



AMERICAN
BANKRUPTCY
INSTITUTE

Midwest Regional Bankruptcy Seminar

Consumer Session

Complex Chapter 13 Issues

Pamela N. Maggied, Moderator

Pamela N. Maggied Co., LPA | Columbus, Ohio

Margaret A. Burks

Chapter 13 Trustee (S.D. Ohio) | Cincinnati

Michael A. Cox

Guerrieri, Cox & Associates, LLC | Columbus, Ohio

Hon. Mina Nami Khorrami

U.S. Bankruptcy Court (S.D. Ohio) | Columbus

2024 Midwest Regional Bankruptcy Seminar

August 18-20 | Cincinnati, Ohio

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Monday August 19, 2024 | 2:15 – 3:15 p.m.

Panel -

- *Moderator:* Pamela N. Maggied – Pamela N. Maggied Co., LPA (Columbus)
- Margaret A. Burks – Chapter 13 Standing Trustee for the Southern District of Ohio (Cincinnati)
- Michael A. Cox – Guerrieri, Cox & Associates, LLC (Columbus)
- John M. Hauber – Chapter 13 Standing Trustee for the Southern District Indiana (Indianapolis)
- Athena Inembolidis – Athena Legal, LLC (Columbus)
- The Honorable Mina Nami Khorrami – United States Bankruptcy Court, Southern District of Ohio, (Columbus)



Fact Pattern 1 – Below Median Income Debtors with Assets

- Forty months ago, below-median wage earners, Paul and Linda, filed a chapter 13 to retain an inherited home with \$25,000 equity over and above available exemptions. The only encumbrance on the real estate was a \$5,000 tax lien.
- Schedule J showed \$900.00 monthly net income, but Debtors’ plan proposed \$450.00 monthly for 60 months, which would pay the tax lien and a 100% dividend which is \$15,000 allowed unsecured claims.
- Due to a reduction in income and an increase in expenses, Debtors want to lower their plan payments.

QUESTIONS:

1. In calculating the liquidation test, does the \$25,000 over available exemptions require \$15,000 payout to unsecured creditors? What factors might modify the liquidation calculation?
2. If Debtors’ income is now \$100 per month, can counsel modify the plan to decrease the plan payments to \$100 per month for the remaining 20 months? Does the plan even need to be 60 months?
3. If the home decreases in value post-petition due to a kitchen fire, which will cost \$25,000 to repair, can the liquidation test be modified?
4. If creditors are to be paid the value of assets “as of the effective date of the plan,” should the plan have offered interest to the unsecured creditors?

11 U.S.C. Section 1325(a)(4)

- (a) Except as provided in subsection (b), the court shall confirm a plan if
(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;.....

11 U.S.C. Section 1325(b)(1)

- (1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—
(A) the value of the property to be distributed under the plan ...is not less than the amount of such claim; or
(B) the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

Fact Pattern 2 – Below Median Income Debtors with After-Acquired Assets

- Forty months ago, below-median wage earners, John and Yoko, filed a chapter 13 case to recover and retain a repossessed 2017 Toyota Avalon needed for work.
- The plan proposed to pay \$500.00 per month for 60 months for a total of \$30,000. Debtors' tight budget showed \$500.00 was all the Debtors could pay. The proposed plan will pay the vehicle in full and pay \$1,500 to the unsecured claims of \$15,000.
- John calls his counsel to say that his mother passed away last month, and he may inherit a home, a bank account, and an IRA. Yoko also mentions she JUST discovered that she is part of a class-action mesh implant suit from 15 years ago which may settle soon for an unknown amount. And, that they just sent the trustee a \$10,000 check using a gift from an uncle and the plan is now paid in full.

QUESTIONS:

1. Are the Debtors required to contribute anything beyond the applicable commitment period of 36 months?
2. Does the inheritance change the liquidation test figure? Does it change projected disposable income?
3. What amendments should counsel make to schedules?
4. Can the plan be modified since all plan payments have been completed and Debtors have provided all projected disposable income for at least 36 months? Are they entitled to a discharge?

11 U.S.C. Section 1329(a), (b)(2), and (c)

- (a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim,....
- (b)(1) Sections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title apply to any modification under subsection (a) of this section.
- (b) (2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.
- (c) A plan modified under this section may not provide for payments over a period that expires after the applicable commitment period under section 1325(b)(1)(B) after the time that the first payment under the original confirmed plan was due unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

11 U.S.C. Section 1306(a)(1)

(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first;

11 U.S.C. Section 1327(b)

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

Fact Pattern 3 – Above Median Income Debtor

- George recently filed an individual chapter 13 bankruptcy. His SOFA states that he is married but getting divorced. At the time of filing, Debtor's spouse ("NFS") lives with the Debtor in the home and they are both on the deed.
- George earns \$22.00 per hour / \$45,000 annually, which makes him a below-median income debtor. NFS has an income of \$100,000 annually. Trustee accounts for NFS' income in calculating that the means test requires 100% payment to unsecured creditors. The total unsecured claims are \$25,000.
- Debtor's plan only offers \$500 to be paid to the unsecured creditors and Debtor argues that the disposable income should only be based on his income. Debtor testifies that he pays all household expenses, including the mortgage, and NFS does not contribute to the household expenses at all.

QUESTIONS:

1. If a NFS does not contribute to the household in any manner, does the Code require imputed income for applicable commitment period or means test contribution from NFS?
2. If the Debtor filed a chapter 7, would he beat a UST' motion to dismiss?
3. Does it make a difference whether the divorce has actually been filed?
4. Can the Debtor modify the plan after the case has been confirmed to lower the applicable commitment period?

11 U.S.C. Section 101(10)

- The term “current monthly income”-
 - (A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor’s spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on.....
 - (B)
 - (i) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor’s spouse), on a regular basis for the household expenses of the debtor or the debtor’s dependents

Fact Pattern 4 – Debtor with a Possible Asset

- Ringo filed a low dividend chapter 13 plan. The only potential asset is the Debtor’s 33% membership interest in an LLC named “Ringo Rentals.” LLC owns a dwelling which it rents.
- On Schedule A/B, the Debtor lists the value of his 33% LLC interest as \$0.00 because the dwelling is empty now with no prospect of another tenant as the home is in a bad neighborhood and has been severely vandalized.
- The Debtor however testified that he received \$12,000 rental income from the LLC home last year which should have been split among all three members, but Debtor used it to pay his personal bills. The other two members want the Debtor to pay them \$8,000 of the rental income, which would lower the value of Debtor’s LLC membership interest.
- The Debtor further testified that there is insurance coverage on the home and the insurance company will pay \$100,000 to the LLC for home repair. The Debtor wants \$33,000 of the insurance, but the other two members refuse.

QUESTIONS:

1. What is the liquidation amount that must be paid to unsecured creditors in this case?
2. Can the liquidation amount be lowered due to the claim of the other partners (\$8,000)?
3. If the other members want to use the insurance proceeds to repair the home, can the trustee require the members to turn over \$33,000 to the estate?
4. Do the other LLC members need to seek any relief from stay to proceed with using the insurance funds?

11 U.S.C. Section 1302(c)

(c) If the debtor is engaged in business, then in addition to the duties specified in subsection (b) of this section, the trustee shall perform the duties specified in sections 1106(a)(3) and 1106(a)(4) of this title.

11 U.S.C. Section 1106(a)

(a) A Trustee shall –

(3) except to the extent that the court orders otherwise, investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(4) as soon as practicable –

(A) file a statement of any investigation conducted under paragraph (3) of this subsection, including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate.

Confirmation Order – Southern District of Ohio Excerpt

The Debtor(s) shall keep the Trustee informed as to any claim for or receipt of money or property regarding personal injury, workers compensation, bonuses, buyout, severance package, lottery winning, inheritance, or any other funds to which the Debtor(s) may be entitled or becomes entitled to receive. Before the matter can be settled and any funds distributed, the Debtor(s) shall comply with all requirements for filing applications or motions for settlement with the Court as may be required by the Bankruptcy Code, the Bankruptcy Rules or the Local Bankruptcy Rules. The Debtor(s) shall also keep the Trustee informed as to any claim for or receipt of social security funds.

Materials:

Indianapolis:

Plan
Rights and Responsibilities Statement

Southern District Ohio:

Plan
Confirmation Order
Liquidation form – Cincinnati
Michael Cox – Rights and Responsibilities Client Statement

Cases:

In re Engle, 496 B.R. 456 (Bankr. S.D. Ohio 2013)

In re Halwachs, No. 19-30557 (Bankr. S.D. Ill. April 1, 2024)

Harris vs. The Anthem Companies, No. 1:22cv00002-JMS Doc. 124 (S.D. IN Apr 6, 2023)

Hughes v. Canadian National Railway Co., 23-1410 (8th Cir. June 25, 2024)

In re Scholl 605 B.R. 163 (Bankr. S.D. Ohio 2019)

Faculty

Margaret A. Burks is the chapter 13 trustee for the Southern District of Ohio in Cincinnati, appointed in July 1992. Previously, she clerked for U.S. Bankruptcy Judge J. Vincent Aug, Jr. from 1988-91 and was counsel to PNC Bank in the areas of bankruptcy and commercial law. Ms. Burks chaired the CBA Bankruptcy Committee, is a past president of the National Association of Chapter 13 Trustees and a former co-chair of ABI's Consumer Bankruptcy Committee. She received her B.S. and B.A. *magna cum laude* from the University of Cincinnati in 1977 and is a member of Phi Beta Kappa. She received her J.D. from Salmon P. Chase College of Law in 1985, where she was a member of its law review.

Michael A. Cox is a member-owner of Guerrieri, Cox & Associates, LLC in Columbus, Ohio, which he founded and manages. He helps consumers and small businesses maximize the debt relief available in chapter 7 and chapter 13 bankruptcies, and he assists homeowners with avoiding junior mortgages and judgment liens, and helps stop garnishments, foreclosures, evictions, utility shut-offs, repossessions and driver's license suspensions. Mr. Cox helps clients avoid bankruptcy with loan modifications and assists them with foreclosure defense/mediation. He also has assisted corporations with obtaining judicial dissolution through receivership and focused on helping business owners recover from business setbacks. Previously, Mr. Cox was a member-owner of High Street Holdings, LLC, a real estate holding company that he divested in late 2013. He received his B.A. in chemistry and political science in 1999 from The Ohio State University and his J.D. in 2002 from The Ohio State University Moritz College of Law.

Pamela N. Maggied is a sole practitioner with Pamela N. Maggied Co., L.P.A. in Columbus, Ohio, and her law practice has been devoted to the bankruptcy and insolvency areas since 1980. She has been Board Certified in Consumer Bankruptcy Law since 1993, and has been a member of NACBA since 1992. Ms. Maggied is a Columbus Bar Foundation Fellow and a member of the Columbus Bar Association. She is a Columbus Bar Foundation Fellow and a member of the Columbus Bar Association, for which she has been active in its Bankruptcy Committee since 1981. She also is a member of ABI and has served on the advisory board of the Midwest Regional Bankruptcy Seminar. Ms. Maggied is a member of the Mediation Committee, and a former member of the Attorney Advisory Committee, for the bankruptcy courts in Columbus, Cincinnati and Dayton. She also has been recognized as an *Ohio Super Lawyer* each year since 2007 and was listed among the Top 25 Women Columbus *Super Lawyers* 2010-14 and 2018 to the present. In addition, she was awarded the Columbus Bar Association's Professionalism Award for 2019. Ms. Maggied received her undergraduate degree *summa cum laude* in 1975 from Ohio University and her J.D. in 1979 from The Ohio State University College of Law.

Hon. Mina Nami Khorrami is a U.S. Bankruptcy Judge for the Southern District of Ohio in Columbus and was appointed on Sept. 10, 2021, by the U.S. Court of Appeals for the Sixth Circuit. She began her career in St. Louis, Mo., where she practiced bankruptcy law and litigation as an associate with the firms of Vogler & Associates and then with Compton, Wells & Hamburg. While she practiced in St. Louis, she successfully argued a case before the U.S. Court of Appeals for the Eighth

Circuit. In 1991, Judge Nami Khorrami relocated to Columbus to open her own firm. Her practice focused on more complex chapter 7 and 13 bankruptcies, including arguing before the Bankruptcy Appellate Panel of the U.S. Court of Appeals for the Sixth Circuit. She also handled general civil litigation, foreclosure defense, and issues relevant to small businesses. Prior to her appointment to the bench, she also served as a chapter 7 panel trustee. Judge Nami Khorrami has served on numerous committees of the Columbus Bankruptcy Bar and was a frequent speaker at CLE programs. She has long been committed to bankruptcy *pro bono* service in the Columbus community, and in 2013 she received the Columbus Bar Association and Foundation Award for her involvement in the implementation of the chapter 7 bankruptcy *pro bono* project in Columbus. Judge Nami Khorrami also served as vice-chair of the court's Attorney Advisory Committee and as co-chair of its Consumer/Small Business subcommittee. She is a past co-chair of the Columbus chapter of the International Women's Insolvency & Restructuring Confederation (IWIRC) and a past co-chair of the Bankruptcy Law Institute's (BLI's) Planning Committee. She also served on the board of trustees for the Credit Education Coalition (CEC) and was a member of the Chapter 13 Liaison Committee. Judge Nami Khorrami received her B.S. in business administration from the University of Missouri-St. Louis and her J.D. from Valparaiso University School of Law.