

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**RITA CAROL BEASLEY,**

**CASE NO. 06-00897-NPO**

**DEBTOR.**

**CHAPTER 13**

**PRELIMINARY ORDER ON TRUSTEE'S  
OBJECTION TO CONFIRMATION**

This day there came on for consideration the Trustee's Objection to Confirmation (Dk. No. 20)(the "Objection") in the above-referenced chapter 13 proceeding. At the hearing on August 23, 2006, George M. Yoder represented Rita Carol Beasley (the "Debtor"), and Todd Johns represented Harold J. Barkley, Jr., the chapter 13 trustee (the "Trustee"). The basis for the Trustee's Objection is his assertion that the Chapter 13 Plan (Dk. No. 5)(the "Plan") fails to provide all of the Debtor's "projected disposable income" to the payment of unsecured creditors pursuant to § 1325(b)(1)(B) of the Bankruptcy Code, 11 U.S.C. § 101-1330 (the "Code").<sup>1</sup> The Debtor is an above-median income debtor under the Bankruptcy Abuse and Consumer Protection Act of 2005 ("BAPCPA"). Defining "projected disposable income" raises the question of whether the calculation should be based upon the debtor's average income for the six (6) months prior to bankruptcy (less certain deductions) as calculated on Form B22C, or based on the debtor's financial condition on the "effective date of the plan" and anticipated income during the "applicable commitment period." 11 U.S.C. § 1325(b)(1)(B). The Court, being fully advised in the premises, finds that the latter approach is appropriate for the reasons set forth herein. The Court further finds that the Objection

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<sup>1</sup> Hereinafter, all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code, unless otherwise noted.

should be set for hearing for the parties to argue the amount available for unsecured creditors in this chapter 13 case after applying the definition of “projected disposable income,” consistent with this Order.

### **JURISDICTION**

The Court has core jurisdiction over the parties and subject matter of this contested matter pursuant to 28 U.S.C. §§ 1334(b), 157(a), (b)(1), and (b)(2)(A), (L), and (O).

### **FACTS**

On June 2, 2006, the Debtor filed her Chapter 13 Petition (Dk. No. 1)(the “Petition”), Schedules and Statement of Financial Affairs (Dk. No. 2)(the “Schedules”), Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income Calculation (Dk. No. 3)(“Form B22C”), and Plan.

According to Part I of Form B22C, Report of Income, the Debtor earns \$4,568.31 per month in gross wages/salary. This figure represents her average monthly income for the six (6) months prior to the filing of her Petition. Her annualized income is \$54,819.72. The Debtor and her mother reside in the household. The median family income on Form B22C for a Mississippi household size of two is \$36,940.00. Therefore, the Debtor's income is greater than the applicable median family income.

Also in accordance with Form B22C, the Debtor calculates her total deductions to be \$5,008.68. (Line 52). Subtracting her monthly expenses from her monthly income, the Debtor thus calculates her monthly disposable income to be negative \$440.37. (Line 58).

The figures calculated in accordance with Form B22C should be compared to the Debtor's monthly disposable income as calculated under her bankruptcy Schedules. Schedule I lists

combined net monthly income, including her mother's social security benefits of \$700, as \$4,057.63. (Line 16). Schedule J lists total monthly expenses of \$3,501.18. (Line 18). As a result, monthly net income on Schedule J is \$556.45. (Line 20C).

Under the Plan, the Debtor proposes to pay \$550.00 per month to the Trustee over sixty (60) months with no dividend to be paid to unsecured creditors.

### **DISCUSSION**

Section 1325(b)(1)(B) 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 -

(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.

For debtors with above-median income, courts have been required to define “projected disposable income” because the Code does not provide a definition. Some courts have held that “projected disposable income,” less certain deductions, should be based on a debtor's average income for the six (6) months prior to the chapter 13 proceeding as calculated on Form B22C. *See, e.g., In re Alexander*, 344 B.R. 742 (Bankr. E.D.N.C. 2006); *In re Barr*, 341 B.R. 181 (Bankr. M.D.N.C. 2006); *In re Guzman*, 345 B.R. 640 (Bankr. E.D. Wis. 2006); *In re Rotunda*, 2006 WL 268749 (Bankr. N.D.N.Y. 2006). Other courts have held that “projected disposable income” should be based on a debtor's financial condition during the “applicable commitment period” as reflected

on Schedules I and J. *See, e.g., In re Crittendon*, 2006 WL 2547102 (Bankr. M.D.N.C.); *In re Demonica*, 345 B.R. 895 (Bankr. N.D. Ill. 2006); *In re Fuller*, 346 B.R. 472 (Bankr. S.D. Ill. 2006); *In re Hardacre*, 338 B.R. 718 (Bankr. N.D. Tex. 2006); *In re Jass*, 340 B.R. 411 (Bankr. D. Utah 2006).

This Court finds the latter group of cases to be more persuasive. In particular, the forward-looking language of § 1325(b)(1)(B) seems to require a definition of “projected disposable income” which makes reference to Schedules I and J as opposed to the six (6) month historical information provided in Form B22C. The language in § 1325(b)(1)(B) includes “as of the effective date of the plan” and “received in the applicable commitment period,” as well as the use of the word “projected.”

While this Court must choose a definition of “projected disposable income,” such choice was not clear despite the views expressed in some of the decisions cited herein. Those decisions favoring the formulaic approach of Form B22C, while well-reasoned, also express great frustration with BAPCPA and the end result of their holdings. While the detractors to the approach taken in this Order view it as attempt to “nostalgically preserve the past by seizing on isolated words,”<sup>2</sup> the Court prefers the more balanced and reasonable approach of statutory construction, without the anti-BAPCPA rhetoric, taken by the decisions relied upon herein.

SO ORDERED, this the 29<sup>th</sup> day of September, 2006.

/s/ Neil P. Olack  
NEIL P. OLACK  
UNITED STATES BANKRUPTCY JUDGE

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<sup>2</sup> *In re Alexander*, 344 B.R. at 752.