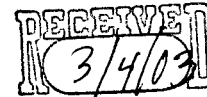


**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE**

KEITH M. LUNDIN  
U. S. BANKRUPTCY  
JUDGE

February 26, 2003

CUSTOMS HOUSE, SECOND FLOOR  
701 BROADWAY  
NASHVILLE, TENNESSEE 37203-3976  
TELEPHONE: 615-736-5586  
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03-BK-A

The Honorable A. Thomas Small  
Judge, U.S. Bankruptcy Court  
Century Station Post Office  
Post Office Drawer 2747  
Raleigh, NC 27602-2747

RE: Model Form for the Chapter 13 Plan

Dear Tom:

Enclosed is a copy of the July 2002 *Norton Bankruptcy Law Adviser*. If you've already seen this, throw it away, but otherwise take a look at the first article—it is an account of a workshop at the 2002 meeting of the National Association of Chapter 13 Trustees in San Juan. Fifty bankruptcy professionals representing every region of the country and virtually every aspect of consumer bankruptcy practice drafted a model Chapter 13 plan.

During the drafting exercise in San Juan, the participants recognized that the endless variation in Chapter 13 plans across judicial districts produces enormous inefficiency in Chapter 13 cases, encourages creditor hostility to Chapter 13 and generates many procedural and substantive defects in Chapter 13 practice. Despite many differences in "local legal cultures," the participants reached a consensus that it was possible to standardize most of the necessary content of a Chapter 13 plan and that it was worth the effort. The draft plan at the end of the enclosed article is the product of that effort.

Since last summer, I get an e-mail or a phone call about once a week from a bankruptcy judge that is considering the model plan. With small changes, it has been implemented several places and I know of half a dozen districts that plan to try out the form by local rule or general order during 2003. The model plan is being studied by several national organizations with an eye toward spreading the model from the grassroots—from district to district.

You see where this letter is going: would the Advisory Committee on Bankruptcy Rules consider the development of a form Chapter 13 plan? If there is a formal process to request consideration, I would be pleased to start that process by making that request. There are several organizations that would wish to be heard, especially creditor groups that have lined up in support

Honorable A. Thomas Small

-2-

February 26, 2003

of the model plan after the San Juan meeting. Please let me know what I should do next. Thanks in advance.

Best personal regards,

Sincerely,



Keith M. Lundin  
Judge, U.S. Bankruptcy Court

KML/co

cc: Hon. Chris Klein  
Hon. Mark McFeeley  
Hon. James Walker

Editor in Chief: William L. Norton, Jr., Former U. S. Bankruptcy Judge (1971-1985)  
Attorney at Law, Atlanta, Georgia

July 2002

Issue No. 7

### IN THIS ISSUE...

1. **The San Juan 50: A Proposed Model Form For The Chapter 13 Plan**
2. **Message To Preference Defendants: When In Trouble Holler "Earmarking"**
3. **Ninth Circuit Extends *Gruntz* To Discharge Context**

## THE SAN JUAN 50: A PROPOSED MODEL FORM FOR THE CHAPTER 13 PLAN

Henry E. Hildebrand, III, Esq.  
Chapter 13 Trustee  
Nashville, Tennessee  
and  
Keith M. Lundin  
U.S. Bankruptcy Court  
Nashville, Tennessee

Picture this: Fifty experienced Chapter 13 bankruptcy professionals from 29 different states—a mix of standing trustees, debtors' lawyers, creditors' lawyers and paralegals—closeted in a conference room at a Caribbean resort with instructions to draft a "perfect" model Chapter 13 plan that fits on two sides of one piece of paper.

This was one of the exercises undertaken by participants in the Advanced Chapter 13 Practice Institute that preceded the annual meeting of the National Association of Chapter 13 Trustees in San Juan, Puerto Rico in July 2002. To prepare for the Advanced Institute, each registrant collected Chapter 13 plans in actual use from at least five districts other than their own. The hundreds of collected plans varied in length from a simple one page form to a complex and detailed 16 pages. Participants also reviewed recent decisions on the effects of confirmation of Chapter 13 plans.

First in small groups, and then altogether with the help of a unique four-screen computer word processing/projection system, the registrants struggled to reach a consensus on the provisions of a model Chapter 13 plan. The often heated discussion produced many important insights:

- There is anarchy in Chapter 13 practice with respect to the content and form of the plan. Many districts have a preferred or required form for the Chapter 13 plan that would not be recognizable outside of the district. Every such district seems to think that its form for the plan is the best. One creditors' attorney with national clients observed that the attorneys and paralegals in her office had to contend with 214 different forms for the Chapter 13 plan.

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West Group  
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THOMSON  
WEST

## NORTON BANKRUPTCY LAW ADVISER

- In districts without a preferred or model form for the plan, standing Chapter 13 trustees and creditors constantly struggle to determine the content of plans because the forms used by debtors' counsel vary and the same words used in different plans don't always convey the same meaning.
- National creditors barraged with different plan forms, often cannot determine the treatment of their claims from the papers they receive.
- The words used in plans to describe the treatment of creditors do not mean the same thing from district to district. For example, "pot" and "base"-terms widely used to describe the basis for calculating distributions to unsecured creditors-had four different meanings among the 50 participants.
- Creditors want to be able to look in the same place on every plan to determine their treatment. Creditors want the words used in plans to have the same meaning everywhere.
- Debtors' attorneys like the "local culture" approach to the Chapter 13 plan because it is familiar and local judges "like their own forms." Debtors' attorneys customize their law office software to use unique plan forms. Software manufacturers cannot develop off the shelf programs for preparation of Chapter 13 plans for use across the country. With the impending nationwide implementation of electronic case filing, this computer resource problem is exacerbated.
- Creditors see the encyclopedia of different plan forms as a self-serving opportunity for debtors' attorneys to "hide the ball." Some debtors' attorneys candidly admitted there was a technical advantage to local forms.
- Motions that are determinative of the treatment of creditors in Chapter 13 cases are often separate from the plan-physically and in terms of court procedures. Creditors cannot know the complete treatment proposed for their claims without tracking many different papers on many different time tracks. Everyone would be better off if the motions for such things as valuation of collateral and lien avoidance were included on the same document as the plan itself.
- Accurate notice to creditors of treatment under the plan is a universal problem in Chapter 13 cases. The method and content of notice to creditors varies as dramatically as the forms

used for the plan. Noticing responsibility with respect to the content of the plan is assigned to the Chapter 13 trustee in some districts; to the bankruptcy court clerk in other districts; to a central noticing bureau in some districts; and, to the debtor or debtor's counsel in still others. In a few districts, notice includes the entire plan in whatever form it was filed. Some notices include a summary of the entire plan. Some notices contain an excerpt or partial summary of the plan dealing only with the claim of the creditor to which the notice is addressed.

- Longer plan forms compound the notice problems. It is harder to find the treatment of a particular creditor in a multi-page plan. Notice of the content of a long plan typically means composing a summary of the plan. The process of summarizing adds a layer of interpretation and multiplies errors.
- Many recent appellate decisions disrespecting the effects of confirmation in Chapter 13 cases demonstrate that the forms and procedures for confirmation in many districts are not adequate.
- Notwithstanding the startling diversity of plans in actual use, almost all forms for the plan contain a core of similar information. This common information probably can be standardized as to form and content without greatly offending local legal cultures. A short, concise, difficult to corrupt standard form for the plan could be used as the actual notice of the content of the plan in all Chapter 13 cases. This would be an enormously positive step for Chapter 13 practice.

What follows is a slightly edited version of the Model Chapter 13 Plan that emerged from the Advanced Institute in San Juan. No one believes that this form is "perfect." But there was much enthusiasm and determination on the part of the San Juan 50 that a movement should begin to seek a national consensus on a standard form for the Chapter 13 plan. Look at the model that follows with an eye to whether you could make this form work in your Chapter 13 practice. If you have additions, edits or any comments, e-mail, fax or mail them to: Henry E. Hildebrand, III, Chapter 13 Trustee, P.O. Box 190664, Nashville, TN 37219-0664; (615) 242-3241 (fax); <[hank13@ch13nsh.com](mailto:hank13@ch13nsh.com)>; or to Keith M. Lundin, 701 Broadway, Customs House, 2d Floor, Nashville, TN 37203; (615) 736-7705 (fax); <[Keith\\_Lundin@tnmb.uscourts.gov](mailto:Keith_Lundin@tnmb.uscourts.gov)>.

NORTON BANKRUPTCY LAW ADVISER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF

IN RE:

CASE NO.:
CHAPTER 13

SSN:

CHAPTER 13 PLAN AND MOTIONS [ ] Original [ ] Amended Date

YOUR RIGHTS WILL BE AFFECTED. You should read these papers carefully and discuss them with your attorney. Anyone who wishes to oppose any provision of this plan or any motion included below must file a timely written objection. This plan may be confirmed and become binding, and included motions may be granted without further notice or hearing unless written objection is filed before the deadline stated on the separate Notice you should have received from the court.

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

1. PAYMENT AND LENGTH OF PLAN

Debtor shall pay \$ per to the Chapter 13 Trustee starting for approximately months. Joint debtor shall pay \$ per to the Chapter 13 Trustee starting for approximately months. Total amount to be paid to Trustee shall be not less than \$ Other payments to Trustee:

2. PRIORITY CLAIMS (INCLUDING ADMINISTRATIVE EXPENSES AND SUPPORT)

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

Table with 3 columns: Creditor, Type of Priority, Scheduled Amount. Rows include <Filing Fees> and <Debtor's Attorney>

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

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

Table with 6 columns: Creditor, Collateral, Scheduled Debt, Value, Interest Rate, Monthly Payment

Debtor surrenders the following collateral. Upon confirmation, the stay is lifted as to surrendered collateral.

Table with 2 columns: Creditor, Collateral to be Surrendered

4. UNSECURED CLAIMS

(a) Not Separately Classified

Allowed non-priority unsecured claims shall be paid:

- [ ] Not less than \$ to be distributed pro rata.
[ ] Not less than percent.
[ ] Pro rata distribution from any remaining funds.

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**(b) Separately Classified Unsecured Claims**

<u>Creditor</u>	<u>Basis for Classification</u>	<u>Treatment</u>	<u>Amount</u>
-----------------	---------------------------------	------------------	---------------

**5. CURING DEFAULT AND MAINTAINING PAYMENTS**

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

<u>Creditor</u>	<u>Collateral or Type of Debt</u>	<u>Estimated Arrearage</u>	<u>Interest Rate (Arrearage)</u>	<u>Monthly Arrearage Payment</u>	<u>Regular Monthly Payment</u>
-----------------	-----------------------------------	----------------------------	----------------------------------	----------------------------------	--------------------------------

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

<u>Creditor</u>	<u>Collateral or Type of Debt</u>	<u>Estimated Arrearage</u>	<u>Interest Rate (Arrearage)</u>	<u>Monthly Arrearage Payment</u>	<u>Regular Monthly Payment</u>
-----------------	-----------------------------------	----------------------------	----------------------------------	----------------------------------	--------------------------------

**6. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

All executory contracts and unexpired leases are rejected, except the following are assumed:

<u>Creditor</u>	<u>Property Description</u>	<u>Treatment by Debtor</u>
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**7. OTHER PLAN PROVISIONS AND MOTIONS**

**(a) Motion to Avoid Liens under 11 U.S.C. § 522(f)**

Debtor moves to avoid the following liens that impair exemptions:

<u>Creditor</u>	<u>Collateral</u>	<u>Amount of Lien to be Avoided</u>
-----------------	-------------------	-------------------------------------

**(b) Lien Retention**

Except as provided above in Section 5, allowed secured claim holders retain liens until:

- Liens are released at discharge.
- Liens are released upon payment of allowed secured claim as provided above in Section 3.
- Liens are released upon completion of all payments under the plan.

**(c) Vesting of Property of the Estate**

Property of the estate shall revert in Debtor:

- Upon confirmation.
- Upon discharge.
- Other: \_\_\_\_\_

**(d) Payment Notices**

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

**(e) Order of Distribution**

Trustee shall pay allowed claims in the following order:

- (1) \_\_\_\_\_
- (2) \_\_\_\_\_
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_

Signed: \_\_\_\_\_  
 Attorney for Debtor (or Debtor(s) if not represented by an attorney)

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
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WASHINGTON, D.C. 20544

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March 4, 2003

FACSIMILE TRANSMISSION

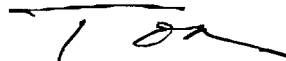
The Honorable Keith M. Lundin  
Judge, U.S. Bankruptcy Court  
Middle District of Tennessee  
Customs House, Second Floor  
701 Broadway  
Nashville, TN 37203-3976

Dear Keith:

Thank you for your letter of February 26, 2003, regarding a form for a chapter 13 plan. I will bring this up at our meeting on April 3 and 4, and we'll probably refer the matter to the Committee's Consumer Subcommittee.

Thanks again.

Very truly yours,



A. Thomas Small

ATS:lw

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
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WASHINGTON, D.C. 20544

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JERRY E. SMITH  
EVIDENCE RULES

March 10, 2003

Honorable Keith M. Lundin  
United States Bankruptcy Court  
Middle District of Tennessee  
Customs House, Second Floor  
701 Broadway  
Nashville, Tennessee 37803-3976

*Re: Your Suggestion for a New Bankruptcy Form (Docket Number 03-BK-A)*

Dear Judge Lundin:

Thank you for your letter of February 26, 2003, to Judge Small suggesting that the Advisory Committee on Bankruptcy Rules consider developing a Chapter 13 Plan form. A copy of your letter will be included as an information item in the agenda books for the committee's next meeting on April 3-4, 2003.

We very much welcome your suggestion and appreciate your interest in the rulemaking process.

Sincerely,  


Peter G. McCabe  
Secretary

cc: Honorable A. Thomas Small  
Professor Jeffrey W. Morris