

Concurrent Workshop

Hot Topics in Chapter 13 Cases

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Hon. Michael G. Williamson

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

Hot Topics in Chapter 13

Panelists:

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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 Sues*, 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)