Consumer over-indebtedness and health care costs: how to approach the question from a global perspective

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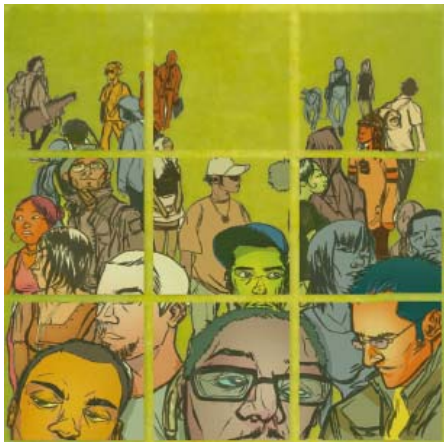

Consumer over-indebtedness and health care costs: how to approach the question from a global perspective

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Abstract:

The last two decades have witnessed significant increases globally in consumer over-indebtedness and in adoption of bankruptcy legislation. In light of emerging studies from the United States which examine the role of health care costs in personal bankruptcy cases, the question arises as to whether similar factors influence the rates of personal bankruptcy in other countries. While traditionally this was thought unlikely due to more extensive social safety nets for health coverage in Europe and elsewhere as well as the lack of credit extended to consumers, economic constraints on these safety nets and rising consumer credit make it worth raising the question considering the significant contribution that health care costs make to personal indebtedness globally. Accordingly Questionnaires were sent to Member States in EURO, SEARO and WPRO to ask about the existence of personal bankruptcy in these countries and whether health care costs are a factor. Research and questionnaire responses have been used to better frame the question of how future studies could develop their methodology.

1 Background

Recent studies have examined the role of medical costs in declarations of personal bankruptcies within the United States[123]. This paper aims to explore the question as to whether filings of personal bankruptcy in countries other than the US may be impacted by out-of-pocket medical costs and as such should be the subject of further research.

While the American health care system is quite limited in comparison with others, for example the European provision of universal or near-universal coverage, there are several factors that make it important to explore this question. The consumer finance industry is continuing its rapid expansion into emerging markets, and personal bankruptcy regimes have developed dramatically in recent years in Europe and Asia. While limited data is available on this recent phenomenon, it is likely that personal bankruptcies in which medical costs play a factor are on the rise globally.

1.1 Medical debt in the United States

A number of studies in the United States have addressed the problem of medical debt. Health care costs pose a significant problem in the United States, and a 2007 survey found that 70 million Americans owe medical debt or experience difficulty in paying for treatment.[4] Another found that 62.1% of all bankruptcies in 2007 were medical; 92% of these medical debtors had medical debts over $5000, or 10% of pretax family income while others had lost significant income due to illness or mortgaged a home to pay medical bills – and that between 2001 and 2007, the share of bankruptcies attributable to medical problems rose by 49.6%.[5] While these findings have not gone undisputed,[6] it seems safe to say that illness and medical bills meaningfully contribute to US bankruptcies.

Traditionally, rates of medical bankruptcy have been considerably higher in the United States than in those countries with bankruptcy laws less favorable to debtors and more comprehensive social safety nets,

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[2] Himmelstein DU, Thorne D, Warren E, Woolhandler S. Medical bankruptcy in the United States, 2007, results of a national study. *Am J Med.* 2009 Aug; 122(8): 699.

[3] Jacoby M, Holman M. Managing Medical Bills on the Brink of Bankruptcy. Managing Medical Bills on the Brink of Bankruptcy. *Yale J. of Health Policy, Law and Ethics*, Vol. X Iss. 2 (2010).

[4] M. M. Doty, S. R. Collins, S. D. Rustgi, and J. L. Kriss, Seeing Red: The Growing Burden of Medical Bills and Debt Faced by U.S. Families, the Commonwealth Fund, August 2008.

[5] Himmelstein DU, Thorne D, Warren E, Woolhandler S. Medical bankruptcy in the United States, 2007, results of a national study. *Am J Med.* 2009 Aug; 122(8): 699.

[6] Dranove, David and Michael Millenson. 2006. Medical Bankruptcy: Myth versus Fact. *Health Affairs*. 25(2): 74-83

for example Canada[7] and Europe[8]. One commentator even notes that "The main difference between these European countries and the United States is the absence of healthcare costs as a significant cause of financial difficulty".[9] These changes are due primarily to the comprehensiveness of social coverage such as medical costs; authors have also attributed these differences to the linkages which exist in the US between health insurance and employment and the absence of comprehensive stop-loss provisions.[10]

This paper will use the term "medical bankruptcy" to refer to the phenomenon under debate within the United States. The Medical Bankruptcy Fairness Act of 2009 (S. 1624) defines "medical debt" as "any debt incurred directly or indirectly as a result of the diagnosis, cure, mitigation, treatment or prevention of injury, deformity, or disease, or for the purpose of affecting any structure or function of the body,"[11] though the exact definition of "medical debt" is still under debate.[12]

1.2 History: change in regulatory environment

Consumer debt was a relatively rare phenomenon until the late 1970's even in the United States. However, with relaxed government regulation on consumer lending following the 1978 Supreme Court case *Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp*[13], large banks began to market the credit card to consumers. Similar deregulation in European countries led to massive increases in institutional lending to consumers in the 1980's and 1990's. Consumer over-indebtedness came under the consideration of European policymakers in beginning in the 1980's, and consumer insolvency relief laws were adopted by Denmark (1984), France (1989), Finland and Norway (1993), Sweden, Austria and Germany (1994), Netherlands and Belgium (1998), Germany (1999) and Luxembourg (2000).[14] This increased lending to consumers has expanded into Asia and Latin America as well[15]. Through new lines of credit consumers may have additional options to fund medical costs. Additionally, social "safety nets" have been scaled back at the same time as the adoption of consumer insolvency regimes in many

[7] J.S. Ziegel, "A Canadian Perspective," *Texas Law Review* 79, no. 5 (2001): 241–256.
[8] I. D. Ramsay, Comparative Consumer Bankruptcy, *Illinois Law Review*, (2007): 241-273, at 247.
[9] I. D. Ramsay, Comparative Consumer Bankruptcy, *Illinois Law Review*, (2007): 241-273, at 247
[10] Himmelstein DU, Warren E, Thorne D, Woolhandler S. Illness and injury as contributors to bankruptcy. *Health Aff (Millwood)* 2005;Suppl Web Exclusives:W5-64–W5-73.
[11] Sec. 2 (a) (1) (39B) of S. 1624.
[12] American Bankruptcy Institute, ABI Member Testify on Medical Debt and "Bailouts vs. Bankruptcy," 28-JAN Am. Bankr. Inst. J. 10 (December/January), at 69.
[13] 439 U.S. 299 (1978)
[14] Jason Kilborn, Comparative Consumer Bankruptcy. Carolina Academic Press 2007, pgs 6-9.
[15] Ramsay, Iain (2007)Comparative Consumer Bankruptcy. *Illinois Law Review*, 2007 (1). pp. 241-274.

European countries.[16] Personal bankruptcy or consumer insolvency filings could provide one measure of how medical costs are impacting over-indebtedness.

1.3 Current research on over-indebtedness and health

Current research in the area is quite limited outside of the United States. A complex relationship exists between over-indebtedness and ill health: financial problems may result from the cost of health care, but illness and disability (and a lack of social safety nets) may also lead to financial distress. As one study noted, "over-indebtedness leads to illness and illness leads to over-indebtedness"[17].

Outside of the US, research on links between over-indebtedness and health has been quite limited to date, consisting largely of rankings of factors in consumer debt. For instance, within the United Kingdom, sickness or disability accounted for 5% of households in financial difficulties in 2002 [18]. A ranking of causes of over-indebtedness and private bankruptcy in Germany found that "psychological problems" and "own sickness", if added together, would rank in fourth place of reasons for over-indebtedness and private bankruptcy[19].

There have been a number of interesting recent studies in Germany on the subject. These have found a high risk of mental disorders among those facing the threat of over-indebtedness[20] as well as the association of over-indebtedness with an increased prevalence of overweight and obesity apart from traditional socioeconomic factors[21]. Additionally, there is evidence that over-indebted persons refrain from seeking medical treatment or purchasing prescriptions even under Germany's health system.[22] One

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[16] Cause and Effect: Consumer Insolvency and the Eroding Social Safety Net, 14 *Columbia J. European L*. 563 (2008), http://ssrn.com/abstract=926203

[17] Münster E, Rüger H, Ochsmann E, Alsmann C, Letzel S. Überschuldung und Gesundheit – Sozialmedizinische Erkenntnisse für die Versorgungsforschung. Arbeitsmed. Sozialmed. Umweltmed. 2007; 42, 12, Seite 628-634.

[18] Ramsay, Iain (2009) *"Wannabe Wags and Credit Crunch Binges": The Construction of Over-Indebtedness in the UK*. In: Niemi, Johanna and Ramsay, Iain and Whitford, William, eds. Consumer Credit, Debt and Bankruptcy: Comparative and International Perspectives. Hart Publishing, Oxford

[19] Backert et al, Bankruptcy in Germany (in Consumer Credit, Debit and Bankruptcy)

[20] Rüger H, Löffler I, Ochsmann E, Alsmann C, Letzel S, Münster E.[Mental Illness and Over-Indebtedness.] Psychische Erkrankung und Überschuldung. Psychother Psychosom Med Psychol. 2009 Mar 9. 59; 1-5

[21] Munster E et al. Over-indebtedness as a marker of socioeconomic status and its association with obesity: a cross-sectional study. *BMC Public Health* 2009, 9:286

[22] Münster E, Rüger H, Ochsmann E, Alsmann C, Letzel S. Überschuldung und Zuzahlungen im deutschen Gesundheitssystem – Benachteiligung bei Ausgabenarmut. Over-indebtedness and Additional Payments to the German Health-Care System - Discrimination upon Destitution in Expenditure.Gesundheitswesen. 2009 May 14.

third of participants in a study of insolvency counseling services in Rhineland–Palatinate indicated that their financial difficulties were a result of accident, illness or addiction.[23]

1.4 Researching medical bankruptcy

It should be stated at the outset that bankruptcy cannot be treated as a proxy for over-indebtedness. Comparative research in this area is fraught with methodological problems, and bankruptcy statistics cannot easily be compared across jurisdictions. Iain Ramsay enumerates these in detail, but some selected issues are as follows: Different countries have distinctive legal and administrative mechanisms to address over-indebtedness; within countries bankruptcy procedures may have different purposes; varying methods may be used to collect comparative data; and statistics must be considered in light of available social safety nets.[24] However, this is not to say that research in comparative consumer insolvency law is not useful. The same author notes that "bankruptcy may be used as a method of highlighting pathologies in society such as inadequate unemployment relief or healthcare."[25]

2 Questionnaires and research

In order to acquire some feedback about whether this phenomenon exists globally, it was decided to develop a questionnaire which was sent to Member States in the EURO, SEARO and WPRO regions. The questionnaire was directed to regional focal points who were asked to identify individuals familiar with health law within the countries who would be able to respond. The following questions were posed:

1. How does your legal system handle consumer over-indebtedness (i.e. through personal bankruptcy, insolvency, government intervention, etc)?
2. Even where health care is provided through a government system or through insurance, are there circumstances under which consumers need to pay directly (i.e. out-of-pocket) for health care costs? What are these circumstances (i.e. particular treatments)?
3. What options exist for consumers unable to pay such costs (i.e. government assistance, charities, etc)?
4. Does any legislation or regulation specifically allow individuals to be declared personally bankrupt/insolvent in your country?
5. If yes, do you know whether the inability to cover medical costs is ever a cause of such personal bankruptcy/insolvency (i.e. do not know; never; rarely; frequently)?
6. Does any legal/policy instrument protect consumers from personal bankruptcy/insolvency based on medical debt?

[23] Münster E, Rüger H, Ochsmann E, Alsmann C, Letzel S. Überschuldung und Gesundheit – Sozialmedizinische Erkenntnisse für die Versorgungsforschung. Arbeitsmed. Sozialmed. Umweltmed. 2007; 42, 12, Seite 628-634.
[24] Ramsay, Iain (2007) Comparative Consumer Bankruptcy. *Illinois Law Review*, 2007 (1). pp. 241-274.
[25] Ramsay, Iain (2007) Comparative Consumer Bankruptcy. *Illinois Law Review*, 2007 (1). pp. 241-274.

One response to the questionnaire follows, to demonstrate the type of information received:

Malaysia

(information provided by Dr. Rozita Halina Tun Hussein, Ministry of Health)

The Malaysian legal system allows for action to be instituted for indebtedness. Bankruptcy proceedings can be instituted where the sum involved is above RM 30,000 under Bankruptcy Act 1967 (Act 360).

For health care services provided by the public sector, there is minimal co-payment. Care provided is highly subsidized. For primary care, the fee is RM 1($0.31). Care for hospitalization services is based on a fees schedule, up to a maximum of RM 500 for third class patients. Patients in government facilities have to top up for certain items such as prosthesis and medical appliances. The bulk of OOP expenses occur when seeking care in private health facilities.

Government health care services are free for those who cannot afford it. Hence, financial protection for healthcare is provided by government. Some cases appeal for charity donation. The government has set up a special fund to provide financial assistance in deserving cases, to cover services not available in the MOH or to cover the cost of medical appliances such as pacemakers etc.

Indebtedness that occurs in private healthcare sector is a civil affair between the user (patient) and the provider. In most cases, there is a re-negotiation of price and/or arrangement to pay by installments. In some cases, the hospital writes off as bad debt or classifies it as charity. In others, the provider will resort to legal means to obtain payment. A few cases of credit card holders who pay hospital bills using credit cards have been declared bankrupt.

The information received from the questionnaires has been grouped into the following classifications. Where necessary it has been supplemented by information from other sources.

2.1 Medical costs and over-indebtedness

A number of responses noted that medical costs are present in a growing number of personal debts. These included Belgium, Laos (where out-of-pocket expenditure on health care is more than 60%) and Malaysia (which reports that there have been cases of medical bankruptcy among credit card holders who

have paid hospital bills on credit). Viet Nam reports that inability to cover medical costs does constitute a cause of insolvency (since there is no system to declare bankruptcy), though the extent of the connection requires further research. 2002 studies estimated that 6-8% of households face catastrophic payments for health care, and that catastrophic health care costs were identified in a more recent survey as the top cause of concern for families in one provincial survey.

2.2 Out-of-pocket costs

Respondents cited a high number of out-of-pocket costs. This paper acknowledges the substantial and existing research in this field, but these anecdotal examples are provided to illustrate the severity of the problem

- In the Philippines, despite Philhealth (SHI) reimbursements and public provision and funding of care, out-of-pocket expenditures continue to be the main source of funding for health care costs. This situation is confounded by the fact that balance billing is a common practice in in-patient care when the treatment is not covered; that medicines, laboratory tests and other procedures are often unavailable in public hospitals, forcing patients to purchase them outside the facility out-of-pocket; that patients cannot claim reimbursements under Philhealth if he was treated at an unaccredited health facility; that outpatient medicines are not covered; and that most primary health care services delivered by private practitioners are paid out-of-pocket.
- In Mongolia, there are numerous instances in which the government is unable to provide health care coverage – for example, new mothers must pay for their babies' medicine, feeding and wrapping. There are nearly no options for consumers unable to meet these costs and the questionnaire respondent indicated that medical costs are definitely a cause of consumer over-indebtedness.
- In Laos, out-of-pocket expenditure is over 60%.
- In Viet Nam, consumers who are covered with national health insurance system still pay out of pocket for health care cost for circumstances such as: (1) Co- payment of at least 20% for the cost of routine services; 50% or more for hi-tech services (e.g. imaging diagnostic tests); (2) there is capping on maximum amount reimbursable by health insurance, per case and per year, so any cost above the capping should be paid by consumers (e.g. patients with cancer; patients with chronic condition that requires high cost treatment…); and (3) services that are not covered in the benefit package. Very limited options such as government or charitable assistance are available for consumers unable to pay.

2.3 Availability of credit

Other countries, such as Georgia, responded that credit is simply unavailable to poorer populations. Accordingly, even where there are substantial out-of-pocket costs, poorer individuals are simply unable to access services.

2.4 Lack of personal bankruptcy laws

In some countries, such as Georgia and Mongolia, there are no personal bankruptcy laws, and creditors would have to initiate civil law suits within the court system in order to seek recovery of the healthcare costs. Court decisions against the consumer may involve foreclosure of assets.

2.5 Administrative arrangements

Many countries have mediation proceedings for consumers and debtors which act either as an alternative or addition to the more formal option of declaring personal bankruptcy. These agencies include the French *commission de surendettement des particuliers*, Luxembourg's counseling program of the "National Service for the Fight Against Indebtedness", Belgium's *médiateur des dettes*, German's state-sponsored debt advice centers (*Schuldnerberatungsstelle*). The United Kingdom facilitates an Individual Voluntary Arrangement as alternative to the more formal bankruptcy track; this constitutes a negotiation assisted by a professional Insolvency Practitioner in which the debtor draws up a payment plan to creditors. In Sweden, the administrative agency responsible for the consumer insolvency system (*Kronofogdemyndigheten*) approves petitions for debt relief and draws up a mandatory payment plan.[26] Voluntary insolvency is also an option in the Philippines.

2.6 Social safety nets

Many countries provide publicly-funded comprehensive health care coverage for eligible residents. However, it is possible for medical debt to become overwhelming even in countries with "universal coverage". Adequately examining this question about medical debt will require soliciting the aid of government agencies or other experts who will be able to describe the services which are covered, as these are complex. Two examples follow:

- The United Kingdom's National Health Service (NHS) generally provides free primary, in-patient, long-term and psychiatric care as well as ophthalmologic and dental treatments, though

[26] Kilborn J. "Out-of-court Debt Restructuring in the US and Europe" in Comparative Consumer Bankruptcy. Carolina Academic Press 2007.

there are charges for certain services. However, those who opt out in order to avoid lengthy delays or to seek treatments unavailable under the NHS (these may include cosmetic surgery, in vitro fertilization) will be responsible for all debt incurred seeking private services. Those found ineligible for continuing care, defined as care provided over an extended period of time to a person aged 18 or over to meet physical or mental health needs which have arisen as the result of disability, accident or illness, may also have significant medical costs to meet out-of-pocket.[27] This is only one of many examples which demonstrate that even in countries with universal coverage; it is possible for medical debt to arise.

- Singapore offers universal healthcare coverage to its citizens, with a financing system anchored on the twin philosophies of individual responsibility and affordable healthcare for all. The mixed financing system consists of heavy government subsidies, individual medical savings accounts (Medisave) and catastrophic medical insurance (MediShield). Individuals are expected to co-pay for part of the healthcare expenses, ranging from primary/outpatient, in-patient as well as intermediate- and long-term care, but the out-of-pocket payments are usually small and affordable.
- While New Zealand's publicly funded health system covers all hospital care and subsidizes primary care, dental care and many pharmaceuticals, demand for services exceeds the funding available, and so services have to be rationed, egg waiting lists exist for many elective services and health care procedures. There are, however, some exceptions where payment occurs, for example all General Practitioner and primary care services (though a subsidy is provided) and community dental services.

2.7 Additional social safety nets

The questionnaire also asks about possible support options for consumers faced with medical costs which any state system will not cover. Options such as donor-supported equity funds (Laos) and NGOs providing assistance for those suffering from certain diseases (Georgia) were cited. In the Philippines, the Phil. Charity Sweepstakes can be tapped by patients to cover medical treatment/costs, though this is relatively underutilized. Public hospitals also have the social services desk to help indigent patients, waiving them from any payment. Politicians also set aside some of their development funds to provide some financial assistance to their constituents. In Singapore, the Government provides a safety net (Medifund) which helps needy Singaporeans who are unable to afford their medical bills, despite

[27] See http://www.nhs.uk/chq/pages/2392.aspx?CategoryID=68&SubCategoryID=155&r=1&rtitle=Common+health+question, accessed 03/04/2010.

government subsidies, Medisave withdrawals and MediShield claims. Financial assistance for medical expenses is also provided by a number of non-profit organizations or charities.

3 Lessons learned

It should be emphasized that learning more about this phenomenon of "medical bankruptcy" would constitute an enormous undertaking due to its complex and multidisciplinary nature. To address it properly would require considerable resources and experts in the areas of comparative consumer insolvency law, statistics (for the interpretation of data from a number of different countries), health finance and health systems. This paper addressed only the relatively narrow question of how such research might be managed in the future. It makes the following proposals for future projects in this area:

- Adopt a multidisciplinary approach: As stated above, any further response will need to be multi-disciplinary due to the variety of factors at play. The continuing expansion of the consumer lending industry and responding government regulation, belt-tightening with respect to social safety nets such as universal health coverage, the privatization of medical services and the complex relationship between over-indebtedness and health constitute just a few of the issues which would need to be considered.
- Research should not be limited to personal bankruptcy legislation: As outlined above, many countries do not recognize personal bankruptcy but may still have populations which suffer from over-indebtedness due to health care payments. Addressing all official administrative processes intended to facilitate consumer debt relief would provide more comprehensive results.
- Target the country respondents: The response rate to the surveys was relatively low, understandably given time constraints, communications problems and difficulty in identifying appropriate respondents. Every effort was made to identify experts in health law and policy, but even these individuals may not be familiar with such a technical subject. Many respondents were concerned that he or she could not adequately or accurately answer the questionnaires. It would be worthwhile to invest time and resources

to identify persons or agencies within countries that are familiar with the legal and administrative systems to address over-indebtedness (see point below).

- Identify relevant agencies: As mentioned above, many countries do have a voluntary negotiation system that exists in addition to the formal option of bankruptcy; the agencies mentioned in the paper would be a valuable source of information for future research. Such agencies will be familiar with legal and administrative processes relevant to credit problems and are also likely to have empirical data about the role of medical costs in such cases. A targeted questionnaire for these agencies could yield impressive results.
- Utilize consumer advocacy organizations: At least in Europe, there are a great number of NGOs dedicated to assisting with the problem of consumer over-indebtedness. These, as well as the government debt counseling agencies mentioned above, should be contacted for suggestions and for their impression of the role of medical costs in over-indebtedness.
- Appreciate the complexity of comparative law in developing a methodology: Personal bankruptcy or consumer insolvency legislation is difficult to map across countries (there are few resources that attempt this, one notable exception being the European Commission's European Judicial Network[28]) and should be approached on a regional basis. This research must be undertaken systematically and based on legislative texts, as discrepancies were observed even between questionnaire responses and national legislation in some instances.
- Appreciate cultural differences in approach to debt: Declaring personal bankruptcy or seeking State-sponsored debt counseling is taboo in certain cultures. It will be necessary to decide whether countries with this approach - i.e. where medical debt may exist but cannot be measured in the same way – should be included in the research and, if so, how it could be assessed.
- The chicken and the egg: The relationship between physical or mental illness, disabilities, health care costs and financial problems is extremely complex. Illness or disability may lead to loss of income, which in turn may contribute to financial insolvency. Health care costs may be partly, though not exclusively, responsible for insolvency proceedings. Financial problems may also be a cause of physical and mental illness. It will be

[28] http://ec.europa.eu/civiljustice/bankruptcy/bankruptcy_ec_en.htm, accessed 03/04/2010.

necessary for any further work in this area to clarify exactly what statistics are being requested from government agencies.

4 PAHO Study and existing legal mechanisms

A paper, "Compilation of legal provisions on health care costs related insolvency", was prepared by the Pan-American Health Organization.[29] It aimed to determine whether there are legal provisions in Latin America that offer an alternative mechanism to people who contracted debts to pay medical expenses and whether a bankruptcy procedure or a mechanism for consumer protection or readjustment of debts is accessible to protect individuals and/or families from a current or imminent insolvency. In this study national legislation in force as of 1 April 2010 in 19 Latin America countries concerning insolvency was reviewed, focusing on specific mechanisms to face family or consumer insolvency. Analysis was extended to general provisions on consumer protection and to mechanisms established in health legislation to finance catastrophic or costly medical expenses. No specific mechanisms were identified that would protect individuals or families from medical debts.

5 Conclusions

The relationship between consumer over-indebtedness and medical costs is a fascinating question, with relevance to millions of consumers worldwide. While considerable work has been carried out in the area of globalization and health, this is an area which is relatively unexplored. This paper cannot begin to do justice to these issues, but it has attempted to lay the groundwork for further steps in this area.

[29] Castiglione S. Compilación de Normas en Materia de Insolvencia por Gastos de Salud. World Health Report 2010 Background Paper Nr. 54.