

## **Committee of Concerned Bankruptcy Judges November 18, 2014**

To the Committee on Rules of Practice and Procedure of the  
Judicial Conference of the United States  
Washington, D.C.

Dear Members of the Committee:

Many bankruptcy judges throughout the United States oppose the adoption of a mandatory national chapter 13 plan. We thought that a brief summary of some of our shared concerns would be helpful.

### **General Statement of Concern**

The push for a mandatory model plan is not as a result of any statutory change, appellate court decision or other significant development in the law, and no one has demonstrated that there is any compelling need for such a mandatory plan to be imposed on those districts that have locally developed workable plans. In addition, we have each concluded that there will be no significant benefits—but there will be some very significant harms—from the use of a national mandatory plan. While many of us use locally adopted mandatory plans in our respective districts, those plans were developed and adopted only after input from all impacted constituencies. These plans uniquely meet the requirements of differing state exemption and Circuit law. A national mandatory plan cannot be adopted that can accommodate these state law differences and can meet the requirements of the mosaic of case law that has developed, and will continue to develop, throughout the nation.

Imposition of a national mandatory plan will be costly. Most courts will be required to change their local rules, clerk staff will be required to change procedures, and chapter 13 trustees will be required to change their administrative processes. Debtors will bear increased legal costs as lawyers struggle to fit their clients' needs into a national plan that is not designed to meet local needs and practices—yet another increase that debtors can ill-afford. And, in most cases, this increased cost will result in decreased distributions to unsecured creditors.

Without a compelling need, we cannot support the imposition of these large costs on courts, trustees, creditors and debtors

### **Creation of Foreseeable Problems**

If the national mandatory plan is adopted, we fear that it will create very real legal and economic problems. This letter mentions only a few of the problems that are of general concern.

**Conduit Payments.** The proposed plan does not have an adequate means to implement conduit mortgage or car payments. It does not deal with the administration of monthly payment changes, the imposition of late charges, the timing of distributions when there are payment shortages, the

**Letter from Committee of Concerned Bankruptcy Judges  
November 18, 2014**

automatic adjustments of payments to the chapter 13 trustee, or myriad other factors. Those of us in conduit districts have adopted workable procedures for all of these issues. The proposed plan will create a debtor-by-debtor patchwork that will render conduit payments unworkable. This is particularly problematic in districts that are bound by case law mandating conduit payments. Not all judges signing this letter are in conduit districts. But, those signatories in conduit jurisdictions unanimously oppose the plan.

**Problematic Part 9.** We feel compelled to respond to the oft-cited solution to the conduit mortgage problem and many other identified problems—the availability of “nonstandard” provisions in Part 9 of the proposed form plan. Concerns exist that the imposition of mandatory “nonstandard” provisions by local rule or general order would violate proposed Rules 3015 and 9009. But if such mandatory nonstandard provisions can be mandated locally, the use of those non-standard provisions will quickly eviscerate the only real benefit of the proposed national form plan—making it easier for national creditors to read plans. It is easy to foresee that Part 9 could simply overwrite the other parts of the proposed national form plan. Such inconsistent, nonstandard provisions, uniquely drafted by debtor’s counsel in each case (or mandated by local court rule) will make the application of uniform procedures (such as the payment of conduit mortgages) nearly impossible to regulate.

**Lack of Standard Distribution Order.** The Bankruptcy Code requires the Chapter 13 trustee to distribute monies after confirmation “in accordance with the plan.” The form plan does not include a mandated distribution order, presumably because there is no national consensus on this point. The plan either (i) allows the trustee to implement an undisclosed distribution scheme; or (ii) allows the debtor to set the distribution priority. Under either option, this weakens the claim that a national form plan will better enable creditors to evaluate a plan.

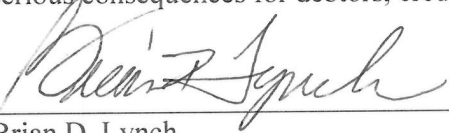
**National Consumer Practices.** It is likely that regional and national debtor firms will see the national plan as an opportunity to solicit clients in distant jurisdictions, with client meetings conducted electronically. This will result in Court appearances being sub-contracted to local counsel with limited client contact or time for preparation. We are convinced that in-person meetings with debtors (who are frequently undereducated, elderly and ill prepared to fend for themselves) are far superior. Based on our negative experience with similar centralization in national creditor practices, adoption of a national plan will lead to multiple problems, with local counsel relegated to a diminished role. We are concerned that many debtors will regard their experience in a negative light, reducing respect for the legal profession and the Court.

**Inability to Easily Adapt to Changes in Law or Statutory Interpretations.** It has been our experience that changes to national forms can take upwards of two years to implement. As case law develops, or statutory changes occur in state or federal law that impacts our practice, we are able to adapt our mandatory local forms to meet the exigencies of the law, on a circuit-by-circuit or district-by-district basis. We fear that the rigors of a national form plan will eliminate our ability to timely respond to these changes.

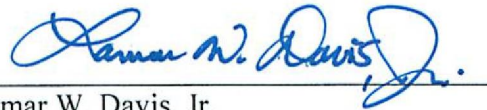
**Letter from Committee of Concerned Bankruptcy Judges  
November 18, 2014**

**Conclusion**

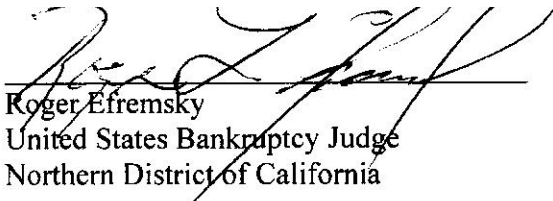
The bankruptcy community, and your own committee, has historically moved through consensus building. There is no demonstrated consensus for a mandatory plan, and absent strong and widespread support for—and a demonstrated need for—such a fundamental change in how we do business, the Committee should decline to adopt a mandatory plan that so many oppose. We hope that the very general concerns expressed by the signatories to this letter enable the Committee to better understand why the adoption of the national form plan would be a grave mistake, with serious consequences for debtors, creditors and the bankruptcy system as a whole.



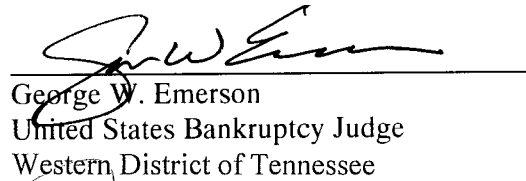
Brian D. Lynch  
United States Bankruptcy Judge  
Western District of Washington



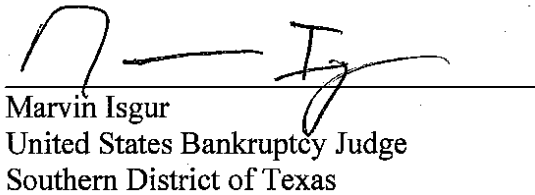
Lamar W. Davis, Jr.  
United States Bankruptcy Judge  
Southern District of Georgia



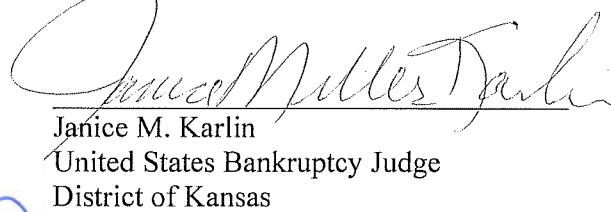
Roger Efremsky  
United States Bankruptcy Judge  
Northern District of California



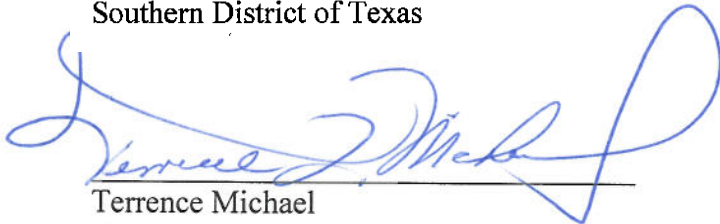
George W. Emerson  
United States Bankruptcy Judge  
Western District of Tennessee



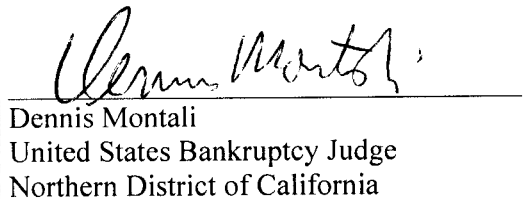
Marvin Isgur  
United States Bankruptcy Judge  
Southern District of Texas



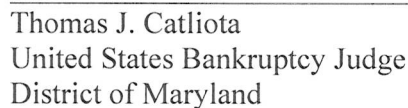
Janice M. Karlin  
United States Bankruptcy Judge  
District of Kansas



Terrence Michael  
United States Bankruptcy Judge  
Northern District of Oklahoma



Dennis Montali  
United States Bankruptcy Judge  
Northern District of California



Thomas J. Catliota  
United States Bankruptcy Judge  
District of Maryland

**AND JOINED IN BY EACH OF THE JUDGES LISTED ON THE ATTACHED EXHIBIT**

**UNITED STATES BANKRUPTCY JUDGES  
JOINING NOVEMBER 18, 2014 LETTER FROM  
COMMITTEE OF CONCERNED BANKRUPTCY JUDGES**

1	Brian D. Lynch Chief United States Bankruptcy Judge Western District of Washington (Original Signer)	2	Lamar W. Davis, Jr. United States Bankruptcy Judge Southern District of Georgia (Original Signer)
3	Roger L. Efremsky United States Bankruptcy Judge Northern District of California (Original Signer)	4	George Emerson United States Bankruptcy Judge Western District of Tennessee (Original Signer)
5	Marvin Isgur United States Bankruptcy Judge Southern District of Texas (Original Signer)	6	Janice Miller Karlin United States Bankruptcy Judge District of Kansas (Original Signer)
7	Terrence L. Michael Chief United States Bankruptcy Judge Northern District of Oklahoma (Original Signer)	8	Dennis Montali United States Bankruptcy Judge Northern District of California (Original Signer)
9	Thomas J. Catliota United States Bankruptcy Judge District of Maryland (Original Signer)	10	Edward J. Coleman, III United States Bankruptcy Judge Southern District of Georgia
11	Robert J. Faris Chief United States Bankruptcy Judge District of Hawaii	12	Christopher M. Klein Chief United States Bankruptcy Judge Eastern District of California
13	Michael S. McManus United States Bankruptcy Judge Eastern District of California	14	Robert E. Nugent Chief United States Bankruptcy Judge District of Kansas
15	Dale L. Somers United States Bankruptcy Judge District of Kansas	16	David R. Jones United States Bankruptcy Judge Southern District of Texas
17	Robert D. Berger United States Bankruptcy Judge District of Kansas	18	Letitia Paul United States Bankruptcy Judge Southern District of Texas

**UNITED STATES BANKRUPTCY JUDGES  
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19	Richard S. Schmidt United States Bankruptcy Judge Southern District of Texas	20	Harlin D. "Cooter" Hale United States Bankruptcy Judge Northern District of Texas
21	Jeff Bohm Chief United States Bankruptcy Judge Southern District of Texas	22	Karen K. Brown United States Bankruptcy Judge Southern District of Texas
23	Jeffrey P. Norman United States Bankruptcy Judge Western District of Louisiana	24	Douglas D. Dodd Chief United States Bankruptcy Judge Middle District of Louisiana
25	Tom R. Cornish Chief United States Bankruptcy Judge Eastern District of Oklahoma	26	Craig A. Gargotta United States Bankruptcy Judge Western District of Texas
27	Alan Jaroslovsky Chief United States Bankruptcy Judge Northern District of California	28	Paul B. Snyder United States Bankruptcy Judge Western District of Washington
29	Karen A. Overstreet United States Bankruptcy Judge Western District of Washington	30	Timothy W. Dore United States Bankruptcy Judge Western District of Washington
31	Marc L. Barreca United States Bankruptcy Judge Western District of Washington	32	Frank Kurtz United States Bankruptcy Judge Eastern District of Washington
33	Sarah A. Hall Chief United States Bankruptcy Judge Western District of Oklahoma	34	David S. Kennedy Chief United States Bankruptcy Judge Western District of Tennessee
35	Fred Corbit Chief United States Bankruptcy Judge Eastern District of Washington	36	Jimmy Croom United States Bankruptcy Judge Western District of Tennessee
37	Paulette J. Delk United States Bankruptcy Judge Western District of Tennessee	38	Sheri Bluebond United States Bankruptcy Judge Central District of California

**UNITED STATES BANKRUPTCY JUDGES  
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39	Gregg W. Zive United States Bankruptcy Judge District of Nevada	40	H. Christopher Mott United States Bankruptcy Judge Western District of Texas
41	D. Michael Lynn United States Bankruptcy Judge Northern District of Texas	42	Russell F. Nelms United States Bankruptcy Judge Northern District of Texas
43	Charles D. Novack United States Bankruptcy Judge Northern District of California	44	Susan D. Barrett Chief United States Bankruptcy Judge Southern District of Georgia
45	Scott H. Yun United States Bankruptcy Judge Central District of California	46	Martin S. Teel, Jr. United States Bankruptcy Judge District of Columbia
47	Marcia Phillips Parsons Chief United States Bankruptcy Judge Eastern District of Tennessee	48	John E. Waites United States Bankruptcy Judge District of South Carolina
49	Dwight H. Williams, Jr. United States Bankruptcy Judge Middle District of Alabama	50	John Andrew Caddell, Jr. United States Bankruptcy Judge Northern District of Alabama
51	Hannah L. Blumenstiel United States Bankruptcy Judge Northern District of California	52	David M. Warren United States Bankruptcy Judge Eastern District of North Carolina
53	Randy D. Doub United States Bankruptcy Judge Eastern District of North Carolina	54	August B. Landis United States Bankruptcy Judge District of Nevada
55	Stephani W. Humrickhouse Chief United States Bankruptcy Judge Eastern District of North Carolina	56	Redfield T. Baum, Sr. United States Bankruptcy Judge District of Arizona
57	Edward Ellington United States Bankruptcy Judge Southern District of Mississippi	58	J. Craig Whitley United States Bankruptcy Judge Western District of North Carolina

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59	Laura T. Beyer Chief United States Bankruptcy Judge Western District of North Carolina	60	Daniel P. Collins Chief United States Bankruptcy Judge District of Arizona
61	George Hodges United States Bankruptcy Judge Western District of North Carolina	62	Katharine Medley Samson United States Bankruptcy Judge Southern District of Mississippi
63	Catharine R. Aron Chief United States Bankruptcy Judge Middle District of North Carolina	64	William J. Lafferty, III United States Bankruptcy Judge Northern District of California
65	Tamara O. Mitchell United States Bankruptcy Judge Northern District of Alabama	66	Joan A. Lloyd United States Bankruptcy Judge Western District of Kentucky
67	Thomas H. Fulton Chief United States Bankruptcy Judge Western District of Kentucky	68	Marci Beth McIvor United States Bankruptcy Judge Eastern District of Michigan
69	Suzanne H. Bauknight United States Bankruptcy Judge Eastern District of Tennessee	70	Thomas E. Carlson United States Bankruptcy Judge Northern District of California
71	Niles Jackson United States Bankruptcy Judge Western District of Oklahoma	72	Ralph B. Kirscher Chief United States Bankruptcy Judge District of Montana
73	M. Elaine Hammond United States Bankruptcy Judge Northern District of California	74	Philip H. Brandt United States Bankruptcy Judge Western District of Washington
75	John S. Dalis United States Bankruptcy Judge Southern District of Georgia	76	John T. Laney III Chief United States Bankruptcy Judge Middle District of Georgia
77	Wendelin I. Lipp United States Bankruptcy Judge District of Maryland	78	Neil W. Bason United States Bankruptcy Judge Central District of California

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79	Jason D. Woodard Chief United States Bankruptcy Judge Northern District of Mississippi	80	Robert A. Gordon United States Bankruptcy Judge District of Maryland
81	Lena James United States Bankruptcy Judge Middle District of North Carolina	82	James P. Smith United States Bankruptcy Judge Middle District of Georgia
83	Duncan W. Keir United States Bankruptcy Judge District of Maryland	84	Michael G. Williamson United States Bankruptcy Judge Middle District of Florida
85	Thomas B. Donovan United States Bankruptcy Judge Central District of California	86	Robert D. Martin United States Bankruptcy Judge Western District of Wisconsin
87	Catherine J. Furay Chief United States Bankruptcy Judge Western District of Wisconsin	88	Mark D. Houle United States Bankruptcy Judge Central District of California
89	Jerry A. Brown United States Bankruptcy Judge Eastern District of Louisiana	90	Mark S. Wallace United States Bankruptcy Judge Central District of California
91	Vincent P. Zurzolo United States Bankruptcy Judge Central District of California	92	Robin L. Riblet Recalled United States Bankruptcy Judge Central District of California
93	Bruce T. Beesley United States Bankruptcy Judge District of Nevada	94	Mike K. Nakagawa Chief United States Bankruptcy Judge District of Nevada
95	Laurel E. Davis United States Bankruptcy Judge District of Nevada	96	Brenda T. Rhoades Chief United States Bankruptcy Judge Eastern District of Texas
97	Bill G. Parker United States Bankruptcy Judge Eastern District of Texas	98	Richard D. Taylor Chief United States Bankruptcy Judge Eastern and Western Districts of Arkansas



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99	John K. Olson United States Bankruptcy Judge Southern District of Florida	100	E. Stephen Derby United States Bankruptcy Judge District of Maryland
101	Ben Barry United States Bankruptcy Judge Eastern and Western District of Arkansas	102	Alan C. Stout United States Bankruptcy Judge Western District of Kentucky
103	Shelley D. Rucker United States Bankruptcy Judge Eastern District of Tennessee	104	Peter J. McNiff Chief United States Bankruptcy Judge District of Wyoming
105	Thomas J. Tucker United States Bankruptcy Judge Eastern District of Michigan	106	Jerry A. Funk United States Bankruptcy Judge Middle District of Florida
107	Robert A. Mark United States Bankruptcy Judge Southern District of Florida	108	David E. Rice United States Bankruptcy Judge District of Maryland
109	Daniel S. Opperman United States Bankruptcy Judge Eastern District of Michigan	110	Steven W. Rhodes United States Bankruptcy Judge Eastern District of Michigan
111	Phillip J. Shefferly Chief United States Bankruptcy Judge Eastern District of Michigan	112	John T. Gregg United States Bankruptcy Judge Western District of Michigan
113	Walter Shapero United States Bankruptcy Judge Eastern District of Michigan	114	Paul M. Glenn United States Bankruptcy Judge Middle District of Florida
115	Austin E. Carter United States Bankruptcy Judge Middle District of Georgia	116	Catherine E. Bauer United States Bankruptcy Judge Central District of California
117	Catherine P. McEwen United States Bankruptcy Judge Middle District of Florida	118	Laura S. Taylor Chief United States Bankruptcy Judge Southern District of California

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119	Peter W. Bowie United States Bankruptcy Judge Southern District of California	120	Louise D. Adler United States Bankruptcy Judge Southern District of California
121	Stephen L. Johnson United States Bankruptcy Judge Northern District of California	122	Brendan L. Shannon Chief United States Bankruptcy Judge District of Delaware
123	George B. Nielsen, Jr. United States Bankruptcy Judge District of Arizona	124	Eddward P. Ballinger, Jr. United States Bankruptcy Judge District of Arizona
125	Madeleine C. Wanslee United States Bankruptcy Judge District of Arizona	126	James M. Marlar United States Bankruptcy Judge District of Arizona
127	Brenda K. Martin United States Bankruptcy Judge District of Arizona	128	Paul Sala United States Bankruptcy Judge District of Arizona
129	Scott H. Gan United States Bankruptcy Judge District of Arizona	130	Brenda Moody Whinery United States Bankruptcy Judge District of Arizona
131	Eileen W. Hollowell United States Bankruptcy Judge District of Arizona	132	James Schneider United States Bankruptcy Judge District of Maryland
133	Kathryn C. Preston United States Bankruptcy Judge Southern District of Ohio	134	Michael B. Kaplan United States Bankruptcy Judge District of New Jersey
135	Thomas C. Holman United States Bankruptcy Judge Eastern District of California	136	Richard W. Lee United States Bankruptcy Judge Eastern District of California
137	Ronald H. Sargis United States Bankruptcy Judge Eastern District of California	138	Fredrick E. Clement United States Bankruptcy Judge Eastern District of California

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139	Robert S. Bardwil United States Bankruptcy Judge Eastern District of California	140	Tony M. Davis United States Bankruptcy Judge Western District of Texas
141	Scott W. Dales United States Bankruptcy Judge Western District of Michigan	142	James W. Boyd United States Bankruptcy Judge Western District of Michigan
143	Beth A. Buchanan United States Bankruptcy Judge Southern District of Ohio	144	Barbara J. Houser Chief United States Bankruptcy Judge Northern District of Texas