Nos. 25-2878 and 25-2879 (consolidated)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

In re:

City of Chicago
Appellant-Creditor

v.

Stephen Falkner and Ahmed Alayah
Appellees-Debtors

Appeal from the United States Bankruptcy Court
For the Northern District of Illinois, Eastern Division
Bankruptcy Case Nos. 25-09837 and 25-09060
The Honorable Donald R. Cassling presiding

BRIEF AND APPENDIX OF THE APPELLEES STEPHEN FALKNER AND AHMED ALAYAH

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ORAL ARGUMENT REQUESTED

Stephen Falkner and Ahmed Alayah, Appellees, respectfully request oral argument in this case.

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JURISDICTIONAL STATEMENT

The statement of jurisdiction in the Appellant City of Chicago brief is complete and correct.

STATEMENT OF ISSUES

1. Whether Section 1325(b)(1)(B)'s disposable-income test silently displaces Section 1326(b)(1)'s express command that administrative attorneys' fees be paid before or at the time of payments to creditors under a Chapter 13 plan.

2. Whether payment of Section 507(a)(2) administrative attorneys' fees in a Chapter 13 case requires the filing of a proof of claim, when Section 503(b) requires only a request for payment and Sections 1322(a)(2) and 1326(b)(1) mandate their payment through the plan.

STATEMENT OF THE CASE

These consolidated appeals arise from Chapter 13 bankruptcy cases filed in the Northern District of Illinois by Stephen Falkner and Ahmed Alayah. Alayah R. 2, Falkner R. 1.[1] In each case, the debtor proposed a 36-month Chapter 13 plan that provided for payment of allowed administrative attorneys' fees of debtor's counsel

[1] Alayah R. _ and Falkner R. _ refer to the records in *In re Falkner*, 25-09387 and *In re Alayah*, No. 25-09060. Appendix to this brief is cited as App _.

before general unsecured creditors, pursuant to 11 U.S.C. §§ 507(a)(2), 1322(a)(2), 1322(b)(4), and 1326(b)(1).[2] Alayah R. 265, Falkner R. 241.

The City of Chicago, an unsecured creditor, objected to confirmation in both cases, arguing that § 1325(b)(1)(B), the disposable income test, prohibits payment of administrative attorneys' fees from plan funds during the 36-month applicable commitment period. The bankruptcy court overruled the objections and confirmed the plans, holding § 1325(b)(1)(B) does not displace the Bankruptcy Code's express provisions governing the treatment and timing of administrative expenses. Alayah R. 35, Falkner R. 33. Chicago appealed and the parties jointly sought direct appellate review. Falkner R. 259, Alayah R. 284. This Court granted authorization. No material facts are in dispute.

Both debtors, Falkner and Alayah, are below-median income debtors subject to the minimum 36-month plan requirement under § 1325(b)(4). Although the commitment period is 36 months, the plans are projected to run nearly 60 months to pay required secured, priority, and administrative debt.

Falkner's plan provides for payment of a secured vehicle loan, attorney's fees, the Chapter 13 Trustee's fee, and an estimated zero percent minimum distribution to general unsecured creditors. Falkner R. 241. Falkner holds no non-exempt equity in any assets and therefore satisfies the best interests of creditors test under §

[2] All references to the Bankruptcy Code are to title 11 of the United States Code unless otherwise indicated.

1325(a)(4).[3] Alayah's plan provides for payment of two vehicle loans, priority tax debt to the Illinois Department of Revenue, a domestic support obligation for child support arrears, Trustee fees, and a minimum $800 pro rata distribution to general unsecured creditors. Alayah R. 265. This reflects Alayah's non-exempt equity and satisfies the best interest test. In both cases, the proposed minimum distribution to unsecured creditors represents a floor, not a ceiling. If the debtors' income increases or fewer claims are filed than projected, unsecured creditors will receive more on a pro rata basis.[4]

Both debtors completed Form 122C-1 and were determined to be below-median income debtors. Disposable income is therefore determined under § 1325(b)(2), and projected disposable income is calculated on a forward-looking basis under § 1325(b)(1)(B). Below-median debtors are subject to a three-year commitment period, while above-median debtors must apply § 1325(b)(3) and commit to five years.

Both debtors signed the Court-Approved Retention Agreement prior to their cases being filed agreeing to a flat fee of $5,500 for full legal representation. *See* App. 1; Alayah R. 69-73; Falkner R. 70-74 This permits a debtor's attorney to be paid a flat fee for the entire case, as opposed to hourly billing, except in cases involving

[3] The best interests of creditors test in § 1325(a)(4) requires that a Chapter 13 plan provide general unsecured creditors at least as much as they would receive in a hypothetical Chapter 7 liquidation. This means the debtor must pay into the plan the value of any non-exempt equity in assets that would otherwise be available for liquidation by a Chapter 7 trustee. If the debtor has no non-exempt assets, the plan may legally propose a 0% distribution to unsecured creditors and still satisfy § 1325(a)(4). *See In re Greer*, 60 B.R. 547, 553–54 (Bankr. C.D. Cal. 1986).

[4] When a debtor's income increases, a party can file a motion to modify pursuant to § 1329 to increase the payments to unsecured creditors.

extraordinary services. Pursuant to Local Rule 5082-2 [5] of the Northern District of Illinois, their attorneys filed fee applications, not proofs of claim, which the bankruptcy court approved at confirmation. Falkner R. 135-151, Alayah R. 134-150. This procedure, consistent with § 503(b), treats the fee application as the statutory request for payment of administrative expenses under § 507(a)(2). Chapter 13 Trustee Thomas G. Hooper was appointed in both cases. As in all cases in the district, his compensation is only paid through the plan as a fixed percentage of disbursements, currently 6.2%,[6] and is treated as an administrative expense under § 1326(b).

In confirming both plans, the bankruptcy court also found the debtors' attorneys' fees qualified as an unsecured claim for purposes of § 1325(b) and therefore satisfied that section's requirements.[7] However, resolution of that issue was not necessary to the outcome, as the court separately concluded §§ 507(a)(2), 1322(a)(2), and 1326(b)(1) govern the treatment and timing of administrative expenses, including attorneys' fees, under a Chapter 13 plan.

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[5] *See* https://www.ilnb.uscourts.gov/sites/ilnb/files/Local-Rules-9-1-2024.pdf at pp. 24-26.

[6] *See* https://chicagoch13.com/.

[7] Chicago previously litigated this precise legal issue in two prior cases, where the bankruptcy court rejected the City's position in written opinions. Although Chicago appealed those rulings, the appeals were later dismissed as moot. When Chicago again raised the identical argument in these cases, the bankruptcy court expressly adopted its prior rulings and reasoning, overruled Chicago's argument for the same reasons already articulated, and—given the repetitive nature of the issue—did not issue a separate written opinion. Accordingly, when citing the bankruptcy court's reasoning, Appellees cite the court's written analysis in *In re Jackson*, 669 B.R. 805 (Bankr. N.D. Ill. 2025), which sets forth the reasoning adopted and applied by the court in overruling the City's argument here. See App. 11; 17; 21; 24.

SUMMARY OF ARGUMENT

Chicago's appeal is premised on the contention that when Congress amended § 1325(b)(1)(B) through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") to add the phrase "to unsecured creditors," it silently required that general nonpriority unsecured creditors be paid before debtor's counsel and thereby barred the payment of attorneys' fees during the plan term. That reading is incorrect. Section 1325(b)(1)(B) governs only how much projected disposable income a debtor must commit upon objection—not when payments are made or which claims are paid first.

Section 1325(b)(1)(B) addresses only the amount of income a debtor must devote to unsecured creditors. It does not regulate the timing or order of payments. Those issues are addressed elsewhere in the Code. Section 1322(a)(2) mandates full payment of claims entitled to priority under § 507 through the plan. Section 1326(b)(1) expressly requires that administrative expenses, including allowed attorneys' fees under § 507(a)(2), "shall be paid before or at the time of each payment" to creditors. Section 1322(b)(4) further confirms that debtors may—but are not required to—pay administrative expenses concurrently with nonpriority unsecured creditors. Read together, these provisions establish a coherent statutory scheme governing the amount, order, and timing of payments in Chapter 13 cases. The debtors' plans complied precisely with that structure.

Chicago's interpretation directly conflicts with § 1326(b)(1)'s mandatory timing command. That provision does not merely permit early payment of attorneys' fees; it

requires payment before or concurrently with payments to other creditors. Chicago's theory—which would defer all attorneys' fees until after unsecured creditors are paid—cannot be reconciled with this plain language. Under Chicago's reading, court-approved debtor's counsel would receive no compensation at all during the entire thirty-six-month commitment period, despite providing representation from the outset. If Congress had intended § 1325(b)(1)(B) to override these express priority provisions, it could have done so explicitly, such as by using "notwithstanding" language. But Congress did not do that. Chicago cites no statute or case adopting its interpretation, and no court has ever held that § 1325(b)(1)(B) subordinates administrative attorneys' fees to unsecured creditors. To adopt Chicago's view, the Court would have to ignore Congress's use of mandatory language and effectively rewrite § 1326(b)(1) to allow the very delay it expressly forbids.

Section 1325(b)(1)(B) is not ambiguous, so this Court should not resort to legislative history, despite Chicago's invitation. In any event, the legislative history of BAPCPA is sparse. Courts have recognized that when Congress supplies little or no meaningful legislative record, pre-BAPCPA practice remains controlling absent a clear expression of congressional intent to the contrary. Pre-BAPCPA, Chapter 13 plans routinely paid court-approved attorneys' fees before or concurrently with unsecured creditors. Chicago relies only on a single floor statement by Senator Feingold, who opposed the legislation and was neither a sponsor nor a committee member. That isolated statement carries no interpretive weight and cannot overcome the statute's plain text or the Code's structural commands.

Chicago attempts to justify its position by asserting that debtor's counsel must first qualify as a creditor and file a proof of claim before receiving payment through the plan. That argument misreads the Code. Administrative expenses are allowed and paid under §§ 503 and 507 upon request and court approval, not based on creditor status or the filing of a proof of claim. And even accepting Chicago's premise for argument's sake, payment of allowed attorneys' fees would still be governed by §§ 507(a)(2), 1322(a)(2), 1322(b)(4), and 1326(b)(1), which operate independently of § 1325(b)(1)(B). Chicago's theory therefore fails even on its own terms.

Chicago's reading also produces untenable and unworkable results. It would exclude Chapter 13 Trustees—who do not file proofs of claim—from receiving compensation during the commitment period, despite the Code's express directive that Trustees be paid through plan payments. It would permit attorneys' fees to be paid immediately in 100% plans yet bar payment in plans proposing less than full repayment, a distinction found nowhere in the statute. And for over-median debtors subject to a mandatory sixty-month plan cap, Chicago's rule would effectively prohibit payment of attorneys' fees altogether, rendering most plans infeasible under § 1325(a)(6). These consequences confirm that Chicago's interpretation cannot be correct.

Nothing in BAPCPA altered this framework. Congress added the phrase "to unsecured creditors" to § 1325(b)(1)(B) to resolve a pre-BAPCPA dispute over whether payments on secured or priority claims could be considered when calculating disposable income—not to reorder payment priorities or defer administrative

expenses. That payment hierarchy had been uniformly followed in Chapter 13 cases for decades before BAPCPA, and Congress made no textual change indicating an intent to disrupt it. Courts applying § 1325(b)(1)(B) post-BAPCPA have consistently treated attorneys' fees as part of the disposable-income framework while preserving their statutory priority under §§ 507 and 1326. No court has adopted Chicago's contrary reading.

Even if the Court were to reach creditor status, debtor's counsel qualifies as an unsecured creditor under § 101(10)(A) because the Court-Approved Retention Agreement was executed prepetition, creating a claim—a right to payment—that arose before or at the time of filing.

Because § 1325(b)(1)(B) governs only how much income must be committed—not when or to whom it is paid—and because the Code expressly requires payment of administrative attorneys' fees before or concurrently with unsecured creditors, the bankruptcy court correctly confirmed the plans. Its orders should be affirmed.

ARGUMENT

I. Standard of review.

The Appellees, do not contest the Appellant's statement of the standard of review. *See* Chicago brief p. 10.

II. Section 1325(b)(1)(B)'s disposable-income test does not govern payment priority and cannot override Sections 507(a)(2), 1322(a)(2), 1322(b)(4), or 1326(b)(1).

This appeal turns on the meaning and function of § 1325(b)(1)(B) which reads:

> [T]he 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.

Section 1325(b)(1)(B), known as the disposable income test, sets the minimum amount a debtor must pay to unsecured creditors, based on the debtor's income and allowable expenses. *In re Dumas*, 608 B.R. 915, 906 (Bankr. N.D. Ga. 2019). Section 1325(b)(1)(B) was slightly amended in 2005 under the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") to add the following three words "to unsecured creditors". Chicago places all its weight on those three words, asserting the amendment now requires general unsecured creditors such as itself to be paid before a debtor's administrative attorneys' fees. But Chicago's argument rests on an extraordinary and wholly unsupported leap. Nothing in BAPCPA's insertion of the phrase "to unsecured creditors" remotely suggests Congress intended to upend the long-established statutory priority scheme or to prohibit timely payment of administrative attorneys' fees mandated by § 507(a)(2) and § 1326(b)(1).

Chicago's reading would force attorneys to forgo plan compensation for three years, despite providing legal services from the outset, and penalize attorneys for representing debtors. As the bankruptcy court expressly found, Chicago "…cites to no statute or case law in support of this interpretation." *In re Jackson*, 669 B.R. 805, 807 (Bankr. N.D. Ill. 2025).

Chicago's reading isolates § 1325(b)(1)(B) from the rest of the Code and fails to reconcile it with the provisions that govern the priority and timing of administrative expenses, including attorneys' fees. To properly understand the provision, it must be read in conjunction with the other sections that govern the priority and timing of administrative expenses, including attorneys' fees. Section 1325(b)(1)(B) does not establish a universal payment sequence but merely dictates what a debtor must commit if an objection is made. Congress left the timing and order of plan payments to other provisions of the Code, not to § 1325(b)(1)(B).

A. Section 1325.

Section 1325 provides the main framework governing the confirmation of Chapter 13 plans. *In re Melendez*, 597 B.R. 647, 657 (Bankr. D. Colo. 2019). The first part of the statute, § 1325(a) lists nine requirements every Chapter 13 plan must meet for court approval. *Id.* The second part, § 1325(b), establishes the disposable income test, which determines how much of a debtor's projected disposable income must be devoted to plan payments for the benefit of unsecured creditors. Nothing in either of these sections addresses the priority or timing of payments to creditors.

Section 1325(b) divides Chapter 13 debtors into below- and above-median categories, with above-median debtors calculating expenses under the standardized means test of § 707(b)(2). For below-median debtors, allowable expenses are determined by the court's discretion under § 1325(b)(2), but that discretion affects only how income is calculated, not the order in which creditors are paid.

Chicago incorrectly assumes § 1325(b)(1)(B) dictates when creditors are paid, but there is nothing in § 1325 that addresses the timing of payments to nonpriority unsecured creditors. In fact, nothing in any part of §§ 1325(a) or (b) contains any provision at all regarding the timing or hierarchy of payments to any creditors. This omission is significant because it confirms Congress did not intend for § 1325(b) to govern the order or schedule of payments. That structure is instead set out in other provisions of the Code, including § 1322, which specifies what a plan may and must provide regarding the treatment of claims. The Code assigns the timing of payments to other provisions, such as the following provisions:

B. Section 507(a)(2).

Section 507 sets out the general priority ranking of claims in bankruptcy, determining which types of creditors are entitled to priority payment. While this ranking governs the order of payment in Chapter 7 liquidations, it does not strictly control distributions in Chapter 13 cases. Nevertheless, § 507 remains relevant because it identifies which claims must be paid in full under a Chapter 13 plan pursuant to § 1322(a)(2).

Under § 507(a), Congress created several categories of priority claims. The first priority (§ 507(a)(1)) is given to domestic support obligations such as past due child support. The second priority (§ 507(a)(2)) covers other administrative expenses, including Chapter 13 attorneys' fees. *Dumas*, 608 B.R. at 912. The eighth priority (§ 507(a)(8)) extends to certain tax debts, such as recent income taxes owed to the IRS or state taxing authorities. Notably absent from the priority scheme under § 507 are general nonpriority unsecured creditors such as Chicago's claim in this appeal. By designating attorneys' fees as priority, Congress signaled it warranted heightened protection in reorganization cases, a judgment carried forward in Chapter 13 through §§ 1322(a)(2) and 1326(b)(1), which ensure mandatory treatment of priority claims such as administrative attorneys' fees. Having identified the categories of claims entitled to priority under § 507, the next question is how those claims are treated in a Chapter 13 plan.

C. Section 1322(a)(2).

Section 1322(a)(2) shows the Chapter 13 plan must "provide for the full payment … of all claims entitled to priority under section 507…" This section mandates full payment of all priority claims, including Chapter 13 attorneys' fees. *In re Maldonado*, 483 B.R. 326, 337 (Bankr. N.D. Ill. 2012). Section 1322(a)(2) establishes that all claims entitled to priority under § 507 must be paid in full through the plan.

D. Section 1326(b)(1) requires immediate or concurrent payment of administrative attorneys' fees and directly conflicts with Chicago's theory.

Section 1326(b)(1) is the linchpin of Chapter 13's payment structure, converting § 507(a)(2)'s priority status for attorneys' fees into a mandatory, temporal rule that governs when—and ahead of whom—those fees must be paid. Section 1326(b)(1) explicitly states:

> Before or at the time of each payment to creditors under the plan, there *shall* be paid any unpaid claim of the kind specified in section 507(a)(2) of this title (emphasis added).

The use of the term "shall" demonstrates a mandatory requirement, not merely a suggestion or discretionary action. In statutory interpretation, shall is recognized as imposing an obligation, leaving no room for alternative interpretation. See *Lopez v. Davis,* 531 U.S. 230, 241 (2001) ("[T]he use of 'shall'...is mandatory language.").

This mandates that administrative expenses allowed under § 507(a)(2), including attorneys' fees, must be paid before or concurrently with payments to creditors under the Chapter 13 plan. This statutory prioritization confirms administrative expenses take precedence over, and must be satisfied before, general unsecured claims. Accordingly, the Code requires debtor's attorneys' fees to be paid prior to or alongside nonpriority unsecured claims. Even accepting Chicago's premise that § 507 operates differently across chapters, no chapter—including Chapter 13—eliminates the elevated status of administrative expenses. *See Dumas*, 608 B.R. at 923.

Chicago asserts that the bankruptcy court erred in finding a conflict between § 1325(b)(1)(B) and the Code's priority provisions, particularly § 507(a)(2). According to Chicago, there is no conflict because each chapter of the Code implements § 507

differently and Chapter 13 does not require payment of § 507 priorities in the order listed. *See* Chicago brief at p, 22.

The bankruptcy court never held that § 507(a)(2) operates independently in Chapter 13 or that its ordering provisions automatically control distributions as they do in a Chapter 7 liquidation. Rather, the bankruptcy court recognized § 507(a)(2) functions in tandem with § 1326(b)(1) to determine when and how priority administrative claims are paid within a confirmed Chapter 13 plan as follows:

> Under Section 507(a)(2), administrative expenses arising during the bankruptcy are to be paid before or at the time of each payment to prepetition unsecured creditors under a plan. *See* 11 U.S.C. § 1326(b)(1). By contrast, the Court's interpretation gives full effect to both statutory provisions … doing so in a way that preserves the payment hierarchy set forth in Section 507.

See Jackson, 669 B.R. at 809.

1. Chicago's cited cases are inapposite.

The four cases Chicago cites—*In re Miceli*, 587 B.R. 492 (Bankr. N.D. Ill. 2018); *In re Barbee*, 82 B.R. 470 (Bankr. N.D. Ill. 1988); *In re Hickman*, 156 B.R. 243 (Bankr. W.D. Ark. 1993); and *In re Sanders*, 341 B.R. 47 (Bankr. N.D. Ala. 2006)—do not support its position and, if anything, reinforce the bankruptcy court's reasoning. Chicago cites these decisions only in passing, without analysis, offering short, decontextualized blurbs rather than any substantive reasoning.

Chicago's reliance on the *Miceli* holding that § 1325 bars expedited attorney-fee payments is misplaced. That case involved the equal monthly payment requirement of § 1325(a)(5)(B)(iii), addressing whether a debtor could accelerate payments on attorneys' fees ahead of ongoing secured mortgage arrearage payments. *Miceli*, 587

B.R. at 494. The issue was one of payment scheduling, not the priority hierarchy established by §§ 1322(a)(2), 1326(b)(1), and 507(a)(2). *Miceli* simply held that courts may not expedite attorneys' fees if doing so violates § 1325's equal-payment rule for secured claims. *Id.* at 497-8. But *Miceli* also reaffirmed that administrative expenses may "not be subordinated or deferred pending payment of other claims" and that § 1326(b) requires those expenses to be paid before or at the time of each payment to creditors under the plan. *Id.* at 498. Ironically, the very passage Chicago relies on underscores this priority principle, confirming attorneys' fees cannot be postponed behind other creditors but must be paid concurrently or ahead under § 1326(b)(1). Although *Miceli* addressed a different issue, it affirms administrative attorneys' fees must be paid concurrently with or ahead of other creditors under § 1326(b)(1). Thus, *Miceli's* equal-payment analysis for secured creditors has no bearing on whether unsecured creditors may be paid ahead of or contemporaneously with allowed administrative fees. The two provisions serve entirely different purposes within Chapter 13's statutory framework.

Barbee affirmatively supports the concurrent-payment rule, explaining that attorneys' fees may be "spread over part or all of the life of the plan," meaning paid concurrently with other creditors, not deferred until after them. 82 B.R. at 473. *Hickman* merely held that Chapter 13 Trustees must follow the confirmed plan, a point not in dispute. 156 B.R. at 246. *Sanders* noted that § 1322(a)(2) requires full payment of § 507(a)(2) claims, even if § 507's order isn't strictly imported into Chapter 13. None of these cases authorizes, much less requires, postponing payment of

attorneys' fees until after unsecured creditors, and together they confirm § 1326(b)(1) requires those fees to be paid before or concurrently with them.

2. Congress knows how to override mandatory payment rules and did not do so here.

Chicago's argument that unsecured creditors must be paid before § 507(a)(2) administrative attorneys' fees cannot be reconciled with the plain text of § 1326(b)(1). This provision expressly directs that "before or at the time of each payment to creditors under the plan, there shall be paid any unpaid claim of the kind specified in section 507(a)(2)." This language leaves only two permissible options for timing of administrative claims: (1) before payments to other creditors, or (2) concurrently with those payments. It does not authorize administrative expenses to be postponed until after unsecured creditors are paid. Chicago's interpretation would require the Court to rewrite § 1326(b)(1) by eliminating Congress's command that administrative expenses be paid "before or at the time of each payment," and substituting an unstated rule of payment only after unsecured creditors.

Chicago's argument requires this Court to conclude that § 1325(b)(1)(B), a provision that addresses only how much of a debtor's projected disposable income must be committed to the plan, silently overrides § 1326(b)(1)'s express command that administrative expenses shall be paid before or at the time of payments to creditors under the plan. As the Supreme Court has repeatedly cautioned, Congress does not hide elephants in mouseholes. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). If Congress had intended § 1325(b)(1)(B)'s disposable-income test to displace § 1326(b)(1)'s mandatory timing rule for administrative expenses, it would

have said so expressly. Nothing in § 1325(b)(1)(B) references § 1326(b)(1), administrative expenses, or payment timing.

The Code's structure throughout Chapter 13 confirms Congress knows how to alter mandatory payment rules when it intends to do so. Section 1322(a)(4) is instructive. There, Congress expressly authorized a departure from § 1322(a)(2)'s priority-payment requirement for certain domestic support obligations, using clear "notwithstanding" language and explicitly tying disposable-income commitments to modified priority treatment. That provision demonstrates that when Congress intends disposable-income rules to override otherwise mandatory payment provisions, it does so directly and unmistakably.

The Code repeatedly follows this same pattern. When Congress intends one provision to override or condition another, it does so explicitly, often through "notwithstanding" language or express cross-reference. *See*, e.g., § 1322(b)(2) ("notwithstanding section 506(a)"); § 1325(b)(3) (expressly incorporating § 707(b)(2)); § 1129(a)(9) (explicitly incorporating § 507(a)(2)). By contrast, § 1325(b)(1)(B) contains no such language. It does not mention § 1326(b)(1), administrative expenses, or payment timing. The absence of any express override to displace § 1326(b)(1), is decisive and forecloses Chicago's interpretation.

3. Courts uniformly hold that Section 1326(b)(1) requires payment of attorneys' fees before or concurrently with other creditors.

Courts interpreting § 1326(b)(1) have uniformly held administrative attorneys' fees must be paid either in full before or concurrently with payments to other creditors. Some courts have taken a strict view, holding that the statute requires full

payment of administrative attorneys' fees before any distribution to other creditors. *See, e.g.*, *In re Harris*, 304 B.R. 751, 757–58 (Bankr. E.D. Mich. 2004); *In re Bellamy*, 379 B.R. 86 (Bankr. Md. 2007). Other courts hold that administrative attorneys' fees may be paid concurrently with other creditors, but not deferred until after them. *See In re Balderas*, 328 B.R. 707 (Bankr. W.D. Tex. 2005); *Barbee*, 82 B.R. at 473.

No court, however, has ever adopted the position advanced by Chicago that administrative attorneys' fees must be paid after general unsecured creditors. Such a reading would directly contradict § 1326(b)(1)'s plain language and render its directive meaningless. The bankruptcy court's reading gives full effect to each provision of the Code and reflects the only interpretation consistent with both statutory text and longstanding precedent. Chicago's contrary view would render § 1326(b)(1) meaningless and should be rejected.

E. Section 1322(b)(4).

Lastly, § 1322(b)(4) reinforces the flexibility Congress intended in Chapter 13 repayment plans. It provides that the plan "may provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claims." This provision is permissive, not mandatory. It simply allows but does not require concurrent payment of unsecured claims. Thus, general unsecured creditors such as Chicago may be paid concurrently with other classes if the debtor elects to do so, but nothing in the statute compels that result. Courts interpreting § 1322(b)(4) uniformly support this understanding. *See In re Baines*, 263 B.R. 868, 873 (Bankr. S.D. Ill. 2001); *In re Monroe*, 281 B.R. 398, 402 (Bankr. N.D.

Ga. 2002). Courts have consistently held the provision is discretionary and designed to give debtors, not Trustees or creditors, the flexibility to decide whether unsecured creditors are paid concurrently with other classes or later in the plan. *Id.* This follows from § 1321, which provides "the debtor shall file a plan," making clear it is the debtor—not any creditor—who proposes the terms of repayment, including whether and when unsecured creditors are paid.

The court in *Baines* squarely rejected an effort by the Chapter 13 Trustee to require special or accelerated distributions to unsecured creditors. *Baines* held § 1322(b)(4) confers upon the debtor, at his sole discretion, the choice to pay his unsecured and secured creditors contemporaneously or to satisfy secured creditors first, and "[n]either the Trustee nor any unsecured creditor can compel a Chapter 13 debtor to exercise his § 1322(b)(4) option." *Baines*, 263 B.R. at 873. In other words, the ordering of unsecured payments is entirely a matter of debtor discretion, not creditor entitlement.

The reasoning in *Baines* also explains why Congress preserved this flexibility. Debtors often choose to pay secured or priority obligations first such as home mortgages arrears, vehicle loans, priority tax debts, or domestic support obligations because these debts would survive dismissal or conversion to Chapter 7. *Id.* at 873. As *Baines* recognized, this is not a tactic to harm unsecured creditors, but a rational and lawful strategy encouraged by the Code itself. *Id.* Chapter 13 is voluntary, and unsecured creditors inherently bear the risk a case may be dismissed, converted, or

yield little or no dividend. *Id.* at 873-874. That is not inequitable, it is a feature of the statutory structure Congress designed. *Id.* at 874.

Here, none of the debtors in these appeals elected to elevate general unsecured creditors such as Chicago above other claims. Their plans follow the standard and permissible structure authorized by § 1322(b)(4): secured, priority, and administrative claims are paid first or concurrently, while general unsecured creditors receive whatever disposable income remains thereafter. If § 1325(b)(1)(B) truly restricted who can be paid, § 1322(b)(4) would be meaningless. But Congress clearly wrote § 1322(b)(4) to allow concurrency, confirming that § 1325(b)(1)(B) cannot be read as a gatekeeper or as limiting who may receive payment under a confirmed plan. Chicago's reading would render § 1322(b)(4) superfluous, violating the well-established canon that statutes must be construed to give effect to every provision. *Hibbs v. Winn*, 542 U.S. 88, 89 (2004).

F. Sections 507(a)(2), 1322(a)(2), 1326(b)(1) and 1322(b)(4) work together to establish that administrative attorneys' fees are paid before general unsecured creditors.

Statutory interpretation is a holistic endeavor. Courts must read interrelated provisions together, not in isolation. As the Supreme Court has explained, a provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme because one of the permissible meanings produces a substantive effect that is compatible with the rest of the law. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). A court should do more than review words or sub-sections in isolation. *In re Echeman*, 378 B.R. 177,

180 (Bankr. S.D. Ohio 2007). A court should read all relevant statutory provisions together as a whole. *Id.* Lastly, a court should give effect to every word of a statute whenever possible. *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61, 70 (2011).

When read together, §§ 507(a)(2), 1322(a)(2), 1326(b)(1), and 1322(b)(4) establish a cohesive structure under which administrative Chapter 13 attorneys' fees are entitled to payment ahead of nonpriority unsecured creditors. Section 1326(b)(1) dictates timing; it requires administrative expenses under § 507(a)(2), including attorneys' fees, be paid before or concurrently with payments to other creditors. Section 1322(a)(2) mandates full payment of all § 507 priority claims in the plan. Section 1322(b)(4) allows, but does not require, concurrent payment of unsecured claims, confirming that debtors, not unsecured creditors, control whether unsecured creditors share payments with higher classes. And § 507(a)(2) places administrative expenses near the top of the statutory hierarchy.

Chicago's interpretation of § 1325(b)(1)(B) ignores this integrated structure. Reading § 1325(b)(1)(B) in isolation without reconciling it with §§ 507(a)(2), 1322(a)(2), 1322(b)(4), and 1326(b)(1) creates an artificial conflict where none exists. Nothing in § 1325(b)(1)(B) purports to reorder priorities or alter payment timing. It simply determines how much disposable income must be devoted to unsecured creditors, not when or in what sequence those payments occur.

Administrative expenses are elevated across every chapter of the Bankruptcy Code. *Dumas*, 608 B.R. at 923 (administrative expenses, including attorneys' fees, appear "at or near the top of the priority list in every other chapter," citing §§ 507,

726, and 1129(a)(9)(A)). Chapter 13 follows that same model: attorneys' fees are paid before or concurrently with other claims. This structure shows that Congress explicitly regulated the priority and timing of attorney-fee payments in §§ 507(a)(2), 1322(a)(2), 1326(b)(1), and 1322(b)(4). Significantly, Congress did not include any timing rule in § 1325. Section 1325(b)(1)(B) simply defines the pot of disposable income owed to unsecured creditors; it does not dictate the order of distribution. Chicago's theory collapses these distinctions and renders the surrounding provisions meaningless, contrary to the rule that a statute must be construed to give effect to every provision.

As *Collier on Bankruptcy* explains, interpreting § 1325(b) to exclude payment of administrative expenses "would place it in direct conflict with § 1326(b), which requires payment of 'any unpaid claim' under § 507(a)(2)." *In re Nething*, 2008 WL 2246072, at 5 (Bankr. E.D. Wis. May 30, 2008) (quoting *Collier on Bankruptcy* ¶ 1325.08[5][c][i] (15th ed.)). Moreover, § 1325(a)(1) requires that every Chapter 13 plan "comply with the provisions of this chapter and with the other applicable provisions of this title." A plan that defers attorneys' fees behind unsecured creditors would violate that command, because it would fail to comply with §§ 507(a)(2), 1322(a)(2), 1322(b)(4), and 1326(b)(1).

Even if Chicago's reading were accepted, it would lead to absurd results by preventing attorneys' fees from being paid before unsecured creditors, an outcome Congress could not have intended. The absurdity doctrine permits courts to depart

from a literal reading to avoid unreasonable consequences. *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000).

The uniform practice in the Northern District of Illinois also supports this interpretation. *See* App. 29. Local General Order 17-02 (N.D. Ill.) in effect since 2017 adopts a distribution hierarchy consistent with the Code:

(1) current mortgage payments under § 1322(b)(5);
(2) monthly payments on non-mortgage secured claims;
(3) costs of administration;
(4) mortgage arrears under § 1322(b)(5);
(5) priority unsecured claims other than costs of administration; and
(6) other unsecured claims.

This long-standing order, mirrored in *In re Hemker*, 2015 WL 5262080, at 6 (Bankr. C.D. Ill. Sept. 8, 2015) confirms the established understanding that nonpriority unsecured creditors, including Chicago, are paid last. Nothing in BAPCPA or in the 2005 amendment to § 1325(b)(1)(B) altered that priority structure.

Finally, Chicago's theory improperly reads a timing requirement into § 1325(b)(1)(B) that simply does not exist. Had Congress intended to regulate the sequence of payments there, it would have done so explicitly, as it did in § 1326(b)(1) and elsewhere in the Code. The proper reading harmonizes all relevant provisions, ensuring attorneys' fees and other administrative expenses remain entitled to payment before or concurrently with general unsecured creditors.

G. The term "applied" in Section 1325(b)(1)(B) refers to allocation of disposable income within the plan, not payment priority.

Chicago's argument treats § 1325(b)(1)(B) as a payment-priority rule, but the statute does not address the timing or sequence of distributions. It requires only that

projected disposable income be "applied" to make payments to unsecured creditors as provided under the plan and the governing provisions of the Code, not that unsecured creditors be paid ahead of other allowed claims.

As courts have recognized, the word "applied" in § 1325(b)(1)(B) reflects a debtor's obligation to allocate disposable income within the existing statutory framework for Chapter 13 distributions, which separately governs priority and timing through §§ 507(a)(2), 1322(a)(2), and 1326(b)(1). *Nething,* 2008 WL 2246072, at 2 ("The operative word in section 1325(b)(1)(B) is 'applied,' and payments to unsecured creditors have always included the Trustee fee as well as a claim for the debtors' unpaid attorneys' fees and other administrative fees."). Nothing in § 1325(b)(1)(B) suggests Congress intended to override that framework or to transform a funding requirement into an unstated payment-priority rule.

H. Chicago's reading produces absurd results between 100% and non-100% plans.

Section 1325(b)(1) is written in the disjunctive. *In re Eubanks*, 581 B.R. 583, 585 (Bankr. S.D. Ill. 2018). A debtor must satisfy either subsection (A) or (B): the debtor must either pay all unsecured creditors in full under § 1325(b)(1)(A) or commit all projected disposable income to the plan under § 1325(b)(1)(B). *Id.* When a debtor pays unsecured creditors in full, i.e. 100%, the plan automatically satisfies § 1325(b)(1)(A), rendering the subsection (B) disposable-income test inapplicable. Thus, where unsecured creditors are paid in full, § 1325(b)(1)(B) provides no basis for objection by Chicago or any other creditor.

This structure exposes a fundamental flaw in Chicago's argument: its interpretation applies only in cases where unsecured creditors receive less than 100% of their claims, yet it would yield a completely different priority scheme depending on that percentage. Chicago has objected only to plans not paying creditors in full in these appeals, not to 100% plans. Because under its theory, § 1325(b)(1)(B) inexplicably springs into life only when unsecured creditors are not paid in full. Chicago's reading therefore creates irrational disparities between 100% plans and every other Chapter 13 case. In a 100% plan where unsecured creditors are fully paid § 1325(b)(1)(B) never comes into play, and attorneys' fees are routinely paid at the outset. But under Chicago's theory, in every plan paying less than 100%, attorneys' fees would suddenly become subordinated until all unsecured creditors were paid even though the Code's structure and § 1326(b)(1)'s timing rule remain identical. Nothing in BAPCPA suggests Congress intended to create one payment rule for 100% plans and an opposite rule for all others. The far more coherent reading is that § 1325(b)(1)(B) governs how much income must be committed to unsecured creditors, not when those creditors are paid.

Chicago's construction would produce an untenable result. The timing of attorney's fee payments would depend entirely on whether an unsecured creditor chooses to object, since Section 1325(b)(1) applies only "if the Trustee or the holder of an allowed unsecured claim objects." Under Chicago's theory, the priority of payment would inexplicably depend on whether an objection is filed—meaning identical plans would have different payment hierarchies solely based on a creditor's decision to

object. Nothing in Chapter 13 suggests the Code's timing rules for administrative expenses fluctuate depending on whether an objection is lodged. Priority rules apply uniformly. Section 1325(b) merely determines the amount of disposable income, not the sequence of payments.

Chicago's interpretation also leads to untenable results for above-median debtors. Under § 1325(b)(4), an above-median debtor's applicable commitment period is sixty months, and § 1322(d)(1) prohibits a Chapter 13 plan from extending beyond that term. If, as Chicago contends, § 1325(b)(1)(B) prohibits payment of administrative attorneys' fees until the 60-month commitment period ends, then debtor's counsel would be statutorily barred from payment for the entire life of the plan with no lawful month sixty-one in which payment could occur. That result renders Chapter 13 plans facially infeasible under § 1325(a)(6), and directly contradicts § 1326(b)(1)'s command that administrative expenses be paid "before or at the time of each payment."

Taken together, these results confirm that Chicago's reading of § 1325(b)(1)(B) cannot be correct**.** Its interpretation produces arbitrary and internally inconsistent outcomes by allowing administrative attorneys' fees to be paid immediately in 100% plans, subordinating them indefinitely in plans paying less than 100%, and barring them altogether in cases subject to the mandatory sixty-month cap imposed by § 1322(d)(1). Such a scheme yields absurd results Congress could not have intended and must be rejected under the settled principle that statutes should not be construed to produce irrational outcomes. *See Hartford*, 530 U.S. at 6. It also violates the canon of consistent usage, which presumes identical words used in different parts of the

same statute carry the same meaning. *See Gustafson v. Alloyd Co., Inc.,* 513 U.S. 561, 570 (1995) ("identical words used in different parts of the same act are intended to have the same meaning"). The phrase "to unsecured creditors" cannot mean one thing in cases where § 1325(b) is inapplicable because unsecured creditors are paid in full and something entirely different where § 1325(b) is invoked. Congress did not create multiple priority regimes under the same statutory language. The only interpretation that avoids these arbitrary and statutorily impossible results is that of the bankruptcy court: § 1325(b)(1)(B) governs how much income must be committed to unsecured creditors, while §§ 1322(a)(2) and 1326(b)(1) govern when administrative expenses are paid.

III. The evolution of the disposable income test in Section 1325(b)(1) shows that Congress added "to unsecured creditors" just to clarify how disposable income is calculated, and not to change payment priority.

A. Origin and purpose of the disposable income test.

To confirm a Chapter 13 plan, a debtor must satisfy the disposable income test in § 1325(b)(1). Congress enacted it in 1984 through the Bankruptcy Amendments and Federal Judgeship Act, the first time the Code required debtors to commit disposable income toward repaying creditors. *In re Kerr*, 199 B.R. 370, 371 (Bankr. N.D. Ill. 1996). The pre-BAPCPA version of § 1325(b)(1)(B) required debtors, upon objection by the Trustee or an unsecured creditor, to commit all projected disposable income received during a three-year period to payments made under the plan. *In re Lush*, 213 B.R. 152, 153 (Bankr. C.D. Ill. 1997). The statute did not specify that payments had to go to unsecured creditors, only that they be applied under the plan. Congress

later added the phrase "to unsecured creditors" for one narrow purpose—to resolve the pre-BAPCPA split over what expenses the disposable-income test captured, not, contrary to Chicago's argument, to require debtors to withhold attorneys' fees for thirty-six months or to alter the priority scheme already mandated by § 1326(b)(1).

The purpose of this test is to ensure that debtors devote their best efforts to repaying unsecured creditors by committing all income not reasonably necessary for their maintenance and support. *In re Brooks*, 241 B.R. 184, 186 (Bankr. S.D. Ohio 1999). The test prevents debtors from reducing payments to unsecured creditors through unnecessary or excessive spending on nonessential or luxury items. *Id.*

B. The pre-BAPCPA split over what Section 1325(b)(1) covered.

The pre-BAPCPA § 1325(b)(1)(B) required all the debtor's projected disposable income be applied to make payments under the plan, but it did not specify to whom those payments must go. This omission created a split in the case law over how to apply the disposable income test. The majority view illustrated by *In re Helms*, 262 B.R. 136, 139-40 (Bankr. M.D. Fla. 2001) treated § 1325(b) as authorizing courts to review every expense, whether directly payable and listed on Schedule J or paid inside the plan like attorneys' fees and secured debts, to determine whether each was reasonably necessary for the debtor's support. In contrast, the minority view, led by *In re Jones*, 119 B.R. 996, 1000-05 (Bankr. N.D. Ind. 1990) and followed in *In re Humphrey*, 165 B.R. 508, 510-11 (Bankr. M.D. Fla. 1994), held § 1325(b) was a mechanical test limited to comparing the debtor's income and living expenses on Schedules I and J. Under that approach, once the debtor devoted all remaining

income to plan payments, § 1325(b) was satisfied. Questions about the propriety of particular debts paid inside a plan, like a car payment, were instead evaluated under § 1325(a)(3)'s good-faith standard. This split persisted and produced inconsistent results based on how courts characterized expenses. Under both approaches, there was no dispute about the fact that administrative expenses must be paid before or concurrently with unsecured claims.

C. BAPCPA's 2005 amendment resolved the split.

As a leading Chapter 13 treatise, *Lundin On Chapter 13*, explained, Congress resolved the ambiguity in 2005 through BAPCPA, by amending § 1325(b)(1)(B) to require that projected disposable income be applied to payments to unsecured creditors under the plan. As Lundin observed:

> The second major change is that projected disposable income received during the applicable commitment period is applied to make payments to *unsecured* creditors under the plan. Under prior law, there was some disagreement whether the projected disposable income test addressed the reasonableness or necessity of payments to secured claim holders provided for by the plan. Now it is clear that the test accounts for all payments to creditors and all living expenses of the debtor on the way to calculating the entitlement of unsecured creditors.

Keith M. Lundin, *Lundin On Chapter 13*, § 92.2 at ¶ 3, LundinOnChapter13.com (last visited November 2, 2025). *See* App. 30. By adding "to unsecured creditors," BAPCPA codified the majority view: all payments direct or through the plan are considered in determining disposable income under § 1325(b). The amendment clarified how projected disposable income is calculated, not when or in what order creditors are paid.

Chicago cites no authority supporting its claim that the amendment requires unsecured creditors to be paid before administrative attorneys' fees. *See* Chicago brief at 12-13 and 26. Chicago identifies no reported decision adopting its reading that § 1325(b)(1)(B), a statute governing the amount of income a debtor must devote to unsecured creditors, reordered the payment priority scheme already dictated by § 1326(b)(1). Chicago's interpretation would repeal § 1326(b)(1) by implication, contrary to statutory construction canons and wholly inconsistent with BAPCPA's purpose, which was to ensure debtors pay the maximum disposable income, not to delay or prohibit payment of administrative expenses authorized elsewhere in the Code. *Ransom*, 562 U.S. at 71.

Statutory history, case law, and Lundin's treatise show why Congress added the phrase "to unsecured creditors." The pre-BAPCPA split over whether § 1325(b) reached payments made through the plan created inconsistent rulings on how to calculate disposable income. The 2005 amendment resolved that dispute by adopting the majority position confirmed by *Helms*, *Jones*, *Humphrey*, and the commentary by *Lundin* that all expenses direct or inside the plan, including payments to secured and priority creditors, must be considered when determining how much income is available for unsecured creditors. Chicago's contrary interpretation disregards settled history and finds no support in any statute or case.

IV. Post-BAPCPA case law confirms attorneys' fees are paid before or concurrently with nonpriority unsecured creditors.

Section 1325(b)(2) defines disposable income, as used in the disposable income test under Section 1325(b)(1), as the debtor's "current monthly income … less amounts

reasonably necessary to be expended … for the maintenance or support of the debtor or a dependent." This provision applies to all Chapter 13 debtors and establishes the baseline calculation of what portion of a debtor's income must be paid to unsecured crediotrs. *Dumas*, 608 B.R. at 907.

Congress fundamentally changed how Chapter 13 debtors calculate projected disposable income in 2005 through BAPCPA. BAPCPA divided debtors into two income categories—below-median and above-median—based on the median family income for a household of the debtor's size and state of residence as published by the U.S. Trustee Program. *Dumas*, 608 B.R. at 906-7. A debtor whose current monthly income (the six-month average defined in § 101(10A)) is less than the applicable median is below-median; a debtor whose income exceeds that threshold is above-median. § 1325(b)(3); *Dumas*, 608 B.R. at 906-7. This distinction is significant because the Code requires above-median debtors to calculate projected disposable income differently than below-median debtors. *Id.* at 907.

Before 2005, all debtors calculated disposable income under § 1325(b)(2) using a flexible, case-by-case standard reviewed by the court to decide which expenses were reasonably necessary. *In re Short*, No. 08-11224, 2008 WL 5751873, at *3-4 (Bankr. N.D. Ohio, Sept. 11, 2008). For debtors with below-median income—like the debtors in this appeal—the Code continues to provide no additional guidance on what constitutes a reasonably necessary expense, leaving that determination to be made on a case-by-case basis by debtors, Trustees, creditors, and the courts. *Dumas*, 608 B.R. at 907. BAPCPA retained that approach for below-median debtors but imposed

a new standardized formula for above-median debtors by adding § 1325(b)(3) and prescribing "amounts reasonably necessary to be expended ... shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)." *Dumas*, 608 B.R. at 907. Subparagraphs (A) and (B) of § 707(b)(2), in turn, spell out what is commonly called the means test. *Id.*

Higher-income debtors whose current monthly income exceeds the applicable state median must calculate disposable income under § 1325(b)(3) using the means test set forth in § 707(b)(2). Under this provision, disposable income is determined mechanically by applying standardized expense deductions rather than individualized judgments of necessity. Subparagraphs (A)(ii), (iii), and (iv) of § 707(b)(2) specify which categories of expenses may be deducted from current monthly income to arrive at monthly disposable income, including standardized IRS allowances for housing, transportation, and food. These fixed deductions replace the flexible, case-by-case reasonably necessary inquiry that continues to apply to below-median debtors. This formula-based approach replaced the prior individualized inquiry with standardized deductions. The means test is the heart of BAPCPA and is designed to ensure debtors who can pay their debts do so. *Ransom*, 562 U.S. at 64.

A. Section 1325(b)(1)(B) governs how much money must be committed to unsecured creditors in the , not when or to whom it is paid.

Since BAPCPA, courts have examined the phrase "to unsecured creditors" mainly in the context of above-median debtors, subject to the means test and the standardized expense deductions under § 707(b)(2). These cases present a narrower question than Chicago's, that is, whether attorneys' fees, as § 507(a)(2) priority

administrative expenses, are paid from the projected disposable-income pot, not whether they must be paid after unsecured creditors. Consistently, these decisions recognize § 1325(b)(1)(B) governs only how much of a debtor's income must be paid to unsecured creditors in the plan, while § 1322(a)(2) and § 1326(b)(1) control how those committed funds are distributed once in the Trustee's hands.

B. Courts differ only in methodology, not outcome, on how attorneys' fees are treated.

Courts addressing above-median debtors have developed two competing approaches to determine how attorneys' fees fit within the disposable-income framework. The first group of decisions, the means-test deduction cases, holds attorneys' fees may be deducted as a priority expense under § 707(b)(2)(A)(iv), thereby reducing the debtor's projected disposable income before plan payments are calculated. Because § 707(b)(2)(A)(iv) permits a deduction for the total amount of debts entitled to priority, these courts reason attorneys' fees qualify as such under § 507(a)(2). *See, e.g.*, *In re Williams*, 394 B.R. 550, 564 (Bankr. D. Kan. 2008); *Hemker*, 2015 WL 5262080 at 2–3; *In re Johnson*, 408 B.R. 811, 814 n.11 (Bankr. W.D. Mo. 2009); *Dumas*, 608 B.R. at 921.

The second line of cases, the pot-deduction approach, treats attorneys' fees as paid from the same projected disposable-income pool available to nonpriority unsecured creditors. Under this theory, priority claims such as attorneys' fees are deducted from the total funds available for unsecured creditors after projected disposable income is determined but before it is distributed to general unsecured claims. *See, e.g.*, *In re Jiter*, 2011 WL 477823, at 1 (Bankr. E.D. Wis. Feb. 3, 2011); *In re Minahan*, 394 B.R.

116, 128 n.27 (Bankr. W.D. Va. 2008); *Nething*, 2008 WL 2246072, at 4; *In re Brown*, 2008 WL 4372675 (Bankr. S.D. Ohio Apr. 15, 2008); *Echeman*, 378 B.R. at 182; *In re Puetz*, 370 B.R. 386, 390 (Bankr. D. Kan. 2007).

Despite this divergence in methodology, both camps reach the same substantive conclusion: attorneys' fees are paid from the debtor's projected disposable income either by reducing it at the front end or by drawing from it at the back end. None interpret § 1325(b)(1)(B) as requiring unsecured creditors to be paid before attorneys' fees, and all recognize that §§ 1322(a)(2) and 1326(b)(1) govern the timing and priority of those payments.

Tellingly, Chicago has not cited a single case pre- or post-BAPCPA that supports its reading of § 1325(b)(1)(B). Every reported decision interpreting the phrase "to unsecured creditors" has treated attorneys' fees as part of the projected disposable-income framework, not as a claim that must wait until general unsecured creditors are paid. Over two decades of post-BAPCPA litigation, no court has held that the 2005 amendment silently displaced the clear directive of § 1326(b)(1) that administrative expenses be paid before or concurrently with unsecured claims. Chicago's position therefore stands alone unsupported by authority and contrary to the text, structure, and history of the Code itself.

Moreover, reading § 1325(b)(1)(B) to mean below-median debtors cannot pay attorneys' fees before nonpriority unsecured creditors, while every above-median case holds they can, would violate the Supreme Court's canon of consistent statutory construction. Courts "are generally reluctant to give the same words a different

meaning when construing statutes." *Bank of Am., N.A. v. Caulkett*, 575 U.S. 790, 797 (2015). Section 1325(b) applies to all Chapter 13 debtors. Nothing in its text or history suggests "to unsecured creditors" should carry one meaning for above-median debtors and another for below-median debtors. The Code must be read as a cohesive whole to achieve consistency within the statutory scheme. *Timbers*, 484 U.S. at 371.

Dumas reinforces this point, rejecting the Trustee's identical claim that above-median debtors gain an unfair advantage by deducting attorneys' fees. *Dumas*, 608 B.R. at 921. *Dumas* held "…allowing above-median debtors to deduct attorneys' fees…does not preclude below-median debtors from deducting their attorneys' fees when calculating PDI… Not allowing above-median debtors to take a similar deduction leads to inequitable treatment, not the other way around." *Id.* at 922-23. The canon of consistent interpretation thus confirms what *Dumas* recognized in practice: the Code yields the same effective result for all debtor's attorneys' fees, as § 507(a)(2) administrative expenses must be paid before or concurrently with nonpriority unsecured claims.

This division among courts underscores precisely why Chicago's argument fails. Although judges have differed on how attorneys' fees should be accounted for, whether as a means-test deduction or as a pot deduction, they have all agreed on where those fees belong—within the projected disposable-income framework itself. In every formulation, attorneys' fees are either deducted in determining disposable income or paid from the same pool of funds that satisfies unsecured creditors. They are never postponed until after nonpriority unsecured claims are paid. The split

therefore highlights the real question Congress intended courts to answer, how to integrate attorneys' fees into the disposable-income calculation, not the illusory issue Chicago raises about payment priority. As these authorities make clear, §§ 1325(b), 1322(a)(2), and 1326(b)(1) operate together to ensure that attorneys' fees, as § 507(a)(2) administrative expenses, are paid before or concurrently with other unsecured creditors, consistent with the Code's overall structure and purpose.

C. BAPCPA did not alter the longstanding rule that administrative attorneys' fees are paid before or concurrently with nonpriority unsecured creditors.

Pre-BAPCPA practice and the courts interpreting BAPCPA since confirm attorneys' fees remain payable before or concurrently with unsecured creditors under Chapter 13. As *Dumas* explained, prior to BAPCPA, Chapter 13 plans "routinely paid the debtor's net income figure first toward priority claims in the order set forth in § 507—which included post-petition or administrative expenses, such as attorneys' fees and Trustee's compensation—and then applied the balance to the nonpriority unsecured creditor class." *Dumas*, 608 B.R. at 920 (quoting *Williams*, 394 B.R. at 563). The Supreme Court has cautioned courts should not "read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication Congress intended such a departure." *Hamilton v. Lanning*, 560 U.S. 505, 517 (2010). Nothing in BAPCPA provides such an indication. As *Dumas* observed:

> [G]iven the lack of any clear intention to alter the common understanding of 'priority claim' or to specifically exclude attorney's fees from the deduction, the Court will not read 'priority claims' to erode the pre-BAPCPA practice of allowing debtors to pay attorney's fees before calculating payments to nonpriority unsecured creditors.
>
> *Id.* at 921.

Courts applying this reasoning after BAPCPA reached the same conclusion for both above-median and below-median debtors. *See Hemker*, 2015 WL 5262080 at 8 ("below-median income debtors are allowed to pay attorneys' fees from their projected disposable income before they pay nonpriority unsecured creditors"); *In re Braswell*, No. 06-00318-8-JRL, 2006 Bankr. LEXIS 2902 at 4 (Bankr. E.D.N.C. Aug. 23, 2006) ("below-median debtors may deduct the monthly amount needed to pay the Trustee to meet the secured, priority, and administrative obligations of the plan as a reasonably necessary expense"); *Echeman*, 378 B.R. at 183 n.7.

Taken together, these authorities confirm BAPCPA did not alter the pre-existing rule: attorneys' fees remain part of the projected disposable-income calculation and are paid before or concurrently with nonpriority unsecured creditors under § 1322(a)(2) and § 1326(b)(1). Chicago's contrary theory would erode settled bankruptcy practice without any indication of Congressional intent.

V. Legislative history confirms Congress did not intend to alter the priority of administrative attorneys' fees.

A. The statutory language of § 1325(b)(1)(B) is clear, therefore this Court should not consider legislative history.

Chicago invites this Court to consult legislative history to support its novel reading of § 1325(b)(1)(B). *See* Chicago brief at 25-6. That invitation should be declined. Legislative history may be considered only where the statute is ambiguous, and § 1325(b)(1)(B) is not. *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004). The text is plain and clear: § 1325(b)(1)(B) determines how much of a debtor's projected disposable income must be paid to unsecured creditors, not how these payments are

to be distributed. Distribution priority is separately governed by §§ 1322(a)(2) and 1326(b)(1), which expressly require payment of administrative expenses, including debtor's attorneys' fees, before or concurrently with unsecured claims. Thus, Chicago cannot invoke legislative history to manufacture ambiguity where none exists.

B. Lack of meaningful legislative history for BAPCPA precludes Chicago's legislative history argument.

The legislative record surrounding § 1325(b)(1)(B) and BAPCPA is sparse. *In re Gillcrese*, 346 B.R. 373, 375 (Bankr. W.D. PA 2006). Even if this Court were to consult it, nothing in that record supports Chicago's interpretation or suggests Congress intended to disturb the long-standing priority scheme embodied in §§ 507 and 1326(b)(1). Legislative history can be helpful in statutory interpretation. However, that is not the case here. The only legislative history relating to BAPCPA is a report of the House Judiciary Committee which states: "Section 102(h) of the Act amends section 1325(b)(1) of the Bankruptcy Code to specify that the court must find, in confirming a chapter 13 plan to which there has been an objection, that the debtor's disposable income will be paid to unsecured creditors."[8]

This House Report merely reiterates the new language of § 1325(b)(1)(B) about paying disposable income to unsecured creditors. It makes no mention of overriding the priority scheme under Section 507 or Section 1326(b)(1)'s mandated priority that attorneys' fees shall be paid immediately or concurrently. This minimal amount of

[8] H.R. Rep. No. 109-31(1) at 52 (2005); Thomas F. Waldron & Neil M. Berman, *Principled Principles of Statutory Interpretation: A Judicial Perspective After Two Years of BAPCPA*, 81 Am. Bankr. L.J. 195, 209-10, 2012 (2007).

legislative history is insufficient to provide guidance for interpreting § 1325(b)(1)(B). *Waldron & Berman,* at 282.

Ordinarily, before a legislative act is passed, there is a wealth of legislative history, including House, Senate, and conference committee reports, and floor statements by bill sponsors. *Id.* at 217. But with BAPCPA, none of these traditional forms of legislative history are present. *Id.*

Chicago argues BAPCPA's legislative history supports its position that § 1325(b)(1)(B) was amended to require projected disposable income to be paid first to nonpriority unsecured creditors, before administrative attorneys' fees. To support this, Chicago relies on its sole alleged legislative history support—floor statements made by then-Senator Russ Feingold during the Senate debate in 2005. But Senate floor debates are forums for open discussion where any Senator can express personal opinions, regardless of their involvement in sponsoring or managing the bill.

Feingold's statements represent his subjective interpretation of how the amended statute would operate but his interpretation is flawed and does not reflect how the statute functions in practice. Moreover, his statements reflect personal opposition to the bill rather than legislative intent or the collective intent of Congress. *See Peterson v. Somers Dublin Ltd.,* 729 F.3d 741, 749 (7th Cir. 2013) ("We apply the text—which both Houses of Congress approved, and the President signed—not themes from a history that was neither passed by a majority of either House nor signed into law"). He was neither a sponsor, floor manager, nor a supporter of the bill. As such, his statements do not reflect the intent of those who drafted, sponsored, or managed

BAPCPA through the legislative process. Moreover, the Supreme Court avoids reliance on "the passing comments of one Member," *Garcia v. United States*, 469 U.S. 70, 76 (1984), and has emphasized that the remarks of a single legislator "are not controlling in analyzing legislative history." *Chrysler Corp. v. Brown*, 441 U.S. 281, 311 (1979). Consequently, Feingold's statements are not authoritative legislative history, and this Court should disregard Chicago's legislative history arguments.

Courts have recognized that the legislative history of BAPCPA is too sparse to justify departure from prior practice. *In re Wilbur,* 344 B.R 650, 653-54 (Bankr. D. Utah 2006) ("because the Congressional record is largely silent, and the only records available are little more than a gloss of the statutory language of BAPCPA, a court's only measure in determining what it means is pre-BAPCPA practice."); *see also*; *Lanning*, 560 U.S. at 517 ("Pre-BAPCPA bankruptcy practice is telling because we 'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure.' " (quoting *Travelers Casualty & Surety Co. of America* v. *Pacific Gas & Elec. Co.*, 549 U. S. 443, 454 (2007))).

As argued in Section IV.C, supra, the pre-BAPCPA practice required debtors to calculate disposable income by subtracting expenses on Schedule J from income on Schedule I, then subtracting the priority, administrative, and secured debts paid through the plan, with the remainder allocated to nonpriority unsecured creditors. This pre-BAPCPA practice supports the Debtor's position that BAPCPA did not alter the priority scheme, and priority administrative attorneys' fees are still paid before nonpriority unsecured creditors. *Dumas*, 608 B.R. at 916. If Congress had truly

intended § 1325(b)(1)(B) to upend long-standing payment priorities, it would have said so explicitly. It did not. Thus, this Court should not construe § 1325(b)(1)(B) in a manner that erodes the established practice of paying priority claims before nonpriority unsecured creditors.

VI. Policy considerations confirm Chicago's interpretation would undermine the Chapter 13 system and deny debtors access to counsel.

Finally, Congress mandated that debtor's attorneys' fees be paid ahead of other creditors because of the essential role counsel plays in making Chapter 13 work. Most of the labor in a Chapter 13 case occurs at the outset—meeting with the client, preparing and filing the petition, attending the § 341 meeting, and securing plan confirmation. If debtor's attorneys were required to wait until month thirty-seven for payment, it would disincentivize competent counsel from accepting Chapter 13 cases or force them to demand full payment of the $5,500 flat fee upfront, effectively denying access to legal representation for lower-income debtors. This concern is not hypothetical. According to Trustee Thomas Hooper, the standing Chapter 13 Trustee appointed in all of these debtors' cases, the average upfront payment made by Chapter 13 debtors in his division since January 1, 2024 is only approximately $330. *See* App. 31 Out of 7,100 cases filed, only $2.36 million was paid upfront across 3,400 cases, averaging just $330 per case. This data confirms what courts have long recognized: Chapter 13 debtors overwhelmingly lack the ability to pay meaningful attorneys' fees at the start of a case. Chicago's interpretation would make competent representation financially impossible and would collapse the functioning of Chapter 13 in this Circuit.

The court in *Dumas* recognized this very concern, noting that discouraging attorneys from representing Chapter 13 debtors "would undermine the effectiveness of the system." *Dumas*, 608 B.R. at 923. *Dumas* emphasized the Code prioritizes attorneys' fees as necessary administrative expenses precisely because capable legal representation is indispensable to successful plan administration and creditor repayment. *Id.* Treating attorneys' fees as equivalent to general unsecured claims contradicts both the Code's express priority scheme and its practical operation. *Id.*

Nothing in BAPCPA suggests Congress intended to make it more difficult for debtors—especially those with limited means—to hire counsel. As *Dumas* explained, Chapter 13 exists to benefit unsecured creditors, and "it is reasonable for them to bear the cost of the attorneys' fees necessary to administer these cases." *Id.* This interpretation best aligns with congressional policy, ensuring access to competent representation and preserving the viability of Chapter 13 as a functioning repayment system.

VII. In the alternative, Chicago's creditor definition and claim-filing arguments fail because administrative attorneys' fees are paid under Sections 503(b), 507(a)(2), and 1326(b)(1).

Even if this Court were to entertain Chicago's fallback theory—which incorrectly ties payment of administrative attorneys' fees to §1325(b)(1)(B)'s disposable-income calculation—Chicago's argument still fails. Chicago's entire theory depends on artificially narrowing the statutory terms "creditor" and "unsecured creditor" to exclude administrative attorneys' fees from plan payment, but that framing misreads the Code. Section 1325(b)(1)(B) governs how much income must be

committed to the plan, not who may be paid from those funds. The treatment and timing of administrative expenses are controlled entirely by §§503(b), 507(a)(2), and 1326(b)(1), which require payment of attorneys' fees before or concurrently with unsecured creditors and do not depend on creditor status or a proof of claim. Thus, this Court need not reach Chicago's definitional theory at all. But if the Court concludes the definition of "unsecured creditors" must be addressed, debtor's counsel comfortably fits within that definition because the fee obligation arises at or before the order for relief and is not secured by collateral, as the bankruptcy court correctly held. Chicago's effort to graft § 101's creditor definition and Federal Rule of Bankruptcy Procedure 3002(a)'s claim-filing requirement onto §1325(b)(1)(B) misconstrues all three provisions and cannot overcome the Code's mandatory priority framework.

A. Debtor's attorney is a "creditor" under the plain language of Section 101(10)(A).

The Code defines a creditor as "an entity that has a claim against the debtor that arose at the time of or before the order for relief." § 101(10)(A). This definition is intentionally broad. It includes not only debts incurred before the petition date but also those that arise at the time of filing, when the order for relief is entered. Congress could have limited the definition to strictly prepetition debts, but it did not.

A "claim," in turn, is defined expansively as a "right to payment, whether or not such right is ... contingent, matured, unmatured, disputed, [or] undisputed." § 101(5)(A). Together, these provisions make it clear that a party holds "creditor" status whenever it has a right to payment arising either before or at the commencement of

the bankruptcy case. The Supreme Court has held that Congress intended this definition to be as broad as possible. *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991). Because debtor's attorneys' fees represent a clear "right to payment," they fall squarely within the statutory definition of a claim. *Dumas*, 608 B.R. at 912.

Chicago contends debtor's counsel cannot be a creditor because attorneys' fees are a post-petition administrative expense. According to the Chicago, § 101(10) limits creditor status to holders of prepetition debts only. *See* Chicago brief at p. 13. This argument misfires for two reasons. First, § 101(10) says no such thing. The statute expressly includes entities whose claims "arose at the time of or before the order for relief." Chicago omits the phrase "at the time of," which extends creditor status to debts arising upon filing of the petition. The order for relief in a voluntary case is entered at the moment of filing. Thus, a right to payment that arises simultaneously with the filing, when Chapter 13 representation begins, falls squarely within the definition of a creditor.

Second, Chicago's argument ignores that debtor's obligation to pay counsel arises under the Court-Approved Retention Agreement (CARA) which is executed prepetition in nearly all Chapter 13 cases. *See* App. 1. Once signed, the CARA creates a binding contractual obligation to pay a fixed fee for the entire case. That right to payment exists before filing, making the attorneys' fee a prepetition debt. *C.f. In re Busetta-Silvia*, 314 B.R 218, 225 (B.A.P. 10th 2004) (holding chapter 13 attorneys' fees can be a pre-petition debt). Even if one views the obligation as arising when the

case is filed, it still "arises at the time of" the order for relief and therefore satisfies § 101(10).

Moreover, because debtor's counsel's fees are not backed by any collateral, they fall within the ordinary meaning of an unsecured claim. *See Wilbur*, 344 B.R. at 653; *In re Grabarczyk*, 2012 WL 909511, at 8 (Bankr. N.D. Ill. 2012); *Matter of Prescott*, 805 F.2d 719 (7th Cir. 1986). The bankruptcy court correctly reached this conclusion, holding "both of these classes of debts [prepetition unsecured and postpetition administrative] are included as 'unsecured creditors' … since neither debt is secured by any form of collateral." *Jackson*, 669 B.R. at 808.

Chicago also contends administrative attorneys' fees can never qualify as prepetition claims, except for the narrow and inapplicable exception under § 503(b)(9). That contention is incorrect. As the court explained in *Dumas*, 608 B.R. at 902, 917 n.16, "it is not true that administrative expenses cannot be prepetition claims." Section 503(b) itself contemplates numerous administrative expenses that arise prepetition, including the value of goods delivered within 20 days before the petition date (§ 503(b)(9)), fees of petitioning creditors (§ 503(b)(3)(A)), fees of a prepetition custodian (§ 503(b)(3)(E)), and professional fees of petitioning creditors or prepetition custodians (§ 503(b)(4)). *See also Busetta-Silvia*, 314 B.R. at 224-5 (attorneys' fees for prepetition work can qualify as administrative expense entitled to priority). These provisions and authorities confirm administrative status and prepetition timing are not mutually exclusive concepts under the Code.

Chicago argues the bankruptcy court erred by relying on the Fair Debt Collection Practices Act (§§ 1692a(4)–(5)) to define "creditor." That misreads the bankruptcy court's ruling. The bankruptcy court's reference to the FDCPA was dicta, used only to illustrate the ordinary meaning of the term, not as the basis of the ruling. As argued above, debtor's counsel qualifies as an unsecured creditor because the fee agreement arose prepetition or at the time of filing, and is not secured by collateral. In any event, the bankruptcy court's finding of a direct conflict between § 1325(b)(1)(B) and §§ 507(a)(2) and 1326(b)(1) was independently sufficient to sustain the decision.

B. Section 1325(b)(1)(B) does not qualify or limit the term unsecured creditors.

Section 1325(b)(1)(B) does not "qualify or distinguish the term" unsecured creditors. *Grabarczyk*, 2012 WL 909511 at 8. If Congress intended § 1325(b)(1)(B) to apply only to nonpriority unsecured creditors, it could have said so expressly. It did not. Nothing in § 1325(b)(1)(B) limits its scope to nonpriority claims, yet Chicago asks this Court to read additional words into the statute. But courts "ordinarily resist[] reading words into a statute that do not appear on its face." *Bates v. United States*, 522 U.S. 23, 29 (1997).

The bankruptcy court below rejected this very argument, finding "[t]he City's unsupported assertion that the only 'fair reading' of the statute forbids inclusion of unsecured administrative claims is refuted by the language of the statute itself." *Jackson*, 669 B.R. at 809. The bankruptcy court correctly explained that:

> [o]n its face, the term 'unsecured creditors' contains no limitations on when the unsecured debts arose or on whether those debts are entitled to priority under the Code. Congress could have chosen to add temporal or priority limitations to the statute…such as 'prepetition unsecured creditors' or 'non-administrative

> unsecured creditors'…[b]ut it did not do so, and the Court will not alter the statute by adding restrictions which Congress did not place there.
>
> *Id.*

C. Debtor's attorney need not file a proof of claim to be paid under a confirmed plan.

As an alternative to its primary theory, Chicago argues that the bankruptcy court erred in confirming the plan because, if debtor's counsel is considered a creditor, the debtors' attorney was required to file a proof of claim pursuant to Fed R. Bankr. P. § 3002(a) to be paid. *See* Chicago brief at 27-8. Chicago further argues because no proof of claim was filed, debtor's counsel is not entitled to receive any payments under the plan. Chicago's fixation on whether debtor's counsel must file a proof of claim and whether counsel is technically a creditor misses the point entirely. Section 1325(b)(1)(B) governs how much of a debtor's projected disposable income must be paid to unsecured creditors, not how those funds are disbursed or who must file claims to receive them. Once projected disposable income is committed to the plan, the distribution of those funds is governed by §§ 1322(a)(2) and 1326(b)(1), both of which require administrative expenses, including attorneys' fees, to be paid before or concurrently with unsecured creditors. The filing of a proof of claim plays no role in statutory hierarchy.

Even if the Court were to entertain Chicago's collateral arguments, they fail as a matter of law. First, administrative expenses such as debtor's attorneys' fees are not paid by proof of claim at all under Fed R. Bankr. P. § 3002(a), but by request for payment under § 503(a). Section 503(a) states '[a]n entity may timely file a request

for payment of an administrative expense[.]" In *Parker*, a creditor argued Chapter 13 attorneys must file a proof of claim to get paid. 15 B.R. 980, 982 (Bankr. E.D. Tenn. 1981). The *Parker* court rejected this on the plain reading of § 503(a) because "only a request for payment is required." *Id.*

Moreover, several courts have held that when a debtor voluntarily provides for a creditor in a Chapter 13 plan, the Trustee may disburse payments to that creditor even without a filed proof of claim. *See In re Hrubec*, 544 B.R. 397, 401 (Bankr. N.D. Ill. 2016); *In re Ellis*, 2024 WL 6816194, at 4 (Bankr. N.D. Ill. June 5, 2024). Here, the debtors likewise voluntarily provided for their attorneys' fees in Section 4.3 of their confirmed plans, consistent with their signed Court-Approved Retention Agreements authorizing such payment.

Section 1322(b)(8) expressly permits a debtor's plan to "provide for the payment of all or part of a claim" from estate or non-estate property. This provision allows for voluntary payment of a claim, regardless of whether a proof of claim has been filed. *Ellis*, 2024 WL 6816194 at 4-5. That right is independent of creditor enforcement and supports the bankruptcy court's approval of the plan structure.

Chicago also argues that the bankruptcy court erred by failing to consider this Court's decision in *In re Pajian*, 785 F.3d 1161 (7th Cir. 2015), which it incorrectly believes forbids any payment to a creditor absent a filed claim. But Chicago's interpretation of *Pajian* is incorrect. As multiple courts have recognized, including *Hrubec* and *Ellis*, *Pajian* addressed a single narrow issue: whether a secured creditor who failed to file a timely proof of claim could compel inclusion of its debt in a debtor's

plan. *See Ellis*, 2024 WL 6816194 at 4. *Pajian* held such a creditor may not force payment. It did not hold that a debtor is prohibited from voluntarily including or paying a creditor through the plan. To the contrary, *Hrubec* and *Ellis* expressly confirm that *Pajian* governs the rights of creditors seeking to force payment through the plan, not the rights of debtors to propose voluntary payments under § 1322(b)(8).

Because attorneys' fees are § 507(a)(2) administrative expenses that §§ 1322(a)(2) and 1326(b)(1) require to be paid before or concurrently with unsecured creditors, *Pajian* has no application here. Accordingly, Chicago's contention the bankruptcy court erred by not applying *Pajian* misconstrues both the case's holding and its limited scope. Attorneys' fees are paid before or concurrently with unsecured creditors, without any proof-of-claim requirement.

D. Chicago's reading would bar Chapter 13 Trustee compensation during the Plan Term—an absurd and unworkable result.

The flaw in Chicago's position becomes even more apparent when its logic is applied to Chapter 13 Trustees. Under Chicago's interpretation, Trustees, like debtor's counsel, would be excluded from receiving payment because they are not "creditors", and do not file proofs of claim. Chicago attempts to sidestep this consequence by asserting in a footnote that it "does not challenge the authorization of payments to the Trustee in this case." *See* Chicago's Brief at p.13 at n.3. That disclaimer does not save its position. Chicago's theory that only "unsecured creditors" as defined by § 101(10) and those who file proofs of claim may be paid from disposable income necessarily extends to the 13 Trustee. Under Chicago's view, the 13 Trustee,

like debtor's counsel, is neither a prepetition creditor nor the holder of a secured claim and does not file a proof of claim. If Chicago's reading of § 1325(b)(1)(B) were correct, the same logic would prohibit payment of the Trustee's compensation, an outcome flatly inconsistent with the Code.

Section 1326(b)(2) expressly provides the Chapter 13 Trustee shall be paid before or at the time of each payment to creditors under the plan. Trustees are compensated as administrative expenses under § 503(b)(2), not as creditors holding claims under § 501. This Court recently confirmed that a Chapter 13 Trustee's fee is collected pursuant to § 1326(b), not under 28 U.S.C. § 586(e)(2), as Chicago suggests. *Marshall v. Johnson*, 100 F.4th 914, 917 (7th Cir. 2024) ("… § 586(e)(2) is irrelevant, as it 'only addresses the source of funds that may be accessed to pay standing Trustee fees.' ") Chicago's reliance on § 586(e)(2) misstates the law and divorces the Trustee's compensation from the framework Congress established in Chapter 13.

Nor could Chicago meaningfully limit its theory to attorneys while exempting Trustees. Once a court of appeals has interpreted a provision of the Code, that interpretation becomes binding precedent on all bankruptcy courts within the circuit under the doctrine of stare decisis. *See Coyne v. Westinghouse Credit Corp. (In re Globe Illuminations Co.)*, 149 B.R. 614, 617 (Bankr. C.D. Cal. 1993). Thus, if this Court were to accept Chicago's view that § 1325(b)(1)(B) prohibits payments to entities that are not creditors with filed claims, that rule would necessarily extend to Chapter 13 Trustees as well, a result that would prevent them from being compensated for administering Chapter 13 plans. The result would be absurd:

Chapter 13 Trustees who are self-funded, statutorily required to collect and distribute plan payments, and essential to the system's operation could not be compensated for thirty-six months or longer. Congress could not have intended a reading of § 1325(b)(1)(B) that disables the very officers charged with carrying out its provisions.

CONCLUSION

For the foregoing reasons, the bankruptcy court's decision should be affirmed.

DATED: February 20, 2026

RESPECTFULLY SUBMITTED,

Michael A. Miller
Attorney for Appellees

/s/ Michael A. Miller

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CERTIFICIATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 12,995 words, excluding the parts of the brief exempted by Rule 32(f).

I further certify that this brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and 32(a)(6) and Circuit Rule 32(b) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 12-point Century font.

DATED: February 20, 2026

RESPECTFULLY SUBMITTED,

Michael A. Miller
Attorney for Appellees

/s/ Michael A. Miller

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Chicago, IL 60643
Phone: 312-256-8728
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CERTIFICATE OF SERVICE

I certify that on February 20, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Michael A. Miller

APPENDIX

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Form 13-8

COURT-APPROVED RETENTION AGREEMENT
(for cases filed on or after March 15, 2021)

This agreement describes the rights and duties of debtors and their lawyers in Chapter 13 bankruptcy cases in the Northern District of Illinois. The debtor and lawyer must enter into this agreement for the lawyer to receive a flat fee of $5,500.00 as compensation in the case. By signing this agreement, the debtor and lawyer agree to do everything this agreement requires.

DO NOT sign this agreement unless you have read it and understand it.

This agreement replaces any conflicting agreement between the debtor and the lawyer. If any provision of another agreement conflicts with this agreement, the lawyer will not be awarded a flat fee as compensation in the case.

The lawyer must perform all tasks reasonably necessary for the bankruptcy case. Performance of those tasks is a condition of receiving the flat fee. The lawyer may not charge any other fees for representing the debtor in the case. The sole exception, explained below, is representation of the debtor in certain lawsuits in the bankruptcy case known as adversary proceedings.

1. Duties of the Debtor and the Lawyer

A. Counseling Before Filing a Bankruptcy Case

Before a bankruptcy case is filed, the debtor must provide financial and other information to the lawyer. The lawyer must evaluate the information and advise the debtor whether filing a bankruptcy case is appropriate, and if so, under which chapter of the Bankruptcy Code. The lawyer must explain the advantages and disadvantages of filing a bankruptcy case.

If filing a chapter 13 bankruptcy case is appropriate, the lawyer must explain how and when attorneys' fees will be paid.

B. Documents for the Case

The lawyer or a member of the lawyer's staff must prepare all the documents required to be filed in the bankruptcy case. The debtor must provide all information the lawyer or a member of the lawyer's staff requests to prepare the documents. Failure to provide requested information will make it difficult or impossible for the lawyer to file the case or to represent the debtor once the case is filed. The lawyer must review each document with the debtor, who must approve and sign the documents.

C. Representation of the Debtor throughout the Case

The lawyer must represent the debtor at the § 341 meeting of creditors and in all court

hearings. The lawyer must prepare and file all motions necessary for the case and must represent the debtor on all other motions that affect the debtor's interests.

The lawyer must examine all claims creditors file in the case and must object to claims if appropriate.

The lawyer must be available to answer the debtor's questions about the case and must answer them in a timely manner.

The debtor must notify the lawyer of any significant change in the debtor's circumstances, such as the loss of a job or the proposed purchase or sale of a home or car. The debtor must also notify the lawyer of any change in the debtor's address, phone number, or email address.

If the debtor and the lawyer decide that the case should be converted to a case under chapter 7, the lawyer must file the notice of conversion.

The lawyer must file and represent the debtor in adversary proceedings for turnover of property of the bankruptcy estate.

2. Attorneys' Fees and Expenses

A. Flat Fee for Attorneys' Fees

The lawyer may charge a flat fee for all services required in this agreement. The flat fee may not exceed the amount permitted by the court when the case is filed.

The flat fee does not cover:

- representing the debtor in adversary proceedings other than for turnover of estate property
- representing the debtor in the chapter 7 case, if the case is converted to chapter 7
- representing the debtor in appeals

The debtor and the lawyer can negotiate an additional fee for representation in adversary proceedings not included in the flat fee and for representation in a chapter 7 case if the case is converted.

B. Expenses

The lawyer may also charge the debtor for certain actual, necessary expenses incurred in representing the debtor as permitted in this paragraph. These expenses are in addition to the flat attorney's fees. The court must approve all expenses.

The lawyer may charge the debtor for the following expenses:

- Court filing fees
- Fees charged by a credit reporting agency for a credit report
- Copying and postage charges as follows:

    1. A flat fee not to exceed $25 for all copying and postage charges in the case. The copying and postage charges need not be itemized.

    or

    2. The actual amount of postage and copying costs (no more than $0.10 per page) incurred in the case. The itemization must state (a) the number of copies and the dates when the copies were made, and (2) the dates and amounts of postage charges incurred.

- Fees charged by the IRS or other taxing authorities to obtain tax returns
- Other actual, necessary expenses, but only if the lawyer submits to the court an itemization of the expenses with supporting copies of invoices or other documents

The lawyer may not charge the debtor for an outside service that serves documents filed in the bankruptcy case.

C. Advance Payment to the Lawyer

The lawyer and the debtor must agree on whether the debtor will pay any or all of the attorneys' fee owed for the case before it is filed.

If the debtor makes a payment before the case is filed, the payment will be treated as an advance payment retainer.

The lawyer must explain to the debtor how an advance payment retainer is treated. The lawyer will not hold the retainer in a client trust account and it will become property of the lawyer upon payment. The special purpose of the advance payment retainer is that it permits the lawyer to be paid for essential work that must be performed before the court can consider the lawyer's fee application. The lawyer is not required to keep detailed time records because this is a flat fee agreement. The lawyer need not refund any portion of the advance payment if work is not performed, unless the court orders the lawyer to do so.

D. Payment of the Balance during the Case

Attorneys' fees not paid before the case is filed will be paid to the lawyer by the trustee out of the debtor's plan payments. The debtor may not pay the lawyer directly after the case is filed.

The debtor's Chapter 13 plan may not provide for current monthly payments to secured creditors that are other than in equal amounts. The lawyer may not file a Chapter 13 plan for the debtor in which payments to a secured creditor are set at an amount that accelerates payments to the lawyer.

E. Additional Fees in Extraordinary Circumstances

In extraordinary circumstances, the lawyer may apply to the court for additional compensation. The application must be accompanied by an itemization of the services rendered.

3. Coverage Counsel

A. Disclosure of the Practice

If the debtor's lawyer has a practice of using other lawyers not employed at the same firm to perform any of the lawyer's obligations under this agreement, he must disclose that practice to the debtor before the debtor signs the agreement.

B. Identifying Coverage Counsel

If the debtor's lawyer asks another lawyer not employed at the same firm to represent the debtor at the meeting of creditors or at any court appearance, the debtor's lawyer must notify the debtor in advance and must provide the name of the lawyer who will represent the debtor.

C. Providing Information to Coverage Counsel

If the debtor has information to give the other lawyer for the meeting of creditors or for a court appearance, the debtor must give that information to the debtor's lawyer. The debtor's lawyer must then promptly forward the information to the lawyer representing the debtor at the meeting or in court.

4. Dismissal or Conversion of the Case

If the bankruptcy case is dismissed or converted to another chapter before all plan payments have been made, the attorneys' fees paid to the lawyer are not refundable, unless the court orders the fees refunded.

If the bankruptcy case is dismissed after the court has granted the lawyer's application for compensation, the lawyer will not enforce the order granting the application against the debtor for any unpaid fees or expenses.

5. Termination of this Agreement

The debtor may terminate this agreement at any time. By terminating the agreement, the debtor ends the lawyer's representation. If the lawyer has not been paid in full when the

agreement is terminated, the court may reduce the balance of attorneys' fees owed based on the services the lawyer provided before termination.

If the debtor terminates this agreement and hires another lawyer, the court may apportion the flat fee between the lawyers.

The lawyer may terminate this agreement only with court approval.

6. Amount of Attorneys' Fees and Expenses

A. Attorneys' Fees:

The debtor agrees to pay the lawyer a flat fee of $5,500.00 for the lawyer's services in the chapter 13 case.

B. Expenses:

The estimated expenses for the case are: $379.71

These expenses are for:

COST - TAX TRANSCRIPTS	$5.00
COST - FILING FEE CHAPTER 13	$313.00
COST- CCC Allen Single/Joint PHONE 30	$30.00
COST - COPIES AND POSTAGE	$25.00
COST - 1 BUREAU CREDIT REPORT - Single $6.71	$6.71

C. Total Fees and Estimated Expenses: $5,879.71

Advance payment by debtor: $350.00

Balance owed by debtor: $5,529.71

/s/ Stephen Falkner
Debtor

Debtor

6/18/2025
Date

/s/ Mitchell Shanks
Lawyer

6/18/2025
Date

Form 13-8

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If the debtor's lawyer has a practice of using other lawyers not employed at the same firm to perform any of the lawyer's obligations under this agreement, he must disclose that practice to the debtor before the debtor signs the agreement.

B. Identifying Coverage Counsel

If the debtor's lawyer asks another lawyer not employed at the same firm to represent the debtor at the meeting of creditors or at any court appearance, the debtor's lawyer must notify the debtor in advance and must provide the name of the lawyer who will represent the debtor.

C. Providing Information to Coverage Counsel

If the debtor has information to give the other lawyer for the meeting of creditors or for a court appearance, the debtor must give that information to the debtor's lawyer. The debtor's lawyer must then promptly forward the information to the lawyer representing the debtor at the meeting or in court.

4. Dismissal or Conversion of the Case

If the bankruptcy case is dismissed or converted to another chapter before all plan payments have been made, the attorneys' fees paid to the lawyer are not refundable, unless the court orders the fees refunded.

If the bankruptcy case is dismissed after the court has granted the lawyer's application for compensation, the lawyer will not enforce the order granting the application against the debtor for any unpaid fees or expenses.

5. Termination of this Agreement

The debtor may terminate this agreement at any time. By terminating the agreement, the debtor ends the lawyer's representation. If the lawyer has not been paid in full when the

agreement is terminated, the court may reduce the balance of attorneys' fees owed based on the services the lawyer provided before termination.

If the debtor terminates this agreement and hires another lawyer, the court may apportion the flat fee between the lawyers.

The lawyer may terminate this agreement only with court approval.

6. Amount of Attorneys' Fees and Expenses

A. Attorneys' Fees:

The debtor agrees to pay the lawyer a flat fee of $ 5500.00 for the lawyer's services in the chapter 13 case.

B. Expenses:

The estimated expenses for the case are: $ 361.71

These expenses are for:

COST - 1 BUREAU CREDIT REPORT - Single $6.71	$ 6.71
COST - COPIES AND POSTAGE	$ 25.00
COST - FILING FEE CHAPTER 13	$ 313.00
COST - MONEY SHARP CREDIT COUNSELING - Single	$ 12.00
COST - TAX TRANSCRIPTS	$ 5.00

C. Total Fees and Estimated Expenses: $ 5861.71

Advance payment by debtor: $ 450.00

Balance owed by debtor: $ 5411.71

x _____
Debtor

x _____
Joint Debtor

Date: 6/4/2025

_____
Attorney,
Semrad Law Firm

Date: 06/04/2025

669 B.R. 805
United States Bankruptcy Court,
N.D. Illinois, Eastern Division.

IN RE: Dewayne C. JACKSON, Debtor.

Bankruptcy No. 24 B 18391
|
Signed April 25, 2025

Synopsis

Background: City, a prepetition unsecured creditor, objected to confirmation of proposed Chapter 13 plan, arguing, inter alia, that by proposing to pay postpetition administrative expenses like attorney fees, plan failed to comply with the Bankruptcy Code's requirement that all of debtor's projected disposable income be paid only to "unsecured creditors."

Holdings: The Bankruptcy Court, Donald R. Cassling, J., held that:

[1] the term "unsecured creditors," as used in the section of the Code providing that an objected-to Chapter 13 plan cannot be approved unless all of debtor's projected disposable income will be applied to make payments to unsecured creditors, is not limited to those with prepetition unsecured non-administrative claims but, instead, includes unsecured administrative expenses that arise during the bankruptcy, and

[2] administrative expenses do not require the filing of either proofs of claim or proofs of interest in order to be approved and paid under a plan.

Objections overruled.

Procedural Posture(s): Objection to Confirmation of Plan.

West Headnotes (12)

[1] **Statutes** Plain language; plain, ordinary, common, or literal meaning

Statutes Relation to plain, literal, or clear meaning; ambiguity

When statute's language is plain, sole function of courts, at least where disposition required by text is not absurd, is to enforce it according to its terms.

[2] **Statutes** Similar or Related Statutes

When language of statute is not plain and unambiguous, courts may look for guidance in related statutory provisions, not just in statute's immediate terms, when resolving disputes about statute's meaning.

[3] **Bankruptcy** Claims and assets; propriety and feasibility in general

Under the Bankruptcy Code, a Chapter 13 debtor's "projected disposable income" must be paid only to unsecured creditors from the first months of the plan. 11 U.S.C.A. § 1325(b)(1)(B).

[4] **Bankruptcy** Claims and assets; propriety and feasibility in general

Chapter 13 debtor's "projected disposable income" is the amount left over after paying mortgages, utilities, car payments, food, and other reasonable "necessities of life" which, in the case of a below-median-income debtor, are normally derived from the debtor's Schedule J. 11 U.S.C.A. § 1325(b)(1)(B).

[5] **Bankruptcy** Claims and assets; propriety and feasibility in general

Term "unsecured creditors," as used in section of the Bankruptcy Code providing that objected-to Chapter 13 plan cannot be approved unless all of debtor's projected disposable income will be applied to make payments to unsecured creditors, is not limited to those with prepetition unsecured non-administrative claims but, instead, includes unsecured administrative expenses that arise during bankruptcy; neither class of debts is secured by any form of collateral, on its face term "unsecured creditors" contains no limitations on when unsecured debts arose or on whether those debts are entitled to priority under the Code, and a contrary interpretation not only would be inequitable to debtors and their counsel, but,

because administrative expenses arising during bankruptcy have, by statute, higher priority status than unsecured claims that arose prior to bankruptcy, it also would cause section in question to conflict with payment hierarchy set forth in the Code's priorities section. 11 U.S.C.A. §§ 507, 1325(b)(1)(B).

[6] **Bankruptcy** Claims and assets; propriety and feasibility in general

Bankruptcy Unsecured claims

Term "unsecured creditors," as used in the section of the Bankruptcy Code providing that an objected-to Chapter 13 plan cannot be approved unless all of debtor's projected disposable income will be applied to make payments to unsecured creditors, unambiguously covers all creditors whose loans or other debts owed are unsecured by consensual, judgment, or statutory liens on any property of the debtor. 11 U.S.C.A. § 1325(b)(1)(B).

[7] **Bankruptcy** Administrative expenses in general

Under the Bankruptcy Code, administrative expenses arising during the bankruptcy are to be paid before or at the time of each payment to prepetition unsecured creditors under a Chapter 13 plan. 11 U.S.C.A. §§ 507(a)(2), 1326(b)(1).

[8] **Bankruptcy** Professional services; attorney fees

Bankruptcy Claims and assets; propriety and feasibility in general

If, in a Chapter 13 case, the bankruptcy court allows an administrative expense such as attorney fees, then such unsecured fees must be first in line to be paid with debtor's projected disposable income made available to the case trustee because they are the highest priority of unsecured debts to be paid from the estate's assets; any remaining proceeds are then to be paid to categories of unsecured claims with lower priorities, such as holders of unsecured, prepetition claims in accordance with the priorities section of the Bankruptcy Code. 11 U.S.C.A. §§ 507, 1325(b)(1)(B).

[9] **Bankruptcy** Proof; Filing

Under the Bankruptcy Code, claims which have been made for collection of prepetition secured or unsecured debts are called "proofs of claim," whereas claims which have been made for preservation or recognition of equity interests are called "proofs of interest." 11 U.S.C.A. § 501.

[10] **Bankruptcy** Administrative claims; request for payment

Administrative expenses do not require filing of either proofs of claim or proofs of interest in order to be approved and paid under Chapter 13 plan. 11 U.S.C.A. § 501.

[11] **Bankruptcy** Claims allowable; what constitutes "claim."

Where one party owes money to another, the party to whom the money is owed can safely be labeled a "creditor," as term is used in the Bankruptcy Code. 11 U.S.C.A. § 101(10).

[12] **Bankruptcy** Necessity of Filing; Effect of Failure

Bankruptcy Code does not require that counsel for a Chapter 13 debtor file a proof of claim to be entitled to its fees. 11 U.S.C.A. § 501.

Attorneys and Law Firms

Attorneys for Debtor: Michael Miller, The Semrad Law Firm, LLC, 11101 S. Western Avenue, Chicago, Illinois 60643.

Attorney for the City of Chicago: David Paul Holtcamp, City of Chicago Department of Law, 121 North LaSalle Street, Suite 400, Chicago, Illinois 60602.

ORDER OVERRULING OBJECTIONS TO CONFIRMATION (DOCKET NOS. 14 & 34)

Donald R. Cassling, United States Bankruptcy Judge

***806** The matter is before the Court on the objections of the City of Chicago (the ***807** "City") to the confirmation of the plan of Debtor, Dewayne Jackson. For the reasons that follow, the Court overrules the objections and will allow confirmation of the Debtor's plan to proceed.

BACKGROUND

The Debtor filed his case on December 10, 2024, under Chapter 13 of the Bankruptcy Code. According to the Debtor's Schedules I and J, his projected monthly disposable income is $700.24.[1] His proposed plan provides for 60 monthly payments of $700 and a 0% dividend to prepetition unsecured creditors. (Dkt. No. 8.) The plan additionally provides for payment of attorneys' fees, if allowed through application to the Court,[2] of $4,853.96 and estimated trustee's fees of $2,856. (*Id.*) According to the Debtor, the monthly plan payments cover attorneys' fees, trustee's fees, a claim secured by his vehicle, an estimated priority claim of $1,000, and potential distributions to unsecured creditors.

The City, a prepetition unsecured creditor, objects to confirmation of the Debtor's plan, arguing that the plan fails to meet the requirements for confirmation. According to the City, the BAPCPA Amendments of 2005 require that all projected disposable income be paid only to "unsecured creditors" during the applicable commitment period, starting with the first payment. 11 U.S.C. § 1325(b)(1)(B). The City argues that the statute's use of the term "unsecured creditors" must mean, under any fair reading of Section 1325(b), "general [prepetition] unsecured creditors," meaning prepetition creditors whose debts are unsecured and who do not hold priority claims. (*See* Obj. to Confirmation, Dkt. No. 14, at 8.) The City cites to no statute or case law in support of this interpretation. The City next argues that "[p]ayments [through the plan] for maintenance or support, like mortgages or car payments, are not considered disposable income, so they do not go to unsecured creditors. However, attorneys' fees are not maintenance or support." (Reply in Support of Obj. to Confirmation, Dkt. No. 33, at 1.) Instead, the City argues, debtors' attorneys are holders of post-petition administrative expenses, which are distinct from debtors' prepetition unsecured creditors. Therefore, according to the City, "attorneys' fees may not be deducted from disposable income[,] nor may they be paid out of disposable income[.]" (*Id.*) By contrast, the City does not object to the payment of trustee's fees under a confirmed plan, citing Section 707(b)(2)(A). 11 U.S.C. § 707(b)(2)(A).

The apparent policy basis for the City's interpretation of Section 1325(b)(1)(B) is that "a significant amount from [plan] payments will go into [the Debtor's] attorneys' pockets" while "the majority of Chapter 13 cases fail well before distributions to unsecured creditors begin." (Obj. to Plan Confirmation, Dkt. No. 14, at 1.) According to the City, "debtors with plans such as [the one proposed by the Debtor, whose plans fail] are ... left with no debt relief (or actually owing more money) and they are out ... thousands of dollars their attorneys took from the plan payments." (*Id.*)[3]

***808** In response, the Debtor argues that a "holistic" approach must be followed in interpreting Section 1325(b)(1)(B), and that the City's interpretation of that statute is inconsistent with the Code's requirement that post-petition administrative claims be paid ahead of prepetition unsecured claims under Section 507(a)(2). Additionally, the Internal Revenue Service (the "IRS"), one of the Debtor's creditors holding a priority unsecured claim, filed a response urging the Court to reject the City's argument that unsecured creditors with priority claims are not "unsecured creditors" within the meaning of Section 1325(b)(1)(B).[4] (Response, Dkt. 28, at 1-2.) As the discussion below indicates, resolution of this dispute over statutory construction must begin with a challenge to the City's unsupported premise that the statute's use of the term "unsecured creditor" must mean "*prepetition* unsecured creditor."

DISCUSSION

[1] **[2]** "[W]hen a statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Sebelius v. Cloer*, 569 U.S. 369, 381, 133

S.Ct. 1886, 185 L.Ed.2d 1003 (2013) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6, 120 S.Ct. 1942, 147 L.Ed.2d 1 (2000)). Where the language of the statute is not plain and unambiguous, the Courts may of course look for guidance in related statutory provisions, not just in a statute's immediate terms, when resolving disputes about a statute's meaning. *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 221, 144 S.Ct. 2071, 219 L.Ed.2d 721 (2024).

[3] **[4]** The City is correct that Section 1325(b)(1)(B) plainly requires that "unsecured creditors" must be paid from a debtor's "projected disposable income" and paid *only* to unsecured creditors from the first months of the plan. 11 U.S.C. § 1325(b)(1)(B). Both sides agree that "projected disposable income" is the amount left over after paying mortgages, utilities, car payments, food, and other reasonable necessities of life. [5] *See* *In re Farrar-Johnson*, 353 B.R. 224, 227-28 & n.5 (Bankr. N.D. Ill. 2006). Here, the Debtor's documents indicate that his projected monthly disposable income is $700.24, and he must therefore make that amount as a payment to unsecured creditors each month.

[5] The issue presented by this case is whether the term "unsecured creditors" includes unsecured administrative expenses that arise during the bankruptcy, or whether that term is limited to unsecured non-administrative claims that arose prior to the bankruptcy filing date. For the reasons which follow, the Court concludes (1) that both of these classes of debts are included as "unsecured creditors" within the meaning of Section 1325(b)(1)(B) because neither debt is secured by any form of collateral; and (2) that administrative expenses arising during bankruptcy have, by statute, a higher priority status than unsecured claims that arose prior to bankruptcy. The Court's interpretation has the merit of affirming the plain meaning of not ***809** only Section 1325(b)(1)(B) but of the related statutes as well.

[6] First, the term "unsecured creditors" unambiguously covers all creditors whose loans or other debts owed are unsecured by consensual, judgment, or statutory liens on any property of the debtor. The City's unsupported assertion that the only "fair reading" of the statute forbids inclusion of unsecured administrative claims is refuted by the language of the statute itself. On its face, the term "unsecured creditors" contains no limitations on *when* the unsecured debts arose or on *whether* those debts are entitled to priority under the Bankruptcy Code. Congress could have chosen to add temporal or priority limitations to the statute by adding limitations such as "*prepetition* unsecured creditors" or "*non-administrative* unsecured creditors." But it did not do so, and the Court will not alter the statute by adding restrictions which Congress did not place there. [6]

[7] **[8]** Second, the City's interpretation would cause Section 1325(b)(1)(B) to conflict with other provisions of the Bankruptcy Code that give priority to administrative claims, *see* 11 U.S.C. § 507(a)(2), and priority claims such as that of the IRS, *see* 11 U.S.C. § 507(a)(8), over general, prepetition unsecured claims. Under Section 507(a)(2), administrative expenses arising during the bankruptcy are to be paid before or at the time of each payment to prepetition unsecured creditors under a plan. *See* 11 U.S.C. § 1326(b)(1). By contrast, the Court's interpretation gives full effect to both statutory provisions, allowing only unsecured debts to be paid initially out of "projected disposable income," but doing so in a way that preserves the payment hierarchy set forth in Section 507. Under the Court's interpretation, if an administrative expense such as attorneys' fees are allowed by the Court in a case under Chapter 13 of the Bankruptcy Code, then such unsecured fees must be first in line to be paid with the projected disposable income made available to the case trustee because they are the highest priority of unsecured debts to be paid from the estate's assets. Any remaining proceeds are then to be paid to categories of unsecured claims with lower priorities, such as holders of unsecured, prepetition claims in accordance with Section 507.

Finally, given the context of the priority hierarchy of Title 11 described above, the Court notes that it would be inequitable to debtors and their counsel to read the reference to "unsecured creditor" in Section 1325(b)(1)(B) as a provision that would prevent counsel from receiving payment through a Chapter 13 plan where it is anticipated that such administrative fees have been incurred by a debtor's estate and are owing.

[9] **[10]** The City filed an alternative objection to the plan, arguing that even if one treats an administrative expense as a general unsecured "claim", the Debtor's attorneys never filed a proof of claim for their fees and therefore cannot be paid under Section 1325(b)(1)(B). The Court overrules this objection as well. Section 501 defines "proof of claim" and "proof of interest." 11 U.S.C. § 501. Claims which have

been made for collection of prepetition secured or unsecured debts are called "proofs of ***810** claim" and claims which have been made for preservation or recognition of equity interests are called "proofs of interest." Administrative expenses fall into neither category, and therefore do not require the filing of either proofs of claim or proofs of interest in order to be approved and paid under a plan. *See marchFirst, Inc.*, 448 B.R. at 508.

[11] **[12]** Significantly, Section 1325(b)(1)(B) does not employ the terms "claim," "proof of claim," "interest," or "proof of interest." Instead, it uses the term "unsecured *creditor*." In the Court's view, administrative expenses sought by a debtor's counsel are obviously moneys which are owed by that debtor to their counsel. Where one party owes money to another, the party to whom the money is owed can safely be labeled a "creditor." *See generally* 15 U.S.C. § 1692a(4) & (5) (defining creditor as person who offers or extends credit creating debt or to whom debt is owed, and debt as obligation to be paid). And, to the extent that the debts owed to them are not secured by collateral, they are "unsecured debts" held by "unsecured creditors." But because the Code does not require that counsel file a proof of claim to be entitled to its fees, the Court rejects the City's alternative argument.

To sum up, the Court overrules both of the City's objections, holding that the term "unsecured creditors" in Section 1325(b)(1)(B) includes all holders of debt unsecured by collateral, whether arising prepetition or post-petition, and whether entitled to administrative priority or not.

CONCLUSION

For the foregoing reasons, the Court overrules the City's objections to plan confirmation.

All Citations

669 B.R. 805

Footnotes

1 The Debtor's income is below the median income threshold, as indicated on his Official Form 122C-1. (Docket No. 4.)

2 The Debtor's counsel has filed an application for attorneys' fees using the Court-Approved Retention Agreement, Local Form 13-8, which the Court is considering alongside confirmation of the Debtor's proposed plan. (Docket No. 10.)

3 On April 2, 2025, the City filed an alternative objection to the confirmation of the Debtor's proposed plan. (Dkt. No. 34.) Its alternative argument is that, if the Court finds that the Debtor's attorney is a creditor of the Debtor's estate, then confirmation of the Debtor's plan must be denied as it provides for payment to a creditor who did not file a claim. This alternative argument is rejected for the reasons set forth in the discussion which follows.

4 The IRS also points out that the portion of its claim entitled to priority totals $19,68644. (Bankr. Case No. 24-18391, Claim No. 3-1.)

5 These "necessities of life" are normally derived from a debtor's Schedule J if a debtor's income is below the median threshold.

6 The Court recognizes that various decisions have concluded that post-petition administrative expenses are distinct from unsecured prepetition claims. *See* 11 U.S.C. § 101(10); *In re marchFirst, Inc.*, 448 B.R. 499, 508 (Bkrtcy.N.D.Ill. 2011); *In re Ames Dep't Stores, Inc.*, 582 F.3d 422, 429 (2d Cir. 2009). That is inarguable. But both types of debts can have features in common in addition to features which are distinct.

Here, it is the feature they hold in common—the lack of collateral to secure repayment—that brings both types of debts within the plain language of Section 1325(b)(1)(B).

End of Document

2025 WL 1260827
Only the Westlaw citation is currently available.
United States Bankruptcy Court,
N.D. Illinois, Eastern Division.

IN RE: Jade GORDON, Debtor.

Bankruptcy No. 24 B 18109
|
Signed April 25, 2025

Attorneys and Law Firms

Andrew B. Carroll, Michael A. Miller, The Semrad Law Firm, LLC, Chicago, IL, Michael A. Miller, Robert J. Semrad and Associates, LLC, Chicago, IL, for Debtor.

ORDER OVERRULING OBJECTIONS TO CONFIRMATION (DOCKET NOS. 15 & 27)

Donald R. Cassling, United States Bankruptcy Judge

***1** The matter is before the Court on the objections of the City of Chicago (the "City") to the confirmation of the plan of Debtor, Jade Gordon. For the reasons that follow, the Court overrules the objections and will allow confirmation of the Debtor's plan to proceed.

BACKGROUND

The Debtor filed her case on December 4, 2024, under Chapter 13 of the Bankruptcy Code. According to the Debtor's Schedules I and J, her projected monthly disposable income is $425.09.[1] Her proposed plan provides for 36 monthly payments of $425 and a 0% dividend to prepetition unsecured creditors. (Dkt. No. 7.) The plan additionally provides for payment of attorneys' fees and costs, if allowed through application to the Court,[2] of $4,528.96 and estimated trustee's fees of $1,040.40. (*Id.*) According to the Debtor, the monthly plan payments cover attorneys' fees, trustee's fees, a claim secured by her vehicle, and potential distributions to unsecured creditors.

The City, a prepetition unsecured creditor, objects to confirmation of the Debtor's plan, arguing that the plan fails to meet the requirements for confirmation. According to the City, the BAPCPA Amendments of 2005 require that all projected disposable income be paid only to "unsecured creditors" during the applicable commitment period, starting with the first payment. 11 U.S.C. § 1325(b)(1)(B). The City argues that the statute's use of the term "unsecured creditors" must mean, under any fair reading of Section 1325(b), "general [prepetition] unsecured creditors," meaning prepetition creditors whose debts are unsecured and who do not hold priority claims. (*See* Obj. to Confirmation, Dkt. No. 15, at 8.) The City cites to no statute or case law in support of this interpretation. The City next argues that "[p]ayments [through the plan] for maintenance or support, like mortgages or car payments, are not considered disposable income, so they do not go to unsecured creditors. However, attorneys' fees are not maintenance or support." (Reply in Support of Obj. to Confirmation, Dkt. No. 26, at 1.) Instead, the City argues, debtors' attorneys are holders of post-petition administrative expenses, which are distinct from debtors' prepetition unsecured creditors. Therefore, according to the City, "attorneys' fees may not be deducted from disposable income[,] nor may they be paid out of disposable income[.]" (*Id.*) By contrast, the City does not object to the payment of trustee's fees under a confirmed plan, citing Section 707(b)(2)(A). 11 U.S.C. § 707(b)(2)(A).

The apparent policy basis for the City's interpretation of Section 1325(b)(1)(B) is that "a significant amount from [plan] payments will go into [the Debtor's] attorneys' pockets" while "the majority of Chapter 13 cases fail well before distributions to unsecured creditors begin." (Obj. to Plan Confirmation, Dkt. No. 15, at 1.) According to the City, "debtors with plans such as [the one proposed by the Debtor, whose plans fail] are ... left with no debt relief (or actually owing more money) and they are out ... thousands of dollars their attorneys took from the plan payments." (*Id.*)[3]

***2** In response, the Debtor argues that a "holistic" approach must be followed in interpreting Section 1325(b)(1)(B), and that the City's interpretation of that statute is inconsistent with the Code's requirement that post-petition administrative claims be paid ahead of prepetition unsecured claims under Section 507(a)(2). As the discussion below indicates, resolution of this dispute over statutory construction must begin with a challenge to the City's unsupported premise that the statute's use of the term "unsecured creditor" must mean "*prepetition* unsecured creditor."

DISCUSSION

"[W]hen a statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Sebelius v. Cloer*, 569 U.S. 369, 381 (2013) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)). Where the language of the statute is not plain and unambiguous, the Courts may of course look for guidance in related statutory provisions, not just in a statute's immediate terms, when resolving disputes about a statute's meaning. *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 221 (2004).

The City is correct that Section 1325(b)(1)(B) plainly requires that "unsecured creditors" must be paid from a debtor's "projected disposable income" and paid *only* to unsecured creditors from the first months of the plan. 11 U.S.C. § 1325(b)(1)(B). Both sides agree that "projected disposable income" is the amount left over after paying mortgages, utilities, car payments, food, and other reasonable necessities of life. [4] *See* *In re Farrar-Johnson*, 353 B.R. 224, 227-28 & n.5 (Bankr. N.D. Ill. 2006). Here, the Debtor's documents indicate that her projected monthly disposable income is $425.09, and she must therefore make that amount as a payment to unsecured creditors each month.

The issue presented by this case is whether the term "unsecured creditors" includes unsecured administrative expenses that arise during the bankruptcy, or whether that term is limited to unsecured non-administrative claims that arose prior to the bankruptcy filing date. For the reasons which follow, the Court concludes (1) that both of these classes of debts are included as "unsecured creditors" within the meaning of Section 1325(b)(1)(B) because neither debt is secured by any form of collateral; and (2) that administrative expenses arising during bankruptcy have, by statute, a higher priority status than unsecured claims that arose prior to bankruptcy. The Court's interpretation has the merit of affirming the plain meaning of not only Section 1325(b)(1)(B) but of the related statutes as well.

First, the term "unsecured creditors" unambiguously covers all creditors whose loans or other debts owed are unsecured by consensual, judgment, or statutory liens on any property of the debtor. The City's unsupported assertion that the only "fair reading" of the statute forbids inclusion of unsecured administrative claims is refuted by the language of the statute itself. On its face, the term "unsecured creditors" contains no limitations on *when* the unsecured debts arose or on *whether* those debts are entitled to priority under the Bankruptcy Code. Congress could have chosen to add temporal or priority limitations to the statute by adding limitations such as "*prepetition* unsecured creditors" or "*non-administrative* unsecured creditors." But it did not do so, and the Court will not alter the statute by adding restrictions which Congress did not place there. [5]

***3** Second, the City's interpretation would cause Section 1325(b)(1)(B) to conflict with other provisions of the Bankruptcy Code that give priority to administrative claims over prepetition unsecured claims, such as Section 507(a)(2). Under the latter section, administrative expenses arising during the bankruptcy are to be paid before or at the time of each payment to prepetition unsecured creditors under a plan. *See* 11 U.S.C. § 1326(b)(1). By contrast, the Court's interpretation gives full effect to both statutes, allowing only unsecured debts to be paid initially out of "projected disposable income," but doing so in a way that preserves the payment hierarchy set forth in Section 507. Under the Court's interpretation, if an administrative expense such as attorneys' fees are allowed by the Court in a case under Chapter 13 of the Bankruptcy Code, then such unsecured fees must be first in line to be paid with the projected disposable income made available to the case trustee because they are the highest priority of unsecured debts to be paid from the estate's assets. Any remaining proceeds are then to be paid to categories of unsecured claims with lower priorities, such as holders of unsecured, prepetition claims.

Finally, given the context of the priority hierarchy of Title 11 described above, the Court notes that it would be inequitable to debtors and their counsel to read the reference to "unsecured creditor" in Section 1325(b)(1)(B) as a provision that would prevent counsel from receiving payment through a Chapter 13 plan where it is anticipated that such administrative fees have been incurred by a debtor's estate and are owing.

The City filed an alternative objection to the plan, arguing that even if one treats an administrative expense as a general unsecured "claim", the Debtor's attorneys never filed a proof of claim for their fees and therefore cannot be paid under Section 1325(b)(1)(B). The Court overrules this objection as well. Section 501 defines "proof of claim" and "proof of

interest." 11 U.S.C. § 501. Claims which have been made for collection of prepetition secured or unsecured debts are called "proofs of claim" and claims which have been made for preservation or recognition of equity interests are called "proofs of interest." Administrative expenses fall into neither category, and therefore do not require the filing of either proofs of claim or proofs of interest in order to be approved and paid under a plan. *See marchFirst Inc.*, 448 B.R. at 508.

Significantly, Section 1325(b)(1)(B) does not employ the terms "claim," "proof of claim," "interest," or "proof of interest." Instead, it uses the term "unsecured *creditor*." In the Court's view, administrative expenses sought by a debtor's counsel are obviously moneys which are owed by that debtor to their counsel. Where one party owes money to another, the party to whom the money is owed can safely be labeled a "creditor." *See generally* 15 U.S.C. § 1692a(4) & (5) (defining creditor as person who offers or extends credit creating debt or to whom debt is owed, and debt as obligation to be paid). And, to the extent that the debts owed to them are not secured by collateral, they are "unsecured debts" held by "unsecured creditors." But because the Code does not require that counsel file a proof of claim to be entitled to its fees, the Court rejects the City's alternative argument.

To sum up, the Court overrules both of the City's objections, holding that the term "unsecured creditors" in Section 1325(b)(1)(B) includes all holders of debt unsecured by collateral, whether arising prepetition or post-petition, and whether entitled to administrative priority or not.

CONCLUSION

For the foregoing reasons, the Court overrules the City's objections to plan confirmation.

All Citations

Slip Copy, 2025 WL 1260827

Footnotes

1 The Debtor's income is below the median income threshold, as indicated on her Official Form 122C-1. (Dkt. No. 4.)

2 The Debtor's counsel has filed an application for attorneys' fees using the Court-Approved Retention Agreement, Local Form 13-8, which the Court is considering alongside confirmation of the Debtor's proposed plan. (Dkt. No. 13.)

3 On April 2, 2025, the City filed an alternative objection to the confirmation of the Debtor's proposed plan. (Dkt. No. 27.) Its alternative argument is that, if the Court finds that the Debtor's attorney is a creditor of the Debtor's estate, then confirmation of the Debtor's plan must be denied as it provides for payment to a creditor who did not file a claim. This alternative argument is rejected for the reasons set forth in the discussion which follows.

4 These "necessities of life" are normally derived from a debtor's Schedule J if a debtor's income is below the median threshold.

5 The Court recognizes that various decisions have concluded that post-petition administrative expenses are distinct from unsecured prepetition claims. *See* 11 U.S.C. § 101(10); *marchFirst*, 448 B.R. at 508; *In re Ames Dep't Stores, Inc.*, 582 F.3d 422, 429 (2d Cir. 2009). That is inarguable. But both types of debts can have features in common in addition to features which are distinct. Here, it is the feature they hold in common —the lack of collateral to secure repayment—that brings both types of debts within the plain language of Section 1325(b)(1)(B).

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

STEPHEN C. FALKNER,	)	No. 25 B 09387
	)	
	)	Chicago, Illinois
	)	October 9, 2025
Debtor.	)	10:00 a.m.

TRANSCRIPT OF ZOOM VIDEOCONFERENCE PROCEEDINGS
BEFORE THE HONORABLE DONALD R. CASSLING

APPEARANCES:

For the Debtor:	Ms. Brittni Hayes;
For the City of Chicago:	Mr. David Holtkamp;
For the Chapter 13 Trustee:	Ms. Autumn Knight.

Court Reporter: MARY C. KELLY, CSR
United States Courthouse
219 South Dearborn Street
Room 661
Chicago, Illinois 60604

THE CLERK: Stephen Falkner.

MS. HAYES: Brittni Hayes on behalf of the debtor.

MR. HOLTKAMP: Good morning again, Your Honor. David Holtkamp for the City of Chicago.

MS. HAYES: Your Honor, I'm asking that this case be confirmed.

MR. HOLTKAMP: And, Your Honor, this is another one where we filed our objection that we filed before in the Jade Gordon case and the Juanita White case objecting to disposable income going to pay the attorneys as opposed to unsecured creditors. That's on appeal in the Seventh Circuit.

THE COURT: Refresh my recollection, Mr. Holtkamp, because I know this has come up before. I would like to handle all of these consistently, and I just don't recall exactly how we handled it the last time this came up.

MR. HOLTKAMP: Well, Your Honor, you just adopted your reasoning from your opinion in the Jade Gordon case and overruled my objection and confirmed the plan, which is what I would assume here. And then last time I just appealed, and I'll just appeal the confirmation order in this one,

too.

THE COURT: Okay. I couldn't recall.

All right. Ms. Knight, are you ready to confirm?

THE TRUSTEE: Yes, Your Honor. All trustee objections have been resolved.

THE COURT: Okay. And that's the one at Docket 31, am I correct?

THE TRUSTEE: Yes, Your Honor.

THE COURT: All right. I will confirm the plan filed at Docket 31 over the objections of the City of Chicago for the same reason that I overruled those objections on the cases that are currently pending before the Seventh Circuit, and I will allow compensation, and the trustee's motion to dismiss is withdrawn.

THE TRUSTEE: Thank you.

MR. HOLTKAMP: Thank you, Your Honor.

(Which were all the proceedings had in the above-entitled cause, October 9, 2025, 10:00 a.m.)

I, MARY C. KELLY, CSR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE./S/ (f)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AHMED ALAYAH,	)	No. 25 B 09060
	)	
	)	Chicago, Illinois
	)	September 25, 2025
Debtor.	)	10:00 a.m.

TRANSCRIPT OF ZOOM VIDEOCONFERENCE PROCEEDINGS
BEFORE THE HONORABLE DONALD R. CASSLING

APPEARANCES:

For the Debtor:	Ms. Brittni Hayes; Mr. Michael Miller;
For the City of Chicago:	Mr. David Holtkamp;
For Santander:	Ms. Cari Kauffman;
For the Chapter 13 Trustee:	Ms. Autumn Knight.

Court Reporter: MARY C. KELLY, CSR
United States Courthouse
219 South Dearborn Street
Room 661
Chicago, Illinois 60604

THE CLERK: Ahmed Alayah.

MS. HAYES: Brittni Hayes on behalf of the debtor.

MS. KAUFFMAN: Cari Kauffman for Santander.

MR. HOLTKAMP: And David Holtkamp for the City of Chicago.

MR. MILLER: Michael Miller on behalf of the debtor as well.

THE COURT: All right.

MS. KAUFFMAN: Your Honor, Santander's objection has been resolved.

THE COURT: Okay.

MR. HOLTKAMP: And the City filed identical -- more or less identical objections that we -- that you have already ruled on in the Gordon and White case objecting to the plan and confirmation of the plan.

THE COURT: Okay. I just wanted to make sure I had the right one in mind.

MR. HOLTKAMP: Yes.

THE COURT: And that one is currently on appeal, I believe. I think it's at the Seventh Circuit level at this point, correct?

MR. HOLTKAMP: Yes, Your Honor.

We -- we're not filing these just to be annoying. We just don't --

THE COURT: No, no. I --

MR. HOLTKAMP: -- think it's a bad --

THE COURT: You have the right --

MR. HOLTKAMP: -- idea -- it's not a bad idea to have a few in reserve.

THE COURT: No. You have got a right to file whatever you want that's in accordance with the Rules and the City.

All right. Ms. Knight, where are you?

THE TRUSTEE: The Trustee's objections are all resolved, Your Honor.

THE COURT: Well, I guess the issue is do we wait for the Seventh Circuit to rule on Mr. Holtkamp's objection or can we go ahead?

MR. HOLTKAMP: My intention here is to have a few on reserve on appeal.

So what I envisioned happening was Your Honor would just adopt your reasoning from your previous opinion and that we could appeal and maybe stay it on appeal just so we have it.

I filed it in five cases before you, today I think three have been continued to other dates. But the idea is just to have more on appeal

in case of, you know, dismissals and those types of things.

MS. HAYES: Your Honor has already ruled on this specific issue. And I'm of the opinion that this is inefficient for both the court and the debtor to have to reconsider it, and we'd respectfully request that this objection be overruled and the plan confirmed.

MR. HOLTKAMP: And that's what I envisioned would happen, Your Honor. You would just adopt your reasoning, and we can appeal confirmation.

THE COURT: And refresh my recollection, Mr. Holtkamp, the name of the prior case just so I can state it right on the record.

MR. HOLTKAMP: It is Jade Gordon and Juanita White.

THE COURT: Okay. Based for the same reasons in those cases, I will overrule the City's objection.

I'll confirm the plan is that at Docket 32, Ms. Knight?

THE TRUSTEE: Yes, Your Honor.

THE COURT: I'll confirm the plan at Docket 32, allow compensation, and the Trustee's

motion is withdrawn.

MS. HAYES: Thank you, Your Honor.

MR. HOLTKAMP: Thank you.

(Which were all the proceedings had in the above-entitled cause, September 25, 2025, 10:00 a.m.)

I, MARY C. KELLY, CSR, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE./S/ (f)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

GENERAL ORDER NO. 17-02

Priority of Chapter 13 Plan Payments
Effective December 1, 2017

Unless otherwise provided in a chapter 13 plan, claims of creditors will be paid pro rata in the following order: (1) current mortgage payments under 1322(b)(5); (2) monthly payments on non-mortgage secured claims; (3) costs of administration; (4) mortgage arrears under 1322(b)(5); (5) priority unsecured claims other than costs of administration; and (6) other unsecured claims.

ENTERED:

Pamela S. Hollis
Chief Judge

Dated: November 14, 2017

§ 92.2 Projected Disposable Income: All Debtors

Revised: September 7, 2010

CASES UPDATED: January 21, 2026

Cite as: **Keith M. Lundin, LUNDIN ON CHAPTER 13, § 92.2, at ¶ ____, LundinOnChapter13.com (last visited _____).**

[1] Upon objection by the trustee or the holder of an allowed unsecured claim, the bankruptcy court may not confirm a Chapter 13 plan unless one of two conditions is satisfied: either the value of property to be distributed under the plan on account of the objecting creditor's claim is "not less than the amount of such claim";[1] or the plan must provide that all of the debtor's "projected disposable income to be received in the applicable commitment period" is applied to payments to unsecured creditors under the plan.[2] The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)[3] changed the projected disposable income test[4] in important ways and, perhaps more importantly, did not change the test in others.

[2] First, "applicable commitment period" has been substituted for the "three-year period" during which projected disposable income must be committed to payments under the plan. "Applicable commitment period" is a new term of art.[5] There is disagreement in the reported decisions whether applicable commitment period is a temporal measurement of the length of the Chapter 13 plan or a mathematically derived multiplier in a formula that determines the amount of projected disposable income that must be committed to unsecured creditors under the plan.[6]

[3] The second major change is that projected disposable income received during the applicable commitment period is applied to make payments to *unsecured* creditors under the plan. Under prior law, there was some disagreement whether the projected disposable income test addressed the reasonableness or necessity of payments to secured claim holders provided for by the plan.[7] Now it is clear that the test accounts for all payments to creditors and all living expenses of the debtor on the way to calculating the entitlement of unsecured creditors.

Re: Question

Thomas H.

Mike Miller

Rounded numbers since January 1, 2024 - 7,100 cases filed, $2.36M in fees paid up front in 3,400 cases.= $330/case

Thomas H. Hooper
Chapter 13 Standing Trustee
Northern District of Illinois
55 E. Monroe St., Ste. 3850
Chicago, IL 60603
312-294-5900