



A handwritten signature in black ink, reading "Brian D. Lynch".

Brian D. Lynch
U.S. Bankruptcy Judge
(Dated as of Entered on Docket date above)

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

In re:

DEAN EDWARD AND ELISA EGGER,
Debtors.

Chapter 7

Case No. 16-43428-PBS

**ORDER OVERRULING TRUSTEE'S
OBJECTION TO CONFIRMATION**

The Standing Ch. 13 Trustee, Michael G. Malaier, objected to the confirmation of Debtors' Ch. 13 Plan (the "Objection") (ECF No. 11). The Trustee's Objection was that Debtors' proposed Ch. 13 Plan did not propose to pay all of Debtors' disposable income, and it did not propose to pay 100% of the present value of Debtors' claims (i.e. with interest).

The Debtors have scheduled \$9,982.00 in priority claims and \$18,823 in general unsecured claims (ECF No. 1, Schedule E/F, p. 6). Their proposed plan will pay 100% of those claims without interest. (ECF No. 2, p. 3). The Debtors reported net income of \$3,038.00 in their Schedules I and J (ECF No. 1, Schedule J, p. 2) but propose a monthly plan payment of only \$2,750 (ECF No. 2). The Trustee asserts in his Objection that in order to pay all required secured claims, priority claims, and administrative expenses, the debtors' plan will run approximately 41 months, but if they paid the full amount of

1 their disposable income every month the plan could complete in approximately 34
2 months. Debtors do not dispute that their plan does not meet the “disposable income”
3 test under Section 1325(b)(1)(B). However, the Debtors’ plan does propose to pay
4 100% of allowed unsecured claims in less than sixty months, which is the other option
5 under 11 U.S.C. 1325(b)(1).

6 The sole issue is whether the Debtors’ Plan that proposes to pay 100% of the
7 general unsecured claims while contributing less than their monthly disposable income
8 satisfies the requirements of 11 U.S.C. §1325(b)(1)(A) if it does not propose to pay
9 interest on those claims. This Court holds that under Section 1325(b)(1)(A), a plan that
10 pays 100% of allowed unsecured claims is not required to pay interest on the claims.

11 In interpreting the meaning of a statute, a court must start “where all such inquiries
12 must begin: with the language of the statute itself.” *Ransom v. FIA Card Servs., N.A. (In*
13 *re Ransom)*, 562 U.S. 61, 131 S.Ct. 716, 723–24, 178 L.Ed.2d 603 (2011). Under
14 Section 1325(b)(1), a requirement for confirmation of a plan is that:

15 “as of the effective date of the plan –

16 (A) the value of the property to be distributed under the plan on account of such
17 claim is not less than the amount of such claim; or
18 (B) the plan provides that all of the debtor’s projected disposable income to be
received in the applicable commitment period beginning on the date that the first
payment is due under the plan will be applied to make payments to unsecured
creditors under the plan.

19 11 U.S.C. §1325(b)(1). At the heart of this dispute is whether the phrase “as of the
20 effective date of the plan” (the “introductory phrase”) refers to the date for determining
21 whether the Debtors’ plan will provide either (A) payment in full or (B) payment of all
22 projected disposable income during the applicable commitment period, or whether the
23 introductory phrase, when read together with subsection (A), denotes that the plan must
24 pay the *value, as of the effective date of the plan*, which suggests that an interest
25 component might be required to provide for present value.

1 Debtors argue the former, and that the plain language of the statute provides that
2 Debtors shall only need to pay the amount of such allowed unsecured claims on the
3 effective date of the plan, excluding interest. See *e.g. In re Stewart-Harrel*, 443 B.R. 219
4 (Bankr. N.D. Ga. 2011).

5 The Trustee argues that the phrase “as of the effect date of the plan” must be
6 read together with subsection (A) as “the value[, *as of the effective date of the plan*,] of
7 the property,” a phrase which has been commonly interpreted as requiring a “present
8 value” analysis including interest, as opposed to the face value of the claim. See *e.g. In*
9 *re Hight-Goodspeed*, 486 B.R. 462 (Bankr. N.D. Ind. 2012) (providing examples of where
10 courts have interpreted the phrase “the value, as of the effective date of the property” in
11 other sections of the Bankruptcy Code to include interest).

12 There is no legislative history which addresses the intent of the language.
13 Commentators are divided on the issue of whether debtors must pay interest on claims
14 under Section 1325(b)(1)(A). Colliers supports the *Stewart-Harrel* interpretation that
15 interest on claims is not required, 8 Collier on Bankruptcy ¶1325.11[3] (16th ed.), while
16 Norton and Lundin agree with the *Hight-Goodspeed* interpretation that interest on claims
17 is required. See 7 Norton Bankr. L & Prac (3d ed.), §151:19; Keith M. Lundin & William
18 H. Brown, Chapter 13 Bankruptcy, 4th edition §168.1 at ¶6.

19 A plain language reading of the statute provides that a plan must provide that “as
20 of the effective date of the plan- (A) the value . . . is not less than the amount of such
21 claim.” The value that a Debtor’s plan must provide must be not less than the amount of
22 the creditors’ claims as of the effective date of the plan. Putting the phrase “as of the
23 effective date of the plan” before both (A) and (B) of Section 1325(b)(1) has the effect of
24 making the phrase applicable to both subsections. That works fine with the *Stewart-*
25 *Harrel* holding that the phrase “as of the effective date of the plan” is simply a reference

1 to *when* the Court determines what is being paid to the allowed unsecured claims, i.e.,
2 either (A) the amount of such claim, or (B) the debtor's projected disposable income in
3 the applicable commitment period. The problem with *Hight-Goodspeed* and the
4 commentators supporting its interpretation of Section 1325(b)(1)(A) is that while a
5 present value determination makes sense with respect to subsection (A), it does not
6 make sense with respect to subsection (B). *Stewart-Harrel*, 443 B.R. at 223.

7 A fundamental principle of statutory construction is that "[i]nterpretive
8 constructions [of statutes] which would render some words surplusage . . . are to be
9 avoided." *In re Kun*, 868 F.2d 1069, 1071 (9th Cir. 1989). If the Court accepts the
10 Trustee's argument that subsection (A) must be read as the "value [, *as of the effective*
11 *date of the plan,*] of the property" then it must also apply a similar parallel construction of
12 subsection (B), which would render the introductory phrase nugatory (e.g. "the plan, '*as*
13 *of the effective date of the plan,*' provides that all of the debtor's projected disposable
14 income . . ."). Neither party has suggested, nor has any case held, that the disposable
15 income requirement of Section 1325(b)(1)(B) has a present value element.

16 Conversely, the Debtors' proposed construction allows the introductory phrase to
17 modify both subsections (A) and (B) without creating any inconsistency in meaning or
18 surplusage. The Supreme Court, in *Hamilton v. Lanning*, 560 U.S. 505, 518, 130 S. Ct.
19 2464, 2474, 177 L. Ed. 2d 23 (2010), held that Section 1325(b)(1)(B) directs courts to
20 determine projected disposable income "as of the effective date of the plan." "[I]t would
21 make no sense for the phrase 'as of the effective date of the plan' to have different
22 meanings as to each of the following subsections." *In re Stewart-Harrel*, 443 B.R. at 223.
23 Thus, a construction of the introductory phrase similar to that in *Hamilton v. Lanning's*
24 construction of subsection (B) should also apply to subsection (A).

1 The Trustee makes other policy arguments in favor of his position, arguing that
2 the *Hight-Goodspeed* approach provides some protection to unsecured creditors for the
3 risk that over the longer time for payment of the allowed unsecured claims chosen by the
4 Debtors, there might be a change of financial circumstances such that the Debtors would
5 need to amend the plan and reduce distributions to unsecured creditors. However, that
6 is not a risk that the Code protects creditors against. Moreover, if the Debtors made such
7 a motion, the Trustee could point out that the Debtors could extend their plan out longer
8 (from 41 months up to 60 months) to avoid reducing the amount paid to allowed
9 unsecured claims. Likewise, the Code allows a challenge to a plan on the grounds of
10 lack of good faith or feasibility. But the Code gives Debtors the option of paying 100%
11 of the allowed unsecured claims, thereby avoiding having to comply with the projected
12 disposable income requirement.

13 WHEREFORE, the Trustee's Objection to the Debtors' Plan of Reorganization is
14 overruled.

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16 ///End of Order///
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