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PREJUDGMENT WAGE GARNISHMENT: NOTICE AND HEARING REQUIREMENTS UNDER *SNIADACH v. FAMILY FINANCE CORP.*

I. GARNISHMENT STATUTES

Wage garnishment is the process by which a creditor obtains a judicial writ ordering a debtor's employer to withhold payment to the debtor of wages earned.¹ The writ is obtained by the creditor, either as a means of securing payment of a judgment entered against the wage earner, or as security for a claim pending adjudication.² In the former case the amount of the judgment is withheld from the debtor's paycheck and paid over to the creditor. The judgment is thereby enforced, and the creditor obtains his settlement indirectly through the debtor's employer.³ In the latter case, referred to as prejudgment garnishment, the plaintiff-creditor obtains the writ of garnishment when he files a claim against the alleged debtor. The amount of the claim is withheld from the defendant's paycheck and remains frozen until the dispute is settled.⁴ The process provides the plaintiff with security for the anticipated judgment; if the defendant defaults or if the plaintiff wins a judgment, the amount withheld will be paid directly to the creditor. In both cases the process of garnishment is designed to serve the needs of the creditor. The collection of the debt is both insured and enforced by the court.

The process of ordering the employer to withhold wages is identical whether it is initiated for security prior to judgment or for execution of a judgment already obtained.⁵ Prejudgment garnishment, however, raises special questions. Focusing on the statutes of the jurisdictions that retain the prejudgment remedy will point up these problems, as well as illustrate the basic process common to all garnishments.

A. *Prejudgment Provisions*

The states which provide for garnishment prior to judgment permit the plaintiff to set the garnishment process in motion at the time the complaint for the suit on the debt is issued.⁶ The initial claim, the basis

¹ 6 Am. Jur. 2d Attachment and Garnishment §§ 1-4 (1963).

² Id. § 12.

³ Id. § 4.

⁴ Id. § 12.

⁵ See, e.g., Cal. Civ. Proc. Code § 537 (West Supp. 1969), amending Cal. Civ. Proc. Code § 537; Cal. Civ. Proc. Code § 541 (West 1954).

⁶ Alaska Stat. §§ 09.40.010, -030, -35.080 (1962); Ariz. Rev. Stat. Ann. § 12-1571 (1956); Ark. Stat. Ann. § 31-501 (1962); Cal. Civ. Proc. Code §§ 537, 543 (West Supp. 1969), amending Cal. Civ. Proc. Code §§ 537, 543 (West 1954); D.C. Code Encycl. Ann. § 16-501 (1967); Idaho Code §§ 8-501, -505, -508 (1947); Iowa Code Ann. §§ 639.1, -3, -25 (1946); Mont. Rev. Codes Ann. §§ 93-4301, -4306, -4314 (1963); N.M. Stat. Ann. §§ 36-11-1, -14-1 (Supp. 1969); N.D. Cent. Code §§ 32-09-01, -06 (1960); Ore. Rev. Stat. §§ 29.110, -140, -270 (1967); R.I. Gen. Laws Ann. §§ 10-5-1, -2, -7, -8 (1956); Vt. Stat. Ann. tit. 12, §§ 3011, 3013 (1958); Wyo. Stat. Ann. §§ 1-226, -235 (1957).

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for a writ of garnishment, must be an action founded on a contract, either expressed or implied, and ordinarily one that is unsecured by any other property.⁷ In a few states plaintiffs must also allege that the defendant has disposed of or is about to dispose of his property, "with the fraudulent intent to cheat, hinder or delay his creditors."⁸

A special affidavit from the plaintiff is necessary to obtain a writ of garnishment in nearly all states. Although the language varies from state to state, the affidavit requirements are quite similar. Plaintiffs in Washington must affirm that the debt is "just, due and unpaid, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee."⁹ Garnishment affidavits in Oregon must assert that there is a "bona fide, existing debt due and owing from the defendant to the plaintiff . . ."¹⁰ A clause common to affidavits in many states requires that the writ not be sought "to hinder, delay, or defraud any creditor of the defendant."¹¹ Generally, prejudgment garnishment statutes also require that the plaintiff post a bond or undertaking prior to obtaining the writ, agreeing to pay to the defendant all costs and damages in the event that the garnishment is wrongfully obtained or the defendant wins the judgment.¹² Once a writ of garnishment is obtained by the plaintiff, it is then served directly on the garnishee-employer. This places the employer under order from the court to withhold from the defendant's wages a specified amount which remains under the court's control until a judgment is entered on the case.¹³

Under the prejudgment garnishment statutes, the defendant's wages are withheld as security on the claim until the suit has been fully adjudicated.¹⁴ If the defendant has a valid defense he may assert it at a trial on the merits, obtain judgment in his favor, and have his wages remitted at the conclusion of the trial. However, once the plaintiff files the claim and submits the required affidavit and undertaking, causing the garnishment writ to issue, the defendant has lost the use of his wages until the conclusion of the case.

There are methods by which the defendant may have a prejudgment writ dismissed prior to a trial of the claim. Dismissal of such a writ must result from an attack upon the garnishment itself, and not the underlying claim.¹⁵ Examples of grounds for dismissal are: the cause of action is not one for which a garnishment may issue, for ex-

⁷ Compare Cal. Civ. Proc. Code § 537 (West Supp. 1969), amending Cal. Civ. Proc. Code § 537 (West 1954), with Vt. Stat. Ann. tit. 12, § 3011 (1958).

⁸ See, e.g., Ark. Stat. Ann. §§ 31-101(7), (8) (1962); D.C. Code Encycl. Ann. § 16-501(d)(4) (1966). See also note 96 *infra*.

⁹ Wash. Rev. Code Ann. app. 7.1 § (1)(b) (Supp. 1960).

¹⁰ Ore. Rev. Stat. § 29.120(2) (1968).

¹¹ See, e.g., Cal. Civ. Proc. Code § 538(3) (West 1954); Ariz. Rev. Stat. Ann. § 12-1571(A)(2) (1956).

¹² See, e.g., Idaho Code § 8-503 (1947); Iowa Code Ann. § 639.11 (1946).

¹³ 6 Am. Jur. 2d Attachment and Garnishment §§ 3, 511 (1963).

¹⁴ *Id.* § 12.

¹⁵ *Id.* § 431.

ample, a tort claim; irregularities in the proceedings to procure the writ; and insufficiency of the plaintiff's bond or undertaking.¹⁶ The garnishment may not, however, be attacked on the basis of the lack of merit of the plaintiff's claim.¹⁷ Legal or factual issues regarding the basic debt claim cannot be raised until the trial on the merits, and unless the garnishment writ itself is shown to be invalid the defendant's wages are withheld until the conclusion of the trial.¹⁸

B. Provisions to Protect the Debtor

All of the states which statutorily provide for wage garnishment, whether prior to judgment or in execution thereof, incorporate into their statutes certain protections for the debtor.¹⁹ These protections take two forms: (1) prohibitions against discharge for reasons of garnishment,²⁰ and (2) exemption provisions whereby a certain portion of the debtor's wages are held exempt from garnishment.²¹ Some type of exemption provision is in effect in every state, although anti-discharge provisions are not particularly common.²²

The federal government has recently entered the field of garnishment legislation and as a result has preempted provisions in many state statutes providing debtor protection in garnishment actions. Title III of the Federal Consumer Credit Protection Act (FCCPA), which becomes effective on July 1, 1970, contains major provisions dealing with prohibitions on firing and with wage exemption.²³ The federal approach to firings because of garnishment is clear and direct: "No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness."²⁴ For wilful violations of this section there is a maximum fine of \$1000 or imprisonment for up to one year or both.²⁵ Under this section an employee may not be fired no matter how repeatedly his wages are garnisheed, provided the garnishment stems from the same claim or debt. If, however, the debtor's wages are subjected to garnishment by more than one plaintiff or creditor on separate claims, or

¹⁶ *Id.* §§ 431-32.

¹⁷ *Id.* § 431.

¹⁸ *Id.*

¹⁹ U.S. Bureau of Labor Standards, Dep't of Labor, *Wage Garnishment Restrictions Under Federal and State Laws* (1968) [hereinafter cited as *Bureau of Labor Standards*].

²⁰ See, e.g., Conn. Gen. Stat. Ann. § 52-361(a) (Supp. 1969) (employer may not suspend, discipline or discharge an employee because of wage garnishment unless the garnishments exceed 7 in a calendar year); Hawaii Rev. Laws § 378-32 (1968) (no employee may be suspended or discharged solely because his wages have been garnisheed).

²¹ See *Bureau of Labor Standards*, supra note 19.

²² *Id.*

²³ Consumer Credit Protection Act §§ 301-07, 15 U.S.C. §§ 1671-77 (Supp. IV, 1969). This act is frequently referred to as the Federal Truth in Lending Law.

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

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

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because of a second claim by the same creditor, there is no protection against his discharge under federal law.²⁶

The exemption provision of the FCCPA sets the following limits as the maximum part of an individual's salary that may be garnished:

- (1) 25 per centum of his disposable earnings for that week or
- (2) The amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable whichever is less.²⁷

As a practical protection for the debtor, this section is an improvement over many of the state provisions presently in force. A number of the state statutes exempt only a small, fixed sum each pay period as a subsistence allowance.²⁸ Unlike these subsistence allowances, which are continually rendered inadequate by inflation, the federal exemption is not inflexibly bound to a dollar amount.²⁹ The federal exemption is subject to criticism, however, in that the base protected amount for one week is 30 and not 40 times the minimum hourly wage. A wage earner working a full 40-hour week at the minimum hourly rate will be making, by congressionally recognized standards, the minimum necessary to support a family at a subsistence level. Yet the federal statute allows a wage earner to be forced below this level by as much as 25 percent. The law is therefore inadequate as a protection for

²⁶ In contrast to the federal limitation, the Uniform Consumer Credit Code (U.C.C.C.) includes the following provision prohibiting firing because of garnishment:

No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease, or consumer loan.

U.C.C.C. § 5.106.

²⁷ 15 U.S.C. § 1673(a) (Supp. IV, 1969). Section 1672(b) defines "disposable earnings" 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."

²⁸ See, e.g., N.D. Cent. Code § 32-09-02 (Supp. 1969), amending N.D. Cent. Code § 32-09-02 (1960) (exempts \$50 per week for a resident family head plus \$5 per week for each dependent up to 5 dependents); Ga. Code Ann. § 46-208 (1933) (exempts \$3 per day plus 50% of the balance). See also Bureau of Labor Standards, *supra* note 19, at 1-7.

²⁹ Another major section of the federal garnishment law sets out the relationship between the federal provisions and existing state laws. Section 1675 allows the Secretary of Labor to refrain from applying the federal exemption provision to garnishments issued under state laws which "provide restrictions on garnishment which are substantially similar to those provided in § 1673(a)." 15 U.S.C. § 1675 (Supp. IV, 1969). As to more extensive state restrictions, § 1677 declares that this title does not alter or affect in any way the enforcement of the laws of any state:

- (1) prohibiting garnishments or providing for more limited garnishments 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.

those workers who are not earning substantially more than the minimum wage.³⁰

II. HOW GARNISHMENT AFFECTS THE DEBTOR

The effects of wage garnishment on the debtor are both sudden and severe. Garnishment statutes generally do not provide for notice to the debtor prior to the issuance of the writ,³¹ and in many cases the employee's first awareness of an attachment on his wages comes with the less-than-full pay envelope.³² Despite the federal exemption provision, which is a major improvement over many state subsistence allowances,³³ the loss of up to 25 percent of a worker's normal weekly pay is bound to cause some hardship. The class of workers whose wages are most often subjected to garnishment seldom have any capital to depend upon in emergencies.³⁴ The family head will have a difficult time affording necessities, and periodic payments arising from other obligations will become impossible to meet.³⁵ It is also reasonable to assume that a person whose wages are being garnished will be unable to obtain credit from other sources.

In addition to serious financial problems, the debtor is likely to find himself in trouble with his employer. Automatically firing an employee because of a garnishment is still a regular practice among some employers.³⁶ The FCCPA provision now prohibits such action in cases of "garnishment for any one indebtedness."³⁷ However, as has been noted, the law does not protect the debtor from dismissal in the case of garnishment by more than one creditor, or by the same creditor on a second claim. Thus, the problem of discharge because of garnishment is not by any means eliminated by the FCCPA, since it extends only to a limited class of debtors.

Regardless of the extent of protection against dismissal provided by law, the employer-employee relationship inevitably deteriorates because of garnishment. Because additional bookkeeping is required to comply with a writ, garnishment creates an extra burden on the

³⁰ This inadequacy of the federal exemption is not present in the U.C.C.C. in which the base exemption for garnishments arising out of consumer transactions is 40 times the minimum hourly wage. U.C.C.C. § 5.105. Utah has adopted this section of the U.C.C.C. without modification. Utah Code Ann. § 70B-5-105(a)(b) (1969).

³¹ But see N.D. Cent. Code § 32-09-03 (1960) (providing 2-days written notice to the debtor-defendant before the garnishment writ issues).

³² Wage Garnishment in Washington—An Empirical Study, 43 Wash. L. Rev. 743, 761 (1968). In prejudgment garnishment actions a common practice among creditors is to initially serve the defendant's employer with the garnishment writ. The creditor can then conveniently serve the defendant with a summons to answer the debt claim when the defendant comes to him seeking a release from garnishment. *Id.* at 760 n.98.

³³ See note 28 *supra*.

³⁴ Wage Garnishment in Washington, *supra* note 32, at 765 & n.125.

³⁵ *Id.*; Note, Wage Garnishment as a Collection Device, 1967 Wis. L. Rev. 759, 761-62.

³⁶ Wage Garnishment in Washington, *supra* note 32, at 756-57.

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

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employer.³⁸ Employer-garnishees are required to account to the court for the garnished amount and are subject to contempt penalties for failure to do so.³⁹ The employer also may be responsible for applying the local exemption provision and calculating the protected amount.⁴⁰ If the debt is large in comparison to the amount of earnings available for garnishment, the withholding process may be repeated week after week compounding the burdens on the employer.⁴¹ The entire process is an expensive nuisance for the employer who has no interest in the debt collection.⁴²

Another aspect of garnishment causing deterioration of the employer-employee relationship is the employer's tendency to consider garnishment as evidence of unreliable character.⁴³ The employer may conclude that since the employee has let his debts get out of control and has involved himself and the employer in court actions, the apparent financial irresponsibility of the employee may be indicative of general irresponsibility. It is argued by employers that these considerations are important in practical management policy,⁴⁴ but ideally they should be irrelevant as long as they do not affect the worker in his performance on the job. Nevertheless, in spite of the fact that the debtor never intends that his employer become involved in his personal financial problems, serious damage to the work relationship is the inevitable result.⁴⁵

In addition to the withholding of wages by garnishment and the consequent job difficulties, the defendant in a prejudgment action must defend himself in a law suit. As the alleged debtor normally will not be familiar with the defenses available to him,⁴⁶ a lawyer's services are essential if he is to effectively contest the suit.⁴⁷ But considering legal

³⁸ Brunn, *Wage Garnishment in California: A Study and Recommendations*, 53 Calif. L. Rev. 1214, 1229 (1965); *Wage Garnishment in Washington*, supra note 32, at 755-56.

³⁹ See, e.g., *Ariz. Rev. Stat. Ann. § 12-1586(B)* (1956).

⁴⁰ *Wis. Stat. Ann. § 267.18(2)(a)* (Supp. 1969).

⁴¹ *Ky. Rev. Stat. Ann. § 425.190(6)* (1969).

⁴² In 1845, the Pennsylvania State Legislature abolished wage garnishment. Their reasons, as stated by the Pennsylvania Supreme Court, were in part:

inconvenience . . . of manufacturers and other large employers being harassed with attachment executions . . . , complicating accounts, accumulating costs, and depriving them of labourers on whom they depended, by diverting wages from the current support of the labourer's family to the paying of former debts.

Firmstone v. Mack, 49 Pa. 387, 392-93 (1865). See Comment, *Garnishment of Wages in Pennsylvania: Its History and Rationale*, 70 Dick. L. Rev. 199 (1966).

⁴³ Brunn, supra note 38, at 1233.

⁴⁴ *Id.*

⁴⁵ Felsenfeld, *Some Ruminations About Remedies in Consumer-Credit Transactions*, 8 B.C. Ind. & Com. L. Rev. 535, 563 n.103 (1967). If discharge because of garnishment is prohibited, it might be anticipated that an employer who considers garnishment such a substantial problem as to justify discharge will resort to other methods of penalizing the debtor employee. Comment, supra note 42, at 212.

⁴⁶ See generally *Wage Garnishment in Washington*, supra note 32, at 764.

⁴⁷ Even in cases of garnishment in execution of judgment, the debtor may be in need of legal assistance just to claim the statutory exemptions to which he is entitled. *Id.* at 761.

fees in the light of abbreviated paychecks, only the most determined defendant will engage counsel.⁴⁸

The overall effect of prejudgment garnishment is to coerce the defendant into a settlement.⁴⁹ Often the only practical course available to defendants in prejudgment cases is to approach the plaintiff-creditor and attempt to work out some agreement whereby the wages will be released as quickly as possible.⁵⁰ The pressures on the defendant to meet family and financial obligations, the possibility of job loss, and the impracticality of retaining counsel all combine to push him into an abandonment of possible defenses.⁵¹ In effect, the defendant is forced to make a repayment arrangement, accepting whatever terms the creditor may demand.⁵²

One very significant problem related to garnishments in execution of judgments as well as the prejudgment process is that of consumer bankruptcy. This problem is serious both because of the human distress involved⁵³ and because of the vast creditor losses which consumer bankruptcies represent.⁵⁴ After extensive hearings, the House Committee on Banking and Currency reported that there is a "clearly established" causal connection between harsh garnishment laws and the alarmingly high levels of personal bankruptcy.⁵⁵ This finding supports the conclusion of several recent commentators that garnishment is the major cause of bankruptcy among consumers.⁵⁶

III. PREJUDGMENT GARNISHMENT UNDER *Sniadach v. Family Finance Corp.*

A. *The SNIADACH Case*

The use of garnishment to withhold the wages of an alleged debtor before a judgment is entered against him caused the United States Supreme Court to consider the constitutionality of prejudgment statutes in *Sniadach v. Family Finance Corp.*⁵⁷ The plaintiff-creditor brought garnishment proceedings against the defendant and her employer in a Wisconsin county court. The writ was founded on the plaintiff's claim of \$450 due on a promissory note. As security for the alleged debt, one-half of the defendant's accrued wages were withheld by her employer subject to the order of the court. The remain-

⁴⁸ See Brunn, *supra* note 38, at 1230.

⁴⁹ Patterson, *Wage Garnishment—An Extraordinary Remedy Run Amuck*, 43 Wash. L. Rev. 735, 737 (1968).

⁵⁰ *Wage Garnishment in Washington*, *supra* note 32, at 753, 763-64.

⁵¹ Patterson, *supra* note 49, at 738. See also *Wage Garnishment in Washington*, *supra* note 32, at 764-65; Note, *supra* note 35, at 770.

⁵² *Wage Garnishment in Washington*, *supra* note 32, at 753, 763-64.

⁵³ Brunn, *supra* note 38, at 1235.

⁵⁴ H.R. Rep. No. 1040, 90th Cong., 1st Sess. 20 (1967).

⁵⁵ *Id.* at 20-21.

⁵⁶ Brunn, *supra* note 38, at 1234-38; Lee, *An Analysis of Kentucky's New Exemption Law*, 55 Ky. L.J. 618, 630-31 (1967); *Wage Garnishment in Washington*, *supra* note 32, at 766-67.

⁵⁷ 395 U.S. 337 (1969).

ing half was paid to the defendant as the required subsistence allowance under the Wisconsin garnishment law. The defendant moved to have the garnishment writ dismissed as a deprivation of property without due process of law in violation of the fourteenth amendment. The issuance of the writ by the court provided the necessary state action making the fourteenth amendment applicable.⁵⁸ The lower court denied the defendant's motion to dismiss and this denial was affirmed by the Wisconsin Supreme Court.⁵⁹

On appeal to the United States Supreme Court, the *Sniadach* case presented two basic issues: (1) was this wage garnishment prior to judgment a deprivation of property, and (2) if so, did the procedure fail to provide the defendant with notice and hearing as required by due process of law? Answering these questions in the affirmative, the Supreme Court held that the application of Wisconsin's garnishment statute⁶⁰ in this case was a taking of defendant's property and that it violated the due process clause because it did not afford the defendant either proper notice or an opportunity to be heard prior to the taking.⁶¹

The Court's opinion, delivered by Justice Douglas, directed itself primarily to the issue of whether the prejudgment attachment of wages constitutes an actual taking of property thereby making procedural due process necessary.⁶² "Wages," the Court emphasized, "are a specialized type of property presenting distinct problems in our economic system."⁶³ The loss resulting from prejudgment garnishment often imposes "tremendous hardships" on the alleged debtor.⁶⁴ The Court pointed to the "enormous" leverage which a creditor can exert on a defendant by having his wages frozen, in many cases forcing the payment of fraudulent claims and inflated collection fees.⁶⁵ In view of the special problems created by wage garnishment, the Court stated: "Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing . . . this prejudgment procedure violates the fundamental principles of due process."⁶⁶

B. Wage Garnishment Distinguished From Other Forms of Attachment

The essence of the *Sniadach* decision is that garnishment of a defendant's wages is quite different from other forms of attachment prior to judgment. Before *Sniadach* the garnishment of wages owed

⁵⁸ Civil Rights Cases, 109 U.S. 3, 11 (1883).

⁵⁹ Family Finance Corp. v. Sniadach, 37 Wis. 2d 163, 178, 154 N.W.2d 259, 267 (1967).

⁶⁰ Wis. Stat. Ann. § 267.01 (Supp. 1968).

⁶¹ 395 U.S. at 342.

⁶² Id. at 340.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id. at 341.

⁶⁶ Id. at 342.

to a defendant was treated by the courts in the same manner as the attachment of any type of property belonging to a defendant; procedural due process requirements did not have to be strictly complied with before the attachment.⁶⁷ As the Supreme Court pointed out however, "[a] procedural rule that may satisfy due process for attachments in general . . . does not necessarily satisfy procedural due process in every case."⁶⁸ Instead, the nature of earned wages as a modern and unique property form establishes a sound basis for distinguishing wage garnishment and providing the defendant with notice and hearing before the wages can be withheld.

The historical basis for distinguishing wage garnishment from other property attachments was presented in Judge Heffernan's dissent to the Wisconsin Supreme Court's disposition of *Sniadach*. The Heffernan opinion pointed out that although attachment itself is a fairly old remedy, its application to the wages of a defendant is a relatively new practice.⁶⁹ Only since the beginning of the twentieth century has the accrual bookkeeping system been widely used, with laborers being paid on a weekly or monthly basis.⁷⁰ Prior to the adoption of this method of payment, there was an almost universal policy of making all wages totally exempt from attachment.⁷¹ Recognizing that accrued wages are a new form of property, it seems reasonable to conclude with Judge Heffernan that they "should be treated by the law with that distinction in mind."⁷²

The most persuasive reason for treating wage garnishments separately is the unique role wages play in our society. As the Supreme Court stated in *Sniadach*, wages are "a specialized type of property presenting distinct problems in our economic system."⁷³ To the low or moderate income family, no other type of property holds the same significance as weekly earnings. There is almost total dependence on each week's wages,⁷⁴ and to be cut off from them would undoubtedly mean that the quality of life will be adversely affected. If a defendant were merely "inconvenienced" by the loss of wages as indicated by the majority in the Wisconsin court,⁷⁵ then the necessity for treating garnishment separately might not be so acute. However, the United States Supreme Court recognized this approach as unrealistic, and stressed that many defendants rely heavily upon weekly wages, par-

⁶⁷ *Family Finance Corp. v. Sniadach*, 37 Wis. 2d 163, 169-73, 154 N.W.2d 259, 262-65 (1967); *McKay v. McInnes*, 279 U.S. 820 (1929), aff'g per curiam *McInnes v. McKay*, 127 Me. 110, 141 A. 699 (1928).

⁶⁸ 395 U.S. at 340.

⁶⁹ 37 Wis. 2d at 181, 154 N.W.2d at 269 (dissenting opinion).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ 395 U.S. at 340.

⁷⁴ *Wage Garnishment in Washington*, supra note 32, at 758 & n.86.

⁷⁵ 37 Wis. 2d at 173, 154 N.W.2d at 264. See also *Byrd v. Rector*, 112 W. Va. 192, 198, 163 S.E. 845, 848 (1932).

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ticularly those in difficult economic circumstances.⁷⁶ It was this awareness of the vital nature of wages that led to the Court's ruling in *Sniadach* that the temporary withholding of wages cannot be given the same treatment as the attachment of other forms of property.

C. Notice and Hearing Requirements

The Wisconsin prejudgment garnishment statute was struck down in *Sniadach* because it resulted in a deprivation of property without affording to the defendant the procedural due process requirements of notice and prior hearing. The statute required notice to the defendant within ten days of the issuance of the writ, making no provision for notice before the garnishment.⁷⁷ The only hearing opportunity provided was that the writ, once issued, could conceivably be dismissed if the defendant showed that the underlying claim was either demurrable or fraudulent on its face.⁷⁸ These provisions were ruled insufficient to satisfy minimum due process standards for notice and hearing.

The *Sniadach* Court did not specify what would constitute a sufficient hearing prior to a writ of garnishment. The opinion briefly mentioned that the "opportunity to be heard" before one can be deprived of his property is a constitutionally protected right, and referred to three of its previous decisions for further explanation of this principle.⁷⁹ The Court's opinion in one of these decisions, *Mullane v. Central Hanover Trust Co.*,⁸⁰ provides insight into the substance of the due process hearing requirements: "[A]t a minimum . . . [the due process clause] require[s] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."⁸¹ The Court stated that a hearing is the "opportunity to present . . . objections"⁸² or "the opportunity . . . to contest."⁸³

Though this due process hearing principle was only alluded to in *Sniadach*, the opinion did define the essence of the notice requirement.

⁷⁶ 395 U.S. at 340-42.

⁷⁷ Wis. Stat. Ann. § 267.07(1) (Supp. 1969), amending Wis. Stat. Ann. § 267.07 (1957).

⁷⁸ *Family Finance Corp. v. Sniadach*, 37 Wis. 2d 163, 183, 154 N.W.2d 259, 270 (dissenting opinion).

⁷⁹ 395 U.S. at 339, 342. The cases cited by the Court were *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306 (1950); *Schroeder v. New York*, 371 U.S. 208 (1962); and *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915). The *Mullane* case dealt with the judicial distribution of trust fund assets under the New York Banking Law, and held publication notice to known beneficiaries insufficient under the due process clause. *Schroeder* was an application of *Mullane*, striking down publication notice to an absentee landowner in a taking of property by eminent domain. *Coe* ruled invalid a Florida statute providing for execution without notice against a stockholder's property by a creditor of the corporation.

⁸⁰ 339 U.S. 306 (1950).

⁸¹ *Id.* at 313.

⁸² *Id.* at 314.

⁸³ *Id.* at 313.

Quoting *Mullane*, the *Sniadach* Court stated that "the right to be heard 'has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest'."⁸⁴

While the general principles of notice and hearing under due process were set forth in *Sniadach* and *Mullane*, they contained no specific formulation of the minimum notice and hearing requirements for wage garnishment cases. The minimum standard for notice to the defendant is the least difficult to deduce. According to *Mullane*, the notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action"⁸⁵ Garnishment cases do not present any inherent problems of identifying, locating and serving defendants. Normally nothing in garnishment situations prevents the plaintiff's attorney or a court officer from serving the defendant personally with notice that a garnishment action based on a specified debt claim is pending against his employer and his wages. This should be the minimum notice required in garnishment cases.

What might constitute minimum hearing standards for garnishment statutes under *Sniadach* is more difficult to determine. Several alternatives may be suggested whereby the defendant is afforded an opportunity to be heard on the merits of the underlying claim prior to the issuance of the garnishment writ. One solution is to require a full trial of the creditor-debtor dispute before any garnishment action can be instituted, thereby eliminating the prejudgment procedure. The plaintiff-creditor would then be prevented from attaching any wages until his debt claim has been fully adjudicated and he has obtained a judgment by prevailing on the merits of his case.

Another approach to the problem of providing an adequate hearing was suggested in Judge Heffernan's dissent to the Wisconsin Supreme Court decision in *Sniadach*. He suggested that the best way to insure the defendant's rights would be to provide for a mandatory trial on the merits within a limited and statutorily defined time following the seizure of the defendant's wages.⁸⁶ Such a procedure would afford the plaintiff whatever security advantages prejudgment garnishment presently offers, and would also give the defendant full hearing on the claim within only a short period after the garnishment. Though this compromise procedure would reduce the length of the deprivation and probably the consequent hardships on the defendant, it would, nevertheless, contravene the prior hearing principle set forth by the Supreme Court in *Mullane* and *Sniadach* which requires that the defendant must be provided with an opportunity to be heard *before* he may be deprived of the use of his wages.⁸⁷

⁸⁴ 395 U.S. at 339-40.

⁸⁵ 339 U.S. at 314.

⁸⁶ 37 Wis. 2d at 183, 154 N.W.2d at 270 (dissenting opinion).

⁸⁷ 395 U.S. at 342.

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Justice Douglas' majority opinion in *Sniadach* intimated that a hearing might take a form other than a full trial and still satisfy due process in garnishment cases. In describing the practice of prejudgment garnishment under the Wisconsin statute, the opinion stated that the defendant was deprived of the enjoyment of his wages, "without any opportunity to be heard and to tender any defense he may have, whether it be fraud or otherwise."⁸⁸ This indicates that a satisfactory prior hearing might simply provide the defendant the opportunity to appear within a limited time and assert some general defense to the plaintiff's debt claim. A judge under this procedure would simply determine whether or not any of the defenses asserted would result in a judgment for the defendant if proven at a trial on the merits. If one of the defenses asserted was legally sufficient, then a full trial on the merits would ensue before the defendant could be deprived of his wages. If the defendant failed to appear, or if the defense he asserted obviously had no legal merit, then the garnishment writ could issue prior to a final judgment upholding the plaintiff's claim.

A similar type of hearing was suggested by the concurring opinion of Justice Harlan, which stated that due process is afforded "only by the kinds of 'notice' and 'hearing' which are aimed at establishing the validity, or at least the probable validity, of the underlying claim against the alleged debtor *before* he can be deprived of his property or its unrestricted use."⁸⁹ Such a "probable validity" hearing would require the judge to sit as a fact-finder. On the basis of the pleadings, affidavits, and oral testimony of the parties the judge would weigh the merits of the claim against the defenses raised. If the judge determined at such a hearing that the plaintiff's claim would probably be upheld at a jury trial, he could then issue a garnishment writ prior to trial of the case. If, on the other hand, the defenses raised were legally sufficient and probably supportable by fact, no garnishment could take place until after a full trial.

Both the probable validity hearing and the procedure whereby a defendant could simply assert a legally sufficient defense to avoid prejudgment garnishment appear to meet the due process prior hearing requirement of the *Sniadach* Court. It is quite clear, however, that either of these hearing procedures would be meaningless without mandatory notice to the defendant of the pendency of the action and his upcoming opportunity to be heard, allowing him a reasonable time to prepare for the hearing.⁹⁰

D. *The Effect of Sniadach on Prejudgment Garnishment Statutes*

The existing prejudgment garnishment provisions⁹¹ are, for the most part, embodied in the states' general property attachment

⁸⁸ Id. at 339.

⁸⁹ Id. at 343 (concurring opinion).

⁹⁰ *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313-14 (1950).

⁹¹ See note 6 *supra*.

statutes,⁹² and are based on the assumption that the withholding of wages for security on a contract claim merely creates a temporary lien on the defendant's property without an actual deprivation.⁹³ Moreover, the statutes give no indication that the attachment of wages should be treated differently than the attachment of any other form of property. Thus, they fail to provide notice or prior hearing as required by *Sniadach* and are of questionable validity under present due process standards.

Application of the requirements in *Sniadach*, however, is not absolute, for while the Court ruled prejudgment garnishment without notice and prior hearing unconstitutional, it acknowledged that "[s]uch summary procedure may well meet the requirements of due process in extraordinary situations . . . requiring special considerations to a state or creditor interest . . ."⁹⁴ None of the four cases cited by the Court to illustrate extraordinary situations, however, involved wage garnishment, and only one of them, *Ownbey v. Morgan*, involved a property attachment as a preliminary step in a debt claim.⁹⁵ The Court indicated that wage garnishment is not generally used in these extraordinary situations, but if it were so used, a vital state or creditor interest might justify less than strict adherence to procedural due process.

An extraordinary situation may exist where there is no possibility of obtaining in personam jurisdiction over the debtor. This was not a problem in *Sniadach* where, as the Court noted, the defendant was a resident of the community in which her wages were garnisheed, and in personam jurisdiction was readily obtainable.⁹⁶ In *Ownbey*, on the other hand, the quasi in rem attachment of shares of stock in Delaware was upheld as the only means of obtaining jurisdiction over a Colorado defendant who was absent from the jurisdiction.⁹⁷ This would seem

⁹² See, e.g., Cal. Civ. Proc. Code §§ 537, 543 (Supp. 1969), amending Cal. Civ. Proc. Code §§ 537, 543 (West 1954); Idaho Code Ann. §§ 8-501, -505, -508 (1947); Iowa Code Ann. §§ 639.1, -.3, -.25 (1946).

⁹³ See *Family Finance Corp. v. Sniadach*, 37 Wis. 2d 163, 169-73, 154 N.W.2d 259, 262-65; *McKay v. McInnes*, 279 U.S. 820, aff'g per curiam *McInnes v. McKay*, 127 Me. 110, 141 A. 699 (1928).

⁹⁴ 395 U.S. at 339.

⁹⁵ *Ownbey v. Morgan*, 256 U.S. 94 (1921), upheld as reasonable a Delaware practice requiring a foreign defendant who had left the state, leaving behind no property, to post security for his attached stock certificates pending adjudication of the claim against him. *Fahey v. Mallonee*, 332 U.S. 245 (1947), upheld the taking of possession of a marginal bank by a Federal Home Loan Administration conservator without notice or prior hearing because of the delicate nature of the institution and the impossibility of preserving credit during an investigation. *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950), upheld a Federal Food and Drug Administration seizure of misbranded articles on a finding of probable cause prior to prosecution by the Attorney General. *Coffin Bros. v. Bennett*, 277 U.S. 29 (1928), upheld a state Superintendent of Banks' assessment against the property of the stockholders of a closed bank on the grounds that at a stockholder's request a trial could be held to defeat the assessment and that the stockholders had voluntarily assumed this liability.

⁹⁶ 395 U.S. at 339.

⁹⁷ 256 U.S. at 107-08, 111.

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to be the exception, however, for in the great majority of cases a wage earner, though he may not actually reside within the jurisdiction, would presumably be present there during working hours, and obtaining personal service on him would be no more difficult than attaching his wages through a garnishment writ served on the employer. Thus, the employee's nonresidency in the jurisdiction in which he works should not be a sufficient ground for prejudgment garnishment. Only when the nonresidency is accompanied by the practical impossibility of obtaining in personam jurisdiction does such an extraordinary situation exist as to justify the use of prejudgment garnishment without notice or hearing.⁹⁸

It was further stated by the *Sniadach* Court that prejudgment garnishment in these extraordinary situations is allowable only where the prejudgment statute is so "narrowly drawn" as to be capable of being applied *only* under such unusual conditions.⁹⁹ The Wisconsin statute clearly fails in this respect as it provides: "Any creditor may proceed [with a garnishment action] against any person who is indebted to or has any property in his possession or under his control belonging to such creditor's debtor . . ." ¹⁰⁰ Other statutes cite extraordinary situations such as the unavailability of in personam jurisdiction or an absconding defendant as grounds for prejudgment garnishment, but also allow it in *any* situation where the creditor is suing on an unsecured contract claim.¹⁰¹ Such statutes are not in fact distinguishable from the Wisconsin statute and should also be ruled unconstitutional, because they do not provide the defendant with notice and hearing prior to attachment, and they do not narrowly restrict the use of the prejudgment process to truly extraordinary situations.¹⁰²

⁹⁸ But see *City Finance Co. v. Williams*, Civil No. 65-23497-67 (D.C. Ct. Gen. Sess., June 18, 1969), granting a judgment in rem against the wages of a non-resident defendant which were garnished without notice or prior hearing. The facts presented by the District of Columbia court in this case did not make it clear whether or not in personam jurisdiction was readily obtainable over the defendant, who worked in the District but lived in neighboring Virginia.

⁹⁹ 395 U.S. at 339.

¹⁰⁰ Wis. Stat. Ann. § 267.01(1) (Supp. 1968).

¹⁰¹ See note 6 *supra*. But compare the old and new prejudgment provisions of Minnesota and Washington. Law of June 9, 1969, ch. 1142, § 571.41, [1969] Minn. Acts 1773-4, formerly Minn. Stat. § 571.41 (1967); Law of May 23, 1969, ch. 264, §§ 1, 3, 4, [1969] Wash. Acts 1149-50, formerly Wash. Rev. Code Ann. §§ 732.010, -.020, -.030 (1961).

The District of Columbia statute includes as one alternative ground for prejudgment garnishment that the defendant "has assigned, conveyed, disposed of, or secreted, or is about to assign, convey, dispose of, or secrete his property with intent to hinder, delay, or defraud his creditors." D.C. Code Encycl. Ann. § 16-501(d)(4) (1966). When used as a limitation on the prejudgment attachment of wages, this provision can have little meaning. A wage earner who cashes his pay check so that he may pay the rent, purchase groceries and other necessities is "about to . . . dispose of . . . his property" impliedly with the "intent" that his creditors will have to suffer some delay. The difficulty seems to arise from the failure throughout these statutes to make any distinction between wages and other forms of property. See pp. 469-71 *supra*; but see note 92 *supra*.

¹⁰² The prejudgment statutes of three states, California, North Dakota and Oregon,

IV. PROHIBITION OF PREJUDGMENT GARNISHMENT

Theoretically, the purpose of prejudgment garnishment is to provide plaintiff-creditors with security on debt claims.¹⁰³ However, the process of prejudgment garnishment is primarily used by creditors as a high pressure collection device.¹⁰⁴ The practice serves creditors by causing severe hardships on debtors and forcing the settlement of what are often unjust claims.¹⁰⁵ Because of these unnecessary hardships on the debtor resulting from the use of the prejudgment process, prejudgment garnishment should be abolished in less than extraordinary circumstances, even if the state statutes can be revised to meet the *Sniadach* notice and hearing requirements.

The loss of whatever security prejudgment garnishment presently provides creditors would be of minimum significance. As a rule, the garnishment process is able to secure only a portion of the alleged debt due before the claim can be adjudicated.¹⁰⁶ Moreover, the plaintiff, should he prevail at the trial, will usually have ample opportunity to satisfy the judgment. A wage earner is unlikely to abandon his job, very likely his only asset, and flee the jurisdiction because of a debt claim, and there is little evidence that defendants do attempt to escape judgments in this way.¹⁰⁷

Garnishment before judgment is favored by creditors because it serves as a highly effective collection device,¹⁰⁸ forcing the defendant into a repayment agreement without the necessity of securing a final judgment.¹⁰⁹ Though these out-of-court settlements may be defended by creditors as avoiding unnecessary litigation, the coercive effect of garnishment on debtors renders the circumstances under which the settlements are reached unfair.¹¹⁰ Claims which defendants agree to

have been declared unconstitutional in Attorney Generals' Opinions. CCH New Developments, Consumer Credit Guide §§ 99.887, 99.904. Two state courts have ruled their prejudgment statutes unconstitutional under *Sniadach*. *Arnold v. Knettle*, 1 CA-CIV 768, Ariz. (1969), struck down the Arizona statute which was quite similar to the Wisconsin provision, and *State Credit Ass'n v. Lewis*, No. 710166 (Wash. Super. Ct. 1969), upheld a judge who had been quashing all prejudgment writs before him on the strength of *Sniadach*.

¹⁰³ 6 Am. Jur. 2d Attachment and Garnishment § 12 (1963).

¹⁰⁴ Wage Garnishment in Washington, *supra* note 32, at 749.

¹⁰⁵ *Id.* at 764-65.

¹⁰⁶ Brunn, *supra* note 38, at 1221.

¹⁰⁷ Wage Garnishment in Washington, *supra* note 32, at 751-54.

¹⁰⁸ *Id.* at 749.

¹⁰⁹ Judge Patterson of the Everett (Wash.) District Justice Court made the following statement based on his experience with garnishment:

In the 227 cases of 311 garnishment cases sampled involving garnishment before judgment not one went to trial. The usual notation on the docket was "Dismissed with Prejudice—settled." The writer recalls only one case of the 2,600 cases filed in the Everett Court in 1967 in which a defendant went to trial after a prejudgment garnishment.

Patterson, *supra* note 49, at 735-36.

¹¹⁰ In both justice court and superior court, garnishments are issued by the clerk of the court on the basis of affidavits, written in the language of the statutes, in

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settle under pressure of garnishments are often invalid or based on fraudulent transactions.¹¹¹ In addition, the creditor's collection fees and other costs resulting from the garnishment action are added to the claim and assessed to the defendant.¹¹² Frequently these charges are inflated, and they constitute a substantial part of the settlement which the harassed defendant ultimately accepts.¹¹³ A court determination of the merits of the claim prior to garnishment would be the most effective means of eliminating this practice.

The harmful effects of prejudgment garnishment on the debtor, weighed against the minimal security provided the creditor, suggest that the device is no longer effective and should be abolished. If garnishment before judgment is prohibited, defendants will not be prevented by financial pressure or inconvenience from presenting their available defenses. This is the direction taken by the *Sniadach* decision even though prejudgment garnishment was allowed when accompanied by adequate notice and hearing.¹¹⁴ However, the coercive effects of prejudgment garnishment would not necessarily be eliminated by modifying the process to include a pretrial hearing before the issuance of a writ. Unless he could retain legal counsel, an unsophisticated defendant would be at a great disadvantage relative to creditors at such a hearing, and failure at this stage might cause a defendant, under the pressure of garnishment, to give up contesting the claim any further. Such a preliminary hearing would also increase the burden on the courts and parties and, aside from the minimal amount of prejudgment security afforded to a creditor by this method, would be of little value in settling the ultimate issues. Moreover, if the plaintiff has a legitimate claim, he is entitled to have it reduced to a judgment as quickly as possible and in a manner consistent with the defendant's due

which the only things are the names of the defendant, garnishee defendant, affiant and notary not printed in advance. The judges, by and large, never see a writ until long after it has been issued. . . . For most wage earners weekly wages are the only asset of any real importance. Where there are neither savings, benevolent friends, nor relatives to fall back on, the loss of garnished wages, even for the three-week period between garnishment and default judgment, may well mean eviction on a three-day notice for failure to pay rent, repossession of the car necessary for transportation to the job, arrest for failure to make support payments, or any number of hazards which afflict the man who is unable to meet his obligations when due. If the defendant has a defense to a claim which he wishes to assert at trial, he can expect to be parted from his wages for an additional thirty to sixty days or more. Furthermore, there is nothing to prevent the plaintiff from filing additional writs pending trial save the anticipated displeasure of a judge known not to favor such maneuvers. The coercive nature of prejudgment garnishment upon the poor is clear.

Id. at 737.

¹¹¹ *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 341 (1969).

¹¹² Id.

¹¹³ Wage Garnishment in Washington, *supra* note 32, at 75 & n.58.

¹¹⁴ 395 U.S. at 343 (Harlan, J., concurring); see p. 473 *supra*.

process rights. A preliminary hearing for the purpose of obtaining a prejudgment garnishment writ would only add to the delay and cost of a final judgment without increasing either the efficiency or the equity of the resolution. Thus, the interests of both parties would be served by total repeal of the existing statutes and by elimination of prejudgment garnishment in all but extraordinary situations, such as the impossibility of obtaining in personam jurisdiction.

Though wage garnishment before the creditor obtains a judgment is particularly difficult to justify, garnishment-related problems are such that the continued use of the practice in execution of judgments should also be questioned. Especially acute is the consumer bankruptcy problem,¹¹⁵ which according to one federal referee can be substantially reduced only through the exemption of all wages from garnishment.¹¹⁶ Five states currently provide complete wage exemption,¹¹⁷ and the National Consumer Law Center has included such a provision in a recently proposed comprehensive model consumer protection act, citing the per capita bankruptcy rates in these states as the lowest in the nation.¹¹⁸ Personal bankruptcy and the other resulting hardships from garnishment make the legal system appear to the poor as "an instrument of oppression rather than a force for justice,"¹¹⁹ and garnishment has been cited as one of the many factors causing the alienation of ghetto residents which has led to rioting.¹²⁰ There are less harsh alternative collection remedies available,¹²¹ and, more importantly, creditors may now utilize advanced methods of evaluating credit risks,¹²² and in many cases eliminate the overextension of credit which makes garnishment necessary.¹²³ Weighing the harmful

¹¹⁵ H.R. Rep. No. 1040, 90th Cong., 1st Sess. 20 (1967).

¹¹⁶ Lee, *supra* note 56, at 635.

¹¹⁷ Fla. Stat. Ann. § 222.11 (1961); N.C. Gen. Stat. § 1-362 (1951); Pa. Stat. Ann. tit. 42, § 886 (1966); S.D. Code § 33-2404 (Supp. 1960); Tex. Const. art. 16, § 28 (1955); Tex. Civ. Stat. Ann. arts. 3832, 4099 (1966).

¹¹⁸ Office of Legal Services, Office of Economic Opportunity, National Consumer Act: A Model Act for Consumer Protection § 5.106(1)(a) & Comment (1970). The Act was drafted by the National Consumer Law Center at Boston College Law School. See also Brunn, *supra* note 38, at 1234-38; Lee, *supra* note 56, at 635.

¹¹⁹ Jordan & Warren, A Proposed Uniform Code for Consumer Credit, 8 B.C. Ind. & Com. L. Rev. 441, 457 (1967).

¹²⁰ Report of the National Advisory Commission on Civil Disorders 276-77 (1968).

¹²¹ Wage Garnishment in Washington, *supra* note 32, at 783; Comment, *supra* note 42, at 211.

It is suggested that in many cases when a creditor resorts to wage garnishment he defeats himself and other creditors as well by causing the job loss or bankruptcy of a debtor who might otherwise have been able to satisfy his obligations given a longer time period. See Wage Garnishment in Washington, *supra* note 32, at 767-68, 770.

¹²² Jordan & Warren, *supra* note 119, at 457; Wage Garnishment in Washington, *supra* note 32, at 783; Comment, *supra* note 42, at 211.

¹²³ See Jordan & Warren, *supra* note 119, at 457, which states:

The ability to use the courts as collection agencies no doubt has encouraged some creditors to induce debtors to incur more debt than they can actually manage. Coercion by the state to pay debts is defensible where the debtor can pay but will not, and the specter of the "deadbeat" is constantly invoked by creditors to

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effects of wage garnishment against its diminished necessity may lead in the future to the complete abolition of the practice whether it is employed prior to or in execution of a judgment.

CONCLUSION

Wage garnishment imposes serious hardships on the debtor, and when the practice is invoked prior to judgment it tends to coerce him into unfair settlements. The *Sniadach* decision has ruled that prejudgment garnishment without notice and prior hearing is unconstitutional in all but extraordinary situations. However, because of the harmful effects involved, prejudgment garnishment should be eliminated entirely, and the continued use of wage garnishment in execution of judgment should also be seriously examined.

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justify tough collection remedies. All too often, however, it is not the "deadbeat," but rather the naive victim of the overreaching creditor, who is subjected to the worst collection practices. Moreover, it is becoming increasingly doubtful whether many of the traditional creditor remedies are needed by legitimate creditors