

## HELP FOR THE INSOLVENT CONSUMER

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The January 1961 Readers' Digest first person award-winning article, "We Went Bankrupt on the Installment Plan", is not the story of a normal consumer, and it does not represent a typical consumer bankrupt. Helen Arnold's nightmarish account describes an isolated experience of a family on the skids of a credit binge. As Sylvia

Porter put it in her syndicated article which appeared in the New York Post for May 8, 1961, Mrs. Arnold was a "preposterously naive wife and mother who is spreading more distorted propaganda against installment buying today than any 'cash only' fanatic I can remember. The message she is sending you via some of the nation's leading publications is so loaded and potentially harmful that I am astounded authorities on installment credit have not yet slapped her down with the facts you will read below."

In case you missed the rather fantastic tale, Miss Porter notes that Helen "lists about every mistake a borrower could make. No sooner had she and her husband begun piling up debts than she quit to have their first baby. With only Don's income (\$100 weekly take-home), they went all-out with charge accounts and on-the-cuff buying of furniture, appliances, etc. At this point, they built a house, ended up with additional mortgage payments of \$110 a month, had a second baby, learned that the bare necessities include 'dancing lessons little girls have to have'".

#### The Typical Bankrupt

The average consumer knows better than to voluntarily put himself in Helen Arnold's predicament. Even though an insolvent consumer may resort to bankruptcy, he is not stupid or illiterate. He not only can read and write, but has the training and ability to earn more than a minimum wage and wants to enjoy and expects to pay for many of the comforts of our present-day society. From an examination of literally thousands of bankruptcy files, a composite picture has been formed which shows him to be somewhat as follows:

- a. He is a male<sup>(1)</sup> and most likely from 25 to 40 years of age.
- b. He is married and is usually living with his wife and children.
- c. He is employed when he files his petition in bankruptcy and was then earning about \$400 per month.
- d. Exclusive of a home mortgage<sup>(2)</sup>, his indebtedness totals from \$3000 to \$4000.

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(1) There is a trend toward female bankrupts, as discovered in various studies, including a preliminary survey made by Syracuse University Research Group in the Utica, New York area.

(2) Usually a home mortgage, which provides for payment over a 20-30 year period, may be regarded in lieu of rent and hence is not weighed as heavily as some other debts in figuring a debtor's financial position, especially when there is no substantial equity in that debtor's favor.

Now, having a general image of our subject, we go on to consider what caused his trouble and what can be done to help him.

### The Extent of Bankruptcy

But, before we review the common causes of bankruptcy and consider what might be done to reduce the number, we will take a look at the trend and the extent of the problem so that you can form your own conclusions as to how serious it is.

The bankruptcy rocket was launched in 1950 when there were a total of 33,392 petitions filed. The rocket, figuratively propelled by an annual booster, has soared higher and higher each year thereafter. In fiscal year 1960 a total of 110,034 bankruptcy petitions were filed -- almost a 400% increase over 1950. And in 1961 there was a 33% increase over the prior year, with a climb in total filings to the all-time high of 146,643.

There has also been a change in the type of bankrupt. In 1898 when our present basic Bankrupt Act was enacted, there was little occasion for wage earners to resort to bankruptcy. Individuals not engaged in business for themselves had very few personal debts. By 1940 about 75% of the bankrupts were in the non-business category. Now, 90% of all bankrupts are of the non-business type -- or are in what we might refer to as being the consumer group.

It seems appropriate to mention here that this change in type of bankrupt shows how out of date our basic Act has become. The twofold purpose of the Bankruptcy Act of 1898 was:

1. The expeditious distribution of the bankrupt's assets to his creditors.
2. The relief of an honest debtor from the weight of oppressive indebtedness.

Today, one of the primary purposes of the Act is no longer being satisfied, in almost 90% of the cases, because there are no assets for distribution. Nevertheless, we are still administering the old patent medicine treatment-(it does not kill, but it does not meet the needs of the patient)-when we should be developing a modern day approach to meet our economic requirements.

### Causes of Bankruptcy

Before trying to decide what, if anything should be done, it is appropriate to consider the causes of bankruptcy. Briefly, those most commonly asserted causes may be summarized as follows:

1. Overloading by careless or indifferent credit grantors
- 1a. Misjudgment of an individual's credit worth either by the individual or the creditor
2. Loss of employment
3. Marital difficulties
4. Moral breakdown on the part of debtors
5. Harsh collection laws
6. Ruthless collection methods
7. Antiquated Bankruptcy Act that does not provide suitable and well-developed and well-understood alternatives
8. Lawyers who needlessly encourage bankruptcies either for their own convenience or financial gain or because they do not know what is the best relief for certain insolvent debts

#### Summary Position

Time does not permit a careful or even a casual examination of all these alleged causes. In moving quickly we present three observations:

1. We know that some consumers are overloaded with debt; that for some time they may have been wandering through a hostile wasteland of wage assignments, garnishments, judgments, harrying phone calls, pre-emptory letters and visits from collectors and repossessors. Hence, it is fair to say that various insolvent consumers do need some form of relief. It must be made available. The question is what type of treatment should be provided. This will be discussed later and in some detail under the heading "Is Bankruptcy Necessary?".

This need for a form of relief should, of course, be viewed in its proper perspective. It relates to a fringe minority who always do and always will get into trouble. The great majority of consumers handle their credit well. For instance, only approximately  $\frac{1}{2}$  of 1% of the customers of consumer finance companies file petitions in bankruptcy.

2. We think that harsh collection laws tend to increase the number of bankrupts in the states where those laws exist. For instance, in the states of Connecticut, Florida, Pennsylvania and Texas, wages are not subject to garnishment, but wages may be attached in the state of California, Illinois, Ohio and Oregon. The following table showing non-business bankruptcy petitions filed in fiscal 1961 presents an interesting comparison:

## GROUP A

<u>STATES</u>	<u>TOTAL BANKRUPTCY PETITIONS FILED</u>	<u>POPULATION</u>
California	24,576	15,717,204
Illinois	16,356	10,081,158
Ohio	13,284	9,706,397
Oregon	3,457	1,788,687
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TOTAL	57,673	37,293,446

## GROUP B

Connecticut	768	2,535,354
Florida	269	4,951,560
Pennsylvania	359	11,319,366
Texas	149	9,579,677
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TOTAL	1,545	28,385,957

A comparison between the two most populous states would also seem to be in order. California, with a population of 15,717,202, had a total of 24,567 non-business bankruptcy petitions filed in 1961 while the state of New York with a population of 16,782,304 had a total of 3554 non-business bankruptcy proceedings commenced in that year. Why should there be about a 7 to 1 difference. Certainly it appears appropriate to observe that New York has a moderate and humane garnishment law that is not unduly burdensome to debtors, is not too annoying to employers, and gives creditors some fair means of collection, while California has a garnishment law which may be unduly oppressive to the debtor in many cases.

Roger Birdsell, a staff writer for the South Bend Tribune (South Bend, Indiana) after interviewing the Referee in Bankruptcy and the Secretary of the Credit Bureau of South Bend and following other research, said in a feature article published in that paper on September 10, 1961:

"(Referee in Bankruptcy) Rodibaugh is of the opinion that the majority of bankruptcy petitions are filed by persons who know that their employers will not accept garnishments or who expect to get jobs with those who don't.

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"Indiana in that year had a total of 2021 bankruptcies filed with a population of 4,634,000. Florida, with a population of 4,886,000 and a legal prohibition of any garnishments,



had 489 filings. On the other hand, Illinois with a population of 10 million and no limitation on garnishments, had 14,419 filings.

"Rodibaugh believes the Indiana garnishment law makes a virtual dead letter of Chapter 13 of the federal bankruptcy act in the state. Chapter 13 was recently praised in a national magazine as a preferable solution to a debtor's problems."

Illinois and Louisiana did amend their collection laws in 1961 and a decrease in garnishments and bankruptcies has already been experienced in Illinois. The results in Louisiana are not yet at hand.

3. We are exploring the charges that some lawyers share a responsibility for the growing tide of non-business bankruptcies.

#### Is Bankruptcy Necessary?

There are forms of relief other than straight bankruptcy proceedings which may be better for many overburdened debtors:

A. For instance, a debtor may take advantage of Chapter XIII of the Bankruptcy Act and proceed under a Wage Earner's Plan. As observed by Murray T. Bloom in his June 1961 Reader's Digest article entitled "Ready Help for People in Debt" that provision is "one of the least known and most useful pieces of social legislation ever passed by Congress \* \* \*, it enables solvent families to pay off their debts, keep their self-respect and avoid bankruptcy."

Under such a plan, worked out for the individual debtor, he is able to pay his debts out of future earnings over a three-year period under the supervision and protection of the bankruptcy court. Professor Charles F. Nadler<sup>(3)</sup> summed it up by saying:

"Thus, not only does such a debtor immediately put a stop to never-ending creditor dunning and legal harassment, but upon successful completion of the arrangements he has conserved his morale and self-respect, to say nothing of his legal benefits."

Where the Chapter XII procedure has been properly set up and administered, it has worked successfully. This is demonstrated in the states of Alabama, Georgia, Kansas and Tennessee where in 1960 the following number of wage-earner petitions were filed:

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(3) Professor Emeritus Walter F. George School of Law, Mercer University, Volume VII, New York Law Forum, page 331.

Alabama	5778	Kansas	1257
Georgia	1276	Tennessee	1986

As mentioned in Professor Nadler's article supra less than 15% of the non-business bankruptcy cases have been filed under Chapter XIII.

"And yet, out of 5840 'extension' cases, (payment in full), concluded in fiscal year 1959, a total of \$4,603,679 was paid out to the several unsecured creditors, while in 1960, the unsecured creditors received \$5,150,514 in 5920 'extension' cases concluded--an increase of 80 cases producing better than an additional half million dollars. Note that the creditors receiving full payment under these extension Chapter XIII cases would have received nary a penny had these debtors filed under ordinary bankruptcy."

In Murray T. Bloom's Readers' Digest article (June 1961) he said: "Not only does the Wage Earner's Plan serve the interests of both creditor and debtor better than bankruptcy, but it gives the debtor something priceless: a clear conscience."

Yes, Mr. Bloom, it is for the individual's own good to avoid straight bankruptcy where every possible. Where he can arrange to pay his debts, it serves his pride, self-respect and firms his moral stability. It also operates for the benefit of the general welfare of our society and economy.

B. Another approach of an unofficial but somewhat paralled nature is being sponsored by the National Foundation for Consumer Credit. That Foundation is developing a model plan for a free Family Credit Counseling Service locally sponsored and supported for the users of consumer credit. The model plan calls for a free professional advisor and is to be supported by the local credit grantors as a joint enterprise. Under this service, financed by all of the local credit grantors as a community project, distressed debtors can obtain financial guidance and relief without any expense to themselves or the creditors immediately concerned.

C. Organized labor has also considered the problem of the distressed debtor. Guidance in budget planning is obtainable through the non-profit consumer counseling program of the AFL-CIO Community Service Activities. In reporting on this program in the September 1961 issue of the American Federationist, an official monthly publication of the AFL-CIO, Leo Perlis, Director of AFL-CIO Community Service Activities, said in part:

"Most of us buy on time for good and sufficient reasons. But sometimes our debts outrun our ability to keep up with the payments or perhaps a lay-off puts us in the hole or maybe fast-talk outwits our judgment. Into these troubled waters has come a new breed of sharks offering to pool our woes--for a price.

"Because the debt-adjustment racket has hit specially hard at the working people of this country, it has been a matter of particular concern to the AFL-CIO. At a meeting in February 1961 the Federation's Executive Council declared flatly, 'The deb-adjustment business, regulated or unregulated, is not economically or socially desirable as a commercial activity and should be eliminated'"

"Obviously, there remain a great need to inform debtors not only of the evils of debt-pooling, but also of the many reputable agencies available to provide them with assistance."

This is the background of the AFL-CIO Community Service Activities.

To sum up, it is seldom necessary for an insolvent consumer to resort to straight bankruptcy for relief. In most cases his purposes will be better served through a Wage-Earner's Plan under Chapter XIII of the Bankruptcy Act, or through the free assistance of a local family credit counseling service or with the guidance of the non-profit consumer counseling program of the AFL-CIO. In addition, in states having harse collection laws, hard-pressed debtors deserve legislative consideration.