



Chapter 13 Plan Modifications



Although a full discussion of chapter 13 plan modifications is beyond the scope of this book, there are certain emerging issues that are demanding of careful analysis. For example, in *In re Meza*, 467 F.3d 874 (5th Cir. 2006), the court considered the interaction of §§1329(a) and 1329(b)(2). As the court observed, when considered together, those sections:

show that, when a modification request is timely filed, the completion of the plan and eventual discharge of the debtor is stayed until the bankruptcy court is allowed to consider the modification on its merits. A contrary result would encourage gamesmanship on behalf of debtors and prevent them from repaying creditors “to the extent of [their] capabilit[ies].”

In *In re Murphy*, 474 F.3d 143 (4th Cir. 2007), the Fourth Circuit addressed two cases involving instances in which a chapter 13 trustee sought to modify a confirmed chapter 13 plan to increase the amount to be paid to the unsecured creditors. The U.S. Bankruptcy Court for the Eastern District of Virginia, Stephen S. Mitchell, J., 327 B.R. 760, granted the motion with respect to one debtor’s plan and denied the motion with respect to the other debtor’s plan. The chapter 13 trustee appealed. The U.S. District Court for the Eastern District of Virginia, Claude M. Hilton, J., affirmed. The Fourth



Circuit affirmed, holding that the refinancing of a home mortgage was not a substantial change in the financial condition, as required to modify a chapter 13 plan. Moreover, the court held that a sale of the debtor's condominium was a "substantial and unanticipated change" in the debtor's financial circumstances, and the proposed modification of the chapter 13 plan was warranted.

In *In re Nichols*, 440 F.3d 850 (6th Cir. 2006), the court noted that a post-confirmation plan modification could be approved, although it would likely cause a creditor to become undersecured. In that case, a modified chapter 13 plan proposed by the debtors to cure a post-confirmation default resulting from the debtor-husband's temporary loss of employment, under which the debtors proposed to use their disposable income first to cure a default in their mortgage payments and to delay any payment to a purchase-money motor vehicle lender for nearly one year, did not impair the lender's lien rights contrary to the Fifth Amendment. Moreover, the Sixth Circuit held that the bankruptcy court did not abuse its discretion in approving the modified chapter 13 plan. While this delay in payment would likely cause the lender to become slightly undersecured, the lender, as of the date of the hearing on the modified plan, was still protected by a slight equity cushion in the collateral. Moreover, the court found that the lender had already received a significant portion of the total amount due, having received plan payments alone of roughly \$14,300 on the original \$14,000 debt, and would receive most of what it bargained for at the start of the parties' relationship, including interest.

In *In re Disney*, 386 B.R. 292 (Bankr. D. Colo. 2008), the bankruptcy court granted a motion to reclassify certain claims and modify a chapter 13 plan. The court specifically held that a creditor could be bound by the debtor's post-confirmation modification of a chapter 13 plan. Moreover, the court held that a chapter 13 debtor may recharacterize an allowed secured claim post-confirmation following foreclosure or surrender of collateral and treat the resulting deficiency claim in the modified plan. The court further found that cause existed to reconsider the allowance of the creditor's claim. Thus, the debtor could modify his treatment of the creditor's claim under his plan to provide for the claim to be paid as an unsecured claim. Finally, the reclassification of



a creditor's claim and modification of its treatment under a confirmed plan did not violate the creditor's due process rights.

In *In re Demske*, 372 B.R. 85 (Bankr. M.D. Fla. 2007), the court held that a lack of evidence as to how mortgage refinancing affected debtors' disposable income, either positively or negatively, prevented the court from granting the debtors' motion to modify the chapter 13 plan to pay off their creditors early with proceeds of mortgage refinancing. Moreover, in *In re Belcher*, 369 B.R. 465 (Bankr. E.D. Ark. 2007), the court found that the debtors could not modify their confirmed chapter 13 plan to provide that a lender's perfected purchase money security interest in a motor vehicle would be satisfied in full by payment of the insurance proceeds and the transfer of the wrecked vehicle to it, even though the wreck was an unanticipated event where the debtors had elected to retain the vehicle and pay the entire amount of the lender's claim plus interest under §1329. Lastly, in *In re Ireland*, 366 B.R. 27 (Bankr. W.D. Ark. 2007), the court found that the debtors, who had suffered a substantial reduction in income after filing their bankruptcy petition, were not prohibited by BAPCPA from modifying their chapter 13 plan after confirmation to reduce payments to the unsecured creditors, despite the contention that their "current monthly income" used to calculate the plan payments was permanently fixed at time they filed their bankruptcy petition.

