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I. INTRODUCTION

Although the unsecured creditor long has occupied a precarious position, the widespread passage of article 9 of the Uniform Commercial Code has created additional perils for him by making virtually all of his debtor's assets available to a secured lender.[1] The Bankruptcy Act, while not so one-sided, also contains snares and pitfalls for the unsecured creditor. One potential trap is contained in the seemingly straightforward declaration of section 60c, which provides:

> If a creditor has been preferred, and afterward in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estate, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.[2]

This article focuses upon, and proposes a means for the elimination of, the unnecessary paradoxes implicit in section 60c's treatment of an unsecured creditor who extends continuing credit to a debtor in financial trouble.

II. PURPOSE AND EFFECT OF SECTION 60C

On the surface, section 60c seems to be aimed at mitigating the harsh treatment that a creditor, who extends continuing unsecured credit to a financially shaky debtor, might otherwise receive under sections 60a[3] and b.[4] Under section 60b the trustee in bankruptcy can recover all payments on account of antecedent debts that constitute a preference as defined in section 60a[5] if they are received within four months of

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1. *See generally* Raphael, *The Status of the Unsecured Creditor in the Modern Law of Secured Transactions*, 2 B.C. IND. & COM. L. REV. 303 (1961); Viles, *The Uniform Commercial Code v. the Bankruptcy Act*, 55 KY. L.J. 636 (1967).

2. Ch. 575, § 60c, 52 Stat. 870 (1938) (codified at 11 U.S.C. § 96(c) (1964)).

3. 11 U.S.C. § 96(a) (1964).

4. *Id.* § 96(b).

5. 11 U.S.C. § 96(a)(1) (1964) defines a preference as follows: "A preference is a transfer, as defined in this title, of any of the property of a debtor to or for the benefit of a creditor for or on

bankruptcy and if the benefited creditor had reasonable cause to believe the debtor was insolvent at the time the payment was made. If, after receipt of a 60a preference, a creditor in "good faith"[6] extends new unsecured credit that becomes part of the debtor's estate, section 60c allows him a set-off measured by the amount of this new credit that remains unpaid at the date of the adjudication in bankruptcy. This set-off enables the creditor to retain payments received after acquiring knowledge of the debtor's insolvency, which the trustee in bankruptcy could otherwise require him to repay as a voidable preference.

While section 60c directs attention to the amount of new unsecured credit that remains unpaid at the date of the adjudication in bankruptcy, it provides no formula for determining what portion of the total indebtedness is reduced by a preferential payment.[7] This determination must be made in cases in which the preferred creditor was owed something prior to his learning of the bankrupt's insolvency within the four month period preceding filing of the bankruptcy petition. At this point, the deceptiveness of 60c's initial appearance of clarity begins to manifest itself. If general accounting principles are applicable, requiring the matching of current payments to the oldest portion of the indebtedness, the plight of the creditor depends upon how long he has been extending credit to the capsized debtor rather than upon the amount of "new credit" he has extended during the preference period. A preferred creditor with a large backlog of debt prior to the critical period would enjoy favored treatment in bankruptcy because preferential payments would be applied first to old debts, leaving unpaid the "new credit" extended during the critical period. On the other hand, had our creditor arrived on the scene later, he would enjoy a much smaller protective set-off.

account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of the petition initiating a proceeding under this title, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class."

6. "Good faith" in this context obviously does not mean no cause to believe the debtor to be insolvent. "It means only that the extension be for some honest purpose and not to defeat the Bankruptcy Act by secreting the proceeds." *In re* Ira Haupt & Co., 304 F. Supp. 917, 946 (S.D.N.Y. 1969). *See also* Hygrade Envelope Corp. v. Gibraltar Factors Corp., 393 F.2d 60 (2d Cir.), *cert. denied*, 393 U.S. 837 (1968).

7. In addition to the problem of what accounting method is presupposed by § 60c for determining whether payments are to be applied to new credit or older portions of the indebtedness, there is a question as to whether a creditor who attempts to obtain security and fails is entitled to the benefit of the set-off provided by § 60c. At least one court has suggested that under these circumstances the creditor is entitled to the limited protection afforded by § 60c. *In re* Ira Haupt & Co., 304 F. Supp. 917 (S.D.N.Y. 1969). This result is not consistent, however, with the policy that § 60c seems to have been designed to promote: protection of a creditor who assumes the risk of aiding an insolvent debtor without obtaining adequate security for his claim.

This paradoxical treatment of the creditors described above is illustrated by the following hypothetical case. Assume that the first creditor had extended 2,000 dollars in unsecured credit before receiving any voidable preferences and that the second creditor had extended 1,000 dollars under similar circumstances. Further assume that each creditor received two voidable preferences of 1,000 dollars and, after an interval of a few days, matched these payments with an extension of new unsecured credit in the same amount. Each creditor has received payments totaling 2,000 dollars and has added 2,000 dollars to the bankrupt's estate during the critical period. Since the entire 2,000 dollars of preferences received by the first creditor can be applied to the initial 2,000 dollar debt, 2,000 dollars of "new credit" would remain unpaid and, therefore, available as a set-off to prevent any recovery by the trustee in bankruptcy.[8] The plight of the second hypothetical creditor would be markedly different. This creditor can match only 1,000 dollars of the 2,000 dollars in preferences with the original debt, leaving a balance of only 1,000 dollars in unpaid "new credit." Consequently, the trustee can recover 1,000 dollars from the second creditor despite the fact that his transactions with the bankrupt during the preference period were identical to those of the first creditor and did nothing, in economic effect, to deplete the bankrupt estate.

III. ESCAPE FROM THE LEGISLATIVE TRAP—THE "NET RESULT" RULE

Section 60c's more generous treatment of the creditor with the larger claim against the bankrupt going into the critical pre-bankruptcy period is illogical, because the section purports to deal only with transactions between creditor and bankrupt during this period. If the "net result" of debtor-creditor transactions within the period were used as the standard for determining the applicable set-off against otherwise voidable preferences, the treatment of the second creditor in the hypothetical case above would be quite different and, it is submitted,

8. It can be argued that a different sequence of transactions during the critical period would reduce this creditor's set-off and allow the trustee to recover a portion of the preferential payments. For example, if one preferential payment of $1,000 had come after the extension of $2,000 in new unsecured credit, § 60c could be interpreted to require the entire amount of this final payment to be turned over to the trustee, because it was not followed by the good faith extension of "further credit without security of any kind . . . ." *See, e.g.*, Robie v. Meyers Equipment Co., 114 F. Supp. 177 (D. Minn. 1953); Price v. Derbyshire Coffee Co., 128 App. Div. 472, 112 N.Y.S. 830 (1908); 3 COLLIER ON BANKRUPTCY ¶ 60.67, at 1139 (14th ed. 1971); Note, *A Proposed Amendment to Resolve the "Remaining Unpaid" Paradox of Section 60c of the Bankruptcy Act*, 64 YALE L.J. 295 n.9 (1954). This, however, does not seem required by a literal reading of the statute in its present form. All the statute purports to require before triggering its set-off provision is that the creditor receive a preference and extend new credit. *See* Walker v. Wilkinson, 296 F. 850 (5th Cir. 1924).

more equitable.[9] For example, by considering the economic effect of all debtor-creditor transactions during the critical period, a "net result" rule would prevent any recovery by the trustee in bankruptcy from either creditor. Each creditor's 2,000 dollars in preferential receipts would not exceed the 2,000 dollars in new unsecured credit extended during the critical period.

The "net result" rule just described is a judicially created doctrine that was originated to avoid the harsh effect of section 57g in its pre-1903 form.[10] Before section 57g was amended in 1903 it read: "The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences."[11] This meant that any preferred creditor, even one whose preference was not voidable under section 60b, was required to return his preferences as a prerequisite to the proof of any claim in the bankruptcy proceeding.[12] The "net result" rule lessened the potential threat to unknowing preferred creditors whose preferences were not voidable by taking into account the total effect of the transactions between the creditor and bankrupt to minimize the likelihood of any preference and its amount if one was found.

Despite the apparent desirability of utilizing the "net result" rule to avoid section 60c's literal mandate, there are two major obstacles in the way of using it as a formula for determining the rights of a running account creditor. First, by purporting to provide an appropriate formula for determining the outcome of cases in which extensions of unsecured credit follow the receipt of a preference, section 60c impliedly rejects any inconsistent formula. Secondly, the 1903 amendment of section 57g[13] limited its scope to *void* or *voidable* preferences and, therefore,

9. The result reached under the 2 approaches will be the same in any situation in which the pre-preference indebtedness equals or exceeds the total amount of voidable preferential payments made, as in the case of the first creditor. In these instances, under both the "net result" rule and the 60c formula, the determinative factor will be the difference in amount between the voidable preference and the "new credit" extended. As the amount of initial indebtedness is reduced below the sum of the voidable preferences, the difference between the 2 approaches becomes increasingly apparent.

10. 3 COLLIER ON BANKRUPTCY ¶ 57.19, at 289 (14th ed. 1971); *see, e.g.*, Joseph Wild & Co. v. Provident Life & Trust Co., 214 U.S. 292 (1909); Yaple v. Dahl-Millakan Grocery Co., 193 U.S. 526 (1904); Jaquith v. Alden, 189 U.S. 78 (1903).

11. Act of July 1, 1898, ch. 541, § 57(g), 30 Stat. 544.

12. Carson, Pirie & Scott v. Chicago Title & Trust Co., 182 U.S. 438 (1901).

13. The amended version, still in effect, declares: "The claims of creditors who have reeeived or acquired preferences, liens, conveyances, transfers, assignments or encumbrances, *void or voidable* under this Act, shall not be allowed unless such creditors shall surrender such preferences, liens, conveyances, transfers, assignments, or encumbrances." Ch. 487, § 12g, 32 Stat. 799 (1903) (codified at 11 U.S.C. § 93(g) (1964)) (emphasis added).

eliminated both the threat to unknowing preferred creditors and the theoretical foundation that it furnished for the "net result" rule. Consequently, there is persuasive judicial authority[14] and commentary[15] to the effect that the so-called "net result" rule has been laid to rest.

Realizing the lack of logical underpinning for section 60c's mandate, some courts have ignored the formidable arguments against continued utilization of the "net result" rule and have refused to recognize its demise.[16] By continuing to apply the rule in order to reach equitable results, these courts have impliedly given it a new theoretical foundation—dissatisfaction with the relief provided by section 60c.

The facts of one of these cases, *In re Stewart*,[17] strongly suggest the reason for the "net result" rule's current vitality. The creditor had been delivering gasoline to the bankrupt on terms that required payment for the last load received before the delivery of another load. When the debtor could no longer meet these terms because of his inability to pay for the previous delivery, the creditor agreed to make two additional deliveries on credit. Each further delivery was conditioned upon the bankrupt's payment for the oldest unpaid delivery at that time. Although the above arrangement required payments concurrent with deliveries, matching them with previous rather than current deliveries rendered the 13,148 dollars received by the creditor during the critical period vulnerable to the trustee's assertion that it constituted a voidable preference. The referee in bankruptcy held for the trustee and required the creditor to pay over the 13,148 dollars he had received despite the fact that he had delivered gasoline worth approximately 15,000 dollars to the debtor in the same period.

On appeal from the referee's decision, the district court was obviously persuaded that the creditor should not have been treated so harshly because he easily could have avoided the voidable preference problem by setting up the transaction on a cash sale basis. In order to reach a result more compatible with the realities of the transaction, the court held:

> [T]he net result rule applies to payments on a running account, within the four month period, where new sales succeed payments and the net result is to increase the

14. *See, e.g.*, Cooper Petroleum Co. v. Hart, 379 F.2d 777 (5th Cir. 1967); Shaw v. Walter E. Heller & Co., 385 F.2d 353 (5th Cir. 1967); Ricotta v. Burns Coal & Bldg. Supply Co., 264 F.2d 749 (2d Cir. 1959); Campanella v. Liebowitz, 103 F.2d 252 (3d Cir. 1939); *In re* Ira Haupt & Co., 304 F. Supp. 917 (S.D.N.Y. 1969).

15. *See* 3 COLLIER ON BANKRUPTCY ¶ 60.67 (14th ed. 1971); J. MACLACHLAN, HANDBOOK OF THE LAW OF BANKRUPTCY 315-16 (1956).

16. *See* text accompanying notes 7-24 *infra*.

17. 233 F. Supp. 89 (D. Ore. 1964).

> value of the estate. Such payments do not constitute preferential transfers within the meaning of § 60, sub. a.
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> . . . .
>
> The equities are with . . . the creditor who attempted to rescue the bankrupt. . . . An employment of equitable jurisprudence in accordance with applicable law requires a reversal.[18]

A recent Eighth Circuit decision, *Farmer's Bank v. Julian*,[19] also illustrates the current utilization of the "net result" rule to avoid the problems inherent in the remedy provided by section 60c. In *Julian* the creditor bank had received 9,000 dollars as partial repayment of a 12,000 dollar loan within the four-month period preceding the filing of an involuntary petition in bankruptcy. Subsequently, the bank made a new loan of 16,000 dollars to the bankrupt, but retained 3,000 dollars of this amount to retire the original obligation. Immediately before the bankruptcy petition was filed the bank reduced the outstanding indebtedness to 6,000 dollars by exercising its right of set-off under section 68a[20] against the 10,000 dollar balance in the bankrupt's account. The trustee in bankruptcy argued that the repayment of the initial 12,000 dollar indebtedness constituted a voidable preference. Since only 6,000 dollars of the new credit extended after the initial preference remained unpaid, the trustee contended that this was the maximum set-off allowed by section 60c. The referee held that the trustee was entitled to recover 6,000 dollars from the creditor bank and his decision was affirmed by the district court.[21] The court of appeals reversed on two grounds. First, the court found insufficient evidence to support the referee's finding that the creditor knew or had reason to know of the bankrupt's insolvency when the repayments occurred as required by section 60b. Secondly, the court reasoned that, even if the creditor had the requisite knowledge of insolvency, no voidable preference had been received. On this point, the court declared:

> When a creditor in good faith enriches a debtor's estate and this enrichment was caused by the otherwise preferential payment of an outstanding debt, the other creditors are only treated inequally to the extent that the preferential payments exceeded the new advances. If the new credit equals or exceeds the amount of the otherwise preferential payment the other creditors have not been harmed. Consequently, there is no recognizable preference under the equitable principles of § 60(a).[22]

18. *Id.* at 93.

19. 383 F.2d 314 (8th Cir.), *cert. denied*, 389 U.S. 1021 (1967).

20. Act of July 1, 1898, ch. 541, § 68, 30 Stat. 565 (codified at 11 U.S.C. § 108(a) (1964)) provides: "In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid."

21. 248 F. Supp. 855 (W.D. Mo. 1966).

22. 383 F.2d at 328.

While the decisions discussed above used the "net result" rule to avoid forcing the unsecured creditor to rely upon the limited protection of section 60c, at least one court has refused to recognize any distinction between the two by simply reading the "net result" rule into 60c. Thus, in *Wise v. General Electric Co.*,[23] the court used the following language to explain its reliance upon section 60c as authority for applying the "net result" rule:

> The facts of this case reveal that the estate of bankrupt received a net benefit from the transactions with the defendant during the four-month period, and hence there was no prejudice to the other creditors which would compel the restoration of the preferential payments to the estate of the bankrupt . . . . The applicable set-offs more than meet the preferences.[24]

IV. THE NEED FOR REVISION OF SECTION 60C

As is so often true with the law, judicial adherence to a basic concept of fairness toward the running account creditor has produced decisions that are laudable in result yet conceptually unsound. These decisions have ignored section 60c's literal requirement limiting the set-off against otherwise voidable preferences to the amount of "new credit" extended after a preference and "remaining unpaid at the time of the adjudication in bankruptcy . . . ."[25] This theoretical inconsistency underscores the need for a reexamination of the Bankruptcy Act's policy with regard to the running account creditor and the role that section 60c should play in this overall scheme.

The basic question whether the Bankruptcy Act should encourage or discourage the extension of unsecured credit to a financially shaky debtor must be answered before any resolution of the problems previously discussed is possible. This requires a look at current financing of small or medium-sized businesses and its effect upon the unsecured creditor's claims against the bankrupt estate. During the twentieth century, particularly since the widespread passage of article 9 of the Uniform Commercial Code, "total security" has become commonplace.[26] This has resulted in making intangible assets readily available to secured creditors and has deprived unsecured creditors of the one source that had often yielded some return for them from the bankrupt estate. Thus in an overwhelming majority of today's bankruptcy proceedings there are either no assets available for

23. Civil No. 8752 (D. Conn., Jan. 22, 1963).

24. *Id.* at 14-15.

25. Act of June 22, 1938, ch. 575, § 60, 52 Stat. 870 (codified at 11 U.S.C. § 96(c) (1964)).

26. The simple perfection requirements of article 9 of the Uniform Commercial Code allow secured creditors to tie up virtually all of a debtor's property. *See* Viles, *supra* note 1, at 662-68.

distribution to unsecured creditors or the nominal assets present are barely sufficient to cover the costs of administration. The unsecured creditor does not fare much better when there are more than nominal assets because the assets not subject to security interests and not used to satisfy administrative costs are usually eaten up by priority claims.[27] This fate can be particularly harsh when he has made extentions of unsecured credit to a debtor in reliance upon the fact that payments are being made. Failure to meet the technical requirements of section 60c may cause this creditor the loss of payments on account made by the debtor as well as any outstanding credit balance.

After subjecting the unsecured creditor to this labyrinth of legal perils, there is no justification for restricting the relief available to new creditors under section 60c unless a conscious policy of discouraging the extension of unsecured credit to insolvent debtors is desired. Such a policy would have the effect of speeding the demise of marginal operators and would prevent them from increasing potential harm to creditors by getting further into debt. If this is the intended policy, section 60c is not needed. Its elimination would discourage the extension of unsecured credit to marginal operators by forcing lenders and suppliers to exercise increased care in light of the risks of losing both the amount still owing at the date of bankruptcy and the entire amount of payments received on account within four months of bankruptcy. Of course, increasing the risks to unsecured creditors would further augment the control secured lenders could exercise over the operational decisions of their debtors and also contribute to the possibility of eventual bankruptcy for businesses experiencing difficulty in obtaining operating capital.[28]

In view of the questionable value of an even tougher posture toward unsecured creditors, perhaps the Bankruptcy Act should encourage or at least remain neutral with regard to extensions of unsecured credit to troubled debtors. This would tend to benefit all creditors by keeping some debtors out of bankruptcy altogether and would offset somewhat the effect of article 9 of the Uniform Commercial Code as a deterrent to the extension of unsecured credit. Another desirable side-effect of facilitating the extension of unsecured credit would be the marginal

27. In asset cases, the latest available statistics (as of June 30, 1969) indicate that assets cover only 17% of the total claims. Out of these assets, secured creditors received nearly 76 cents on the dollar in satisfaction of their claims and priority claimants recovered a little over 34 cents on the dollar. Unsecured creditors, however, were paid only 7.8 cents on the dollar for their claims. ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, TABLES OF BANKRUPTCY STATISTICS, table F6 (1971).

28. *See* Viles, *supra* note 1, at 671.

debtor's increased freedom from the control of his secured creditors. The present version of section 60c helps to a limited extent in achieving these objectives by protecting the unsecured creditor who deals extensively with the bankrupt both before and after his financial problems become acute. It fails, however, to provide this protection to a creditor who comes into the critical pre-bankruptcy period with a smaller backlog of outstanding credit.[29] This limitation upon the amount of 60c's protective set-off makes the sequence of transactions the crucial factor rather than the total economic impact of debtor-creditor dealings during the critical period. The result is an unnecessary restriction on section 60c's potential effectiveness, both as a means of achieving equitable results in running account cases and as a source of encouragement for the extension of unsecured credit.

One way to eliminate the unnecessary limitation on the protection afforded unsecured creditors by section 60c would be to incorporate the "net result" rule by amendment. This could be done by revising the section to read:

> If a creditor receives what would otherwise be recoverable from him as a voidable preference and thereafter in good faith extends further credit without security of any kind for property which becomes a part of the debtor's estate, the amount of the credit extended after the first preferential payment may be set off against the total amount which would otherwise be recoverable from him.[30]

One commentator, although conceding the desirability of the "net result" rule, has asserted that its unqualified adoption as a part of section 60c would have the undesirable effect of creating a loophole allowing large payments to favored creditors on the eve of bankruptcy to offset any unused balance of new credit.[31] This argument is without merit when it is realized that under the proposed amendment only those credits extended after receipt of a voidable preference[32] may be used in

29. The treatment presently given this creditor is not logically consistent with the rule that a transfer by a debtor to a fully secured creditor is not preferential if it does not exceed the amount of the secured claim. The rationale for this rule has been stated as follows: "There can be no depletion or diminution of a bankrupt's estate when there is a transfer by a debtor of money or property in total or partial discharge of a valid and non-preferential existing lien on the bankrupt's property. Such a transfer does not constitute a preference because the assets available for general creditors are not thereby diminished." Azar v. Morgan, 301 F.2d 78, 80 n.1 (1962) (per curiam) (quoting Johnson, J., in affirming his decision below).

30. For another suggested revision of § 60c see Note, *supra* note 8, at 302. This suggested revision solves the problem described in note 7 *supra* by making the set-off inapplicable to any preferential payment that is not followed by a new extension of unsecured credit.

31. Note, *supra* note 8, at 302 & n.46.

32. The important distinction between a preference and a voidable preference for the purposes of this discussion is that a voidable preference requires the creditor's knowledge, or reason to know, of the debtor's insolvency when the preference is received.

computing the set-off against recoverable preferences received during the same period. A creditor who aids the bankrupt under these circumstances benefits other creditors by increasing the bankrupt estate when bankruptcy is imminent. Therefore, neither the amount of a voidable payment nor the time when it is received should be a matter of great concern so long as the total economic impact of these transactions is taken into account by the rule determining the amount of the unsecured creditor's allowable set-off.[33] On the other hand, the criticism of a large final payment would have considerable merit if the amended version of section 60c carried forward the terminology of the present statute and allowed an early build-up of the set-off consisting of "new credit" extended after a nonvoidable preference.[34]

V. CONCLUSION

Statutory implementation of the "net result" rule is a needed gesture of fairness to the running account unsecured creditor. Under the present version of section 60c an unsecured creditor who continues to extend credit to an insolvent debtor and relies on the fact the payments are being made runs a substantial risk of losing not only the additional credit but also the payments received unless the pre-preference-period

33. Some commentators have broadly stated that the "new credit," which may be used in computing the applicable set-off under § 60c, must be extended after a preference that is voidable. 3 COLLIER ON BANKRUPTCY ¶ 60.67, at 1137 n.5 (14th ed. 1971); Note, *supra* note 8, at 295 n.9. This interpretation is at variance with the express language of the statute, which refers to "new credit" extended after a creditor has been preferred. Furthermore, this writer has been unable to find any case directly supporting the above interpretation of § 60c. Assuming, therefore, that the literal language of the statute is controlling, the amount of the available set-off may be greatly augmented if the creditor has extended "new credit" after a preferential payment that is not voidable. This would enable the creditor to retain a large final payment on the eve of bankruptcy for the purpose of using up the amount of such "new credit" in excess of voidable payments already received if an analogous "net result" rule were adopted for all transactions in the critical preference period. The proposed revision of § 60c avoids this problem by diminishing the available set-off through a limitation of the transactions to which the "net result" rule is to be applied.

34. If it is deemed desirable not to allow the "new credit" set-off to protect large last minute payments by the debtor to the creditor, there is a better way to accomplish this than to require each voidable preference to be followed by "new credit" before that particular voidable preference will come within the protective cloak of the § 60c set-off. The desired result could be reached by substituting the following ending to the revision suggested in note 30 *supra*: "setoff against the total amount of payments in the ordinary course that would otherwise be recoverable from him." If this substitution were made, a definition of "payment in the ordinary course" would need to be added to the Bankruptcy Act. The term could be defined as "any payment not unreasonably in excess of other regular payments previously made to the creditor receiving the payment." Where there is not an adequate history of regular payments, a "payment in the ordinary course" would be one not significantly greater than the amount that a similarly situated creditor would anticipate under normal circumstances. This change would seem to close the door on large pre-bankruptcy payments without making critical the sequence of routine payments and extensions of "new credit."

debt owed him is large enough to balance these payments. The present limitations on 60c's protection, therefore, penalize an unsecured creditor by enabling the trustee in bankruptcy to recover from him an amount exceeding the extent that the bankrupt estate is depleted by his transactions with the debtor during the critical period.

The proposed amendment of section 60c would eliminate the present inadequacy in providing relief for the running account unsecured creditor, but not at the expense of the favored secured lender whose collateral is generally sufficient to satisfy the bulk of his claim. It would instead decrease the recovery of priority claimants and, to a lesser extent, other unsecured creditors. While, regrettably, those who already receive so little would have to pay for this reform,[35] the inequity of the current approach warrants the change. Hopefully, so long as the current version of section 60c remains in effect, judges and referees will look more frequently away from the words of the Bankruptcy Act and apply the "net result" rule. Yet, a running account creditor who relies upon being saved from potential disaster through a beneficent court's application of the "net result" rule must be described as constructing his financial house on a foundation of sand. Until the needed reform comes, the generous lender will continue to assume a tremendous risk whenever he extends credit to a debtor in financial trouble, unless he does so on a secured basis.

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35. *See* note 33 *supra* and accompanying text. More meaningful reform will have to await substantial revamping of the distribution provisions of the Bankruptcy Act. Perhaps then the secured creditor will be required to bear more of the cost of business failure than he now does. *See generally* Viles, *supra* note 1, at 678-80.