecdote and intuition ought to be driving the process. I suggest that much like the 144 judges who signed that letter that the proponents have not met their burden of proof.

JUDGE IKUTA: Thank you. Well, we've used up all our time, but we have time for a question or two.

JUDGE LYNCH: All right.

JUDGE IKUTA: Judge Goldgar.

JUDGE GOLDGAR: Judge Lynch, could you explain why having a particular form plan increases or decreases confirmation rates and case completion rates rather than say the quality of the lawyering, whether the debtor keeps a job, gets cancer or gets divorced and so on? Why does the plan affect that?

JUDGE LYNCH: Well, obviously good lawyering and the person's financial circumstances make a huge difference in confirmation rates. But we know

nationally that the ratios are quite different, and I guess what you're telling me is, well, it's just a function of the personal situation of the attorney and the individual.

I suggest to you that you might be wrong, that a form plan that tries to do too much at the beginning basically burdens the -- front loads the cost of the thing and makes it less desirable, and these choices ultimately affect the success rate of Chapter 13.

You know, I see it in my own jurisdiction. The more work that's done on a case the less likely it is to succeed. The best cases have the least amount of work involved in it. So it's not just what you've suggested. It's a lot of other things. The problem is nobody's tried to study this. This information is available. There's a lack of will I think in certain circles to say, okay, is Chapter 13 working? What's the success rate? What's the cost?

You know, for instance, I pointed out to you Chapter 13 in Portland, they void liens and they cram down values for secured claims in the plan. That requires 7004 service. It adds additional burdens. It makes it a more expensive -- I mean, Portland has some of the highest debtor fees per case in the

country. Seattle, similar demographic, across the river, has much smaller fees. I couldn't tell you all the reasons, but it seems to me before you start adopting national form plans you ought to be looking at that rather than positing what the issue is and then somehow by anecdote and intuition, and I think that's what's driving this. I don't think you've gotten much in the way of empirical information to support any of these ideas.

JUDGE IKUTA: We have time --

JUDGE LYNCH: Obviously, it hasn't sold the judges who signed our letter, and let me say the judges, we called them up. We didn't send any email blasts. This was done -- lemmings is an interesting thing to accuse bankruptcy judges of. I'm surprised at the use of that term because the way we handled it, we've been very careful, and we simply asked -- we're amazed as much as maybe they are and maybe you are how many judges agree with us that they haven't made the case.

JUDGE IKUTA: Okay. We have time for one more question.

JUDGE DOW: Yeah, you seem to assume that the process will somehow become more expensive and more delayed because these other issues are rolled

into confirmation rather than done separately, and I'm having trouble understanding that. If a debtor is going to have to value something anyway or avoid a lien anyway, how does it become more expensive because it's done in one document versus in several different documents if it's got to be done anyway?

JUDGE LYNCH: Well, and I will agree with you this much, Judge Dow. Empirically neither side has made the case, but in answer to your question, because a lot of cases don't even have lien avoidances and secured claim valuations.

JUDGE DOW: And they wouldn't be in the plan.

JUDGE LYNCH: They wouldn't be in the plan, but other cases it's done -- it can be done on the back end when the case is likely to succeed. Often cases fail early on, within the first six, nine months. You spend a whole bunch of time and money on a case that fails. Better to spend the money in the middle or the end if you even need to. Oftentimes the value issue goes away before you ever have to file a motion to determine the value. The parties work that out, it's in the plan, and nobody ever has to do anything.

What I'm suggesting is we haven't done any

kind of empirical test. And trust me, Judge Isgur, he values his in the plan, and he voids liens. I'm just saying we don't have the kind of information that you need to override the local practice that's worked well in that jurisdiction because you're going to sweep away a lot of local practice if you drop this national form plan.

JUDGE IKUTA: Thank you, Judge Lynch. We appreciate your testimony.

JUDGE LYNCH: Thank you.

JUDGE IKUTA: Thank you. And we'll next hear from Judge Marvin Isgur.

JUDGE ISGUR: Good morning, Judge Ikuta. I'm Marvin Isgur, a United States Bankruptcy Judge from Texas, and I appreciate the chance to testify today or to talk to you today.

I'd like to start by saying I was going to give Keith a chance to withdraw his lemming comment, but I'm going to have too much fun talking to Judge Karlin and Judge Rhodes, who is our representative to the Supreme Court, and to Judge Houser, the former NCBJ chair, telling them that for the first time in their lives they've been accused of lemming, so I'm going to let Keith's comment stand.

You know, the absence of a consensus did not

arise because there wasn't an effort, and if anybody thinks that our letter or any comments I've made say that people didn't try and get a consensus, that's wrong. There was a huge effort made to get a consensus. Gene Wedoff traveled anywhere anybody would listen to him, and he's a good man. He's about the most persuasive judge and maybe the most solid judge I know. He tried hard to build a consensus.

And so our goal when I first talked to Brian about doing this was, you know, maybe we will get 60 judges that will be in the minority that I think Keith referred to when he sent out his blast email, some silent minority. Vocal minority I think we were called. We were shocked when there were 144 people who hadn't bought in because despite valiant effort there isn't a consensus, and that's a far different cry from saying nobody tried to get one. They did. It didn't work and it didn't work because it doesn't address the fundamental question that bothers most of us.

And it doesn't matter if you talk to me or talk to Brian or talk to Judge Connelly or talk to Judge Lundin. Our biggest concern is making these cases work. How do we make Chapter 13 work? And what this plan does is it locks us into one method of

trying to make plans work. It eliminates the ability to figure out what does work, and what needs to happen is you need to persuade us if you want to get consensus that this will enhance the success of Chapter 13 cases.

In my own district, we have implemented an integrated way of dealing with motions for leave from the state, plans, modifications. We've implemented automated payment methods, ACH drafts, electronic payments into our plan. We stopped the cycle where debtors can alternate between paying their mortgage one month and paying the Chapter 13 trustee the next month. We've reduced our lift-stay docket from about 60 or 70 per week just before me down to six or seven per week just before me over the last decade. And we need to help, not hinder, the process.

All of us would jump at the opportunity, both the proponents and the opponents, to make Chapter 13 more successful. I think we are accomplishing that, but like Judge Lynch says, we do not have the empirical data, nor do you, to know which way to go on the plan.

One of the letters, and I think it's from Judge Lundin, says, look, I've compared these things, and if you look at what's happened, he compares things

back in 2002, compares things in '95. There's been a whole new world of bankruptcy judges in the last decade, and a number of us are trying to make changes in the plan, to go to Judge Dow's question and to go to Judge Goldgar's question, where the plan can make cases more successful.

The most recent thing we've done in a plan is we have a savings provision where debtors can save money by making a deposit with the Chapter 13 trustee who charges no fee for administering an emergency savings fund. The biggest reason why I have cases fail is people have an emergency, and there's a reason why they're in Chapter 13. I want to be real about that. And if we can add some discipline where they have some savings, maybe we can make the cases more successful by virtue of what's in the plan.

The second thing that I want to address is the letter from my district identifies really major flaws in the sample plan that was circulated for comment. The sample plan as written, and these things are repairable, don't get me wrong, but as written, it takes away lien rights, it fails to preserve payments to holders of unsecured claims, and it makes it impossible to learn when secured debts have been paid off. Sure, those can be fixed, but why are we

adopting a national plan that doesn't work in the one sample that was published? It makes no sense to me to do that.

Third and very importantly, the plan impermissibly delegates authority about priorities to Chapter 13 trustees. You know, who gets paid first is often the single most important question in a Chapter 13 case. But if you look at the sample plan, the way the sample plan works is it says the Chapter 13 trustee will decide that. And the reason why it had to say that is because when the earlier version came out and the plan tried to address priorities it couldn't and it couldn't because there are all these different checkmarks that can occur in the plan.

You know, those checkmarks will produce, if you take sort of all the permutations, there's 1.9 million permutations of how your plan can work, the one that's been proposed, 1.9 million. And if anybody thinks they can absorb what all the problems are from all 1.9 million permutations and put that into a priority when you can check all these different options and boxes, you can't do it, and so you had to delegate to the Chapter 13 trustee.

That's my job. That isn't the trustee's job. And if Wells Fargo thinks they're not getting

paid in the right order of priority, they need to be able to come and complain to the judge at the confirmation hearing, and they do, and we listen to them. Are we now going to take away their ability to come to Court because we confirmed a plan that says it's up to the 13 trustee to decide how to do it?

Fourth, I want to be clear that I think that the creditors who come and say that it's only fair if you do the plan that you do the rules as well or if you do the rules that you do the plan as well, those guys are right. I happen to like the rules, but I think it would do a disservice to the attempt to do consensus that was built at least amongst the creditor community to separate those two.

I am a big believer in the consensus building process and, frankly, you would do a great disservice to Wells Fargo to adopt one and not the other. But I'm worried that we'll still do that disservice. And as we said in my district's letter, we have grave concerns over whether the form plan is consistent with your authority under 2075. And if you adopt a form plan, and we have 144 judges out there and we have 83 Chapter 13 trustees, and someone challenges that plan, and let's say the plan gets tossed out, you're not going to have the rules and no

plan.

Or you wonder why we have 144 judges. The main reason we didn't get more is there were a lot of judges that said don't worry. I'm just going to handle all these problems in my confirmation order.

So what we're going to have is a form plan and a confirmation order that varies the form plan and that confirmation order isn't going to be published anywhere, and it will control over the plan. So you're going to have instead of what I have right now, which is a mandatory plan in my district where everybody knows exactly what we're going to do, I'm going to have a secret confirmation order at least in some districts that say here's what we're going to do and no one is going to get to review it. We're going to do the opposite of disclosure if we end up trying to force this down on people, and it's going to really hurt people that have worked hard in this trade, and it is the wrong thing to do.

And finally, the supporters of the form plan repeatedly claim that the from is simply a uniform way of achieving the same results that plans around the country produce. In our letter or in my testimony, my written testimony I submitted, I gave five things by just looking at my plan that this plan can't

accomplish, can't do them.

It can't adjust payments so that we can match mortgage payment changes. It requires modifications. Why are we doing that? Why are we taking away that right? We have a savings plan. That can't be built in here. The rules prohibit me from incorporating it in there. I can't fix your plan. This is a big mistake, and I really implore you not to do this. Thank you.

JUDGE IKUTA: Some questions? All right.

JUDGE JORDAN: Judge Isgur, if all these different localities have different plans and all have different varying rates of success in Chapter 13 plans --

JUDGE ISGUR: Right.

JUDGE JORDAN: -- even in the absence of an empirical study, doesn't that suggest that the form has relatively little to do with success rates? In other words, if you have an option in your plan that seems to work, the savings plan, for example, that you mentioned.

JUDGE ISGUR: We started that January 1 of this year.

JUDGE JORDAN: No, I know. I'm not talking about data.

JUDGE ISGUR: Right.

JUDGE JORDAN: But you would think that that is an idea that regardless of locale, regardless of the type of debtor, regardless of the type of creditor would be a good idea to put in, but yet, if that sort of innovation on the part of one district isn't being used elsewhere, what does that say about the importance of the form plan?

JUDGE ISGUR: Well, a bunch of things. First of all, the biggest innovation that's come about in the last decade is payment of mortgages through the trustee, and although -- and I don't have exact data on this, so take these as sort of estimates. Fifteen years ago I would bet that there were fewer than three districts in the country that paid mortgage payments through the trustee. Today I think the number is about half the districts pay mortgage payments through the trustee. That's an idea that was an innovation that the rest of us saw and we adopted it into our form plan. I bought into that because I thought it was working in other districts.

The savings plan that we just came up with was an idea of one of our new judges came in and said, I'm having these cases fail because people can't meet emergencies. He talked to the trustees. We figured

out a way to do a savings plan and not charge debtors for it. We just started it. If it works, the first person who's going to adopt it is Judge Connelly. She wants her cases to work. But if you do this form plan, we'll never know. And if somebody else comes up with a good idea, we'll never know. So there is infection from one district to another as we see good ideas.

There are a lot of similarities. I have no problem if you all want to have a rule that says every district has to have a form plan. That solves the Espinoza problem. I've got no problem if you say every district has to have a form plan and all special provisions have to be in the last paragraph of the form plan. You know, I've done that for a decade.

I was shocked when I heard Keith say that the thing he likes most about the new plan is he can look at one paragraph and see all the changes. Most of us have done that for a very long time, and again, we stole that idea from somebody else. So there are ideas that get stolen and they get stolen because things are working. And this will stop innovation.

Is that responsive to your question?

JUDGE JORDAN: Yes.

JUDGE ISGUR: I'm trying to be.

JUDGE JORDAN: Thank you very much.

JUDGE ISGUR: Thank you.

JUDGE IKUTA: Judge Harris, you had a question.

JUDGE HARRIS: Yeah. I think you touched on it a little bit, Judge Isgur, but the possibility of an incremental approach where there was a national form but an opt-out with a local form, so there was only one form in a particular district. Could you expand on that a little?

JUDGE ISGUR: This won't get all 144 judges that signed my letter and signed Brian's letter on board, but it will get 140 of us on board, which is most of us aren't opposed to the concept of saying that a form plan is a good idea. It's adopting a form plan like one that doesn't work or adopting a form plan that would stifle innovation that causes a problem.

So I think if what you do is say this is a mandatory form plan, but then the rule gets amended to say you don't have to use the mandatory form plan if your district has adopted its own mandatory form plan that meets the following minimum requirements, and one of the minimum requirements can be special provisions are in a special place.

I'd be ecstatic with that. I'm ecstatic if what you do is say form plans have to be adopted in the same manner as local rules. You know, we do that anyway. When we make a change to our form plan, we put it out for public comment. The only thing we actually don't do with our form plan is the Circuit Court doesn't review it like they do our local rules. I'm perfectly happy having my form plan reviewed by the Circuit Court. If I've got something in there that's inconsistent with circuit law, I don't want it there.

So you can put requirements that say that each district has to either use the national form plan, adopt its own, and when it adopts its own it has to do so in the same manner as it adopts a local rule. We have all the sunlight that you need, we can try new things, and we can make things work much better in a much less confusing way than what I think 1.9 million options will give us.

Did that respond to your question?

JUDGE IKUTA: We have time for one more question.

JUDGE JONKER: Help me out, please. As a district judge who doesn't practice, when I hear you talk about the impact of the form, my immediate

response is why doesn't Part 9 solve all your problems? You just put your savings plan and all your other nonstandard provisions there.

JUDGE ISGUR: I've really got a couple of answers. That one is I happen to think that the rule that is proposed to go along with the form plan prohibits our local court from mandating the inclusion provisions in Part 9. If the rule were amended to allow a local rule of a court to mandate the inclusion provisions in Part 9, it would solve all of my problems except it would not accomplish what you all are trying to accomplish because I know what I'll include.

I'm going to put a statement in there. I'll say it's mandated you include a statement that the Chapter 13 plan procedures that are set forth on the Court's website are incorporated into this plan, and if there's any conflict, those procedures control, and I'm going to repeat exactly what I'm doing in my plan on my procedures, and I've taken away what you're trying to do.

So I think you've stopped me from doing it, and if you're going to do a mandatory form plan, you almost have to or else I'm going to undermine it, and I don't mean to be that -- I'm not trying to be rude

to you, Judge, but that's the practical problem is I'm a big believer in following the rules, and if you adopt a rule that says I can't change the plan, I'm not going to change it, and that's the rule that I think you've adopted, and so I'm going to be left with a choice of, since I'm going to follow the rule, either fixing this by saying that the plan is illegal, and by the way, I wouldn't be here if I'd already decided I was going to do that because I wouldn't bother to make the trip. I'd just issue it. I'm going to let that get litigated and see whether I think it's legal or not. I don't know if it's legal or illegal. I know there's a good chance I think it's illegal. Or I can just fix it in a confirmation order.

But, you know, I feel almost like I'm cheating when I say that those are my options because if you all are going to do this, I'm going to have great reluctance not to follow it, and it's going to make me follow something that I know will disserve debtors and creditors alike, and I really don't want to be doing that.

Does that answer your question? So, if you'll fix the rule, my problem goes away, but so does your solution.

JUDGE IKUTA: Well, thank you, Judge Isgur, for your testimony.

JUDGE ISGUR: Thank you, Judge Ikuta.

JUDGE IKUTA: Appreciate it. We'll next hear from Karen Cordry.

MS. CORDRY: Thank you, Judge Ikuta, and members of the Committee. My name is Karen Cordry. I'm the bankruptcy counsel for the National Association of Attorneys General. Just to be clear, I'm not speaking hear as an official position of the Attorneys General. At this point we haven't done that. I'm speaking on behalf of the States' Association of Bankruptcy Attorneys, but certainly my experience does come, among other things, from working with state counsel across the country who have to deal with these issues.

It also comes from having written an unsuccessful brief in Espinoza, arguing to the Court that they should have kept with the eight I think it was circuits that said that there were due process problems with leaving creditors to search diligently through a thousand, a million different plans to find where the debtors chose not to follow the code or the rules and that the numbers of cases, the amounts of paper, and perhaps most importantly the lack of

resources available for creditors, especially people like state creditors with their very limited budgets and very limited time, to be able to try to search through and find these provisions made it imperative that the rules be followed, that the plans be structured, that you'd be able to find these things. We lost that argument in Espinoza. So be it.

It was based on that that we were one of the very first people who urged an adoption of a uniform national plan. We certainly recognize and appreciate the fact that a great number of the districts in this country have now adopted their own uniform plans. Of course, it's not just that there's a district plan. As I noted in my comments, a number of the districts can't even have a single plan within the district. Ohio has four in one district, in the Northern District. Texas's Western District has six within a district. The Northern District of California has four separate plans, and they aren't broken up by division. Apparently one judge uses one uniform plan and another judge in the same district uses a different uniform plan.

Two hundred or so uniform plans is better than an unlimited number of debtor-created plans. I don't dispute that. But for those of us who practice

nationwide it's not a great solution either. It's fine to say creditors don't participate. One of the reasons they don't is because the payouts are so low in the cases and then the debts are often low and then the payouts in them are so low that when you are trying to use your resources to deal with that it becomes very difficult if you can't deal with these things.

So that's one of the reasons why we have -- that's the primary reason why we have begged, pleaded, cajoled, to try to move towards this concept of a national uniform plan so that our people, when our student loan debtor who went to school in Florida and moves to California, that when they go to California they don't have to try to look through those six different plans; when our domestic support creditor moves from Texas to New Hampshire and so forth; and our taxes. People don't stay in the same place.

We're not -- for judges and debtors, they do typically only work within a single district. That's great. But that's two legs of the pie, but -- that's a mixed metaphor there -- but the third part of this tripod here is that there are creditors, and creditors are an equally important part of the system. It has to work for them as well, and when you are dealing

with a nationwide system this is a national law. It's not a bankruptcy law for Tennessee, it's not a bankruptcy law for New Hampshire. It is a federal national law with a requirement that it be uniform, and I think we have a really unique perspective on that.

The Supreme Court has told us that the requirement of uniformity in the bankruptcy law is so significant. It proves the states gave up their sovereign immunity with respect to bankruptcy.

We don't agree with that, but if it's important enough for us to do that, it certainly ought to be important enough to mean that we could look at a uniform national plan that we can deal with.

I've heard a number of questions here, and I did actually read all the prior comments the last time around, and it seems to me that one of the problems here with the plan is that everybody thinks there is -- we heard -- everybody thinks their plan is perfect. It's just that everybody's plan is a little different from the next person's plan.

One of the reasons why this plan here perhaps has the number of permutations is it's trying to accommodate the people who each side says, yes, have a plan, but it must be my plan. If we actually

adopted some of these pieces where they were the choices that actually worked better, I have no problem with. I would like to see less choices in the plan and perhaps the kind of data, empirical data we're doing. I agree, conduit plans are probably the best, paying the mortgage, having these automatic wage transfers are probably the best choices. The problem, I think the plan was trying to accommodate prior comments who said I want to have my options in there.

I have put a couple of possibilities in my comments about ways that those could be done, but I think there's not a bad idea to actually go back and do some more research and perhaps pick some of these better choices. I think there may be questions as to whether or not in fact you can force a choice on people. That's a legal issue. But a lot of districts seem to be able to do that, so I think that's probably a great idea.

I think most of those questions are not about the question of having a uniform plan as such. It's a question of what should the plan do.

The other point -- I would just very quickly a couple of points I would make. Maybe the most important one is in these rules, and the rules say, yes, the plan must be here, it must be in a special

place. You need a form order too. And the order, I don't care what else it says, but the order must say that anything that is in this plan that doesn't follow those parts of the rules is not approved because unless you have it in the order we're right back in the Espinoza problem. And I know the rules say it has to do this, but we had lots of rules in Espinoza that weren't followed, so that's perhaps the most important part.

And the other one just as a matter of detail, and we'll have some more detailed comments coming by the February deadline just on practical matters. There are a number of ways in which the plan and the rules, which do work together, and some of the issues here I think really have to do with the questions about how the rules are setting up the process to work, when you put these together, there's a number of places where it says things like the claim will control over the plan or the plan will control over the claim or the government claim can come in after the bar date.

I don't think we still yet have a really clear understanding of what that means and how that's going to operate in practice. Is the plan going to be modified? When will it be modified? How do you make

those two pieces work together? We'll talk about them in more detail, but I think that is a part that still needs to be finely tweaked in the rules.

And I'm a little over. Sorry.

JUDGE IKUTA: Thank you.

MS. CORDRY: But thank you for allowing me to speak.

JUDGE IKUTA: Questions?

JUDGE DOW: Well, I'm sure that if we adopt your particular approach on the confirmation order it's going to disappoint Judge Isgur. But my question for you, I understand what you're saying, but do you think that that approach that you're suggesting, which is not really part of the current package, is consistent with the Bankruptcy Code, particularly Section 1327? And is it consistent with people being able to understand what parts of the plan were really confirmed and what parts were not confirmed?

MS. CORDRY: I think it's consistent because I think the bankruptcy judge does not have to approve anything he doesn't -- I mean, this is saying that if there is a provision in there that violates the rule, I have not approved that provision, if it somehow has snuck through.

My only concern is unless you say that it

doesn't matter what you put in the rules. It doesn't matter what you say the plan has to do if somehow -- you know, the rule says everything should be in Part 9. But if in fact I don't put it in Part 9, I put in Part 4, you know, a completely separate provision that completely violates everything that's there, and the judge doesn't see it in Part 4 because, like Judge Lundin, he's now only looking at Part 9, which is where he's supposed to be able to look, and he signs a confirmation order and says I approve the plan, if it's in the wrong place, even though it's violated the rules and the plan and everything else, Espinoza says it still controls.

So you've got to deal with the fact that the order has to say I am approving the parts of this that follow the pieces. If it's not in Part 9, I'm not approving it if it contradicts, you know, the rest of the plan. I think as a practical matter there's no other way you can actually enforce that provision consistent with Espinoza, and that was the first thing I said when we -- the first time after Espinoza came out, and my first comment was, well, even if I put it in a rule it still has to -- you still have to deal with it in the order.

JUDGE IKUTA: What did you think of Judge

Isgur's suggestion that the rules should give districts the option of either using the national form or a form that meets minimum requirements?

MS. CORDRY: I think it still -- again, the more local forms there are the better, certainly to the extent a local form would require that so you could do that the better. That would be better than the current situation. It still leaves us with the position that anyone who comes in then has to research a whole new set of forms, try to become informed about a whole new set of requirements and things.

Again, when you're going all over the country, when you can't travel there, when you have very limited resources, it becomes that much more difficult to deal with. It's certainly better than nothing.

One other point. In listening to Judge Isgur's comments, the point about local innovations, I think it's a great idea, but I think the idea that if we have something like we have concluded that, and empirically you can probably demonstrate that mortgage payments through the trustee work better, why should we leave it that it slowly percolates one district at a time and takes 10 or 15 years to become a national provision?

If that in fact works better, then why should it not -- you know, this plan is not set in stone. I would expect that it would be revisited perhaps every few years and these kind of innovations could be put in. The same thing with electronic fund transfers. I mean, that isn't something anybody could ever have done 15 years ago, but perhaps now that will be, you know, the growing approach. But it will come into effect much more usefully and be much more likely to make all plans succeed if it comes in nationally as opposed to having to be adopted in -- I'm not sure how many precise districts there are, but roughly 100 districts or more and divisions within each one of those districts.

So I think there's a great deal to be said for -- I would never dispute looking at empirical data and trying to make the plan work better, but if those are the comments that -- if that's what the issue is, then that's a way of saying make the plan better. It's not a reason not to have a national plan.

JUDGE IKUTA: Okay. Thank you for your testimony.

MS. CORDRY: Thank you.

JUDGE IKUTA: We'll next hear from Mike Bates.

MR. BATES: Good morning, Committee Members, and I'll apologize in advance because I'm probably going to read a little quicker than I would like to make sure I stick within the time constraints.

My name is Michael Bates, and I am a senior company counsel for Wells Fargo & Company where I have worked for 21 years providing legal support and guidance to all of Wells Fargo's consumer bankruptcy operations. Wells Fargo is the nation's leading residential mortgage lender, financing one out of every five home loans in the United States in 2013, and we service one out of every six loans in the United States. There are several reasons why Wells Fargo believes that the form plan merits its support.

First, like the Committee, Wells Fargo is an advocate for greater uniformity in Chapter 13 practice, and we believe that this plan provides a template or a standardized format for listing out plan provisions in a manner which promotes that uniformity. As Judge Tallman of the United States Bankruptcy Court for the District of Colorado observed in the case of In Re: Butcher, and I quote:

"There seems to be no area of bankruptcy law practice that is more localized than Chapter 13 practice. The nature of consumer credit means that

the majority of creditors appearing in Chapter 13 cases are institutional creditors with national operations. Such creditors receive plans proposed by debtors from all over the country that vary substantially from district to district in format, language, and emphasis, and allow debtors unlimited latitude to customize provisions. This adds complexity and cost and serves no useful purpose."

Wells Fargo wholeheartedly agrees with Judge Tallman's opinion.

Second, implementing the form plan would greatly simplify and standardize training for creditors because creditors would not need to spend time training employees on hundreds of different plan forms from across the country that vary substantially district to district. Instead, creditors would be able to train employees in a manner that allowed an employee to know exactly where to look in a form to determine how a particular debtor addresses a particular issue or to determine how a particular debtor addressed the treatment of its particular claim.

Committee members, while Wells Fargo does support the adoption and implementation of the form plan, we do have one suggestion that we think would

make the form more effective if it were adopted. Based on our review of Part 3.5, which deals with the surrender of collateral and the related Advisory Committee note, we believe that the Committee intended that upon confirmation of the plan the automatic stay and co-debtor stay would be lifted as to any collateral surrendered by the debtor so that the credit could pursue its in rem rights.

Indeed, the Advisory Committee note, Part 3.5, states that, and I quote: "Termination will be effective upon confirmation of the plan."

Unfortunately, Wells Fargo does not believe that the current language in Part 3.5 is sufficient to accomplish the Committee's goal. Therefore, Wells Fargo would submit that Part 3.5 should directly state that upon confirmation of the plan the stay and co-debtor stays are lifted as to any in rem rights a lender might have with respect to property surrendered in the plan. Wells Fargo believes that making such a statement in the plan would make the use of the plan more efficient and save time and cost for debtors, trustees, creditors, and the Court.

The Committee has also solicited comments on whether the form plan and associated rule amendments should be considered as an integrated package. Wells

Fargo adamantly believes that the plan and associated rule amendments should be considered as an integrated package, and we strongly oppose the adoption of the rules without the adoption of the form plan.

Others have commented that imposing a new 60-day bar date for proofs of claim and a shortened time period to object to confirmation might be very challenging and burdensome for some creditors. It can be argued that this reduction in time and the associated burdens are offset to a degree by the benefits of a standardized data-enabled form of Chapter 13 plan.

Similarly, allowing a debtor to determine the secured nature and priority of claims in a plan or avoid a lien through a plan and impose the binding effect of that treatment through Rule 3015 seems only fair and practical from an operational perspective if this form plan is implemented. If the Committee does not adopt the form plan and proposed rule changes as an integrated package, creditors will end up shouldering a series of new burdens without any corresponding benefit.

As a participant in this Committee's January 2013 working group on these issues, I can honestly state that this is not the arrangement that the

working group contemplated.

In closing, let me state that I have read the comments from others that argued there is no need nor benefit to the adoption of the form plan. I respectfully disagree. As I have discussed this morning, there is a tremendous benefit to creditors to be able to efficiently review claim treatment in Chapter 13 cases and to know where to look for nonstandard plan provisions that may affect their claims.

I have also read comments that argue the Committee should not adopt the form plan because the Committee has not made an effort to develop a consensus opinion supporting the need for the plan. I don't disagree with the goal of consensus. It's a laudable goal when it's possible. However, sometimes consensus is just not possible. I submit this may be one of those times.

Back in 2005, I do not believe that Congress had the consensus of the industry when it adopted or implemented the Bankruptcy Abuse and Consumer Protection Act. I also don't believe that this Committee necessarily had industry consensus before it implemented Rule 3002.1. Nevertheless, I believe that our experiences with the implementation of that law

and that rule are examples of how new processes, while potentially painful to deal with and implement in the short run, actually go on to be the accepted norm, and for these reasons Wells Fargo encourages the Committee to strike out and recommend the form plan and the proposed rule changes to the standing committee as an integrated package.

Wells Fargo appreciates the Committee's hard work in seeking to bring greater uniformity to the Chapter 13 practice and the opportunity to comment here today. Thank you.

JUDGE IKUTA: Questions?

One of the concerns that was expressed was that there is a lack of empirical data as to how the national, the proposed official form would work, and whether it would be effective and have a high success rate, and there was a suggestion to try it as a model plan perhaps in some districts. If that were the case and the rules didn't go forward, then we would not have empirical data about how the plan worked with the rules. Do you think there's any solution to that problem?

MR. BATES: From my participation in this process, Judge Ikuta, I feel like these rules and the amendments to these rules were tailored to go with

this form. If the Committee wants to test the form, and apparently it's more than being tested in Judge Lundin's district, and apparently their local rules seem to work with that form fine, I'm not sure that it's really necessary to go ahead and adopt the rules in total if all you're going to do is test this form. I think from my perspective it's more of a wholesale adoption.

And Judge Isgur's point about possibly modifying I think Rule 9009 to allow them to use a form plan, again, a step in the right direction, a positive step, but these rule amendments weren't put together in my opinion to deal with any form plan. They were put together to deal with this form plan. That's why we believe that they need to be adopted and recommended as an integrated package.

JUDGE IKUTA: Ricardo, did you -- no. Any other questions?

(No response.)

JUDGE IKUTA: Apparently not. Thank you very much for your testimony.

MR. BATES: Thank you.

JUDGE IKUTA: And we'll next hear from Alane Becket.

MS. BECKET: Good morning. I'm so far down

on the list that I'm not going to sound very original, so please forgive me for repeating some of what you've already heard. But my name is Alane Becket and I'm a managing partner with the law firm of Becket & Lee in Malvern, Pennsylvania. For almost 30 years Becket & Lee has specialized in the nationwide representation of large issuers of consumer credit and more recently purchasers of consumer accounts in bankruptcy matters. I have been in practice since 1992 and have extensive experience with the operational and legal challenges faced by large lenders managing portfolios of consumer bankruptcy cases.

My testimony relates primarily to my firm's interest in the implementation of an official form for Chapter 13 plans. Our experience in managing large portfolios of unsecured accounts leads us to conclude that a standard form for Chapter 13 plans is an important step in protecting the rights of both creditors and debtors. I'd like to begin by making a few comments that were not contained in my written testimony.

Because I have a nationwide practice, I have the opportunity to speak with practitioners from all over the country. After discussing the idea of an official form with many people what I have concluded

is that most jurisdictions do in fact have a mandatory form for Chapter 13 plans, as you've heard. Therefore, I don't believe the opposition is to the idea of a standard form. Rather, the problem seems to be the practitioners in these areas are happy with what they have and they don't want anybody to change it.

And more practically, there are some specific substantive provisions of the plan that individuals who are opposed to it have. However, that is what this comment process is for, and I know for a fact that this Committee reads, considers, and responds in some way to all comments that are submitted to it.

It goes without saying that creditors and especially secured creditors must review all plans. This Committee embarked on this process several years ago to address the Supreme Court's decision in United Student Aid Funds v. Espinoza, which did two things.

First, it held that the terms of a confirmed Chapter 13 plan were binding on all parties regardless of the legality of any of the provisions in it, and second, it put the burden on the bankruptcy judges to not confirm any plan that contained an illegal provision. As a result, this Committee recognized

that the need for the standardization of format for Chapter 13 plans to address both of those considerations.

Currently, there are dozens of Chapter 13 plans in use throughout the country and some estimate that there are at least 200 forms. In addition, there are some jurisdictions where there is no standard form and anything goes. Changes to local form plans are assimilated into my firm's practices on an as-discovered basis as there is no formalized process for communicating changes in plan forms to creditors.

As an experienced representative of unsecured creditors, our firm has developed processes and procedures for reviewing these many plan types. However, because of the lack of uniformity, this type of review is manual and time-consuming in an environment where the returns, especially for unsecured creditors, are small or nonexistent.

Due to time constraints I'm going to pass on my remarks about the benefits of a standard point from a technology standpoint, and you've heard most of what I would say, except to say that standardization presents many opportunities for all participants to leverage technology to make the process more smooth, efficient, and cost-effective.

The November 18, 2014, letter from the Committee of Concerned Bankruptcy Judges to this Committee suggests that there is no need for nor benefit to an official form for Chapter 13 plans, and I respectfully disagree. As has been noted, there is tremendous benefit to all creditors to be able to efficiently review claim treatment in Chapter 13 cases and to know where to look for nonstandard plan provisions that may affect claims.

A section for nonstandard plan -- pardon me. Having nonstandard plan provisions in the same location on every plan along with the accompanying checkbox on page 1 of the form will not only facilitate identification of those provisions but will protect debtors who comply with the notification requirements from due process attacks on their plans.

A section for nonstandard provisions should also satisfy those who worry that certain provisions critical to the operation of Chapter 13 in their jurisdictions are not included in the form. Any provision not otherwise in contradiction to the form or the law can be implemented through that section.

However, this Committee should make clear that Part 9 should not be used to circumvent the use or operation of the proposed form and that deviations

from the form as permitted by the current proposed Rule 3015(c) should not be used to supplant the form, as has been suggested might happen.

These days consumer lenders are more heavily regulated than ever and are expected to maintain accurate and up-to-date records regarding consumer accounts. The ability to review and monitor claims in bankruptcy cases is a benefit to creditors, benefit to the bankruptcy system, and brings transparency to the bankruptcy process. We believe the overall benefit from having standardization in the format for similar activities, such as Chapter 13 plans, will outweigh any short-term pain.

Our experience with the implementation of the means test and accompanying form and rule changes is a good example of how imposition of a new process, while potentially causing a short-term disruption to established procedures, eventually becomes the norm.

I see that my time is up, but I would just also echo those who have strongly urged that the plan and the rules are not unbundled. Those rules are inherently burdensome for creditors. A shorter proof of claim deadline, determination of liens, and priorities in a plan will require creditors to act and act quickly. If the standard form is not in place,

there is a huge potential for exactly what happened in Espinoza to happen. So I strongly encourage that these be implemented as an integrated package, and I thank you for the opportunity to address you today.

JUDGE IKUTA: Questions? Judge Harris.

JUDGE HARRIS: Ms. Becket, trying to get more empirical information, for example, payments to unsecured creditors and how that might vary among districts and which districts have a better rate, I know there are a lot of factors because you could have some districts have a lot more 7s than 13s so that even if you have 100 percent payout in a 13, if only 5 percent of the cases in that district are 13s, that may not be such a good distribution for you.

But do you have anything in observing unsecured creditors where you might be able to suggest we could get more empirical data and try and look at that?

MS. BECKET: I think someone earlier on spoke about the National Data Center and the information that they're able to provide on these issues.

Now, as a representative of not every creditor unfortunately, just certain creditors, I don't have access to all of the data that's available

from the NDC. But others with a different perspective may have access to that type of data.

I do know that success rates in Chapter 13 is largely a factor of local culture, and I don't think that local culture, that local culture, for example, in some of the districts of Tennessee where 70 percent of the plans that are filed are Chapter 13 plans when right down the street or down another state only 5 percent are Chapter 13 plans. That is a function of local culture, but I don't think that type of local culture, which lends itself to success and just coming out of the box and not even considering Chapter 7 unless it's absolutely necessary, will not be overshadowed by the implementation of a standardization in format, which is really all I think we're saying here is all things that deal with unsecured claims go in Part 8. All things that deal with liens go in Part 5.

Judge Connelly made a really good point when she said she mapped out these elements that are common to plans and they can all be in a standardized format is really what I think is the most important thing here, is we're not looking to change any local culture. We're just looking for some standardization of form.

JUDGE IKUTA: Other questions? Ricardo.

MR. KILPATRICK: Ms. Becket, I know that your practice spans the country. Have you had anyone do a mapping of the proposed model form plan to the existing plans that are out there to see if this plan would accommodate the local practices that exist throughout the country?

MS. BECKET: You know, I have not done that. I think maybe Judge Connelly did something of the sort, but the fact is I'm an unsecured creditor. I'm going to get what I'm going to get, and I can't influence that very much, but what I can do is try to do the best job for my clients in identifying parts of plans where they may need to take action. We may need to object to confirmation. Something else in the plan may affect our claim as happens from time to time.

So, if this plan were implemented, I would actually begin something in my practice that I can't do right now, which is every plan that comes through my door somebody would look at Part 9 or the checkbox in Part 1, whereas today I can't even begin to have the resources and staffing and training to go anywhere near that.

And I might also add although I do represent unsecured creditors I fully support what Mike Bates is

saying, and I'm really a proponent of the bankruptcy process and not just my client's interest, and my perspective is that the bankruptcy process will be improved by taking away the free-for-all, with no disrespect, that goes on from our perspective of the inability to kind of get our arms around all of these different plans and really represent our clients in the best way that we can.

MR. KILPATRICK: And although it was stated by Mr. Bates, and I probably should have asked him this question, how will it affect training within your organization, having a standardized form?

MS. BECKET: I think Mike and I would both agree that, wow, you know, that would be great, and once you get into data enabling, you know, talk about the savings in mailing costs, in printing out papers, in PACER costs, so data enabling is not part of this Committee's proposals at the moment, but we're never going to get there, we'll never get to data enabling unless we get standardization of formats.

But, you know, from day one of this new form look at the checkbox. For an unsecured creditor look at the checkbox on page 1, and if there's nothing checked there move on, and that's easy.

MR. KILPATRICK: Ms. Becket, would it be a

step forward for you then if the form plan -- a form plan simply said admin claims are here, secured are here, priorities here, unsecured, one, two, three, four, five, as opposed to the content and you could have what's going to happen locally, but you could teach your folks we're unsecured in this case, we need to look at number six? My job is to look at paragraph number six --

MS. BECKET: Yes.

MR. KILPATRICK: -- because nationally unsecured is treated at paragraph number six.

MS. BECKET: Speaking strictly from --

MR. KILPATRICK: That's a step forward from where you are now.

MS. BECKET: Sure, sure.

MR. KILPATRICK: Okay.

MS. BECKET: And to the extent that we can then use that data, it will enable us to get data where we just don't have the resources or it's not cost-effective to do it at this time. But just to be able to get that data and go back to our clients and say this is what you can expect from your, you know, portfolio, this is how it breaks down, and, you know, they can't deny that a lot of these companies sell their debt, sell this bankrupt debt to other companies

who are more than happy to participate in the bankruptcy process, and it helps them as well. You know the value of what you've got.

But strictly for an unsecured creditor, yes. If it was always in box nine, I wouldn't care less what the rest of the plan said. But as a proponent of the bankruptcy system, I have to say that everyone else's perspective is also very important.

JUDGE IKUTA: One more question.

JUDGE GOLDGAR: I wondered if you could answer the question that I posed to Judge Lynch, and it really was just a question and given your national practice, and that is whether in your view the form of a plan in a particular district influences confirmation rates or plan completion rates and, if you do think so, why you think that's true.

MS. BECKET: I can't really speak to that as an unsecured creditor because it doesn't do anything for me to figure that out. However -- for my clients I would say, and nobody else wants to pay me to do it. However, I think the success of Chapter 13 is not -- if you ask me based just on my experience doing this -- is not dependent on what order everything is in in the plan. It's dependent on the trustee, the debtor attorney, the local culture, the bankruptcy

judges. They all manage their cases differently, and I don't think how the information is presented to the Court really affects the ultimate success of a case.

That's where local culture is. You can see obvious differences in local culture, but, again, I don't think that changing the format of the presentation of the information is going to have an impact on that.

JUDGE GOLDGAR: So, when you say local culture, you're not including the plan as part of the local culture. You're really talking about something else?

MS. BECKET: I am talking about something else because local culture is really the people in the area's view of bankruptcy and the goal of bankruptcy and what their role is in the process. You can look at a chart of the United States and see areas where almost every case that's filed at least starts out as Chapter 13, where success rates are higher than other rates, where payouts are higher than other rates, and a lot of that is a factor of how the participants, the everyday participants, the trustees, the debtor attorneys, and the judges approach bankruptcy cases.

Some courts would not confirm a zero percent plan, zero percent unsecured. They just won't. Some

courts won't, and this is probably a little more pre-BAPCPA, but some courts wouldn't confirm a plan that was less than a 20 percent dividend, and so that's the kind of influence that local people can have on the process and therefore the outcome, and, again, I don't think the format of the information makes any difference really.

MR. HARTLEY: I'm sorry, but one more question. But in a district where you have a judge that will approve a zero percent plan and have a $3,500 no look for the debtor's counsel, you're going to have high 13s in that district, right?

MS. BECKET: You can, but the payouts are going to be low.

MR. HARTLEY: Sure.

MS. BECKET: So, yeah, you may have high 13s, but again, the choice to go into Chapter 13 and submit yourself to three to five years of payments is largely due to the debtor's personal circumstances, whether they've got collateral they're trying to protect, you know, whether they're behind on their mortgage. But the fact still is that in some jurisdictions just out of the box the idea is let's see what you can do in a 13 because we pay our creditors back here if we can, and that's the local

culture in that area. In other areas they don't care. If your plan, you know, meets all of the checkboxes and it's confirmed, that's it. It doesn't matter what it pays out. So that's how local culture plays into the success of the payout I think in Chapter 13.

JUDGE IKUTA: Okay. Thank you very much, Ms. Becket, for your testimony.

MS. BECKET: Thank you.

JUDGE IKUTA: And our last witness today is Ronda Winnecour.

MS. WINNECOUR: Thank you, Judge Ikuta, members of the Committee.

I need to start out with a confession. I hate to do this, but I was wrong and you were right. I chaired the first -- no group of -- with all respect to the judges in this room and my friends who are creditors' attorneys and the debtors' attorneys who are also here, there is no group of individuals who will be more affected by a national plan than Chapter 13 trustees, and despite the fact that everybody sort of seems to think that they didn't know about it, they did.

I chaired a program on this two years ago at the mid-winter meeting for the trustees when we were alone in Hawaii. I attended every board meeting, open

and closed, that addressed the plan form. I had the opportunity following it to serve as sort of a liaison on the committee that the Association formally put together on the plan form and rules, and I had the opportunity to meet with Judge Wedoff and Mr. Kilpatrick on several occasions to tweak the current plan form, and I was opposed all the way through it until this version.

It makes sense, and the thing that really made sense to me was reading the comments to the rules. Everybody who is opposed to the form, the most vocal opponents are opposed because they have one, and they have one for the same reason I have for 15 years. It works, and there's nothing about my form that could not be incorporated into the national form.

The local practice and culture, the attitude of the trustee, the debtors' bar and the creditors' bar comes to the table in a really meaningful way when you look at the plan. It doesn't matter what it looks like on the paper. It does matter what the conformation order says, what the local rules apply.

In my district, like Judge Isgur's, I pay everything. Actually, I pay things, other than the savings account which I'm about to institute probably when I get back, I pay things that no other trustee in

the country does. I have made ongoing property tax payments, I have made ongoing utility payments, and I have done that to make plans work since I became trustee 15 years ago, and I incorporated the practice of my predecessor from 15 years before that, and he had a mandatory plan too. His was 14 pages long, single-spaced, font size 9, and was so complicated it contained a four-page plan summary on the top of it.

I'm not that kind of trustee. I like what he did and what he accomplished, but I'm an administrator trustee. So the first thing I did was dump the form and keep the summary. My judges have since expanded the form, and we're about six or seven pages now, but it's not significantly different from yours. None of the plans I looked at were significantly different from yours.

My colleagues have argued vehemently that the fact that there is a checkbox for the debtor will pay unsecured creditors outside the plan will mean that every debtor is going to try to do that, and you know what? They will. They absolutely will. Every one of my debtors' attorneys is going to sit there at a confirmation hearing or at a conciliation conference, we actually do an informal process for plan confirmation, and we do it at 341 so that we can

move money quickly, so every one of them is going to sit there and check that box and my staff's going to alert it, oh, yes, because it's data-enabled they're going to know about it without having to do it manually. They're going to alert it. My staff attorney or I are going to sit there and say you're kidding, right? You really think you want to make that work? Let's have a hearing, and it will go away in six months.

Nobody hates change more than bankruptcy lawyers. I know, I didn't used to be one, and I have never -- and it's what you want and it's what you want in a trustee and it's what you hope for in a judge. You hope for consistent administration of what is actually a financial institution. I move $140 million a year. To date, I have moved it all to the right place. I am very fortunate. It may not have happened since I haven't checked email this morning. That's really what we do.

We get it to the right place in the right amount in the right way, and the form for how we get there is really pretty much irrelevant. Yes, there's griping, and I get that people don't like it. I don't think that the plan form affects the success rate. I've actually done some research on it in my own area.

What is affecting plan success is trustee attitude about helping debtors complete, mandatory wage attachments, electronic funds transfers coming in, but it isn't affected -- mine isn't better than somebody else's because of the form I use.

Mine may be better because we pay everything, and when my debtors come out of Chapter 13 they're coming out with a mortgage payment paid ahead. They're coming out with the cars fully paid. They're coming with, oh, yeah, the money I took all the time back in their pockets. So that increases effectiveness, but the form does not.

And I really want to thank you all. I really want to spend four seconds on the rules. They are necessary. They are essential, and if they are what it costs to get a plan and if it works in a way to get a form in place for creditors to be able to file proofs of claim in mortgage cases, to file a proof of claim within 60 days, to let us get that money out the door to them quicker, more accurately, and to require them to come to the table and give us the information we need to do it, there's nothing more important than this right now. Thank you.

JUDGE IKUTA: Questions?

JUDGE DOW: Ronda, you said that originally

you were opposed and for some time.

MS. WINNECOUR: Uh-huh.

JUDGE DOW: So what specifically was it that drove your opposition and what was it about the process or the changes to the form that changed your mind?

MS. WINNECOUR: One of them was the removal of the distribution sequence. I actually attended that session, and in fact the fact that trustee's fees are in place in the first line of distribution is probably no longer accurate too because the United States Trustee Program changed their policy on trustee's fees, and we now take fees on receipts in virtually every jurisdiction, so we aren't distributing them to ourselves. We've already taken them. They're gone.

But what really changed it was Judge Wedoff's willingness to meet with us over and over again and make it a neutral form. It doesn't incorporate the outcome. The outcome is in the orders. It's in the trustee's objections to confirmation. It's in the hearings that are going to go around, and it's in everybody doing the job they already have. The form doesn't do our jobs.

JUDGE DOW: Since you mentioned the

distribution scheme a number of the comments by those who oppose the form have been that there's a problem with that part of the form either because it permits debtors to adopt some distribution scheme that may be completely out of whack with the code or because it delegates it to the trustee and then it will be a secret process. What's your response on those concerns?

MS. WINNECOUR: The distribution scheme in my jurisdiction does not comply with the code, and I've had the objection raised by secured creditors that we don't comply with code because we don't make adequate protection payments to 910 car claims. We don't do any of that stuff, and we've litigated it, and judges said, gee, do it. Anytime a creditor objects we now do it. They don't object anymore. They get money faster. And to use the distribution sequence in place would have slowed down the distribution process for my district.

I think that it varies. I don't think there's any secrecy about it. The confirmation order establishes when the money is going to move. The plan form in my district shows it, the rules show it, and the creditor has the right to object to it. I don't see this as a big deal. I think mandating the

distribution sequence was the problem.

JUDGE IKUTA: One of the comments that we've heard is that adopting this national form would squelch innovation in the various districts because it would have to make any changes, would have to go through the forms modification process. What's your response to that concern?

MS. WINNECOUR: I think that to the extent that there might be something innovative or new, we would encourage the bar to include it in Provision 9. We would encourage the Court to include it in the court order confirming the plan.

I don't think that -- and to the extent that we think it's really great and we should share it, I will write it, my staff attorneys will write it, we'll get it out there. Thirteen trustees talk to each other all the time. As a matter of fact, I'm surprised you only got complaints from 84 of my colleagues. I've heard from petty much all of them this week. We talk to each other all the time. We are very close-knit, much in the same way the bankruptcy judge community is. We have a private email list. We just saw each other all last week. This is certainly a topic that is concerning to the 13 community.

But like I said, I can't see -- when you actually think it through, it works. That's why we do what we do, and making it work for everybody is an administrative boon. It's going to save me money, which means Alane's clients are going to get more. I don't have to have a person sit there and input every single piece of that plan. I've talked to the software provider. He said as long as it's on a platform they can incorporate all we're going to do is push a button.

Now my staff's going to go through and tell me what's wrong because the car payment will be in the wrong place, the mortgage payment will be in the wrong place, an adequate protection payment isn't yet provided for in your form. I made some suggestions, my colleagues have made others. It's all going to be in the wrong place, but it's going to be in my system with the push of a button. It's going to save 20 manhours a week in my office.

JUDGE IKUTA: Other questions?

(No response.)

JUDGE IKUTA: We thank you for your testimony.

MS. WINNECOUR: Thank you.

JUDGE IKUTA: Thank you. That was our last

witness. I'd like to thank all of the witnesses for coming out here and giving us their testimony. This information is extremely important for our process. Our next meeting will be in Pasadena this April, and the information regarding the meeting will be posted on the U.S. Courts Rules website, and we'll also try to have very nice weather for you all. And with that we are adjourned. Thank you.

(Whereupon, at 11:46 a.m., the meeting in the above-entitled matter was concluded.)

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