

**AMERICAN BANKRUPTCY INSTITUTE
14TH ANNUAL SOUTHEAST BANKRUPTCY WORKSHOP**

Hot Topics in Chapter 13

Panelists:

Richard Thomson, Clark & Washington, P.C., Atlanta, Georgia
O. Byron Meredith III, Standing Chapter 13 Trustee, Savannah, Georgia
Hon. Michael G. Williamson, United States Bankruptcy Court, Tampa, Florida
Felicia S. Turner, Deputy Executive Director, ABI, Alexandria, Virginia (moderator)

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I. Chapter 13 Means Test Issues

A. “Projected Disposable Income”

1. Form 22C creates rebuttable presumption, but can consider true future income
 - a. *In re Lanning*, 545 F.3d 1269 (10th Cir. 2008) (starting point is CMI, subject to showing substantial change in circumstances)
 - b. *In re Petro*, 395 B.R. 369 (B.A.P. 6th Cir. 2008) (forward-looking approach)
 - c. *In re Lanning*, 380 B.R. 17 (B.A.P. 10th Cir. 2007)
 - d. *In re Pak*, 378 B.R. 257 (B.A.P. 9th Cir. 2007)
 - e. *In re Kibbe*, 361 B.R. 302 (B.A.P. 1st Cir. 2007)
2. Only refer to Form 22C
 - a. *In re Kagenveama*, 541 F.3d 868 (9th Cir. 2008)
 - b. *In re Fredrickson*, 375 B.R. 829 (B.A.P. 8th Cir. 2007)

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3. Refer to Schedules I & J
 - a. *In re Van Bodegom Smith*, 383 B.R. 441 (Bankr. E.D. Wis. 2008)
- B. “Applicable Monthly Expense Amounts” (housing or car)
 1. Set deductions, no requirement of lease or loan payments
 - a. *In re Ross-Tousey*, 549 F.3d 1148 (7th Cir 2008) (relevant chapter 7 case)
 - b. *In re Kimbro*, 389 B.R. 518 (B.A.P. 6th Cir. June 12, 2008)
 - c. *In re Pearson*, 390 B.R. 706 (B.A.P. 10th Cir.2008), *vacated as moot by* 2009 WL 205408 (10th Cir. Jan.22, 2009)
 2. Only deduct if there are lease or loan payments
 - a. *In re Wilson*, 383 B.R. 729 (B.A.P. 8th Cir. 2008)
 - b. *In re Ransom*, 380 B.R. 799 (B.A.P. 9th Cir. 2007)
- C. “Payments on account of secured debt” where the collateral will be surrendered
 1. May deduct regardless of surrender
 - a. *In re Rudler*, 388 B.R. 433 (B.A.P. 1st Cir. 2008)
 - b. *In re Thomas*, 395 B.R. 914 (B.A.P. 6th Cir. 2008)
 2. May not deduct where intend to surrender
 - a. *In re Suess*, 387 B.R. 243 (Bankr. W.D. Mo. 2008)
 3. *Side Note: In re Thissen*, 400 B.R. 776 (Bankr. E.D. Cal. 2009) (payments on a “secured” debt that is entirely unsecured cannot be deducted as secured debt payments)
- D. Household size
 1. Limited to the categories listed in statute
 - a. *In re Law*, 2008 WL 1867971 (Bankr. D. Kan. Apr. 24, 2008)
 2. Census bureau approach
 - a. *In re Ellringer*, 370 B.R. 905 (Bankr. D. Minn. 2007)

3. Totality approach
 - a. *In re Jewell*, 365 B.R. 796 (Bankr. S.D. Ohio 2007)
4. IRM approach

II. Hanging Paragraph Issues

A. 910 Cars: the Effect of Negative Equity on a PMSI

1. Matter of State Law, Proper to Certify Question
 - a. *In re Peaslee*, 547 F.3d 177 (2d Cir. 2008) (certified to the N.Y. Court of Appeals)
2. Negative equity, gap insurance, etc. not part of PMSI, therefore follow dual status rule & bifurcate
 - a. *In re Penrod*, 392 B.R. 835 (B.A.P. 9th Cir. 2008)
 - b. *In re Callicott*, 396 B.R. 506 (E.D. Mo. 2008)
 - c. *In re McCauley*, 398 B.R. 41 (Bankr. D. Colo. 2008)
 - d. *In re Blakeslee*, 377 B.R. 724 (Bankr. M.D. Fla. 2007)
3. Refinance of debt, etc., all integral to sale, therefore, part of PMSI
 - a. *In re Graupner*, 537 F.3d 1295 (11th Cir. 2008)
 - b. *In re Schwalm*, 380 B.R. 630 (Bankr. M.D. Fla. 2008)

B. Effect of Surrender on 910 Car Claim

1. Creditor retains state law unsecured deficiency claim
 - a. *In re Barrett*, 543 F.3d 1239 (11th Cir. 2008)
 - b. *In re Ballard*, 526 F.3d 634 (10th Cir. 2008)
 - c. *Tidewater Finance Co. v. Kenney*, 531 F.3d 312 (4th Cir. 2008)
 - d. *In re Long*, 519 F.3d 288 (6th Cir. 2008)
 - e. *Capital One Auto Fin. v. Osborn*, 515 F.3d 817 (8th Cir. 2008)
 - f. *In re Wright*, 492 F.3d 829 (7th Cir. 2007)
 - g. *In re Rodriguez*, 375 B.R. 535 (B.A.P. 9th Cir. 2007)

III. Other Chapter 13 Plan Issues

A. Increased Plan Payments Due to Payoff of Debts

1. Must include increased disposable income
 - a. *In re Lasowski*, 384 B.R. 205 (B.A.P. 8th Cir. 2008)
2. Need not increase monthly payments
 - a. *In re Hughey*, 380 B.R. 102 (Bankr. S.D. Fla. 2007)

B. “Applicable Commitment Period”

1. A temporal requirement, not a multiplier
 - a. *In re Frederickson*, 545 F.3d 652 (8th Cir. 2008)
 - b. *In re Fridley*, 380 B.R. 538 (B.A.P. 9th Cir. 2007)
2. A plan may be shortened under certain circumstances, regardless
 - a. *In re Kagenveama*, 541 F.3d 868 (9th Cir. 2008)

C. Good faith requirement after the Means Test

1. May still consider anticipated future income in good faith analysis
 - a. *In re Phillips*, 382 B.R. 153 (Bankr. D. Mass. 2008)
2. Passing Means Test means good faith is irrelevant
 - a. *In re Mancl*, 381 B.R. 537 (W.D. Wis. 2008)
 - b. *In re Burmeister*, 378 B.R. 227 (Bankr. N.D. Ill. 2007)

D. Equal monthly payments

1. Payments to creditor must be equal
 - a. *In re Williams*, 385 B.R. 468 (Bankr. S.D. Ga. Mar. 28, 2008)
2. Adequate protection payments need not be equal, only plan payments
 - a. *In re Chavez*, 2008 WL 624566 (Bankr. S.D. Tex. Mar. 5, 2008) (slip-op.)
 - b. *In re Debtor’s Attn’y Fees in Ch. 13 Cases*, 374 B.R. 903 (Bankr. M.D. Fla. 2007)

3. Debtor's payments to trustee must be equal, not trustee's payments to creditors
 - a. *In re Erwin*, 376 B.R. 897 (Bankr. C.D. Ill. 2007)

IV. Post-Confirmation Issues

A. Mortgage Lender Violations of the Discharge Injunction

1. *Ruhl v. HSBC Mortgage Services, Inc.*, 399 B.R. 49 (E.D. Wis. 2008)
2. *In re Jones*, 366 B.R. 584 (Bankr. E.D. La. 2007), *aff'd in part and rev'd in part by* 391 B.R. 577 (E.D. La. 2008)
3. *In re Jones*, 400 B.R. 525 (Bankr. N.D. Miss. 2009)
4. *In re Janssen*, 396 B.R. 624 (Bankr. E.D. Pa. 2008)
5. *In re Padilla*, 389 B.R. 409 (Bankr. E.D. Pa. 2008)

B. Duty to Disclose Assets Acquired Post-Confirmation

1. *In re Waldren*, 536 F.3d 1239 (11th Cir. 2008)