

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:

APPEARANCES:

- 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
- ROY T. ENGLERT, JR., ESQUIRE
- 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

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

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

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

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

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

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

16 MR. KILPATRICK: Ricardo Kilpatrick,
17 attorney from Detroit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 JUDGE IKUTA: Okay. Thank you.

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

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

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

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

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

1 flexibility, and local customization.

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

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

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

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

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

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

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

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

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

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

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

6 What the new rules do is provide a
7 compatible, consistent, coherent mechanism or
8 procedure so that we have consistent service
9 requirements, consistent, compatible time periods, and
10 they provide an option, a very important option. Not
11 a mandate. The rules use the term "may". A Chapter
12 13 debtor may collapse and combine these five
13 different procedures into one when the debtor uses an
14 official form for the Chapter 13 plan, that is,
15 uniform reporting of the information, standard
16 reporting of the information and certain standard
17 minimum notice requirements, minimum notice
18 requirements, not maximum. That is, there is no
19 indication that there can't be additional terms,
20 additional notices, additional procedures, but minimum
21 procedures are provided in this official form.

22 I believe it's an enhancement to Chapter 13.

23 It will aid Chapter 13 debtors, enhance the ability
24 to use Chapter 13. It will improve due process. It
25 will reduce costs, but it will not eliminate judicial

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

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

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

17 Thank you again for considering Chapter 13.

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

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

23 JUDGE DOW: I've got some questions.

24 JUDGE IKUTA: Judge Dow.

25 JUDGE DOW: In your written testimony, and

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

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

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

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

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

20 JUDGE IKUTA: Other questions?

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

23 JUDGE IKUTA: Go ahead.

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

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

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

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

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

1 JUDGE CONNELLY: Thank you. Thank you very
2 much.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 every reason why we need to go ahead with this.

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

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

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

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

5 (Laughter.)

6 JUDGE LUNDIN: What can I tell you?
7 Anything?

8 JUDGE IKUTA: Do we have some questions?

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

11 JUDGE LUNDIN: Go for it. Go for it.

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

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

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

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

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

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

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

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

10 (Laughter.)

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

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

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

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

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

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

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

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

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

17 I don't know what to make of it. I really
18 don't. It's peculiar, it is, and it's dangerous. But
19 I've got to say I think I know what's going on, I
20 think I know what's going on, and it's something that
21 Theresa Sullivan and Jay Westbrook and Elizabeth
22 Warren, they saw it. They saw it 25 years ago, and
23 they wrote about it, and they called it local culture.

24 It's a wonderful phrase to describe what you can do
25 is just fine, just don't do it in my back yard, the

1 old NIMBY idea. It is.

2 I know that Marvin, Brian and all of these
3 144 -- if you look at them, almost all of them have
4 their own form. They believe in having a form. They
5 just want their form. And if the Committee would just
6 adopt their form, the whole issue would go away and
7 everybody would be happy. We just can't do it because
8 we've got 200 different forms.

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

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

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

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

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

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

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

13 A hundred forty-four judges did not sign our
14 letter because they agreed with every jot and tittle
15 of what we said in that letter. It's because overall
16 they think the proponents of a mandatory form Chapter
17 13 plan haven't made the case for the clear disruption
18 that will take place in local Chapter 13 practice, and
19 they're concerned because they feel by and large that
20 Chapter 13 works in their jurisdictions.

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

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

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

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

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

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

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

20 What's my point? Two.

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

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

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

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

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

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

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

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

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

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

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

1 and conversion rate. That information is available.

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

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

20 I know there's a temptation among the
21 influential few to treat this as an effort to somehow
22 create order out of chaos. Is there really a problem?

23 Are your local communities telling you Chapter 13 is
24 not working? And what is the problem? Is the
25 solution that's being offered here really the

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

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

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

15 JUDGE LYNCH: All right.

16 JUDGE IKUTA: Judge Goldgar.

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

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

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

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

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

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

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

10 JUDGE IKUTA: We have time --

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

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

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

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

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

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

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

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

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

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

10 JUDGE LYNCH: Thank you.

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

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

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

25 You know, the absence of a consensus did not

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

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

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

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

6 In my own district, we have implemented an
7 integrated way of dealing with motions for leave from
8 the state, plans, modifications. We've implemented
9 automated payment methods, ACH drafts, electronic
10 payments into our plan. We stopped the cycle where
11 debtors can alternate between paying their mortgage
12 one month and paying the Chapter 13 trustee the next
13 month. We've reduced our lift-stay docket from about
14 60 or 70 per week just before me down to six or seven
15 per week just before me over the last decade. And we
16 need to help, not hinder, the process.

17 All of us would jump at the opportunity,
18 both the proponents and the opponents, to make Chapter
19 13 more successful. I think we are accomplishing
20 that, but like Judge Lynch says, we do not have the
21 empirical data, nor do you, to know which way to go on
22 the plan.

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

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

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

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

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

4 Third and very importantly, the plan
5 impermissibly delegates authority about priorities to
6 Chapter 13 trustees. You know, who gets paid first is
7 often the single most important question in a Chapter
8 13 case. But if you look at the sample plan, the way
9 the sample plan works is it says the Chapter 13
10 trustee will decide that. And the reason why it had
11 to say that is because when the earlier version came
12 out and the plan tried to address priorities it
13 couldn't and it couldn't because there are all these
14 different checkmarks that can occur in the plan.

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

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

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

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

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

1 plan.

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

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

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

1 accomplish, can't do them.

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

10 JUDGE IKUTA: Some questions? All right.

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

15 JUDGE ISGUR: Right.

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

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

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

1 JUDGE ISGUR: Right.

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

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

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

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

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

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

23 Is that responsive to your question?

24 JUDGE JORDAN: Yes.

25 JUDGE ISGUR: I'm trying to be.

1 JUDGE JORDAN: Thank you very much.

2 JUDGE ISGUR: Thank you.

3 JUDGE IKUTA: Judge Harris, you had a
4 question.

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

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

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

1 I'd be ecstatic with that. I'm ecstatic if
2 what you do is say form plans have to be adopted in
3 the same manner as local rules. You know, we do that
4 anyway. When we make a change to our form plan, we
5 put it out for public comment. The only thing we
6 actually don't do with our form plan is the Circuit
7 Court doesn't review it like they do our local rules.

8 I'm perfectly happy having my form plan reviewed by
9 the Circuit Court. If I've got something in there
10 that's inconsistent with circuit law, I don't want it
11 there.

12 So you can put requirements that say that
13 each district has to either use the national form
14 plan, adopt its own, and when it adopts its own it has
15 to do so in the same manner as it adopts a local rule.

16 We have all the sunlight that you need, we can try
17 new things, and we can make things work much better in
18 a much less confusing way than what I think 1.9
19 million options will give us.

20 Did that respond to your question?

21 JUDGE IKUTA: We have time for one more
22 question.

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

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

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

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

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

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

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

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

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

3 JUDGE ISGUR: Thank you, Judge Ikuta.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 And I'm a little over. Sorry.

5 JUDGE IKUTA: Thank you.

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

8 JUDGE IKUTA: Questions?

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

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

25 My only concern is unless you say that it

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

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

25 JUDGE IKUTA: What did you think of Judge

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

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

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

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

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

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

21 JUDGE IKUTA: Okay. Thank you for your
22 testimony.

23 MS. CORDRY: Thank you.

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

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

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

15 First, like the Committee, Wells Fargo is an
16 advocate for greater uniformity in Chapter 13
17 practice, and we believe that this plan provides a
18 template or a standardized format for listing out plan
19 provisions in a manner which promotes that uniformity.

20 As Judge Tallman of the United States Bankruptcy
21 Court for the District of Colorado observed in the
22 case of In Re: Butcher, and I quote:

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

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

9 Wells Fargo wholeheartedly agrees with Judge
10 Tallman's opinion.

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

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

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

9 Indeed, the Advisory Committee note, Part
10 3.5, states that, and I quote: "Termination will be
11 effective upon confirmation of the plan."

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

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

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

5 Others have commented that imposing a new
6 60-day bar date for proofs of claim and a shortened
7 time period to object to confirmation might be very
8 challenging and burdensome for some creditors. It can
9 be argued that this reduction in time and the
10 associated burdens are offset to a degree by the
11 benefits of a standardized data-enabled form of
12 Chapter 13 plan.

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

23 As a participant in this Committee's January
24 2013 working group on these issues, I can honestly
25 state that this is not the arrangement that the

1 working group contemplated.

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

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

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

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

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

12 JUDGE IKUTA: Questions?

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

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

1 this form. If the Committee wants to test the form,
2 and apparently it's more than being tested in Judge
3 Lundin's district, and apparently their local rules
4 seem to work with that form fine, I'm not sure that
5 it's really necessary to go ahead and adopt the rules
6 in total if all you're going to do is test this form.

7 I think from my perspective it's more of a wholesale
8 adoption.

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

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

19 (No response.)

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

22 MR. BATES: Thank you.

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

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

1 on the list that I'm not going to sound very original,
2 so please forgive me for repeating some of what you've
3 already heard. But my name is Alane Becket and I'm a
4 managing partner with the law firm of Becket & Lee in
5 Malvern, Pennsylvania. For almost 30 years Becket &
6 Lee has specialized in the nationwide representation
7 of large issuers of consumer credit and more recently
8 purchasers of consumer accounts in bankruptcy matters.

9 I have been in practice since 1992 and have extensive
10 experience with the operational and legal challenges
11 faced by large lenders managing portfolios of consumer
12 bankruptcy cases.

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

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

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

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

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

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

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

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

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

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

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

10 A section for nonstandard plan -- pardon me.

11 Having nonstandard plan provisions in the same
12 location on every plan along with the accompanying
13 checkbox on page 1 of the form will not only
14 facilitate identification of those provisions but will
15 protect debtors who comply with the notification
16 requirements from due process attacks on their plans.

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

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

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

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

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

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

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

5 JUDGE IKUTA: Questions? Judge Harris.

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

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

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

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

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

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

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

1 JUDGE IKUTA: Other questions? Ricardo.

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

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

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

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

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

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

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

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

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

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

9 MS. BECKET: Yes.

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

12 MS. BECKET: Speaking strictly from --

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

15 MS. BECKET: Sure, sure.

16 MR. KILPATRICK: Okay.

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

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

4 But strictly for an unsecured creditor, yes.

5 If it was always in box nine, I wouldn't care less
6 what the rest of the plan said. But as a proponent of
7 the bankruptcy system, I have to say that everyone
8 else's perspective is also very important.

9 JUDGE IKUTA: One more question.

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

17 MS. BECKET: I can't really speak to that as
18 an unsecured creditor because it doesn't do anything
19 for me to figure that out. However -- for my clients
20 I would say, and nobody else wants to pay me to do it.

21 However, I think the success of Chapter 13 is not --
22 if you ask me based just on my experience doing
23 this -- is not dependent on what order everything is
24 in in the plan. It's dependent on the trustee, the
25 debtor attorney, the local culture, the bankruptcy

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

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

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

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

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

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

8 MR. HARTLEY: I'm sorry, but one more
9 question. But in a district where you have a judge
10 that will approve a zero percent plan and have a
11 \$3,500 no look for the debtor's counsel, you're going
12 to have high 13s in that district, right?

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

15 MR. HARTLEY: Sure.

16 MS. BECKET: So, yeah, you may have high
17 13s, but again, the choice to go into Chapter 13 and
18 submit yourself to three to five years of payments is
19 largely due to the debtor's personal circumstances,
20 whether they've got collateral they're trying to
21 protect, you know, whether they're behind on their
22 mortgage. But the fact still is that in some
23 jurisdictions just out of the box the idea is let's
24 see what you can do in a 13 because we pay our
25 creditors back here if we can, and that's the local

1 culture in that area. In other areas they don't care.

2 If your plan, you know, meets all of the checkboxes
3 and it's confirmed, that's it. It doesn't matter what
4 it pays out. So that's how local culture plays into
5 the success of the payout I think in Chapter 13.

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

8 MS. BECKET: Thank you.

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

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

13 I need to start out with a confession. I
14 hate to do this, but I was wrong and you were right.
15 I chaired the first -- no group of -- with all respect
16 to the judges in this room and my friends who are
17 creditors' attorneys and the debtors' attorneys who
18 are also here, there is no group of individuals who
19 will be more affected by a national plan than Chapter
20 13 trustees, and despite the fact that everybody sort
21 of seems to think that they didn't know about it, they
22 did.

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

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

9 It makes sense, and the thing that really
10 made sense to me was reading the comments to the
11 rules. Everybody who is opposed to the form, the most
12 vocal opponents are opposed because they have one, and
13 they have one for the same reason I have for 15 years.

14 It works, and there's nothing about my form that
15 could not be incorporated into the national form.

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

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

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

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

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

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

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

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

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

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

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

24 JUDGE IKUTA: Questions?

25 JUDGE DOW: Ronda, you said that originally

1 you were opposed and for some time.

2 MS. WINNECOUR: Uh-huh.

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

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

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

25 JUDGE DOW: Since you mentioned the

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

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

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

1 distribution sequence was the problem.

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

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

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

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

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

20 JUDGE IKUTA: Other questions?

21 (No response.)

22 JUDGE IKUTA: We thank you for your
23 testimony.

24 MS. WINNECOUR: Thank you.

25 JUDGE IKUTA: Thank you. That was our last

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

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

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