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ARTICLE

Personal Insolvency: Next Step for Reformers in Developing Countries

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Where it is available in developed economies, personal bankruptcy is a regular vehicle for failed businesses when those businesses are sole proprietorships, or even small businesses with identity non-separable from their owners/proprietors. In the context of developing countries, where a large proportion of businesses are small and comprised of sole-proprietorships, where self-employment is common in the face of limited opportunities for lucrative employment, a personal bankruptcy system becomes important to maintaining a welcoming business climate, particularly for entrepreneurs. Without a system for personal bankruptcy, individuals who start a business, but fail, can be burdened with the debts of a failing business for a lifetime, preventing redeployment of their 'human capital' back into productive economic use. Personal insolvency has macroeconomic implications as well, and these are also discussed. While there is significant scholarship on the nature of personal insolvency issues and business climate, to date reformers in developing countries have not addressed this area. The time is ripe to address integrate personal insolvency into investment climate reform.

I. Introduction: Reasons to encourage systems for resolution of personal/household debt

The idea of personal insolvency as a development initiative is not a novel one[1], though it has not been pursued aggressively in donor-funded development/reform programs. The focus of most restructuring/bankruptcy reform is still on corporate/business bankruptcy. However, it appears that personal insolvency issues are gaining increasing attention.

On a micro level, individuals who start or operate businesses, or are self-employed, often finance their work or business with personal debt. When the business or endeavour fails, they can be left with burdensome debt that can hamper their ability to recover and reenter the marketplace, without a system that allows restructuring, relief from burdensome debt, and a fresh start. This is true in developed and developing countries. However, in developing countries, sole-proprietorships, or small or micro-business, which are indistinguishable in identity from their owners/proprietors, are ubiquitous. Often there is less opportunity for wage-earning, and the economy and its risk factors result in a heavy proportion of small, one-person or one-family operations. It is these countries that arguably most need the release valve of a personal bankruptcy system, to allow such entrepreneurs and self-employed individuals to recover and reenter the economy, that fail to provide personal bankruptcy mechanisms. As credit availability increases for individuals across the globe, and more economies support entrepreneurship, assisting developing countries in developing personal insolvency systems is a natural evolution of the business climate reform portfolio.

Personal insolvency also reaches beyond individual debtors and their particular situations. The existence or the lack of a system for discharge of personal/household debt has macroeconomic implications. In fact, the IMF has issued an IMF Staff Position Note, dated June 26, 2009, suggesting that a system for restructuring of individual debt is important for countries facing financial crisis in order to prevent further drain on the economy that could lead to social unrest.[2] As a systemic issue, as consumer credit increases in developing countries, a personal insolvency system is an important check on the financial stability of individual borrowers, and the discipline of the institutions that lend to them.[3]

Notes

1 Adam Fiebelman, 'Consumer Bankruptcy as Development Policy', (26 January 2009) 39:63 *Seton Hall Law Review* 63, citing a Reserve Bank of India publication.

2 Luc Laeven, Thomas Laryea, 'Principles of Household Debt Restructuring', IMF Staff Position Note, SPN/09/15. The note is not focused on entrepreneurs or the self-employed but for macroeconomic stability, advocates 'It is [ ] important that an effective court-supervised insolvency framework be in place for individual debtors, providing for multi-creditor restructuring', pp. 6-7.

3 Creditor discipline, consumer safety-valve, and prevention of fraud explained in a later section.

II. Small businesses/proprietorships: personal liability and personal insolvency

A. Developed economies

The issue of personal liability for business debts is well-known by bankruptcy practitioners in the U.S. When an entrepreneur is starting a business, regardless of its incorporated status, he is most likely taking personal responsibility for a substantial portion of the debts of the business. In fact, when making credit decisions, banks often discount a small business' organisational form and require owners personally guarantee loans to their small corporate businesses.[4] These guarantees muddy the distinction between corporate versus noncorporate businesses. The U.S. is perhaps well-known for having a very active consumer bankruptcy system, where individuals can file to be relieved from overly burdensome debts.[5] It has been estimated, that in the U.S. system, one in seven persons appearing in bankruptcy court as a consumer is there in connection with his or her own business.[6] In addition to the business bankruptcy, often the owner will file a separate personal bankruptcy case in order to discharge the debts he incurred on behalf of his distressed business.[7]

The idea of a 'fresh start', a discharge of personal debt for individuals following a bankruptcy proceeding, is by no means universal in advanced economies. Common law countries, including the U.S., U.K., Canada and Australia, are more likely to automatically allow for discharge of personal debts in bankruptcy.[8] In Norway, Sweden, Denmark, Finland, Austria, Germany, France, Spain and Portugal, a judge has the discretion to grant a discharge.[9] The severity of the standards applied for granting discharge vary widely among these countries. Moving further down the line of severity of bankruptcy systems, in Italy, only merchants may file bankruptcy, and the bankrupt is not entitled to debt forgiveness.[10]

It appears though, that systems to address personal overindebtedness tend to arise in tandem with growth in consumer credit.[11]

B. Developing economies

Experience and evidence suggest that for entrepreneurs, the self-employed, and many small businesses in developing countries, personal bankruptcy converges with business bankruptcy. As in developed economies, debt for small business and sole proprietorships/household enterprises tend to be personal, rather than shielded by corporate form, exposing individuals to potentially unlimited, crippling, lifetime debt. A large number of entrepreneurs and small business debtors are not being served by existing bankruptcy systems

Several countries provide vivid examples of the gap between debt incurred on behalf of a majority of enterprises and current bankruptcy regimes' ability to address that debt effectively.

1. Egypt

In Egypt, registered businesses and 'traders'[12] are eligible for bankruptcy. Many businesses are ineligible, as there is a minimum capitalisation requirement in order to keep the proceeding in the courts, which is difficult to prove due to poor record-keeping. In addition to eligibility to file restrictions, discharge is not available at the end of a bankruptcy proceeding. Thus, there is no procedure by which an Egyptian sole proprietor, or entrepreneur, can escape from burdensome debts from a failed business. In Egypt, debts are never considered erased, and follow a person, even in a corporate bankruptcy. Even corporate debts are considered personal, to the owners, or the manager of a failed company. This connection is evidenced by the fact that one of the

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4 Wei Fan, Michelle J. White, 'Personal Bankruptcy and the Level of Entrepreneurial Activity', (October 2003) XLVI *Journal of Law and Economics* 543-567, at p. 559, footnote 8, citing Jeremy Berkowitz & Michelle J. White, 'Bankruptcy and Small Firms' Access to Credit' (Working Paper No. 9010, Nat'l Bur. Econ. Res. 2002).

5 Shannon Miehe, 'When You Can't Pay Your Business Debts: Personal Liability and Bankruptcy Options', at NOLO.com, also at <smallbusiness.yahoo.com/r-article-a-2608-m-2-sc-53-when_you_cant_pay_your_business_debts_personal_liability_and_bankruptcy_options-i>; an advice column providing information to small business owners in financial distress, discusses personal liability for business debts for small businesses, and banks and other creditors' requiring personal guarantees from small businessmen, and the need to file a personal as well as business bankruptcy in order to protect personal assets.

6 Robert M. Lawless, Elizabeth Warren, 'The Myth of the Disappearing Business Bankruptcy', (2005) 93 *California Law Review*.

7 From author's experience working with bankruptcy practitioners.

8 Ian Ramsay and Cameron Sim, 'Personal Insolvency in Australia: An Increasingly Middle Class Phenomenon', Melbourne Law School Legal Research Paper No. 420, September 2009.

9 Natalie Martin, 'The Role of History and Culture in Developing Bankruptcy and Insolvency Systems: The Perils of Legal Transplantation', (2005) 28:2 *Boston College International and Comparative Law Review* 42-43.

10 Rafael Efrat, 'Global Trends in Personal Bankruptcy', (2002) 81 *Am. Bank. L.J.* 10, note 6.

11 Martin, *supra* note 9, at 43-44.

12 Law No. 17 of 1999, Promulgating the Trade Law, Chapter 5 on Bankruptcy, Article 550. The bankruptcy and conciliation procedures are available to 'Any trader who is responsible for commercial bookkeeping.'

restrictions on a 'debtor',[13] is restriction on movement – the court seizes the 'debtor's' passport. The rule is a reaction to debtors who take flight as a way to avoid their debt, from which they do not have a sanctioned escape. A system that resolves personal debt, and provides an overburdened debtor with discharge after his assets/income have been distributed in a rational manner, would be valuable to protecting human capital, keeping it in Egypt, and keeping it productive.

2. Vietnam

In Vietnam, within a population of 85 million[14] there are an estimated 2,600,000 'household'-run enterprises. Many if not most of them do not register.[15] The 2.6 million household enterprises are estimated to comprise 98% of enterprises in Vietnam.[16] The Vietnamese bankruptcy procedure is limited to larger businesses and State-Owned Enterprises (SOEs). It does not apply to household firms nor even to small businesses that may be registered.[17] In a 2004 assessment, interviewees reported that only 15-20 bankruptcy cases were filed between October 2004 and October 2005[18], stark evidence that the Vietnamese bankruptcy system does not address the majority of businesses. Given the nature of the household businesses that comprise the vast majority of enterprises in Vietnam, real debt relief, an effective insolvency system, would address personal debt through a personal insolvency system.

III. Connection between personal insolvency systems and entrepreneurship

A. Promoting small business entrepreneurship

There appears to be a correlation in societies that value entrepreneurship, and the availability of discharge.[19] Countries already disposed toward promoting entrepreneurship, such as the U.S. and Canada, have liberal policies toward bankrupt debtors, and the most generous 'fresh start', i.e. discharge policies. Many countries that embraced entrepreneurship more recently, such as Germany and Finland, have adopted more liberal fresh start policies.[20] Recently, the European Commission posted the following facts and figures:[21]

- *Small and medium businesses are the backbone of the EU economy. They account for 99% of all companies and provide some 75 million jobs.*
  Source: Eurostat, Commission Communication on Modern SME Policy for Growth and Employment (2005)
- *People who start a new business risk their reputations as well as their money and property. Entrepreneurs worry most about how their families would cope if they went with bankrupt.*
  Source: Attitudes to Bankruptcy. The Insolvency Service, London
- *To support high-growth entrepreneurship, we need to be more accepting of firm failure and bankruptcy, and reducing the economic and social costs that go with them (refers to start-ups creating 20 or more jobs within five years).*
  Source: The Global Entrepreneurship Monitor, High Growth Report 2007
- *A study on the performance of Europe's fastest-growing companies shows that companies founded by restarters have higher turnover and employment growth than companies run by entrepreneurs who have never failed.*
  Source: Setting the Phoenix Free. Boston Consulting Group, 2002
- *Business failure does not mean losing the entrepreneurial spirit. Research shows that a large majority of people whose businesses had failed still had plans for new business projects.*
  Source: Starting anew: Entrepreneurial intentions and realizations subsequent to business closure. Stam E., Schutjens V., 2006

Notes

13 If the form is corporate, without a sole owner or proprietor, the manager/CEO is the individual treated as the 'bankrupt', the debtor subject to the personal disabilities of the bankruptcy procedure.

14 *Transforming Rebound Into Recovery,* A World Bank Economic Update for East Asia and the Pacific Region, November 2009, country-specific statistics p. 70.

15 Dr. Pham Thi Thu Hang, on behalf of the Vietnam Chamber of Commerce and Industry, 'A Private Sector Perspective on Business Environment Reform – The Case of Vietnam', at Committee of Donor Agencies for Small Enterprises Development International Conference: Reforming the Business Environment: From assessing problems to measuring results, presented in Cairo, Egypt 2005.

16 Pham Thi Thu Hang, *supra* note 15.

17 Joelle Daumas, Director, and Katherine Pike, Lawyer, Price Waterhouse Coopers, 'Vietnam', *The Asia-Pacific Restructuring and Insolvency Guide 2006* 173. <www.adb.org/Documents/Guidelines/restructuring-insolvency/chap4-16.pdf>.

18 *Southeast Asia Commercial Law and Trade Diagnostics – Vietnam*, USAID-funded CLIR-Seldon Project, September 2007, 47-49. <www.bizlawreform.com/country_assess/VietnamFullReport.pdf>.

19 Efrat, *supra* note 10, at 6-7.

20 Efrat, *supra* note 10, at 6-7.

21 Entitled 'Entrepreneurs make mistakes – but then who doesn't?' on European Commission/Enterprise and Industry/Small and Medium Enterprises page at <ec.europa.eu/enterprise/policies/sme/business-environment/failure-new-beginning/facts-figures_en.htm>.

Individuals in both developed and developing countries fund profit-seeking activities by borrowing in their capacity as consumers, often because creditors will not extend credit against the potential success or failure of these profit-seeking activities.[22] A 2003 study quantitatively establishes that the extent of forgiveness and protection of personal assets in the bankruptcy regime does affect the incentive to start a small business.[23] The model used in the study was an individual or family that is considering starting a business. The business form would be noncorporate, and therefore the debts will be obligations of the owners.[24] The ensuing analysis which measured aspects of a personal insolvency system and finance, including bankruptcy cost and exemption levels, demonstrates quantitatively that a personal bankruptcy system provides incentive to potential entrepreneurs by providing partial wealth insurance, and that larger exemptions of personal property can result in significantly higher incentive to start a business.[25]

In addition to debt forgiveness, another aspect of personal insolvency law that significantly affects entrepreneurship is the ease with which the bankrupt entrepreneur may be rehabilitated into the economy.[26]

Many systems impose disabilities on bankrupt debtors that limit their ability to work, to participate productively in the economy. In Egypt, a bankrupt debtor[27] is unable to run a business for three years after being declared bankrupt, in addition to restrictions on movement and other personal disabilities.[28] In Australia, a bankrupt debtor is required to give his passport to the trustee, and can neither continue nor commence legal proceedings. Bankruptcy is also a bar to certain occupations, such as a parliamentary seat, or the management of a corporation. It can result in termination of the holding of a statutory office, or membership of a statutory authority. After-tax income of a bankrupt above a certain amount must be paid to the trustee as contributions to the estate. Details of the bankruptcy are permanently entered onto the National Personal Insolvency Index, which is public. When entering into certain transactions of USD 3,000 or more, including obtaining credit, bankrupts must inform other parties that they are an undischarged bankrupt.[29]

The entrepreneur may or may not be at fault for the business' failure. Regardless he will have gained experience and skills that could be applied to a new venture.[30] Hobbling the entrepreneur and limiting his opportunities is detrimental to economy and negatively affects the business climate. The European Commission has recognised that a failed businessmen can be an asset, rather than a drain on an economy, as evidenced by the quotes listed at the beginning of this section. A fresh start can quickly redeploy the entrepreneur's skills, and tolerance for risk, into economic productivity.

B. Venture capital, innovation, and the relationship to personal insolvency systems

For countries trying to attract venture capital across their borders, evidence shows that a personal insolvency system allowing discharge for individuals is positively correlated to levels of venture capital investment.[31] A personal insolvency system can be a valuable tool to create an investment climate that supports innovation, and attracts entrepreneurship.

Venture capital is a form of financing new enterprises distinct from the traditional debt model. It is the basis for much of Silicon Valley's famed growth and wealth in the last two decades. Venture capitalists have access to large amounts of capital. Instead of loaning money, they fund start-up entrepreneurs with promising ideas and technology. Venture capitalists also provide mentorship, as entrepreneurs may be lacking in management and operational skills. Venture capital, where it has become established, is disproportionately important in stimulating innovation.[32] Evidence from the U.S. and Germany has supported this assertion.[33]

So how is personal insolvency relevant to the process of venture capital financing? Before qualifying for VC funding, an entrepreneur starts with an idea,

Notes

22 Fiebelman, *supra* note 1, at 63, citing a Reserve Bank of India publication, citing Fan and White, *supra* note 4, at 559, footnote 8, citing Berkowitz and White, *supra* note 4.
23 Fan and White, *supra* note 4.
24 Fan and White, *supra* note 4, at 546.
25 Fan and White, *supra* note 4, at 552, 556. The data for the study was in the U.S., the variation in bankruptcy is the difference in exemption of personal property from bankruptcy procedures in various states.
26 John Amour, 'Personal Insolvency and the Demand for Venture Capital', (2004) 5 *European Business Organization Law Review* 87-188 at 97.
27 The owner of a business, or in the case of a corporation, the manager.
28 Law No. 17 of 1999, Promulgating the Trade Law, Chapter 5 on Bankruptcy, Articles 588 and 712.
29 Ramsay and Sim, *supra* note 8.
30 In Silicon Valley, bankruptcy/failure is viewed as a necessary and inevitable cost of innovation, and this attitude encourages people to take chances. Renowned venture capitalist John Doerr has been quoted as saying 'it is O.K. to fail and in fact it might even be important that you failed before on someone else's money', quoted by Thomas Friedman in *Lexus and the Olive Tree Understanding Globalization* (Anchor Books, 2000). <www.moranlaw.net/Friedman.htm>, website of the Moran Law Group in California, with business bankruptcy among its specialities.
31 Amour, *supra* note 26.
32 Amour, *supra* note 26, at 92.
33 Amour, *supra* note 26, at 92, footnote 1, citing two 2000 studies that provide evidence for this pattern in the U.S. and Germany.

growth opportunities, and his own human capital.[34] He will likely have to use his own capital in order to establish sufficient foundation to attract venture capitalist funding and support. Therefore, if he is ultimately unsuccessful, the losses incurred in the preliminary start-up costs, through expended personal assets, and money borrowed/guaranteed personally, are his to bear, on his own.[35] Entrepreneurship requires a willingness to take risks. When personal assets are at risk, and a potential entrepreneur could lose their home and other personal assets if the entrepreneurial enterprise fails, many will be too risk-averse to try. However, if there is a safety net, a personal insolvency system that allows discharge, and allows the debtor to survive without lifetime crippling debt, it creates an atmosphere where there will be more demand for venture capital financing, as evidenced by a 2004 study.[36]

Corporate insolvency is unlikely to have as large an effect on venture capital financing. That is because there is likely to be very little in the way of assets to reorganise if a venture-backed company goes into insolvency proceedings.[37] There is also likely to be very little debt financing, to allow restructuring/renegotiation, due to the nature of venture capital financing itself – it is often used in situations where traditional debt financing is unavailable. Trade creditors simply have nothing over which to fight.[38]

IV. Personal bankruptcy system as a stabilising mechanism for burgeoning consumer debt

Consumer borrowing in developing countries has increased substantially in recent years. In India, household financial liabilities increased six-fold between 2000 and 2006.[39] In Brazil, consumer lending doubled between 2003 and 2007, from USD 238 billion to USD 530 billion.[40] In Mexico, outstanding consumer credit has grown by 35% per year in recent years.[41] Among consumers/individuals filing bankruptcy, in many countries, a substantial percentage of debtors file due to failure of a small business.

The rate of consumer growth can increase the potential for overindebtedness among the population. Financial crisis can cause the overindebtedness to soar to a level which threatens the stability of banks and the financial system. Personal overindebtedness from consumer credit is not only devastating to the individuals incurring it. When it reaches a systemic level, increasing non-performing loans held by financial institutions to unhealthy levels, it can be destabilising on a macroeconomic as well as personal scale.[42]

A. Consumer/small businessman safety-valve

Consumers can become overburdened by debt due to numerous financial circumstances. Most overburdened consumers are in deep financial distress, rather than the stereotypical overindulgent spenders.[43] Without a safety valve, they can be forever indebted, limiting their ability to participate actively in the economy. Given the fact that consumer debt is increasing in developing countries, it is reasonable to assume that consumers could become overburdened in response to an event that changes an individual's situation. There are arguments that a generous bankruptcy law and fresh start promote waste and fraud by consumers, but the

Notes

34 Amour, *supra* note 26, at 89.
35 Amour, *supra* note 26, at 96.
36 Amour, *supra* note 26, at 107. Through a quantitative analysis and regression of data, comparing severity of insolvency laws (using difficulty of obtaining discharge as the measure) afforded in a country with its level of venture capital investment, showed a negative correlation between severity of the law and levels of venture capital investment. In other words, where discharge is more difficult, there is less VC investment, and the differences are statistically significant.
37 Amour, *supra* note 26, at 108.
38 Amour, *supra* note 26, at 108; in informal interviews with several venture capitalists, they stated that their failed ventures were 'complete write offs', with no recovery and no chance of sale as a going concern.
39 Fiebelman, *supra* note 1, at 63, citing a Reserve Bank of India publication.
40 Fiebelman, *supra* note 1, at 64, citing Jack Chang, 'Banking, Consumer Credit Boom Transforms Brazil', *McClatchy Newspapers Online* (13 February 2008), <wwww.mcclatchydc.com/161/story/27564.html>.
41 Fiebelman, *supra* note 1, at 64, citing Anna Gelpern, 'Wal-Mart Bank in Mexico: Money to the Masses and the Home-Host Hole', (2007) 39 *Conn. L. Rev*. 1513, 1515 (citing Jos J. Sidaoui, 'The Mexican Financial System: Reforms and Evolution 1999–2000', (2006) 28 *BIS Papers* 277, 289).
42 Luc Laeven, Thomas Laryea, 'Principles of Household Debt Restructuring', IMF Staff Position Note, SPN/09/15, 2. Household debt overhang and debt servicing problems weaken bank balance sheets through non-performing loans, and they also result in decreased wealth and lower consumption, which can lead to lower growth and higher unemployment, a downward spiral. Korea's 2003 credit card lending crisis, which required the Korean government to intervene, discussed *supra*, is a clear example of the macroeconomic destabilising potential of unresolved personal debt.
43 Ronald Mann, 'Optimizing Consumer Credits and Bankruptcy Policy', (2006) Berkeley electronic press (bepress) Legal Series [17 May 2005 draft], Paper 1036, 8, referring to numerous studies, 'the abusive and highly compensated filer seeking to discharge luxurious consumer spending is largely a myth.'

evidence does not support that assertion.[44] In addition, the creditor discipline that will be created by a structured, predictable system will be a mitigating force on fraudulent activity.

B. Creditor discipline

Bankruptcy can also be helpful in motivating consumer lenders to apply due-diligence in extending consumer credit. In Korea, lax lending standards, enabled by credit card deregulation, were a major contributor to the 2003 credit card lending crisis. Prior to the 2003 Korean credit card crisis, consumer credit had expanded exponentially, by sixfold.[45] Regulations in Korea were lax, and banks overextended credit, and in 2003 the level of default by credit card holders reached a crisis level.[46] Korea's credit card industry was young, with many relatively unsophisticated lenders entering the initially extremely lucrative industry. The competition led to most lenders relaxing their lending standards. Lenders used lax standards in issuing credit cards, and particularly targeted revolving accounts, which were profitable in the short-term due to interest collected but less creditworthy, to the point that it destabilised the financial system, and required government intervention.[47]

A liberal discharge can be a motivator for lenders to lower levels of default, since they will not recover the debt if the debtor files for a personal bankruptcy, by using the available information to make more sound lending decisions. In a modern system, lenders have sufficient information to lower their default rates. [48] Even in the case of borrowers trying to 'game' the system, when lenders are more diligent in reviewing a borrowers' creditworthiness, they will be able to prevent more fraud than when they issue debt carelessly. [49]

V. Conclusion

The level of scholarship on the subject of personal insolvency systems in developing countries suggests that the time is ripe for reformers to address this vital element of the business climate in their supports to reform.

Notes

44 Mann, *supra* note 43, at ii ('[T]here is no evidence that the relatively liberal discharge available in the United States has led to abusive borrowing and spending').

45 Taesoo Kang and Guonan Ma, 'Credit card lending distress in Korea in 2003', Bank for International Settlements (BIS) Papers No. 56, 95-106, at 96. <www.bis.org/publ/bppdf/bispap46k.pdf>.

46 Kang and Ma, *supra* note 45.

47 Kang and Ma, *supra* note 45. In the nascent Korean credit card industry, lenders used lax standards in issuing credit cards, and particularly targeted revolving accounts, which were profitable in the short-term due to interest collected but less creditworthy, to the point that it destabilised the financial system, and required government intervention.

48 Mann, *supra* note 43, at 33. In the modern world, particularly in the context of credit card lending, the rate of default in a lender's portfolio is largely in the control of the lender. If a lender wishes to lower the rate of default in its portfolio, it can simply tighten the criteria it uses for determining when to cease advancing.

49 Mann, *supra* note 43, at 8. Most people who file are in deep distress, and the abusive and highly compensated filer seeking to discharge luxurious consumer spending is largely a myth, citing Teresa Sullivan, Elizabeth Warren and Jay Westbrook, *As We Forgive Our Debtors* (1989); David U. Himmelstein, Elizabeth Warren, Deborah Thorne and Steffie Woolhandler, 'MarketWatch: Illness and Injury as Contributors to Bankruptcy', (February 2005) *Health Affairs*; Katherine Porter and Deborah Thorne, *Going Broke and Staying Broke: The Realities of the Fresh Start in Chapter 7 Bankruptcies* (unpublished 2005 manuscript) as empirical evidence.

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