

# What is the *cause* of your bankruptcy?

BY JUDGE JOHN C. NINFO, II

In my nearly 15 years as a U.S. bankruptcy judge, I have seen many debtors forced to file bankruptcy because of the classic catastrophic events of divorce, job loss and uninsured medical expenses. These events leave them burdened with debt they simply cannot afford to repay or leave them unable to pay even their home mortgages and car loans.

The true catastrophic event debtors in this category include an otherwise debt-free husband who incurred in

excess of \$100,000 in attorney's fees as the result of a litigious divorce and related child custody disputes, an otherwise debt-free couple that could not afford health insurance but incurred \$90,000 in chemotherapy bills when the husband came down with cancer, and many single mothers who were barely able to get by before they experienced a series of job losses,



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leaving them unable to even pay their utility bills.

As much as all of us who work in the bankruptcy system are saddened by these hardships, we are glad to be part of a system than can provide these honest but unfortunate debtors with much needed debt relief and a fresh start.

What concerns me is that the media continues to pub-

lish reports indicating that the majority of bankruptcies are caused by divorce, job loss and medical problems. This may lead the public to believe that all of these debtors have experienced a divorce, job loss or medical problem identical or at least similar to the debtors I have described.

That assertion is simply not consistent with what many of us in and around the bankruptcy court actually see every day. I see many debtors who have experienced one of these events, but I cannot hon-

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estly say that it was the cause of their bankruptcy.

I will admit that by the time these debtors get to our court they may be just as financially devastated as the true catastrophic event debtors I described, but my observations and analysis make it clear that these events were not the cause of their bankruptcy. The cause of their bankruptcy was their poorly structured finances that finally imploded when one of these events occurred.

In far too many of these cases, I believe bankruptcy could have been avoided if the debtors had better understood the difference between needs, wants and wishes, had savings for when bad things inevitably happen to good people, instead of hoping and planning for the best, and had avoided unnecessary consumer debt, particularly credit card and more-than-three-year car loan debt.

I have written about them before, but these two hypothetical couples provide an analysis that explodes the myth that the majority of bankruptcies are caused by the catastrophic events of divorce, job loss and medical problems.

Imagine two couples where the husband and wife both work. They have a combined income of approximately \$60,000, two reasonable car loans and a home mortgage. Couple one also has \$40,000 of credit card debt at an average of 20 percent interest that was accumulated over years of going out to dinner, going on an annual vacation and buying gifts, clothing and other stuff, much of it for their children.

Believe it or not, \$40,000 of credit card debt on many maxed out cards is not unusual in bankruptcy court these days. Couple one, like so many Americans, also lives paycheck to paycheck, has no savings, investments or equity in their home.

In contrast, couple two lives

within their means, has no credit card debt, has built up substantial savings of more than the net payroll after taxes for the annual salary of both the husband and wife, as well as an emergency fund of \$5,000. Couple two also has equity in their home.

If couple two experiences a divorce, a \$5,000 uninsured medical problem, or one of the spouses loses their job, receives unemployment, and can't find another job for six months to a year, they will have no reason to file bankruptcy. They have no debt to eliminate. They will still need and can pay for their cars, they will retain or sell their home and their savings will carry them through the hard times.

Couple one, on the other hand, paying \$8,000 a year (more than \$660 per month) in interest just to maintain that \$40,000 in credit card debt — extra money that they most likely don't have but were likely paying by borrowing more money — probably will be forced into bankruptcy.

Why? Because they will no longer be able to service that \$40,000 in credit card debt at 20 percent interest. It is the credit card debt, not any debt directly incurred because of the divorce, job loss or medical problem that they will need to eliminate in a bankruptcy.

The bottom line is that we see far too many debtors in bankruptcy court who fall in the couple one category. If you ask them why they filed, they will tell you it is because they experienced that divorce, job loss or medical problem.

Even though they may be just as much in need of, and entitled to financial relief in our existing system, as are the true catastrophic event debtors, I don't think they should be reported to be the same. I don't feel it's fair for those debtors to say that those events caused their bankruptcy.

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*Hon. John C. Ninfo, II is chief judge of the U.S. Bankruptcy Court, Western District of New York.*