Office of the Chapter 13 Trustee—Akron Ohio
Keith L. Rucinski—Trustee

Chapter 13 Quarterly Newsletter
June 2014

1. New Bankruptcy Judge for Akron

On May 2, 2014, Alan M. Koschik was sworn in as the new bankruptcy judge in Akron for a 14 year term. Prior to taking the bench, Judge Koschik worked with the Brouse and McDowell law firm. The Akron bankruptcy community extends a warm welcome to Judge Koschik.

2. Attorney Terry Zimmerman to Retire

At the end of June 2014, the Akron bankruptcy community will bid a fond farewell to Attorney Terry Zimmerman. Attorney Zimmerman has been active in the collection business and representing lenders in state court foreclosures. Most of all, Mr. Zimmerman is most noted for his educational endeavors in conducting various seminars for bar associations both locally and throughout Ohio. He has practiced law for over three decades and for those of us who have had the privilege of working with him, his professionalism, candor and humor will be greatly missed.

3. Personal Financial Management Class, October 25, 2014 Annual Saturday Morning Class

Please note that the Chapter 13 office in Akron will hold its next Personal Financial Management Class for debtors who have not yet taken this required class on Saturday, October 25, 2014 from 9 AM to 11 AM at the main library in downtown Akron. The Chapter 13 office offers this class free of charge.

As all counsel know, if a debtor fails to take the class, the debtor will not be eligible for discharge and creditors would be permitted to keep all funds paid into the plan and seek further recovery from the debtors. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 made the Personal Financial Management Class a requirement for discharge.

A few cases did not receive a discharge this year but were closed for the debtor's failure to take the required class. The cases were closed even after the debtor was given a warning that the case would close without a discharge but the debtors, for whatever reasons, failed to take the class.

The Trustee thanks all counsel for working with their clients to take the class as early in the bankruptcy process as possible as taking the class within the first few months of the petition filing date does seem to help the debtors complete the plan successfully and gives the debtors a better understanding of the Chapter 13 program.

A flyer for the October 25, 2014 class is attached to this newsletter for counsel to share with their clients.

4. Trustee's Motion to Dismiss for Failure to Provide Annual Tax Return

Many counsel will be receiving motions to dismiss filed by the Akron Chapter 13 Trusteeship as some debtors have failed, despite requests, to turnover annual tax returns for review by the Trustee. The debtors are obligated to supply annual tax returns upon request pursuant to the Order Confirming Plan. The motion to dismiss filed by the Trustee advises the debtors that if they have experienced a large change in income, they should meet with their counsel immediately to modify their plan to provide a increased dividend to unsecured creditors. Plans which are amended to simply increase the monthly expenses on Schedule J and provide no additional return to creditors will be challenged by the Chapter 13 Trustee.

5. IRS Participation at 341 Meetings

The IRS is a creditor in many Chapter 13 cases. Recently, representatives of the IRS have exercised their right to participate in 341 meetings either in person or telephonically. The Trustee has no knowledge of which cases the IRS may or may not participate but does suggest that counsel review the filing status of all past returns which the debtor prior to filing the Chapter 13 case. Should the debtor fail to file a tax return, it would be in the best interest of all parties to have them meet with their accountant and get the delinquent tax return filed prior to the 341 meeting. Ultimately, the case cannot be recommended for confirmation unless tax returns with both the federal and state authorities are current.

6. Updated No Look Budget for Chapter 13 Cases in Akron

Please find attached an updated listing for the Chapter 13 no look budget in Akron. The no look budget is meant to assist counsel and their clients in preparing the Chapter 13 plan and a budget which is reasonable for the local area. Please remember that if a debtor does not max out a certain category, the Trustee will take that into consideration if a debtor spends funds in other areas. Many parties have found the no look budget to be useful in preparing Chapter 13 cases.

To provide a background, the Chapter 13 no look budget is prepared by having Chapter 13 staff members monitor their own expenses over a 30 day period and then those amounts are averaged plus a 10%-20% increase to account for any emergencies the debtors may have (such as the need to replace a car battery). The Chapter 13 office compares all cases against the no look budget to determine whether or not said expenses are reasonable and whether or not an objection needs to be raised to the plan based on necessary expenses.

7. Attorney Constituent Group

Please know the Attorney Constituent Group for the U.S. Bankruptcy Court, N.D. Ohio convened May 19, 2014 and together with the judiciary, is preparing for a 2015 Bench Bar Retreat. The ACG membership consists of representatives appointed by their specific professional bar associations and the current roster can be found at the court's website under Attorney Information, Atty Constituent Group. At this time, the ACG is seeking input as to any topics/issues you want addressed either prior to or at the 2015 Bench Bar Retreat. Please forward any comments to Keith Rucinski (krucinski@ch13akron.com) or Romi T. Fox (romi.fox@lsrlaw.com). Thank you for your time and we look forward to hearing from you.

8. Adding Additional Expenses to Means Test without Proof

Some counsel have begun completing the Chapter 13 Means Test and adding additional expenses on various line items. When questioned the response was: The debtor's actual expenses are larger than the IRS standards; and therefore, those are placed on lines on the Means Test which allows some additional expenses. The lines on the Means Test which allow additional expenses are not simply the difference between the actual expenses and the IRS standard expenses. In order to qualify for additional expenses on the means test, the debtor must provide proof during the 341 Meeting that they have special needs which qualify them for increased expenses. See In Re Schultz, 529 F.3d 343 (Sixth Circuit Court of Appeals)(2008). Unless debtor and their counsel build a record during the 341 meeting and substantiate the extra expenses, the Trustee will be challenging these extra expenses by moving the Court to dismiss the case.

A copy of Schultz v. United States is attached to this newsletter.

9. Filing of Ohio Tax Returns

To reduce the number of estimated claims as well as encourage compliance with §1308 and state law, the Ohio Department of Taxation is now sending letters to debtors' counsel with copies to the Chapter 13 Trustee's office prior to the first meeting of creditors to request the debtor submit outstanding pre-petition State tax returns. The letters specify the delinquent tax years and how to remit the returns. Failure to comply with the request for returns can result in the State of Ohio and/or this office objecting to plan confirmation and/or conversion or dismissal of the Chapter 13 case. Estimated claims generally result in debtors paying more than they owe or burdensome refunds resulting from the late filing of returns during the pendency of the case. For more information on this project, contact the Ohio Department of Taxation, Office of Chief Counsel Bankruptcy Division at 614.752.6864 or by email at Kerrie.ryan@tax.state.oh.us

10. Case Law

Exec. Benefits Ins. Agency v. Arkison, 2014 U.S. LEXIS 3993.

Bellingham Insurance Agency, Inc. (BIA) was a company owned by Nicholas Paleveda and his wife, Marjorie Ewing. Shortly before BIA filed for voluntary Chapter 7 bankruptcy in 2006, the company assigned the insurance commission from one of its largest clients to Peter Pearce, a long-time employee. Additionally, Paleveda used BIA funds to incorporate the Executive Benefits Insurance Agency, Inc. (EBIA). Pearce then deposited over $100,000 into an account held jointly by EBIA and another company owned by Paleveda and Ewing. The Chapter 7 Trustee, Peter Arkison, filed a claim against EBIA in the BIA bankruptcy proceeding. Arkison alleged fraudulent conveyances and that EBIA, as a successor corporation, was liable for BIA's debts. The bankruptcy court granted summary judgment in favor of the Trustee and the district court affirmed.

On appeal to the U.S. Court of Appeals for the Ninth Circuit, EBIA argued, for the first time, that the bankruptcy judge's entry of a final judgment on the Trustee's claims was unconstitutional. The Court of Appeals affirmed the district court's decision, holding that, while a bankruptcy court may not decide a fraudulent conveyance claim, it may hear the claim and make a recommendation for review by a district court. Additionally, the Court of Appeals determined that EBIA, by failing to object to the bankruptcy court's jurisdiction, waived its Seventh Amendment right to a hearing before an Article III court.

The legal questions considered by the Supreme Court on review: (1) May a bankruptcy judge hear a fraudulent conveyance claim and submit a report and recommendation to a district court for review? (2) May a litigant consent to the entry of a final judgment by a non-Article III bankruptcy judge? And, if so, does the litigant's failure to object to the bankruptcy judge's entry of a final judgment amount to implied consent?

The Supreme Court affirmed the Ninth Circuit on the first question and did not reach the consent theory. The Supreme Court called the claim in this case a "Stern claim," which it

defined as "a claim designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter" because of Article III limits on bankruptcy court authority. As a general matter, the Constitution allows bankruptcy courts to adjudicate debtor-creditor relationships at the "core" of bankruptcy power, but state-created private rights must be adjudicated by Article III courts. Congress provided in 28 U.S.C. § 157 that certain claims that it labeled "core" proceedings could be finally decided by bankruptcy courts, while "non-core" proceedings required the bankruptcy court to issue proposed findings of fact and conclusions of law, on which the Article III district court would review de novo and enter final judgment. Stern v. Marshall held that Article III prohibited bankruptcy courts from entering final judgment on some of the claims that Congress had labeled "core" claims and entrusted to bankruptcy courts for final decision, but Stern did not explain how bankruptcy courts should proceed on those claims. The problem was that 28 U.S.C. § 157 required only claims designated as "non-core" to go through the proposed-findings-of-fact regime, and the trustee's claim against Executive Benefits was designated as a "core" claim under the statute.

The Supreme Court held that the severability provision in the bankruptcy statute provides the resolution of these types of disputes. When a court identifies a Stern claim, it has determined that a bankruptcy court cannot enter final judgment on that claim even if it is labeled "core" in the bankruptcy statute. In that case, the severability provision permits the bankruptcy court to apply its procedures for non-core proceedings to the Stern claim. The bankruptcy court may hear the proceeding and submit proposed findings of fact and conclusions of law to the district court for *de novo* review, as it does with other non-core proceedings. The Supreme Court also held that the fraudulent-conveyance claims in this case are subject to Stern, so the bankruptcy court was permitted to hear the proceeding, then submit proposed findings and conclusions for *de novo* review as with non-core claims. The Supreme Court affirmed the Ninth Circuit because the district court reviewed the bankruptcy court's findings and conclusions *de novo*, which satisfied Article III.

In re Sampson-Pack, 2014 Bankr. LEXIS 1287 (Bankr. D. Md. Mar. 31, 2014).

The Debtor Sampson-Pack, proposed an amended Chapter 13 Plan calling for monthly payments, from the Debtor's income, in the amount of $900 over a period of 60 months. Based on the claims filed, the plan would pay all claims in full. The Debtor, however, could afford to pay more to the plan each month by operating on a tighter budget and could pay the claims off earlier, but she elected not to do so. The amended plan elected to stretch out the plan payment period, but the plan did not propose to pay any interest on the claims.

The Chapter 13 Trustee, Cosby objected to the amended plan. The Trustee argued that even though the plan proposed to pay all claims in full, it is not confirmable because it does not comply with both prongs of the confirmation requirement set forth in 11 USC Section 1325 (b)(1). The Trustee argued that in order for the plan to be confirmed, the Debtor would need to make the commitment period shorter such that she would dedicate all of her available disposable income to the plan (and still pay 100% of the claims), or compensate the creditors by paying them interest.

The Bankruptcy Court for the District of Maryland agreed with the Trustee and found that 11 USC Section 1325 (b)(1) requires the Debtor to pay interest on unsecured claims if the Debtor fails to commit all disposable income to the payment of unsecured creditors, but nonetheless pays unsecured creditors in full. The Court sustained the Trustee's objection to confirmation and denied the confirmation of the plan with leave to amend.

The court held that because the debtor had not dedicated all of her disposable monthly income to the plan, it could not be confirmed under 11 USC Section 1325 (b)(1)(B). Thus, the plan had to be confirmed, if at all, under Section 1325 (b)(1)(A). The Court concluded that Congress intended the phrase "as of the effective date of the plan" to modify both prongs of Section 1325(b)(1). In essence, debtors who do not devote all of their disposable income to a Chapter 13 plan, but pay all claims in full, must pay a rate of interest in exchange for their election to make payments over a longer period of time.

Santander Consumer USA, Inc. v. Brown (In re Brown), 746 F.3d 1236, 2014 U.S. App. LEXIS 5678, Bankr. L. Rep. (CCH) P82,619, 24 Fla. L. Weekly Fed. C 1150 (11th Cir. Ga. 2014)

In July 2007, the debtor Brown purchased a 37-foot 2006 Keystone Challenger recreational vehicle. The debtor entered into a loan agreement secured by the recreational vehicle. In July 2012, the debtor filed for Chapter 13 bankruptcy. Santander, the owner of the loan agreement, filed a proof of secured claim in the bankruptcy court for $36,587.53, the outstanding payoff balance due at the petition date. The debtor's modified Chapter 13 plan proposed surrendering the vehicle in full satisfaction of Santander's claim. Santander objected to the confirmation of the plan.

At the confirmation hearing on September 27, 2012, the parties disagreed on the method for valuing the debtor's vehicle. The debtor argued that 11 USC Section 506(a)(2)'s replacement value standard governed his vehicle's valuation, which in turn determined the amount of Santander's secured claim. The debtor contended that if his vehicle's replacement value exceeded his debt, surrendering his vehicle would satisfy Santander's entire claim (and his debt) under 11USC Section 1325(a)(5)(C). Santander argued that a surrendered vehicle's value should be based on its foreclosure value, not replacement value.

On December 3, 2012, the bankruptcy court overruled Santander's objection, holding that 11 USC Section 506(a)(2) required valuing the debtor's vehicle based on its replacement value. The bankruptcy court found that while the U.S. Supreme Court's 1997 decision in Associates Commercial Corp. v. Rash, 520 U.S. 953, 117 S. Ct. 1879, 138 L. Ed. 2d 148 (1997) supported applying a foreclosure value standard to The debtor's surrendered vehicle, Rash preceded the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005's ("BAPCPA") addition of 11 USC Section 506(a)(2), which required the replacement value standard. The court concluded Santander would have a secured claim to the extent of the vehicle's replacement value, and that the debtor's surrender of the vehicle would satisfy that claim under 11 USC Section 1325(a)(5)(C).

Following a valuation and confirmation hearing, the bankruptcy court determined that the vehicle's replacement value at least equaled the debt and confirmed the debtor's Chapter 13 plan. Santander appealed the bankruptcy court's decision to apply the replacement value standard to the district court, which rejected Santander's arguments and affirmed the bankruptcy court's decision.

Upon appeal to the Eleventh Circuit Court of Appeals, the district court’s decision was also affirmed. The Court held that where a loan agreement owner objected to the confirmation of a debtor's plan under Chapter 13 of the United States Bankruptcy Code, which proposed that the debtor surrender his vehicle under 11 USC Section 1325(a)(5)(C) to satisfy the owner's claim, 11 USC Section 506(a)(2) required valuing the debtor's vehicle based on its replacement value because 11 USC Section 506(a)(2)'s valuation standard applies when a Chapter 13 debtor surrenders his vehicle under 11 USC Section 1325(a)(5)(C). The Court of Appeals also stated that the owner's argument that Section 506(a)(2) only applied to cases where the debtor exercised the retention option under Section 1325(a)(5)(C) was rejected because this would require the court to read a limitation into the statute that did not exist in the plain text. The Court reasoned that because bifurcation was premised on the collateral's valuation, it was permissible for the debtor to seek a valuation in proposing his Chapter 13 plan.

Please find attached the updated Means Test Numbers
Effective May 1, 2014

Personal Financial Management Class, October 25, 2014
Annual Saturday Morning Class

Phone: (330) 762-6335
Fax: (330) 762-7072
Web: www.chapter13info.com

Office Of
The Chapter 13 Trustee
Keith L. Rucinski, Trustee

One Cascade Plaza
Suite 2020
Akron, Ohio 44308

June 6, 2014

Personal Financial Management Instructional Course

Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, all people filing for bankruptcy after October 17, 2005, must take a Personal Financial Management Instructional Course in order to earn a discharge of their case. A discharge means a successful completion of the plan and creditors paid through the plan may not seek further payment from you. This course is in addition to the Credit Counseling Course that you took to file your Chapter 13 case. If you have already taken both courses you may disregard this notice.

The Chapter 13 Office in Akron, Ohio will be offering the Personal Financial Management Instruction Course on **Saturday, October 25th, 2014**, at the Akron-Summit County Public Library, 60 S. High Street, Akron, Ohio 44308. Pickup of course materials and seating for the class begins at 9:15 a.m. The course runs from 10:00 a.m. to 12:00 p.m. A parking deck is located next to the library and parking is free. **You must register for the course and may do so by calling 330-475-7500, or by email to edclass@ch13akron.com. PLEASE MAKE SURE TO LEAVE YOUR NAME AND CASE NUMBER WHEN CALLING TO MAKE YOUR RESERVATION. Space is limited so please make your reservation as soon as possible**. **The deadline to register for the class is October 24th, 2014.** A photo I.D. will be necessary in order to take the course. If you require a Sign Language interpreter send your request to edclass@ch13akron.com. The instructor will be Keith Rucinski. Mr. Rucinski is a CPA and Attorney and serves as Trustee for the Chapter 13 Office. For the past decade he has taught college courses and has been a frequent speaker at local and national seminars.

This course is only being offered to individuals who have filed Chapter 13 with the U.S. Bankruptcy Court in Akron, Ohio. The course is being offered without regard to an individual's ability to pay. There is no cost to individuals for taking the course sponsored by the Chapter 13 Office.

You are not required to take this course through the Chapter 13 Office, but you must take a course which has been certified by the U.S. Department of Justice – U.S. Trustee Program. The other course providers may charge you a fee. The Chapter 13 Office in Akron does not pay or receive fees or other consideration for the referral of debtor students to or by the provider.

Upon completion of the course the Chapter 13 Office in Akron will provide participants a certificate of course completion. This certificate must be filed with the U.S. Bankruptcy Court in Akron, Ohio in order to earn a discharge in your case.

Main Library

is located at 60 S. High Street
Akron, Ohio 44326
in downtown Akron, OH
330-643-9000.

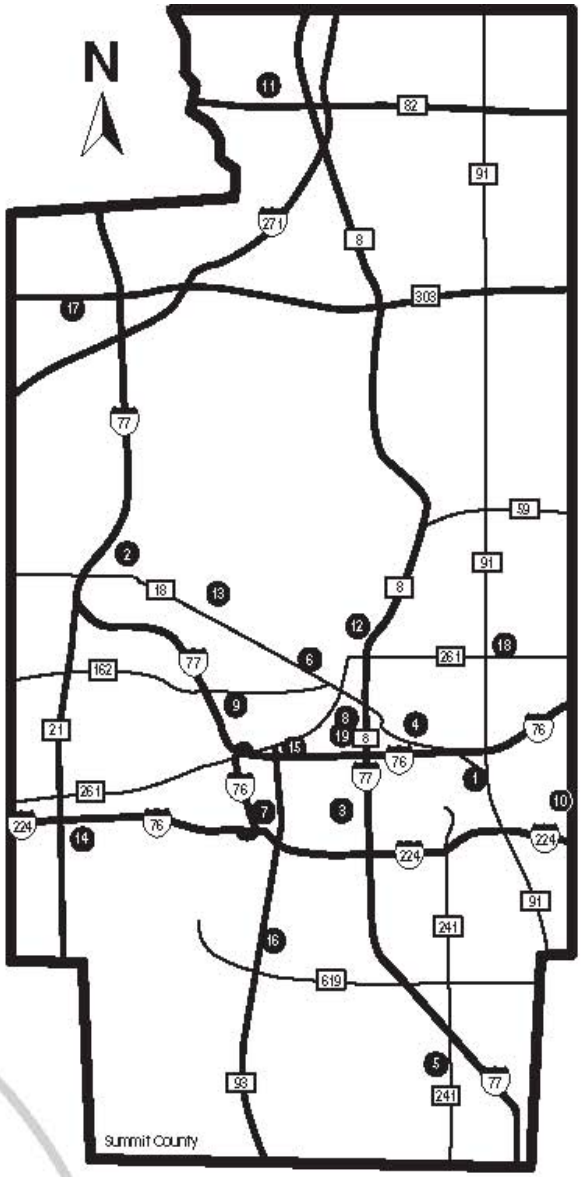
**Drive-through window accessible
from High Street between
Main Library and the High & Market parking deck
***LOADING DOCK entrance is on Mill Street

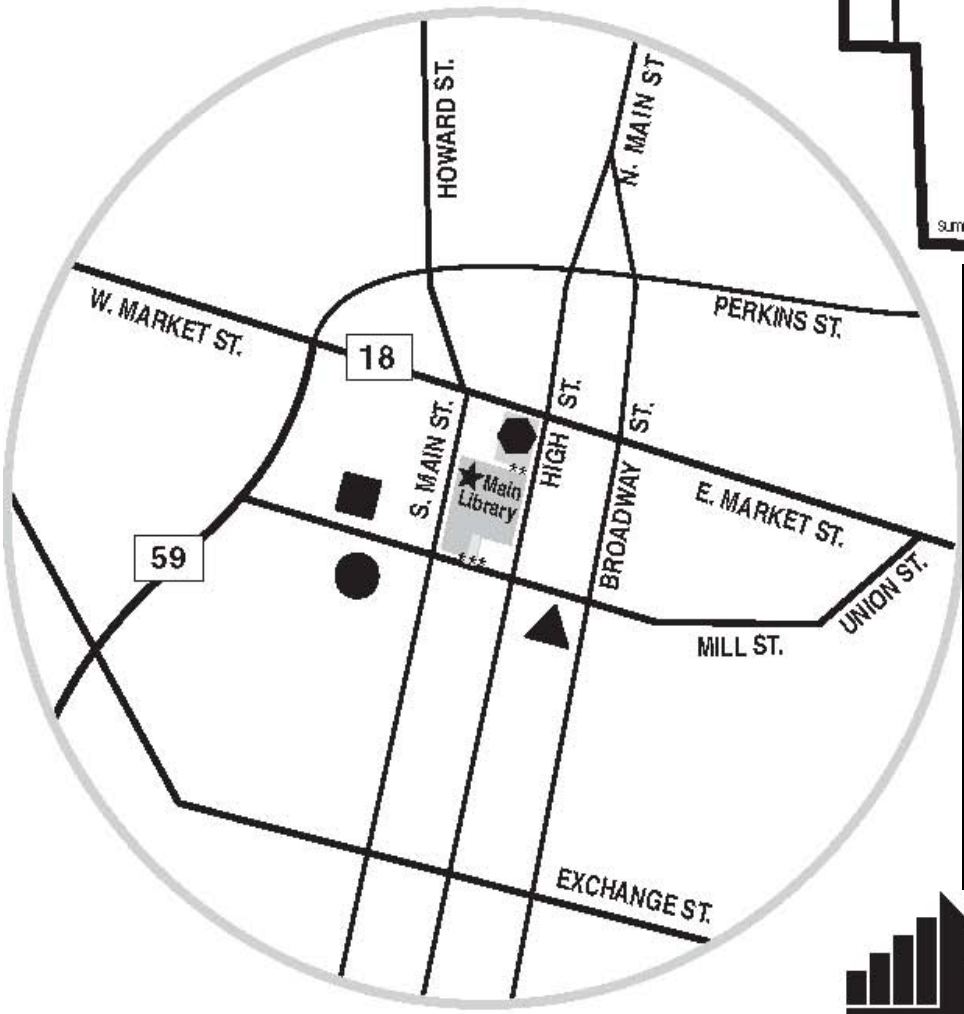
• **From Cleveland**: From Interstate I-77 South, take exit 21C to merge onto Innerbelt/Martin Luther King Jr Fwy E/OH-59 E toward Downtown Akron. Turn right at N. High St.

• **From Canton**: From I-77 North, take the OH-59 W exit toward Perkins St/M.L. King Jr Blvd & Fwy. Turn left at Perkins St and continue on Martin Luther King Jr Blvd. Turn left at N High St.

Convenient Parking for Main Library includes:

- ⬢ - **High & Market Deck** (across from the Akron Art Museum and connects to the library)
- ■ - Super Block Garage
- ● - Cascade Parking Garage
- ▲ - John S. Knight Center Parking





***** A PHOTO ID IS REQUIRED FOR ADMITTANCE TO THE SEMINAR**

***** IF YOU PARK IN THE LIBRARY PARKING DECK MAKE SURE TO BRING YOUR PARKING TICKET TO THE CLASS WITH YOU. IT CAN BE VALIDATED AT THE LIBRARY SECURITY DESK.**

Akron-Summit County Public Library

Updated Akron No Look Budget

CHAPTER 13 AKRON, OHIO JUNE 2014
"NO LOOK BUDGET"

SCHEDULE J – CURRENT EXPENDITURES OF INDIVIDUAL DEBTORS

RENT/MORTGAGE	PER CONTRACT
HOME MAINTENANCE	$50/RENT - $100/ BUY
ELECTRIC/HEAT/GAS	$400/MONTH
WATER/SEWER/GARBAGE	$150/MONTH
TELEPHONE/CELL PHONE/INTERNET/CABLE	$350/MONTH
FOOD & HOUSEKEEPING SUPPLIES	$500/1 PERSON - $850/2 PEOPLE – $1000/3 PEOPLE
CHILDCARE	NEED PROOF
CLOTHING/LAUNDRY/DRY CLEANING	FAMILY $175/MONTH
PERSONAL CARE	$100/MONTH
TRANSPORTATION	$550/MONTH
ENTERTAINMENT	$100/MONTH
CHARITABLE CONTRIBUTION	WILL REQUIRE PROOF
INSURANCE – HOME/AUTO/HEALTH/LIFE	- USE MONTHLY AMOUNTS
PROPERTY TAXES	- VERIFY WITH COUNTY AUDITOR

INSTALLMENT PAYMENTS - ACTUAL PAYMENT AMOUNTS PER CONTRACT
(Trustee will question why not surrendering luxury vehicles)

AMOUNTS OVER THE ABOVE ITEMS WILL REQUIRE DISCUSSION AND PROOF AT THE 341 MEETING OF CREDITORS.

NOTE: DEBTORS SHOULD ONLY USE EXPENSES APPLICABLE TO THEIR SITUATION.

In Re Schultz, 529 F.3d 343
(Sixth Circuit Court of Appeals)(2008)

Schultz v. United States

United States Court of Appeals for the Sixth Circuit
March 17, 2008, Argued; June 2, 2008, Decided; June 2, 2008, Filed
No. 07-5618

Reporter: 529 F.3d 343; 2008 U.S. App. LEXIS 11686; 2008 FED App. 0206P (6th Cir.); Bankr. L. Rep. (CCH) P81,255; 59 Collier Bankr. Cas. 2d (MB) 1405; 50 Bankr. Ct. Dec. 26

BERNARD F. SCHULTZ; ELIZABETH M. SABATINE, Plaintiffs-Appellants, v. UNITED STATES OF AMERICA, Defendant-Appellee.

Subsequent History: As Amended June 18, 2008.
Rehearing denied by, Rehearing, en banc, denied by *Schultz v. United States, 2008 U.S. App. LEXIS 22363 (6th Cir., Sept. 17, 2008)*
US Supreme Court certiorari denied by Schultz v. United States, 2008 U.S. LEXIS 8945 (U.S., Dec. 8, 2008)

Prior History: ; 2008 FED App. 0206P (6th Cir.), ***Cir.) [1]** Appeal from the United States District Court for the Eastern District of Tennessee at Chattanooga. No. 07-00012--R. Allan Edgar, District Judge.
Schultz v. United States, 369 B.R. 349, 2007 U.S. Dist. LEXIS 35263 (E.D. Tenn., 2007)

Disposition: The appellate court affirmed the decision of the district court.

Core Terms

median, bankruptcy court, state law, geographic, monthly income, exempt, uniform law, calculate, bankruptcy law, district court, family income, isolate, commitment period, local standard, annualize, region

Case Summary

Procedural Posture

Plaintiffs, a husband and wife who had filed for Chapter 13 bankruptcy, challenged the decision entered by the United States District Court for the Eastern District of Tennessee that granted defendant government's motion for summary judgment and dismissed the couple's complaint that sought declaratory judgment, alleging that the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) violated the Bankruptcy Clause.

Overview

The couple challenged five sections of the BAPCPA that employed the "means test"--*11 U.S.C.S. §§ 707(b)(7)*. 707(b)(2), 704(b), 1325(b)(3), and 1325(b)(4)--under one central theory: because median-income calculations were based, at least in part, on the state and county in which the debtor resided, the BAPCPA was not a uniform law on the subject of bankruptcies throughout the United States. The district court found that the uniformity requirement did not proscribe different results in different states because of state law variations. The appellate court focused its attention on whether the BAPCPA was a uniform law on the subject of bankruptcy. The court concluded that it was. The BAPCPA distinguished between two classes of debtors: those whose annualized current monthly income was above the family median income for the applicable state and those whose income was below. The court would not accept the couple's argument that, while their annualized income was above the median family income for a family of five in Tennessee, it was below the median family income of Connecticut, Hawaii, Massachusetts, Maryland, New Hampshire, and New Jersey.

Outcome

The appellate court affirmed the decision of the district court.

LexisNexis® Headnotes

Civil Procedure > ... > Justiciability > Standing > General Overview
Civil Procedure > Appeals > Standards of Review > De Novo Review

HN1 An appellate court reviews de novo the question of standing even where standing has erroneously been assumed below.

Civil Procedure > ... > Justiciability > Standing > General Overview
Constitutional Law > ... > Case or Controversy > Standing > Elements

HN2 A plaintiff has U.S. Const. art. III standing when he or she can show: (1) an injury-in-fact that (2) was fairly traceable to the defendant's allegedly unlawful conduct and (3) is likely to be redressed via a favorable decision.

Bankruptcy Law > General Overview
Governments > Legislation > Interpretation

HN3 The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (codified as amended in scattered sections of Title 11 of the United States Code, is a constitutionally uniform law.

Constitutional Law > Congressional Duties & Powers > Bankruptcy Clause

HN4 The Congress shall have power to establish uniform laws on the subject of Bankruptcies throughout the United States . *U.S. Const. art. I, § 8, cl. 4*.

Counsel: ARGUED: Thomas E. Ray, SAMPLES, JENNINGS, RAY & CLEM, Chattanooga, Tennessee, for Appellants.

Lewis Yelin, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

ON BRIEF: Thomas E. Ray, SAMPLES, JENNINGS, RAY & CLEM, Chattanooga, Tennessee, for Appellants.

Lewis Yelin, William Kanter, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. George W. Kuney, UNIVERSITY OF TENNESSEE COLLEGE OF LAW, Knoxville, Tennessee, for Amicus Curiae.

Judges: Before: RYAN, SILER, and COLE, Circuit Judges.

Opinion by: R. GUY COLE, JR.

Opinion

[*1]** **[*346]** R. GUY COLE, JR., Circuit Judge. Plaintiffs-Appellants Bernard Francis Schultz and Elizabeth Mary Sabatine (hereinafter ″the Schultzes″), husband and wife and residents of Hamilton County, Tennessee, filed for bankruptcy under Chapter 13 in the United States Bankruptcy Court for the Eastern District of Tennessee. Independently, the Schultzes filed a complaint for declaratory judgment in the United States District Court for the Eastern District of Tennessee, alleging that the Bankruptcy Abuse Prevention and Consumer Protection **[**2]** Act of 2005 (″BAPCPA″ or ″the Act″) violates *Article I, Section 8, Clause 4 of the Constitution* (the ″Bankruptcy Clause″), which gives Congress the power to establish ″ *uniform* Laws on the subject of Bankruptcies throughout the United States.″ *U.S. CONST. art. 1, § 8, cl. 4* (emphasis added). The district court granted the Government's motion for summary judgment and dismissed the Schultzes' complaint. For the following reasons, we **AFFIRM** the judgment of the district court.

[*2] I. BACKGROUND**

A.

Individual consumer debtors generally choose between two forms of relief afforded by the Bankruptcy Code: Chapter 7 and Chapter 13. [1] In a Chapter 7 proceeding, an individual debtor receives an immediate unconditional discharge of personal liabilities for debts in exchange for the liquidation of all non-exempt assets. *See11 U.S.C. §§ 701-784*. By contrast, in a Chapter 13 proceeding, a debtor commits to repayment of a portion of his or her financial obligations over a specified period of time (generally three to five years) in exchange for retaining non-exempt assets and receiving a broader discharge of debt than is available under Chapter 7. *See11 U.S.C. §§ 1301-1330*. Under the bankruptcy system **[**3]** prior to the BAPCPA, *Pub. L. No. 109-8, 119 Stat. 23* (codified as amended in scattered sections of Title 11 of the United States Code), debtors had a **[*347]** presumption of eligibility to file under Chapter 7, with the final determination made by the Bankruptcy Court on an individualized basis. *11 U.S.C. § 727*.

In 2005, the landscape for bankruptcy filings dramatically changed. Responding to a growing belief that ″bankruptcy relief may be too readily available and is sometimes used as a first resort, rather than a last resort,″ H.R. REP. NO. 109-31(I), at 4 (2005), and the prevalence of ″opportunistic personal filings and abuse,″ *id.* at 5, Congress enacted the BAPCPA in order to require above-median income debtors to make more funds available for the payment of unsecured creditors. As a result, higher-income debtors with the ability to repay a substantial portion of their debts without significant hardship are now required to do so by filing under Chapter 13 rather than Chapter 7.

The centerpiece of the Act is the imposition of a ″means test″ for Chapter 7 filers, which requires would-be debtors to demonstrate financial eligibility to avoid the presumption that their bankruptcy filing is an **[**4]** abuse of the bankruptcy proceedings. By its terms, the BAPCPA authorizes a bankruptcy court to dismiss a debtor's petition filed under Chapter 7 or, with the debtor's consent, to convert such a petition to Chapter 13 ″if it finds that the granting of relief would be an abuse of the provisions of [Chapter 7].″ *11 U.S.C. § 707(b)(1)*. Under this test, the first step instructs the bankruptcy court to compare the debtor's annualized current monthly income to the median family income of a similarly sized family in the debtor's state of residence. If the debtor's current monthly income is equal to or below the median, then the

[1] While individual consumer debtors also may file under Chapter 11 of the Bankruptcy Code, see *Toibb v. Radloff*, 501 U.S. 157, 160-64, 111 S. Ct. 2197, 115 L. Ed. 2d 145 (1991), as a practical matter, the cost and complexity of this remedy preclude most individual debtors from doing so.

presumption of abuse does not arise. *11 U.S.C. § 707(b)(7)*. If, however, it exceeds the median, the Act directs the court to recalculate the debtor's income by deducting certain necessary expenses specified by the statute. *Id.§ 707(b)(2)(A)(ii)*. These reductions are derived from the national and local standards contained in the Internal Revenue Service's Financial Analysis Handbook. *Id.*; *see* INTERNAL REVENUE SERV., INTERNAL REVENUE MANUAL, FINANCIAL ANALYSIS HANDBOOK ("IRS Handbook"), *available at*http://www.irs.gov/irm/part5/ch15s01.html.

Because of these deductions, eligibility under **[**5]** the new regime is calculated at least in part based on the state and county where the debtor resides. The housing expense deduction, for example, is governed by the county where the debtor resides. *Id.* § 5.15.1.7(4)(A). [2] Although the national standards, which identify amounts for "food, housekeeping supplies, apparel and services, and personal care products and services," and a fixed "miscellaneous" amount, *id.* § 5.15.1.7(3), are mostly uniform throughout the United States, the local standards, which define amounts for housing and transportation, vary greatly.

[*3]** If after deducting these necessary expenses and specified amounts, the debtor's current monthly income exceeds certain mathematical benchmarks, then the presumption of abuse arises. *11 U.S.C. § 707(b)(2)(A)(i)*. This presumption may be rebutted only if the debtor demonstrates special circumstances **[**6]** justifying any additional expenses or adjustments to the debtor's income for which there is no reasonable alternative, and that those special circumstances reduce the debtor's income **[*348]** below the specified benchmarks. *Id.§ 707(b)(2)(B)*. And even if the presumption of abuse does not apply, or has been rebutted by the debtor, the BAPCPA empowers a bankruptcy court to consider whether it believes "the debtor filed the petition in bad faith," or whether "the totality of the circumstances . . . of the debtor's financial situation demonstrates abuse." *Id.§ 707(b)(3)*.

To implement and enforce these reforms, the United States trustee or the bankruptcy administrator reviews a Chapter 7 debtor's petition and files with the court a statement explaining whether a presumption of abuse arises. *Id.§ 704(b)(1)*. If the trustee determines that it does, then the trustee is directed either to file a motion to dismiss, a motion to convert the petition, or to provide a statement explaining why such a motion is inappropriate. *Id.§ 704(b)(2)*.

The BAPCPA also amended two aspects of Chapter 13. First, "disposable income" is now defined as "currently monthly income received by the debtor . . . less amounts reasonably **[**7]** needed to be expended." *11 U.S.C. § 1325(b)(2)*. If a debtor's annualized monthly income exceeds the median family income for a similarly sized family in the applicable state, the Act requires the bankruptcy court to calculate "amounts reasonably necessary to be expended" in accordance with the same IRS Handbook's national and local standards used in Chapter 7. *Id.§ 1325(b)(3)*. If a debtor is below the median income, the "amounts reasonably necessary to be expended" are instead determined as they were pre-BAPCPA--by the bankruptcy court assessing whether the expenses listed by the debtor in Schedule J (which must be filed along with the bankruptcy petition) are reasonably necessary for the debtor's maintenance and support. *Id.§ 1325(b)(2)*. Second, if the debtor's income still exceeds the median after recalculation, the Act imposes an "applicable commitment period" of "not less than 5 years." *Id.§ 1325(b)(4)(A)(ii)*. However, if the debtor's annualized income is less than the median, then the applicable commitment period is three years. *Id.§ 1325(b)(4)(A)(i)*.

B.

On November 21, 2006, the Schultzes filed for bankruptcy under Chapter 13 in the United States Bankruptcy Court for the Eastern District of Tennessee. On January 13, 2007, the bankruptcy court confirmed their plan, which required payment for sixty months and resulted in a pro-rata distribution to unsecured creditors of less than 100% **[**8]** of their allowed claims.

Concurrently, the Schultzes brought a separate suit against the United States, which challenges the five sections of the BAPCPA that employ the "means test"--*Sections 707(b)(7)*, *707(b)(2)*, *704(b)*, *1325(b)(3)*, and *1325(b)(4)*--under one central theory: because median-income calculations are based, at least in part, on the state and county in which the debtor resides, the BAPCPA is not a "*uniform* Law[] on the subject of Bankruptcies throughout the United States." *U.S. CONST. art. 1, § 8, cl. 4* (emphasis added).

At the time of their Chapter 13 filing, the Schultzes had an annualized current monthly income of $ 84,975.84, an amount that is above the median family income for a family of five for Tennessee residents (which is $ 63,174), but below the median family income of Connecticut, Hawaii, Massachusetts, Maryland, New Hampshire, and

[2] The BAPCPA also permits a debtor to deduct additional expenses for food, clothing, housing, utilities, health insurance, disability insurance, health savings accounts, and certain educational expenses, so as long as the debtor demonstrates that those additional allowances are reasonable and necessary. *11 U.S.C. § 707(b)(2)(A)(ii)*.

New Jersey. [3] As a result of this benchmark in Tennessee, the Schultzes' applicable commitment period **[*349]** was five, rather than three, years, and in calculating their disposable income they were limited to the expense deductions set forth in *Sections 707(b)(2)(A)* and *(B)*. *11 U.S.C. § 1325(b)(3)-(4)*.

[*4]** After the parties filed cross-motions for summary judgment, the district court granted the Government's motion and dismissed the Schultzes' complaint. Canvassing relevant Supreme Court precedent, the district court concluded that the ″uniformity requirement does not proscribe different results in different states because of state law variations.″ *Schultz v. United States, 369 B.R. 349, 352 (E.D. Tenn. 2007)*. In response to the Schultzes' argument that the BAPCPA amendments are unconstitutional because they create variations in different states based on federal instead of state law, the district court explained that there is ″no principled reason for concluding that variations resulting from federal statistics create unconstitutional non-uniformity, whereas variations resulting from state law do not.″ *Id.* The court concluded that ″[d]isposable income might vary from place to place, but it is based on uniformly calculated national statistics. The variations in the results produced by these statistics are of no constitutional consequence.″ *Id. at 353*.

The Schultzes timely appealed. **[**10]** We review de novo a district court's grant of summary judgment. *Miller v. Admin. Office of the Courts, 448 F.3d 887, 893 (6th Cir. 2006)*.

II. ANALYSIS

A.

As a threshold matter, we address briefly the Government's contention that the Schultzes lack standing to challenge two BAPCPA provisions affecting Chapter 7 bankruptcy filings: *Sections 707(b)(2)* and *704(b)*. ***HN1*** We review de novo the question of standing, *Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 573 (6th Cir. 2004)*, even ″where standing has erroneously been assumed below,″ *Adarand Constructors, Inc. v. Mineta, 534 U.S. 103, 110, 122 S. Ct. 511, 151 L. Ed. 2d 489 (2001)*. [4] ***HN2*** A plaintiff has Article III standing when he or she can show: (1) an injury-in-fact that (2) was ″fairly traceable to the defendant's allegedly unlawful conduct″ and (3) is ″likely to be redressed″ via a favorable decision. *Prime Media, Inc. v. City of Brentwood, 485 F.3d 343, 349 (6th Cir. 2007)* (quoting *Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)*). The only question in dispute is whether the Schultzes have shown an ″injury-in-fact,″ or ″an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent,″ *Lujan, 504 U.S. at 560* **[**11]** (citations omitted), by the two presumption-of-abuse sections intended for Chapter 7 debtors. In applying the first requirement of a concrete injury, the Supreme Court made clear that a plaintiff is not entitled to injunctive or declaratory relief ″[a]bsent a sufficient likelihood that he will again be wronged in a similar way,″ *City of Los Angeles v. Lyons, 461 U.S. 95, 111, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983)*, unless the plaintiff is subject to ″continuing, present adverse effects,″ *O'Shea v. Littleton, 414 U.S. 488, 496, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974)*.

[*350] The problem, as the Government sees it, is that the Schultzes never filed a Chapter 7 bankruptcy petition, nor do they intend to do so in the future. Although the Schultzes have shown that their income is above the applicable median family income for Tennessee, *potentially* subjecting them to the challenged Chapter 7 provisions, they have not established that they would be exposed to the presumption of abuse after their **[**12]** monthly income is reduced by allowable expenses specified by the statute. *See11 U.S.C. § 707(b)(2)*. The Schultzes, in turn, argue that the potential for being subject to the presumption of abuse under Chapter 7 forced them into filing under Chapter 13. And requiring a debtor to file a Chapter 7 petition with full knowledge that it would be dismissed subjects the debtor to years of litigation while his bankruptcy case, and financial situation, remain in limbo.

The questions of whether the Schultzes were deterred from filing a Chapter 7 petition, and whether the presumption of abuse would have applied after the appropriate reductions and calculations, are irrelevant for one simple reason: the parties concede that the Schultzes have **[***5]** standing to challenge the Chapter 13 provisions--*Sections 1325(b)(3)* and *(4)*--which use the same state-specific median income levels and varying local standards as the Chapter 7 amendments. Based on their median family income calculation in Tennessee, the Schultzes are currently repaying debt under a sixty-month Chapter 13 plan, and receive less favorable treatment in their plan than individuals in other states. Moreover, their housing and transportation **[**13]** expenses were determined by reference to the IRS Handbook, which varies by locality.

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[3] Across the United States, the median family income for **[**9]** a family of five ranges from $ 52,036 in Mississippi to $ 98,505 in Connecticut. (Joint Appendix (″JA″) 73-74.)

[4] The Government did not raise the standing issue at the district court, *Schultz, 369 B.R. at 351 n.1*, but ″[s]tanding is not an affirmative defense that must be raised at risk of forfeiture.″ *Cmty. First Bank v. NCUA, 41 F.3d 1050, 1053 (6th Cir. 1994)*.

Because our resolution of the Schultzes' Chapter 13 challenges effectively addresses the identical claims for the Chapter 7 provisions, without regard to whether they have standing to challenge those provisions, we find no need to resolve this issue. To put it simply, we could not invalidate some of the ″means test″ provisions without invalidating the others.

B.

1.

We turn to the central issue in this case: Is the BAPCPA a uniform law on the subject of bankruptcy? The Bankruptcy Clause of the Constitution grants Congress the power to ″establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.″ *U.S. CONST. art. I, § 8, cl. 4*. What distinguishes these ″peculiar terms″ from the other Article I powers is the concept of uniformity, which, as Chief Justice Marshall noted nearly two centuries ago, ″deserve[s] notice. Congress is not authorized merely to pass laws, the operation of which shall be uniform, but instead to establish uniform laws on the subject throughout the United States.″ *Sturges v. Crowninshield, 17 U.S. (4 Wheat.) 122, 193-94, 4 L. Ed. 529 (1819)*.

Echoing Justice Marshall's concern **[**14]** that the concept of ″uniformity is, perhaps, incompatible with state legislation,″ *id.*, the Schultzes contend that ″the classification scheme adopted by Congress based upon whether a debtor is above or below the median income of his particular state of residence violates the Bankruptcy Clause because it results in some debtors receiving different bankruptcy relief under federal law based solely upon [the] state or county [in which] they happen to reside.″ (Appellants' Br. 8-9.) Implicit in their argument is what the Supreme Court has referred to as personal uniformity, or the notion that the bankruptcy laws should apply identically to individual debtors, regardless of the state or locality in which **[*351]** the debtor resides. The Court, however, has consistently described the Bankruptcy Clause's uniformity requirement as ″geographical, and not personal,″ *Hanover Nat'l Bank v. Moyses, 186 U.S. 181, 188, 22 S. Ct. 857, 46 L. Ed. 1113 (1902)*, which is ″wholly satisfied when existing obligations of a debtor are treated alike by the bankruptcy administration throughout the country regardless of the State in which the bankruptcy court sits,″ *Vanston Bondholders Protective Comm. v. Green, 329 U.S. 156, 172, 67 S. Ct. 237, 91 L. Ed. 162 (1946)* **[**15]** (Frankfurter, J., concurring).

Over the last century, the Supreme Court has wrestled with the notion of geographic uniformity, ultimately concluding that it allows different effects in various states due to dissimilarities in state law, so long as the federal law applies uniformly among classes of debtors. In *Moyses*, one of the first cases dealing with the validity of a bankruptcy statute, the Court upheld the incorporation of varying state exemptions into the 1898 Bankruptcy Act. *186 U.S. at 189-90*. Geographic uniformity in this context, the Court observed, was satisfied ″when the trustee takes in each state whatever would have been available if the bankrupt law had not been passed. The general operation of the law is uniform although it may result in certain particulars differently in different states.″ *Id. at 190*. In 1918, the Court reaffirmed the *Moyses* principle in a case involving the Bankruptcy Act's incorporation of varying state fraudulent conveyance statutes, despite the fact that the laws ″may lead to different results in different states.″ *Stellwagen v. Clum, 245 U.S. 605, 613, 38 S. Ct. 215, 62 L. Ed. 507 (1918)*. *See also Vanston, 329 U.S. at 172* (explaining that the Bankruptcy Clause ″does not mean **[**16]** wiping out the differences among the forty-eight States″ and holding that state tort and contract law may determine the validity of creditors' claims).

[*6]** Nearly sixty years later, the Supreme Court, applying *Moyses*, held that Congress may enact non-uniform laws to deal with geographically isolated problems as long as the law operates uniformly upon a given class of creditors and debtors. *Blanchette v. Conn. Gen. Ins. Corp., 419 U.S. 102, 95 S. Ct. 335, 42 L. Ed. 2d 320 (1974)*. In *Blanchette*, the Court considered the constitutionality of the Regional Rail Reorganization Act (″Rail Act″), which operated only in a single statutorily defined region: the northeast United States. In explaining why such a specific statute did not exceed Congress's power under Article I, the Court noted that at the time Congress passed the Rail Act, all of the railroads then operating under the bankruptcy laws were contained within the northeast region, and thus, even had the statute been drafted to be of general applicability, its operation and effect would have been unchanged. *Id. at 159-60*. The Court ultimately concluded that the ″uniformity provision does not deny Congress power to take into account differences that exist between **[**17]** different parts of the country, and to fashion legislation to resolve geographically isolated problems,″ *id. at 159*, so long as the law ″appl[ied] equally to all creditors and debtors,″ *id. at 160*. *See also Leidigh Carriage Co. v. Stengel, 95 F. 637, 646 (6th Cir. 1899)* (holding that the Bankruptcy Clause ″imposes no limitation upon congress as to the classification of persons who are to be affected by such laws, provided only the laws shall have uniform operation″).

Only once has the Court struck down a statute as non-uniform. In *Railway Labor Executives' Ass'n v. Gibbons, 455 U.S. 457, 470-71, 102 S. Ct. 1169, 71* **[*352]** *L. Ed. 2d 335 (1982)*, the Court determined that

Congress overstepped its authority in passing a private bankruptcy law that affected only the employees of a single company, the Rock Island & Pacific Railroad Company. While acknowledging that ″the uniformity requirement is not a straightjacket that forbids Congress to distinguish among classes of debtors,″ *id. at 469*, the Court found that the Act ″[was] a response to the problems caused by the bankruptcy of *one* railroad″ and was therefore ″nothing more than a private bill,″ *id. at 470-71*. The Court documented the chaos created by discriminatory state legislation **[**18]** during the Articles of Confederation, and concluded that the ″uniformity requirement was drafted in order to prohibit Congress from enacting private bankruptcy laws.″ *Id. at 472*. The lesson, in short, is that ″[t]o survive scrutiny under the Bankruptcy Clause, a law must at least apply uniformly to a defined class of debtors.″ *Id. at 473*.

Applying these principles to the instant case, we conclude that ***HN3*** the BAPCPA is a constitutionally uniform law. Congress is allowed to distinguish among classes of debtors, and to treat categories of debtors differently, whether it be through the incorporation of varying state laws ″affecting dower, exemptions, the validity of mortgages, priorities of payment and the like.″ *Stellwagen, 245 U.S. at 613*. And this is precisely what the BAPCPA does: *Sections 707(b)(7)*, *1325(b)(3)*, and *1325(b)(4)* distinguish between two classes of debtors, those whose annualized current monthly income is above the family median income for the applicable state and those whose income is below. *All* Chapter 13 below-median-income debtors have only a three-year instead of a five-year applicable commitment period, and are subject to more favorable treatment in calculating their disposable **[**19]** income than all debtors above the median; *all* above-median-income debtors are subject to a applicable commitment period of ″not less than 5 years,″ and have their income recalculated in accordance with the IRS Handbook's national and local standards. Yes, the Schultzes may receive less favorable treatment simply because they are residents of Tennessee, a state whose median monthly income is lower than a host of others, but the same could be said of debtors living in states with less favorable state property exemption laws. *See Moyses, 186 U.S. at 190*. Accordingly, ″[t]he general operation of the law is uniform although it may result in certain particulars differently in different states.″ *Moyses, 186 U.S. at 190*.

Had Congress described the ″means test″ in explicit geographic terms, by enacting legislation exempting residents of certain states without justification, we would be faced with a significantly different case. In *St. Angelo v. Victoria Farms, Inc., 38 F.3d 1525 (9th Cir. 1994)*, for instance, the Ninth Circuit considered whether a statutory amendment extending the deadline for two states to implement an administrative program violated the uniformity provision of the Bankruptcy Clause **[***7]** . The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, **[**20]** *Pub. L. No. 99-554, 100 Stat. 3088 (1986)*, permanently established the United States Trustee Program, an administrative agency responsible for overseeing the administration of bankruptcy cases and private trustees. Congress curiously chose to phase the program in over a two-year period for every state except North Carolina and Alabama, who instead had the option of voting into the Trustee program over an extended period of time. Several years later, in *Section 317 of the Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990)*, **[*353]** Congress extended the deadline for North Carolina and Alabama to implement the program to October 1, 2002, without any corresponding explanation for the special treatment. *St. Angelo, 38 F.3d at 1529*.

Finding that the exemption was ″not a provision which has different effects . . . due to differences in the laws of these two states,″ *id . at 1531*, and that ″Congress [did not] provide[] [any] indication that the exemption in question was intended to deal with a problem specific to North Carolina and Alabama,″ *id.*, the Ninth Circuit concluded that the law did ″not apply uniformly to a defined class of debtors,″ *id. at 1532*.

But there are key **[**21]** differences between the BAPCPA and the statute in *St. Angelo*. For one, as we have already noted, the BAPCPA is uniform in form: all debtors whose income is above the median family income are treated alike, as are all debtors whose income falls below. The resulting differences based on the state in which the debtor resides are analytically indistinguishable from the differences resulting from the incorporation of various state laws. For another, whereas in *St. Angelo* there was no indication that Congress intended for the exemption to deal with a problem specific to North Carolina and Alabama, the BAPCPA directly addresses regionally isolated problems. Because debtors in certain parts of the country are likely to pay more for housing than debtors in other parts, Congress believed that the means test--or ″needs-based bankruptcy relief″--could gauge varying costs of living, and thus ″ensure that debtors repay creditors the maximum they can afford.″ H.R. REP. NO. 109-31(I), at 2. The Bankruptcy Clause ″does not deny Congress power to take into account differences that exist between different parts of the country, and to fashion legislation to resolve geographically isolated problems,″ *Blanchette, 419 U.S. at 159*, **[**22]** and it is not for us as an appellate court to pass judgment on the wisdom of congressional legislation.

2.

The Schultzes next argue that the uniformity requirement was enacted in response to the fear that the national

government would use its power over commerce to the disadvantage of particular states. (Appellants' Br. 12-21; Amicus Br. 4-5.) Accordingly, even if a federal bankruptcy law may vary in application from state to state, employing *federal* income standards enables the preferential treatment of debtors in some states over debtors in other states, a form of discriminatory treatment the Framers explicitly prohibited. We do not find their argument or their view of history compelling.

First, Supreme Court precedent lends no support to the federal versus state distinction. *Moyses*, *Stellwagen*, and *Blanchette* cannot be read as standing for anything more than their precise holding: that Congress does not exceed its constitutional powers in enacting a bankruptcy law that permits variations based on state law or to solve geographically isolated problems. Although the Supreme Court has not specifically addressed classifications based on federal law such as those in the BAPCPA, we find **[**23]** no reasoning within the relevant case law explaining why employing federal variations somehow makes a bankruptcy law non-uniform. The lesson of *Moyses* and its progeny--that Congress may permissibly address regional variations--would apply equally to variations based on either state laws or federal statistics.

[*8]** And *Gibbons* does not counsel a different result. There, the Court struck down **[*354]** a federal bankruptcy law as violative of the uniformity provision on the ground that the Act was a law designed for and applied to only one bankrupt railroad. *455 U.S. at 470-71*. The BAPCPA, in contrast, is uniformly applicable across the nation and does not target any isolated entity.

True, the Court has recognized that "the Bankruptcy Clause itself contains an affirmative limitation or restriction upon Congress' power." *Gibbons, 455 U.S. at 468*. But a strict reading of this statement "overlooks the flexibility inherent in the constitutional provision," *Blanchette, 419 U.S. at 158*, and improperly cabins the reach of Congress's authority. It is worth noting that in every case considering the scope of the Clause, the Court merely assumed that the term "uniform" implied an affirmative restriction, and **[**24]** ultimately concluded that such a restriction could be satisfied by a law that is uniform only in form.

Nor does the original understanding of the Bankruptcy Clause support the federal versus state distinction that the Schultzes urge us to adopt. We need not belabor the point, as a historical account of the Bankruptcy Clause has been recounted numerous times, including once recently by this circuit. *See In re Hood, 319 F.3d 755, 764-65 (6th Cir. 2003)*, *aff'd on other grounds*, *Tennessee Student Assistance Corp. v. Hood, 541 U.S. 440, 124 S. Ct. 1905, 158 L. Ed. 2d 764 (2004)*. It suffices to say the following: the Bankruptcy Clause emerged amidst a depressed economy, collapsing business ventures, and the prospect of commercial warfare between the various states. To combat mounting debt crises in the newly confederated America, states enacted "an ignoble array of legislative schemes" discharging the debt obligations of their citizens, primarily at the expense of out-of-state creditors. *Home Bldg. & Loan Ass'n v. Blaisdell, 290 U.S. 398, 427, 54 S. Ct. 231, 78 L. Ed. 413 (1934)*.

Faced with multiple obstacles for collecting debt, and the resulting economic harm, the Framers believed that a federal--and "uniform"--bankruptcy system would be necessary to reduce **[**25]** the problem inherent in applying varying state insolvency and bankruptcy rules, and to rein in the pro-debtor excesses of state legislatures. *See Cent. Virginia Cmty. Coll. v. Katz, 546 U.S. 356, 362-63, 126 S. Ct. 990, 163 L. Ed. 2d 945 (2006)* ("The history of the Bankruptcy Clause . . . demonstrate[s] that it was intended not just as a grant of legislative authority to Congress, but also to authorize limited subordination of state sovereign immunity in the bankruptcy arena. Foremost on the minds of those who adopted the Clause were the intractable problems, not to mention the injustice, created by one State's imprisoning of debtors who had been discharged . . . in and by another State."); *Hood, 319 F.3d at 764-65* ("Indeed, setting bankruptcy policies on the state level would enable states to favor in-state creditors over similarly-situated out-of-state creditors. By granting the power to Congress exclusively, the Constitution prevented runaway states from defeating bankruptcy's goals."); *In re Dehon, Inc., 327 B.R. 38, 56 (Bankr. D. Mass. 2005)* ("[T]he use of the word 'uniform' in the Bankruptcy Clause was not primarily intended as a restriction on congressional power, but as a *grant* of power to Congress. The very **[**26]** structure of the clause and its placement in the Constitution clarify this point."). *See also* BRUCE H. MANN, REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE 183-85 (2002); Kurt H. Nadelmann, *On the Origin of the Bankruptcy Clause*, 1 AM. J. LEGAL **[*355]** HIST. 215, 225-27 (1957). [5]

[*9]** In light of this account, we find no merit in the Schultzes' argument that Congress can incorporate state

[5] Indeed, the only direct reference to the Bankruptcy Clause in the Federalist Papers conveys the idea that uniform bankruptcy laws were necessary to protect creditors in a national economy. James Madison recognized in No. 42 that "[t]he power of establishing uniform laws of bankruptcy, is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question." THE FEDERALIST No. 42, at 239 (James Madison) (Clinton Rossiter ed., 1961). So did Alexander Hamilton

laws, but cannot incorporate federal standards. At the time of the Constitutional Convention, the fear was not, at least in the bankruptcy context, of Congress discriminating in favor of or against a particular locality. Quite to the contrary, uniformity in the Bankruptcy Clause was viewed as a way to safeguard the nation's interest in establishing and maintaining a single system of debt and credit without interference from the parochial or otherwise obstreperous action on the part of the fifty states. *See* Dehon, 327 B.R. at 56 n.34.

3.

One final point needs to be addressed: We are not persuaded that the heightened scrutiny applied in United States v. Ptasynski, 462 U.S. 74, 84, 103 S. Ct. 2239, 76 L. Ed. 2d 427 (1983), is relevant to the interpretation of the Bankruptcy Clause. In *Ptasynski*, the Court considered whether a section of the Crude Oil Windfall Profit Tax Act granting an exemption for oil produced in certain regions near Alaska violated the uniformity provision in the Taxing **[**28]** Power. Although the Court ultimately upheld the exemption, it began its analysis with the presumption that the "the Uniformity Clause was proposed as one of several measures designed to limit the exercise of [Congress's] power," id. at 81, and applied a form of heightened scrutiny: "[W]here Congress does choose to frame a tax in geographic terms, we will examine the classification closely to see if there is actual geographic discrimination." Id. at 84-85.

However, the text and the background of the Taxing Power is wholly inapposite to that of the Bankruptcy Clause. We need not look any further than the plain language of the Bankruptcy Clause, which states: ***HN4*** "[The Congress shall have Power] to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. CONST. art. I, § 8, cl. 4. Reading these words in conjunction with the Taxing Power, another clause in Congress's enumerated powers, reveals a striking contrast. The Taxing Power states: "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, . . . *but* all Duties, Imposts and Excises *shall be* uniform throughout the United States." U.S. CONST. art. I, § 8, cl. 1 (emphasis **[**29]** added). If the Framers had intended both of these uniformity provisions to be read as an absolute limitation, requiring Congress to enact perfectly uniform laws, they presumably would have employed similar language in the Bankruptcy Clause by stating that "Congress shall have Power to establish Laws on the subject of Bankruptcies, but all such Laws **[*356]** shall be uniform throughout the United States." *See* Randolph J. Haines, *The Uniformity Power: Why Bankruptcy is Different*, 77 AM. BANKR. L.J. 129, 166-67 (2003) [hereinafter *The Uniformity Power*].

McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 4 L. Ed. 579 (1819), provides ample support for this reading of constitutional text. In his foundational analysis in *McCulloch*, Justice Marshall concluded that "necessary" as used in the Necessary and Proper Clause should be interpreted as conferring an additional grant of power, rather than a limitation on Congress's authority to choose only those means that were absolutely necessary: "1st. The clause is placed among the powers of congress, not along the limitations on those powers. 2d. Its terms purport to enlarge, not diminish the powers vested in the government." Id. at 419-20. Much like the Bankruptcy Clause, **[**30]** if Congress intended "necessary" to imply a restraint on the sphere of congressional authority, it "would have been expressed in terms resembling these. 'In carrying into execution the foregoing powers, and all others,' &c. 'no laws shall be passed but such as are necessary and proper.'" Id. at 420. *See also* Haines, The Uniformity Power, at 167. As it was in *McCulloch*, so it is here: the term "uniform" was intended to grant an additional power at the expense of the fifty states, rather than to limit the scope of Congress's delegated powers.

While it is true that the Supreme Court has "looked to the interpretation of [the Bankruptcy Clause] in determining the meaning of the [Taxation Power]," Ptasynski, 462 U.S. at 83 n.13 (citing Blanchette, 419 U.S. at 160-61), the Court has never found prior precedent in one area to be dispositive in the other, nor has it required appellate courts to apply the heightened scrutiny in **[***10]** *Ptasynski* to cases interpreting the Bankruptcy Clause. In fact, the Court in *Ptasynski* acknowledged in the very same footnote that "the purposes giving rise to the Bankruptcy Clause are not identical to those underlying the [Taxing Power's] Uniformity Clause . . . ." *Id.* **[**31]** The lengthy historical discussion in *Ptasynski* shows that the Taxing Power emerged from the "concern that the national government would use its power over commerce to the disadvantage of particular States," id. at 81, a history that stands in stark contrast to the problems inherent in applying varying state bankruptcy rules to debtors and creditors living in different states. In sum, uniformity of taxes and duties served to assure the states that Congress would not discriminate in favor of or against a particular locality, whereas uniformity in the bankruptcy context was viewed as a grant of power to standardize creditor relief

in No. 32, when he explained that the word "uniform" in the Naturalization Clause--a provision that closely mirrors that of the Bankruptcy Clause--confers on Congress the "exclusive jurisdiction" to regulate within that area, "because if each State had power to prescribe a **[**27]** *distinct rule*, there could not be a *uniform rule*." THE FEDERALIST No. 32, at 199 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

across the nation, notwithstanding varying obtrusive state laws. We therefore find it inappropriate to employ the heightened scrutiny in *Ptasynski* and to determine whether the BAPCPA results in ″actual geographic discrimination.″ *Id. at 85*.

III. CONCLUSION

For those reasons, we **AFFIRM** the judgment of the district court.

Exec. Benefits Ins. Agency v Arkison,
2014 U.S. LEXIS 3993

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Supreme Court of the United States

EXECUTIVE BENEFITS
INSURANCE AGENCY, Petitioner
v.
Peter H. ARKISON, Chapter 7 Trustee of The
Estate of Bellingham Insurance Agency, Inc.

No. 12–1200. | Argued Jan.
14, 2014. | Decided June 9, 2014.

Synopsis

Background: Bankruptcy trustee filed complaint under fraudulent transfer theory to recover commissions deposited into account of noncreditor as property of estate of Chapter 7 debtor. The United States Bankruptcy Court for the Western District of Washington granted summary judgment in favor of trustee. Noncreditor appealed. The District Court, Marsha J. Pechman, Chief Judge, affirmed. Noncreditor appealed. The United States Court of Appeals for the Ninth Circuit, Paez, Circuit Judge, 702 F.3d 553, affirmed. Certiorari was granted.

Holdings: The Supreme Court, Justice Thomas, held that:

[1] when, under the reasoning of *Stern v. Marshall*, the Constitution does not permit a bankruptcy court to enter final judgment on a bankruptcy-related claim, the relevant statute nevertheless permits a bankruptcy court to issue proposed findings of fact and conclusions of law to be reviewed de novo by the district court;

[2] assuming without deciding that the subject fraudulent conveyance claims were so-called "*Stern* claims," the bankruptcy court could have adjudicated the claims as non-core and submitted proposed findings of fact and conclusions of law to the district court to be reviewed de novo; and

[3] even if the bankruptcy court's entry of judgment was invalid, as noncreditor contended, the district court's de novo review and entry of its own final judgment cured any error.

Affirmed.

West Headnotes (7)

[1] Bankruptcy

Pursuant to the Supreme Court's decision in *Granfinanciera*, a fraudulent conveyance claim under title 11 is not a matter of "public right" for purposes of Article III, and the defendant to such a claim is entitled to a jury trial under the Seventh Amendment. U.S.C.A. Const. Art. 3, § 1 et seq.; Amend. 7.

Cases that cite this headnote

[2] Bankruptcy

Under the Bankruptcy Amendments and Federal Judgeship Act of 1984, if a matter is "core," the bankruptcy judge may enter final judgment on the claim, subject to appellate review by the district court; if a matter is "non-core" and the parties have not consented to final adjudication by the bankruptcy court, however, the bankruptcy judge must propose findings of fact and conclusions of law, and the district court must review the proceeding de novo and enter final judgment. 28 U.S.C.A. §§ 157, 157(b), 157(c).

Cases that cite this headnote

[3] Bankruptcy

Pursuant to the Supreme Court's decision in *Stern v. Marshall*, even though bankruptcy courts are statutorily authorized to enter final judgment on a class of bankruptcy-related claims, namely, those labeled by Congress as "core," Article III of the Constitution prohibits bankruptcy courts from finally adjudicating certain of those claims, including a common-law counterclaim for tortious interference against a creditor to the estate. U.S.C.A. Const. Art. 3, § 1 et seq.; 28 U.S.C.A. §§ 157(b), 157(b)(2)(C).

Cases that cite this headnote

[4] Bankruptcy

When, under the reasoning of *Stern v. Marshall*, the Constitution does not permit a bankruptcy court to enter final judgment on a bankruptcy-related claim, the relevant statute nevertheless permits a bankruptcy court to issue proposed findings of fact and conclusions of law to be reviewed de novo by the district court. U.S.C.A. Const. Art. 3, § 1 et seq.; 28 U.S.C.A. §§ 157(b), 157(c)(1).

Cases that cite this headnote

[5] Statutes

Pursuant to the Supreme Court's general approach to severability, the Court ordinarily gives effect to the valid portion of a partially unconstitutional statute so long as it remains fully operative as a law, and so long as it is not evident from the statutory text and context that Congress would have preferred no statute at all.

Cases that cite this headnote

[6] Bankruptcy

Assuming without deciding that the fraudulent conveyance claims asserted by Chapter 7 trustee against owner of account into which debtor's principals had deposited insurance commissions were so-called "*Stern* claims," that is, proceedings that are defined as "core" by statute but may not, as a constitutional matter, be adjudicated as such, the bankruptcy court could have adjudicated the claims as non-core and submitted proposed findings of fact and conclusions of law to the district court to be reviewed de novo; Article III did not permit these claims to be treated as "core," and the claims, by asserting that the improperly transferred property should have been part of debtor's bankruptcy estate and subject to distribution to creditors, were self-evidently "related to a case under title 11." U.S.C.A. Const. Art. 3, § 1 et seq.; 28 U.S.C.A. §§ 157(b), 157(c)(1).

Cases that cite this headnote

[7] Bankruptcy

Even if the bankruptcy court's entry of final judgment on Chapter 7 trustee's fraudulent conveyance claims against noncreditor, as alleged "*Stern* claims," was invalid for lack of constitutional authority, the district court's de novo review and entry of its own final judgment cured any error; noncreditor received the same review from the district court that it would have received if the bankruptcy court had treated the fraudulent conveyance claims as non-core matters and issued only proposed findings of fact and conclusions of law. U.S.C.A. Const. Art. 3, § 1 et seq.; 28 U.S.C.A. §§ 157(b), 157(c)(1).

Cases that cite this headnote

West Codenotes

Recognized as Unconstitutional
28 U.S.C.A. § 157(b)(2)(C)

Syllabus [*]

***1** Bellingham Insurance Agency, Inc. (BIA), filed a voluntary chapter 7 bankruptcy petition. Respondent Peter Arkison, the bankruptcy trustee, filed a complaint in the Bankruptcy Court against petitioner Executive Benefits Insurance Agency (EBIA) and others alleging the fraudulent conveyance of assets from BIA to EBIA. The Bankruptcy Court granted summary judgment for the trustee. EBIA appealed to the District Court, which affirmed the Bankruptcy Court's decision after *de novo* review and entered judgment for the trustee. While EBIA's appeal to the Ninth Circuit was pending, this Court held that Article III did not permit a Bankruptcy Court to enter final judgment on a counterclaim for tortious interference, even though final adjudication of that claim by the Bankruptcy Court was authorized by statute. *Stern v. Marshall*, 564 U.S. ——, ——. In light of *Stern*, EBIA moved to dismiss its appeal for lack of jurisdiction. The Ninth Circuit rejected EBIA's motion and affirmed. It acknowledged the trustee's claims as "*Stern* claims," *i.e.*, claims designated for final adjudication in the bankruptcy

court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter. The Court of Appeals nevertheless concluded that EBIA had impliedly consented to jurisdiction. The Court of Appeals also observed that the Bankruptcy Court's judgment could instead be treated as proposed findings of fact and conclusions of law, subject to *de novo* review by the District Court.

Held :

1. Under the Bankruptcy Amendments and Federal Judgeship Act of 1984, federal district courts have original jurisdiction in bankruptcy cases and may refer to bankruptcy judges two statutory categories of proceedings: "core" proceedings and "non-core" proceedings. See generally 28 U.S.C. § 157. In core proceedings, a bankruptcy judge "may hear and determine ... and enter appropriate orders and judgments," subject to the district court's traditional appellate review. § 157(b)(1). In non-core proceedings—those that are "not ... core" but are "otherwise related to a case under title 11," § 157(c)(1)—final judgment must be entered by the district court after *de novo* review of the bankruptcy judge's proposed findings of fact and conclusions of law, *ibid.*, except that the bankruptcy judge may enter final judgment if the parties consent, § 157(c)(2).

In *Stern*, the Court confronted an underlying conflict between the 1984 Act and the requirements of Article III. The Court held that Article III prohibits Congress from vesting a bankruptcy court with the authority to finally adjudicate the "core" claim of tortious interference. The Court did not, however, address how courts should proceed when they encounter a *Stern* claim. Pp. —— – ——.

2. *Stern* claims may proceed as non-core within the meaning of § 157(c). Lower courts have described *Stern* claims as creating a statutory "gap," since bankruptcy judges are not explicitly authorized to propose findings of fact and conclusions of law in a core proceeding. However, this so-called gap is closed by the Act's severability provision, which instructs that where a "provision of the Act or [its] application ... is held invalid, the remainder of th[e] Act ... is not affected thereby." 98 Stat. 344. As applicable here, when a court identifies a *Stern* claim, it has "held invalid" the "application" of § 157(b), and the "remainder" not affected includes § 157(c), which governs non-core proceedings. Accordingly, where a claim otherwise satisfies § 157(c)(1), the bankruptcy court should simply treat the *Stern* claim as non-core. This conclusion accords with the Court's general approach to severability, which is to give effect to the valid portion of a statute so long as it "remains 'fully operative as a law,' " *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U.S. 477, 509, 130 S.Ct. 3138, 177 L.Ed.2d 706, and so long as the statutory text and context do not suggest that Congress would have preferred no statute at all, *ibid.* Pp. —— – ——.

***2** 3. Section 157(c)(1)'s procedures apply to the fraudulent conveyance claims here. This Court assumes without deciding that these claims are *Stern* claims, which Article III does not permit to be treated as "core" claims under § 157(b). But because the claims assert that property of the bankruptcy estate was improperly removed, they are self-evidently "related to a case under title 11." Accordingly, they fit comfortably within the category of claims governed by § 157(c)(1). The Bankruptcy Court would have been permitted to follow that provision's procedures, *i.e.*, to submit proposed findings of fact and conclusions of law to the District Court for *de novo* review. Pp. —— – ——.

4. Here, the District Court's *de novo* review of the Bankruptcy Court's order and entry of its own valid final judgment cured any potential error in the Bankruptcy Court's entry of judgment. EBIA contends that it was constitutionally entitled to review by an Article III court regardless of whether the parties consented to bankruptcy court adjudication. In the alternative, EBIA asserts that even if such consent were constitutionally permissible, it did not in fact consent. Neither contention need be addressed here, because EBIA received the same review from the District Court that it would have received had the Bankruptcy Court treated the claims as non-core proceedings under § 157(c)(1). Pp. —— – ——.

702 F. 3d 553, affirmed.

THOMAS, J., delivered the opinion for a unanimous Court.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Opinion

Justice THOMAS delivered the opinion of the Court.

***3** In *Stern v. Marshall*, 564 U.S. —— (2011), this Court held that even though bankruptcy courts are statutorily authorized to enter final judgment on a class of bankruptcy-related claims, Article III of the Constitution prohibits bankruptcy courts from finally adjudicating certain of those claims. *Stern* did not, however, decide how bankruptcy or district courts should proceed when a "*Stern* claim" is identified. We hold today that when, under *Stern* 's reasoning, the Constitution does not permit a bankruptcy court to enter final judgment on a bankruptcy-related claim, the relevant statute nevertheless permits a bankruptcy court to issue proposed findings of fact and conclusions of law to be reviewed *de novo* by the district court. Because the District Court in this case conducted the *de novo* review that petitioner demands, we affirm the judgment of the Court of Appeals upholding the District Court's decision.

I

Nicolas Paleveda and his wife owned and operated two companies—Aegis Retirement Income Services, Inc. (ARIS), and Bellingham Insurance Agency, Inc. (BIA). By early 2006, BIA had become insolvent, and on January 31, 2006, the company ceased operation. The next day, Paleveda used BIA funds to incorporate Executive Benefits Insurance Agency, Inc. (EBIA), petitioner in this case. Paleveda and others initiated a scheme to transfer assets from BIA to EBIA. The assets were deposited into an account held jointly by ARIS and EBIA and ultimately credited to EBIA at the end of the year.

On June 1, 2006, BIA filed a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Western District of Washington. Peter Arkison, the bankruptcy trustee and respondent in this case, filed a complaint in the same Bankruptcy Court against EBIA and others. As relevant here, the complaint alleged that Paleveda used various methods to fraudulently convey BIA assets to EBIA.[1] EBIA filed an answer and denied many of the trustee's allegations.

After some disagreement as to whether the trustee's claims should continue in the Bankruptcy Court or instead proceed before a jury in Federal District Court, the trustee filed a motion for summary judgment against EBIA in the Bankruptcy Court. The Bankruptcy Court granted summary judgment for the trustee on all claims, including the fraudulent conveyance claims. EBIA then appealed that determination to the District Court. The District Court conducted *de novo* review, affirmed the Bankruptcy Court's decision, and entered judgment for the trustee.

***4** EBIA appealed to the United States Court of Appeals for the Ninth Circuit. After EBIA filed its opening brief, this Court decided *Stern*, *supra*. In *Stern*, we held that Article III of the Constitution did not permit a bankruptcy court to enter final judgment on a counterclaim for tortious interference, *id.*, at ——, even though final adjudication of that claim by the Bankruptcy Court was authorized by statute, see Part II–B, *infra*.[2] In light of *Stern*, EBIA moved to dismiss its appeal in the Ninth Circuit for lack of jurisdiction, contending that Article III did not permit Congress to vest authority in a bankruptcy court to finally decide the trustee's fraudulent conveyance claims.

[1] The Ninth Circuit rejected EBIA's motion and affirmed the District Court. *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553 (2012). As relevant here, the court held that *Stern*, *supra*, and *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989),[3] taken together, lead to the conclusion that Article III does not permit a bankruptcy court to enter final judgment on a fraudulent conveyance claim against a noncreditor unless the parties consent. 702 F.3d, at 565. The Ninth Circuit concluded that EBIA had impliedly consented to the Bankruptcy Court's jurisdiction, and that the Bankruptcy Court's adjudication of the fraudulent conveyance claim was therefore permissible. *Id.*, at 566, 568. The Court of Appeals also observed that the Bankruptcy Court's judgment could instead be treated as proposed findings of fact and conclusions of law, subject to *de novo* review by the District Court. *Id.*, at 565–566.

We granted certiorari, 570 U.S. —— (2013).

II

In *Stern*, we held that Article III prohibits Congress from vesting a bankruptcy court with the authority to finally adjudicate certain claims. 564 U.S., at ——. But we did not address how courts should proceed when they encounter one of these "*Stern* claims"—a claim designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter. [4]

As we explain in greater detail below, when a bankruptcy court is presented with such a claim, the proper course is to issue proposed findings of fact and conclusions of law. The district court will then review the claim *de novo* and enter judgment. This approach accords with the bankruptcy statute and does not implicate the constitutional defect identified by *Stern*.

A

***5** We begin with an overview of modern bankruptcy legislation. Prior to 1978, federal district courts could refer matters within the traditional "summary jurisdiction" of bankruptcy courts to specialized bankruptcy referees. [5] See *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 53, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (plurality opinion). Summary jurisdiction covered claims involving "property in the actual or constructive possession of the [bankruptcy] court," *ibid.*, *i.e.*, claims regarding the apportionment of the existing bankruptcy estate among creditors. See Brubaker, A "Summary" Statutory and Constitutional Theory of Bankruptcy Judges' Core Jurisdiction After *Stern v. Marshall*, 86 Am. Bankr.L.J. 121, 124 (2012). Proceedings to augment the bankruptcy estate, on the other hand, implicated the district court's plenary jurisdiction and were not referred to the bankruptcy courts absent both parties' consent. See *MacDonald v. Plymouth County Trust Co.*, 286 U.S. 263, 266, 52 S.Ct. 505, 76 L.Ed. 1093 (1932); see also Brubaker, *supra*, at 128.

In 1978, Congress enacted sweeping changes to the federal bankruptcy laws. See 92 Stat. 2549. The Bankruptcy Reform Act eliminated the historical distinction between " 'summary' " jurisdiction belonging to bankruptcy courts and " 'plenary' " jurisdiction belonging to either a district court or an appropriate state court. *Northern Pipeline*, *supra*, at 54 (plurality opinion); see also 1 W. Norton & W. Norton Bankruptcy Law and Practice § 4:12, p. 4–44 (3d ed.2013). Instead, the 1978 Act mandated that bankruptcy judges "shall exercise" jurisdiction over "all civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. §§ 1471(b)-(c) (1976 ed., Supp. IV). Under the 1978 Act, bankruptcy judges were "vested with all of the 'powers of a court of equity, law, and admiralty,' " with only a few limited exceptions. *Northern Pipeline*, 458 U.S., at 55 (plurality opinion) (quoting § 1481). Notwithstanding their expanded jurisdiction and authority, these bankruptcy judges were not afforded the protections of Article III—namely, life tenure and a salary that may not be diminished. *Id.*, at 53.

In *Northern Pipeline*, this Court addressed whether bankruptcy judges under the 1978 Act could "constitutionally be vested with jurisdiction to decide [a] state-law contract claim" against an entity not otherwise a party to the proceeding. *Id.*, at 53, 87, n. 40. The Court concluded that assignment of that claim for resolution by the bankruptcy judge "violates Art. III of the Constitution." *Id.*, at 52, 87 (plurality opinion); see *id.*, at 91 (Rehnquist, J., concurring in judgment). The Court distinguished between cases involving so-called "public rights," which may be removed from the jurisdiction of Article III courts, and cases involving "private rights," which may not. See *id.*, at 69–71 (plurality opinion); *id.*, at 91 (Rehnquist, J., concurring in judgment). Specifically, the plurality noted that "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights," which belong in an Article III court. *Id.*, at 71–72, and n. 26.

B

***6** Against that historical backdrop, Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984—the Act at issue in this case. See 28 U.S.C. § 151 *et seq.* Under the 1984 Act, federal district courts have "original and exclusive jurisdiction of all cases under title 11," § 1334(a), and may refer to bankruptcy judges any "proceedings arising under title 11 or arising in or related to a case under title 11," § 157(a). [6] Bankruptcy judges serve 14–year terms subject to removal for cause, §§ 152(a)(1), (e), and their salaries are set by Congress, § 153(a).

The 1984 Act largely restored the bifurcated jurisdictional scheme that existed prior to the 1978 Act. The 1984 Act implements that bifurcated scheme by dividing all matters that may be referred to the bankruptcy court into two categories: "core" and "non-core" proceedings. See generally § 157.[7] It is the bankruptcy court's responsibility to determine whether each claim before it is core or non-core. § 157(b)(3); cf. Fed. Rule Bkrtcy. Proc. 7012. For core proceedings, the statute contains a nonexhaustive list of examples, including—as relevant here—"proceedings to determine, avoid, or recover fraudulent conveyances." § 157(b)(2)(H). The statute authorizes bankruptcy judges to "hear and determine" such claims and "enter appropriate orders and judgments" on them. § 157(b)(1). A final judgment entered in a core proceeding is appealable to the district court, § 158(a)(1), which reviews the judgment under traditional appellate standards, Rule 8013.

As for "non-core" proceedings—*i.e.*, proceedings that are "not ... core" but are "otherwise related to a case under title 11"—the statute authorizes a bankruptcy court to "hear [the] proceeding," and then "submit proposed findings of fact and conclusions of law to the district court." § 157(c)(1). The district court must then review those proposed findings and conclusions *de novo* and enter any final orders or judgments. *Ibid*. There is one statutory exception to this rule: If all parties "consent," the statute permits the bankruptcy judge "to hear and determine and to enter appropriate orders and judgments" as if the proceeding were core. § 157(c)(2).

[2] Put simply: If a matter is core, the statute empowers the bankruptcy judge to enter final judgment on the claim, subject to appellate review by the district court. If a matter is non-core, and the parties have not consented to final adjudication by the bankruptcy court, the bankruptcy judge must propose findings of fact and conclusions of law. Then, the district court must review the proceeding *de novo* and enter final judgment.

C

[3] *Stern v. Marshall*, 564 U.S. ——, confronted an underlying conflict between the 1984 Act and the requirements of Article III. In particular, *Stern* considered a constitutional challenge to the statutory designation of a particular claim as "core." The bankrupt in that case had filed a common-law counterclaim for tortious interference against a creditor to the estate. *Id.*, at ——. Section 157(b)(2)(C), as added by the 1984 Act, lists "counterclaims by the estate against persons filing claims against the estate" as a core proceeding, thereby authorizing the bankruptcy court to adjudicate the claim to final judgment. See *supra* this page. The respondent in *Stern* objected that Congress had violated Article III by vesting the power to adjudicate the tortious interference counterclaim in bankruptcy court. *Stern*, 564 U.S., at ——.

We agreed. *Id.*, at ——. In that circumstance, we held, Congress had improperly vested the Bankruptcy Court with the " ' judicial Power of the United States,' " just as in *Northern Pipeline*. 564 U.S., at ——, —— (slip op., at 21, 38). Because "[n]o 'public right' exception excuse[d] the failure to comply with Article III," we concluded that Congress could not confer on the Bankruptcy Court the authority to finally decide the claim. *Id.*, at ——. (slip op., at 21).

III

***7** **[4]** *Stern* made clear that some claims labeled by Congress as "core" may not be adjudicated by a bankruptcy court in the manner designated by § 157(b). *Stern* did not, however, address how the bankruptcy court should proceed under those circumstances. We turn to that question now.

The Ninth Circuit held that the fraudulent conveyance claims at issue here are *Stern* claims—that is, proceedings that are defined as "core" under § 157(b) but may not, as a constitutional matter, be adjudicated as such (at least in the absence of consent, see n. 4, *supra*. See 702 F.3d, at 562. Neither party contests that conclusion.

The lower courts, including the Ninth Circuit in this case, have described *Stern* claims as creating a statutory "gap." See, *e.g.*, 702 F.3d, at 565. By definition, a *Stern* claim may not be adjudicated to final judgment by the bankruptcy court, as in a typical core proceeding. But the alternative procedure, whereby the bankruptcy court submits proposed findings of fact and conclusions of law, applies only to non-core claims. See § 157(c)(1). Because § 157(b) does not explicitly authorize bankruptcy judges to submit proposed findings of fact and conclusions of law in a *core proceeding*, the argument goes, *Stern* created a "gap" in the bankruptcy statute. See 702 F.3d, at 565. That gap purportedly renders the bankruptcy court powerless to act on *Stern* claims, see Brief

for Petitioner 46–48, thus requiring the district court to hear all *Stern* claims in the first instance.

We disagree. The statute permits *Stern* claims to proceed as non-core within the meaning of § 157(c). In particular, the statute contains a severability provision that accounts for decisions, like *Stern*, that invalidate certain applications of the statute:

> "If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, or the application of that provision to persons or circumstances other than those as to which it is held invalid, is not affected thereby." 98 Stat. 344, note following 28 U.S.C. § 151.

The plain text of this severability provision closes the so-called "gap" created by *Stern* claims. When a court identifies a claim as a *Stern* claim, it has necessarily "held invalid" the "application" of § 157(b)—*i.e.*, the "core" label and its attendant procedures—to the litigant's claim. Note following § 151. In that circumstance, the statute instructs that "the remainder of th[e] Act ... is not affected thereby." *Ibid.* That remainder includes § 157(c), which governs non-core proceedings. With the "core" category no longer available for the *Stern* claim at issue, we look to § 157(c)(1) to determine whether the claim may be adjudicated as a non-core claim —specifically, whether it is "not a core proceeding" but is "otherwise related to a case under title 11." If the claim satisfies the criteria of § 157(c)(1), the bankruptcy court simply treats the claims as non-core: The bankruptcy court should hear the proceeding and submit proposed findings of fact and conclusions of law to the district court for *de novo* review and entry of judgment.

***8** **[5]** The conclusion that the remainder of the statute may continue to apply to *Stern* claims accords with our general approach to severability. We ordinarily give effect to the valid portion of a partially unconstitutional statute so long as it "remains ' "fully operative as a law," ' " *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U.S. 477, 509, 130 S.Ct. 3138, 177 L.Ed.2d 706 (2010) (quoting *New York v. United States*, 505 U.S. 144, 186, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992)), and so long as it is not " 'evident' " from the statutory text and context that Congress would have preferred no statute at all, 561 U.S., at 509 (quoting *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684, 107 S.Ct. 1476, 94 L.Ed.2d 661 (1987)). Neither of those concerns applies here. Thus, § 157(c) may be applied naturally to *Stern* claims. And, EBIA has identified "nothing in the statute's text or historical context" that makes it "evident" that Congress would prefer to suspend *Stern* claims in limbo. 561 U.S., at 509. [8]

IV

A

[6] Now we must determine whether the procedures set forth in § 157(c)(1) apply to the fraudulent conveyance claims at issue in this case. The Court of Appeals held, and we assume without deciding, that the fraudulent conveyance claims in this case are *Stern* claims. See Part III, *supra*. For purposes of this opinion, the "application" of both the "core" label and the procedures of § 157(b) to the trustee's claims has therefore been "held invalid." Note following § 151. Accordingly, we must decide whether the fraudulent conveyance claims brought by the trustee are within the scope of § 157(c)(1)—that is, "not ... core" proceedings but "otherwise related to a case under title 11." We hold that this language encompasses the trustee's claims of fraudulent conveyance.

First, the fraudulent conveyance claims in this case are "not ... core." The Ninth Circuit held—and no party disputes—that Article III does not permit these claims to be treated as "core." See Part III, *supra*. Second, the fraudulent conveyance claims are self-evidently "related to a case under title 11." At bottom, a fraudulent conveyance claim asserts that property that should have been part of the bankruptcy estate and therefore available for distribution to creditors pursuant to Title 11 was improperly removed. That sort of claim is "related to a case under title 11" under any plausible construction of the statutory text, and no party contends otherwise. See, *e.g.*, *Celotex Corp. v. Edwards*, 514 U.S. 300, 307, n. 5, 308, 115 S.Ct. 1493, 131 L.Ed.2d 403 (1995) ("Proceedings 'related to' the bankruptcy include ... suits between third parties which have an effect on the bankruptcy estate"). Accordingly, because these *Stern* claims fit comfortably within the category of claims governed by § 157(c)(1), the Bankruptcy Court would have been permitted to follow the procedures required by that provision, *i.e.*, to submit proposed findings of fact and conclusions of law to the District Court to be reviewed *de novo*.

B

***9** **[7]** Although this case did not proceed in precisely that fashion, we affirm nonetheless. A brief procedural history of the case helps explain why.

As noted, § 157 permits a bankruptcy court to adjudicate a claim to final judgment in two circumstances—in core proceedings, see § 157(b), and in non-core proceedings "with the consent of all the parties," § 157(c)(2). In this case, the Bankruptcy Court entered judgment in favor of the bankruptcy trustee without specifying in its order whether it was acting pursuant to § 157(b) (core) or § 157(c)(2) (non-core with consent). EBIA immediately appealed to the District Court, see § 158, but it did not argue that the Bankruptcy Court lacked constitutional authority to grant summary judgment. As a result, the District Court did not analyze whether there was a *Stern* problem and did not, as some district courts have done, relabel the bankruptcy order as mere proposed findings of fact and conclusions of law. See, *e.g.*, *In re Parco Merged Media Corp.*, 489 B.R. 323, 326 (Me.2013) (collecting cases). The District Court did, however, review *de novo* the Bankruptcy Court's grant of summary judgment for the trustee—a legal question—and issued a reasoned opinion affirming the Bankruptcy Court. The District Court then separately entered judgment in favor of the trustee. See 28 U.S.C. § 1334(b) ("[T]he district courts shall have original but not exclusive jurisdiction of all civil proceedings ... related to cases under title 11").

EBIA now objects on constitutional grounds to the Bankruptcy Court's disposition of the fraudulent conveyance claims. EBIA contends that it was constitutionally entitled to review of its fraudulent conveyance claims by an Article III court regardless of whether the parties consented to adjudication by a bankruptcy court. Brief for Petitioner 25–27. In an alternative argument, EBIA asserts that even if the Constitution permitted the Bankruptcy Court to adjudicate its claim with the consent of the parties, it did not in fact consent. *Id.*, at 38.

In light of the procedural posture of this case, however, we need not decide whether EBIA's contentions are correct on either score. At bottom, EBIA argues that it was entitled to have an Article III court review *de novo* and enter judgment on the fraudulent conveyance claims asserted by the trustee. In effect, EBIA received exactly that. The District Court conducted *de novo* review of the summary judgment claims, concluding in a written opinion that there were no disputed issues of material fact and that the trustee was entitled to judgment as a matter of law. In accordance with its statutory authority over matters related to the bankruptcy, see § 1334(b), the District Court then separately entered judgment in favor of the trustee. EBIA thus received the same review from the District Court that it would have received if the Bankruptcy Court had treated the fraudulent conveyance claims as non-core proceedings under § 157(c)(1). In short, even if EBIA is correct that the Bankruptcy Court's entry of judgment was invalid, the District Court's *de novo* review and entry of its own valid final judgment cured any error. Cf. *Carter v. Kubler*, 320 U.S. 243, 248, 64 S.Ct. 1, 88 L.Ed. 26 (1943) (bankruptcy commissioner's error was cured after the District Court "made an independent and complete review of the conflicting evidence").

***10** Accordingly, we affirm the judgment of the Court of Appeals.

It is so ordered.

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

1 The trustee asserted claims of fraudulent conveyance under 11 U.S.C. § 544, and under state law, Wash. Rev.Code, ch. 19.40 (2012).

2 As we explain below, see Part II–B, *infra*, the statutory scheme at issue both in *Stern* and in this case grants bankruptcy courts the authority to "hear and determine" and "enter appropriate orders and judgments" in "core" proceedings. 28 U.S.C. § 157(b)(1). The statute lists counterclaims like the one brought in *Stern* as "core" claims. § 157(b)(2)(C).

3 *Granfinanciera* held that a fraudulent conveyance claim under Title 11 is not a matter of "public right" for purposes of Article III, 492 U.S., at 55, and that the defendant to such a claim is entitled to a jury trial under the Seventh Amendment, *id.*, at 64.

4 Because we conclude that EBIA received the *de novo* review and entry of judgment to which it claims constitutional entitlement, see Part IV–B, *infra*, this case does not require us to address whether EBIA in fact consented to the Bankruptcy Court's adjudication of a *Stern* claim and whether Article III permits a bankruptcy court, with the consent of the parties, to enter final judgment on a *Stern* claim. We reserve that question for another day.

5 Bankruptcy referees were designated "judges" in 1973. See *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 53, n. 2, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (plurality opinion).

6 In addition, district courts may also withdraw such matters from the bankruptcy courts for "cause shown." § 157(d).

7 In using the term "core," Congress tracked the *Northern Pipeline* plurality's use of the same term as a description of those claims that fell within the scope of the historical bankruptcy court's power. See 458 U.S., at 71 ("[T]he restructuring of debtor-creditor relations, which is at the *core* of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights ..." (emphasis added)).

8 To the contrary, we noted in *Stern* that removal of claims from core bankruptcy jurisdiction does not "meaningfully chang[e] the division of labor in the current statute." 564 U.S., at —— (slip op., at 37). Accepting EBIA's contention that district courts are required to hear all *Stern* claims in the first instance, see Brief for Petitioner 46–48, would dramatically alter the division of responsibility set by Congress.

End of Document

In Re Sampson-Pack, 2014 Bankr LEXIS 1287
(Bankr. D. Md. Mar. 31, 2014)

Signed: March 31, 2014

SO ORDERED

NANCY V. ALQUIST
U. S. BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)

In re:	*	
Renee L. Sampson-Pack,	*	Case No. 12-30589-NVA (Chapter 13)
Debtor	*	

* * * * * * * * *

MEMORANDUM ORDER SUSTAINING CHAPTER 13 TRUSTEE'S OBJECTION [doc. 23] TO CONFIRMATION OF CHAPTER 13 PLAN

Renee L. Sampson-Pack, the debtor herein (the "Debtor"), proposed an amended Chapter 13 Plan (the "Plan") [doc. 20] calling for monthly payments, from the Debtor's income, in the amount of $900 over a period of 60 months.[1] Based on the claims filed, the Plan will pay all claims in full. The Debtor, however, could afford to pay more to the plan each month by operating on a tighter budget and could pay the claims off earlier, but she has elected not to do so. Despite the Debtor's elective stretch out of the plan payment period, the Plan does not propose to pay any interest on the claims.

[1] The Plan also provides that the Debtor will pay into the Plan one half of the amount of the refund she receives on account of her jointly-filed state and federal tax returns for tax years 2013-2016.

The Chapter 13 Trustee, Ellen W. Cosby (the "Trustee"), objects to the Plan. She argues that even though the Plan pays all claims in full, it is not confirmable because it does not comply with both prongs of the confirmation requirement set forth in §1325(b)(1) of the Bankruptcy Code.[2] The Trustee argues that in order for the Plan to be confirmed, the Debtor would need to make the commitment period shorter such that she would dedicate all of her available disposable income to the Plan (and still pay 100% of the claims), or compensate the creditors by paying them interest.

For the reasons stated herein, this Court agrees with the Trustee and finds that §1325(b)(1) requires the Debtor to pay interest on unsecured claims if the Debtor fails to commit all disposable income to the payment of unsecured creditors, but nonetheless pays unsecured creditors in full. This Court sustains the Trustee's Objection and denies the confirmation of the plan with leave to amend.

Applicable Law

A Chapter 13 Plan may not be confirmed over the objection of an unsecured creditor or the trustee unless the Plan complies with the provisions of §1325(b) of the Bankruptcy Code. *Petro v. Mishler*, 276 F.3d 375 (7th Cir. 2002); *In re Brumm*, 344 B.R. 795 (Bankr. N.D.W.Va. 2006). Section 1325(b) of the Bankruptcy Code provides --

> **(b)(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 on account of such claim is not less than the amount of such claim; or

[2] Title 11 of the United States Code.

> **(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.

This section governs the amount of income that must be dedicated to a Chapter 13 plan and was designed to deal with plans that yield little or nothing for unsecured creditors. *In re Hight-Goodspeed*, 486 B.R. 462, 463 (Bankr. N.D. Ind. 2012). The purpose of this section is to insure that when proposing a plan, a debtor dedicates the necessary amount of effort and seriousness in repaying unsecured creditors. *Id.*

Discussion

On its face, §1325(b)(1) requires a Debtor to comply with either subsection (A) (requiring a debtor to pay "the amount of the claim") or, in the alternative, subsection (B) (requiring that "all of the debtor's projected disposable income" be dedicated to a plan) before the court can confirm the plan. "As written, §1325(b)(1) requires compliance with either subsection (A) or (B), but not both." *In re Bailey*, 13-60782, 2013 WL 6145819 (Bankr. E.D. Ky. 2013) (quoting *In re Jones*, 374 B.R. 469, 469 (Bankr.D.N.H.2007)); *In re Winn*, 469 B.R. 628, 630 (Bankr. W.D.N.C. 2012) ("Only one of the prongs [of § 1325 (b)] need be met, not both.").

It is undisputed that the Debtor has failed to dedicate all of her disposable income as required by §1325(b)(1)(B). The Debtor is currently paying $900 per month for a period of 60 months, but her disposable income exceeds the amount she has dedicated to the Plan by

approximately $500 to $1000 a month.[3] Because the Debtor has not dedicated all of her disposable monthly income to the Plan, it cannot be confirmed under §1325(b)(1)(B).

Thus, the Plan must be confirmed, if at all, under §1325(b)(1)(A). Section 1325(b)(1)(A) states that a plan may not be confirmed unless the value of property distributed on account of a claim is "not less than the amount of such claim." *Id*. The Debtor argues that this section entitles creditors to the face amount of their claims and no more, and accordingly, she proposes to pay her creditors 100% of the face amount of their claims. The Debtor takes the position that §1325(b)(1)(A) does not require her to pay interest when her claims will be paid at 100% of face value, notwithstanding that she is not dedicating all of her disposable income to the Plan.

The Trustee argues that because the Debtor in this case has voluntarily decided to slow down the plan process by extending the Plan commitment period (which would be many months shorter while still providing for a 100% payout if the Debtor dedicated all of her disposable income), she must compensate her creditors for the time value of their claims and must do this by paying them interest. By paying any lesser amount, the Trustee argues, the claims would not be paid in full - - the plan would not, "as of its effective date" distribute "property" the "value" of which in not less than the amount of the creditors' claims, as mandated by §1325(b)(1)(A).

According to the Trustee, when Congress intends that claims may be paid in full without interest, it has made this intent clear. *See In re Krump*, 89 B.R. 821, 824 (Bankr. D.S.D. 1988) (finding that §1222(a)(2) of the Code does not require the payment of interest); *In re Fowler*, 394 F.3d 1208 (9th Cir. 2005) (finding that §1322(a)(2) does not require the payment of interest). By way of illustration, §§1222(a)(2) and 1322(a)(2) mandate that a "plan shall – provide for the full

[3] Although the parties originally disputed the amount of the Debtor's disposable monthly income, they have stipulated that not all of the Debtor's disposable income is being dedicated to the Plan. *See generally* [doc. 41].

payment, in deferred cash payments of all claims entitled to priority under section 507….” Unlike §1325(b)(1)(A), neither of these sections (which are uniformly interpreted as not requiring interest) require a debtor to pay the “value” of the claim “as of the effective date” in order to provide full, *albeit* deferred, payment.

Absent such a phrase requiring the payment of “present value,” courts have concluded that Congress did not intend that deferred payments must include interest. *In re Hageman*, 108 B.R. 1016, 1019 (Bankr. N.D. Iowa 1989); *See also In re Kingsley*, 86 B.R. 17 (Bankr. D. Conn. 1988) (“[I]t has been consistently held that when Congress intended to provide a claimholder with interest to compensate for the present value of a claim, it expressly provided for that treatment by the use of specific words, such as, ‘*value, as of the effective date of the plan equal to the allowed amount of such claim.’*”). Thus, because this language is included in §1325(b)(1), Congress did not excuse a debtor who utilizes this section to confirm her plan from paying interest in order to compensate a creditor fully for the value of its claim.

The Trustee relies on *Hight–Goodspeed, supra.* In that case, the court held that §1325(b)(1)(A) requires interest payments when a debtor does not devote all disposable income to the 100% Chapter 13 Plan. *Id.* In reaching this conclusion, the court determined that the phrase “as of the effective date of the Plan,” found in §1325(b)(1), applies to both subsections (A) and (B). *Id*. at 464–65.

For the “value of the property to be distributed under the plan on account of such claim… [to be] not less than the amount of such claim” as of the effective date of the plan, the plan must provide compensation for the value of money paid over time. *Id*. at 465 (“If a debtor would prefer to have a more flexible or less rigorous budget it may choose to devote less than all of its

disposable income to the Plan; but the price for doing so, is that [unsecured claims] must be paid in full with interest."). An appropriate compensation for the value of time is interest on a claim. *Id.*

As noted in *Hight-Goodspeed*, various provisions of the Bankruptcy Code contain the phrase "as of the effective date of the Plan."[4] These provisions are interpreted uniformly to require the payment of interest to compensate creditors for a debtor's delayed payment. *Id.* at 464.[5] However, it is appropriate to look at the placement of the phrase "as of the effective date of the plan" and the phrase "the value" in various sections of the Bankruptcy Code. In other sections of the Code, the phrase "as of the effective date of the plan" appears *after* the words "the value." Conversely, in §1325(b)(1)(A), the phrase "as of the effective date" appears *before* the words "the value."

Notwithstanding that these phrases appear in a different order in §1325(b)(1)(A) than they do in other Code sections, the court in *Hight-Goodspeed* interpreted the phrases as they appear in §1325(b)(1)(A) to have the same meaning and effect as they do in other sections of the Code. *Id.* The court concluded that the placement of the phrase in §1325(b) reflects the desire of Congress to make the phrase "as of the effective date of the Plan" apply to both subsections (A) and (B). "[T]he meaning of those words is not changed by relocating the phrase 'as of the effective date of

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[4] 11 U.S.C. §§ 1129(a)(7), 1225(a)(4), 1325(a)(4) (best interest of creditors test); §§ 1129(b)(2)(A)(i)(I, II), (B)(i), (C)(i), 1225(a)(5)(B)(ii), 1325(a)(5)(B)(ii) (cram down); § 1129(a)(9)(C)(i) (payment of priority claims).

[5] *See Till v. SCS Credit Corp.*, 541 U.S. 465, 469, 472–73, 124 S.Ct. 1951, 1955–56, 1958, 158 L.Ed.2d 787 (2004) (discussing § 1325(a)(5)(B)(ii)); *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 957, 117 S.Ct. 1879, 1882–83, 138 L.Ed.2d 148 (1997) (discussing § 1325(a)(5)(B)(ii)); *Rake v. Wade*, 508 U.S. 464, 469–70, 113 S.Ct. 2187, 2191, 124 L.Ed.2d 424 (1993) (discussing § 1325(a)(5)(B)(ii)); *United Savings Association of Texas*, 484 U.S. at 377, 108 S.Ct at 633 (discussing § 1129(b)(2)(A)(i)(II)). *See also, In re Airadigm Communications, Inc.*, 547 F.3d 763, 768–69 (7th Cir.2008) (§ 1129(b)(2)(A)(i)(II)); *Koopmans v. Farm Credit Services of Mid–America, ACA*, 102 F.3d 874 (7th Cir.1996) (§ 1225(a)(5)(B)(ii)); *In re Hardy*, 755 F.2d 75 (6th Cir.1985) (§ 1324(a)(4)); *Matter of Burgess Wholesale Mfg.*, 721 F.2d 1146, 1147 (7th Cir.1983) (§1129(a)(9)(C)). *In re Hight-Goodspeed*, at 464 (Bankr. N.D. Ind. 2012).

the Plan.'" *Id*. at 464 - 65. The *Hight-Goodspeed* court concluded that, "[t]he two statements 'the value, as of the effective date of the Plan, of the property to be distributed ...' and 'as of the effective date of the Plan—the value of the property to be distributed ...' have the same meaning." *Id.* at 465.

The Debtor, in turn, relies upon *In re Stewart-Harrel*, 443 B.R. 219 (Bankr. N.D. Ga. 2011), in which the court construed the §1325(b) language differently. The court held that the better interpretation of the phrase "as of the effective date of the plan" in §1325(b)(1) is that it refers to the date on which the court makes the determination whether the debtor will proceed under subsection (A) or (B). *Id.* at 222. In that court's view, reading the phrase "as of the effective date of the plan" to require the payment of interest may make sense with respect to subsection (A), but would have no meaning if applied to subsection (B). *Id.* at 222–23. The court also reasoned that holding that subsection (A) requires the payment of interest would create a contradiction within the Bankruptcy Code: interest would have to be paid on claims of general unsecured creditors under §1325(b)(1)(A), but not on priority claims under §1322(a)(2). *Id.* at 223-24.[6] The court in *Hight-Goodspeed* acknowledged that while this contradiction may exist, the difference in treatment of priority and non-priority unsecured claims should be attributed to the multiple amendments to the Bankruptcy Code which have caused certain discrepancies. *In re Hight-Goodspeed, supra* at 465.

[6] A debtor is never compelled to pay interest on unsecured claims in order to confirm a Chapter 13 Plan under § 1325 (b). To avoid paying interest, a debtor need only devote all of his or her disposable income to the Plan. *See In re Hight-Goodspeed*, 486 B.R. 462, 465 (Bankr. N.D. Ind. 2012).

This Court believes that the Trustee has the more compelling position. It is not illogical, in this Court's view, to conclude that Congress intended the phrase "as of the effective date of the plan" to modify both prongs of §1325(b)(1). As applied to subsection (B), the phrase "as of the effective date of the plan," would mean the date on which the value and the amount of projected future income should be calculated. *See In re Braswell*, 2013 WL 3270752 (Bankr. D. Or. June 27, 2013) ("In order to apply to both subsections (A) and (B) and make sense, the second wording was used in §1325(b)(1).").

This Court recognizes that other jurisdictions disagree with an interpretation of §1325(b)(1)(A) that requires interest payments, even where a debtor fails to dedicate all of her monthly disposable income to a plan. *See, e.g.*, *In re Ross*, 375 B.R. 437, 444 *opinion amended on reconsideration*, 377 B.R. 599 (Bankr. N.D. Ill. 2007) ("Indeed, §1325(b)(1)(A) does not specify that the value to be paid must be the 'value, as of the effective date of the Plan.' Hence, §1325(b)(1)(A) does not require the payment of present value through interest for unsecured claims.") (internal citations omitted). *See also*, *In re Richall*, 470 B.R. 245, 249 (Bankr. D.N.H. 2012) (dismissing trustee's concerns regarding the time value of money and stating, "[t]he Debtors' Plan provides for payment of all unsecured claims in full during a five year term through payments of approximately one-half of their disposable income. Thus, the Debtors' Plan complies with §1325(b)(1)(A).").

This Court agrees with the court in *Hight-Goodspeed*, that denying interest to unsecured creditors who must wait to be paid on their claims longer than a debtor's disposable income would otherwise allow is to "overlook the language in [§1325](b)(1) that precedes sub-paragraph (A)...." *See Id*. at 465. The use of the phrase "as of the effective date" in conjunction with language calling for the payment of the value of a claim is interpreted throughout the Bankruptcy Code as

providing for interest. *Krump*, *supra*, at 824. The result should be no different here. Statutory interpretation is a holistic endeavor, and identical words used in different parts of the same statute are intended to have the same meaning. *In re Parke*, 369 B.R. 205, 208 (Bankr. M.D. Pa. 2007).

A debtor must pay the full value of the claim "as of the effective date of the plan" because "a dollar received today is worth more than a dollar to be received in the future." *Parke*, 369 B.R. at 208, (*quoting In re Szostek*, 886 F.2d 1404, 1406 at n. 1 (3d Cir.1989)). The price a debtor pays for not committing all of her disposable income to her plan is interest. *Hight-Goodspeed*, *supra*, at 465. This insures, consistent with the language of § 1325(b)(1), that creditors either are receiving all of a debtor's disposable income *or* that that they are compensated for the debtor's elective delay. [7]

[7] The Fourth Circuit recently analyzed the meaning of the term "applicable commitment period," as used in §1325(b)(1)(B). *Pliler v. Stearns*, No. 13-1445 (4th Cir. Mar. 29, 2014). In *Pliler*, the Fourth Circuit held that above-median income debtors (who did not propose to pay claims in full) must maintain a 60-month plan, even though they had, on paper, negative monthly disposable income. The court stated that its decision was in harmony with the "core purpose" underpinning the 2005 Bankruptcy Code revisions, that "debtors devote their full disposable income to repaying creditors." *Id.* at 9 (quoting *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 729 (2011)). This Court believes the instant decision similarly is in harmony with the core purpose of the amendments. Requiring a debtor to pay interest for delayed plan payments is an acceptable economic substitute for devoting all monthly disposable income to the plan.

Conclusion

This Court concludes that debtors who do not devote all of their disposable income to a Chapter 13 plan, but pay all claims in full, must pay a rate of interest in exchange for their election to make payments over a longer period of time. For the foregoing reasons, it is, by the United States Bankruptcy Court for the District of Maryland

ORDERED that the Trustee's objection [doc. 23] to confirmation of the Debtor's amended Chapter 13 Plan [doc. 20] is hereby sustained; and it is further

ORDERED that the Debtor is granted leave to amend the Plan; and it is further

ORDERED that an amended Plan must be filed within fourteen days of the date of the entry of this Order or this case will be dismissed.

cc: all counsel
all parties

END OF MEMORANDUM ORDER

Santander Consumer USA, Inc. v. Brown (In Re Brown), 746 F.3d 1236, 2014 U.S. App. LEXIS 5678, Bankr. L. Rep. (CCH) P82, 619, 24 Fla. L. Weekly Fed. C 1150 (11th Cir. Ga. 2014)

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 13-13013

D.C. Docket Nos. 5:13-cv-00068-CAR, 12-51926

In re: PHILLIP JEFFERSON BROWN,

Debtor.

SANTANDER CONSUMER USA, INC.,
as assignee of Thor Credit Corp.,

Plaintiff-Appellant,

versus

PHILLIP JEFFERSON BROWN,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Georgia

(March 27, 2014)

Before WILSON, Circuit Judge, BUCKLEW,* and LAZZARA,** District Judges.

BUCKLEW, District Judge:

Santander Consumer USA, Inc., as assignee of Thor Credit Corp. ("Santander") appeals the district court's affirmance of the bankruptcy court's order overruling Santander's objection to the confirmation of Phillip Jefferson Brown's plan under Chapter 13 of the United States Bankruptcy Code, which proposed that Brown surrender his vehicle under 11 U.S.C. § 1325(a)(5)(C) to satisfy Santander's claim. The bankruptcy court held 11 U.S.C. § 506(a)(1) and (a)(2) determined the vehicle's value and hence the amount of Santander's secured claim, which would be satisfied by Brown's surrender of the vehicle.

The issue before this Court is whether § 506(a)(2)'s valuation standard applies when a Chapter 13 debtor surrenders his vehicle under § 1325(a)(5)(C). We hold that it does, and we affirm.

I.

We have jurisdiction because the district court's affirmance of the bankruptcy court's decision is a final appealable order. 28 U.S.C. § 158(d)(1). Brown's plan was confirmed at the time of the district court's order, which

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* Honorable Susan C. Bucklew, United States District Judge for the Middle District of Florida, sitting by designation.

** Honorable Richard A. Lazzara, United States District Judge for the Middle District of Florida, sitting by designation.

definitively concluded that § 506(a)(2) governed the valuation of Brown's vehicle surrendered under § 1325(a)(5)(C). *See In re Colbourne*, No. 12-14722, 2013 WL 5789159, at *1 nn.3-4 (11th Cir. Oct. 29, 2013) (per curiam). The district court's decision is "final and ended this part of the litigation on the merits," leaving the bankruptcy court with nothing left to decide. *T & B Scottdale Contractors, Inc. v. United States*, 866 F.2d 1372, 1375 (11th Cir. 1989).

II.

In July 2007, Brown purchased a 37-foot 2006 Keystone Challenger recreational vehicle. Brown entered into a loan agreement secured by the recreational vehicle. In July 2012, Brown filed for Chapter 13 bankruptcy. Santander, the owner of the loan agreement, filed a proof of secured claim in the bankruptcy court for $36,587.53, the outstanding payoff balance due at the petition date. Brown's modified Chapter 13 plan proposed surrendering the vehicle in full satisfaction of Santander's claim. Santander objected to the confirmation of the plan.

At the confirmation hearing on September 27, 2012, the parties disagreed on the method for valuing Brown's vehicle.[1] Brown argued that § 506(a)(2)'s replacement value standard governed his vehicle's valuation, which in turn

[1] At that time, Santander had possession of the vehicle but had not sold it.

determined the amount of Santander's secured claim. Brown contended that if his vehicle's replacement value exceeded his debt, surrendering his vehicle would satisfy Santander's entire claim (and his debt) under § 1325(a)(5)(C). Santander argued that a surrendered vehicle's value should be based on its foreclosure value, not replacement value.

On December 3, 2012, the bankruptcy court overruled Santander's objection, holding that § 506(a)(2) required valuing Brown's vehicle based on its replacement value. The bankruptcy court found that while the Supreme Court's 1997 decision in *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 117 S. Ct. 1879 (1997) supported applying a foreclosure value standard to Brown's surrendered vehicle, *Rash* preceded the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005's ("BAPCPA") addition of § 506(a)(2), which required the replacement value standard. The court concluded Santander would have a secured claim to the extent of the vehicle's replacement value, and that Brown's surrender of the vehicle would satisfy that claim under § 1325(a)(5)(C).

Following a valuation and confirmation hearing, the bankruptcy court determined that the vehicle's replacement value at least equaled the debt and confirmed Brown's Chapter 13 plan.[2] Santander appealed the bankruptcy court's

[2] Santander challenges only the bankruptcy court's decision to apply § 506(a)(2)'s replacement value standard in this case, not the court's finding regarding the vehicle's replacement value.

decision to apply the replacement value standard to the district court, which rejected Santander's arguments and affirmed the bankruptcy court's decision.

III.

"The factual findings of the bankruptcy court cannot be set aside unless they are clearly erroneous; however, conclusions of law made by either the bankruptcy court or the district court are subject to *de novo* review." *In re Graupner*, 537 F.3d 1295, 1299 (11th Cir. 2008).

A.

Under § 1325(a)(5), a plan's treatment of an "allowed secured claim" can be confirmed if: the secured creditor accepts the plan, the debtor retains the collateral and makes payments to the creditor, or the debtor surrenders the collateral. 11 U.S.C. § 1325(a)(5)(A)-(C). In this case, Brown exercised the surrender option under § 1325(a)(5)(C).

The term "allowed secured claim" refers to § 506(a). *Rash*, 520 U.S. at 957, 117 S. Ct. at 1883 ("The value of the allowed secured claim is governed by § 506(a) of the Code."); *Graupner*, 537 F.3d at 1296. Section 506(a)(1) bifurcates a secured creditor's allowed claim into secured and unsecured portions based on the underlying collateral's value and addresses how to determine such value:

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . *is a secured claim to the extent of the value* of such creditor's interest in the estate's interest in such property . . . *and is an unsecured claim* to the extent that the value of

> such creditor's interest . . . is less than the amount of such allowed claim. *Such value shall be determined* in light of the purpose of the valuation and of the proposed *disposition or use* of such property . . . .

11 U.S.C. § 506(a)(1) (2006) (emphasis added).

In *Rash*, the debtor proposed to retain the collateral under § 1325(a)(5)(B), while valuing the collateral based on its foreclosure value. 520 U.S. at 957, 117 S. Ct. at 1883. However, the Supreme Court interpreted "disposition or use" as requiring different valuation standards depending on whether the collateral was surrendered or retained. *Id*. at 962, 117 S. Ct. at 1885. *Rash* held that the proper standard was replacement value, not foreclosure value, in the retention context. *Id*.

After *Rash*, BAPCPA added § 506(a)(2). Like § 506(a)(1)'s last sentence, § 506(a)(2) refers to § 506(a)(1)'s bifurcation provision and addresses how to determine value. Unlike § 506(a)(1), § 506(a)(2)'s scope is limited to certain cases and expressly mandates a replacement value standard:

> If the debtor is an individual in a case under chapter 7 or 13, *such value* with respect to personal property securing an allowed claim *shall be determined based on the replacement value* of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

11 U.S.C. § 506(a)(2) (2006) (emphasis added). Thus, when § 506(a)(1) and (a)(2) both apply, a creditor holding an undersecured claim would have a secured claim

equal to the collateral's judicially-determined replacement value and an unsecured claim to the extent the debt exceeds the collateral's replacement value.

The parties do not dispute that Brown is an individual in a Chapter 13 case with property falling within the scope of § 506(a)(2). Nevertheless, they dispute whether § 506(a)(2) applies. Santander contends § 506(a)(2)'s replacement value standard does not apply where, as here, the debtor exercises the surrender option under § 1325(a)(5)(C). Brown contends it does.

B.

We begin with the text of the Bankruptcy Code. *In re Allied Mech. Servs., Inc.*, 885 F.2d 837, 838 (11th Cir. 1989). Section 506(a)(2)'s text—"[i]f the debtor is an individual in a case under chapter 7 or 13, such value . . . shall be determined based on the replacement value"—expressly requires applying a replacement value standard in cases falling within its ambit. And the cases that fall within the scope of § 506(a)(2)'s ambit include those involving a Chapter 13 debtor's personal property or property for personal, family, or household use—precisely the kind at issue here. Section 506(a)(2), by its plain terms, applies to this case.

We disagree with Santander's textual arguments. Santander argues that applying § 506(a)(2)'s replacement value standard when a debtor surrenders property under § 1325(a)(5)(C) would misapply *Rash* and violate § 506(a)(1)'s "disposition and use" language. Specifically, Santander contends that applying a

replacement value standard would ignore *Rash's* holding that different valuation standards should apply depending on the collateral's "disposition or use," with foreclosure value governing surrender and replacement value governing retention.

But Santander fails to acknowledge that *Rash* preceded BAPCPA's addition of § 506(a)(2), which expressly requires applying the replacement value standard in this case. And while § 506(a)(2)'s replacement value standard mandate seemingly contradicts § 506(a)(1)'s broader "disposition and use" valuation language, a well-established canon "of statutory construction [is] that the specific governs the general." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012) (internal quotation marks omitted). Here, § 506(a)(2) specifies how to value certain property in Chapter 7 and 13 cases, while § 506(a)(1) is more broadly worded and says nothing about Chapter 7 and 13 cases. When a case falls within § 506(a)(2)'s ambit, its specific requirements control. *Id*. ("The general/specific canon is . . . applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one.").

Santander's corollary argument is that § 506(a)(2) only applies to cases where the debtor exercises the retention option under § 1325(a)(5)(B). But this requires us to read a limitation into the statute that does not exist in the plain text.

Congress expressly limited § 506(a)(2) to certain Chapter 7 and 13 cases; it could have also limited § 506(a)(2) to cases where the debtor retains or "uses" the collateral. Congress did not, and neither will we.

Santander also asserts that § 506(a)(2) only applies to retained property under § 1325(a)(5)(B), because BAPCPA only added § 506(a)(2) to codify *Rash's* holding that replacement value should govern in the retention context. We acknowledge that cases have described § 506(a)(2) as a codification of *Rash*, *see, e.g.*, *In re Martinez*, 409 B.R. 35, 40 (Bankr. S.D.N.Y. 2009), but they do not hold that § 506(a)(2) is limited to the facts of *Rash*. Nor does the text of § 506(a)(2) support that conclusion.

Santander also suggests that it is improper to conduct any valuation at all, because *Rash* "does not state that the court is to pre-determine the value of surrendered vehicles under § 506(a) based on foreclosure value, or any other value standard." (Ini. Br. 12.) However, as Santander concedes, § 506(a)(1) bifurcation applies. (Reply Br. 2.) Because bifurcation is premised on the collateral's valuation, "[i]t was permissible for [Brown] to seek a valuation in proposing [his] Chapter 13 plan." *Nobelman v. Am. Sav. Bank*, 508 U.S. 324, 328, 113 S. Ct. 2106, 2110 (1993) ("Petitioners were correct in looking to § 506(a) for a judicial valuation of the collateral to determine the status of the bank's secured claim.").

C.

Nor are we persuaded by Santander's arguments that applying § 506(a)(2) in the surrender context would be absurd. Santander argues that it would be absurd because it allows debtors to surrender collateral in full satisfaction of the debt. This overstates the effect of § 506(a)(2). Surrender would satisfy the creditor's secured claim, not the entire debt. If a creditor holds an undersecured claim, the creditor would still have an unsecured claim to the extent the debt exceeds the collateral's judicially-determined replacement value.

Santander also argues that applying § 506(a)(2) would be absurd because it eliminates creditors' contract and state law rights to liquidate and pursue an unsecured claim for any deficiency. But state law does not govern if the Bankruptcy Code requires a different result. *See Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 918 (1979); *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20, 120 S. Ct. 1951, 1955 (2000) (holding that creditors' rights are "subject to any qualifying or contrary provisions of the Bankruptcy Code"). Here, the Bankruptcy Code is contrary to state law, as an unsecured claim under § 506(a)(1) and (a)(2) equals the amount that the debt exceeds the property's replacement value—not the amount of post-sale deficiency. Thus, state law cannot apply.

During oral argument, Santander cited *Graupner*, 537 F.3d 1295, and contended that applying § 506(a)(2) would be unfair to secured creditors and contrary to the legislative intent to benefit secured creditors. But *Graupner* did not

address § 506(a)(2); it addressed the "hanging paragraph" at the end of § 1325(a)—a provision added by the BAPCPA to preclude § 506(a) bifurcation. *See* 11 U.S.C. § 1325(a)(*); *In re Barrett*, 543 F.3d 1239, 1243 (11th Cir. 2008). In finding that the purpose of the hanging paragraph was to benefit secured creditors, *Graupner* noted the title of the BAPCPA section that added the hanging paragraph: "Giving Secured Creditors Fair Treatment in Chapter 13." 537 F.3d at 1297-98, 1302.

The effect of § 506(a)(2) is different than that of the hanging paragraph.[3] Further, to the extent the title of the enacting BAPCPA section—"Fair Valuation of Collateral"—is indicative of the legislative intent for adding § 506(a)(2), our construction is consistent. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 327, 119 Stat. 23, 99 (2005). Congress may believe that a replacement value standard provides a "fair valuation" for cases falling within the scope of § 506(a)(2). Santander's assertion that it is unfair to secured creditors is a policy argument that cannot overcome the plain

[3] The court in *In re Rodriguez*, 375 B.R. 535 (B.A.P. 9th Cir. 2007) speculated that the hanging paragraph was added to protect secured creditors from § 506(a)(2)'s valuation standard. *Id.* at 544 ("We suspect, but do not decide, that there is one very important reason why Congress chose to suspend section 506 from its application to section 1325(a)(5)(C)'s surrender option. . . . Section 506(a)(2)'s applicability is not limited to the retention, anti-cramdown option of section 1325(a)(5)(B). Thus, without the hanging paragraph, upon surrender of a 910 vehicle, the 'replacement value' would be used to reduce the total amount owed to the 910 creditor, rather than the amount actually realized on liquidation. That would inevitably lead to a smaller deficiency claim. By rendering section 506(a)(2) unavailable following surrender, there is no artificially inflated reduction of the total debt . . . ." (footnote omitted)).

textual indication of § 506(a)(2): that Congress did not intend to limit § 506(a)(2) to cases where the debtor retains collateral under § 1325(a)(5)(B). *See Lamie v. U.S. Trustee*, 540 U.S. 526, 542, 124 S. Ct. 1023, 1034 (2004) ("If Congress enacted into law something different from what it intended, then it should amend the statute to conform it to its intent. . . . In the meantime, we must determine intent from the statute before us.").

The district court's order affirming the bankruptcy court is **AFFIRMED.**

UPDATED MEANS TEST NUMBERS

EFFECTIVE MAY 1, 2014

MEDIAN INCOME FOR OHIO FOR CASES FILED ON OR AFTER 05/1/14

1 Person	2 People	3 People	4 People
$43,688	**$53,852**	**$61,568**	**$77,500**

****Add $8,100 for each individual in excess of 4 people on cases filed on or after 4/1/13**

NATIONAL STANDARD FOR FOOD, CLOTHING & OTHER ITEMS

Expense	One Person	Two People	Three People	Four People
Food	$315	$588	$660	$794
Housekeeping Supplies	$30	$66	$65	$74
Apparel & Services	$88	$162	$209	$244
Personal care products & services	$34	$61	$64	$70
Miscellaneous	$116	$215	$251	$300
TOTAL	$583	$1092	$1249	$1482

More than four persons	Additional Amount Per Person
For each additional person, add to four-person total allowance:	**$298**

Expense	One Person	Two People	Three People	Four People
Food & Clothing (Apparel & Services)	$403	$750	$869	$1038
5% of Food and Clothing	$20	$38	$43	$52

More than four persons	Additional Amount Per Person
Food & Clothing (Apparel & Services)	$209
5% of Food and Clothing	$10

LOCAL HOUSING & UTILITIES STANDARDS FOR OHIO (NON-MORTGAGE EXPENSE)

Family Size	1 Person	2 People	3 People	4 People	5 or more People
SUMMIT COUNTY	$445	$523	$551	$615	$625
PORTAGE COUNTY	$452	$531	$559	$623	$633
MEDINA COUNTY	$438	$515	$542	$605	$615

LOCAL HOUSING & UTILITIES STANDARDS FOR OHIO (MORTGAGE/RENT EXPENSES)

Family Size	1 Person	2 People	3 People	4 People	5 or more People
SUMMIT COUNTY	$867	$1018	$1073	$1196	$1215
PORTAGE COUNTY	$928	$1090	$1149	$1281	$1302
MEDINA COUNTY	$1073	$1260	$1328	$1480	$1504

IRS NATIONAL STANDARDS FOR OUT-OF-POCKET HEALTH CARE

Out of Pocket Costs	
Under 65	$60
65 and Older	$144

LOCAL TRANSPORTATION EXPENSE STANDARDS

No Car	One Car	Two Cars
$184	$212	$424

OWNERSHIP COSTS

One Car	Second Car
$517	$517

****Lease vehicles only get the IRS ownership cost.**

Example: If your lease payment is $350 per month, you claim $517 on the means test with no other deductions. If your lease payment is $650 per month, you only claim $517 on the means test with no other deductions.