#39 11/27/70

Memorandum 70-118

Subject: Study 39 - Attachment, Garnishment, Execution (Pre-Judgment Garnishment and Attachment)

We have received a few letters which we attached to this memorandum:

(1) Exhibit I (pink) (Daniel R. Sheahan, Glendale attorney)--suggests the need for provisions permitting victim of intentional tort to attach the property of the tortfeasor.

(2) Exhibit II (white) (John P. Rooney, San Francisco attorney)--noting that, in one San Francisco case, a bank account attachment was quashed and, in another, the court refused to quash garnishment of a bank account.

(3) Exhibits III (green) and IV (gold) (Legal Aid Society of Alameda County)--approving Professor Riesenfeld's recommendations, noting (Exhibit IV) that, in Alameda County, a pre-judgment attachment of the defendant's bank account was discharged on the authority of Sniadach, and noting other cases that should be of interest.

(4) Exhibit V (blue) (Hal L. Coskey, Los Angeles attorney)--dealing with attachment and garnishment against commercial debtors and taking the view that the legislative approach suggested by Professor Riesenfeld would increase trial delay and court congestion and making the following recommendations:

(a) A comprehensive statistical study be made of California cases to determine whether or not abuse exists in the levies of attachment, and the extent of that abuse, if any.

(b) An attachment law be enacted which will direct itself to the specific abuses uncovered by an investigation while providing protection for the commercial community.

(c) Any revision of the attachment laws with regard to commercial transactions also include within its scope a revision of the bulk transfer and other portions and aspects of the Commercial Code, assignments for the benefit of creditors, and other aspects of the creditor/debtor relationship as well as possible changes in court procedures.

(d) If an urgency be found for corrective legislation in the consumer field, the attachment laws could be modified at this time by making them unavailable in any action under the Unruh Act (Civil Code Section 1801 et seq.) or the Rees-Levering Motor Vehicle Sales and Finance Act (Civil Code Section 2991 et seq.).

Respectfully submitted,

John H. DeMoully
Executive Secretary

EXHIBIT I

DANIEL R. SHEAHAN
ATTORNEY AT LAW
512 EAST WILSON AVENUE
SUITE 311
GLENDALE, CALIFORNIA 91206
TELEPHONE: (213) 245-0347

November 12, 1970

CALIFORNIA LAW REVISION COMMISSION
Stanford University School of Law
Stanford, California 94305

Re: Attachment and Garnishment Procedures

Gentlemen:

In the Los Angeles Daily Journal edition of November 12, 1970, I find an interesting and informative article written by Mr. Steve Martini discussing the Sniadach Decision and the upcoming hearing in this area of the law.

While my schedule does not permit me to attend the hearings, I do have a personal interest in the legislation. Although it seems as though the late trend in the thinking of the courts favors the debtor, and even though I can state generally that I am in favor of abolishing some of the harsh remedies which exist at present, I believe that there should be certain exceptions to this trend. I believe very strongly that we should have a change in our Code regarding the ability of a victim of an intentional tort to attach the property of the tort feasor.

My concern originates from my being the victim of a husband who, in the County Courthouse, shot and killed his wife as well as wounded three other persons and immediately assigned all of his assets, some $230,000.00, to attorneys he retained to represent him in the defense of the tort and crime. We went through a virtual hell in attempting to reach assets, including an unsuccessful preliminary injunction, suit for fraudulent conveyance, early trial, ad nauseam.

I would be most willing to offer my files and records and any further correspondence the Commission requests. I

firmly believe that the belief that defendant debtors are all "good guys" is as specious as the converse.

Sincerely,

DANIEL R. SHEAHAN

DRS:dfj

EXHIBIT II

COPY

JOHN P. ROONEY
ATTORNEY AND COUNSELOR AT LAW

CIVIC CENTER BUILDING, 507 POLK STREET
SAN FRANCISCO, CALIFORNIA 94102

TELEPHONE 673-5527
AREA CODE 415

November 13, 1970

Los Angeles Daily Journal
210 South Spring Street
Los Angeles, California

Gentlemen:

The author of your November 12th article regarding bank account attachment might be interested in two San Francisco cases. Eckstein vs. Ross, San Francisco Superior Appeal #3150, dated March 19, 1970 and Sauer vs. Milpitas Hotel, San Francisco Superior #620935, dated September 4, 1970.

In the former case, the Appellate Division upheld the quashal of a bank account garnishment. In the latter case, the Law and Motion Dept. refused to quash such a garnishment. The Second District case was not cited by counsel but the Court may have been aware of it through other channels.

I represented the defendant in both cases.

Yours truly,

JPR

JOHN P. ROONEY

JPR/a

EXHIBIT III

Legal Aid Society of Alameda County
1330 CHESTNUT STREET
OAKLAND, CALIFORNIA 94607
Telephone 465-3833

November 16, 1970

California Law Revision Commission
School of Law
Stanford University
Palo Alto, California 94305

Re: Proposed CCP 537 and 538

Gentlemen:

I would like to communicate my approval of your draft of amended CCP Sections 537 and 538.

For four years I have practiced law as a legal services attorney in the West Oakland office of the Legal Aid Society of Alameda County. I am presently the attorney in charge of the office. During my four years practice in this office, I have advised many clients concerning their wages, bank accounts, automobiles and other personal property held under prejudgment attachment. As a practical matter, a substantial number of these clients had good legal defenses to the actual lawsuit, but because of the immediate importance of their automobile or small bank accounts to their daily lives, they gave up hope in asserting their legal defenses and accepted poor settlements in the return of exchange for their attached property. In these many cases, justice was not served.

An even more important problem exists. Many of my clients have very little confidence in and feel that they are left out of our legal system. The holding of their personal property prior to their opportunity to be heard simply reinforces their disenchantment. Poor and minority citizens must be accorded due process of law if they are to become more involved members of the community.

Based upon my legal experience and my experience as a legal aid attorney, I feel that the proposed amendments both effectively and fairly limit prejudgment attachment and provide the procedural safeguards of due process of law where attachment is allowed.

Very truly yours,

Gary J. Grimm

GARY J. GRIMM
Attorney at Law

GJG:cs

Memorandum 70-118 EXHIBIT IV

Legal Aid Society of Alameda County
8924 HOLLY STREET
OAKLAND, CALIFORNIA 94621
Telephone 635-8676

THOMAS L. PIKE
Executive Director
Stefan Rosenzweig
Attorney-In-Charge

November 17, 1970

California Law Revision Commission
School of Law
Stanford, California 94305

Re: Attachment-Garnishment Study

Gentlemen:

I have read Professor Riesenfeld's recommendations concerning C.C.P. 537-538 with great interest and would urge the Commission to approve them.

Our office provides free legal services to persons financially unable to hire attorneys to represent them. Thus, we have handled numerous cases involving pre-judgment attachments.

I have personally been involved in litigation involving the constitutionality of pre-judgment attachments as attorney for the defendants in Leary v. Heard cited in Professor Riesenfeld's study at page 23. In that case, the Municipal Court in Alameda discharged a pre-judgment attachment of the defendant's bank account on the authority of Snidach. I am also involved in a constitutional challenge to California's Claim & Delivery Law, C.C.P. §509, et seq on Snidach grounds. (Gordon v. Madigan & Beneficial Finance, #397 724, Superior Court, County of Alameda).

It is our position that these statutes in question provide for the taking of property without due process of law and are thus unconstitutional. Professor Riesenfeld has already cited most of the controlling authorities in this area and I will not attempt to elaborate on his analysis. I will, however, bring the Commission's attention to the following cases that further extend the result reached in Snidach:

1. Eckstein v. Ross, S. F. Muni Ct., #614797 (July 15, 1969). This case, like Leary v. Heard, Supra, discharged a pre-judgment bank account attachment.

2. Blair v. Pitchess, #942966, Superior Court, County of Los Angeles, Memorandum of Opinion dated May 12, 1969 held that the provisions of California's Claim & Delivery Law were unconstitutional on both due process and Fourth Amendment grounds.

3. The same result was reached by a three-judge federal court in Laprease v. Raymoors Furniture Co., 39 Law Week 2082 (1970) concerning New York's replevin law.

4. Klin v. Jones, U.S.D.C., N.Calif., 39 Law Week 2060 (1970) held, on the authority of Snidach, that Cal. C.C. 1861, California's Innkeeper's Lien Law, was unconstitutional.

All of these cases recognize the proposition that pre-judgment takings are unconstitutional unless required to protect some overriding state or creditor interest. They further recognize the disasterous effects that pre-judgment attachments have on the alleged debtors. The alleged debtor faced with a pre-judgment attachment frequently finds that he cannot sustain himself financially in the time period that elapses between the attachment and the trial on the merits. Thus, he is coerced into paying the obligation sued upon and forfeiting whatever defense he might have, or filing bankruptcy. Thus, in practice, there is often no judicial determination whatsoever, either pre- or post-attachment regarding the merits of the claim.

Professor Riesenfeld's recommendations go a long way towards alleviating the problem. They provide on the one hand legitimate protection to the creditors' interest in safeguarding against the debtor who would attempt to "hinder, delay or defraud his creditors", while at the same time, should insure that the alleged debtor with a defense, whether it be fraud or otherwise, has his day in court.

We would, therefore, recommend that the Commission approve Professor Riesenfeld's draft of Amended Sections 537 and 538, a decision that I believe to be mandated by the Constitution of the United States.

Very truly yours,

Stefan Rosenzweig

STEFAN ROSENZWEIG,
Attorney in Charge

SR:wd

cc: Prof. Stefan Riesenfeld,
Boalt Hall

Memorandum 70-118

EXHIBIT V

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TOBIAS COSKEY
HAL L. COSKEY
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477-5505 AND 879-9558

November 20, 1970

John H. DeMoully
Executive Secretary
California Law Revision Committee
School of Law
Stanford University
Stanford, California 94305

Dear Mr. DeMoully:

Re: Attachment & Garnishment Procedures

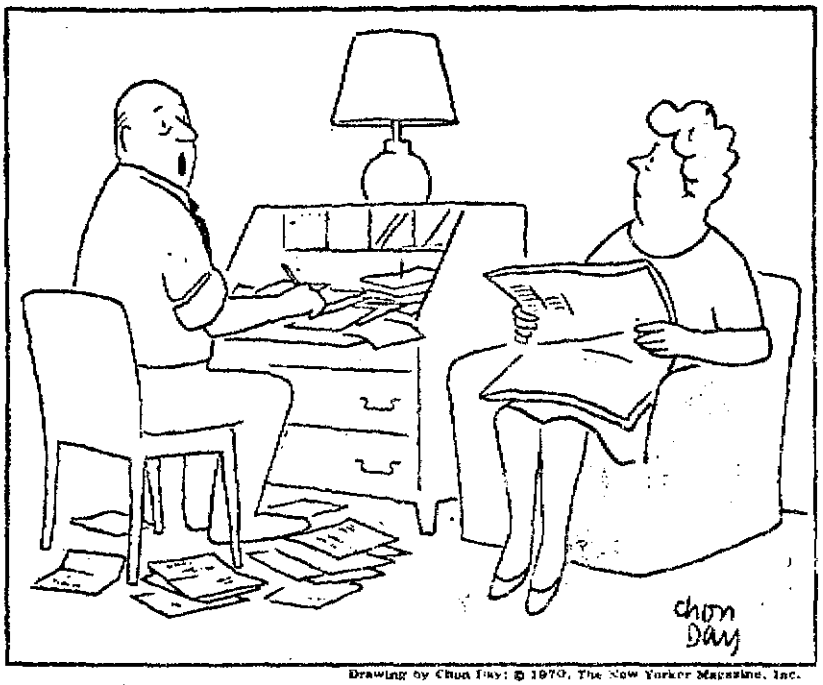
I am enclosing a Memorandum re Background Study Relating to Attachment and Garnishment. As you will notice, this Memorandum is presented from the point of view of the attorney practicing in the commercial field.

If you deem it of sufficient value, we would appreciate your disseminating copies of this memorandum to members of the Commission. If it is necessary to request a specific time to be heard by the Commission in Los Angeles, would you please consider this letter to be such a request and inform us of the availability of such a time.

Sincerely,

HAL L. COSKEY
of COSKEY & COSKEY

HLC/jm
Encl.



Drawing by Chon Day; © 1970, The New Yorker Magazine, Inc.

'Know something? We're in debt beyond our wildest dreams!'

The Artful Dodgers

With inflation, recession, work layoffs and strikes all hitting the consumer at once, more and more U.S. families are finding that they are unable to pay their bills on time. And when that happens, of course, the credit systems of America unleash the formidable weaponry in their collection arsenals: vengeful computers, blacklisting through nationwide credit bureaus, bill collectors on the phone and, finally, garnishment of the paycheck. But the harried debtor is not without weapons systems of his own. A recent survey by NEWSWEEK's domestic bureaus uncovered a veritable stockpile of ploys that artful dodgers use, legally and illegally, to hold off their creditors while, like Mr. Micawber, they wait for something to turn up—ideally, the economy. Among the most widely practiced stratagems:

■ **The Mailbox Maneuver.** Most creditors open their offensives by contacting debtors through the mail. Since the debtor is not legally responsible for opening his mail, he may leave unopened letters in his mailbox, then claim that he has been away on a trip. Or, he may destroy the bills and pretend that they have been thrown out inadvertently with all the junk mail he receives. A $12,000-a-year employee of Boston's State Street Bank and Trust Company, who has a wife and an apartment that he cannot afford, credits this method with buying him a four-month delay on his major bills.

■ **The Telephone Stand.** When bills sent by mail are ignored, they are normally followed up by a telephone call from a collection agent threatening court proceedings if the amount owed is not remitted immediately. "The best response to that," says a Boston consumer, "is, 'Fine, you let me know by mail just when and where I'm to appear in court'." He argues from wide experience that few bill collectors will begin proceedings for less than $100 owed. "If you call their bluff," the Boston dodger maintains, "they know that you know that court is not profitable for them."

■ **The Mail-Telephone Double Cross.** Not surprisingly, the most difficult company on which to employ the telephone ploy is the telephone company itself. "To keep your phone in service," advises a Los Angeles dodger, "keep saying you mailed the check, that it must have been lost in the mails, and promise to void that check and mail them another. I got about four months and $200 worth of calls out of that dodge before I had to abandon it."

■ **Partial Payment of Bills.** This is another common method of holding off creditors though it is more difficult to arrange than it used to be. "Things have gotten worse since the computers," says a Los Angeles father of six. "It used to be that if you sent ten dollars every month to every one of your creditors, that was enough. But no longer. Now, explanations don't stop the computers from regularly sending you dunning letters—regardless of the deals you've made. If you send them ten, and the payment is fifteen, the computers let you know you're five dollars short."

But the most ingenious of the artful dodgers have even dreamed up ploys for confounding the computers. To wit:

■ **The Withheld-Signature Stratagem.** The dodger puts checks in the mail to his creditors—but does not sign them. That ploy will delay payment for as much as two weeks. "It doesn't do a bit of good just to mutilate the punch card," notes a Radcliffe College coed. "Once you include a signed check made out to them, they just make a new punch card and cash your check." And when two creditors have caught up with this young lady on the withheld-signature stratagem, she sends each the other's signed check. That buys her about two weeks more.

■ **Going Over the Computer's Head.** A San Francisco journalism professor makes a practice of never paying all of his bills. Instead, he reaches the highest-ranking bill collector he can get on the phone ("I try for a woman I can browbeat into submission") and makes a deal: "'Look,' I say, 'if you make me pay all this, I'll go bankrupt and you won't get anything.' Then I name my price: the portion of the bill I am willing to pay—usually lopping off a couple of hundred dollars—and, generally, the collector gratefully accepts my terms."

Filing for bankruptcy used to mean losing the game. But nowadays, according to Marvin Kayne, a professor at Berkeley School of Law, "the American myth that your credit is going to be ruined, that people won't like you if you go bankrupt, is obsolete. Personal bankruptcies have climbed astronomically in the last ten years (fiscal 1960: 97,750 personal bankruptcies; fiscal 1970: 178,202). Bankruptcy is a clean break with the past. And the person may find soon after he's filed that, if he has a steady job, he's a good credit risk."

Indeed, the successfully bankrupt consumer may even be able to start a business of his own—in which case he can start inventing counterploys to keep from becoming a corporate bankrupt.

Feminist Yearbook

If 1970 was the year in which American women became intellectually aware of the modern feminist movement, 1971 may turn out to be the year in which women's lib will become part of their everyday lives. That, at least, is the hope of two enterprising women journalists who have created a combination feminist date book, encyclopedia and almanac entitled "The Liberated Woman's Appointment Calendar and Survival Guide book 1971." And with well over 100,000 copies of the deluxe, $2.95 calendar already sold, its creators' dreams for the book do not seem totally unrealistic.

The [illegible] calendar marks each day with some kind of feminist first. These range from the even-tempered notation for April 5, 1595: "Pocahontas marries John Rolfe and does not change her name, 1614" to the somewhat more belligerent entry for [illegible]: "Madame Jumel . . . marries 77-year-old Aaron Burr in 1833, but when he suggests he manage her properties, she chases him out of the house with fire tongs, causing him to have a stroke"). In addition, the calendar notes female contributions to national holidays (Oct. 12: "Financed and fretted

HLC/jm 11/20/70

MEMORANDUM RE BACKGROUND STUDY RELATING TO ATTACHMENT AND GARNISHMENT

INTRODUCTION

The recommendations of Professor Riesenfeld in his Background Study appear to be directed toward the solution of a problem which is never defined in that study. The study by Professor Riesenfeld and the opinion of Justice Douglas in the Sniadach case (Sniadach vs. Family Finance Corporation 395 U.S. 337, 89 S. Ct. 820, 23 L. Ed. 2d. 349 [1969]), both direct themselves to the alleged evils of judicial levies. Neither one specifically directs itself to those evils which are inherent in levies of attachment and/or garnishment as opposed to levies of execution. The study of Professor Riesenfeld barely if at all, discusses abuse of the attachment statutes in the State of California.

This office is actively engaged in the practice of commercial law and commercial collections. We receive and undertake a substantial number of collection matters. In the course of our collection efforts we file approximately 100 lawsuits per month. Many of these suits employ bank levies and keeper attachments. The vast majority of these suits are against businesses as opposed to consumers.

This memorandum will restrict itself to attachment and garnishment against commercial debtors. It will not deal with attachments against consumers or attachments against out-of-state residents.

1. THE TRUE THRUST OF THE SNIADACH CASE.

The background study indicates (page 18) that the concern with attachments in the state of California as well as in other states was triggered by the Supreme Court decision in the Sniadach case. The study correctly states that it is difficult to determine exactly what was intended by the Supreme Court and specifically by Justice Douglas in the majority opinion in that case. (page 18)

One factor which is clearly evident in the Sniadach case and which apparently was uncontroverted was that Mrs. Sniadach owed the money to the Family Finance Corporation. There nobody expressed any doubt that the Family Finance Corporation would ultimately obtain a judgment against Mrs. Sniadach and thereafter would be able to bring upon her the entire parade of horribles which Justice Douglas apparently hoped to eliminate by outlawing levies of attachments. There is not even a suggestion in the opinion in the Sniadach case or by any other writer that levies of execution against wages or any other property are improper. Hence, aside from permitting Mrs. Sniadack to postpone the inevitable, the Supreme Court did very little to protect her from the ills which it predicted would befall her.

At the time the opinion in the Sniadach case was rendered a new federal law protecting wages from levies had already been passed. Thus, the reference by Justice Douglas to wages being a "special form of property" was entirely correct. Could it not be that the sole purpose of the opinion of Justice Douglas was to accelerate the effective date of the federal law governing wage garnishments?

DEFINITION OF PROBLEM

If there is need for a change in the attachment laws, then that need must be the result of an abuse of the present laws. The Background Study contains no statistics to support the finding of any abuse in the use of attachments in consumer actions or in commercial actions. This writer is unaware of any such study ever having been made.

Admittedly, it is probable that some abuse exists in the use of attachments. However, if meaningful legislation is to be recommended or enacted, should not the drafters of that legislation have before them concrete information as to the dimensions of the problem of attachments and the scope and nature of abuse of the present law?

How many attachments are levied in California in any particular period of time? In how many actions in which attachments are levied does the defendant ultimately prevail? In how many actions in which attachemnts are levied is there a settlement? Where there is a settlement, how many of the defendants have actually been compelled to pay funds which they did not owe or which they were not obligated to pay? How many defendants have found that their remedies for wrongful attachment and abuse of process are inadequate?

The present law provides for a bond to be posted by the plaintiff as protection to the defendant whose assets are wrongfully attached. In addition, the courts have developed the doctrine of abuse of process to the point where it has become a meaningful deterrent to the casual use of a Writ of Attachment. (3)

See White Lighting Company vs. Wolfson, 68 Cal. 2d. 336, 66 Cal. Rptr. 697 (1968). Attention is further invited to the continuing education of the bar series set for May and June, 1971 "Representing Plaintiffs and Defendants In Debt Collection Tort Cases".

The knowledgeable and responsible attorney practicing commercial law must be constantly aware of the developing body of judicial decisions protecting the defendant against ill considered levies of attachment. It is the experience of this writer that where the debtor suggests the slightest hint of a bona fide contest, levies of attachment are avoided. This experience has been gained in representing both creditors and debtors in literally hundreds of cases.

3. OTHER ASPECTS OF THE PROBLEM.

An examination of the attachment and garnishment laws in the State of California without taking into account other creditors' remedies and problems cannot adequately deal with the subject. An attempt to isolate one aspect of the creditor/debtor relationship and to solve the purported problems of that aspect without taking into account the entire relationship can only lead to the creation of more problems than now exist. The background study refers to the lack of attachment rights in the State of New York. However, no reference is made in the study of the significant rights granted to creditors of New York debtors in assignment for the benefit of creditors proceedings or other out of court or in court proceedings. Nor does the study give any details or statistics as to the number

of insolvency proceedings - both in court and out of court - which take place in New York as opposed to California. Does the creditor of a New York debtor, deprived of the rights to attachment, turn to the bankruptcy courts more quickly than the creditor of a California debtor?

The report fails to discuss the bulk sale requirements of the various states which limit rights of attachment. The California version of the Uniform Commercial Code deleted several important sections from the bulk transfer portion of that code (6000 et. seq.). What protection is to be given to the creditor of a businessman who is selling his business?

While it can be argued that the creditor who sees his debtor dissipating assets can turn to the bankruptcy courts that remedy is not realistically available in all cases. First of all, it is necessary to find three creditors in order to file an Involuntary Petition in Bankruptcy. Many times a creditor does not know of other creditors of the debtor. In other situations, other creditors who are known to the creditor are not willing to join. Many national companies have established policies against joining in an Involuntary Petition in Bankruptcy.

4. STATUTES ALLOWING ATTACHMENTS BASED UPON FRAUD ARE ILLUSORY.

Our courts are particularly reluctant to find fraud. It is the opinion of most New York attorneys that attachment rights simply do not exist in that state. The suggested revisions to the California statute permitting attachment rights where there are fraudulent transfers will give absolutely no protection to creditors.

The debtor who is having a "going out of business sale" could file an affidavit in opposition to an Application for Writ of Attachemnt stating that it is his intention to collect all monies from the sale and to thereafter pay them out to creditors. If that statement is uncontroverted, could the court issue a Writ of Attachment under the Act as proposed?

Arrangements where debtors liquidate their business and thereafter distribute the proceeds to creditors are abhorrent to creditors. They usually result in creditors recovering less of their obligation. Very often obligations which are not proper are paid and the debtor appropriates to himself substantial sums of money. These appropriations while questionable might not appropriately be branded as "fraudulent". (Is it "fraudulent" for a debtor to continue to take a substantial salary after the business is terminated but while he is "supervising" the payment of creditors? Is it "fraudulent" to recognize as valid claims to which there are legitimate contests? Is it "fraudulent" to pay a particularly generous fee to the counsel who brought to the debtor's attention this method of paying his creditors?) Unless the debtor is insolvent at the time of the liquidation sale, creditors are completely helpless. Admittedly, they could embark upon an investigation of the debtor's insolvency on a daily basis but is such a procedure practical?

A similar situation will occur when the court has indicated a judgment which it will render. At least 60 days can pass from an indicated decision until the final entry of judgment.

During that entire period of time, although the court has indicated that a judgment will be rendered in favor of the plaintiff creditor, the debtor is free to take whatever steps he might to frustrate the creditor from collecting his judgment. Once a judgment is rendered, even though it may later be overturned by an Appellate Court, plaintiff will be given a Writ of Execution to levy against the assets of the debtor. What are the policy considerations in favor of protecting the assets of this type of debtor in this situation?

5. TRIAL DELAYS HAVE BEEN IGNORED..

The present trial setting situation in the Los Angeles courts encourages the filing of an answer to contest a creditor's claim. In the Los Angeles Superior Court it is not unusual to obtain a 3 year delay by simply filing an answer. The Los Angeles Municipal Court, although setting trial dates earlier, very often encounters situations where it is unable to assign trial courts to the cases on the calendar. It is not difficult to obtain at least a 1 year delay in the Los Angeles Municipal Court.

How many debtors are discouraged from filing non-meritoreous answers because of levies of attachments? It must be assumed that if attachments were abolished there would be a greater incentive for debtors to contest actions in which they have no defense. Such a situation would further complicate the trial calendar problems which the courts now face.

6. PROPOSED LAW WOULD MAKE CREDITORS INVOLUNTARY PARTNERS.

The background study attributes four reasons for the levy of attachment. We would suggest there is an additional and

very compelling reason. Were attachments abolished a debtor could compel his creditor to become an involuntary partner in his business. Without any intention of committing fraud and without any intention of avoiding a just debt, a debtor, by contesting a claim, could delay a creditor from one to three years. (Summary judgment is not the solution for the creditor. See numerous cases expressing reluctance of the California courts to grant summary judgment - a reluctance not shared by courts in some states where attachment is not available.) During this period of delay, if the debtor is successful in his business, the creditor will be paid. If the debtor is unsuccessful in his business the creditor will suffer the consequences. The creditor may refuse to ship further merchandise to the debtor but in effect he has become the unwilling financier for the debtor's business.

A similar situation exists in a period in which interest rates are in excess of the legal rate provided by the State. For the debtor who is pressed for cash, the abolishment of attachment rights coupled with the congestion of the trial courts are more meaningful solutions to his liquidity problem than his local bank. It is certainly cheaper to pay interest at the legal rate of 7% per annum for 3 years to a creditor than it is to attempt to borrow money from a bank to pay that creditor in full at the present time -- assuming a loan is available to the debtor from a bank. Admittedly the debtor must incur attorney's fees in delaying the entry of judgment. However, the attorney knowing that his sole task is to delay the inevitable

can maintain his services at a minimum. The fees which will be paid to an attorney can be considered as a part of the cost of using the creditor's money. The combination of attorney's fees and legal interest will probably not exceed what the debtor would have to pay in interest to the bank.

CONCLUSION AND RECOMMENDATION

Throughout the country there is a hue and cry for modernization of the judicial system. Congestion of the courts and delays in trials are two of the evils which have been cited. It is beyond cavil that the legislation proposed by the Background Study must further increase these delays and congestion. Such a result cannot be countenanced unless there is a substantial reason therefor.

Certainly, it cannot be the intent of this commission or the legislature to encourage debtors to avoid paying their just obligations, or to assist debtors in frustrating a creditor from promptly collection a just debt. The individual for whom there must be genuine concern is the debtor whose assets are attached for a claimed debt which is not owing. With these considerations in mind we make the following recommendations:

1. A comprehensive statistical study be made of California cases to determine whether or not abuse exists in the levies of attachment and the extent of that abuse, if any.

2. An attachment law be enacted which will direct itself to the specific abuses uncovered by an investigation while

providing protection for the commercial community.

3. Any revision of the attachment laws with regard to commercial transactions also include within its scope a revision of the bulk transfer and other portions and aspects of the Commercial Code. Assignments for the Benefit of Creditors and other aspects of the creditor/debtor relationship as well as possible changes in Court procedures.

4. If an urgency be found for corrective legislation in the consumer field, the attachment laws could be modified at this time by making them unavailable in any action under the Unruh Act of the Rees-Levering Act.

HAL L. COSKEY and SANDOR T. BOXER