AMERICAN BANKRUPTCY INSTITUTE

2018 Hon. Eugene R. Wedoff Seventh Circuit Consumer Bankruptcy Conference

So, Now What Do We Do? Chapter 13 Hot Topics

CONCURRENT SESSION

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2018

HON. EUGENE R. WEDOFF SEVENTH CIRCUIT CONSUMER BANKRUPTCY CONFERENCE

OCTOBER 8, 2018

HOT TOPICS – CHAPTER 13

I. Dismissals for default in payments to direct-pay creditors – should courts dismiss cases or deny a discharge when direct payments are in default?

In a recent decision, *Simon v. Finley (In re Finley)*, 2018 WL 4172599, at *1 (Bankr. S.D. Ill. Aug. 28, 2018), Judge Laura Grandy followed what she characterized as the majority position finding that, for discharge purposes, "'payments under the plan' refer to any payment made pursuant to a chapter 13 plan, regardless of whether such payment is made by a debtor directly to a creditor or through the trustee." *Id.* at *2. She found that, to obtain a standard discharge under §1328(a), a debtor must make all payments regardless of whether the trustee or the debtor is the disbursing agent. *Id*. In this case, however, she granted the debtors' motion to dismiss the trustee's adversary complaint seeking to revoke their discharge as having been obtained by fraud. Judge Grandy found that the trustee had notice of the default in the debtors' direct payments before the discharge was entered and therefore could not meet his burden for revocation under §1328(e)(2). *Id*. at *3.

Cases relied on by Judge Grandy include: *In re Thornton*, 572 B.R. 738 (Bankr. W.D. Mo. 2017); *In re Gonzales*, 532 B.R. 828 (Bankr. D. Colo. 2015); *In re Heinzle*, 511 B.R. 69 (Bankr. W.D. Tex. 2014); *In re Russell*, 458 B.R. 731 (Bankr. E.D. Va. 2010).

In another recent case, *In re Gibson*, 582 B.R. 15 (Bankr. C.D. Ill. 2018), Judge Thomas Perkins came to the opposite conclusion. Judge Perkins found that a default in payments on a "nonmodifiable, nondischargeable residential mortgage loan, provided for under section 1322(b)(5)" was not a basis to dismiss the case and deny the debtors a discharge when the debtors had otherwise completed all plan payments to the trustee over a five-year period. *Id*. at 24. He found that the trustee had no duty to police direct payments and was responsible only for the payments required to be made by the trustee. *Id.* at 21-22. Judge Perkins also expressed concern that the issue was raised after the five-year term of the plan had completed, making modification "no longer an option." *Id*. at 23.

II. Is plan modification an option to avoid dismissal or denial of discharge after default on a direct-pay obligation?

The Code Does Not Permit a Debtor to Modify an Allowed Secured Claim, Darron M. Burke, ABI Journal, August 2018, p. 17.

A Fresh Start with Flexibility: Consumers Can Modify the Treatment of a Secured Claim in a Confirmed Plan to Surrender Collateral under §1329, Michelle H. Bass, ABI Journal, August 2018, p. 16.

III. How are disputes about direct-pay defaults raised and resolved?

Rule 3002.1 applies to obligations secured by a debtor's principal residence and, as explained below, provides a mechanism to both identify and resolve disputes about whether a debtor is current on payments when a case is concluding. No similar provision exists for direct-pay obligations secured by collateral other than a debtor's principal place of residence. As a practical matter, disputes over obligations secured by other property will most likely be raised and resolved through motions for relief from stay.

With respect to obligations secured by a debtor's principal residence, a Chapter 13 trustee must file a notice of final cure pursuant to Rule 3002.1(f), which provides:

> Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the holder of its obligation to file and serve a response under subdivision (g). If the debtor contends that final cure payment has been made and all plan payments have been completed, and the trustee does not timely file and serve the notice required by this subdivision, the debtor may file and serve the notice.

Fed. R. Bankr. P. 3002.1(f).

A creditor holding a claim secured by a debtor's principal residence must respond to the notice of final cure pursuant to Rule 3002.1(g), which provides:

> Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with §1322(b)(5) of the Code. The statement shall itemize the required cure or postpetition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

Fed. R. Bankr. P. 3002.1(g).

If either the trustee or the debtor disputes the information provided in the creditor's response, a hearing may be requested pursuant to Rule 3002.1(h), which provides:

> On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

Fed. R. Bankr. P. 3002.1(h).

Note that both the trustee's notice of final cure and the request for hearing made by the trustee or debtor are filed on the main case docket, but the creditor's response is filed as a supplement to its original claim on the claims docket. This procedure limits the ability of a filer to link the documents through ECF and

may cause some procedural confusion. Regardless of the contents of a creditor's response, no hearing is generally set without a request from the trustee or debtor although practices do vary among districts.

IV. Must a plan provide for equal monthly payments to secured creditors?

Section 1325(a)(5)(B)(iii)(I) provides that in order to obtain confirmation, plan payments made to secured creditors must be in "equal monthly amounts." 11 U.S.C. §1325(a)(5)(B)(iii)(I). Several recent decisions have held that the requirement is absolute, and plans which do not provide for such treatment for secured claims cannot be confirmed. *See In re Miceli*, 587 B.R. 492 (Bankr. N.D. Ill. 2018) (Lynch, J.); *In re Williams*, 583 B.R. 453 (Bankr. N.D. Ill. 2018) (Hunt, J.). In *Miceli*, Judge Lynch notes that the statute requires only that the payments to creditors be equal from the time they start until the time they cease, and the payments are not required to be made throughout the entire plan term. *Miceli*, 587 B.R. at 496-97.

Both *Miceli* and *Williams* disagreed with the holding of *In re Erwin*, 376 B.R. 897 (Bankr. C.D. Ill. 2007) (Perkins, J.). In *Erwin*, Judge Perkins held that debtors are required to make equal monthly payments to the trustee but that the trustee has some latitude in making disbursements. He found that "[t]he equal payment provision is a broad-stroke proscription against abusive payment terms, not a tool to micromanage Chapter 13 trustees." *Erwin*, 376 B.R. at 903.

These cases raise interesting questions about the practical management of Chapter 13 plans. How can a Chapter 13 trustee comply with plan terms, standing orders, or local rules that front-load payments of attorney fees and still comply with the equal payment provision? Are balloon payments never permitted? Are debtors' attorneys thinking through these cash flow issues as they construct plans? Is it wise for secured creditors to always insist on equal payments?

V. Are secured creditors required to file a proof of claim? What happens when they don't?

Effective December 1, 2017, Rule 3002(a) was amended to add secured creditors to the list of entities that must file a proof of claim in order for their claim to be allowed. Fed. R. Bankr. P. 3002(a). Rule 3002(c) was amended to reduce the time for filing claims for most creditors to 70 days after the order for relief. Fed. R. Bankr. P. 3002(c).

Prior to the rule change, however, the Seventh Circuit had held that, notwithstanding the fact that secured creditors were not specifically mentioned in Rule 3002, "the better interpretation is that all creditors—unsecured and secured alike—are bound by the Rule 3002(c) deadline." *In re Pajian*, 785 F.3d 1161, 1164 (7th Cir. 2015). This decision followed an earlier pronouncement by the Seventh Circuit, in the context of Chapter 12, that, absent the timely filing of a proof of claim, a creditor is statutorily barred from having an allowed claim. *In re Greenig*, 152 F.3d 631, 633 (7th Cir. 1998).

Notwithstanding the holding of *Pajian*, prior to the rule change, bankruptcy courts split on whether secured creditors were required to file claims in order to be paid through a confirmed Chapter 13 plan. Two courts held that, where a confirmed plan expressly provided for payment of a secured obligation and neither the debtor nor the creditor objected to the payments being made, the trustee should make the proposed payments to the creditor even in the absence of a timely filed claim. *See In re Hrubec*, 544 B.R. 397, 401 (Bankr. N.D. Ill. 2016) (Cassling, J.); *In re Kitzerow*, 2017 WL 499886, at *4 (Bankr. W.D. Wis. Feb.

7, 2017) (Furay, J.). Two other courts held that secured creditors were required to file timely proofs of claim in order to receive distributions under a confirmed plan. *See In re Heft*, 564 B.R. 389, 400 (Bankr. C.D. Ill. 2017) (Gorman, J.); *In re Burns*, 566 B.R. 918, 923 (Bankr. N.D. Ind. 2017) (Grant, J.).

Given the rule change, it would seem unwise for any secured creditor to risk not filing a timely proof of claim if the creditor wants to share in plan distributions. A recent unpublished decision from the Northern District of Indiana, albeit involving a pre-rule-change claim, highlights the issues. In *In re Matthew Robert Benner and Amber Lynn Benner*, Case No. 15- 31477, Judge Harry Dees found that, when a secured creditor filed its claim one day after the claims bar date, the claim should not have been paid by the trustee even though no one objected to the claim. The trustee brought the case to Judge Dees' attention with a motion to show cause alleging a failure by the secured creditor to properly apply plan payments to a mortgage arrearage and the maintenance of regular post-petition payments. But Judge Dees instead found that, because the creditor's claim was late filed, no disbursements should have been made on the claim. Rule 3021 provides that "after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed." Fed. R. Bankr. P. 3021. Relying on that rule and *Pajian*, *Greenig,* and *Burns*, Judge Dees denied the trustee's motion and found that she should never have made any distributions to the creditor.

VI. Can a provision of a form plan be stricken and replaced with non-standard language?

In a recent case, a Texas bankruptcy court denied confirmation of a plan when the debtor had stricken the local form plan's provision regarding the turnover of tax refunds and inserted non-standard language providing for different treatment for the refund. *In re Vega-Lara*, 2018 WL 2422427, at *1 (Bankr. W.D. Tex. May 4, 2018). The District's form plan required the turnover of all tax refunds in excess of $2000 and allowed debtors to file motions to be excused from the turnover only if their plans provided for 100% payment of general unsecured claims. *Id.* at *4. The debtors struck the form plan provision and inserted in the section of the form plan for non-standard provisions that they were amortizing their annual tax refunds and had included the expected refunds in their Schedule I income. In response to the trustee's objection, the debtors argued that reporting the refund as income was a permissible way to address the issue and relied on *Marshall v. Blake*, 885 F.3d 1065 (7th Cir. 2018). In denying confirmation, the court acknowledged that, prior to adoption of its current plan, the method for accounting for tax refunds suggested by the debtors was permissible in the District and did not explain why it was no longer permissible other than it was not what was provided for in the current plan. *Vega-Lara*, 2018 WL 2422427, at *8.

Compiled by:

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United States Bankruptcy Court
Central District of Illinois
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In the Matter of: MATTHEW ROBERT BENNER AMBER LYNN BENNER *Debtors*	Case No. 15-31477 HCD Chapter 13

MEMORANDUM OF DECISION and ORDER

At South Bend, Indiana, on July 18, 2018.

Pending before the court is a Motion for Determination and Show Cause Seterus As Servicer for Fannie Mae for Failing to Comply with Confirmed Plan filed by standing chapter 13 trustee Debra L. Miller (Miller). This motion relates to the confirmed chapter 13 plan of debtors Matthew and Amber Benner (the Benners) and proof of claim number 6 electronically filed by Federal National Mortgage Association (Fannie Mae) c/o Seterus, Inc. (Seterus). The court held a contested evidentiary hearing on Miller's motion during which the court received documentary evidence and heard testimony from lay and expert witnesses. For the reasons discussed below the court denies Miller's motion.

Miller's motion asks the court to decide the current balance of the Benners' post petition escrow account. She also asks that Seterus show cause for having failed to comply with the requirements of the confirmed chapter 13 plan calling for the cure of

pre-petition arrearages and the maintenance of post-petition mortgage and escrow payments.[1] Seterus, of course, disagrees with Miller's assessment of its compliance with the confirmed chapter 13 plan.

The question presented by Miller's motion arises from a factual scenario frequently seen by bankruptcy courts. The Benners fell behind on their mortgage payments for their residence. They filed under chapter 13 and proposed a cure-and-maintain plan[2] with respect to the mortgage serviced by Seterus. The court takes judicial

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[1]Seterus did not object to confirmation. A confirmed chapter 13 plan binds all creditors. See § 1327(a); *Bullard v. Blue Hills Bank*, 135 S.Ct. 1686, 1692 (2015) ("When the bankruptcy court confirms a plan, its terms become binding on the debtor and creditor alike."). Section 1325(b)(5) permits a plan to cure defaults and maintain payments. Section 524(i) requires a creditor to credit plan payments in the manner specified in the plan. With respect to a security interest claimed in the debtor's principal residence, Bankruptcy Rule 3001(c)(2)(C) states, in relevant part, "If an escrow account has been established in connection with the claim, an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim." Applicable nonbankruptcy law is the Real Estate Settlement Procedure Act of 1974 (RESPA), 12 U.S.C. § 2601 *et seq.* and Regulation X, 12 C.F.R. § 1024.1 *et seq.* issued by the Bureau of Consumer Financial Protection to implement RESPA.

[2]A cure-and-maintain plan is designed to let the debtor repay, or cure, mortgage payment arrearages, during the life of the plan while also allowing for the maintenance of ongoing, or current, regular mortgage and escrow payments. In this district the standing chapter 13 trustee disburses these payments under the confirmed plan.

notice of its records in this case that show the Benners' Schedule D lists Seterus as a secured mortgage creditor.[3]

Before addressing the merits of Miller's motion, even in the absence of a challenge by one of the parties the court must be sure it has proper jurisdiction to grant the requested relief. *See, e.g., Hawxhurst v. Pettibone Corp.*, 40 F.3d 175, 179 (7th Cir. 1994) ("Subject matter jurisdiction cannot be waived and may be challenged by any party or raised *sua sponte* by the court at any point in the proceedings."). Given the Bankruptcy Rule 3002(c) 90-day claim filing time limit,[4] the Benners' § 341 meeting notice set October 13, 2015 as the deadline for filing a proof of claim. The record here shows that Seterus electronically filed secured proof of claim number 6, on October 14, 2015. Nothing in the record here suggests that Seterus failed to receive proper notice of the

[3]The court notes that the Benners' mortgage claim has been transferred or assigned several times during the course of this bankruptcy. Seterus, the servicer for the Benners' mortgage at the time they filed bankruptcy, was the servicer at the times of the distributions at issue in this contested matter.

[4]Well after the Benners filed this case, Bankruptcy Rule 3002(c) was amended, effective December 1, 2017, to reduce the claim filing period from 90 days to 70 days after the order for relief.

Benners' chapter 13 case.[5] The § 341 meeting notice clearly stated the last date for filing claims. Seterus filed its proof of claim one day after the deadline.

Where no party in interest objects to a claim, § 502(a) states that the claim is deemed allowed. Because neither Miller nor the Benners have objected, the Seterus claim could be deemed allowed pursuant to § 502(a)—if it was a timely proof of claim. Testimony at the hearing noted that Seterus filed its proof of claim one day beyond the claim filing deadline.[6] The court's review of its records confirms the Seterus claim was late per Bankruptcy Rule 3002(c).[7] The record here does not show any party requesting an extension of the time to file a claim, nor the court's approving such an extension. While the rules permit the debtor or trustee to file a proof of claim for a creditor who does not timely file a claim under Bankruptcy Rule 3002(c), neither Miller nor the

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[5]The Bankruptcy Noticing Center certificate of notice reflects that the BNC sent Seterus a copy of the § 341 meeting notice by first class mail on June 11, 2015. "The rule is well settled that proof that a letter properly directed was placed in a post office creates a presumption that it reached its destination in usual time and was actually received by the person to whom it was addressed." *Hagner v. United States*, 285 U.S. 427, 430 (1932). Seterus' subsequent participation in this case convinces the court that it had actual knowledge of this bankruptcy.

[6]See hearing transcript, ECF no. 48, testimony of Miller's witness Cindy Graber at page 12, lines 5-12, and testimony of Seterus's witness Jon Greenlee at page 75, lines 21-22.

[7]The court notes that Bankruptcy Rule 9006(f) does not apply to extend the deadline for filing proofs of claim. See, e.g., *In re Klimesh*, 1999 WL 33582101, *2 (Bankr. C.D. Ill. July 29, 1999) ("It is well-settled that Rule 9006(f) does not apply to the deadline for filing proofs of claims.").

Benners have done so here.[8] While both Miller and Seterus have glossed over the timeliness of the Seterus claim in their trial arguments and briefs, this court cannot.

Bankruptcy Rule 3021 states, "after a plan is confirmed, distribution shall be made to creditors whose claims have been allowed." The sine quo non for distribution payment under a confirmed plan is an allowed claim. A provision for payment to a secured creditor in a confirmed plan does not obviate the requirement for that secured creditor to have an allowed claim. *In re Pajian*, 785 F.3d 1161, 1165 (7th Cir. 2015). Even under a confirmed plan, without a timely allowed proof of claim distribution to a creditor is improper. *See, e.g., Matter of Greenig*, 152 F.3d 631, 633 (7th Cir. 1998) ("[I]n the event a proof of claim is not filed in a timely fashion, and if no exceptions apply, a hearing is not required *because the claim is statutorily barred.*" Emphasis in original.); *Matter of Burns*, 566 B.R. 918, 923 (Bankr. N.D. Ind. 2017) ("Without an allowed claim, the [creditor] is not entitled to a distribution under debtor's confirmed plan.").

The language of the statute, the rules of procedure, and the directives of the Seventh Circuit provide mandatory guidance to this court. Time matters in bankruptcy. Apart from the stated exceptions in Bankruptcy Rule 3002(c) (none are relevant here), pursuant to § 502(b)(9) this court does not have the equitable power to allow a late-filed

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[8]Where a creditor does not file a timely proof of claim, Bankruptcy Rule 3004 allows a debtor or trustee 30 days after the expiration of the Bankruptcy Rule 3002(c) claim filing period to file a claim for the creditor.

proof of claim. *Greenig*, 152 F.3d at 635.[9] "If the secured creditor wants to receive payments under the confirmed plan, it must file the proof of claim in a timely manner." *In re Bateman*, 331 F.3d 821, 827 (11th Cir. 2003); see also *Matter of Baldridge*, 232 B.R. 394, 395 (Bankr. N.D. Ind. 1999). Irrespective of whether a creditor is secured or unsecured, and regardless of the chapter of the Bankruptcy Code, all creditors are bound by the claim filing deadline. "We think the better interpretation is that all creditors—unsecured and secured alike—are bound by the Rule 3002(c) deadline." *Pajian*, 785 F.3d at 1164; *Burns*, 566 B.R. at 921.

Because none of the exceptions stated in Bankruptcy Rule 3002(c) apply here, the Seterus claim is late and cannot be allowed.[10] Section 502(b)(9), Bankruptcy Rule 3002(c), and established precedent are clear on this point. The fact that neither the Benners nor Miller voiced an objection concerning the timeliness of the Seterus claim cannot make

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[9] See also *In re Baker*, 839 F.3d 1189, 1194 (9th Cir. 2016) ("A plain reading of the applicable statutes and rules places a burden on each Chapter 13 creditor to file a timely proof of claim. A claim will not be allowed if this burden is not satisfied."); *In re Gardenhire*, 209 F.3d 1145, 1148-51 (9th Cir. 2000) (Section 502(b)(9) bars untimely proofs of claim where none of the Bankruptcy Rule 3002(c) exceptions apply. The court cannot use its equitable power to circumvent the law.).

[10]The court recognizes "the rule disallowing late filed claims in Chapter 13 cases is a harsh one. In this case, the proof of claim was received only one day after the bar date. However, the deadlines set out in Rule 3002 and 11 U.S.C. § 502(b)(9) are bright line rules, which this Court has no discretion to extend." *In re Laprade*, 2007 WL 2301101, *3 (Bankr. M.D. Ala. Aug. 9, 2007); *Barker*, 839 F.3d at 1195 ("In a Chapter 13 case, a creditor must file a timely proof of claim in order to participate in the distribution of the debtor's assets, even if the debt was listed in the debtor's bankruptcy schedules.").

this untimely proof of claim timely.[11] An untimely claim cannot be allowed. This leads to the inescapable conclusion that notwithstanding a provision in the confirmed chapter 13 plan calling for payments to Seterus, such distributions should not have been made.[12] Miller's motion is DENIED.

SO ORDERED.

/s/ HARRY C. DEES, JR.
HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT

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[11]See *Burns*, 566 B.R. at 921. The exceptions to the claims bar date in Bankruptcy Rule 3002(c) "do not include some type of agreement between the debtor and creditor or the provisions of a proposed plan."

[12]Section 502(b)(9) disallows late claims under any chapter. *See, e.g., In re Daniels*, 466 B.R. 214, 217 (Bankr S.D. N.Y. 2011) ("[T]he courts have almost uniformly ruled that proofs of claim that are untimely filed in a Chapter 13 case may not be deemed timely filed, and that the claimants thereunder should not take from, or be permitted to recover from, the debtor's estate under the Chapter 13 plan."); *In re Hyde*, 413 B.R. 719, 721 (Bankr. D. Idaho 2009) ("Creditor's proof of claim must be disallowed for purposes of sharing in distributions under Debtor's chapter 12 plan because it was not timely filed.").

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

In the Matter of: MATTHEW ROBERT BENNER AMBER LYNN BENNER *Debtors*	Case No. 15-31477 HCD Chapter 13

ORDER

At South Bend, Indiana, on September 4, 2018.

Now before the court are two motions asking this court to reconsider its order of July 18, 2018. These motions were filed by the chapter 13 trustee in this bankruptcy, Debra L. Miller, [ECF no. 80] and creditor Seterus, Inc. [ECF no. 82]. After reviewing the submissions the court GRANTS the motions and hereby vacates the order of July 18, 2018.

SO ORDERED.

Harry C. Dees, Jr.
United States Bankruptcy Judge

Western District Local Plan Trustee's Tips (8/16/2018):

Section I Notices:
A claim must be filed timely to receive payment through the Ch 13. However, **the plan now controls** treatment of **secured, non-government** claims in cases filed after 12/1/17. Consider filing a claim as allowed under Rule 3004 to make your plan work if a creditor does not timely file a claim.

Failure to check the appropriate box(es) in this Section will make the later corresponding part of the plan unenforceable (for example, any non-standard provisions in Section VIII will be ignored unless the box is checked in the notices section).

Section II Payments and Attorney

(A)Payment Details: The plan states an employer wage order will be issued unless otherwise specified. Use the Non-Standard Provisions at Section VIII if there are special considerations (split between employers, issued to one employer vs. the other, etc.). If you are requesting a waiver of the employer payment requirement, a separate request must be submitted in writing to the Trustee's office.

Correctly indicate the total amount estimated to be paid through the Plan.

(B) Attorney Fees: Fill in the total fee to be paid, pursuant to Form 2106, but leave the rest blank if attorney is to be paid first. If there is a set monthly payment entered, ensure there are enough funds to pay it. *If the fee is to be paid in conjunction with adequate protection and/or equal monthly payments to secured creditors add language here and/or in the appropriate creditor section.* Example language might be: *Attorney's fees shall be paid with all available funds on hand at confirmation and each month thereafter with all available funds, after fixed monthly payments on secured claims, until paid in full.*

Section III Secured Claims

(A) Secured Claims: List secured debt (such as principal home mortgage obligation) that is not receiving additional special treatment,

a. You will need to add: interest rate, adequate protection amount, set monthly payment, pro rata, etc. to the "Other" line. (____% interest rate, $____adequate protection, paid pro rata)
b. Include the amounts of arrears/balance owed at the time of filing ($1,000 / $125,000)
c. If entering direct mortgage here select 'Maintain' or otherwise indicate debtor making ongoing payments directly.
d. If adequate protection or payment concurrent with attorney fees is desired, note it in IIB and add language similar to the following: *Adequate protection payments of $xx.xx/month until plan confirmed. Upon confirmation paid fixed monthly payments of $yy.yy per month.*

(B) Valuation: The section does not include pre-printed language regarding the retention of liens. Attorneys may wish to consider a non-standard provision providing retention when using this section.

If challenging the value this section requires: a separate motion be served pursuant to BR 7004 & Local Rule 3015-1 (alternatively, a stipulation and order might work), the "910 days or more" or the "1 year or more" box should be checked, the "Value of Collateral" should show the challenged value to be paid, the "Amount of Creditor's Lien" would be pre-petition amount due the creditor.

If not challenging the value: the "Amount of Creditor's Lien" must be given, the amount shown in "Value" will be ignored for payment purposes, the appropriate "less than 910 or one year" box must be checked.

(C) Lien Avoidance: List (non-purchase money security) liens secured by personal property that you plan to avoid to preserve an exemption. Similar to the above valuation section, a separate motion pursuant to BR 7004 and LR 3015-1 should be served.

(D) Surrender of Collateral: list any secured debts if the collateral is to be surrendered.

(E) Direct Payments Secured Claims: list any payments the Debtor(s) will be paying direct: home mortgages, student loans- if current at time of filing, etc.

Section IV Administrative and Priority

(A) Administrative Fees: Should be used for additional admin claimant (accountant). You do not need to include Trustee fee since it is addressed in Section 1(A). The filing fee can be entered, but please don't enter how it is to be paid – the Court has their own rules for how the fee is paid through the plan.

(B): Priority Claims: Should list creditors separately if more than one. Section 1325(a)(5) doesn't require equal monthly payments to be paid to unsecured priority creditors so no need to include. Instead can type 'pro-rata' on the monthly payment line. Likewise, no interest is appropriate for unsecured priority obligations.

(C): Domestic Support Obligations: if it is current, click Current paid outside the plan box, if not fill in the child support payment terms. You might consider including the payee name and address only on Schedule E so as not to broadcast this information to all creditors.

(D): Other: List any other debts you listed on Sched E (fines, non-dischargeable debt, etc.)

Section V: Unsecured Nonpriority Creditors: If paying 100%, click the box (B), if not, don't do anything. Type "pro-rata" or leave as $0/mo unless a certain dollar amount is required to be distributed.

(C): Separately Classified: List unsecured non-priority creditors that would get special treatment (ex. to protect a co-debtor, student loans to receive set monthly payment, etc.).

Section VI: Executory Contracts: Look at Sched G & list any/all of them, otherwise select NONE.

Section VII: Income Tax Returns: Regardless of how checked, Trustee may request annual tax returns; see Section 521(f).

Section VIII: Non-Standard Provisions: Should be used **very rarely**, however, if special circumstances make the above categories unfit for use, check the box (as well as the box on page 1) and provide the details.

Section VIII: Mortgage Modification Mediation: Click only if debtor intends to participate in program. Note this is part of the Non-Standard Provisions section so the box on page 1 must be checked as well.

MISCELLANEOUS

Request to Amend Unconfirmed Plan and Request to Modify Confirmed Plan documents must be filed along with Amended/Modified Plans. The purpose of these forms is to alert the Court, creditors and the Trustee to changes being made to the actual plan document. The Request and the Amended/Modified Plan should be consistent. "See attached amended/modified plan" does not fulfill the notice requirement and is not acceptable.

See the Trustee's website: ch13wdw.org "News" page for a summary of rule changes that took place 12-1-2017.

With shortened bar date there might be an advantage to delaying amended plans until after claims are known.

Notice of Postpetition Mortgage Fees, Expenses & Charges (Form 410S2) filed after 2-1-18 will no longer be treated as a filed claim and no payment will be made by this office unless specifically provided for in the plan. A special provision within your plan worded similar to the following would allow payment: *If any post-petition claims are filed under Rule 3002.1(c) during the term of this plan, the trustee will disburse funds on the claim. Debtor(s) will modify the plan if necessary to maintain plan feasibility.*

A stipulation might be used to address plan drafting corrections when the stipulated terms do not affect other creditors' payments. If other creditor payments are altered, an order or amended/modified plan would be needed.

If a secured claim is filed for less than the amount set in the plan, the lower claim amount will be paid. With that exception, other terms set for that creditor in the plan will be followed.

Consumer Counterpoint

By Darron M. Burke

The Code Does Not Permit a Debtor to Modify an Allowed Secured Claim

There are a multitude of life events that a debtor can experience during the duration of a chapter 13 bankruptcy proceeding. Marriage, a new job, relocation or an unexpected change in circumstances are just a few of the scenarios that chapter 13 practitioners have likely encountered throughout the course of their practices. However, perhaps none of these events lead to as much confusion for a diligent practitioner as when a debtor desires to surrender property back to a creditor when the debtor's confirmed plan provides for payment of the secured claim through the plan.

However, this confusion is no fault of the practitioner, as both bankruptcy and appellate courts have also struggled with this issue. The courts have come to starkly contrasting conclusions as to whether a debtor has any right to surrender property to a secured creditor after proposing to pay on the same through a confirmed plan.[1] This split of authority and resulting confusion is largely "created by an absence of clear statutory guidance."[2]

As one bankruptcy court's decision on this issue has noted, "Unfortunately, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") does not address this issue, which cries out for legislative remediation and clarification." Despite the seeming lack of consensus on this issue, a reading of the applicable provisions of the Bankruptcy Code necessitates a determination that debtors cannot alter the treatment of an allowed secured claim by surrendering collateral after a plan has been confirmed.

The Effect of Confirmation of a Debtor's Chapter 13 Plan

The issue as to whether a debtor can surrender collateral to a secured creditor in full satisfaction of its allowed secured claim only arises after the debtor's chapter 13 plan has been confirmed.[3] Once a chapter 13 plan has been confirmed, it "binds the debtor and all creditors — whether provided for in the plan or not — to its terms."[4] However, modifications to a confirmed plan are permitted under 11 U.S.C. § 1329, so it is the "governing authority" with regard to the present issue.[5]

The Debtor Has Only a Limited Ability to Modify a Confirmed Chapter 13 Plan Under § 1329

Of relevance to the issue at hand, 11 U.S.C. § 1329(a)(1)-(3) reads as follows:

> (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, to —
>
> (1) Increase or reduce the amount of payments on claims of a particular class provided for by the plan;
>
> (2) Extend or reduce the time for such payments; [or]
>
> (3) Alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.[6]

As noted in *In re Ramos*,[7] "These specific provisions do not mention surrender (of secured collateral) as a possibility (to modify a confirmed plan)."[8] Therefore, courts have found that pursuant to a plain reading of the language of the Bankruptcy Code, modifications to a debtor's confirmed plan are only permissible in the "limited circumstances" that are expressly set forth in § 1329(a).[9] These "limited circumstances" give a debtor a right to "request an alteration of the amount or timing of specific payments," but not to "alter, reduce, or reclassify a previously allowed claim."[10]

In the present scenario, by proposing to surrender collateral of a secured creditor after a plan has been confirmed in satisfaction of the secured claim,

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1 *See generally In re Adkins*, 425 F.3d 296 (6th Cir. 2006); *In re Ramos*, 540 B.R. 580 (Bankr. N.D. Tex. 2015); *In re Arguin*, 345 B.R. 876 (Bankr. N.D. Ill. 2006); *In re Coleman*, 231 B.R. 397 (Bankr. S.D. Ga. 1999); *In re Kurtz*, 502 B.R. 238 (Bankr. D. Colo. 2013) (finding that debtors could not modify confirmed plan to reclassify allowed claim of secured creditor); *but see Bank One NA v. Leuellen*, 322 B.R. 648 (S.D. Ind. 2005); *In re Scarver*, 555 B.R. 822 (Bankr. M.D. Ala. 2016) (finding that debtors could modify confirmed plan to reclassify allowed claim of secured creditor).

2 *In re Arguin*, 345 B.R. 876, 879 (Bankr. N.D. Ill. 2006).

3 *In re Ramos*, 540 B.R. 580, 583 (Bankr. N.D. Tex. 2015) ("While ... any debtor has the option of surrendering collateral to a secured lender on account of its secured claim at the time of confirming his or her *original* plan ... there is ... a significant split of authority on whether a debtor may *modify* a chapter 13 plan, post-confirmation and before completion of payments under the plan, to surrender collateral to a secured creditor.").

4 *In re Hibble*, 371 B.R. 730, 732 (Bankr. E.D. Pa. 2007) (citing 11 U.S.C. § 1327(a)).

5 *In re Ramos*, 540 B.R. 580, 584 (Bankr. N.D. Tex. 2015).

6 11 U.S.C. § 1329(a)(1), (2) and (3).

7 540 B.R. 580 (Bankr. N.D. Tex. 2015).

8 *Id.* at 584.

9 *In re Arguin*, 345 B.R. 876, 879 (citing *In re Witkowski*, 16 F.3d 739, 745 (7th Cir. 1994)).

10 *Id.* at 880 (citing *In re Nolan*, 232 F.3d 528, 532 (6th Cir. 2000)).

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a debtor is seeking to not only change the amount or timing of payments to a creditor (as permitted under § 1329), but to unilaterally alter the rights of a secured creditor's allowed claim by presumably reclassifying the claim as unsecured and reducing the dollar amount to be paid to said creditor after surrender of the collateral (which is not expressly authorized by § 1329). Given the undisputed negative impact that such an interpretation has on secured creditors, one can reasonably assume that had Congress intended § 1329 to have this effect, it would have made it abundantly clear. As a reading of § 1329 makes clear, such language is not present and was not contemplated.

Judicial attention to the express language (or absence thereof) in § 1329 as to the rights of a debtor to modify a secured creditor's claim cannot be overstated when it comes to analyzing this issue. Simply put, the author agrees with the line of decisions that posit that it is dangerous to "ignore the fact that the word 'surrender' does not appear in § 1329 of the Bankruptcy Code."[11] As noted in *Ramos*:

> We are to presume that Congress means to use the words that it uses. Congress knew when to use the word "surrender": when it wanted to. Congress used the word "surrender" in the set of options for treatment of secured claims in connection with confirmation under section 1325(a)(5).... "Confirmation" is one thing. It refers to confirmation of the original plan. "Modification" — which is sometimes proposed years subsequent to confirmation — is quite another. It refers to the specific types of changes listed in § 1329(a) of the Bankruptcy Code.[12]

The position that § 1329 does not permit a debtor to reclassify a previously allowed secured claim is also supported by respected bankruptcy treatises.[13] For example, with regard to this exact issue, the *In re Coleman*[14] court noted that *Norton Bankruptcy Law and Practice* provides as follows:

> [A] straightforward interpretation of the rule in Code § 1327(a) that the "provisions of a confirmed plan bind the debtor and each creditor…" is that it is binding on debtor and creditor, subject to a fair and justifiable modification of the amount or time of payments on the creditor's claim as the language of Code § 1329(a) provides — not a change in part of the claim from secured to unsecured with a resultant change in the total amount to be paid. The latter attributes to Congress an unlikely intention to give the debtors the option to shift to holders of allowed secured claims any loss in the value of collateral.[15]

In addition, allowing a debtor to reclassify a secured claim to an unsecured one, after confirmation of the debtor's plan, "effectively reads (adequate protection provisions) out of the Code," as "[o]nce allowed, a secured claim is fixed in amount and must be paid in full," and the claim "cannot be altered."[16] As noted in *Coleman*, "altering the amount or timing of payments on a secured claim cannot change the fact that, in the end, the full amount of the secured claim established, as of the effective date of the plan, must be paid."[17]

> **[B]ased on a plain reading of the Bankruptcy Code, had Congress intended to permit a broad application of plan modification under § 1329, it could have inserted language to do so. It did not....**

Therefore, giving such an expansive reading to 11 U.S.C. § 1329 appears not only to read terms into the Bankruptcy Code that are not present, but would subject secured creditors to "the unilateral whims of a debtor throughout the life of a plan."[18] Therefore, it is easy to see why courts are concerned with this concept, and this reasoning relates back to the fact that Congress did not insert any language permitting the surrender of collateral into § 1329. Had Congress intended that secured creditors' rights could be modified at the unilateral request of the debtor, it is reasonable to think that such language surely would have made its way into § 1329. It did not, thus giving such a broad reading to § 1329 is problematic.

Broad Interpretations of § 1329 Run Afoul of Other Code Sections

The cases that take the position that a debtor has the right to surrender collateral to a secured creditor in satisfaction of its unpaid secured claim, despite a confirmed plan providing otherwise, generally rely on 11 U.S.C. § 1322(b)(8) as the authority contemplating surrender of collateral as a form of payment.[19] Emphasis is made on § 1329(b)(1), which provides that § 1322(b) applies to modifications of confirmed plans, and on § 1322(b)(8), which provides that the plan "may 'provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor.'"[20] Thus, the argument follows that § 1322(b)(8) therefore "contemplates surrender of collateral as a form of payment,"[21] and

11 *In re Ramos*, 540 B.R. 580, 593 (Bankr. N.D. Tex. 2015); *see also generally In re Hibble*, 371 B.R. 730 (Bankr. E.D. Pa. 2007); *In re Kurtz*, 502 B.R. 238 (Bankr. D. Colo. 2013); *In re Arguin*, 345 B.R. 876 (Bankr. N.D. Ill. 2006); *In re Adkins*, 425 F.3d 296 (6th Cir. 2005); *Chrysler Fin. Corp. v. Nolan (In re Nolan)*, 232 F.3d 528 (6th Cir. 2000).
12 *In re Ramos*, 540 B.R. 580, 593-594 (Bankr. N.D. Tex. 2015).
13 *In re Coleman*, 231 B.R. 397, 399 (Bankr. S.D. Ga. 1999) (citing *In re Dunlap*, 215 B.R. 867, 870 (Bankr. E.D. Ark. 1997); *In re Banks*, 161 B.R. 375, 378 (Bankr. S.D. Miss. 1993); *Matter of Abercrombie*, 39 B.R. 178, 179 (Bankr. N.D. Ga. 1984)).
14 231 B.R. 397, 399 (Bankr. S.D. Ga. 1999).
15 *Id.* (citing *Norton Bankruptcy Law and Practice* 2d, § 124:3 n.79, pp. 124-27 (1993)).
16 *In re Coleman*, 231 B.R. 397, 399 (Bankr. S.D. Ga. 1999) (citing *In re Dunlap*, 215 B.R. 867, 870 (Bankr. E.D. Ark. 1999)).
17 *Id.* at 399-400.
18 *Id.* at 400.
19 *In re Scarver*, 555 B.R. 822, 832 (Bankr. M.D. Ala. 2016) (citing *Bank One NA v. Leuellen*, 322 B.R. 648, 652 (S.D. Ind. 2005)).
20 *Bank One NA v. Leuellen*, 322 B.R. 648, 652 (S.D. Ind. 2005).
21 *Id.*

that said section "applies without qualification" to plan modifications under § 1329(b)(1)."[22]

This view also posits that 11 U.S.C. § 1325(a)(5), which governs when the court shall confirm a plan with regard to secured claims, is incorporated into § 1329(a) due to the language present in § 1329(b). Therefore, in order for a plan to be modified under § 1329, it must also meet at least one of the subprovisions contained in § 1325(a)(5) governing confirmation of a chapter 13 plan, one of which states that a plan can be confirmed if, with respect to an allowed secured claim, "the debtor surrenders the property securing such claim to such holder."[23] Thus, these cases take the position that through Congress's "explicit incorporation" of §§ 1322(b) and 1325(a) into § 1329(a), "Chapter 13 debtors retain the option to seek court permission to modify a confirmed plan by surrendering collateral to pay a secured claim."[24]

However, this analysis overlooks the express provisions of 11 U.S.C. § 1327, entitled "Effect of Confirmation." In relevant part, § 1327 provides that both a debtor and creditor are bound by the provisions of a confirmed plan.[25] As astutely noted in *In re Kurtz*,[26] the line of cases that propose a broad interpretation of § 1329 "render[s] § 1327 meaningless." Pursuant to *Kurtz*, "If a debtor can modify the claims of his secured creditors whenever the value of the creditor's collateral depreciates, then that debtor has not been bound by his confirmed plan."[27]

In addition, not only does a broad interpretation of § 1329 appear to run afoul of § 1327, it also overlooks and runs contrary to other key provisions of § 1325 that govern plan confirmation. Specifically, § 1325(a) "ties the value of property to be distributed on account of the allowed secured claim to the *effective date of the plan*."[28] As noted by *Kurtz*, this means that a debtor simply cannot "recalculate the amount of the 'allowed secured claim' based upon the depreciated value of the collateral after surrender and sale of the collateral, and discharge the new deficiency amount."[29]

22 *Id.*
23 *Id.* (citing 11 U.S.C. § 1329(a)(5)(C)).
24 *Id.* at 653 (citing *In re Jock*, 95 B.R. 75, 77 (Bankr. M.D. Tenn. 1989); *In re Rimmer*, 143 B.R. 871, 876 (Bankr. W.D. Tenn. 1992)); *see also In re Scarver*, 555 B.R. 822, 833-34 (Bankr. M.D. Ala. 2016).
25 11 U.S.C. § 1327(a).
26 502 B.R. 238 (Bankr. D. Colo. 2013).
27 *Id.* at 244.
28 *Id.* (citing 11 U.S.C. § 1325(a)).
29 *Id.*

Debtors Are Collaterally Estopped from Revaluing a Creditor's Secured Claim After Confirmation

Even if property is surrendered to a creditor after confirmation, a debtor is unable to modify the amount of the allowed secured claim post-confirmation. Since a confirmed plan fixes a secured claim's value, "that issue cannot be revisited or revised" after confirmation.[30]

Some proponents of a broad reading of § 1329 also advocate for the position that 11 U.S.C. § 502(j) (which provides, *inter alia*, that a claim that "has been allowed or disallowed may be reconsidered for cause"[31]) provides a basis for a court to revisit the issue of secured claim valuation and payout.[32] However, this position appears to conflict with the express language of § 502(j) (as only the "allowance" or "disallowance" of claims are contemplated by this provision, not a "recalculation"[33]), and necessarily conflicts with § 1329(b), as § 502(j) is not one of the Bankruptcy Code sections that Congress chose to incorporate into § 1329. As succinctly stated by the court in *In re Arguin*,[34] "Nothing in ... § 502(j) ... allows a confirmed plan to be modified; only § 1329(a) allows plan modification."[35]

Conclusion

The issue of whether the allowed claim of a secured creditor may be modified post-confirmation by a debtor seeking to surrender the collateral is one that has sharply divided courts for a number of years. Both sides of the issue reference specific sections in support of their position. However, based on a plain reading of the Bankruptcy Code, had Congress intended to permit a broad application of plan modification under § 1329, it could have inserted language to do so. It did not, so a debtor must therefore not be allowed to modify the allowed claim of a secured creditor post-confirmation. abi

30 *In re Arguin*, 345 B.R. 876, 881 (Bankr. N.D. Ill. 2006).
31 11 U.S.C. § 502(j).
32 *In re Scarver*, 555 B.R. 822, 835-36 (Bankr. M.D. Ala. 2016).
33 *In re Adkins*, 425 F.3d 296, 304 (6th Cir. 2005).
34 345 B.R. 876, 881 (Bankr. N.D. Ill. 2006).
35 *Id.*

Consumer Point

By Michelle H. Bass

A Fresh Start with Flexibility

Consumers Can Modify the Treatment of a Secured Claim in a Confirmed Plan to Surrender Collateral Under § 1329

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Five years is a long time. For many consumer bankruptcy debtors, committing to a five-year reorganization plan is a challenge. "What if I move, get married or lose my job?," are frequent questions clients may ask prior to executing a petition, schedule, statement and plan. The decision to retain a secured vehicle or home, while at the same time committing to making up to 60 months of plan payments, can be daunting.

Congress acknowledged this difficulty that honest-but-unfortunate debtors face as they attempt to plan for the next five years of their life on a fixed budget. Section 1329 of the Bankruptcy Code serves as the all-important "peace-of-mind" factor, providing the ground rules for a debtor, trustee or holder of an allowed unsecured claim to seek modification of a plan after confirmation.

Although this section does not spell out a specific formula for changing the treatment of a secured claim to an unsecured claim by surrendering collateral, the language of § 1329 has been interpreted to permit this very act. A thorough analysis of this Code section demonstrates that the value of a secured creditor's claim is more than adequately provided for based on other statutory requirements at the time of confirmation. The flexibility accorded to § 1329 by courts across the nation has no doubt contributed to the success of many plans that would have otherwise ended in dismissal. It follows that the equitable principle of allowing consumer debtors to have a "post-confirmation change of heart" is rightfully upheld by a majority of bankruptcy courts, giving debtors the freedom to alter the treatment and classification of secured claims at any time prior to the completion of their plan payments.

In the chapter 13 context, the most commonly filed post-confirmation modification involves the surrender of a car or house and the resulting treatment of that creditor's claim. The authority of § 1329(a) establishes the threshold requirement for applications to modify a confirmed plan. Any proposed modified plan must (1) increase or reduce the amount of payments on claims of a particular class provided for by the plan; (2) extend or reduce the time for such payments; or (3) alter the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim, other than under the plan. Critics argue that this language does little to alleviate the debtor from making full payments on a secured obligation. How, then, does this language actually translate to the surrender of collateral and the reclassification of a claim mid-plan?

The majority of courts that have dealt with this issue have looked beyond the plain meaning of the statute. At first blush, this language appears to be silent as to a modification that wholly changes the qualification of a creditor. On its face, § 1329 only provides for modifications that increase or reduce the amount of payments on a claim, or enlarge or reduce the time for making payments to a particular class of claims. However, the phrase "particular claims," as used in § 1329(a)(1), is synonymous with the phrase "allowed secured claims" by virtue of secured creditors being a class of claims unto themselves.[1] Thus, where each secured claim is considered to be its own "unique" class in a chapter 13 plan, the proposed increase or reduction in payments on that claim will constitute a permissible modification.

Practically speaking, § 1329(a)(1) might be read to allow for a proposed reduction in payments on a secured car loan. For example, a plan modification under § 1329(a)(1) might propose for the secured creditor to go from receiving full equal monthly installments to receiving no payments whatsoever. Under § 1329(a)(1), any modification to alter payments made to a creditor in a particular class is a valid modification of the treatment of that class. Changing the classification of a secured auto lender to an unsecured creditor might therefore be accomplished, notwithstanding the additional requirements under § 1329(b) and (c).

Likewise, § 1329(a)(3) provides that distributions to a creditor treated under a plan might be modified to account for payments made *outside* the plan. Courts that allow for debtors to change the treatment of a secured creditor have ruled that the act of "surrendering collateral" constitutes a form of payment other than under the plan.[2] Section 1329(a)(3) provides a mechanism to alter a secured claim and its treatment in light of any non-plan payment made on the claim (*i.e.*, the surrender

1 *In re Fayson*, 573 B.R. 531, 535.
2 *Id.* at 535.

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of collateral in full satisfaction of the claim[3] in lieu of continued equal monthly installment payments). However, what about the so-called "binding effect" of the order confirming a plan? How is it possible, critics in the minority might ask, that this omnipotent contract between the debtor and his/her creditors can so easily be undone?

The answer is simple: A post-confirmation modification will amend the order confirming a plan as long as the modification itself conforms with the standards set forth under title 11 *as of the time of confirmation*. These significant requirements can be found in the remaining two subsections of § 1329, which encompass the prerequisites for confirmation. Subsection (c) prohibits a proposed modification from either extending the plan terms beyond 60 months or altering the debtor's original plan-commitment period. Under the loftier subsection, § 1329(b)(1), any proposed plan modification must comport with the requirements of §§ 1322(a) and (b), 1323(c) and 1325(a).

While secured creditors tend to argue that under this provision debtors do not possess a universal right to make changes to the classification of their claims, it must be noted that secured creditors themselves are *never* permitted to seek modification of a debtor's plan. All secured creditors must be treated in accordance with the provisions of §§ 1322 and 1325 as of the time of confirmation. In other words, by the time that an allowed party-in-interest seeks modification of the plan, the debtor has already elected one of three treatments with respect to his/her secured creditors: He/she may (1) retain the collateral under § 1325(a)(5)(B), (2) surrender the collateral under § 1325(a)(5)(C), or (3) propose a modification of the secured claim so long as it falls within the confines of § 1325(a). Therefore, it makes sense that one of the three basic requirements for a plan to be modified necessitates that the modification comply with the standards for confirmation.

Under this analysis, any plan modification that is proposed in good faith pursuant to § 1325(a)(3), as incorporated by § 1329(b)(1), will automatically satisfy the statutory requirements for an allowed modification. Likewise, if a debtor has the option of retaining or surrendering secured collateral to satisfy a claim at the outset of his/her case, logic follows that this option must be available during the course of the confirmed plan. After all, § 1329 is regarded by most courts as being a nonprohibitive Bankruptcy Code section; it does not prevent the debtor or an allowed party from taking any action. Instead, it is generally recognized as permitting certain types of modifications.[4]

Understanding this analysis is important for debtors because of the great possibility of a change in their circumstances following confirmation. A negative unforeseeable change in circumstances will likely affect the debtor's ability to make payments on secured collateral and ultimately receive a chapter 13 discharge. The filing of a plan modification to surrender a vehicle might be the factor that allows a debtor to remain in chapter 13. While courts have disagreed on what constitutes the level of "change" necessary to substantiate a viable reclassification modification in order to surrender collateral, only the minority view continues to uphold what the Sixth Circuit characterized in *Chrysler Financial Corp. v. Nolan (In re Nolan)*[5] as "injustice" flowing to the secured creditor due to the proposed modification sought by a debtor.[6]

Nolan is one of the two pivotal minority opinions on this issue (both Sixth Circuit cases were issued prior to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)). The *Nolan* court refused to allow a chapter 13 debtor to modify her plan to surrender a crammed down vehicle with a bifurcated claim, which would have reclassified the deficiency balance as wholly unsecured. In doing so, the Sixth Circuit ruled that Congress did not intend "to allow debtors to reap a windfall by employing a subterfuge that unfairly shifts away depreciation, deficiency, and risk voluntarily assumed by the debtor."[7] Indeed, the debtor in *Nolan* stated in her pleadings that the vehicle in question no longer provided dependable transportation, and in connection with the intended reclassification of the unsecured portion of Chrysler's claim, sought permission to incur credit in order to finance another vehicle. Notwithstanding the fact that the practice of bifurcating an auto loan into separate secured and unsecured claims was eliminated after BAPCPA, the Sixth Circuit's ruling in this case is still upheld as the minority view.

This position offers a drastically different interpretation of the statute, finding that the debtor's proposed modification stood at odds with the plain language of § 1329(a). The *Nolan* court found that the terms "claim" and "payment" have two separate meanings, which (in the minority view) operate to prevent a debtor from reclassifying a secured claim. The court articulated that § 1329(a) "clearly indicates that modifications after plan confirmation cannot alter a claim but can extend or compress payments and reduce or increase the amount of the delivery of value planned as an eventual satisfaction for the creditor's claim."[8]

Despite this ruling by the Sixth Circuit, a majority of bankruptcy courts have correctly found that the surrender of a vehicle in this situation satisfies what the court described as "delivery of value planned as eventual satisfaction." The current breadth of cases in the majority have criticized the Sixth Circuit's skewed interpretation of § 1329, finding that debtors possess the right to modify an original decision to retain a vehicle under § 1325(a)(5)(B) to that of surrendering the vehicle under § 1325(a)(5)(C). This typically described post-confirmation change of heart does not even violate the Sixth Circuit's ruling in *Nolan*, which could be summed up as that circuit's prohibition against re-bifurcation of a secured credi-

3 *See In re Evans*, 349 B.R. 498, 501 (when debtor surrenders collateral pursuant to § 1325(a)(5)(C), creditor is not entitled to deficiency claim; rather, surrender of vehicle fully satisfies debt).
4 *In re Scarver*, 555 B.R. 822, 834.
5 232 F.3d 528 (6th Cir. 2000).
6 *Id.* at 533.
7 *Id.* at 534.
8 *Id.* at 535.

tor's claim.[9] Interestingly enough, the *Nolan* decision does not prohibit the surrender of collateral by a debtor in order to satisfy a creditor's claim; it merely refuses to permit reclassification of the secured portion of a creditor's claim.

The *Nolan* decision was called into question by another pre-BAPCPA opinion on this very issue, in what is regarded as one of the leading cases in the majority view.[10] In *In re Zieder*,[11] the debtors sought a modification to surrender a vehicle destroyed in an accident. The vehicle loan was crammed down in the confirmed plan, with bifurcated secured and unsecured claims being owed to Ford Motor Credit. Following a loss of the collateral, the debtors moved to treat the remaining secured portion as a wholly unsecured claim. The *Zieder* court approved of the modification pursuant to § 1329, turning on an application of §§ 506(a) and 502(j). The court found that "if the secured creditor incurs a loss due to normal depreciation upon subsequent surrender of its collateral, that loss occurs not because a burden has been shifted to the creditor, but because the creditor failed to carry its burden of objecting to confirmation of a plan that did not cover normal depreciation of its collateral."[12] *Zieder* provides a drastic, yet completely rational, response to *Nolan*'s misapplication of § 1329(a).

The *Zieder* decision helped cement the use of § 1329 to allow for modifications that reclassify a secured claim regardless of depreciation of the collateral. It follows from the *Zieder* analysis that pursuant to the undisputed language of § 506(a), the value of Ford's claim was effectively $0 due to a total loss of the collateral. Whereas the estate now possessed no value in the former collateral securing its claim, the claim was found to be wholly unsecured by operation of § 502(j), and the modification to reclassify this portion of the claim was approved.

Since the time that *Zieder* was opined in 2001, most courts have yielded similar opinions upholding this consequential finding. The Sixth Circuit's minority view prohibiting this kind of modification continues to stand out as paradoxical in terms of its reading of § 1329. Moreover, the minority view fails to acknowledge the interplay of other Bankruptcy Code sections, which enables the reclassification of a secured claim, payment on a claim by surrender of collateral and a universal protection for all creditors to the case by mandate of the requirements upon confirmation. By declining to provide debtors with an equitable dry erase board to modify their plan, consumers in the minority circuits are often forced to exit chapter 13 unceremoniously. Thus, the minority view contributes to the struggling rates of chapter 13 discharge in circuits wherein this narrow stance has been upheld.

It is undeniable that the current majority has it right: Secured creditors are not defenseless victims in the chapter 13 process, who deserve the heavy-handed protection afforded by the Sixth Circuit's outdated opinion in *Nolan*. Secured creditors who attempt to challenge a debtor's modification in this light should be forewarned: Absent a serious lack of good faith on the part of the movant, § 1329 operates to allow any permissible modification of a secured claim. These creditors can — and should — file objections to confirmation in order to ensure that they protect themselves from any depreciation of their collateral.[13] Secured creditors can also take solace in knowing that the good-faith requirement pursuant to § 1325(a)(3) as incorporated by § 1329(b)(1) will serve as a gatekeeper to protect any reclassification modification that attempts to violate this pre-confirmation standard. A chapter 13 debtor's right to surrender collateral and reclassify any resulting deficiency balance from a secured claim to an unsecured claim, if done in good faith, must be preserved.

Not only has this been the prevailing view of bankruptcy courts for more than 10 years,[14] but it is logical and acceptable from the perspective of both a debtor and secured creditor. Where the debtor can no longer afford to maintain payments on a vehicle, the vehicle is returned to the lender — and the claim is satisfied by the value of the asset being reclaimed. Car lenders can agree that following BAPCPA, their position as secured creditors was strengthened[15] with the elimination of the cramdown option on "910 claims." This change has ensured that creditors receive a greater deal of value for their claims, if collateral with arguably less depreciation is eventually surrendered.

Courts are encouraged to uphold the majority's broad view of § 1329, as its application provides both protection to secured creditors and flexibility to consumer debtors. To deprive a debtor of this right would be inequitable, render many plans unfeasible and ultimately prevent a great number of debtors from receiving a chapter 13 discharge. Furthermore, circumstances often change for chapter 13 debtors, causing their best intentions with regard to secured collateral and the treatment of the underlying debt to become impracticable or even impossible.

Under § 1329, debtors could seek to modify the terms of their plan when life deals them a bad hand in the form of a car accident, loss of income or other changes affecting their ability to make payments. Courts should continue to provide debtors with this vital flexibility, which often becomes a necessary vehicle (no pun intended) for making changes to their reorganization plans. abi

9 David Gray Carlson, "Cars and Homes in Chapter 13 After the 2005 Amendments to the Bankruptcy Code," 14 *ABI Law Review* (Winter 2006), 301, 380, *available at* abi.org/member-resources/law-review.
10 *In re Scarver*, 555 B.R. 822, 833.
11 263 B.R. 114.
12 *In re Townley*, 256 B.R. 697, 700 (Bankr. D.N.J. 2000); *In re Jock*, 95 B.R. 75, 78 (Bankr. M.D. Tenn. 1989).
13 *In re Scarver*, 555 B.R. 822, 832.
14 *Id.* at 828.
15 Carlson, *supra* n.9 at 304.

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REASONS THAT THE MODEL PLAN DID NOT WORK IN SOUTHERN DISTRICT OF INDIANA

-John M. Hauber,
Chapter 13 Standing Trustee Indianapolis, IN

Prior to the enactment of FRBP 3015.1, the standing Chapter 13 trustee met with members of the Creditors' and the Debtors' bar to determine any modifications we would have to make to our own local form plan; review, consider, and critique the Model Plan; and then submit our recommendations to our Bankruptcy Judges for a final decision. It was first determined in relatively short order that our own local form plan was already close to meeting the requirements under the new Rules. For example, we had to create the initial paragraph check box, we had to change the wording of our final paragraph from "Miscellaneous Provisions" to "Nonstandard Provisions," and we had to modify the certification signature line. Once it was determined that our current plan could still be used in an almost identical format, there was likely a general predisposition to continuing down our current path. As we went through the wording of the Model Plan, respective members of the bar were critical of or confused about the application of several provisions and how we would be required to modify our Local Rules or general practice. As individuals discussed various obstacles, I took notes, which have been summarized into the Top 10 list below. Many of this provisions are over-critical, and could be implemented in our District, but they were listed simply as talking points. Ultimately, it was decided that the most pragmatic approach would be to continue to operate as we have, make modifications to our local form plan to comply with Rule 3015.1, and create less confusion for small and local creditors who may be unfamiliar with our Local Rules.

1. PART 1: To Creditors: If you oppose the plan's treatment of your claim or any provision of the plan, you or your attorney must file an objection to confirmation at least 7 days before the date set for the hearing on confirmation, unless otherwise ordered by the Bankruptcy Court.

   That language is contradictory to our Local Rules and practices within the District. We do not hold specific confirmation hearings unless an objection to confirmation is filed with the court. Upon filing of a petition and plan the court clerk sends notice to all parties which reads: "NOTICE IS GIVEN that any objection to the Chapter 13 Plan must be filed with the Court at least 3 days prior to the 341 meeting date or by [DATE ENTERED 30 DAYS AFTER PLAN IS FILED], 2018, whichever is later. Objections must comply with S.D.Ind. B−9013−1(d) and must be served on the attorney for the debtor and the chapter 13 trustee.

2. PART 1: To Creditors: In addition, you **may** need to file a timely proof of claim in order to be paid under any plan. [Emphasis Added]

   In the Southern District of Indiana, Indianapolis Division, trustees do not pay on a claim if a proof of claim has not been filed. I am not fond of the word "may" and believe that the word would be confusing to unsophisticated creditors. There would have been no harm in substituting the word "must."

3. PART 2: PLAN PAYMENTS AND LENGTH OF PLAN
   PART 2.1: Debtor(s) will make regular payments to the trustee as follows:
   $_____ per _____ for _____ months
   If fewer than 60 months of payments are specified, additional monthly payments will be made to the extent necessary to make the payments to creditors specified in the plan.

   This provision was more of a trustee administrative objection than that of debtors or creditors. Our local form plan states: "Debtor shall pay $_____ monthly to the Trustee starting not later than 30 days after the order for relief, for _____ months, for a total amount of $_____."

   I could see the difficulty with for my staff under the Model Plan with a provision which stated something like "$102.00 per week for 46 months," or "$1,103.00 per bi-weekly period for 53 months." What is the total plan base for either of those examples? We would have to literally count the number of weeks over the months of the plan life to try and figure out a plan base, and that plan base might still differ from the base the debtors intended. In Section 2.5 the Model Plan concludes, "The total amount of **estimated** payments to the trustee provided for in §§ 2.1 and 2.4 is $_____."
   As a trustee administering the case, I prefer a specific number as opposed to any suggestion that the plan base is an estimate.

   Additionally, my office wants to know at the time of confirmation, a minimum amount available for general unsecured creditors (which may increase with tax refunds). Section 2.5 states, "additional monthly payments will be made to the extent necessary to make payments to creditors specified in the plan." This provision appears to be a vague Section 1329 modification which provides no notice to unsecured creditors. I could envision attorneys in my division filing intentionally underfunded plans and placing the onus on the trustee to extend the plan by an unknown amount and not subject to any confirmation order to pay *only* secured and priority claims with no dividend to unsecured creditors, and then ceasing the plan payments before any money is disbursed on those claims. In my division, I would like transparency for all creditors and this provision simply struck me as a means to keep unsecured creditors out of the process.

4. PART 2: PLAN PAYMENTS AN PLAN LENGTH
   PART 2.3 Income tax refunds
   Check One: Debtor(s) will retain any income tax refunds received during the plan term;
   Debtor(s) will supply the trustee with a copy of each income tax return filed during the plan term within 14 days of filing the return and will turn over to the trustee all income tax refunds received during the plan term;
   Debtor(s) will treat income tax refunds as follows:

   With an eight page plan which requires notice to all creditors, postage costs become high. I try to remain cognizant of those costs and limit notice expenses. Without a Local Rule requiring turnover of tax refunds, I suspect that virtually all debtors' attorneys would check the box "Debtor(s) will retain any income tax refunds received during the plan." We have a general practice that the refunds are not offered unless the trustee or creditor makes such a request. I would not want to be in a position to delay confirmation and create additional costs with the only modification being an amended plan which checks a different tax refund status box. In our Division, the trustee reviews tax returns prior to the meeting of creditors, and then runs an estimated plan calculation to determine whether and to what extent the plan offers a sufficient dividend to unsecured creditors. We then look at the budget to try and determine whether any portion of the tax refund is disposable or whether taking a tax refund would likely create a feasibility issue. We ask debtors and attorney to sign an Agreed Modification at the meeting of creditors. Our local practice is that debtor's only turnover one-half of *Federal* tax refunds and that the refunds be paid by April 30 of each year (and we specifically list the tax years to be provided). Allowing a debtor to wait to turn over returns until "14 days of the filing of a return" would allow debtors the opportunity to extend filing until October thus delaying review of income and receipt of refunds. My staff would have no way of knowing when to expect tax returns from any individual in any given year, and there would remain ambiguity regarding whether a delayed refund was received "during the plan term." We normally have tax returns and refund issues wrapped up by June in any given year.

5. PART 3: TREATMENT OF SECURED CLAIMS
   3.1 Maintenance of payments and cure of default, if any.

   In the SDIN local form plan (and previous form plans) we have a separate paragraph specifically designated for mortgage claims securing the primary residence (as required by FRBP 3015.1(d)(1)). The Model Plan appears to contradict the rule requirements for local forms allowing the maintenance and cure of any secured claim. While, we could make this paragraph work, I am not particularly fond of the debtor dictating a monthly payment on arrears. We do not pay a strict monthly payment on the arrears. In my office, we pay the ongoing monthly mortgage payment, adequate protection on secured claims, and a pro rata remainder on attorney fees before payment toward any arrears. As the residence is generally not depreciating and the creditor is receiving adequate

protection, we do not start even paying arrears until interest bearing claims are paid in full. Then the mortgage creditor generally receives a much larger percentage of the monthly plan payments. And while the ongoing monthly mortgage payments are uniform, repayment of the arrears component varies based upon the availability of funds. Requiring the debtor to pay on going mortgage payments, adequate protection and equal monthly payments on vehicles, and then requiring a uniform arrears payment, may contradict the debtor's ability to dictate payments under 11 U.S.C. §1326. The debtors' bar specifically had concerns that if a wage assignment did not start for thirty days and the mortgage payments had to start immediately; it might be years before any attorney fees would be paid.

Additionally, the Model Plan states "In the absence of a contrary timely filed proof of claim, the amounts stated below are controlling." In the Indianapolis Division, we have not yet fought the battle regarding whether a debtor is allowed to modify the rights of a mortgage securing a primary residence if a claim is late filed and differs from the listed arrears. From an administrative point, it appears that the trustee MUST pay pursuant to plan's estimated figures on every late filed claim even if the arrears are lower (or higher) than actual claim and even if the debtor would prefer that we pay the actual amount of a late filed mortgage claim. In our district both the debtors (and creditors) stated a preference that we pay pursuant to the claim.

In our meetings, there was a also question raised regarding whether there might be a *United Student Aid Funds, Inc. v. Espinosa* [559 U.S. 260 (2010)] issue when the standard language of the plan [modifying the rights of a mortgage creditor by paying pursuant to plan estimates] potentially contradicts the 11 U.S.C. § 1322(b)(2) anti-modification clause.

6. PART 3: TREATMENT OF SECURED CLAIMS

3.2 Request for valuation of security, payment of fully secured claims, and modification of undersecured claims. The debtors request that the court determine the value of the secured claim listed below.

In the Indianapolis Division, courts do not automatically set valuation hearings without a creditor objection to confirmation of the plan. If there has been proper notice, it will be presumed that the creditor has agreed to value without the necessity of a hearing to determine value.

Section 3.2 appears to be a cram section; that is, modifying the secured debt to the value of the collateral which secures the lien. However, the section states, "For secured claims of governmental units, unless otherwise ordered by the court, the value of a secured claim listed in a proof of claim filed in accordance with the Bankruptcy Rules controls over any contrary amount listed below." If secured claims cannot ever be lowered to the value of the collateral (which does not seem correct) should it be moved to the pay if full Section 3.3?

Additionally, Section 3.2 states that "The portion of any allowed claim that exceeds the amount of the secured claim will be treated as an unsecured claim under Part 5 of this plan." To the extent that certain secured tax claims could be lowered, there is a probability that some of those tax claims would be classified as priority claims payable under Part 4.4. This possibility was not an option under the Model Plan. Is the trustee always required to pay disallowed secured tax claims as non-priority even though the debtor wants to pay a priority claim and the creditor has not agreed to other treatment?

7. PART 3: TREATMENT OF SECURED CLAIMS
   3.3 Secured claims excluded from 11 U.S.C. § 506
   The claims listed below were either: (1) Incurred within 910 days before the petition was filed and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

   This Section appears to be the "pay in full" section whereby either the debtor or the trustee pays the claim in full. However, the section appears to limit the ability to pay a secured claim in full to either vehicles purchased within 910 days or other secured items purchased within 1 year. Conversely, it appears that debtors may not otherwise pay claims in full that fall outside these criteria (for example, pay in full because there is equity in the collateral, or pay in full because the debtor has sufficient income which mandates a repayment of all claims). There are clearly situations other than those listed in in Section 3.3 whereby a debtor requests that the claim be paid in full, but this provision appears on its face to disallow such treatment.

   Additionally, this provision allows either the debtor or the trustee to pay the claim. If the debtor is making the payments, then in the Indianapolis Division that would be considered "maintaining" the payment. It would then appear that the maintenance of the payment would be better listed in Part 3.1. If the debtor is going to maintain the payment in Part 3.1, then the pay in full provision should be limited to payments made by the trustee. Our Debtor's bar had questions regarding whether maintaining a vehicle could be placed in either Part 3.1 or 3.3.

8. PART 3: TREATMENT OF SECURED CLAIMS
   3.4 Lien Avoidances: The judicial liens or nonpossessory, nonpurchase money security interests securing the claims listed below impair exemptions to which the debtor(s) would have been entitled under 11 U.S.C. § 522(b). Unless otherwise ordered by the court, a judicial lien or security interest securing a claim listed below will be avoided to the extent that it impairs such exemptions upon entry of the order confirming the plan.

The Model Plan allows lien avoidance through the confirmation of the plan. This provision contradicts the SDIN Local Rule B-4003.2 which states, "Any Debtor seeking to avoid a lien pursuant to 11 U.S.C. § 522(f) shall file a separate written motion as to each alleged lien holder. The motion may be combined with the notice required by subparagraph (d) and the certificate of service that complies with S.D.Ind. B-9013-2. … The motion shall identify: (1) the value of the subject collateral; (2) the amount, listed separately, of all mortgages and other liens on the property which the Debtor will not seek to avoid, and a list of the liens on the property which the Debtor will seek to avoid; (3) the amount of the exemption to which the Debtor would be entitled but for the lien; (4) the lien to be avoided and its approximate amount; and (5) if lien avoidance is sought as to real property, the common address and legal description of that property. Our Debtors' bar preferred the separate motion and order specifically containing a legal description of any real estate so that it could be filed with the County Recorder's office. There was a general agreement that filing a generic confirmation would not suffice to put parties on notice.

Additionally, our Local Rules require that the trustee provide notice of the filing of a plan to all creditors listed on the creditor matrix. Our notice is substantially different from the service requirements when avoiding a lien. In many instances, the debtors' schedules only list a local branch of an insured depository institution (or a Post Office Box). My notice of a Chapter 13 plan is not sent via certified mail, and I do not make sure that I am serving an officer of the institution. I would certainly have concerns regarding sufficient service on corporations and federally insured banks. I do not want that liability of improper service. Instead, in my Division, I ask that the court refrain from confirmation until separate orders are issued regarding avoidance of liens.

9. PART 4: TREATMENT OF FEES AND PRIORITY CLAIMS
   Part 4.1: Trustee fees and all allowed priority claims, other than those treated in § 4.5, will be paid in full without postpetition interest.
   Part 4.5: Domestic support obligations assigned or owed to a governmental unit and paid less than full amount.

   Our local plan always contained a separate paragraph for domestic support obligations. It requires the name of the domestic support recipient, the amount of any arrears, and the proposed treatment of the DSO (whether it will be paid through the trustee or continued through a state court ordered wage withholding order). It was not surprising that amended Rule 3015.1(d) required a proposed local form to include a separate paragraph for "paying a domestic-support obligation." What is surprising, then, is that the Model Plan does not comply with Rule 3015.1(d) by creating a separate paragraph specifically for DSO. The difficulty regarding administration is that often-times, the debtor has several DSO orders, the debtor is paying some through a wage order, and the debtor may have fallen behind on others. The Model Plan appears to contradict our local practice by requiring that all DSO obligations be paid through the plan (thus ceasing state court ordered wage withholding). Even ignoring the problem that Section

362 does not create a stay regarding the collection of DSO's, I am hesitant to require stopping a DSO wage withholding order and holding that money until confirmation. If the case should convert to a Chapter 7, I am required under *Harris v. Viegelahn* [575 U.S. ___ (2015)] to return post-petition wages, including the child support arrears, to the debtor (thus harming a custodial parent).

Additionally, Section 4.5 has a separate section for payment of domestic support obligations which are both: 1. Assigned or owed to a governmental unit; and 2) paying less than a full claim. In the thousands of plans that I have reviewed, I have yet to witness a debtor attempt this treatment. It is just not a practice in our local Debtors' bar. It seems curious why the Model Plan provides a specific section and itemization for reduced government domestic support obligations, but not for custodial parents themselves.

10. PART 4: TREATMENT OF FEES AND PRIORITY CLAIMS
    Section 4.4 Priority claims other than attorney's fees and those treated in § 4.5.
    The debtor(s) estimate the total amount of other priority claims to be _____.

In the SDIN local form, there is a specific paragraph specifically reserved for secured and priority tax claims which usually include both the Internal Revenue Service and the Indiana Department of Revenue. The debtor generally does not know whether and to what extent the taxes are secured (IRS secured claim is based on an assessed date while the IDOR is based on the tax warrant date). Additionally, the IDOR claim may also include trust fund taxes such as retail sales tax, withholding tax and food and beverage tax. For a Model Plan that is 8 pages long and, it seems that priority claims were more of an after-thought, only giving one estimated number for all priority claims without asking the debtor to even attempt to itemize how the numbers were calculated.

Presumably, domestic support obligations are also included in this one sentence section which is simply an amalgamation of all priority claims. There is no itemization or other listing to allow the trustee or creditors to determine whether and to what extent the debtor believes that he owes any individual creditor any amount. From a trustee standpoint, I have no ability to determine with certainty which domestic support obligations would be paid through the trust and which payments would continue through a wage-withholding order. To the extent that there is not a meeting of the minds, there would likely be irate custodial parents not receiving support (when I was verbally told that the debtor would continue payments) and unhappy trustee staff wasting countless hours retrieving sums from unsecured creditors for reallocation.