RESOLUTION OF AN APPARENT CONFLICT: *ROWLEY* VERSUS *ANDERSON*

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I. INTRODUCTION

Chapter 12 is the chapter of the bankruptcy code designed specifically for farmers.[1] Because of their unique position in the American enterprise and our

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1. Adjustment of Debts of a Family Farmer with Regular Annual Income, 11 U.S.C. §§ 1201 *et. seq.* (2005).

desire as a people to protect their contribution, Congress enacted Chapter 12 to specifically address issues farmers face when in bankruptcy.[2] For guidance, Congress looked to Chapter 13, an existing chapter of the bankruptcy code.[3] It is from the modeling of Chapter 12 after Chapter 13 that the issue of this paper arises.

Given the heavy reliance upon Chapter 13 by Congress in enacting Chapter 12, it seems logical that a conflict would eventually arise, if the administration of the respective chapters was seemingly at odds. This paper will address the conflict between section 1225(b)(1)(B) and section 1325(b)(1)(B) of the code. Identical in their substance, it has been argued that they have not been identical in their application. From an examination of two lodestar cases, *Rowley v. Yarnall*[4] and In Re *Anderson*[5], there is arguably no conflict at all.

II. CREATING CHAPTER 12

During the 1980s, America witnessed the farm financial crisis. Family farmers were going out of business. Land prices were falling drastically. In addition, there was a conspicuous absence of meaningful aid to family farmers from the bankruptcy code.[6]

Though the farm financial crisis of the 1980s was not caused by one single event or factor over another, not all agree on its many causes. One noted agricultural economist suggests there were three federal policies in effect for two decades that contributed significantly to the crisis American farmers would face.[7]

First was the policy of inflation.[8] Dr. Neil Harl suggests that inflation by the 1980s had come to be viewed as "an expected part of economic life."[9] Because of this view, Dr. Harl suggests there were two main strategies for accom-

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2. 131 CONG. REC. H4768 (June 24, 1985) (statement of Rep. Synar).

3. *Id*.

4. Rowley v. Yarnall, 22 F.3d 190 (8th Cir. 1994) (discussing 11 U.S.C. § 1225(b) as applying to family farmers).

5. *In re* Anderson, 21 F.3d 355 (9th Cir. 1994) (discussing 11 U.S.C. § 1325(b)(1)(B) as applying to individuals).

6. *See* NEIL E. HARL, THE FARM DEBT CRISIS OF THE 1980S 274-76 (Iowa State University Press, 1st ed. 1990) (discussing the wisdom of enacting new Chapter 12).

7. *See id.* at 17.

8. Inflation is the continuing rise in the general price level usually attributed to an increase in the volume of money and credit relative to available goods and services. WEBSTER'S UNABRIDGED DICTIONARY (2d ed. 2001).

9. HARL, *supra* note 6, at 13. Dr. Harl is located at the Iowa State University in Ames, Iowa. He is the Charles F. Curtiss Distinguished Professor in Agriculture; Professor of Economics; Member, Iowa Bar; Director, Center for International Agricultural Finance. Neil E. Harl – Biography, http://www.econ.iastate.edu/people/faculty/defaultFac.asp (last visited Oct. 28, 2005).

modating inflation: (1) indexing economic fortunes to the rate of inflation, and (2) accelerating the purchase of capital assets.[10] Dr. Harl notes that farmers usually accelerated the purchase of capital assets because of their ineffectiveness at indexing.[11] This meant that the capital assets purchased in the 1970s, when inflationary conditions were hospitable to such purchases, were still being paid for in the 1980s when conditions were hostile.[12] All of this, Dr. Harl argues, was because of the built-in expectancy of inflation in the national psyche.[13]

The second factor contributing to the problem was the new policy of dramatically reducing inflation. For two decades, Americans had conditioned themselves and the markets they participated in to expect inflation; dramatic steps were taken in the opposite direction.[14] The reduction of inflation became a primary policy goal.[15] The determination to reduce inflation meant the two to three percent inflation rate of the 1980s, as compared to the thirteen to fifteen percent rate of inflation in the 1970s, resulted in the reduced capability of farmers to service their farm loans with the capital assets purchased when inflation was high.[16]

A corollary to the decline in inflation was a stronger dollar, which meant fewer exports.[17] In comparison, as today's dollar is reaching all-time lows, export markets are increasing as people around the world find it cheaper to buy American.[18] The opposite was true in the 1980s and farmers felt that the most.[19]

Finally, Dr. Harl suggests that the federal budget deficit contributed to the crisis.[20] The tax cuts of 1981 arguably caused the nation's deficit. Even though there were tax cuts, federal spending was not decreased. In fact, the tax cuts of 1981, coupled with the determination to curb inflation, came at a high cost. This resulted in a deficit.[21] And ultimately, Dr. Harl provides, these policies meant four things to farmers:

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10. HARL, *supra* note 6, at 13-14.
11. *Id.* at 14.
12. *Id.*
13. *Id.*
14. *Id.* at 14-15.
15. *Id.*
16. *Id.* at 15.
17. *Id.*
18. ROBERT A. BLECKER, ECONOMIC POLICY INSTITUTE, THE BENEFITS OF A LOWER DOLLAR: HOW THE HIGH DOLLAR HAS HURT U.S. MANUFACTURING PRODUCERS AND WHY THE DOLLAR STILL NEEDS TO FALL FURTHER (2003) http://www.epinet.org/briefingpapers/lowerdollar/may03bp_lowerdollar.pdf (high value of dollar like tax on U.S. exports and subsidy on imports).
19. HARL, *supra* note 6, at 15.
20. *Id.*
21. *Id.*

> (1) a strong dollar that set records against other currencies and that cost U.S. agriculture dearly in terms of export of farm commodities, (2) high interest rates that boosted interest payments for indebted farmers to high levels, (3) falling land values as potential investors were confronted with the reality of 8 to 12 percent real interest rates and the reassessment of land as an alternative investment in the economic environment of the 1980s, and (4) massive defaults on farm loans.[22]

Consensus may never be reached about the exact causes of the farm financial crisis of the 1980s, but there is one undeniable byproduct—focused attention on the plight of the family farmer facing bankruptcy.[23] The farm crisis forced Congress to address that the existing chapters of the bankruptcy code were many times not workable for a family farmer. It had been widely acknowledged that Chapter 11 was burdensome, expensive, and oftentimes impossible for family farmers with it.[24] It was, however, the only alternative to liquidation that many farmers had, because the debt limits allowed under Chapter 13 were too low for most family farmers.[25] A modification of Chapter 13 would attempt to address the problem.

A. *Chapter 13 Modification*

Congress's first attempt at aiding the family farmer in financial distress came as a modification to Chapter 13. On June 24, 1985, the House of Representatives passed H.R. 2211.[26] This resolution proposed to amend Chapter 13 to make it more beneficial for family farmers to file under this chapter rather than under the only other reorganization chapter at the time—Chapter 11.[27]

Among the modifications H.R. 2211 made to Chapter 13 was an expansion of the eligibility provisions. The definition of a debtor under Chapter 13 was amended to include a family farmer with regular annual income owing noncontingent, liquidated, secured and unsecured debts of less than one million dollars.[28] By raising the debt limit for farmers to one million dollars from an otherwise combined $450,000 of secured and unsecured debts, Congress opened Chapter 13

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22. *Id.* at 17.

23. *See id.* (discussing the causes and various governmental responses to the farm debt crisis).

24. *In re* SFW, Inc., 83 B.R. 27, 30 (Bankr. S.D. Cal. 1988); Northwest Bank of Worthington v. Ahlers, 485 U.S. 197, 209 (1988) (providing in dicta relief from then-current farm financial problems must come from Congress and not from misconstruction of bankruptcy code).

25. *See In re SFW*, Inc., 83 B.R. at 30; 11 U.S.C. § 109(e) (2005) (limits unsecured debts of $250,000 or less and secured debts of less than $750,000).

26. Family Farmer Bankruptcy Act of 1985, H.R. 2211, 99th Cong. (1985).

27. *See id.*

28. *Id.* § 2(2).

to a group of people whose only recourse had been liquidation under Chapter 7 or filing under an onerous Chapter 11.[29]

Additionally, H.R. 2211 allowed the family farmer up to ten years to repay her debts instead of the common three-year plan, which could only be increased to five years on a showing of cause.[30] Under H.R. 2211, the family farmer could modify mortgages on homes that were "either on or reasonably close to their farms," and certain corporations were permitted to file under Chapter 13, which provided an incorporated family farm the protections of the chapter.[31]

Although H.R. 2211 did not become law, in 1986 a resolution was introduced calling for the creation of an entirely new chapter devoted solely to the family farmer, entitled the "Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986."[32] When signed into law by the President on October 27, 1986, the chapter's lineage from Chapter 13 was evident.[33]

B. *A New Chapter from an Old One*

With H.R. 2211's suggested modifications to Chapter 13 and the eventual creation of Chapter 12, Congress's reliance on Chapter 13 as a model was clear. Senator Charles Grassley commented that the new bankruptcy chapter was an "experimental, separate, chapter modeled after existing Chapter 13."[34] Because it was modeled after Chapter 13, some sections of the new chapter would be identical to provisions under Chapter 13.

The similarity between chapters 12 and 13 would provide courts with its interpretive direction in Chapter 12 cases. Because Chapter 12 applied to a specific demographic that, before its creation, enjoyed no special treatment in bankruptcy, courts would turn to Chapter 13 in handling the new Chapter 12 cases.

There are several examples of courts relying on Chapter 13 precedent in interpreting the newly created Chapter 12. In 1988, the United States Bankruptcy Court for the Southern District of California granted a creditor's motion for relief from the automatic stay in a Chapter 12 bankruptcy because the automatic stay

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29. *See, e.g., id.* § 2; Miami Valley Production Credit Assoc. v. Tegtmeyer, 31 B.R. 555, 559-60 (Bankr. S.D. Ohio 1983).

30. *See* H.R. 2211 § 7(b).

31. *See id.* § 7(a).

32. Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, § 255, 100 Stat. 3088 (1986) (current version at 28 U.S.C. § 1201 *et. seq.*) (amending bankruptcy code to add Chapter 12 and other issues).

33. *Id.*; 11 U.S.C. §§ 1201 *et. seq.* (2005) (explaining adjustments available for farmers).

34. 132 CONG. REC. S15076 (1986) (statement of Sen. Grassley).

applied only to consumer debt incurred for personal, family, or household purposes.[35] In that case, the debtors were shareholders of a farming corporation and the creditor sought payment of a commercial loan taken by the corporation.[36] In reaching its decision, the court relied upon Congress' provision that only when Chapter 13 was inappropriate for family farmers, had its meaning been modified under Chapter 12.[37] The court reasoned that because "nowhere in the Conference Report is there any indication that section 1201 was intended to be interpreted differently than section 1301 . . . the conclusion that Congress intended the courts to apply the existing case law of section 1301 to disputes arising under section 1201 is inescapable."[38]

That same year, the United States Bankruptcy Court for the Northern District of Indiana held that section 1225(a)(5) required collateral of the debtor be valued as of the date of the valuation hearing because, though the legislative history was silent on the matter, section 1325(a)(5) was identical and could thus be considered in the determination.[39]

The Bankruptcy Court for the Eastern District of Oklahoma began its analysis of a Chapter 12 case by determining whether usage of Chapter 13 case law was appropriate. The court held there was "nothing in the legislative history of the Bankruptcy Code, the provisions of the Code itself, or case law from other jurisdictions which makes the usage of Chapter 13 precedent as an aid to interpreting situations arising under Chapter 12 repugnant."[40] Though these are but three examples of courts relying on Chapter 13 case law in interpreting Chapter 12 situations, the cases doing so are legion.[41]

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35. *In re* SWF, Inc. 83 B.R. at 31-32.
36. *Id.* at 28.
37. *Id.* at 30.
38. *Id.*
39. *In re* Anderson, 88 B.R. 877, 885 (Bankr. N.D. Ind. 1988).
40. *In re* Leach, 101 B.R. 710, 712 (Bankr. E.D. Okla. 1989).
41. *See, eg., In re* Greenick, 1997 Bankr. LEXIS 1001 (Bankr. N.D. Ohio 1997) (recognizing reliance on Chapter 13 cases in determining issue of good faith requirement for plan confirmation); Mitchell v. United States (*In re* Mitchell), 210 B.R. 978, 981-82 (Bankr. N.D. Tex. 1997) (holding IRS claim for post petition interest and penalties on a tax liability must be considered under Chapter 13 precedent instead of Chapter 11 because of similar nature of Chapters 12 and 13); *In re* Martin, 130 B.R. 951, 955 (Bankr. N.D. Iowa 1991) (noting because many of issues present had not been addressed in Chapter 12 context, Chapter 13 case law would be relied upon); *In re* Luchenbill, 112 B.R. 204, 208-209 (Bankr. E.D. Mich. 1990) (relying on interpretations of §1325 to determine the good faith standard for confirmation in a Chapter 12 case because of the similarities between §1325 and §1225); *In re* Kuhlman, 118 B.R. 731, 735 (Bankr. D. S.D. 1990) (recognizing popularity of relying on Chapter 13 case law in determining disposable income and when such should be paid); *In re* Borg, 88 B.R. 288, 291 (Bankr. D. Mont. 1988) (considering Chapter 13 case law to determine requirements for confirmation of debtor's plan in Chapter 12); *In re* Neilsen,

With the creation of Chapter 12, designed solely for family farmers, and the court's reliance on Chapter 13 in interpreting the newly created chapter, family farmers had bankruptcy relief and courts had a method of interpreting the newly formed chapter.

III. CHAPTER 12 REQUIREMENTS

The first question to be resolved in a Chapter 12 case is who may be a debtor for purposes of Chapter 12. The code provides that "only a family farmer or family fisherman with regular annual income may be a debtor under Chapter 12."[42] The code provides that a family farmer with regular annual income is a "family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under Chapter 12."[43] Further, a family farmer is defined by the code as an "individual or individual and spouse who are engaged in a farming operation whose aggregate debts do not exceed $3,237,000;" where "not less than fifty percent of whose aggregate noncontingent, liquidated debts . . . arise out of a farming operation;" and who receive from such farming operation more than fifty percent of their gross income.[44]

If the debtor qualifies to file under Chapter 12, the case commences by filing a voluntary petition and paying all applicable fees.[45] The debtor must then disclose his creditors, file the appropriate schedules, disclose his intentions concerning the retention or surrender of property, cooperate with the trustee, surrender property of the estate, and appear at the meeting of creditors.[46] Upon filing the petition, the debtor is protected by an automatic stay that prohibits any action by a creditor to collect or enforce a debt owing to him.[47]

Within ninety days of filing, the debtor must submit a plan of reorganization.[48] Every plan for reorganization must provide for: (1) "the submission of all . . . future earnings . . . of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;" (2) full payment on a deferred basis of all priority claims unless the creditor agrees to lesser payment; and (3) the same treatment of all claims within a class unless a claim holder "agrees to less

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86 B.R. 177, 178 (Bankr. E.D. Mo. 1988) (determining meaning of phrase "on such date" in §1225(a)(4) court considered case law interpreting identical provision of § 1325 (a)(4)).

42. 11 U.S.C. § 109(f) (2005).
43. *Id.* § 101(19).
44. *Id.* § 101(18).
45. *Id.* § 301.
46. *Id.* § 341.
47. *Id.* § 362.
48. *Id.* § 1221.

favorable treatment."[49] The code also provides factors the plan may include, but that are not required.[50]

Once the reorganization plan is developed, a hearing must be held within forty-five days to determine whether the plan will be confirmed.[51] At this hearing, "[a] party in interest, the trustee, or the United States trustee may object to the confirmation" of the debtor's plan.[52]

The code provides that a court *shall* confirm a plan of reorganization if seven elements are met:

1. the plan must comply with all applicable provisions in the code;[53]
2. any fees or charges required under Chapter 123 of title 28 must be paid before confirmation;[54]
3. the plan must be proposed in good faith;[55]
4. the plan must provide that each unsecured creditor will be paid at least what he would receive under a Chapter 7 liquidation;[56]
5. the secured creditors must be paid the value of their claim and retain their lien on property or the debtor must surrender property securing the claim to the secured creditor unless otherwise agreed;[57]
6. the debtor must be able to "make all payments under the plan";[58] and
7. the debtor must have "paid all amounts that are required to be paid under a domestic support obligation."[59]

Even if all seven elements are met by the debtor's plan, however, the trustee or the holder of an unsecured claim may object to the confirmation of the plan, and the court may not approve the plan unless one of two alternatives is met.[60] The debtor can either provide that the full amount of the unsecured claim will be paid out of the property of the estate[61] or provide in the plan that "all of the debtor's projected disposable income to be received in the three-year period .

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49. *Id.* § 1222(a).
50. *Id.* § 1222(b).
51. *Id.* § 1224.
52. *Id.*
53. *Id.* § 1225(a)(1).
54. *Id.* § 1225(a)(2).
55. *Id.* § 1225(a)(3).
56. *Id.* § 1225(a)(4).
57. *Id.* § 1225(a)(5).
58. *Id.* § 1225(a)(6).
59. *Id.* § 1225(a)(7).
60. *Id.* § 1225(b).
61. *Id.* § 1225(b)(1)(A).

. . will be applied to make payments under the plan."[62] Disposable income means income which is received by the debtor and which is not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor or for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.[63]

If the debtor's plan contains the seven requirements outlined in section 1225(a) and, in the event of objection to confirmation, one of the additional requirements of section 1225(b)(1), the debtor's plan will be confirmed.[64] The effect of confirmation is the binding of the debtor and creditors to the plan.[65]

At the end of the plan period, the debtor will seek discharge.[66] To obtain discharge, the debtor must make all payments under the plan, other than payments to holders of allowed claims under sections 1222(b)(5) or 1222(b)(9).[67] Additionally, the debtor may obtain a discharge although all payments under the plan were not made if (1) the failure to make the payments was due to "circumstances for which the debtor should not justly be held accountable", (2) each unsecured claim received at least what would have been received under Chapter 7, and (3) "modification of the plan under section 1229 . . . is not practicable."[68] The effect is that all unsecured debts under the plan are discharged.[69] Any amount not paid to an unsecured creditor under the plan is eliminated.[70] The unsecured creditor cannot attempt to collect the debt from the debtor after discharge.[71]

IV. PROJECTED DISPOSABLE INCOME

An issue that has arisen at discharge is whether the debtor has completed all payments under the plan as required by section 1228. Specifically, the issue concerns whether the debtor has met the additional burdens imposed by section 1225(b) after objection to the debtor's plan by the trustee or an unsecured creditor. A debtor's plan for reorganization must be confirmed by the court.[72] How-

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62. *Id.* § 1225(b)(1)(B). Under § 1222(c), court may approve longer plan period than three years, but the plan period may not be longer than five years.
63. *Id.* § 1225(b)(2).
64. *See id.* § 1225(a)-(b)(1).
65. *See id.* § 1227(a).
66. *See id.* §1228(a).
67. *See id*.
68. *Id.* § 1228(b).
69. *See id.* § 1228(c).
70. *Id*.
71. *Id.* § 524(a).
72. *Id.* § 1225(a).

ever, if the trustee or an unsecured creditor objects to the reorganization plan, the debtor must provide one of two additional elements in the plan in order to obtain confirmation.[73]

The debtor may guarantee the unsecured creditor he will receive the full amount of his claim under the plan rather than only an amount he would receive under Chapter 7 liquidation.[74] A debtor's ability to pay the full amount of an unsecured creditor's claims is unlikely, however, so this factor is usually not employed.[75] Alternatively, the debtor may provide in the plan that "all of the debtor's projected disposable income . . . will be applied to make payments under the plan."[76] This is, more often than not, the route taken to achieve confirmation after objection by the trustee or an unsecured creditor.[77]

The issue concerning the projected disposable income factor is complex and involves not only the meaning of projected but also what is included in disposable income. A problem arises, however, as to what exactly will be included in determining disposable income. A number of courts have considered Chapter 12 cases that have addressed the projected disposable income question.[78]

There are two ways to consider the meaning of projected disposable income. First, there are those who believe that the code's language in section 1225(b)(1)(B) is clear in its meaning.[79] At confirmation of the debtor's plan,

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73. *Id.* § 1225(b).

74. *Id.* § 1225(b)(1)(A).

75. *See* ALAN RESNICK & HENRY SOMMER, COLLIER ON BANKRUPTCY ¶ 1225.04, 1225-26 (Lawrence P. King, ed., LexisNexis 2005).

76. 11 U.S.C. § 1225(b)(1)(B).

77. *See* RESNICK & SOMMER, *supra* note 75, ¶ 1225.04, 1225-26.

78. *See* RESNICK & SOMMER, *supra* note 75, ¶ 1225.04, 1225-27, n. 3 providing the following:

> *See* Berger v. Pokela (*In re* Berger), 61 F.3d 624 (8th Cir. 1995) (expenses not necessary for business or living expenses excluded in calculating net disposable income; equity in land obtained through forgiveness of debt of relative included in calculating net disposable income; value of tractor purchased with proceeds of exempt life insurance policy not counted in calculating net disposable income); Broken Bow Ranch, Inc. v. Farmers Home Admin. (*In re* Broken Bow Ranch, Inc.), 33 F.3d 1005, 31 C.B.C.2d 1272 (8th Cir. 1994) (government program payments attributable to farming operations during the plan period to be included in calculating net disposable income, even if received after expiration of plan period); In re Meyer, 186 B.R. 267 (Bankr. D. Kan. 1995) (second home expenses were reasonably necessary and so could be included in determining net disposable income); Agribank, FCB v. Honey (*In re* Honey), 167 B.R. 540 (W.D. Mo. 1994) (proceeds of inheritance received after confirmation of plan included in calculation of net disposable income).

79. S*ee* Susan Schneider, *The Family Farmer in Bankruptcy: Recent Developments in Chapter 12*, 3 DRAKE J. AGRIC. L. 161, 191 (1998) (highlighting differences in court interpretation of the statute, for instance "'[t]he amount by which the debtors' income exceeds their obligations at

after objection by the trustee or an unsecured creditor, the debtor must pledge his projected or anticipated disposable income over the life of the plan.[80] If the debtor makes payments reflective of that projection for the requisite number of years, he is eligible to obtain discharge at the end of the plan.[81]

The second school of thought considers the projection given at confirmation as a general pledge or starting point, but not the sum certain amount the debtor is required to pay over the life of the plan.[82] In other words, if the debtor projects a certain amount of disposable income, she cannot satisfy the requirements of the plan by simply paying that amount over the course of the plan; the debtor must pay whatever her actual disposable income is during the plan period. This will usually arise because the trustee or an unsecured creditor argues that the debtor's actual disposable income over the three-year course of the plan is higher than that projected at confirmation.

The genesis of this issue is the fact that Chapter 12 courts apparently do not apply the same meaning to section 1225(b)(1)(B) as Chapter 13 courts apply to section 1325(b)(1)(B), although they are identical provisions. The fact that Chapter 12 was modeled after Chapter 13, coupled with the fact that Chapter 12 courts have consistently considered Chapter 13 case law in deciding Chapter 12 issues, raises the judicial eyebrow.

Section 1225(b)(1)(B) provides that

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan - . . .
>
> (B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

Section 1325(b)(1)(B) provides that

> If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan - . . .
>
> (B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

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the end of their plan, after accounting for carryover funds sufficient to continue their farming operation'" (quoting Hammrich v. Lovald (*In re* Hammrich), 98 F.3d 388, 390 (8th Cir. 1996)).

80. 11 U.S.C. § 1225(b).

81. *Id.* § 1228.

82. *Id.* § 1229.

The only difference between the two sections is the absence in section 1325(b)(1)(B) of a reference to the fact that the plan may be for a longer period than three years. That provision, however is provided in another section in Chapter 13.[83] Given the identical nature of the two sections, both sections would expectedly be applied identically by courts. In actuality, they are not. It also would appear the courts are divided by chapter. In other words, all Chapter 12 cases seem to hold the same and all Chapter 13 cases seem to hold the same, regardless of the court hearing the case.

V. THE *ROWLEY* COURT V. THE *ANDERSON* COURT

The two sides of this issue can be succinctly identified by their belief in the correctness of one case or the other. On the one hand is *Rowley v. Yarnall*, an Eighth Circuit Chapter 12 case from 1994.[84] On the other is In Re *Anderson*, a Ninth Circuit Chapter 13 case from the same year.[85] Each case represents divergent sides of the argument about whether a debtor is required to pay only what the reorganization plan projected as disposable income, or if she is required to pay all of her actual disposable income over the life of the plan.

A. Rowley v. Yarnall

In *Rowley* the issue was "whether the family farmer provisions of the bankruptcy code require debtors to pay net disposable income generated during the plan period to unsecured creditors where an objection to the plan was previously raised at its confirmation."[86]

The Rowleys were farmers in South Dakota who filed a joint petition under Chapter 12. Their initial reorganization plan filed did not provide for payments to the unsecured creditors and three unsecured creditors. The Chapter 12 trustee objected. After another plan included the requirement outlined in section 1225(b)(1)(B) that the debtors promise to pay all projected disposable income, the plan was confirmed.[87]

Upon completion of the plan, the debtors filed a Motion for Discharge. Two unsecured creditors and the United States Trustee filed objections based upon the fact that the Rowleys had not paid all of their net disposable income into the plan. The United States Bankruptcy Court for the District of South Da-

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83. 11 U.S.C. § 1322(d)(2).
84. Rowley v. Yarnall, 22 F.3d 190 (8th Cir. 1994).
85. *In re* Anderson, 21 F.3d 355 (9th Cir. 1994).
86. *Rowley*, 22 F.3d at 191.
87. *Id.*

kota entered a declaratory judgment holding that the Rowleys had a duty to pay their net disposable income into the plan for unsecured creditors. That decision was upheld by the United States Court for the District of South Dakota and the debtors appealed.[88]

The court explained that to resolve the issue, it must determine what was required under the debtors' plan, and in order to make that decision, it must determine what the bankruptcy code requires.[89] The court turned to section 1225 and noted that "[t]he difficulty with interpretation of section 1225(b) arises from Congress's use of the term 'projected disposable income.'"[90] The court noted that the Rowleys argued the term projected was the same as predicted or estimated. Because their plan provided for no distribution to the unsecured creditors, the Rowleys argued they were not required to pay their actual net disposable income into the plan. The unsecured creditors and the trustee argued that the debtors were required to pay all disposable income over the life of the plan.[91]

The court explained that a plain reading of the bankruptcy code would appear to support the Rowleys argument, but that to hold such would render an absurd result.[92] The court explained that if the Rowleys' argument were accepted, it would allow debtors to project zero disposable income and avoid having to pay unsecured creditors.[93] Although this argument is contrary to the requirement that a debtor's plan be proposed in good faith, the court did not address the good faith requirement.[94] The court explained the presumed result is not what Congress intended when it created the code.[95] The court noted that, because the Rowleys' plan projected zero disposable income payable to the unsecured creditors, the court could not address the plan as only requiring that amount.[96] The court held, therefore, the Rowleys must pay all actual net disposable income.[97]

A more expansive explanation of why the court held the way it did concerning projected disposable income can be found in the lower court's opinion of

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88. *Id*.
89. *Id.* at 191-92.
90. *Id.* at 192.
91. *Id*.
92. *Id.*
93. *Id*.
94. Although the debtor makes the projection necessary to achieve plan confirmation, it is important to note that the trustee can object to such projection. Under section 1225(a)(3) the debtor's plan must be proposed in good faith. If the trustee believes the projected amount is made in bad faith, the trustee may object to the projection. *See* 11 U.S.C. § 1225(a)(3) (2005).
95. *Rowley*, 22 F.3d at 192-93.
96. *Id.* at 193.
97. *Id.*

Rowley.[98] There the court, in discussing section 1225(b)(1)(B), explained that disposable income was a confirmation issue.[99] The court noted "though the projection may be uncertain, the commitment is not."[100] The court explained that section 1225(b)(1)(B) is a "confirmation standard 'and is not a part of the definition of disposable income.'"[101]

The court was clear that the actual amount of disposable income projected by the debtor was irrelevant as long as it was projected in good faith.[102] The reason for this was that, again, the requirement to provide for projected disposable income was simply a hurdle to overcome in obtaining confirmation of the plan.[103] It was not a guarantee that if paid, discharge would be allowed.[104]

It is important to note the court's decision to make the Rowleys pay their actual net disposable income into the plan and deny their discharge in the absence of such payment, had nothing to do with the sum certain amount they had projected at confirmation—in this case, a projection of zero dollars.[105] The court explained that whatever the projected amount, it was irrelevant in determining the ultimate responsibility of the Rowleys.[106] Their projection simply provided them a means to overcome objection to their plan at confirmation.

B. In Re Anderson

Throughout *In Re Anderson* the issue concerned the requirements to be met by the debtors in a Chapter 13 case seeking confirmation of their reorganization plan.[107] The debtors were husband and wife filers, who appealed the district court's affirmance of the bankruptcy court's denial of confirmation of their reorganization plan under Chapter 13.[108]

The debtors' proposed reorganization plan provided they would pay $800 per month for thirty-six months. This amount would not pay all of the creditors in full. Because the plan did not provide for full payment to the credi-

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98. *In re* Rowley, 143 B.R. 547 (Bankr. D.S.D. 1992).
99. *Id.* at 554.
100. *Id*.
101. *Id.* (quoting *In re* Wood, 122 B.R. 107, 114 (Bankr. D. Idaho 1990)).
102. *Id.* at 556.
103. *Id.*
104. *See id.* at 557.
105. *See id.* at 556.
106. *Id.*
107. *See In re* Anderson, 21 F.3d at 356.
108. *Id.*

tors, the trustee argued that the debtors must pay all their projected disposable income into the plan in accordance with section 1325(b)(1)(B).[109]

At the section 341 meeting, the debtors refused to sign a "Best Efforts Certification" presented by the trustee whereby the debtors would be required to pay all of their actual disposable income into the plan.[110] According to the trustee, the trustee would periodically review the Andersons' financial condition and automatically alter payments accordingly.[111] Both the bankruptcy court and the district court held that, unless the "Best Efforts Certification" was signed, the reorganization plan would not be confirmed.[112]

The debtors argued to the circuit court that the language of section 1325(b)(1)(B) did not require them to provide for payment of all of their actual disposable income. The court explained that the trustee did not challenge the $800 amount as a projection, but only that the projection did not ensure all actual disposable income would be paid.[113]

The court held that section 1325(b)(1)(B) did not require the debtors to pledge all actual disposable income and requiring such as a prerequisite to confirmation was more burdensome than required.[114] The court looked specifically at the language of the code. Nowhere could the court find a requirement that the debtor must pledge to pay all of their actual net disposable income in order to obtain confirmation of a reorganization plan. Further, there was nothing in the code that would allow the trustee to unilaterally alter the plan payments over the course of the plan without seeking a court order for specific modification.[115]

C. *Apparent Conflict*

After reviewing both *Rowley* and *Anderson*, some have concluded they are in conflict with one another.[116] The basis for this conclusion stems from the fact that the *Rowley* court required the debtor to pay all actual disposable income before being granted a discharge and the *Anderson* court would not require the debtors to pledge all actual disposable income at the behest of the trustee.[117]

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109. *Id.*
110. *Id.* at 356-57.
111. *Id.* at 357.
112. *Id.*
113. *Id.* at 357-58.
114. *Id.* at 358.
115. *Id.*
116. *See In re* Bass, 267 B.R. 812, 817-18 (Bankr. S.D. Ohio 2001).
117. *Id.*

The conclusion that is drawn from the seemingly different approaches taken is that one or the other must be correct but not both.[118] Consequently, those who find a literal reading of the code to be a fair approach, side with the *Anderson* court in arguing that a debtor cannot be made to pay all of his actual disposable income into the plan over the three-year period.[119] On the other hand, those who find that a literal reading leads to the potential for a debtor projecting zero disposable income and harming her creditors or a debtor receiving a windfall during her plan period to the detriment of her creditors, argue in favor of the *Rowley* approach that calls for a debtor to pay all actual disposable income into the plan.[120]

Is it possible that the courts in *Rowley* and *Anderson* are not in conflict? Is it possible that their respective decisions can actually be read together instead of at odds with one another? Is it possible that they are *both* correct in their holdings? The answer is a resounding yes. If read together, *Rowley* and *Anderson* are analogous. Their apparent conflict is more a complication in linguistics than a judicial conflict.

VI. RESOLVING THE APPARENT CONFLICT

For those who have considered the problems posed by the administration of sections 1225(b)(1)(B) and 1325(b)(1)(B), it may seem there is no way to reconcile how the two sections have been administered under their respective chapters.[121] In conducting the research for this paper, the intent was not to show the absence of conflict, but rather to explain why one approach was better than the other; namely why *Rowley* was a better approach than *Anderson*. During that research, nothing was discovered that suggested anything other than the presence of conflict and arguments for each side. What few cases have addressed this issue in either Chapters 12 or 13, and the even smaller number of law review articles or treatise explanations that have been presented, all seem to view a conflict that started with the *Rowley* and *Anderson* cases.[122] However, on closer examination, it becomes clear there may not be a conflict at all.

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118. *See* Susan A. Schneider, *Recent Developments In Agricultural Bankruptcy: Judicial Conflict And Legislative Indifference*, 25 U. Mem. L. Rev. 1233, 1252 (1995).

119. *See* 2 KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY, § 164.1, 164-41 (3d ed. Bankruptcy Press, Inc. 2000 & Supp. 2004).

120. *See In re* Turpen, 218 B.R. 908 (Bankr. N.D. Iowa 1998).

121. *See, e.g.*, Schneider, *supra* note 118, at 1254; LUNDIN, *supra* note 119, § 164.1, 164-41.

122. *See* Schneider, *supra* note 118, at 1250.

A. *Re-examining the Lodestar Cases*

Upon examination of the lower court decision in *Rowley*, it became apparent there was an important distinction between the two cases with significant ramifications. If the distinction held throughout the cases addressing this issue under Chapter 12 and Chapter 13 of the bankruptcy code, the conflict may be resolved.

The *Rowley* case was one addressing the *discharge* of debtors in a Chapter 12 bankruptcy.[123] The issue was one concerning whether the debtors had paid all of their actual disposable income over the course of the three-year plan under section 1225(b)(1)(B).[124] The *Anderson* case was one addressing *confirmation* of the debtors' plan in a Chapter 13 bankruptcy.[125] The issue again concerned the identical provision of section 1325(b)(1)(B), but the focus was different. In *Anderson,* the focus was on whether the trustee could require the debtors to pledge all actual disposable income in order to obtain confirmation of their plan.[126]

To better understand the issue, it is beneficial to think of bankruptcy as a timeline. At the beginning of the timeline is the filing of bankruptcy. At the end of the timeline is the discharge from bankruptcy. The debtors in *Rowley* were at the end of the bankruptcy timeline. They were seeking discharge from their bankruptcy.[127]

In order for a debtor to obtain a discharge he must have made all payments required under the plan of reorganization.[128] As the court noted, the debtors were "entitled to have their motion for discharge granted only upon fulfillment of their obligations under their plan of reorganization."[129] Ultimately the court held that they were not entitled to such discharge because they had failed to pay all of their actual disposable income into the plan.[130] As noted earlier, understanding as to why the court held as it did comes from the lower court's explanation of the requirements posed by section 1225(b)(1)(B).[131]

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123. *Rowley*, 22 F.3d at 191.
124. *Id.* at 194.
125. *In re* Anderson, 21 F.3d at 356.
126. *Id.* at 358.
127. *Rowley*, 22 F.3d at 191.
128. 11 U.S.C. § 1228(a) (2005).
129. *Rowley*, 22 F.3d at 191.
130. *Id.* at 193.
131. *In re* Rowley 143 B.R. at 554-55 (noting that

> [a]t this stage, the actual amount of disposable income to be received, if any, is completely unknown and so the plan is proposed and confirmed based upon a commitment to

The disposable income requirement is one of *confirmation*. In fact, the title of section 1225 is "Confirmation of Plan."[132] As the lower court explained, it makes no difference that the sum certain amount pledged as disposable income may be uncertain, it only matters that there is a pledge if objection to confirmation is lodged.[133] If such a pledge is made, and is in good faith, as the debtors' pledge in *Rowley* was held to be, the debtors overcome the hurdle to confirmation posed by the objection.[134] Such pledge, however, does not determine the sum certain amount that may be required of the debtors over the course of the plan in order to obtain discharge.[135]

One way to think about what *Rowley* provides is to consider a bargaining process. The debtor proposed a plan that was rejected by the trustee or an unsecured creditor.[136] To obtain confirmation of the plan, the debtor adds an additional element to the plan; the debtor pledges to pay all projected disposable income into the plan.[137] If done in good faith, the plan is confirmed.[138]

Section 1225 is not a discharge section, but rather, it is a confirmation section. Although the section only requires the debtor to pledge a projected amount in order to obtain confirmation, this does not provide that the projected amount will be the total required to obtain discharge.[139] The debtor and the trustee, or unsecured creditor, were bargaining only for confirmation of a plan, not discharge from bankruptcy.[140]

Practically, this makes sense as well. Especially in a farm bankruptcy environment, the amount of disposable income is a fluid figure. There is no efficient way to project with any certainty what the disposable income of the farmer will be over the course of the three year plan. Unlike a typical Chapter 13 debtor who may have a more traditional job unaffected by weather, markets, pests, etc., the farmer must take these and other factors into consideration when determining disposable income.[141] If the farmer will project in good faith a reasonable amount at confirmation, and thus obtain plan approval, the sum certain amount may be

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apply all of the debtor's projected disposable income toward payments under the plan. Even though the projection may be uncertain, the commitment is not.)

132. 11 U.S.C. § 1225.
133. *In re* Rowley, 143 B.R. at 554.
134. *Id.* at 556.
135. *Id.* at 557.
136. *Id.* at 555.
137. *Id.* at 554.
138. *Id.* at 552-53.
139. *See id.* at 554-55.
140. *See id.* at 556.
141. *See id.* at 554.

modified throughout the life of the plan consistent with the farmer's current situation.[142]

In *Rowley*, the bargaining process took place at confirmation, and the plan was approved.[143] At discharge, however, the trustee objected because the debtors had not paid their actual disposable income commensurate with their economic situation during bankruptcy.[144] A significant factor to consider with *Rowley* is that the court held a zero dollar amount to be a good faith projection of disposable income.[145] The court did not provide that the Rowleys would not be required to pay anything to their unsecured creditors.[146]

The significant difference between *Rowley* and *Anderson* is that *Anderson* was a case addressing the confirmation of the debtors' plan. In the bankruptcy timeline, the debtors in *Anderson* were at the opposite end from the debtors in *Rowley*.

Though the court in *Rowley* was considering the discharge of the debtors from their Chapter 12 bankruptcy, the court addressed section 1225(b)(1)(B) as a requirement to confirmation of the reorganization plan.[147] It is here that the confusion and conflict likely arises. *Rowley* was a discharge case but was addressing a confirmation code section. Though the Rowleys were seeking a discharge from their bankruptcy, the court denied their discharge by explaining what section 1225(b)(1)(B) required.[148] The requirement was different than the Rowleys' proposed interpretation.[149]

Anderson, likewise, addressed an identical confirmation provision, section 1325(b)(1)(B).[150] Though our debtors were at opposite ends of the bankruptcy timeline, the code sections being addressed by each court were both confirmation sections. The issue in *Anderson* was whether the trustee could force the debtors to sign a "Best Efforts Certification" in order to obtain confirmation of their plan.[151] Ultimately the court held they were not required to sign such a statement guaranteeing payment of all actual disposable income because such a requirement was not provided for in the code.[152] The code only required that the debtors make a projection of what disposable income would be. The court held it

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142. *See id.* at 554.
143. *Id.*
144. *Rowley*, 22 F.3d at 191.
145. *See In re* Rowley, 143 B.R. at 556.
146. *Id.*
147. *See Rowley*, 22 F.3d at 193.
148. *See id.* at 191-93.
149. *Id.* at 192.
150. *In re* Anderson, 21 F.3d at 356.
151. *Id.* at 356-57.
152. *Id.* at 358.

would be an unauthorized expansion of the code to allow the trustee to force the debtors to sign the certification and allow the trustee to unilaterally adjust the debtors' plan payments.[153]

Like *Rowley* discussing Chapter 12, *Anderson* held that confirmation of a plan was to follow the requirements of the code. The code provided nothing along the lines of "Best Efforts Certifications" and unilateral trustee action.

Therefore, when examining both *Rowley* and *Anderson*, they are actually analogous. Both courts hold that the identical sections of Chapter 12 and Chapter 13 are confirmation sections. As such, both courts recognize that the sections have nothing to do with discharge, but only with what is required for a debtor to obtain confirmation of their reorganization plan.

Because the debtors in *Anderson* were at the confirmation stage of bankruptcy, it is easier to understand the analysis. The debtors in *Rowley* were at discharge and, therefore, the idea of considering a confirmation code section becomes a bit more confusing. However, the focus on section 1225(b)(1)(B) in *Rowley* was necessary because the debtors claimed that section was proof they had met all requirements of the plan, when as the court noted, the section only provides a means to overcoming an objection at confirmation. Whether the debtors had actually met the requirements of the plan would hinge upon whether they had paid all of their actual disposable income into the plan. There, they had not.

B. *Supporting the Analysis*

Though the explanation of how to read *Rowley* and *Anderson* analogously made sense, it would all fall apart if other Chapter 12 and Chapter 13 cases did not rule the same as *Rowley* or *Anderson* respectively. To support the analysis it became important to examine the other Chapter 12 and Chapter 13 cases that had addressed the projected disposable income analysis.

All Chapter 12 cases that have addressed the projected disposable income analysis under section 1225(b)(1)(B) were discharge cases.[154] In other words, though all of the cases would refer to *Rowley* for support in requiring the payment of actual disposable income into the plan for the plan period, they were all addressing the debtors at the discharge stage of the bankruptcy timeline.

The next question is how Chapter 13 cases have addressed the same issue faced by the *Anderson* court. The answer here was a bit more tenuous because

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153. *Id*.

154. *See, e.g., In re* Broken Bow Ranch, Inc., 33 F.3d 1005 (8th Cir. 1994); *In re* Meyer, 173 B.R. 419 (Bankr. D. Kan. 1994); *In re* Hammrich, 98 F.3d 388 (8th Cir. 1996); *In re* Linden, 174 B.R. 769 (Bankr. C.D. Ill. 1994); *In re* Petersen, 2000 Bankr. LEXIS 2039 (Bankr. D. Neb., Feb. 9, 2000).

not many Chapter 13 cases have addressed the issue. The few that have, however, view section 1325(b)(1)(B) the same as the *Anderson* court — as a confirmation section.[155] Because section 1325(b)(1)(B) is a confirmation section, and the courts addressing the issue were dealing with debtors at the confirmation stage of the bankruptcy timeline, the issue of whether actual disposable income was ultimately to be a requirement did not arise in the cases.

Thus, the consistency in the courts addressing sections 1225(b)(1)(B) and 1325(b)(1)(B) that was critical to a solid analysis of the two lodestar cases as analogous is achieved. Because the Chapter 12 cases were addressing the same issue *at the same point in the bankruptcy timeline* and the Chapter 13 cases were addressing the same issue *at the same point in the bankruptcy timeline*, the cases can be read as analogous.

VII. THE EFFECT OF SECTION 1329

Though the cases that have addressed the issue of projected versus actual disposable income in the context of section 1225(b)(1)(b) or section 1325(b)(1)(B) are consistent with each other, other courts have looked at the same issue from an angle different from *Rowley* and *Anderson*. The approach taken, while it doesn't affect the consistency of interpretation between sections 1225(b)(1)(B) and 1325(b)(1)(B), does raise questions concerning the ultimate outcome. The courts have examined the issue by examining section 1329 of the bankruptcy code. Although section 1329 has no direct bearing on the ability to read *Rowley* and *Anderson* as analogous, the potential for altering the outcome deserves attention.

Section 1329 of the code, entitled "Modification of plan after confirmation," provides that after confirmation of a bankruptcy plan, but before the debtor completes payments under the plan, the plan may be modified at the request of the debtor, the trustee, or an unsecured creditor.[156] Simply stated, this section provides that a plan can be modified to address a change in economic circumstances that may arise during the course of the bankruptcy plan.[157] If the debtor receives a windfall in the second year of the plan, under this section, the trustee may request the plan be modified to reflect the change and provide higher payments for the unsecured creditors. Likewise, if the debtor suffers an economic

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155. *See In re* Kuehn, 177 B.R. 671 (Bankr. D. Ariz. 1995); *In re* Killough, 900 F.2d 61 (5th Cir. 1990); *In re* Bass, 267 B.R. 812 (Bankr. S.D. Ohio 2001).

156. 11 U.S.C. § 1329 (2005).

157. *Id*.

setback, such as a job loss or divorce, the code allows the debtor to modify the plan accordingly.[158]

This section should be considered the midpoint in the timeline. Whereas confirmation is the beginning of the bankruptcy timeline and discharge is the end, modification is somewhere between the two. And, as *Anderson* represented confirmation and *Rowley* represented discharge, In re *Moss* represents modification under section 1329.[159]

A. In Re Moss

In *Moss*, the debtor was an attorney who filed for protection under Chapter 13 of the bankruptcy code.[160] The debtor's plan was confirmed on December 16, 1985, and the last payments were made on March 22, 1988. When the debtor sought discharge from bankruptcy, the trustee objected on the grounds the debtor had not paid all projected disposable income into the plan in accordance with section 1325(b)(1)(B).[161] The court explained in *Moss* that section 1325 had no bearing on whether a debtor was entitled to discharge for two reasons: (1) the section addresses future performance and (2) section 1328 addresses discharge from Chapter 13 bankruptcy.[162] Therefore, section 1325 cannot be used to make a discharge determination.[163]

The court explained that, after all payments have been made under a plan of reorganization, section 1329 cannot be used to modify the plan.[164] The court believed the trustee was attempting to modify the plan by objecting to the discharge after all payments were made.[165] Because the court found that section 1325 did not apply to modification of the plan after confirmation, the court dismissed the trustee's objection to discharge under section 1325.[166]

B. *How* Moss *Fits into the Analysis*

Though it appears on the surface that *Moss* is the proverbial wrench in the gears, its narrow holding does no harm to the overall understanding of *Rowley* and *Anderson* and the projected versus actual disposable income requirement.

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158. *See id*.
159. *In re* Moss, 91 B.R. 563, 565 (Bankr. C.D. Cal. 1988).
160. *Id.* at 564.
161. *Id*.
162. *Id.* at 564-65.
163. *Id.* at 565.
164. *Id*.
165. *Id*.
166. *Id.* at 566.

Moss holds that section 1325 cannot be utilized as a modification section after confirmation of the plan has been obtained.[167] Clearly, sections 1229 and 1329 provide for such actions, and it is not necessary to attempt to utilize sections 1225 or 1325 in such a manner.[168]

The *Moss* court did err in one respect. The court explained that section 1325(b)(1)(B) could not be used to deny a debtor discharge from bankruptcy because section 1328 addresses discharge.[169] In fact, any element of a debtor's plan that is not complied with may be used as grounds to deny discharge.[170] Section 1328, like its counterpart in Chapter 12, provides that "after completion by the debtor of all payments under the plan" the debtor shall obtain their discharge.[171]

Rowley provides that if the debtor's plan had been objected to at confirmation, forcing the debtor to pledge all projected disposable income over the course of the plan, such projection may be uncertain, but the obligation is not.[172] Therefore, if at discharge the debtor has not paid all actual disposable income into the plan, regardless of the original projection, the debtor has not met his obligation and discharge should not be forthcoming. The debtor has not met the obligations imposed by the confirmed plan under either section 1225 or section 1325 and reference to such sections as grounds for denying discharge is appropriate.[173]

The Bankruptcy Court for the Southern District of Illinois held in 1990 that a trustee's objection to a debtor's discharge based upon section 1225(b)(1) was appropriate because the debtors had failed to show they had met the disposable income requirement imposed by such section.[174] Additionally, in In Re *Roberts*, a Bankruptcy Court for the Northern District of Indiana held that, not only do creditors have standing to object to discharge, but they can lodge such an objection based upon the debtor's failure to pay disposable income pursuant to section 1225(b)(1)(B).[175] The court noted that in In Re *Kuhlman*, a bankruptcy case from the District of South Dakota, the court had stated that "it would not enter a discharge 'until the Court, Chapter 12 trustee, *and all interested parties* are satis-

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167. *Id.*
168. *See id.*
169. *Id.* at 565.
170. 11 U.S.C. § 1328(b) (2005).
171. *Id.* § 1328(a).
172. *Rowley*, 22 F.3d at 193.
173. *See id.* at 191-93.
174. *In re* Bowlby, 113 Bankr. 983, 990 (Bankr. S.D. Ill. 1990) (holding retention of income to pay crop expenses at expiration of plan not acceptable as amount was disposable income).
175. *In re* Roberts, 133 B.R. 1004, 1007 (Bankr. N.D. Ind. 1991).

fied that the Chapter 12 debtors have complied with their confirmed plan, including turning over of all disposable income.'"[176]

Though the *Moss* court was correct in holding that section 1325 cannot be used to modify a plan because section 1329 is designated for that specific purpose, the court was incorrect in holding that section 1325 cannot be the catalyst for such a modification, or in fact, the catalyst to an objection to discharge.[177] The fact that the trustee in *Moss* objected to discharge after all plan payments had been made was clearly problematic in the court's opinion.[178] However, section 704(6) of the code specifically provides that "the trustee shall if advisable, oppose the discharge of the debtor."[179] To be sure, section 1329 provides that modification can only take place after confirmation and "*before the completion of payments under such plan*."[180] The trustee was not attempting to modify the debtor's plan, but objected to the grant of discharge because of the debtor's failure to meet all plan payments as required under section 1325(b)(1)(B).[181]

VIII. POTENTIAL PROBLEMS

As noted above, the analysis proposed by this paper hinges upon the fact that all Chapter 12 cases and all Chapter 13 cases address the issue exactly as they have. It stands to reason then that it would only take one case to arrive at a different conclusion for this analysis to be called into question. In other words, if just one Chapter 13 case determines that section 1325(b)(1)(B) does in fact require the commitment of all "actual" disposable income, or one Chapter 12 case determines that discharge does not depend upon the payment of all "actual" disposable income, the analysis of this paper evaporates. This is unlikely to occur, however, given the number of years these sections have been in effect and the two lodestar cases were decided over a decade ago.[182] There has been ample time to reverse these decisions. Given the support for each of the cases, if a court were to rule opposite either *Rowley* or *Anderson*, it would likely be overruled, citing *Rowley* or *Anderson*.

There is a current issue that appears, on the surface, to challenge this analysis. Senator Grassley's bill permanently enacting Chapter 12 of the bank-

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176. *Id.* (citing *In re* Kuhlman, 118 Bankr. 731, 739 (Bankr. D.S.D. 1990)) (emphasis in original).

177. *In re* Moss, 91 B.R. 563, 566 (Bankr. C.D. Cal. 1988).

178. *Id.* at 565.

179. 11 U.S.C. § 704(a)(6) (2005).

180. *Id.* § 1329(a) (emphasis added).

181. *In re* Moss, 91 B.R. at 564.

182. *See In re* Rowley, 22 F.3d 190 (8th Cir. 1994); *In re* Anderson, 21 F.3d 355 (9th Cir. 1994).

ruptcy code was signed into law by President George W. Bush on April 20, 2005.[183] Within the bill were changes to Chapter 12. One such area of change is section 1006, entitled "Prohibition of Retroactive Assessment of Disposable Income."[184] In section 1006(a), Congress modified section 1225(b)(1) by adding a new subsection (subsection C) providing a third means to overcome an objection to confirmation by the trustee or a holder of an allowed unsecured claim. The new subsection C provides the following:

> (C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.[185]

This language suggests whatever amount the debtor projects at confirmation *is* the sum certain amount they would be required to pay over the course of the plan. This section provides that whatever property is distributed must not be less than the amount of the projected disposable income.[186] However, all this language provides is a floor. If a debtor projects, for example, an $800 disposable income amount — as in *Anderson* — any property to be distributed under the plan must have a value of at least $800.[187] This does not mean that if the debtor's actual disposable income increases over the course of the plan that she will not be required to pay the increased amount in order to obtain discharge. This would have a different result if the proposed code language provided that the value of such property to be distributed over the course of the plan could not be *more* than the projected disposable income of the debtor.[188]

Additionally, the bill proposes in section 1006(b) to change section 1229 of the code to provide that

> (d) A plan may not be modified under this section — . . .
>
> (2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for

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183. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, S. 256, 109th Cong. (2005).

184. *Id.* § 1006.

185. *Id.* at 1006(a); *see* 11 U.S.C. § 1225 (b)(1)(C) (2005).

186. 11 U.S.C. § 1225(b)(1)(C).

187. *See id.*; *see also In re* Anderson, 21 F.3d at 358 (holding that 11 U.S.C. § 1325(b)(1)(B) only required debtors to pay projected disposable income, not their actual disposable income, in this case, $800).

188. *See* 11 U.S.C. § 1225 (discussing that the value of such property to be distributed over the course of the plan could not be less than the projected disposable income of the debtor).

> a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month.[189]

At first glance this language seems to prevent modification of a plan to increase payments based on an increase in the disposable income of the debtor. In other words, whatever the debtor projected at confirmation could not be modified upwards upon the showing that the actual disposable income of the debtor had increased. What the language provides, however, is simply that such a modification cannot be made if "the aggregate of such payments exceeds the debtor's disposable income for such month."[190] Thus, a modification can be made if the debtor's disposable income increases from what was projected at confirmation, but not to a point where the increased payment is greater than the debtor's disposable income for the particular month. This is reasonable because it provides that a debtor cannot be forced to pay more into the plan than he has in disposable income.[191]

Finally, though the cases of *Rowley* and *Anderson* may be read as analogous, there is another argument that can be made. It is generally accepted that the legislature says what it means and means what it says.[192] In sections 1225(b)(1)(B) and 1325(b)(1)(B), the phrase used is "projected disposable income."[193] A projection is not the same as a sum certain amount. By definition, they are not the same. The argument for an analogous reading, therefore, relies on the fact that projection is nothing more than a means to obtaining confirmation, not discharge. The very reason behind the requirements of sections 1225 and 1325, however, is to provide the courts, trustees, and unsecured creditors a means by which they may determine whether a debtor is abiding by the reorganization plan.[194] If section 1225(b)(1)(B) is just a means to confirmation but does not bind the debtor to a particular action, why can not the same argument be made for any of the other requirements in section 1225?

The answer is that nowhere else in either section 1225 or section 1325 is a term as fluid as "projected" used. All other requirements are certain. To overcome the objection, certainty as to amount is not sought, only certainty as to the obligation.

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189. *Id.* § 1229(d)(2).
190. *Id*.
191. *See id.*
192. Unif. Statute and Rule Constr. Act § 2 (1995).
193. *See* 11 U.S.C. §§ 1225(b)(1)(B), 1325(b)(1)(B).
194. *See* 11 U.S.C. §§ 1225, 1325.

IX. CONCLUSION

To undertake a task where traditional notions and long-standing beliefs are questioned is daunting. This paper does not attempt to summarily prove that all previous analysis was faulty or wrong. It does provide a compelling analysis into why this issue may not be the conflict it has appeared to be in the past.

Several factors contribute to the conclusions reached. First, the analysis of sections 1225 and 1325 are intimately tied to what the courts did in *Rowley* and *Anderson*. Those cases are the starting point for this issue. As such, the reliance by courts in cases that have come after *Rowley* and *Anderson* is important. The fact that the few cases addressing this specific issue have referred to the original analysis in either case shows the genesis of the cases' reasoning.

Second, there is ample evidence to show that courts are keenly aware of the relationship between Chapter 12 and Chapter 13. Courts' reliance on Chapter 13 in interpreting Chapter 12 bolsters the idea that, if possible, cases addressing these chapters should be read analogously.

Third, the plain language of the sections indicates fluidity at confirmation, yet no such characteristic is present for the requirements of discharge. This supports the idea that each section in question has little bearing on the requirements of discharge.

Rowley and *Anderson* can in fact be read as analogous. It is not necessary that one be in conflict with the other. Both address confirmation sections of their respective bankruptcy chapters. Both agree that to obtain confirmation of a proposed reorganization plan certain elements must be present. Both agree that the projected disposable income requirement cannot be read to require actual disposable income as a confirmation standard.

It is only in their places along the bankruptcy timeline that these cases are different. Though such a factor could have become an issue that would have squarely caused conflict, the focus on confirmation sections eliminated any potential conflict from arising. *Rowley* and *Anderson* are analogous.