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Subject: Study 39.30 - Attachment, Garnishment, Execution (Earnings Protection Law)

Attached is a copy of a law review article by Robert D. Moran, Administrator of the Wage and Hour Division of the Department of Labor, on the regulation of garnishment under Title III of the Consumer Credit Protection Act.

You should read this article with care. The information it contains will be of substantial assistance to the Commission in its work on wage garnishment.

Respectfully submitted,

John H. DeMouly
Executive Secretary

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ARTICLES

STANDING TO SEEK JUDICIAL REVIEW OF GOVERNMENT CONTRACT
AWARDS: ITS ORIGINS, RATIONALE AND IMPACT ON THE PROCURE-
MENT PROCESS *Richard R. Pierson* 1

THE RAILWAY LABOR ACT *Howard W. Risher, Jr.* 51

FOREWORD by *Herbert R. Northrup* 51

RELIEF FOR THE WAGE EARNER: REGULATION OF GARNISHMENT
UNDER TITLE III OF THE CONSUMER CREDIT PROTECTION ACT
Robert D. Moran 101

COMMENT

Agency Access to Credit Bureau Files: Federal Invasion of Privacy? 110

CASE NOTE

Products Liability—Application of State Long-Arm Statute to Suits for Injuries
Caused by Negligent Foreign Manufacture—*Duple Motor Bodies, Ltd. v.*
Hollingsworth 130

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RELIEF FOR THE WAGE EARNER: REGULATION OF GARNISHMENT UNDER TITLE III OF THE CONSUMER CREDIT PROTECTION ACT

ROBERT D. MORAN*

I. INTRODUCTION

In his latest book, *Points of Rebellion*,¹ Supreme Court Justice, William O. Douglas discusses some of the inequities of life for the rich and poor in America. He argues that the impoverished condition of the poor is perpetuated by the American legal system. As an example, he states:

We got rid of our debtors' prisons in the last century. But today's garnishment proceedings are as destructive and vicious as the debtors' dungeons. Employers have often discharged workers whose wages are garnisheed; and the total runs over 250,000 a year. In many states the percentage of wages garnisheed has been so high that a man and his family are often reduced to a starvation level.²

The federal government has shown an awareness of the problem of uncontrolled garnishment. On May 29, 1968 Congress enacted the Consumer Credit Protection Act³ to bring uniform national standards to the field of consumer finance and to stop the uninformed use of credit. Title III of the Act, which regulates the garnishment of wages and brings a measure of relief to those who previously were forced to exist at the starvation level because of garnishment, became effective on July 1, 1970.⁴

One of Justice Douglas' major fears for the potential victims of garnishment was that consumer credit traditionally has been governed almost entirely by state law, which has been influenced by the powerful finance company lobbies. As of July 1, 1970 this fear has been alleviated. In providing for federal regulation of consumer credit, Congress employed its wide powers under the Constitution to establish uniform bankruptcy laws⁵ and to regulate commerce.⁶ The coverage

* Mr. Moran is Administrator of the Wage and Hour Division of the Department of Labor and a member of the Massachusetts Bar.

¹ W. Douglas, *Points of Rebellion* (1970).

² *Id.* at 48.

³ Consumer Credit Protection Act, 15 U.S.C. §§ 1671-77 (Supp. IV, 1969).

⁴ The delay in the effective date of Title III was designed to permit states to avoid federal regulation of garnishment within their jurisdiction by enacting substantially similar laws of their own.

⁵ U.S. Const. art. I, § 8.

⁶ *Id.*; 15 U.S.C. § 1671(b) (Supp. IV, 1969).

of the Act is, therefore, complete; no employer is excluded from the provisions of Title III regardless of the size of his establishment or the extent of his involvement in interstate commerce.

The congressional purpose in entering the combat zone so familiar to collection attorneys, small claims court judges and the working poor, was to discourage the spread of predatory extensions of credit. Section 301(a) of the Act fully explains:

- (1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.
- (2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.
- (3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.⁷

It was also hoped that a creditor, who in the past made credit sales with complete disregard for the carrying capacity of the debtor because of the possibility of unlimited garnishment, would henceforth exercise restraint in order not to oversell credit to his customer.

II. PROVISIONS OF TITLE III

A. *Limitations on Garnishment*

The new Act, in Section 303(a), prohibits any garnishment in a single work-week which exceeds the lesser of either (1) 25 percent of an employee's disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed 30 times the minimum hourly wage prescribed by Section 6(a)(1)⁸ of the Fair Labor Standards Act.⁹

"Disposable earnings" would not usually be the same thing as "take-home pay." "Disposable earnings" is defined in the law as "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld."¹⁰ Items required by law to be withheld include federal and state

⁷ 15 U.S.C. § 1671(a) (Supp. IV, 1969).

⁸ Section 6(a)(1) currently provides for a minimum wage of \$1.60 per hour.

⁹ 29 U.S.C. § 206 (1964).

¹⁰ 15 U.S.C. § 1672(b) (Supp. IV, 1969).

FEDERAL REGULATION OF GARNISHMENT

income tax deductions and Social Security. While other deductions may be made from an employee's gross wages as a result of a contract, for example, an assignment of wages, or for the convenience of the employee, such amounts are still included in disposable income for the purpose of the Act, even though they are not paid directly to the worker.

The following examples illustrate the statutory tests for determining the amounts subject to garnishment. *A.* An employee's disposable weekly earnings are \$112. Using the first test, 25 percent of the disposable earnings is \$28. According to the second test, 30 times the current minimum wage of \$1.60 per hour is \$48, and the amount of his disposable earnings in excess of \$48 is \$64. Since \$28 is less than \$64, the maximum amount which may be garnished from his wages this particular week is \$28. *B.* An employee earns only \$62 a week in disposable earnings. By the first test, 25 percent of the disposable earnings is \$15.50. Applying the second test, we find that the amount of his disposable earnings in excess of \$48 is \$14. Since \$14 is less than \$15.50, \$14 is the maximum amount which can be garnished in this week.¹¹

The formula is fairly simple to understand. There can be no garnishment which reduces an individual's disposable earnings below \$48 per week.¹² Thus, the full 25 percent limit is not applicable in any case where the employee's disposable earnings are less than \$64 per week.¹³

Whether Title III will achieve the beneficial results its sponsors intended will depend partially at least upon whether wage assignments may be used to circumvent the purposes of the Act. An assignment of wages is a private transaction under which an employee voluntarily transfers to another person his right to receive all or part of his wages, while a garnishment is defined by section 302(c) as "any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt." (Emphasis added.) A question remains whether the definition of garnishment is broad enough to include those wage assignments which are currently sanctioned by state law.¹⁴ There is some precedent for an affirmative con-

¹¹ The discussion herein has been confined to employees paid on a weekly basis. Where employees are paid less frequently, the same principle applies.

¹² The \$48 floor holds for the current minimum wage. If, however, the minimum wage should be raised, the floor too would rise. For example, there are currently bills pending in Congress to raise the minimum wage to \$2 per hour. At such a wage, the limit on garnishments would be \$60.

¹³ Title III specifies three instances where the above restrictions on the amount of garnishment will not apply: (1) court orders for the support of any person, (2) Chapter XIII bankruptcy court orders, and (3) debts due for either state or federal taxes. 15 U.S.C. § 1673(b) (Supp. IV, 1969).

¹⁴ The Solicitor of Labor, however, in an unpublished opinion dated February 10,

clusion in New York where a state court held in *City & Suburban Homes Co. v. John J. Reynolds, Inc.*¹⁵ that a wage assignment could be treated the same as a garnishment for the purpose of garnishment proceedings, that is, that the law does not permit simultaneous deductions from an employee's wages for a wage assignment and a garnishment. This precedent is somewhat stronger than would usually be the case between state and federal courts since the federal garnishment restrictions, according to statements made during the congressional debates, were patterned after the New York garnishment restrictions.¹⁶

There is also some congressional history that might support a conclusion to the contrary. During the House debates on this measure, Congressman Whitener of North Carolina stated:

I do not know whether it is an oversight or not—that there is nothing said about the assignment of wages procedures available in most States of the Union. The assignment of wages procedure[s] are the ones that an unscrupulous businessman will be using . . . I see nothing here that prevents an unscrupulous merchant getting his customer to assign wages at the time he makes a purchase. That is not a garnishment procedure and would not be precluded by the bill.¹⁷

Even if administrative interpretation does not plug the potential loophole of wage assignments, it is unlikely that such assignments will be long permitted to frustrate the purposes of the new garnishment restrictions. The courts may well strike them down on the basis of the reasoning set forth by the Supreme Court in the recent case of *Sniadach v. Family Finance Corp.*,¹⁸ where the Court stressed the need for the protection against creditors of the unique type of property interest constituted by weekly wages. Moreover, Congress itself could take corrective legislative action. One cannot read the congressional hearings which preceded this law without obtaining a perceptible feeling that our nation's lawmakers are quite unhappy with the existing system for withholding part of an employee's wages for application against his debts. The following statement made during the debates on this measure by Congressman Resnick of New York is illustrative.

I had hoped the distinguished Committee . . . would have seen fit to completely eliminate the garnishment racket. For

1970, concluded that the definition of garnishment in § 302(c) does not include wage assignments.

¹⁵ 39 Misc. 2d 299, 240 N.Y.S.2d 628 (Civ. Ct. of N.Y. 1963).

¹⁶ 114 Cong. Rec. 1613 (1968) (remarks of Congressman Wiggins); *Id.* at 1834 (remarks of Congressman Wyman).

¹⁷ *Id.* at 1837 (remarks of Congressman Whitener).

¹⁸ 395 U.S. 337 (1969). See 11 B. C. Ind. & Com. L. Rev. 462 (1970).

FEDERAL REGULATION OF GARNISHMENT

a racket it has become—one that each day victimizes the Nation's workers through shakedowns, lost jobs, personal anguish, and humiliation. Indeed, I have evidence that proves that the very fear of garnishment is one of the major causes of voluntary bankruptcy.¹⁹

B. *Prohibition Against Discharge*

The other arm of Title III prohibits the discharge of any employee "by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness."²⁰ This provision, despite its apparent simplicity, will probably be the subject of more controversy than the limits on the amount of garnishment. It does *not* permit the discharge of an employee on or after the second garnishment for the same debt since it speaks in terms of "indebtedness." If interpreted literally the prohibition would remain through any number of garnishments resulting from the same indebtedness.

The indebtedness standard is somewhat subjective. If, for example, the wages of an employee were garnisheed as the result of an indebtedness to finance company A, and sometime later for a separate indebtedness to finance company B, it may not be easy to determine whether the employee's dismissal from his job resulted from the cumulative effect of garnishments from both debts, or was caused solely by the latest garnishment. Should the employee allege the latter, a court may ultimately have to determine this question.

An employer who is found to have wrongfully discharged a worker for garnishment of wages risks a jail sentence, a fine, or both, since the law provides: "Whoever willfully violates . . . this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both."²¹ No one seems to know how many people lose their jobs each year because of their employers' aversion to garnishments. A cursory and decidedly unscientific survey conducted by personnel of the Wage and Hour Division of the Department of Labor when this law was under consideration in 1967 indicated that three percent of the garnishees surveyed were discharged as a result of wage garnishment.²² Six percent of the employers surveyed stated that they would discharge an employee whose wages were garnisheed.²³ While there are no figures available on the number of garnishments each year, it is probably in the neighborhood of from one to two million. If one can utilize these

¹⁹ 114 Cong. Rec. 1613 (1968) (remarks of Congressman Resnick).

²⁰ 15 U.S.C. § 1674(a) (Supp. IV, 1969).

²¹ 15 U.S.C. § 1674(b) (Supp. IV, 1969).

²² Wage and Hour Division of the Department of Labor, Survey, Garnishment of Wages (1967) (unpublished).

²³ *Id.*

rather shaky premises as a foundation upon which to base a conclusion, somewhere between 30 and 120 thousand people are discharged each year because their wages are garnisheed.²⁴

C. Enforcement

The Act assigns enforcement responsibility to the Secretary of Labor, "acting through the Wage and Hour Division of the Department of Labor."²⁵ Under ideal circumstances, the limitations on garnishment will be self-enforcing. Officials of the Wage and Hour Division and Labor Department attorneys have visited most state and many local officials concerned with wage garnishment to alert them to the new law, and in some cases have assisted in devising arrangements to ensure that the limitations contained in the law are observed. In a number of locales, authorities plan to print the federal restrictions on the face of the process used in their garnishment proceedings. In other cases, court procedural rules are being amended to prevent issuance of garnishments in amounts greater than permitted under federal law.

The burden of adhering to the federal limitations on amounts of garnishment is placed on the courts under Section 303(c) of the Act which provides: "No court of the United States or any State may make, execute, or enforce any order or process in violation of this section."

D. State Garnishment Laws

Under the constitutional doctrine of federal supremacy, it has been held that once the Congress enacts legislation, that legislation becomes part of the supreme law of the land, and any state law to the contrary may thereby be superseded.²⁶ Congress took special precautions to avoid this doctrine by stating explicitly that:

[t]his subchapter does not annul, alter or affect, or exempt any person from complying with, the laws of any State (1) prohibiting garnishments or providing for more limited garnishment than are allowed under this subchapter, or (2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.²⁷

In other words, where state restrictions are stronger than the new

²⁴ This estimate appears to be on the conservative side when compared with the 250,000 figure cited by Mr. Justice Douglas in the opening paragraph of this article.

²⁵ 15 U.S.C. § 1676 (Supp. IV, 1969).

²⁶ *Northern Securities Co. v. United States*, 193 U.S. 197 (1904).

²⁷ 15 U.S.C. § 1677 (Supp. IV, 1969).

FEDERAL REGULATION OF GARNISHMENT

federal restrictions, it will be state law which regulates the garnishments in that state.

Provision is also made for the state law to apply in lieu of the federal law where the Secretary of Labor determines that the laws of that state provide restrictions on garnishment which are "substantially similar" to the federal rules.²⁸ Although there does not now exist full and explicit guidelines on what constitutes "substantially similar" restrictions, it is unlikely that any state law will meet the test if it permits, under any circumstances, the garnishment of a greater amount of money from any employee's pay than is allowed under the federal law.

III. CONCLUSION

Wright Patman, the Chairman of the House Committee on Banking and Currency, discussed the effect of the new law on consumer credit during the House debate on this measure:

There are those who contend that if we restrict the garnishment of wages, there will be a sharp cutback in consumer credit. However, available evidence demonstrates that this argument is false. States—such as my own State of Texas, Pennsylvania, Florida, and New York—have either abolished the use of garnishment or have laws similar to the one proposed here by your Committee. The levels of consumer credit in those states are as high, if not higher, than they are in States having the harshest of garnishment laws.²⁹

The congressional hearings which preceded enactment of the Consumer Credit Protection Act brought out a rather dramatic correlation between wage garnishment and personal bankruptcies. In states where a creditor can obtain wage garnishments easily, personal bankruptcies ranged between two hundred and three hundred per 100,000 population.³⁰ But in Pennsylvania and Texas, where garnishments are prohibited, personal bankruptcies were nine per 100,000 and five per 100,000 respectively.³¹

It is unlikely that the new federal restrictions will produce this kind of drastic reduction in personal bankruptcies. They may, however, discourage those who sell goods and loan money on the expectation that their collection efforts will be enhanced either by the prospect of unrestricted garnishment or by the employee's fear of

²⁸ 15 U.S.C. § 1675 (Supp. IV, 1969).

²⁹ 114 Cong. Rec. 1427 (1968) (remarks of Congressman Patman).

³⁰ H.R. Rep. No. 1040, 90th Cong., 1st Sess., at 20 (1967).

³¹ *Id.*

dismissal by an employer who objects to the administrative burden of having the wages of one of his employees garnisheed.

The feeling in Congress during the hearings seemed to be that the new garnishment law would reduce the number of personal bankruptcies and increase the likelihood that merchants and others who extended credit would be paid in full for their goods or services rather than have the debt discharged in bankruptcy. If that proves to be the result, then Congress has come up with the closest measure yet to a model law—one that helps both debtors and creditors.

Based on the number of pledges of cooperation received to date from local courts, it appears certain that Title III of the Consumer Credit Protection Act will take effect smoothly, bringing some relief and protection to the unsuspecting consumer who is a potential victim of garnishment. In addition, with effective enforcement by the Wage and Hour Division, Title III will benefit the entire American public by ensuring that there are no unnecessary disruptions of employment, production, or commerce.