We Can Go 'Round and 'Round about That...

Jeffrey W. Warren, Moderator
Bush Ross, PA; Tampa

Prof. David G. Epstein
University of Richmond School of Law; Richmond, Va.

Hon. Paul M. Glenn
U.S. Bankruptcy Court (M.D. Fla.); Jacksonville

Hon. Jeffery P. Hopkins
U.S. Bankruptcy Court (S.D. Ohio); Cincinnati

Hon. Paul G. Hyman, Jr.
U.S. Bankruptcy Court (S.D. Fla.) West Palm Beach

Cynthia C. Jackson
Smith Hulsey & Busey; Jacksonville

Hon. Margaret A. Mahoney
U.S. Bankruptcy Court (S.D. Ala.); Mobile

Hon. Robert A. Mark
U.S. Bankruptcy Court (S.D. Fla.); Miami

Hon. K. Rodney May
U.S. Bankruptcy Court (M.D. Fla.); Tampa

Hon. Catherine Peek McEwen
U.S. Bankruptcy Court (M.D. Fla.); Tampa

Hon. C. Ray Mullins
U.S. Bankruptcy Court (N.D. Ga.); Atlanta

Prof. Jack F. Williams
Georgia State University School of Law/
Mesirow Financial Consulting, LLC; Atlanta

Hon. Michael G. Williamson
U.S. Bankruptcy Court (M.D. Fla.); Tampa

American Bankruptcy Institute
30 Years

DISCOVER

asset sales databank
363.abi.org

Retrieve Asset Sales Information

Asset Sales Databank – The Key to § 363

With 363:

- **View by asset sales price, circuit, date and court**
- **Read summaries of key terms of recent asset sales**
- **Receive notification of new asset sales via email or RSS**
- **Use it FREE as an ABI member**

Stay Current on Sales Trends
363.abi.org

44 Canal Center Plaza • Suite 400 • Alexandria, VA 22314-1546 • phone: 703.739.0800 • abi.org

Join our networks to expand yours:

Consumer Corner

By Steven R. Neuner

Chapter 20 and Debt Limitations

Does a Strip-Off of Junior Mortgages Resurrect the Discharged Junior Mortgage Note Obligation as an Unsecured Debt?

Steven R. Neuner
Neuner and Ventura LLP; Marlton, N.J.

Steven Neuner, a partner at Neuner and Ventura LLP in Marlton, N.J., is a certified business bankruptcy specialist. He represents debtors, trustees and creditors, and has served for 25 years as a trustee.

In *In re Scotto-DiClemente*,[1] Judge **Michael Kaplan** of the U.S. Bankruptcy Court for the District of New Jersey charted new territory while weighing in on the ongoing debate of whether a "chapter 20"[2] strip-off of a wholly unsecured junior mortgage is permissible despite the debtor being ineligible for a chapter 13 discharge due to a recent chapter 7 discharge. After careful and thoughtful review, the court held that debtor was entitled to "strip off" wholly unsecured junior mortgages and that sufficient indicia of good faith existed to deny a motion to dismiss on that ground. However, in what is likely to be its most controversial holding, the court nevertheless dismissed the case on the basis that the stripped-off junior mortgages became unsecured debt that exceeded the debt limits for chapter 13 eligibility under § 109(e) of the Bankruptcy Code, even though the debtor had no personal liability because of the previous chapter 7 discharge.[3]

The case presented a common "chapter 20" scenario. The debtor had given Amboy Bank first, second and third mortgages on his residence. Six months after receiving a chapter 7 discharge, he filed a chapter 13 case seeking to cure the arrears on Amboy Bank's first mortgage, strip off the second and third mortgages, and pay a *pro rata* distribution on a small amount of unsecured debt. Because of the previous chapter 7 discharge and 11 U.S.C. § 1328(f)(1), the debtor could not receive a new discharge of unsecured debt in the chapter 13 case.

The first mortgage balance was greater than the value of the debtor's residence. Under these circumstances, the Third Circuit Court of Appeals and several other courts have permitted a chapter 13 debtor to "strip off" (*i.e.*, avoid and remove as a lien) junior mortgages for which there is no equity because the amount due under the senior secured debt is more than the property is worth.[4] While 11 U.S.C. § 1322(b)(2) prevents chapter 13 debtors from modifying the rights of secured creditors holding mortgages only against a debtor's principal residence, the theory is that once the junior mortgages are bifurcated under 11 U.S.C. § 506(a) into secured and unsecured components, the junior mortgages cease to have status as secured debt and § 1322(b)(2) may be applied to modify the obligation to a purely unsecured claim.

Amboy Bank filed a motion to dismiss the case. Initially, the court, in a thoughtful and well-considered review of the existing case law and applicable Code provisions, held that a "chapter 20" was permissible even though no chapter 13 discharge could be granted so long as the later chapter 13 case was filed in good faith.[5] The court concluded that nothing in the Code prevented a chapter 20 debtor from avoiding a wholly unsecured junior mortgage. In doing so, the court started with the fact that before avoidance, the junior lienholder held an "*in rem*" nonrecourse secured claim that could be dealt with in the plan. It then addressed whether § 1325(a)(5) posed any problem and concluded that it did not. Section 1325(a)(5) imposes conditions on confirmation in favor of secured claims, including that the lienholder "retain" its lien in the absence of the creditor's consent or surrender of the collateral. Because that section protects only holders of "allowed" secured claims, a stripped-off mortgage ceases to have that status and therefore falls outside its protections.[6] This portion of the opinion is a valuable addition to the extant case law on this still-simmering issue.

Next, the court addressed whether the debtor's chapter 20 filing met the standards for good faith under § 1325(a)(3). In an equally cogent review that provided a road map for practitioners and some suggestions of situations where dismissal would be warranted, the court found that this case had enough "meritorious reorganizational purpose" and other indicia of good faith to pass muster.[7]

Nevertheless, the court then held that this case had to be dismissed on § 109(e) ineligibility grounds after the "strip off" of the junior mortgages. Section 109(e) requires that a chapter 13 debtor must owe, "on the date of the filing of the petition, noncontingent, liquidated," secured and unsecured debt that does not exceed certain dollar limits. The balances owed to Amboy Bank on its second and third mortgages were substantially more than the $360,475 cap for unsecured debt. The debtor argued that these debt ceilings did not apply to him because his chap-

1 *In re Scotto-DiClemente*, 459 B.R. 558 (Bankr. D.N.J. 2011), *reconsideration denied*, 463 B.R. 308 (Bankr. D.N.J. 2012).
2 "Chapter 20" refers to a chapter 13 case filed after a previous chapter 7 discharge. While no new discharge is available, the subsequent case can achieve other objectives, such as curing mortgage arrears, or in this context, removing wholly unsecured junior liens.
3 At this time, an appeal has been filed.
4 *McDonald v. Master Fin. Inc. (In re McDonald)*, 205 F.3d 606, 615 (2000), *cert. denied*, 531 U.S. 822, 121 S.Ct. 66 (2000).
5 459 B.R. at 563-68.
6 459 B.R. at 567.
7 459 B.R. at 568-70.

ter 7 discharge had removed any personal liability to Amboy Bank, but Judge Kaplan disagreed. As further explained in his opinion denying reconsideration and relying heavily on *Johnson v. Home State Bank*,[8] he reasoned that Amboy Bank's nonrecourse secured debt was an *in rem* claim that it could still enforce after the discharge against the debtor's property. Under § 502(b)(1) of the Code, a claim can only be disallowed if it is neither enforceable against the debtor nor against the debtor's property. Since the *in rem* claim remained enforceable against the debtor's property, it could not be disallowed and remained a debt that factored into the § 109(e) calculus; § 506(a), the court held, merely values the secured portion of the claim but is not a disallowance provision.[9] It then followed that[10]

> Section 109(e) offers only two alternative classifications for debt: secured debt or unsecured debt (assuming such debt is noncontingent and liquidated). Neither alternative lends the Debtor much comfort towards confirmation of a plan. As discussed, if the *in rem* claims were regarded as secured, the "lien retention" provisions of § 1325(a)(5) bar the proposed "strip-off" of Amboy's liens. On the other hand, if the *in rem* claims are treated as unsecured, the Debtor must overcome § 109(e) restraints.

On reconsideration, the court rejected contrary holdings found in *Cavaliere v. Sapir*[11] and *In re Shenas*[12] as not properly considering and addressing this conundrum.[13]

Viewing the opinion in the prism of practice and other bankruptcy policy, other problems emerge. When applied in other cases, the rationale of *Scotto-DiClemente* can and will lead to anomalous and disturbing results. Consider what would happen where a § 109(e) dismissal was not required because the deficiency amount of the stripped-off junior liens, if resurrected as unsecured debt, was still not large enough to disqualify the debtor. Converting a speculative *in rem* claim that is nonrecourse into a full-value deficiency claim allows that claim to share *pro rata* with holders of other nondischargeable unsecured claims, penalizing them with a smaller dividend and granting a windfall to the holder of the stripped-off junior mortgage. If one ignores the discharge of the unsecured debt for § 109(e) purposes, on what principled basis can one then not allow the claim in distribution as an unsecured debt? If the debt is an obligation for the one purpose, must it not also be one for the other? Is the result a fair and even-handed distribution of the bankruptcy estate, especially where some of those other claimants may have extended credit in reliance on the debtor's ineligibility for a discharge?

One may also question whether the bank's *in rem* claim was a liability in a fixed and liquidated amount, as was assumed to be the case in *Scotto-DiClemente*. The definition of "debt" rests in turn on the definition of "claim" under § 101(5)(B): A claim includes a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." In these cases, is not the "right to payment" so contingent and uncertain as to not qualify under § 109(e)? The prevailing rule is that a debt is liquidated when it is "subject to ready determination and precision in computation of the amount due."[14] A debt is subject to a ready determination when only a simple hearing is required, as compared to an extensive, contested evidentiary hearing.[15] Further, if the debt amount is dependent on a future exercise of discretion by a court and is not restricted by specific criteria, the debt is unliquidated.[16] Since the bank's only remedy and right to payment rests on a claim to the debtor's residence, is not the "right to payment" highly dependent on valuation or on future events not under the lender's control, such that the claim ceases to be "liquidated" and thus no longer included in the § 109(e) calculation? The lender's "right to payment" cannot exceed the equity in the residence. Its theoretical right to foreclose on the debtor's residence is indeterminate unless the residence's market value is first fixed and determined, requiring a potentially extensive, contested valuation hearing. Further, the amount of that right to payment is dependent on future events and actions of others that are outside of the bank's control, which results in possible future equity or the ripening of the claim into a present right of payment. For there to be future equity, either the debtor or someone else would have to pay down or pay off the first mortgage, the property would have to increase in value due to future improvements or market forces, or the debtor would have to attempt to sell the residence. Under any of the above scenarios, the bank's *in rem* "right to payment" is arguably so uncertain on the petition date as not to qualify as a liquidated debt.

The textual logic applied in *Scotto-Diclemente* is internally sound, but resurrecting the junior mortgage obligation as an unsecured claim does not square with the clear mandate of § 727(b) that a chapter 7 discharge removes all liability "whether or not a claim based on any such debt or liability is allowed under section 502." Statutory construction is a "holistic endeavor"[17] wherein a court is not to be "guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."[18] Congruence among the various provisions and bankruptcy policy is the proper goal, with constructions that render part of the statute meaningless to be avoided wherever possible.[19] The court applied a strict textualism to conclude that under § 109(e) all debts must be either secured or unsecured. However, an alternative reading of § 109(e) as referring to "allowed" secured or unsecured claims avoids the practical problems and policy conflicts while according § 727(b) its due. Under this interpretation, the Amboy Bank claim is neither an "allowed" secured claim nor an "allowed" unsecured claim.

Conclusion

Overall, the *Scotto-DiClemente* opinion is a valuable, albeit controversial, addition to the accumulating chapter 20 case law. It exposes a disturbing textual conundrum that upends the practical underpinnings of a chapter 20 strip-off. There is no doubt that it will generate new controversy and complications for courts that choose to follow it. abi

8 *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S.Ct. 2150 (1991).
9 463 B.R. at 312-14.
10 459 B.R. at 570-71.
11 *Cavaliere v. Sapir*, 208 B.R. 784, 787 (D. Conn. 1997).
12 *In re Shenas*, 2011 WL 3236182, 2 (Bankr. N.D. Cal. 2011). Both decisions found the result reached in *Scotto-DiClemente* illogical in light of § 727(b) discussed below.
13 463 B.R. at 312.
14 *In re Vaughn*, 276 B.R. 323, 325-326 (Bankr. D.N.H. 2002) (quoting and citing authorities).
15 *Id.* (citing *FDIC v. Wenberg (In re Wenberg)*, 94 B.R. 631, 634 (9th Cir. B.A.P. 1988)).
16 *Id.*; *see United States v. Verdunn*, 89 F.3d 799, 802 (11th Cir. 1996).
17 *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988).
18 *Kelly v. Robinson*, 479 U.S. 36, 43, 107 S.Ct. 353, 93 L.Ed.2d 216 (1986).
19 *United States v. Nordic Vill. Inc.*, 503 U.S. 30, 36 (1992); *Timbers, supra.*

AMERICAN BANKRUPTCY INSTITUTE

NCBJ / Advertisers' Showcase Issue

AMERICAN BANKRUPTCY INSTITUTE
JOURNAL

October 2011 • The Essential Resource for Today's Busy Insolvency Professional • Vol. XXX, No. 8

How Disposable Is Your Individual Chapter 11 Debtor's Income?

Written by:
David S. Jennis
Jennis & Bowen PL; Tampa, Fla.
djennis@jennisbowen.com

Kathleen L. DiSanto
Jennis & Bowen PL; Tampa, Fla.
kdisanto@jennisbowen.com

About the Authors

David Jennis is a founding partner and managing member, and Kathleen DiSanto is an associate, at Jennis & Bowen PL in Tampa, Fla.

An important change brought about by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was the inclusion of an individual chapter 11 debtor's post-petition earnings as property of the estate under § 1115. While chapter 13 debtors' future earnings have long been treated as estate property, the inclusion of post-petition income in the chapter 11 context raises many new issues not sufficiently addressed by existing case law. The inclusion of post-petition income or earnings as property of the estate has a significant impact at several stages during the life of an individual chapter 11 case, most crucially in connection with confirmation.

Wages as Property of Estate


David S. Jennis

Section 1115(b) now provides that in addition to property specified under § 541, "earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed or converted to a case under chapter 7, 12, or 13" are included in property of the estate. Prior to BAPCPA, an individual debtor's wages, earnings or income would generally be excluded from property of the estate pursuant to § 541(a)(6).

The inclusion of post-petition earnings as property of the estate has thus changed the landscape of individual chapter 11 cases. In an individual chapter 11, issues concerning a debtor's claims of exemption are typically much more critical and contested because of their impact on the ability to successfully confirm a plan. The inclusion of earnings as property of the estate also implicates § 363, which governs the circumstances under which a debtor can use wages to fund business operations, pay secured debt and meet lifestyle needs. Finally, in newly added § 1129(a)(15), Congress added a confirmation requirement for individual chapter 11 debtors. Now, debtors must distribute an amount equal to five years of their projected disposable income under a reorganization plan.

Early commentary and case law examined whether the BAPCPA amendments were constitutional given the possibility of involuntary servitude issues presented by the Thirteenth Amendment.[1] When the U.S. Supreme Court allowed individuals to be debtors under chapter 11, the Court specifically noted that the concern about involuntary servitude was not at issue because there was no provision in chapter 11 requiring a debtor to pay future wages for the benefit of creditors.[2] At least one court has addressed some of the Thirteenth Amendment concerns raised by § 1115 in the context of the debtor's motion to dismiss.[3] In the *Clemente* case, a trustee had been appointed, preventing the debtor from being able to convert the case to chapter 7. The court sidestepped the involuntary servitude issue presented by § 1115, but recognized the differences between chapter 13 cases and individual chapter 11 cases. The court focused on the ability of a chapter 13 debtor to dismiss or convert his or her case, while a chapter 11 debtor may be unable to dismiss or convert in some situations.

§§ 1115 and 522 Interplay


Kathleen L. DiSanto

The inclusion of post-petition earnings as property of the estate will likely spawn litigation regarding exemptions. In addition to the wage exemption provided under federal law, a number of states have statutes exempting some or all of a debtor's "wages" from the reach of creditors.[4] Presumably, at least in "opt-out" states, an individual chapter 11 debtor could declare whatever portion of his or her future earnings exempt under applicable state or federal law, exempt under § 522 of the Code, notwithstanding the inclusion of post-petition earnings in property of the estate by § 1115.[5]

No court has specifically addressed whether property exempt under state law may be claimed exempt in the context of an individual chapter 11 case. However, for the purposes of this article, the authors will assume that the exemptions can be properly claimed,

1 *See* Robert J. Keach, "Dead Man Filing Redux: Is the New Individual Chapter Eleven Unconstitutional?," 13 *Am. Bankr. Inst. L. Rev.* 483 (Winter 2005).
2 *See Toibb v. Radloff*, 501 U.S. 157, 165, 111 S.Ct. 2197, 2202, 115 L.Ed.2d 145 (1991).
3 *In re Clemente*, 409 B.R. 288, 290-91 (Bankr. D. N.J. 2009).
4 *See, e.g.*, 15 U.S.C. § 1673 (2006); Fla. Stat. 222.11 (2011); Kan. Stat. Ann. § 60-2310 (2010); Md. Code Ann., Com. Law § 15-601.1 (2011); Tex. Civ. Prac. & Rem. Code Ann. § 63.004 (2011).
5 Section 1115 provides that future earnings are included as property of the estate, "in addition to the property specified in Section 541," but does not address whether such property could be claimed exempt under § 522.

continued on page 66

How Disposable Is Your Individual Chapter 11 Debtor's Income?

from cover

as § 1115 does not reference § 522(c), and there is no policy reason why an individual chapter 11 debtor would be barred from claiming exemptions like any other individual debtor. Accordingly, exemption disputes could arise as to characterization of earnings as wages, distributions or other form of assets.

Sometimes, it is clear that an individual chapter 11 debtor's biweekly paycheck constitutes wages, but what if the debtor was a partner in a professional organization and a component of his or her compensation for services rendered was contingent upon the performance of the office, as clearly defined in his or her partnership agreement? While factually more complicated than the situation involving a standard biweekly paycheck, so long as the compensation structure is clearly defined, and other than performance, the debtor exercises minimal control over the timing and amount of such compensation, the income should be considered wages.[6]

To the extent that the individual chapter 11 debtor controls his or her income and can manipulate shareholder distributions by more than just performance, such income should not constitute wages. The latter is distinguishable from the former, as a debtor who controls his or her income is often a sole shareholder, while a debtor who exercises minimal control over income is not the sole shareholder and compensation is controlled by multiple individuals at various levels of the business entity.

To further complicate the issue of whether compensation constitutes wages that may be claimed exempt in an individual chapter 11 case, some creative lawyers suggest that a debtor may be compensated for services as a debtor in possession (DIP), and at least one court has even concluded that compensation could be paid for services as a DIP, and such wages would be exempt under applicable state and federal exemptions. However, such compensation of the DIP is contrary to § 1107, which specifically provides that a DIP shall have all rights of a trustee, other than the right to compensation under § 330.[7]

Use of Wages by the Debtor

Assuming that any portion of a debtor's earnings could not be claimed exempt, the next obvious issue would be the debtor's ability to use such estate property during the pendency of the chapter 11 case. Once property is considered property of the estate, it can only be used by a DIP pursuant to some authority in the Code or order of the bankruptcy court. Such authority would typically be found within § 363. Section 363(c) generally authorizes the DIP to use property of the estate other than cash collateral in the ordinary course of business without a hearing. Conversely, under § 363(b)(1), property of the estate can only be used "other than in the ordinary course of business" after notice and a hearing, with approval of the bankruptcy court.

While Congress determined that future income is property of the estate unless otherwise exempt, Congress did not provide guidance as to how property could be used during the pendency of an individual chapter 11 case. What is in the ordinary course of business may be straightforward in a corporate chapter 11 reorganization. However, the law is less clear as to what is in the ordinary course of business of an individual chapter 11 debtor. Do payment of the debtor's living and family expenses and payments on nonbusiness related debts (*i.e.*, home mortgage or college tuition) constitute use of estate property during the ordinary course? Some courts have resolved the issue by entering first-day orders that allow an individual debtor to continue to make ordinary living expenses. Absent the entry of such an order, an individual debtor or debtor's counsel may choose to seek approval of an expense budget similar to procedures in connection with seeking cash collateral, to minimize any issues that may arise at confirmation as to the reasonableness of an expense. This analysis could involve a bankruptcy court's examination of the debtor's "lifestyle" and related expenses.

Without legislative guidance, courts appear to have adopted a case-by-case analysis as to whether an individual chapter 11 debtor's expenditures are reasonable. In *In re Draiman*, the bankruptcy court found that the debtor's casino gambling and purchases at women's clothing stores, when he did not have a spouse or other female dependents, demonstrated a "complete lack of regard for repayment of his creditors" and denied confirmation of the debtor's reorganization plan.[8] On the other hand, another bankruptcy court found that large car and mortgage payments are not necessarily indicative that a plan has not been proposed in good faith, noting that if a plan is otherwise confirmable, a debtor does not necessarily need to reduce lifestyle to demonstrate good faith, even if the lifestyle exceeds the lifestyle of average individuals.[9]

Projected Disposable Income

New § 1129(a)(15) has several ambiguities relating to the calculation of projected disposable income. Section 1129(a)(15) states that "the value of property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined under section 1325(b)(2)) to be received during the [five]-year period beginning on the date that the first payment is due under the Plan, or during the period for which the plan provides for payments, whichever is longer." Section 1325(b)(2) defines "disposable income" as current monthly income less amounts reasonably expended "for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation," which sets forth the method for calculating disposable income of below-median-income debtors. However, § 1325(b)(2) is then referenced in § 1325(b)(3), which incorporates the means test proscribed by § 707(b)(2) for above-median-income debtors.

Some creditors have suggested that § 1129(a)(15)'s reference to § 1325(b)(2) must be read in isolation; it requires projected disposable income to be calculated using the method for below-median-income debtors and is essentially based on the debtor's actual expenditures listed on Schedules I and J. However, courts generally agree that based on the plain language of § 1129(a)(15) and its direct reference to § 1325(b)(2), projected disposable income for individual chapter 11 debtors should be calculated in accordance with § 1325(b)(2) using Form B22C instead of based on income and expenses reported on Schedules I and J.[10] If the means test is applied to an

6 *In re McDermott*, 425 B.R. 848, 851 (Bankr. M.D. Fla. 2010); *In re Zamora*, 187 B.R. 783, 784 (Bankr. S.D. Fla. 1995).

7 *See In re Harloff*, 289 B.R. 770, 773 (Bankr. M.D. Fla. 2002); *but see In re Herberman*, 122 B.R. 273, 281 (Bankr. W.D. Tex. 1990).

8 450 B.R. 777, 806-7 (Bankr. N.D. Ill. 2011).

9 *Oncology Therapeutics Network Corp. v. Norbergs (In re Norbergs)*, Case No. 06-07149, Adv. No. 07-00093, Hearing Transcript, 4:22-25, 5:1-10 (July 18, 2007).

10 *In re Lindsey*, 2011 WL 3444465, at *14 (Bankr. E.D. Tenn. Aug. 5, 2011); *In re Kamell*, 451 B.R. 505 (Bankr. C.D. Cal. 2011); *Oncology Therapeutics Network Corp. v. Norbergs (In re Norbergs)*, Case No. 06-07149, Adv. No. 07-00093, Hearing Transcript, 6:20-25, 7:1-25, 8:1:13 (July 18, 2007).

above-median-income debtor, the debtor is entitled to deduct all secured debt payments to calculate projected disposable income, regardless of whether such expenditures are reasonably necessary, as post-BAPCPA courts no longer have discretion to determine whether such expenses are reasonably necessary and should be included in the calculation of projected disposable income.

A more contentious issue is whether § 1129(a)(15) imposes a temporal requirement on individual chapter 11 debtors, mandating a minimum five-year plan. The plain language of § 1129(a)(15) only set forth a formula for calculating the dollar amount of payments that must be made under the plan. Congress knew how to create temporal limits on plans, and it did so in §§ 1322 and 1325 of the Code. Unlike § 1129(a)(15), § 1322(d)(1) clearly and unambiguously states that "the plan may not provide for payments over a period that is longer than [five] years," and § 1322(d)(2) provides that "the plan may not provide for payments over a period that is longer than [three] years." While the BAPCPA amendments have in some ways attempted to transform individual chapter 11 debtor cases into glorified chapter 13 cases for debtors whose debt exceeds the limits of chapter 13, the temporal requirements as to the duration of chapter 13 plans is one element that was not translated into chapter 11, as no minimum temporal requirement is proscribed by § 1129(a)(15).[11] ■

[11] 7 *Collier on Bankruptcy* ¶ 1129.02.