

1                                   **IN THE UNITED STATES BANKRUPTCY COURT FOR**  
2                                   **THE DISTRICT OF PUERTO RICO**

3  
4   **IN RE:**

5   **TERESITA ARROYO MORALES**

6  
7                                   **Debtor(s)**

**CASE NO. 12-07296 BKT**

**Chapter 13**

**FILED & ENTERED ON 07/02/2015**

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9                                   **OPINION AND ORDER**

10           Before the court is the *Motion in Compliance with Order and Memorandum of Law* filed  
11 by the Chapter 13 Trustee on June 23, 2014 [Dkt. No. 83], Debtor’s *Motion in Compliance with*  
12 *Order and Memorandum of Law* filed on July 21, 2014 [Dkt. No. 89], along with *Trustee’s Reply*  
13 *to Motion in Compliance with Order and Memorandum of Law* filed by Trustee on August 28,  
14 2014, [Dkt. No. 94] and Debtor’s *Objection to Request of Entry of Order filed by the Trustee and*  
15 *Request to this Honorable Court to finally take under Advisement for Final Determination the*  
16 *Issue of Law* filed on November 3, 2014, [Dkt. No. 105].

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18                   **I.     Factual Background**

19           Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code on September  
20 17, 2012, with the corresponding schedules that state Debtor’s income, expenses, properties, and  
21 debts (Dkt. No. 1). Debtor is one of multiple members of a class action lawsuit who is claiming  
22 contractual and tort damages caused by the fact that neither the deed by which she acquired a  
23 property in Urb. Vista del Mar, nor the mortgage deed she executed, was recorded in the Puerto  
24 Rico Property Registry. Debtor is requesting a total of \$264,283.32. Debtor assigned the cause of  
25 action a value of “unknown” in Schedule B [Dkt. No. 28]. Trustee filed an *Objection to*  
*Confirmation and Memorandum of Law in Support Thereof* [Dkt. No. 65] in which the Trustee

1 argued that, by not assigning a value to the cause of action, Debtor was not complying the  
2 confirmation requirements of 11 U.S.C. § 1325(a)(4).

3  
4 Trustee argued that the best method to determine the value of a cause of action was  
5 multiplying the amount of the judgment requested times the probability of success. In the event  
6 that the probability of success could not be determined, the fairest conclusion is to estimate the  
7 same at 50 percent as determined in In Re Polis, 217 F. 3d 899, (7th Cir. 2000). This Court  
8 ordered Debtor to amend schedules to include an estimated value to the cause of action. Debtor  
9 subsequently filed an amended Schedule B on November 24, 2013, and listed the cause of  
10 action's value at \$132,142.00.  
11

12 Trustee filed an unfavorable report to Debtor's amended plan arguing that in the amended  
13 plan, Debtor will distribute the liquidation value to the general unsecured creditors only in the  
14 event that the cause of action is resolved during the life of the plan. This Court ordered the  
15 parties to submit simultaneous briefs on or before June 23, 2014, regarding what the best method  
16 to determine the liquidation value of the cause of action is and whether Debtor is obliged to  
17 distribute such liquidation value to the unsecured creditors if said liquidation value arises from a  
18 pre-petition cause of action that is not liquidated during the life of the plan.  
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21 Trustee argues in his motion that the cause of action is property of the estate pursuant to  
22 11 U.S.C. § 541 and, therefore, must be taken into account when calculating the liquidation value  
23 of a chapter 13 case. Furthermore, the Trustee argued that, in order to comply with the "best  
24 interest of creditors test," pursuant to 11 U.S.C. § 1325(a)(4), a plan must provide for  
25 distributions in accordance with the liquidation value calculated, even if said cause of action is  
not liquidated during the commitment period of the bankruptcy. Also, the Trustee argued that, in  
the event that a debtor does not comply with this, he or she would not be entitled to receive a

1 discharge, inasmuch as he or she did not complete all payments under the plan and did not  
2 distribute to unsecured creditors what they would have received in a chapter 7 case. Finally, the  
3 Trustee provided an analysis on the valuation on the cause of action.  
4

5 Debtor, on the other hand, argues in her motion that the funds from the cause of action  
6 are not "disposable income" and, therefore, Debtor should not be obligated to pay the same in the  
7 event that the cause of action is not liquidated during the commitment period and that the cause  
8 of action is not an asset that should be taken into consideration when calculating the liquidation  
9 value.  
10

## 11 **II. Legal Analysis**

### 12 *Approximate Value of Prepetition Cause of Action*

13 A chapter 13 bankruptcy enables individuals with regular income to develop a plan to  
14 repay all or part of their debts. Under this chapter, debtors propose a repayment plan to make  
15 installments to creditors over three to five years. The plan need not pay unsecured claims in full  
16 as long it provides that the debtor will pay all projected "disposable income" over an "applicable  
17 commitment period," and as long as unsecured creditors receive at least as much under the plan  
18 as they would receive if the debtor's assets were liquidated under chapter 7. 11 U.S.C. § 1325. In  
19 chapter 13, "disposable income" is income (other than child support payments received by the  
20 debtor) less amounts reasonably necessary for the maintenance or support of the debtor or  
21 dependents and less charitable contributions up to 15% of the debtor's gross income. Section  
22 1325(b)(1) provides that, if the trustee or a creditor objects to confirmation of the debtor's plan,  
23 the court may not approve the plan unless it "provides that all of the debtor's projected  
24 disposable income to be received in the applicable commitment period beginning on the date that  
25

1 the first payment is due under the plan will be applied to make payments to unsecured creditors  
2 under the plan.” 11 U.S.C. § 1325(b)(1)(B).

3  
4 Property of the bankruptcy estate includes all legal or equitable interests of the debtor in  
5 property as of the commencement of the case. 11 U.S.C. § 541(a)(1). “Section 541 of the  
6 Bankruptcy Code provides that virtually all of a debtor's assets, including causes of action  
7 belonging to the debtor at the commencement of the bankruptcy case, vest in the bankruptcy  
8 estate upon the filing of a bankruptcy petition.” Kane v. Nat'l Union Fire Ins. Co., 535 F.3d 380,  
9 385 (5th Cir.2008) (citing 11 U.S.C. § 541). Pursuant to 11 U.S.C. § 541(a)(1), the act of filing  
10 for bankruptcy relief under chapter 13 creates an estate that consists of “all legal or equitable  
11 interests of the debtor in property as of the commencement of the case.”  
12

13 Section 1325(a)(4) provides that “[e]xcept as provided in subsection (b), the court shall  
14 confirm a plan if—... (4) the value, as of the effective date of the plan, of property to be  
15 distributed under the plan on account of each allowed unsecured claim is not less than the  
16 amount that would be paid on such claim if the estate of the debtor were liquidated under chapter  
17 7 of this title on such date.” 11 U.S.C. § 1325(a)(4). Section 1325(a)(4), referred to as the “best  
18 interest of creditors test,” provides that, at a minimum, unsecured creditors will be paid the  
19 amount which they would receive if the case were a hypothetical chapter 7 liquidation case. The  
20 “best interest of creditors test” is designed to protect the unsecured creditors in chapter 13 cases.  
21 To satisfy the “best interests of creditors test” of 11 U.S.C. § 1325(a)(4), a chapter 13 plan must  
22 afford payment to each allowed unsecured creditor of no less than the amount such holder would  
23 receive on such claim if the Debtor's estate was liquidated under chapter 7. Therefore, the estate's  
24 liquidation value must be evaluated to establish whether the proposed plan satisfies the best  
25 interest of creditors test. In a hypothetical chapter 7 bankruptcy, the chapter 7 Trustee would

1 collect and liquidate all nonexempt property of the estate. 11 U.S.C. § 704(a)(1). "... [T]he  
2 capitalized present value of all deferred payments proposed to be distributed, together with the  
3 present value of any other property proposed to be distributed, to the holder of an allowed  
4 unsecured claim, must equal at least the liquidation value of the nonexempt property of the estate  
5 apportionable to the holder of such allowed unsecured claim." 8 COLLIER ON BANKRUPTCY  
6 ¶ 1325.05[2][c] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).  
7

8 "The valuation of claims in a hypothetical chapter 7 liquidation is 'not an exact science'  
9 because the process entails a considerable degree of speculation." In re W.R. Grace & Co., 475  
10 B.R. 34, 142 (D.Del.2012) (citing In re Affiliated Foods, Inc., 249 B.R. 770, 788  
11 (Bankr.W.D.Mo.2000). "[A]s a first approximation, the value of [Debtor's] claim is the  
12 judgment that she will obtain if she litigates and wins multiplied by the probability of that (to  
13 her) happy outcome. That is roughly how parties to money cases value them for purposes of  
14 determining whether to settle in advance of trial." In re Polis, 217 F.3d 899, 902, (7th Cir. 2000).  
15 Based on this calculation, Trustee arrived at an approximate value of the Cause of Action of  
16 \$90,140.32. This Court disagrees and finds this calculation unnecessary, and therefore, upholds  
17 the original value of the cause of action of \$132,142.00.  
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21 ***Unresolved Cause of Action after Plan Commitment Period***

22 "[T]he status of the property of the estate after the confirmation of a chapter 13 plan is a  
23 controversial issue in itself." See Russell G. Donaldson, *Continued Existence of Bankruptcy*  
24 *Code Chapter 13 Estate After Confirmation of the Chapter 13 Plan*, 126 ALR Fed. 665, 1995  
25 WL 900170 (1995)(Supp.1999). If the court confirms the plan, the chapter 13 trustee will  
distribute funds received under the plan "as soon as is practicable." 11 U.S.C. § 1326(a)(2). If the  
court declines to confirm the plan, the debtor may file a modified plan. 11 U.S.C. § 1323.

1 Section 1329 of the Code states that a confirmed plan may be modified at the request of the  
2 debtor, the trustee, or the holder of an allowed unsecured claim in order to “increase or reduce  
3 the amount of payments on claims of a particular class provided for by the plan; [or to] extend or  
4 reduce the time for such payments ....” 11 U.S.C. § 1329(a)(1,2).  
5

6 In lieu of the aforementioned, this Court finds that if the Debtor is awarded a monetary  
7 judgment on her cause of action during the plan commitment period, a modification of the  
8 confirmed plan shall then promptly follow to include the amount of monetary award received.  
9 The Debtor shall, therefore, file status reports as to the state court litigation within thirty (30)  
10 days of this Opinion and Order, and every four (4) months thereafter until the completion of the  
11 plan. In the alternative, if the local court dismisses Debtor’s cause of action, rules against the  
12 Debtor, or the cause of action is not resolved by month 59 of the plan commitment period, a  
13 modification of the confirmed plan shall then promptly follow to remove the approximate value  
14 of the cause of action from the plan.  
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17 **III. Conclusion**

18 WHEREFORE, IT IS ORDERED that the value of the cause of action remains at  
19 \$132,142.00, and the Debtor shall file status reports as to the state court litigation within thirty  
20 (30) days, and every four (4) months thereafter until the completion of the plan commitment  
21 period. Clerk to schedule a hearing on confirmation.  
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23 In San Juan, Puerto Rico this 2nd day of July, 2015.  
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Brian K. Tester  
U.S. Bankruptcy Judge