

Research Guide

Projected Disposable Income under Code § 1325(b)

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Overview

Perhaps the biggest disagreement among the courts in applying BAPCPA involves the calculation of a Chapter 13 debtor's projected disposable income under Code § 1325(b). While there are two main approaches, the multiplicative and the forward-looking, there is more than one variation of the former, and there are several variations of the latter. Courts disagree as to both **how** income and expenses are to be calculated (Form 22C, Schedules I and J, or some combination thereof) and **as of when** the calculation is to be performed.

This Research Guide attempts to collect all the cases discussing the calculation of projected disposable income insofar as the discussion is specific to Chapter 13. In other words, the calculation of "currently monthly income" under Code § 101(10A), and the construction of the deductions allowed under Code § 707(b)(2), will be treated in separate research guides, some of which have already been compiled. This Research Guide looks at how a court applies § 1325(b) to the numbers generated by the debtor under § 101(10A) and § 707(b)(2). This Research Guide also collects the cases discussing the treatment of a Chapter 13 debtor's retirement plan contributions and loan repayments, and those cases determining the classes of unsecured creditors comprehended by Code § 1325(b)(1)(B), requiring a debtor to pay all of his or her projected disposable income to "unsecured creditors" if those creditors are not paid in full.

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Statutory Text

11 U.S.C. § 1325 Confirmation of plan

(b)(1) 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—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(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.

(2) For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

[the state median income for the debtor's household size]

I. The Courts' Approaches to the Calculation

A. In General

The basic divide among the courts is over whether projected disposable income is calculated simply by starting with the disposable income shown on Form 22C and "doing the math"—i.e., multiplying that figure by the number of months in the debtor's plan term. I call this the "multiplicative approach." Courts that reject the multiplicative approach use a forward-looking approach; that is, they attempt to project forward the debtor's income, expenses, or both, so as to better approximate the debtor's reality. The forward-looking approach has been implemented by various courts in a wide variety of ways. See generally *In re Barfknecht*, 378 B.R. 154 (Bankr. W.D. Tex., Nov. 7, 2007) (noting seven approaches to calculating projected disposable income identified by Judge Keith Lundin).

There are only a few appellate court decisions on the issue, and there are no decisions by a circuit court. However, on August 17, 2007, the Ninth Circuit Court of Appeals heard oral arguments in an appeal (*Maney v. Kagenveama*, docket number 06-17083) of *In re Kagenveama*, 2006 Bankr. Lexis 2759, Case No. 05-28079-PHX-CGC (Bankr. D. Ariz., July 10, 2006), as amended, (July 18, 2006), in which the bankruptcy court had applied the multiplicative approach.

The forward-looking approach has been adopted in a strong majority of cases. As of the publication date of this research guide, some 63 bankruptcy judges and four appellate decisions appear to have embraced some version of the forward-looking perspective, while 27 bankruptcy judges and two appellate courts have applied the multiplicative approach. (The fine print: the total for bankruptcy judges doesn't include bankruptcy judges participating in BAP decisions, and the total includes only judges whose position I can determine.)

It's sometimes difficult, for a variety of reasons, to determine a court's exact holding. This can be due to the sheer number of variations in these approaches, particularly the forward-looking perspective. Other factors to look at in interpreting a decision include:

- Does the court's decision relate to income, expenses, or both? Some courts hold that one, but not the other, is assessed in a forward-looking manner.
- Is the manner of calculation of one or both of these components—say, whether the means test or Schedule J is used to determine expenses—at issue, or the distinct question of the time as of which the calculation is to be performed, such as the petition date or the date of plan confirmation?
- In a case involving a deduction under means test, is the court's holding based on an interpretation of Code § 707(b)(2) or of Code § 1325(b)? In the former case, the decision does not provide guidance about the court's perspective on how to calculate projected disposable income. So long as a court does not view § 1325(b) as imposing an overlay on the application of § 707(b)(2), Chapter 7 cases applying a means test deduction should be equally applicable to filings under Chapter 13. See *In re Burden*, 380 B.R. 194 (Bankr. W.D. Mo., Dec. 20, 2007) ("§ 1325(b)(3) incorporates § 707(b)(2)(A) and (B) without qualification, and it would be illogical to have one interpretation of § 707(b)(2)(A)(iii)(I) for Chapter 7 and a different interpretation for Chapter 13"); *In re Knight*, 370 B.R. 429 (Bankr. N.D. Ga., June 27, 2007) ("§ 707(b)(2)(B) should have the same effect in both chapters").

It should be noted that, while disagreeing over whether “projected disposable income” may be determined on a forward-looking basis, courts agree that Form 22C may not be amended insofar as the figure for “current monthly income” (which determines the “applicable commitment period”) is concerned, at least without a court order. See *In re Louviere*, 2008 WL 925824 (Bankr. E.D. Tex., April 4, 2008) (“Thus, there is no statutory support for, and no purpose served by, the forced insertion of updated income figures into the 22C calculation to correct any projection therefrom nor any support for this Debtor’s maneuver of submitting the revised income figures as a special circumstance expense claim under Part VI of Form 22C. As noted earlier, no adjustment of CMI is authorized under § 1325(b)(3).”); *In re Moore*, 367 B.R. 721 (Bankr. D. Kan., April 13, 2007) (“Current Monthly Income determines Applicable Commitment Period. Accordingly, an above-median income debtor may not reduce his Applicable Commitment Period based solely on a post-petition change in income because CMI is a defined, concrete, historical number. Likewise, a below-median income debtor cannot be forced into a five-year commitment period.”); *In re Anderson*, 367 B.R. 727 (Bankr. D. Kan., April 13, 2007) (“Under BAPCPA, current monthly income cannot be amended during the case because it is based on concrete, historical data”); *In re Gordon*, 360 B.R. 679 (Bankr. S.D. Cal., Jan. 8, 2007) (“The Court is persuaded that amendment of the Form B22C to reflect anticipated future income is not permitted under § 101(10A) or § 1325. As § 1325(b)(4) makes clear, the applicable commitment period is determined by using current monthly income which, in turn, is defined in § 101(10A) as a historical average for the six months immediately prepetition. That does not change looking forward, and efforts to rewrite it are unavailing.”) (citations and internal quotations omitted in all parentheses).

For cases holding that a court may specify a new six-month period for the calculation of “current monthly income,” see the discussion on page 14.

On the other hand, the two courts to have considered the issue have held that, where the debtor’s household size changed postpetition, or was expected to, the household size on the effective date of the debtor’s plan controls. See *In re Fleishman*, 372 B.R. 64, 58 Collier Bankr. Cas. 2d 593, Bankr. L. Rep. ¶ 80,990 (Bankr. D. Or., July 9, 2007) (where the debtor wife was pregnant, but had not given birth as of the plan confirmation date, the unborn child was not a household member); *In re Anderson*, 367 B.R. 727 (Bankr. D. Kan., April 13, 2007) (between the petition date and the plan confirmation date, the debtor’s household size increased from two to six, as the debtor’s 24-year-old daughter and three grandchildren came to live with her). Cf. *In re Webb*, 370 B.R. 418, 57 Collier Bankr. Cas. 2d 1519 (Bankr. N.D. Ga., Feb. 22, 2007) (where the debtors added three household members shortly before filing their petition, as the three children of the debtor wife’s sister had come to live with them following the sister’s death, the debtors properly computed their expenses on the basis of the increased household size).

In this Research Guide, the cases are arranged in two ways. In this Division I, the cases are arranged by their approach to the calculation of projected disposable income. In the following Division II, the cases are arranged by circuit. That division lists all the cases that I have been able to find. Not all of the decisions are listed in this division, as many don’t take a position on the specific issue of a multiplicative versus a forward-looking approach.

For a few cases that have particularly helpful discussions of the issue, see *In re Wilson*, 2008 WL 619196 (Bankr. M.D. N.C., March 3, 2008) (as to income, Form 22C is presumptively correct); *In re May*, 381 B.R. 498 (Bankr. W.D. Pa., Jan. 28, 2008) (Form 22C establishes a rebuttable presumption as to both income and expenses); *In re Simms*, 2008 WL 217174 (Bankr. N.D. W.Va., Jan. 23, 2008) (adopting multiplicative approach); *In re Briscoe*, 374 B.R. 1, 58 Collier Bankr. Cas. 2d 850 (Bankr. D. Dist. Col., Sept. 4, 2007) (while Form 22C establishes a presumption of the debtor's projected disposable income, this presumption may be rebutted with respect to either income or expenses); *In re Kolb*, 366 B.R. 802 (Bankr. S.D. Ohio; March 30, 2007) (adopting multiplicative approach).

B. Multiplicative Approach

1. In General

The multiplicative approach is generally traced to *In re Alexander*, 344 B.R. 742, 56 Collier Bankr. Cas. 2d 427 (Bankr. E.D. N.C., June 30, 2006) (Chief Bankruptcy Judge J. Rich Leonard), as it is the first published decision (and the earliest decision appearing on Westlaw) that adopts this approach. *In re Barr*, 341 B.R. 181, 55 Collier Bankr. Cas. 2d 1763, Bankr. L. Rep. ¶ 80,490 (Bankr. M.D. N.C., April 5, 2006) (Chief Bankruptcy Judge William L. Stocks), decided some three months earlier, is often cited as another progenitor of this approach, although a careful reading reveals that that case addressed a debtor's good faith under Code § 1325(a)(3). In fact, in *In re Crittendon*, 2006 WL 2547102 (Bankr. M.D. N.C., Sept. 1, 2006), Chief Judge Stocks adopted a forward-looking approach.

Under the multiplicative approach, income is predicated on the six-month prepetition period given by Code § 101(10A), expenses are based on the means test applied on the petition date, and no further adjustments are made. The disposable income calculated on Form 22C is simply multiplied by the number of months in the debtor's applicable commitment period.

Courts adopting the multiplicative approach are in a distinct minority, although I find the reasoning persuasive. This approach may force a debtor to propose, in effect, an infeasible plan, however, if the debtor's income has decreased or his or her expenses have increased, compared to the figures shown on Form 22C. Thus, among courts adopting this approach, an important consideration is whether the court is prepared to recognize an exception under these circumstances. This question is addressed below in 3. Effect of Infeasibility of Plan.

2. Courts Applying Multiplicative Approach

Multiple opinions by the same judge are grouped. The list includes two appellate courts: *In re Mancl*, 381 B.R. 537, Bankr. L. Rep. ¶ 81,111 (W.D. Wis., Feb. 12, 2008) (Chief District Judge Barbara B. Crabb); *In re Frederickson*, 375 B.R. 829, 58 Collier Bankr. Cas. 2d 719, Bankr. L. Rep. ¶ 81,022 (8th Cir. B.A.P., Sept. 24, 2007).

Second Circuit

In re Brunner, 2007 WL 4373119 (Bankr. N.D. N.Y., Dec. 7, 2007) (Bankruptcy Judge Robert E. Littlefield Jr.) (rejecting step-up upon completion of debt repayment); *In re McLain*, 378 B.R. 39 (Bankr. N.D. N.Y., Oct. 24, 2007) (Bankruptcy Judge Robert E. Littlefield Jr.) (rejecting step-up upon completion of debt repayment); *In re Green*, 378 B.R. 30 (Bankr. N.D. N.Y., Aug. 29, 2007) (Bankruptcy Judge Robert E. Littlefield Jr.) (“[u]nless ‘projected disposable income’ is related to ‘disposable income,’ § 1325(b)(2) is nothing more than a bizarre curiosity, a hanging definition with no meaning, relevance or importance”)

In re Austin, 372 B.R. 668 (Bankr. D. Vt., Aug. 7, 2007) (Bankruptcy Judge Colleen A. Brown)

Third Circuit

In re Bardo, 379 B.R. 524 (Bankr. M.D. Pa., Sept. 7, 2007) (Chief Bankruptcy Judge John J. Thomas) (“[a] significant body of case law has developed premised on the conclusion that Congress could not have possibly meant to refer to the definition of ‘disposable income’ when discussing ‘projected disposable income.’ This seems hardly possible.”)

In re Vaughn, Case no. 06-00788 (Bankr. M.D. Pa., June 8, 2007) (Bankruptcy Judge Mary D. France) (multiplicative approach, unless “the use of this formula will produce an absurd result mandating the consideration of other factors,” such as the debtor’s loss of employment or experiencing unexpected expenses) ([view full opinion](#))

Fourth Circuit

In re Linn, 2008 WL 687448 (Bankr. N.D. W.Va., March 10, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (multiplicative approach unless the debtor’s income has decreased, in which case the court will look to Schedules I and J; the court will adhere to the multiplicative approach where the debtor’s income has increased); *In re Waters*, — B.R. —, 2008 WL 216312 (Bankr. N.D. W.Va., Jan. 24, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (the debtor’s income had increased); *In re Simms*, 2008 WL 217174 (Bankr. N.D. W.Va., Jan. 23, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (the debtor’s schedules showed that he could pay more)

In re Buck, 2007 WL 4418145 (Bankr. E.D. Va., Dec. 14, 2007) (Bankruptcy Judge Kevin R. Huennekens) (the above-median debtors proposed using their schedules; as the difference was small, questions of infeasibility probably were not presented)

In re Musselman, 379 B.R. 583 (Bankr. E.D. N.C., Nov. 30, 2007) (Chief Bankruptcy Judge Randy D. Doub) (although the debtors apparently could pay more)

In re Williams, Case No. 07-00396-5-ATS (Bankr. E.D. N.C., Oct. 25, 2007) (Bankruptcy Judge A. Thomas Small) ([view full opinion](#))

In re Winokur, 364 B.R. 204 (Bankr. E.D. Va., Jan. 18, 2007) (Bankruptcy Judge Robert G. Mayer) (although the debtors could pay more)

In re Girodes, 350 B.R. 31, Bankr. L. Rep. ¶ 80,813 (Bankr. M.D. N.C., Sept. 20, 2006) (Bankruptcy Judge Catherine R. Carruthers)

In re Alexander, 344 B.R. 742, 56 Collier Bankr. Cas. 2d 427 (Bankr. E.D. N.C., June 30, 2006) (Chief Bankruptcy Judge J. Rich Leonard) (although the debtors could pay more)

Fifth Circuit

In re Dalton, 2007 WL 4554024 (Bankr. S.D. Miss., Dec. 19, 2007) (Bankruptcy Judge Edward R. Gaines) (the debtors' schedules showed that they could pay more)

Sixth Circuit

In re Anderson, — B.R. —, 2008 WL 748416 (Bankr. S.D. Ohio, March 21, 2008) (Bankruptcy Judge Guy R. Humphrey) (the court recognized that, in some cases, the multiplicative approach would preclude debtors from obtaining bankruptcy relief, although this was not such a case)

In re Petro, 381 B.R. 233, Bankr. L. Rep. ¶ 81,094 (Bankr. M.D. Tenn., Jan. 23, 2008) (Chief Bankruptcy Judge George C. Paine II) (although the debtors could pay more)

In re Kolb, 366 B.R. 802 (Bankr. S.D. Ohio; March 30, 2007) (Bankruptcy Judge Lawrence S. Walter) (multiplicative approach even where, as here, the debtor's income had decreased, and the result was an infeasible plan; "The court recognizes that this Debtor may never be able to propose a confirmable plan with a 100% return to unsecured creditors. The reason is simple. The Debtor's schedules of income and expenses reveal that she may not have the actual income necessary to pay her unsecured creditors in full within five years. This is the unfortunate result of a congressionally-created system that uses rigid formulas to calculate a debtor's chapter 13 plan payments rather than considering a debtor's present financial reality and ability to pay. Nonetheless, as noted elsewhere in this decision and by other courts interpreting these provisions of BAPCPA, it is not this court's function to legislate, but to interpret and apply the law as written"; while recognizing that "absurdity represents an exception to the doctrine of plain meaning," the court concluded that the multiplicative approach in general "does not rise to the level of absurdity, although the court did not consider whether the outcome of this particular case was absurd; the court recognized, but did not further discuss the application of, the principle that "because Congress specifically referenced subparagraph (B) of § 707(b)(2) in § 1325(b)(3), § 707(b)(2)(B) may allow for an adjustment to CMI or a debtor's expenses where 'special circumstances' exist")

Seventh Circuit

In re Mancl, 381 B.R. 537, Bankr. L. Rep. ¶ 81,111 (W.D. Wis., Feb. 12, 2008) (Chief District Judge Barbara B. Crabb) (“The term disposable income is used only once in the subsection, in the phrase ‘projected disposable income.’ To adopt the majority view, one must assume that Congress created the precise and objective current monthly income definition of § 101(10A), mandated that bankruptcy courts apply it to the § 1325(b) test, and then added the term ‘projected’ to empower bankruptcy courts to ignore the § 101(10A) definition, substituting their own sense of fairness by applying the former process of analyzing and comparing schedules I and J. Given the precision and detail of the statute, such an interpretation is untenable”; the trustee contended that the debtors could pay more because the husband debtor was temporarily unable to work during the six months prepetition)

In re Spraggins, — B.R. —, 2008 WL 1744576 (Bankr. E.D. Wis., April 11, 2008) (Bankruptcy Judge Susan V. Kelley)

In re Ross, 377 B.R. 599 (Bankr. N.D. Ill., Oct. 31, 2007) (Bankruptcy Judge John H. Squires) (although the debtor’s income had decreased, the court was not faced with an infeasible plan, as the debtor was able to pay his unsecured creditors in full); *In re Ross*, 375 B.R. 437 (Bankr. N.D. Ill., Sept. 13, 2007), amended on reconsideration on other grounds, 377 B.R. 599 (Bankr. N.D. Ill., Oct. 31, 2007) (Bankruptcy Judge John H. Squires)

In re Barrett, 371 B.R. 855 (Bankr. S.D. Ill., July 10, 2007) (Chief Bankruptcy Judge Kenneth J. Meyers) (rejecting step-up); *In re Nance*, 371 B.R. 358 (Bankr. S.D. Ill., July 10, 2007) (Chief Bankruptcy Judge Kenneth J. Meyers)

See also two cases in which the courts, although not addressing the calculation of income, held that an above-median debtor’s expenses are determined under the means test as applied on the petition date. These decisions apply a multiplicative approach to the calculation of expenses but do not explicitly reveal if that approach should also be applied to calculating income:

In re Turner, — B.R. —, 2008 WL 834424 (Bankr. S.D. Ind., March 27, 2008) (Bankruptcy Judge James K. Coachys) (expenses of above-median debtors are determined by applying the means test as of the petition date; the trustee contended that the debtors could pay more because they were surrendering their house)

In re Burmeister, 378 B.R. 227 (Bankr. N.D. Ill., Nov. 16, 2007) (Bankruptcy Judge A. Benjamin Goldgar) (expenses of above-median debtors are determined by applying the means test; the test is applied as of the petition date; thus, the debtors could deduct payments on secured debt for which they intended to surrender the collateral)

Eighth Circuit

In re Frederickson, 375 B.R. 829, 58 Collier Bankr. Cas. 2d 719, Bankr. L. Rep. ¶ 81,022 (8th Cir. B.A.P., Sept. 24, 2007) (postpetition changes not involved, so infeasibility not in issue)

In re Colclasure, 383 B.R. 463 (Bankr. E.D. Ark., March 12, 2008) (Bankruptcy Judge James G. Mixon) (multiplicative approach, even where the debtors' income decreased and the calculated payments were infeasible; although the U.S. Trustee urged recognition of changed circumstances, the Chapter 13 Trustee objected)

In re Riding, 377 B.R. 239 (Bankr. W.D. Mo., Oct. 30, 2007) (Bankruptcy Judge Arthur B. Federman) (multiplicative approach, even where the debtor's income decreased and the calculated payments were infeasible)

Ninth Circuit

Note: All of these decisions may be effectively abrogated if BAP decisions are binding within the circuit. See *In re Pak*, 378 B.R. 257, Bankr. L. Rep. ¶ 81,059 (9th Cir. B.A.P., Nov. 7, 2007), which held that "disposable income," as defined in Code § 1325(b)(2), is only the starting point for determining "projected disposable income."

In re Stubbs, 2007 WL 4287579 (Bankr. D. Mont., Dec. 6, 2007) (Bankruptcy Judge Ralph B. Kirscher) (adhering to multiplicative approach, without reference to *In re Pak*); *In re Crabtree*, 2007 WL 3024030 (Bankr. D. Mont., Oct. 12, 2007) (Bankruptcy Judge Ralph B. Kirscher); *In re Tuss*, 360 B.R. 684, 56 Collier Bankr. Cas. 2d 864 (Bankr. D. Mont., Jan. 5, 2007) (Bankruptcy Judge Ralph B. Kirscher); *In re Tranmer*, 355 B.R. 234 (Bankr. D. Mont., Nov. 16, 2006) (Bankruptcy Judge Ralph B. Kirscher)

In re Kagenveama, 2006 Bankr. Lexis 2759, Case No. 05-28079-PHX-CGC (Bankr. D. Ariz., July 10, 2006), as amended, (July 18, 2006) (Bankruptcy Judge Charles G. Case II) ([view full opinion](#))

Tenth Circuit

Note: These decisions may be effectively abrogated if BAP decisions are binding within the circuit. See *In re Lanning*, 380 B.R. 17, Bankr. L. Rep. ¶ 81,082 (10th Cir. B.A.P., Dec. 13, 2007) ("disposable income" is only the starting point in determining "projected disposable income" under Code § 1325(b)(1)(B)).

In re Lawson, 361 B.R. 215, 57 Collier Bankr. Cas. 2d 649 (Bankr. D. Utah, Jan. 25, 2007) (Bankruptcy Judge Judith A. Boulden); *In re Hanks*, 362 B.R. 494 (Bankr. D. Utah, Jan. 9, 2007) (Bankruptcy Judge Judith A. Boulden) (multiplicative approach, even where the debtors' income decreased, so the calculated plan payment was infeasible; "a harsh or even illogical result is not the same thing as an absurd result"; court may adjust both income and expenses via the incorporation of § 707(b)(2)(B) into Code § 1325(b)(3); however, loss of job did not constitute special circumstance, although the court apparently accepted the notion that changes over time could amount to special circumstances)

Eleventh Circuit

In re Berger, 376 B.R. 42 (Bankr. M.D. Ga., June 11, 2007) (Bankruptcy Judge James D. Walker Jr.) (the forward-looking approach “renders ... superfluous .. the entirety of subsection 1325(b)(2)”); step-up [upon completion of repaying loans from 401(k) account] not required; here, the debtors’ income had increased)

In re Miller, 361 B.R. 224, 56 Collier Bankr. Cas. 2d 795 (Bankr. N.D. Ala., Jan. 18, 2007) (Bankruptcy Judge Jack Caddell) (both expenses and income may be adjusted via a finding of “special circumstances,” although the court did not need to consider special circumstances here)

3. Effect of Infeasibility of Plan

a. In general

The one real pitfall of the multiplicative approach is responding to changed circumstances, either increased expenses, or, more likely, decreased income, that render the plan payment calculated under the multiplicative approach infeasible. Courts have dealt with this in different ways. This will come up, of course, only if the Trustee or an unsecured creditor objects to confirmation.

b. Inflexible application of multiplicative approach

One group of courts applies the multiplicative approach inflexibly, even though this may preclude bankruptcy relief for the debtor. See *In re Anderson*, — B.R. —, 2008 WL 748416 (Bankr. S.D. Ohio, March 21, 2008) (Bankruptcy Judge Guy R. Humphrey) (recognizing possibility); *In re Kolb*, 366 B.R. 802 (Bankr. S.D. Ohio; March 30, 2007) (Bankruptcy Judge Lawrence S. Walter); *In re Colclasure*, — B.R. —, 2008 WL 726896 (Bankr. E.D. Ark., March 12, 2008) (Bankruptcy Judge James G. Mixon); *In re Riding*, 377 B.R. 239 (Bankr. W.D. Mo., Oct. 30, 2007) (Bankruptcy Judge Arthur B. Federman); *In re Miller*, 381 B.R. 736 (Bankr. W.D. Ark., Jan. 29, 2008) (Bankruptcy Judge Ben T. Barry); *In re Hanks*, 362 B.R. 494 (Bankr. D. Utah, Jan. 9, 2007) (Bankruptcy Judge Judith A. Boulden).

One court has suggested that debtors forced into Chapter 7 due to the inflexible application of the multiplicative approach should not be subject to dismissal or conversion for abuse under Code § 707(b). See *In re Miller*, 381 B.R. 736 (Bankr. W.D. Ark., Jan. 29, 2008).

c. Exception for absurd result

At least two courts applying the multiplicative approach have recognized an exception to that approach where the result is an infeasible plan. These courts reason—properly, I believe—that this situation presents an absurd outcome, justifying a departure from the plain meaning of the statute. See *In re Vaughn*, Case no. 06-00788 (Bankr. M.D. Pa., June 8, 2007) (Bankruptcy Judge Mary D. France) (multiplicative approach, unless “the use of this formula will produce an absurd result mandating the consideration of other factors,” such as the debtor’s loss of employment or experiencing unexpected expenses) ([view full opinion](#));

In re Linn, 2008 WL 687448 (Bankr. N.D. W.Va., March 10, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (multiplicative approach unless the debtor's income has decreased, in which case the court will look to Schedules I and J; the court will adhere to the multiplicative approach where the debtor's income has increased). See also *In re Waters*, — B.R. —, 2008 WL 216312 (Bankr. N.D. W.Va., Jan. 24, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (applying multiplicative approach but commenting that its application to a debtor whose income had decreased might produce an absurd result); *In re Edmondson*, 363 B.R. 212, 57 Collier Bankr. Cas. 2d 1082 (Bankr. D. N.M., March 5, 2007) (Chief Bankruptcy Judge Mark B. McFeeley) (adopting the forward-looking approach in part because "strict adherence to Form B22C will result in absurd and illogical results, i.e., denial of confirmation as de facto infeasible because a debtor's actual income is significantly lower than that reflected on Form B22C").

Other courts have disagreed that the interpretive doctrine of absurdity may be invoked under these circumstances. See *In re Hanks*, 362 B.R. 494 (Bankr. D. Utah, Jan. 9, 2007) (Bankruptcy Judge Judith A. Boulden) (multiplicative approach, even where the debtors' income decreased, so the calculated plan payment was infeasible; "a harsh or even illogical result is not the same thing as an absurd result"). See also *In re Kolb*, 366 B.R. 802 (Bankr. S.D. Ohio; March 30, 2007) (Bankruptcy Judge Lawrence S. Walter) (multiplicative approach even where, as here, the debtor's income had decreased, and the result was an infeasible plan; while recognizing that "absurdity represents an exception to the doctrine of plain meaning," the court concluded that the multiplicative approach in general "does not rise to the level of absurdity," although the court did not consider whether the outcome of this particular case was absurd).

d. Establishment of "special circumstances"

Another tack that may be available to a court applying the multiplicative approach is to permit the debtor to adjust his or her income by establishing "special circumstances" under Code § 707(b)(2)(B). See *In re Miller*, 361 B.R. 224, 56 Collier Bankr. Cas. 2d 795 (Bankr. N.D. Ala., Jan. 18, 2007) (Bankruptcy Judge Jack Caddell) ("Courts that turn to Schedules I and J to calculate disposable income also fail to recognize that Congress tied the calculation of disposable income for above median income debtors not only to § 707(b)(2)(A) under the means test, but also to § 707(b)(2)(B). Under § 707(b)(2)(B), the court may consider special circumstances that make 'such expenses or adjustments to income necessary and reasonable.' If special circumstances necessitate a deviation from Form B22C, those circumstances can be raised under § 707(b)(2)(B) without turning to Schedules I and J.").

For other cases recognizing that special circumstances may be established with respect to the income component of projected disposable income, see *In re Crego*, 2008 WL 942618 (Bankr. E.D. Wis., April 2, 2008) (Bankruptcy Judge Susan V. Kelley) ("cases examining special circumstances in Chapter 7 cases apply equally in this Chapter 13 case"); *In re Pak*, 378 B.R. 257, Bankr. L. Rep. ¶ 81,059 (9th Cir. B.A.P., Nov. 7, 2007) (Klein, J., concurring) ("the construction of the statute that discerns the ability to adjust 'current monthly income' based on 'special circumstances' is a plausible reading of the relevant provisions of the Bankruptcy Code and accounts for both upward and downward adjustments to 'current monthly income'"); *In re Puetz*, 370 B.R. 386 (Bankr. D. Kan., June 22, 2007) (Bankruptcy Judge Robert D. Berger) (either the debtor or the trustee may establish special circumstances warranting an adjustment to either the debtor's current monthly income or expenses); *In re Kolb*, 366 B.R. 802 (Bankr. S.D. Ohio; March 30, 2007) (Bankruptcy Judge Lawrence S. Walter) (stating that "because Congress specifically referenced subparagraph

(B) of § 707(b)(2) in § 1325(b)(3), § 707(b)(2)(B) may allow for an adjustment to CMI or a debtor's expenses where 'special circumstances' exist," although the court had no need to apply this principle); *In re Knight*, 370 B.R. 429 (Bankr. N.D. Ga., June 27, 2007) (Bankruptcy Judge Paul W. Bonapfel) (same); *In re Ries*, 377 B.R. 777, 2007 BNH 36 (Bankr. D. N.H., Sept. 18, 2007) (Bankruptcy Judge J. Michael Deasy) ("[t]he Special Circumstances provision allows for the modification of both CMI and expenses provided that a special circumstance can be proven which necessitates the alteration"); *In re Moore*, 367 B.R. 721 (Bankr. D. Kan., April 13, 2007) (Bankruptcy Judge Robert D. Berger) (the incorporation of § 707(b)(2)(B) into Code § 1325(b)(3) "provides the Court with the ability to adjust both CMI and expenses"; here, the debtor's income decreased, and the court applied the "special circumstances" doctrine to a change over time); *In re Hanks*, 362 B.R. 494 (Bankr. D. Utah, Jan. 9, 2007) (Bankruptcy Judge Judith A. Boulden) (the court may adjust both income and expenses via the incorporation of § 707(b)(2)(B) into Code § 1325(b)(3)).

This will only be helpful, of course, if the court accepts the proposition that the debtor's loss of income presented a case of "special circumstances." See *In re Hanks*, 362 B.R. 494 (Bankr. D. Utah, Jan. 9, 2007) (Bankruptcy Judge Judith A. Boulden) (the debtor's loss of a job did not constitute a special circumstance, although the court apparently accepted the notion that changes over time could amount to special circumstances).

Other courts have disagreed with the assertion that "special circumstances" may be established in relation to the income component of projected disposable income. Courts that reject its application point out that Code § 1325(b)(3) provides only that "[a]mounts reasonably necessary to be expended under paragraph (2) ... shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)." These courts reason that the application of special circumstances is explicitly tied only to the determination of expenses. See *In re Wilson*, 2008 WL 619196 (Bankr. M.D. N.C., March 3, 2008) (Bankruptcy Judge Thomas W. Waldrep Jr.); *In re Louviere*, 2008 WL 925824 (Bankr. E.D. Tex., April 4, 2008) (Chief Bankruptcy Judge Bill Parker); *In re Riding*, 377 B.R. 239 (Bankr. W.D. Mo., Oct. 30, 2007) (Bankruptcy Judge Arthur B. Federman); *In re Briscoe*, 374 B.R. 1, 58 Collier Bankr. Cas. 2d 850 (Bankr. D. Dist. Col., Sept. 4, 2007) (Bankruptcy Judge S. Martin Teel Jr.). See also *In re Ross*, 377 B.R. 599 (Bankr. N.D. Ill., Oct. 31, 2007) (Bankruptcy Judge John H. Squires) (apparently holding that special circumstances apply only to expenses).

Courts that calculate projected disposable income by starting with the figure from Form 22C but permitting the debtor to establish special circumstances with respect to income in essence bridge the gap between the multiplicative and the forward-looking approach. This interpretive combination has the effect of pushing the timeframe forward without the necessity of appearing to change an express statutory calculation to a mere presumption. In fact, one court has implemented a forward-looking approach by allowing either the debtor or the Trustee to establish special circumstances. See *In re Puetz*, 370 B.R. 386 (Bankr. D. Kan., June 22, 2007) (Bankruptcy Judge Robert D. Berger); *In re Moore*, 367 B.R. 721 (Bankr. D. Kan., April 13, 2007) (same). The analysis under this framework is identical to that of courts applying the multiplicative approach and recognizing special circumstances with respect to both income and expenses, except that it permits the Trustee, as well as the debtor, to assert a claim of special circumstances. See also *In re Lanning*, 380 B.R. 17, Bankr. L. Rep. ¶ 81,082 (10th Cir. B.A.P., Dec. 13, 2007) ("disposable income" is only the starting point in determining "projected disposable income" under Code § 1325(b)(1)(B); parties contending that a debtor's Form 22C disposable income figure does not accurately project the debtor's future ability to fund a plan must present documentation similar to that required by Code § 707(b)(2)(B)(ii) in support of their claim).

e. Court's establishing more recent interval for calculation of "current monthly income"

Based on the interplay of Code § 101(10A), defining "current monthly income," and § 521(a)(1)(B)(ii), authorizing the court to excuse the debtor's filing of financial schedules, a number of courts have concluded that a court has the authority to specify a more current six-month period for the calculation of "current monthly income." Code § 521(a)(1)(B)(ii) requires a debtor to file a schedule of current income (Schedule I) and current expenditures (Schedule J), unless the court orders otherwise, and Code § 101(10A)(A)(ii) provides that the six-month period for the calculation of "current monthly income" ends on "the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii)." These courts reason that they may strike the debtor's Schedule I under § 521(a)(1)(B)(ii), and that, by doing so, they are then authorized under § 101(10A)(A)(ii) to establish a new, presumably more current, six-month period for the calculation of current monthly income. See *In re Montgomery*, 2008 WL 597180 (Bankr. M.D. N.C., March 4, 2008) (Bankruptcy Judge Catharine R. Carruthers); *In re Wilson*, 2008 WL 619196 (Bankr. M.D. N.C., March 3, 2008) (Bankruptcy Judge Thomas W. Waldrep Jr.); *In re Musselman*, 379 B.R. 583 (Bankr. E.D. N.C., Nov. 30, 2007) (Chief Bankruptcy Judge Randy Davis Doub); *In re McQueen*, Case No. 07-03011-8-JRL (Bankr. E.D. N.C., Dec. 21, 2007) (Bankruptcy Judge J. Rich Leonard) ([view full opinion](#)); *In re Ingram*, Case No. 06-02714-8-RDD (Bankr. E.D. N.C., Nov. 20, 2006) (Chief Bankruptcy Judge Randy Davis Doub) ([view full opinion](#)).

Although only *In re Ingram* mentions striking the debtor's original Form 22C, the court has authority to do so under Code § 521(a)(1)(B)(v), at least if these courts' reasoning is correct.

C. Forward-Looking Approach

1. In General

Courts have applied a forward-looking approach to the calculation of projected disposable income in a wide variety of ways, the common element being an insistence on looking beyond Form 22C. Beyond that, courts disagree on:

- Whether only income, only expenses, or both income and expenses are determined in a forward-looking manner. If one of the two components is not, then the numbers from Form 22C control as to that component.
- Whether the calculation should be based on the debtor's actual income or expenses on a specific date (i.e., the petition date [which is forward-looking only for income], the date on which the first payment is due under the plan, or the plan confirmation date) or on the debtor's projected income and expenses over the term of the plan.
- Whether the calculation, whenever its date, must be made on the basis of the specified methodologies in Code § 101(10A) (income) and Code § 707(b)(2) (expenses for above-median debtors), or whether the court can go beyond those methodologies.

- Whether Code § 1325(b)(2) provides the court with an independent basis of authority to evaluate whether an above-median debtor's expenses are reasonable, necessary and actual. (This can overlap with the preceding issue.)

On the issue of whether a court is bound by the methodologies in § 101(10A) and § 707(b)(2), a large majority of courts explicitly answer in the affirmative. On the other hand, a number of courts, in calling for resort to Schedules I and J, have been ambiguous on this issue, as it may be unclear whether the court is authorizing going beyond the statutory methodologies or simply using those schedules, rather than Form 22C, to provide the input for the specified methodologies. And several courts appear to have disavowed the statutory methodologies. See, for example, the following:

- *In re Liverman*, — B.R. —, 2008 WL 768727 (Bankr. D. N.J., March 5, 2008) (Chief Bankruptcy Judge Judith H. Wizmur) (“[t]he mandate to use standardized means test expenses extends only to define ‘disposable income,’ and does not extend to give meaning to the term ‘projected disposable income’ in § 1325(b)(1)(B). ... It follows that the most plausible reconciliation of the paragraphs of § 1325(b) is that disposable income is calculated according to the prescribed § 1325(b)(2) formula, and is then ‘projected’ with reference to actual income and expenses as necessary to reflect a debtor’s changed circumstances as of the effective date of the plan.”)
- *In re Riggs*, 359 B.R. 649, 57 Collier Bankr. Cas. 2d 1147 (Bankr. E.D. Ky., Feb. 27, 2007) (Bankruptcy Judge William S. Howard) (a debtor’s projected disposable income must be determined by reference to his or her Schedules I and J; this formulation appears to ignore Form 22C)
- *In re Lacny*, 2007 WL 3216627 (Bankr. E.D. Ky., Oct. 25, 2007) (Bankruptcy Judge Joseph M. Scott Jr.) (when calculating Schedule J, debtors—including above-median debtors—shall include expenses that accurately portray the debtor’s situation after making an effort to reduce those expenses; all expenses must be “reasonably necessary”; the court made no reference to the means test or Code § 1325(b)(3))
- *In re Gress*, 344 B.R. 919, Bankr. L. Rep. ¶ 80,765 (Bankr. W.D. Mo., June 14, 2006) (Bankruptcy Judge Arthur B. Federman) (“In enacting the means test, Congress intended to take away discretion from the courts as to higher income debtors, who were seen as abusers of the system. Arguably, for that reason, a mechanical test such as that argued by the Debtors should be applied here. As can be seen, however, the use of the means test in this fashion allows debtors to propose plan payments based on a sort of parallel universe, which sometimes has little or nothing to do with their actual situation. For that reason, the courts in this district have previously found that Congress could not have intended a purely mechanical application of the means test to determine the amount above-median debtors are required to pay to unsecured creditors.”)
- *In re Strickland*, 2008 WL 205577 (Bankr. M.D. Ala. Jan. 24, 2008) (Chief Bankruptcy Judge Dwight H. Williams Jr.) (Form 22C establishes a presumption of the debtor’s projected disposable income; this presumption may be rebutted by evidence that “the debtor’s expectancy of the future will alter that result”; although the court recognized that an above-median debtor’s expenses are determined under the means test, the court held that where, as here, the debtors’ actual vehicle

ownership expenses were less than the IRS standard amounts, the debtors could deduct only their actual payments; this has the effect of reducing the means test deductions to the debtor's actual expense, under the guise of "expectancy").

On the issue of whether Code § 1325(b)(2) provides the court with an independent basis of authority to evaluate whether an above-median debtor's expenses are reasonable, necessary and actual, quite a few cases have explicitly rejected this interpretation. See *In re Moore*, 2008 WL 895668 (Bankr. M.D. N.C., April 2, 2008) (Chief Bankruptcy Judge William L. Stocks); *In re Owsley*, --- B.R. ---, 2008 WL 868044 (Bankr. N.D. Tex., March 31, 2008) (Bankruptcy Judge Russell F. Nelms); *In re Anderson*, --- B.R. ---, 2008 WL 748416 (Bankr. S.D. Ohio, March 21, 2008) (Bankruptcy Judge Guy R. Humphrey); *In re Van Bodegom Smith*, --- B.R. ---, 2008 WL 613177 (Bankr. E.D. Wis., March 6, 2008) (Bankruptcy Judge Pamela Pepper); *In re Franco*, 2008 WL 444679 (Bankr. S.D. Ill., Feb. 12, 2008) (Chief Bankruptcy Judge Kenneth J. Meyers); *In re Sallee*, 2007 WL 3407738 (Bankr. S.D. Ill., Nov. 15, 2007) (Chief Bankruptcy Judge Kenneth J. Meyers); *In re Barrett*, --- B.R. ---, 2007 WL 2255097 (Bankr. S.D. Ill., July 10, 2007) (Chief Bankruptcy Judge Kenneth J. Meyers); *In re Carlton*, 362 B.R. 402, 57 Collier Bankr. Cas. 2d 1065 (Bankr. C.D. Ill., Feb. 28, 2007), reconsideration denied, 370 B.R. 188 (Bankr. C.D. Ill., June 18, 2007) (Bankruptcy Judge Mary P. Gorman); *In re Jones*, 2007 WL 4893472 (Bankr. D. Neb., Dec. 14, 2007) (Bankruptcy Judge Thomas L. Saladino); *In re Renicker*, 342 B.R. 304, 56 Collier Bankr. Cas. 2d 377, Bankr. L. Rep. ¶ 80,608 (Bankr. W.D. Mo., May 15, 2006) (Bankruptcy Judge Jerry W. Venters); *In re Martin*, 373 B.R. 731 (Bankr. D. Utah, May 8, 2007) (Bankruptcy Judge William T. Thurman); *In re Arsenault*, 370 B.R. 845, 20 Fla. L. Weekly Fed. B. 475 (Bankr. M.D. Fla., July 3, 2007); *In re Johnson*, 346 B.R. 256 (Bankr. S.D. Ga., July 21, 2006) (Bankruptcy Judge John S. Dalis); *In re Briscoe*, 374 B.R. 1, 58 Collier Bankr. Cas. 2d 850 (Bankr. D. Dist. Col., Sept. 4, 2007) (Bankruptcy Judge S. Martin Teel Jr.).

For courts that do, or at least appear to, find an independent basis of authority in Code § 1325(b)(2), see the following:

- *In re Edmunds*, 350 B.R. 636 (Bankr. D. S.C., Sept. 18, 2006) (Chief Bankruptcy Judge John E. Waites) (while the expenses of an above-median debtor are determined under the means test, the categories of expenses that are based on the debtor's actual expenses are subject to a test of reasonableness under Code § 1325(b)(3))
- *In re Redmond*, 2008 WL 1752133 (Bankr. S.D. Tex., April 14, 2008) (Bankruptcy Judge Letitia Z. Clark) (the court assessed the reasonableness of the above-median debtor's expenses without explicitly considering whether the court is empowered to do so; the court determined that "the expense of owning and maintaining three vehicles for the use of the debtor and her roommate is not necessary," and that the debtor "presented no evidence with respect to the question of whether the payment of the student loan outside the plan is reasonably necessary to the support of the Debtor or the Debtor's dependents")
- *In re Sadler*, 378 B.R. 780 (Bankr. E.D. Tex., Oct. 9, 2007) (Chief Bankruptcy Judge Bill Parker) ("[i]n the opinion of this Court, the phrase 'in accordance with' as utilized in § 1325(b)(3) means that the standards imposed by that subsection cannot be violated during the determination of whether proposed expenditures are reasonable and necessary. However, the fact that a debtor proposes a plan with a payment amount to unsecured creditors equivalent to the B22C calculation does not necessarily constitute compliance with the § 1325(b)(1)(B) standard and does not

preclude the Court from engaging in a further evaluation of the reasonableness of the debtor's expenses")

- *In re Devilliers*, 358 B.R. 849 (Bankr. E.D. La., Jan. 9, 2007) (Bankruptcy Judge Elizabeth W. Magner) (while "the starting point for all debtors will be the IRS standard deductions regardless of their prepetition experience," the Trustee "is free to challenge the calculation of disposable income in the future if he believes the debtor's actual experience, over a sustained and reasonable period of time, does not necessitate the full allowance claimed"; this is due to "[t]he limitations of § 1325 requiring that any expenditure be reasonably necessary"; all expenses under the means test, other than the IRS standard amounts, are subject to the requirements of necessity and reasonableness, although, for expenses that existed prepetition, the court would assume that these expenses were reasonable and necessary (but these deduction apparently may be challenged by the Trustee in the same manner as deductions for the IRS standard amounts))
- *In re McGillis*, 370 B.R. 720 (Bankr. W.D. Mich., May 15, 2007) (Bankruptcy Judge Jeffrey R. Hughes) (income is based on Form 22C, but all expenses, even those of an above-median debtor under the means test, must be both actual and reasonable; thus, the debtor may deduct only the lesser of the IRS standard amount and his or her actual expense, and the debtor may not deduct payments on a secured debt for which the debtor intends to surrender the collateral)
- *In re Upton*, 363 B.R. 528 (Bankr. S.D. Ohio, March 14, 2007) (Bankruptcy Judge C. Kathryn Preston) ("[i]n the case where the debtor's actual expenses are less than those allowed under the Form 22 means test, her Schedule J may reflect that she has additional income available to pay into the plan that Form 22 does not")
- *In re Rains*, 2007 WL 2900534 (Bankr. N.D. Cal., Oct. 2, 2007) (Bankruptcy Judge Edward D. Jellen) ("[t]he court holds that, for purposes of this case, the calculation of the [above-median] debtors' projected disposable income is governed by the information the debtors provided in their Schedules I (Income) and J (Expenses), and that the debtors are not entitled to a fixed allowance of any expense that is in excess of their actual expenses that are reasonably necessary for their maintenance and support, even if such a fixed allowance might be included in the 'means test' under § 707(b)")

See also *In re Broers*, 2007 WL 4166144 (Bankr. E.D. Wash., Nov. 20, 2007) (Chief Bankruptcy Judge Frank L. Kurtz) (the court does not retain the authority to determine if the expenses of an above-median debtor are necessary and reasonable; however, the court retained certain discretion, which it would exercise here, as the IRS standard was unclear as to whether a debtor in a one-person household could claim ownership expenses for two vehicles; the court determined that this debtor's doing so would be unreasonable and denied the deduction).

Note that the fact that a decision evaluates the reasonableness and necessity of an above-median debtor's expenses does not, in itself, mean that the court is asserting an independent basis of authority under Code § 1325(b)(2) for doing so. The court may simply be applying the means test, under which all expenses other than those provided by IRS standards are required to be reasonable and necessary. See *In re Johnson*, 346 B.R. 256 (Bankr. S.D. Ga., July 21, 2006) (Bankruptcy Judge John S. Dalis) (the court's authority to assess the reasonableness of an expense is limited to that provided under the means test,

i.e., to those expenses that are deductible under the means test only if they are reasonable and necessary).

As to the other areas where the forward-looking courts disagree—whether both income and expenses are calculated in a forward-looking manner, and whether the calculation should be based on the debtor’s actual income or expenses on a specific date or on the debtor’s projected income and expenses over the term of the plan—this section of the research guide does not attempt to collect the cases, due to their numerosity. The reader is referred to 2. Courts Applying Forward-Looking Approach, which follows.

Finally, note that, if the debtor’s proposed plan provides for a monthly payment in excess of the debtor’s projected disposable income calculated on Form 22C, this may, in itself, rebut the presumption that Form 22C is correct. See *In re Zirtzman*, 2006 WL 3000103, 56 Collier Bankr. Cas. 2d 1538 (Bankr. N.D. Iowa, Oct. 4, 2006) (Bankruptcy Judge Paul J. Kilburg) (the debtors’ agreement with the Chapter 13 Trustee to pay their unsecured creditors \$300 per month, although their calculated projected disposable income was negative, rebutted the presumption that the Form 22C calculation was accurate); *In re Mullen*, 369 B.R. 25 (Bankr. D. Or., May 14, 2007) (Bankruptcy Judge Randall L. Dunn) (Form 22C establishes rebuttable presumption; the above-median debtors’ providing for higher monthly payments in their proposed plan, in an amount consistent with Schedule J, rebutted the presumption).

2. Courts Applying Forward-Looking Approach

Decisions are grouped by judge. The list includes four appellate decisions: *In re Nowlin*, 2007 WL 4623043 (S.D. Tex., Dec. 28, 2007); *In re Lanning*, 380 B.R. 17, Bankr. L. Rep. ¶ 81,082 (10th Cir. B.A.P., Dec. 13, 2007); *In re Pak*, 378 B.R. 257, Bankr. L. Rep. ¶ 81,059 (9th Cir. B.A.P., Nov. 7, 2007); *In re Kibbe*, 361 B.R. 302, 57 Collier Bankr. Cas. 2d 1646, Bankr. L. Rep. ¶ 80,861 (1st Cir. BAP, Feb. 20, 2007).

First Circuit

In re Kibbe, 361 B.R. 302, 57 Collier Bankr. Cas. 2d 1646, Bankr. L. Rep. ¶ 80,861 (1st Cir. BAP, Feb. 20, 2007) (Chief Bankruptcy Judge Henry J. Boroff and Bankruptcy Judges Joan N. Feeney and Robert Somma, all from the District of Massachusetts) (Form 22C establishes a rebuttable presumption as to the debtor’s income; here, the debtor’s income increased due to new job)

In re Ries, 377 B.R. 777, 2007 BNH 36 (Bankr. D. N.H., Sept. 18, 2007) (Bankruptcy Judge J. Michael Deasy) (as to income, Form 22C establishes a rebuttable presumption; as to expenses, the means test controls for above-median debtors, and the means test does not allow for consideration of postpetition events; thus, the debtors could deduct payments on secured debts for which they intended to surrender the collateral)

In re Teixeira, 358 B.R. 484, 2006 BNH 49 (Bankr. D. N.H., Dec. 21, 2006) (Chief Bankruptcy Judge Mark W. Vaughn) (as to income, Form 22C establishes a rebuttable presumption; as to expenses, the means test, applied as of the petition date, controls for above-median debtors, even where the debtor has experienced a change in circumstances; here, apparently only income was contested); *In re Kibbe*, 342 B.R. 411, 2006 BNH 17 (Bankr. D. N.H., April 14, 2006), *aff’d*, 361 B.R. 302, 57 Collier Bankr. Cas. 2d 1646, Bankr. L. Rep. ¶ 80,861 (1st Cir. BAP 2007) (Chief Bankruptcy Judge Mark W. Vaughn) (as to income, Form 22C establishes a rebuttable presumption)

Second Circuit

In re Lisenko, 2008 WL 780703 (Bankr. N.D. N.Y., March 24, 2008) (Bankruptcy Judge Margaret Cangilos-Ruiz) (the court would inquire into a disparity between Form 22C and Schedule J as to both income and expenses)

In re Sackett, 374 B.R. 70 (Bankr. W.D. N.Y., Aug. 28, 2007), as amended (Sept. 12, 2007) (Bankruptcy Judge John C. Ninfo II) (Code § 1325(b)(1)(B) specifically provides that any means test objection in Chapter 13 is determined as of the effective date of the plan; here, debtor could not deduct expense of repaying secured debt where the plan provided that the debtor would surrender the collateral for the debt)

In re Vodek, Case No. 06-31645 (Bankr. N.D. N.Y., April 4, 2007) (Chief Bankruptcy Judge Stephen D. Gerling) (projected disposable income from Form 22C may be modified on the basis of change of circumstances; here, the debtor's current monthly income included a one-time bonus, so actual income was less) ([view full opinion](#))

Third Circuit

In re Liverman, --- B.R. ---, 2008 WL 768727 (Bankr. D. N.J., March 5, 2008) (Chief Bankruptcy Judge Judith H. Wizmur) (Form 22C establishes a rebuttable presumption as to both income and expenses for an above-median debtor; "The objectors' proposal to calculate projected disposable income by utilizing the debtors' actual Schedule I income and deducting the means test expenses from that income cannot be sustained, because the statute itself does not support the proposal, and because the proposal produces an anomalous result. ... The mandate to use standardized means test expenses extends only to define 'disposable income,' and does not extend to give meaning to the term 'projected disposable income' in § 1325(b)(1)(B). ... It follows that the most plausible reconciliation of the paragraphs of § 1325(b) is that disposable income is calculated according to the prescribed § 1325(b)(2) formula, and is then 'projected' with reference to actual income and expenses as necessary to reflect a debtor's changed circumstances as of the effective date of the plan.")

In re May, 381 B.R. 498 (Bankr. W.D. Pa., Jan. 28, 2008) (Bankruptcy Judge Jeffery A. Deller) (Form 22C establishes rebuttable presumption as to both income and expenses; expenses for above-median debtors are determined under the means test; the debtors experienced decreased income, and increased expenses, postpetition)

Fourth Circuit

In re Wilson, 2008 WL 619196 (Bankr. M.D. N.C., March 3, 2008) (Bankruptcy Judge Thomas W. Waldrep Jr.) (as to income, Form 22C is presumptively correct; a party in interest must demonstrate that there has been a substantial change in the debtor's income using the methodology of Code § 101(10A); income may not be adjusted using "special circumstances" because Code § 1325(b)(3), referring to Code § 707(b)(2)(B), is concerned only with the calculation of expenses; the expenses of an above-median debtor are determined under the means test)

In re Barnes, 378 B.R. 774 (Bankr. D. S.C., Oct. 26, 2007) (Chief Bankruptcy Judge John E. Waites) (adhering to *In re Edmunds*); *In re Edmunds*, 350 B.R. 636 (Bankr. D. S.C., Sept. 18, 2006) (Chief Bankruptcy Judge John E. Waites) (both income and expenses are determined on a forward-looking basis; thus, income is determined by the actual income the debtor expects to receive over the term of the plan, and a debtor may not take a deduction for payments on a secured debt for which the debtor intends to surrender the collateral; while the expenses of an above-median debtor are determined under the means test, the categories of expenses that are based on the debtor's actual expenses are subject to a test of reasonableness under Code § 1325(b)(3))

In re Watson, 366 B.R. 523 (Bankr. D. Md., April 11, 2007) (Chief Bankruptcy Judge Duncan W. Keir) (Form 22C establishes a presumption as to projected disposable income; however, if by evidence a party demonstrates "a substantial change in circumstance such that the numbers contained in Form B22C are not commensurate with a fair projection of the debtor's budget in the future," then "a projected budget based upon the evidence, reflecting projected earnings and projected reasonable necessary expenses will govern the determination of "projected disposable income" for purposes of confirmation of the plan"; the expenses of an above-median debtor are determined under the means test)

In re Plumb, 373 B.R. 429 (Bankr. W.D. N.C., March 16, 2007) (Bankruptcy Judge George R. Hodges) ("Form B22C is the starting point for determining projected disposable income for above-median income debtors, but because the income and expense components of projected disposable income in § 1325(b) are forward-looking concepts, debtors must take Schedules I and J into consideration when making that calculation"; the expenses of an above-median debtor are determined under the means test)

In re Crittendon, 2006 WL 2547102 (Bankr. M.D. N.C., Sept 1, 2006) (Chief Bankruptcy Judge William L. Stocks) (the expenses of an above-median debtor are determined under the means test; however, because a debtor's expenses are determined as of the date of the confirmation of the debtor's plan, an above-median debtor may not take a deduction for payments on a secured debt for which the debtor intends to surrender the collateral; the court apparently held that income is determined under Form 22C, rather than on a forward-looking basis)

In re McPherson, 350 B.R. 38 (Bankr. W.D. Va., July 31, 2006) (Bankruptcy Judge William E. Anderson) (the expenses of an above-median debtor are determined under the means test; however, because a debtor's expenses are determined on a forward-looking basis, an above-median debtor may not take a deduction for payments on a secured debt for which the debtor intends to surrender the collateral; the court apparently viewed income as also being determined on a forward-looking basis, although income was not at issue)

Fifth Circuit

In re Nowlin, 2007 WL 4623043 (S.D. Tex., Dec. 28, 2007) (District Judge Lynn N. Hughes) ("Debtors must use projected disposable income that includes expected changes to the allowed expenses during the term of the plan"; here, the calculation of the debtor's projected disposable income needed to reflect the fact that, in the 24th month of her 60-month plan, she would complete the repayment of her 401(k) account loan)

In re Graham, 2008 WL 1775003 (Bankr. N.D. Tex., April 15, 2008) (Bankruptcy Judge D. Michael Lynn) (both income and expenses are determined on a forward-looking basis; thus, the above-median debtors were not permitted to deduct payments on a secured debt for

which they intended to surrender the collateral); *In re Zinser*, 2007 WL 3479604 (Bankr. N.D. Tex., Nov. 15, 2007) (Bankruptcy Judge D. Michael Lynn; Westlaw incorrectly identifies the author as Bankruptcy Judge Russell F. Nelms) (applying *In re Barraza*, below, to one debtor's child support payments and another debtor's 401(k) loan repayments, and permitting the deduction only of an average monthly amount in each case; the expenses of an above-median debtor are determined under the means test)

In re Redmond, 2008 WL 1752133 (Bankr. S.D. Tex., April 14, 2008) (Bankruptcy Judge Letitia Z. Clark) (Form 22C establishes the presumptive amount of an above-median debtor's projected disposable income, but that presumption may be rebutted; the court assessed the reasonableness of the above-median debtor's expenses without explicitly considering whether the court is empowered to do so; the court determined that "the expense of owning and maintaining three vehicles for the use of the debtor and her roommate is not necessary," and that the debtor "presented no evidence with respect to the question of whether the payment of the student loan outside the plan is reasonably necessary to the support of the Debtor or the Debtor's dependents")

In re Louviere, 2008 WL 925824 (Bankr. E.D. Tex., April 4, 2008) (Chief Bankruptcy Judge Bill Parker) (the projected disposable income of the debtor may vary from the statutory disposable income calculation if "the debtor can show that there has been a substantial change in circumstances such that the numbers contained in Form 22C are not commensurate with a fair projection of the debtor's budget in the future"; "[o]nce a substantial change in circumstances occurs which significantly alters the income stream once enjoyed in the pre-petition period by a Chapter 13 debtor, the utility of that 22C computation for the purpose of determining projected disposable income under § 1325(b)(1)(B) is undermined and it must be discarded under the statute in favor of a more contemporaneous net income calculation derived from Schedules I and J which recognizes and incorporates the changes occurring in the debtor's real-life circumstances" [footnotes omitted]; here, the debtor's income had decreased; expenses were not at issue; Code § 1325(b)(3) incorporates the special circumstances doctrine only as to expenses, not income; the expenses of an above-median debtor are determined under the means test); *In re Sadler*, 378 B.R. 780 (Bankr. E.D. Tex., Oct. 9, 2007) (Chief Bankruptcy Judge Bill Parker); *In re Sparks*, 360 B.R. 224 (Bankr. E.D. Tex., Oct. 18, 2006) (Chief Bankruptcy Judge Bill Parker); *In re Wayman*, 351 B.R. 808 (Bankr. E.D. Tex., Aug. 16, 2006) (Chief Bankruptcy Judge Bill Parker)

In re Barraza, 346 B.R. 724 (Bankr. N.D. Tex., Aug 1, 2006) (Bankruptcy Judge Russell F. Nelms) (extending forward-looking analysis of *In re Hardacre*, below, to also apply to the debtor's expenses; if an expense [here, court-ordered child support] will end prior to the completion of the plan, the debtor may deduct only a monthly average, i.e., the total dollars to be paid on the expense divided by the number of months in the plan's term; the expenses of an above-median debtor are determined under the means test); *In re Hardacre*, 338 B.R. 718, 55 Collier Bankr. Cas. 2d 1293, Bankr. L. Rep. ¶ 80,506 (Bankr. N.D. Tex., March 6, 2006) (Bankruptcy Judge Russell F. Nelms) (the debtor's income is based, not on Form 22C, but on the "income that the debtor reasonably expects to receive during the term of her plan"; "[t]his does not mean that section 101(10A)'s definition of current monthly income is irrelevant to the calculation of projected disposable income. Section 101(10A) continues to apply inasmuch as it describes the sources of revenue that constitute income, as well as those that do not.")

In re Meador, 2008 WL 243673 (Bankr. S.D. Tex., Jan. 25, 2008) (Bankruptcy Judge Letitia Z. Clark) (Form B22C provides a presumptive definition of projected disposable income, but the presumption may be rebutted; the expenses of an above-median debtor are determined under the means test; under the forward-looking approach, the above-median debtors were not permitted to deduct payments on a secured debt for which the collateral had been repossessed; the plan also was required to reflect additional monies available for unsecured creditors when two debts were completely repaid during the plan term); *In re Knippers*, 2007 WL 1239297 (Bankr. S.D. Tex., April 26, 2007) (Bankruptcy Judge Letitia Z. Clark) (Form B22C provides a presumptive definition of projected disposable income, but the presumption may be rebutted; the expenses of an above-median debtor are determined under the means test; the debtor claimed that his income had decreased, although the court found his evidence lacking)

In re Nowlin, 366 B.R. 670 (Bankr. S.D. Tex., April 11, 2007), *aff'd* 2007 WL 4623043 (S.D. Tex., Dec. 28, 2007) (Bankruptcy Judge Jeff Bohm) (“‘projected disposable income,’ as it is used in § 1325(b), requires the Debtor to account for any events which will definitely occur during the term of the Plan that would alter either the income or expense side of the disposable income calculation”; here, the calculation of the debtor’s projected disposable income needed to reflect the fact that, in the 24th month of her 60-month plan, she would complete the repayment of her 401(k) account loan; step-up required; however, the amount of step-up would be calculated on the basis that the debtor redirected her loan repayments to account contributions, up to the maximum allowable contribution)

In re Devilliers, 358 B.R. 849 (Bankr. E.D. La., Jan. 9, 2007) (Bankruptcy Judge Elizabeth W. Magner) (“since ‘projected’ modifies ‘disposable income’ in § 1325(b)(1)(B), the Court is required to consider not only a debtor’s historical income and expenses, but also his or her anticipated income and expenses when confirming a plan”; the expenses of an above-median debtor are determined under the means test; while “the starting point for all debtors will be the IRS standard deductions regardless of their prepetition experience,” the Trustee “is free to challenge the calculation of disposable income in the future if he believes the debtor’s actual experience, over a sustained and reasonable period of time, does not necessitate the full allowance claimed”; this is due to “[t]he limitations of § 1325 requiring that any expenditure be reasonably necessary”; all expenses under the means test, other than the IRS standard amounts, are subject to the requirements of necessity and reasonableness, although, for expenses that existed prepetition, the court would assume that these expenses were reasonable and necessary (but these deduction apparently may be challenged by the Trustee in the same manner as deductions for the IRS standard amounts); Code § 541(b)(7), excluding from “disposable income” contributions to a qualified retirement plan, imposes no limitations based on reasonableness or necessity)

Sixth Circuit

In re French, 383 B.R. 402 (Bankr. W.D. Ky., March 13, 2008) (Chief Bankruptcy Judge Joan A. Lloyd) (“Form B22C sets up a presumption that may be rebutted by the objecting party and the projected disposable income may be adjusted by the court accordingly”; only income was at issue in the case, but the court’s holding appears to apply to expenses as well); *In re Risher*, 344 B.R. 833 (Bankr. W.D. Ky., July 12, 2006) (Chief Bankruptcy Judge Joan A. Lloyd) (Form 22C establishes only the starting point for the determination of projected disposable income; only income was at issue in the case, but the court’s holding appears to apply to expenses as well)

In re Lacny, 2007 WL 3216627 (Bankr. E.D. Ky., Oct. 25, 2007) (Bankruptcy Judge Joseph M. Scott Jr.) (implementing *In re Riggs*, below, the court said that, when calculating Schedule J, debtors (including above-median debtors) shall include expenses that accurately portray the debtor's situation after making an effort to reduce those expenses; all expenses must be "reasonably necessary"; the court made no reference to the means test or Code § 1325(b)(3))

In re Spurgeon, 378 B.R. 197 (Bankr. E.D. Tenn., Oct. 10, 2007) (Bankruptcy Judge R. Thomas Stinnett) (the expenses of an above-median debtor are determined under the means test; expenses are determined on a forward-looking basis, namely, "on the basis of events in the chapter 13 case and the terms of the proposed plan"; thus, the debtor could not deduct payments on a secured debt for which he would be surrendering the collateral; the court suggested that income is based simply on Form 22C, although the court did not need to decide the issue; the court clearly recognized the distinction between how income and expenses are calculated and as of when they are calculated: "The argument has been made that this method of determining deductible expenses amounts to ignoring the statutory definitions. [citations omitted] The court disagrees. The statutes still identify the kinds of expenses that can be deducted and limit the deductible amounts. The difference is the time of determining the relevant facts. The statutes apply, but they apply to the facts as changed by events in the chapter 13 case, including changes that will result from confirmation of the proposed plan"; the court stated, but did not apply, the principle that "[t]he statutes allow the debtor to rebut the result of the disposable income test—to show less disposable income—by proving lower income or larger expenses.")

In re McCarty, 376 B.R. 819 (Bankr. N.D. Ohio, Sept. 28, 2007) (Chief Bankruptcy Judge Marilyn Shea-Stonum) (while Form 22C establishes the starting point, projected disposable income must reflect all of the income (as defined in Code § 101(10A)) that a debtor anticipates receiving over the applicable commitment period; expenses not in issue; the calculation can not rely on Schedule I because it requires the debtor to list certain types of income excluded under § 101(10A))

In re McGillis, 370 B.R. 720 (Bankr. W.D. Mich., May 15, 2007) (Bankruptcy Judge Jeffrey R. Hughes) (income is based on Form 22C, but all expenses, even those of an above-median debtor under the means test, must be both actual and reasonable; thus, the debtor may deduct only the lesser of the IRS standard amount and his or her actual expense, and the debtor may not deduct payments on a secured debt for which the debtor intends to surrender the collateral)

In re Grant, 364 B.R. 656 (Bankr. E.D. Tenn., March 19, 2007) (Bankruptcy Judge Richard S. Stair Jr.) (Form 22C establishes a rebuttable presumption as to both income and expenses)

In re Upton, 363 B.R. 528 (Bankr. S.D. Ohio, March 14, 2007) (Bankruptcy Judge C. Kathryn Preston) (both income and expenses are to be determined as of the effective date of the plan; this should be based on Schedules I and J, amended as necessary to reflect postpetition changes in circumstances; while the court recognized that income is limited to those sources included under Code § 101(10A), the court disavowed the means test as the sole determinant of the expenses of an above-median debtor: "In the case where the debtor's actual expenses are less than those allowed under the Form 22 means test, her Schedule J may reflect that she has additional income available to pay into the plan that Form 22 does not")

In re Riggs, 359 B.R. 649, 57 Collier Bankr. Cas. 2d 1147 (Bankr. E.D. Ky., Feb. 27, 2007) (Bankruptcy Judge William S. Howard) (a debtor's projected disposable income must be determined by reference to his or her Schedules I and J; appears to ignore Form 22C)

In re Chriss-Price, 376 B.R. 648 (Bankr. M.D. Tenn., July 5, 2006) (Bankruptcy Judge Marian F. Harrison) (as to both income and expenses, "a debtor must propose to pay unsecured creditors the number resulting from Official Form B22C, unless the proof shows that this number does not adequately represent the debtor's budget projected into the future")

Seventh Circuit

In re Van Bodegom Smith, --- B.R. ---, 2008 WL 613177 (Bankr. E.D. Wis., March 6, 2008) (Bankruptcy Judge Pamela Pepper) (expenses of above-median debtors are determined by applying the means test; projected disposable income is determined in a forward-looking manner; therefore, the debtors could not deduct payments on secured debt for which they intended to surrender the collateral; the court does not have the authority to apply a separate test of reasonable necessity); *In re Balcerowski*, 353 B.R. 581 (Bankr. E.D. Wis., Oct. 17, 2006) (Bankruptcy Judge Pamela Pepper) (following *In re Fuller*); *In re Fuller*, 346 B.R. 472 (Bankr. S.D. Ill., June 21, 2006) (Bankruptcy Judge Pamela Pepper) (income is determined from Schedule I as the debtor's actual income on the petition date; expenses for an above-median debtor are determined from Form 22C, i.e., the means test applied on the petition date)

In re Kalata, 2008 WL 552856 (Bankr. E.D. Wis., Feb. 27, 2008) (Chief Bankruptcy Judge Margaret Dee McGarity) (expenses of above-median debtors are determined by applying the means test; projected disposable income is determined in a forward-looking manner; therefore, the debtors could not deduct payments on secured debt for which they intended to surrender the collateral)

In re Mancl, 375 B.R. 514 (Bankr. W.D. Wis., Aug. 24, 2007), rev'd, 381 B.R. 537, Bankr. L. Rep. ¶ 81,111 (W.D. Wis., Feb. 12, 2008) (Bankruptcy Judge Thomas S. Utschig) (as to income, Form 22C establishes rebuttable presumption)

In re Carlton, 362 B.R. 402, 57 Collier Bankr. Cas. 2d 1065 (Bankr. C.D. Ill., Feb. 28, 2007), reconsideration denied, 370 B.R. 188 (Bankr. C.D. Ill., June 18, 2007) (Bankruptcy Judge Mary P. Gorman) (as to income, the court must look to Schedule I so as to determine a debtor's actual income expected to be earned or available during the applicable commitment period; expenses of above-median debtors are determined by applying the means test; the court retains no authority to assess the reasonableness of the expenses); *In re Hall*, 2007 WL 445517 (Bankr. C.D. Ill., Feb. 12, 2007) (Bankruptcy Judge Mary P. Gorman) (although the court states that a debtor's current monthly income "need not be amended to address post-petition changes in a debtor's financial circumstances or to calculate projected disposable income which ultimately determines the amount of plan payments," the court then holds that "the CMI analysis" is "the initial but not the ultimate measure of the debtor's financial condition and ability to fund their plan")

In re Foster, 2006 WL 2621080 (Bankr. N.D. Ind., Sept. 11, 2006) (Chief Bankruptcy Judge Harry C. Dees Jr.) (as to income, CMI is merely the starting point)

In re Nevitt, 2006 WL 2433491, 56 Collier Bankr. Cas. 2d 807 (Bankr. N.D. Ill., Aug. 18, 2006) (Bankruptcy Judge Manuel Barbosa) (Schedule I, instead of Form B22C, should be used to calculate income; the expenses of a below-median debtor are the amount calculated on Schedule J minus any payments on account of secured debts, if not already listed therein); *In re Demonica*, 345 B.R. 895 (Bankr. N.D. Ill., July 31, 2006) (Bankruptcy Judge Manuel Barbosa) (Schedule I, instead of Form B22C, should be used to calculate income; expenses of above-median debtors are determined by applying the means test)

Eighth Circuit

Note: All of these cases may be effectively abrogated if BAP decisions are binding within the circuit. See *In re Frederickson*, 375 B.R. 829, 58 Collier Bankr. Cas. 2d 719, Bankr. L. Rep. ¶ 81,022 (8th Cir. B.A.P., Sept. 24, 2007) (adopting multiplicative approach).

In re Coleman, 382 B.R. 759 (Bankr. W.D. Ark., Feb. 26, 2008) (Bankruptcy Judge Ben T. Barry) (while the expenses of above-median debtors are determined by applying the means test, only payments that first become payable after the date the petition is filed are deductible; thus, debtors may not deduct payments on secured debts for which they intend to surrender the collateral)

Note: While *In re Coleman* purports to apply the multiplicative test embraced in *In re Frederickson*, the decision would seem to analyze at least certain expenses in a forward-looking manner.

In re Ward, 359 B.R. 741, Bankr. L. Rep. ¶ 80,846 (Bankr. W.D. Mo., Jan. 7, 2007) (Bankruptcy Judge Arthur B. Federman) (as to income, Form 22C establishes rebuttable presumption); *In re Gress*, 344 B.R. 919, Bankr. L. Rep. ¶ 80,765 (Bankr. W.D. Mo., June 14, 2006) (Bankruptcy Judge Arthur B. Federman) (as to both income and expenses, Schedules I and J, rather than Form 22C, control; "In enacting the means test, Congress intended to take away discretion from the courts as to higher income debtors, who were seen as abusers of the system. Arguably, for that reason, a mechanical test such as that argued by the Debtors should be applied here. As can be seen, however, the use of the means test in this fashion allows debtors to propose plan payments based on a sort of parallel universe, which sometimes has little or nothing to do with their actual situation. For that reason, the courts in this district have previously found that Congress could not have intended a purely mechanical application of the means test to determine the amount above-median debtors are required to pay to unsecured creditors.")

In re Pederson, 2006 WL 3000104, 98 A.F.T.R.2d 2006-7619 (Bankr. N.D. Iowa. Oct. 13, 2006) (Chief Bankruptcy Judge William L. Edmonds) (as to income, Form 22C establishes only the starting point)

In re Zirtzman, 2006 WL 3000103, 56 Collier Bankr. Cas. 2d 1538 (Bankr. N.D. Iowa, Oct. 4, 2006) (Bankruptcy Judge Paul J. Kilburg) (the debtors' agreement with the Chapter 13 Trustee to pay their unsecured creditors \$300 per month, although their calculated projected disposable income was negative, rebutted the presumption that the Form 22C calculation was accurate)

In re Schanuth, 342 B.R. 601, Bankr. L. Rep. ¶ 80,689 (Bankr. W.D. Mo., May 25, 2006) (Bankruptcy Judge Jerry W. Venters) (characterizes the rebuttable presumption approach as “well reasoned,” but is not called upon to decide the issue); *In re Renicker*, 342 B.R. 304, 56 Collier Bankr. Cas. 2d 377, Bankr. L. Rep. ¶ 80,608 (Bankr. W.D. Mo., May 15, 2006) (Bankruptcy Judge Jerry W. Venters) (“the plain language of § 1325(b)(2) unambiguously indicates that prospective—not historical—expenses are to be used to calculate disposable income”)

Ninth Circuit

In re Pak, 378 B.R. 257, Bankr. L. Rep. ¶ 81,059 (9th Cir. B.A.P., Nov. 7, 2007) (Bankruptcy Judges Peter H. Carroll [C.D. Cal.], Randall L. Dunn [D. Or.] and Christopher M. Klein [E.D. Cal.]) (“disposable income,” as defined in Code § 1325(b)(2), is the starting point for determining “projected disposable income,” subject to adjustment, based on evidence, to reflect reality going forward; although the cases involved only income, the court’s decision is not explicitly limited in this regard; the concurring opinion suggested applying the “special circumstances” doctrine to the income side)

In re Broers, 2007 WL 4166144 (Bankr. E.D. Wash., Nov 20, 2007) (Chief Bankruptcy Judge Frank L. Kurtz) (interprets *In re Pak*, above, to have decided the issue only as to income; the expenses of above-median debtors are determined by applying the means test; the court does not retain the authority to determine if the expenses of an above-median debtor are necessary and reasonable; however, the court retained certain discretion, which it would exercise here, as the IRS standard was unclear as to whether a debtor in a one-person household could claim ownership expenses for two vehicles; the court determined that this debtor’s doing so would be unreasonable and denied the deduction)

In re Rains, 2007 WL 2900534 (Bankr. N.D. Cal., Oct. 2, 2007) (Bankruptcy Judge Edward D. Jellen) (“[t]he court holds that, for purposes of this case, the calculation of the [above-median] debtors’ projected disposable income is governed by the information the debtors provided in their Schedules I (Income) and J (Expenses), and that the debtors are not entitled to a fixed allowance of any expense that is in excess of their actual expenses that are reasonably necessary for their maintenance and support, even if such a fixed allowance might be included in the ‘means test’ under § 707(b)”; *In re Bateman*, 2007 WL 2781119, 58 Collier Bankr. Cas. 2d 691 (Bankr. N.D. Cal., Sept. 21, 2007) (Bankruptcy Judge Edward D. Jellen) (same as *In re Rains*, although debtor was below-median)

In re Meek, 370 B.R. 294 (Bankr. D. Idaho, June 27, 2007) (Chief Bankruptcy Judge Terry L. Myers) (“on the income side of the projected disposable income equation, current monthly income as defined by § 101(10A) and as evidenced by the debtor’s properly completed Form 22C will control unless trustees, creditors or debtors challenge that historically calculated income average as unrealistically high or low given the debtor’s actual factual circumstances and present evidence to support that claim and substantiate the magnitude of the variation” (footnotes omitted); expenses of above-median debtors are determined by applying the means test; however, “other Code language (*i.e.*, ‘projected,’ ‘reasonably necessary’ and ‘to be expended’) allows parties to contest and the Court to consider the provisions of the debtor’s proposed plan as well as events that will definitely occur during the pendency of the plan”; while it is unclear whether this pertains to postpetition changes, allegedly unreasonable expenses, or both, the court did not have to apply this holding under the facts of the case)

In re Mullen, 369 B.R. 25 (Bankr. D. Or., May 14, 2007) (Bankruptcy Judge Randall L. Dunn) (Form 22C establishes rebuttable presumption, with the court not differentiating between income and expenses; the above-median debtors' providing for higher monthly payments in their proposed plan, in an amount consistent with Schedule J, rebutted the presumption)

In re Gordon, 360 B.R. 679 (Bankr. S.D. Cal., Jan. 8, 2007) (Chief Bankruptcy Judge Peter W. Bowie) ("[t]he B22C calculation is important, but not controlling on plan confirmation because § 1325(b)(1)(B) requires commitment of 'projected disposable income' on a going-forward basis, not historical CMI or 'disposable income' without regard to intervening changes in employment or other circumstances"; rule stated but not applied)

In re Pak, 357 B.R. 549, 57 Collier Bankr. Cas. 2d 567 (Bankr. N.D. Cal., Dec. 14, 2006), aff'd, 378 B.R. 257, Bankr. L. Rep. ¶ 81,059 (9th Cir. B.A.P., Nov. 7, 2007) (Bankruptcy Judge Leslie Tchaikovsky) (the court should attempt to estimate the debtor's income during the plan; the debtor was unemployed for much of the six months prepetition but was earning \$100,000 annually on the petition date; rejects use of Schedule I because definition of "current monthly income" excludes Social Security income, which the schedule includes)

In re Bossie, 2006 WL 3703203 (Bankr. D. Alaska, Dec. 12, 2006) (Bankruptcy Judge Donald MacDonald IV) (as to income, CMI is starting point; expenses of above-median debtors are determined by applying the means test)

In re Casey, 356 B.R. 519 (Bankr. E.D. Wash., Oct. 27, 2006) (Bankruptcy Judge Patricia C. Williams) ("for above-median income debtors, the disposable income calculated on Form B22C, as modified by any anticipated change in financial circumstances known at the time of confirmation, constitutes 'projected disposable income' for purposes of § 1325(b)(1)"; the court didn't limit to income; the court stated the principle without applying it, as the case involved no postpetition changes; expenses of above-median debtors are determined by applying the means test)

Tenth Circuit

In re Lanning, 380 B.R. 17, Bankr. L. Rep. ¶ 81,082 (10th Cir. B.A.P., Dec. 13, 2007) (opinion by Bankruptcy Judge William T. Thurman [D. Utah], author of *In re Jass*; also participating were Bankruptcy Judge Richard L. Bohanon [D. Colo.] and Bankruptcy Judge Peter J. McNiff [D. Wyo.]) ("disposable income" is only the starting point in determining "projected disposable income" under Code § 1325(b)(1)(B). Where it is shown that Form 22C disposable income fails accurately to predict a debtor's actual ability to fund a plan, that figure may be subject to modification. Parties contending that a debtor's Form 22C disposable income figure does not accurately project the debtor's future ability to fund a plan must present documentation similar to that required by Code § 707(b)(2)(B)(ii) in support of their claim. However, deviation from the Form B22C determination of disposable income will be the exception rather than the rule; case involved debtor's loss of income postpetition, but court's reasoning is not explicitly limited to the income side)

In re Allen, 2008 WL 451053 (Bankr. D. Kan., Feb. 15, 2008) (Bankruptcy Judge Janice Miller Karlin) (although not stating a general rule with regard to expenses, the court held that an above-median debtor who plans to cram down a secured debt in his or her plan may deduct the full contractual monthly payments, and is not limited to the payments on the crammed down amount; expenses of above-median debtors are determined by applying the means test); *In re Lanning*, 2007 WL 1451999, Bankr. L. Rep. ¶ 97,773 (Bankr. D. Kan.; May 15, 2007) (Bankruptcy Judge Janice Miller Karlin) (the term "projected" is a forward-looking concept that not only allows, but requires, the court to consider at confirmation the debtor's actual income as it is reported on Schedule I, as well as any reasonably anticipated changes in that income during the life of the proposed Chapter 13 plan; expenses of above-median debtors are determined by applying the means test)

In re Mondragon, 2007 WL 2461616 (Bankr. D. N.M., Aug. 24, 2007) (Chief Bankruptcy Judge Mark B. McFeeley) (adhering to *In re Edmondson* (Bankr. D. N.M., March 5, 2007), below); *In re Edmondson*, 371 B.R. 482 (Bankr. D. N.M., July 11, 2007) (Chief Bankruptcy Judge Mark B. McFeeley) (expenses of above-median debtors are determined by applying the means test; while the court also held that the debtors could not include as expenses the mortgage payments for the rental house they intended to surrender, it is unclear whether this was based on a construction of Code § 707(b) or a construction of Code § 1325(b)); *In re Edmondson*, 363 B.R. 212, 57 Collier Bankr. Cas. 2d 1082 (Bankr. D. N.M., March 5, 2007) (Chief Bankruptcy Judge Mark B. McFeeley) (as to income, Form 22C establishes the starting point, but projected disposable income must take into account the debtor's actual current income as reported on Schedule I, projected to include the actual income the debtor expects to receive over the life of the plan; the expenses of above-median debtors are determined by applying the means test, rather than looking to Schedule J; here, debtors' income had decreased)

In re Puetz, 370 B.R. 386 (Bankr. D. Kan., June 22, 2007) (Bankruptcy Judge Robert D. Berger) ("[t]he monthly disposable income reported on Form B22C is presumptively the debtor's 'projected disposable income' under § 1325(b)(1)(B) unless the debtor can show special circumstances [under Code § 707(b)(2)(B)] warranting an adjustment to either the debtor's current monthly income or expenses"; "[t]he trustee may still direct the court's attention to special circumstances or challenges to Form B22C deductions which justify adjustments to the debtor's Form B22C calculations"; expenses of above-median debtors are determined by applying the means test; a creditor contended that the debtors' Schedules I and J showed they could pay more); *In re Moore*, 367 B.R. 721 (Bankr. D. Kan., April 13, 2007) (Bankruptcy Judge Robert D. Berger) (the debtor's income decreased, and the court applied the "special circumstances" doctrine to a change over time)

In re Jass, 340 B.R. 411, 55 Collier Bankr. Cas. 2d 1461, Bankr. L. Rep. ¶ 80,478 (Bankr. D. Utah, March 22, 2006) (Bankruptcy Judge William T. Thurman) ("[t]he Court will presume that the number resulting from Form B22C is the debtor's 'projected disposable income' unless the debtor can show that there has been a substantial change in circumstances such that the numbers contained in Form B22C are not commensurate with a fair projection of the debtor's budget in the future"; "[a] debtor attempting to meet this burden should present documentation similar to that required by § 707(b)(2)(B)"; "[i]f the Court finds adequate evidence to rebut the presumption in favor of Form B22C, the Court will allow the debtor to use a projected budget in the form of Schedules I and J to determine the debtor's 'projected disposable income'; the debtor husband had recently been hospitalized, increasing the debtors' expenses; it was unclear whether their income was also reduced)

Eleventh Circuit

In re Vernon, --- B.R. ---, 2008 WL 859239 (Bankr. M.D. Fla., March 5, 2008) (Bankruptcy Judge Alexander L. Paskay) (the debtor may not deduct payments on secured debt where the debtor's plan provides for the debtor's surrender of the collateral; the court apparently adopted a general rule that an above-median debtor's expenses are determined by the means test applied as of the plan confirmation date)

In re Strickland, 2008 WL 205577 (Bankr. M.D. Ala. Jan. 24, 2008) (Chief Bankruptcy Judge Dwight H. Williams Jr.) (Form 22C establishes a rebuttable presumption of the debtor's projected disposable income; this presumption may be rebutted by evidence that "the debtor's expectancy of the future will alter that result"; although the court recognized that an above-median debtor's expenses are determined under the means test, the court held that where, as here, the debtors' actual vehicle ownership expenses were less than the IRS standard amounts, the debtors could deduct only their actual payments; this has the effect of reducing the means test deductions to the debtor's actual expense, under the guise of "expectancy"); *In re Warren*, 2007 WL 2683837 (Bankr. M.D. Ala., Sept. 6, 2007) (Chief Bankruptcy Judge Dwight H. Williams Jr.); *In re Thicklin*, 355 B.R. 856 (Bankr. M.D. Ala., Oct. 25, 2006) (Chief Bankruptcy Judge Dwight H. Williams Jr.) ("[a] court must consider the future finances of the debtor—not just the historical"; while the expenses of a below-median debtor are the debtor's actual expenses, not the IRS standards, here, the below-median debtor could deduct a reasonable amount for the expected cost of replacing his older automobile, even though the debtor had no actual vehicle ownership expense, although the debtor could not deduct the IRS standard amount)

In re Mulally, 2007 WL 4556680 (Bankr. S.D. Fla., Dec. 19, 2007) (Chief Bankruptcy Judge Paul Hyman) (as to income, Form 22C is the starting point; here, where the debtor wife had secured new employment, the debtors' income was properly based on their Schedule I; an above-median debtor's expenses are determined under the means test, rather than by the debtor's actual expenses; time of application of test not in issue); *In re Hughey*, 380 B.R. 102, 21 Fla. L. Weekly Fed. B. 146 (Bankr. S.D. Fla., Dec. 14, 2007) (Chief Bankruptcy Judge Paul Hyman) (as to income, Form 22C is the starting point; reliance on Schedule I is appropriate unless the debtor's includes income excluded from "current monthly income" under Code § 101(10A); an above-median debtor's expenses are determined under the means test; the fact that the debtors would complete their automobile payments during the term of the plan did not require a step-up, as (1) the IRS vehicle ownership standard is a fixed amount, and (2) the method of calculating the deduction for payments on secured debts already results in a monthly average; the court does not appear to take a position on the time at which the means test is to be applied)

In re Purdy, 373 B.R. 142, 21 Fla. L. Weekly Fed. B. 5 (Bankr. N.D. Fla., Aug. 6, 2007) (Bankruptcy Judge Lewis M. Killian Jr.) ("[a] Chapter 13 debtor's 'projected disposable income,' as calculated by Form B22C, will be presumed accurate unless the debtor or trustee can show that the numbers contained in Form B22C do not reflect a fair projection of the debtor's budget into the future because the debtor has experienced a substantial change in circumstances"; here, the debtors' income had increased; the debtors' expenses were not at issue)

In re Arsenault, 370 B.R. 845, 20 Fla. L. Weekly Fed. B. 475 (Bankr. M.D. Fla., July 3, 2007) (Bankruptcy Judge Michael G. Williamson) (income is based on the debtor's projected income over the plan term, but expenses for an above-median debtor are calculated on the basis of the application of the means test as of the petition date; the court has no discretion in determining what expenses are reasonably necessary for the support of an above-median debtor)

In re LaPlana, 363 B.R. 259, 20 Fla. L. Weekly Fed. B. 230 (Bankr. M.D. Fla., Feb. 9, 2007) (Bankruptcy Judge Karen S. Jennemann) ("courts must consider changes in circumstances, both increases and decreases to income and expenses, to a debtor's financial situation, being always guided by the allowed methodology set forth in the means test"; the issue was the inclusion of the debtors' future tax refunds, although the court's holding, that the refunds needed to be reflected in the calculation of projected disposable income, also follows, as the court noted, from the means test itself, as the debtor's deduction for taxes is limited to actual taxes paid, not the full amount withheld)

In re Love, 350 B.R. 611, 56 Collier Bankr. Cas. 2d 1135 (Bankr. M.D. Ala., Aug. 30, 2006) (Bankruptcy Judge William R. Sawyer) (income is determined by Form 22C, but expenses, while limited to those authorized under the means test, are determined by a forward-looking approach; here, the debtors could not deduct payments on secured debts for which the debtors intended to surrender the collateral)

In re Grady, 343 B.R. 747, 56 Collier Bankr. Cas. 2d 619 (Bankr. N.D. Ga., July 21, 2006) (Bankruptcy Judge C. Ray Mullins) ("Congress intended the Debtors to propose a monthly payment to unsecured creditors based on their financial situation as of the date when the first payment is due. The Debtors are authorized to pay the projected disposable income under Schedule J as opposed to the disposable income on the CMI form"; the debtors' income had decreased; expenses were not in issue)

In re Dew, 344 B.R. 655 (Bankr. N.D. Ala., June 21, 2006) (Bankruptcy Judge James J. Robinson) ("in determining whether a below median income debtor is offering all of his projected disposable income under a plan, the first step, and in most cases the last step, is to look at the debtor's Schedules I and J. ... If a party in interest contends that the amount of monthly net income shown on Schedule J of a below median income debtor should not be considered as the debtor's projected disposable income for the purposes of determining compliance with Code § 1325(b)(1)(B), then for this Court to approve a different amount, that party must be prepared to present credible evidence that proves monetary adjustments in exact amounts are necessary, without resorting to conjecture, opinion, speculation or hearsay"; although the court's holding, on its face, refers to Schedule I, rather than Form 22C, to determine income, the debtors' incomes were not at issue in this consolidated opinion, and the court recognized the definition of "current monthly income")

In re Clemons, No. 05-85163, 2006 Bankr. Lexis 1366 (Bankr. N.D. Ga., June 1, 2006) (Bankruptcy Judge James Massey) ("section 1325(b) permits a bankruptcy court to adjust CMI to approximate the income a debtor will receive during the plan term"; "if this case proceeded under Chapter 7, the Court could adjust the [debtors'] income to account for the special circumstances of a job loss," but the authority to adjust CMI in a Chapter 7 case is not directly applicable to a Chapter 13 case; however, excluding from Chapter 13 bankruptcy those debtors who had recently lost their job but could not afford to wait six months to file a petition would defeat the purpose underlying the Bankruptcy Code; the debtors' income decreased) ([view full opinion](#))

District of Columbia Circuit

In re Briscoe, 374 B.R. 1, 58 Collier Bankr. Cas. 2d 850 (Bankr. D. Dist. Col., Sept. 4, 2007) (Bankruptcy Judge S. Martin Teel Jr.) (while Form 22C establishes a presumption of the debtor's projected disposable income, this presumption may be rebutted with respect to either income or expenses; "[w]here an above-median income debtor is concerned, the debtor (or other party-in-interest) must demonstrate either a change or reasonably anticipated change in the debtor's income using the methodology set forth in § 1325(b)(2) or a change in the circumstances giving rise to the applicable expense figures dictated by the Local and National Standards (or a change in actual expenses for those types of expenses falling under the Other Applicable Expenses category in the Financial Analysis Handbook) if he wishes to prove that his future income is any different from his current income"; Schedule I is "only marginally relevant" because it does not define income in the same manner as Code § 101(10A) defines "currently monthly income"; similarly, Schedule J does not follow the means test, under which an above-median debtor's expenses are determined; under Code § 1325(b)(3), special circumstances only affect expenses, not income; a court does not retain the authority to independently assess the reasonableness of an expense permitted under the means test)

II. Cases Organized by Circuit

First Circuit

Appellate Courts

In re Kibbe, 361 B.R. 302, 57 Collier Bankr. Cas. 2d 1646, Bankr. L. Rep. ¶ 80,861 (1st Cir. BAP, Feb. 20, 2007) (Chief Bankruptcy Judge Henry J. Boroff and Bankruptcy Judges Joan N. Feeney and Robert Somma, all from the District of Massachusetts) (Form 22C establishes a rebuttable presumption as to the debtor's income; here, the debtor's income increased due to new job)

Bankruptcy Courts

In re Phillips, 382 B.R. 153 (Bankr. D. Mass., Feb. 7, 2008) (Bankruptcy Judge Joan N. Feeney) (the means test governs expenses for above-median debtors; here, the debtor's actual housing expense was less than the standard amount)

In re Ries, 377 B.R. 777, 2007 BNH 36 (Bankr. D. N.H., Sept. 18, 2007) (Bankruptcy Judge J. Michael Deasy) (as to income, Form 22C establishes a rebuttable presumption; as to expenses, the means test controls for above-median debtors, and the means test does not allow for consideration of postpetition events; thus, the debtors could deduct payments on secured debts for which they intended to surrender the collateral)

In re Kemp, 2007 WL 2746679 (Bankr. D. Mass., Aug. 9, 2007) (Bankruptcy Judge Joel B. Rosenthal) (the means test governs expenses for above-median debtors, and here the debtor had not attempted to demonstrate that his expenses, which exceeded the standardized deductions, were reasonable and necessary)

In re Teixeira, 358 B.R. 484, 2006 BNH 49 (Bankr. D. N.H., Dec. 21, 2006) (Chief Bankruptcy Judge Mark W. Vaughn) (as to income, Form 22C establishes a rebuttable presumption; as to expenses, the means test, applied as of the petition date, controls for above-median debtors, even where the debtor has experienced a change in circumstances; here, apparently only income was contested)

In re Haley, 354 B.R. 340, 2006 BNH 40 (Bankr. D. N.H., Oct. 18, 2006) (Chief Bankruptcy Judge Mark W. Vaughn) (as to expenses, the means test controls for above-median debtors)

In re Kibbe, 342 B.R. 411, 2006 BNH 17 (Bankr. D. N.H., April 14, 2006), affirmed and remanded, 361 B.R. 302, 57 Collier Bankr. Cas. 2d 1646, Bankr. L. Rep. ¶ 80,861 (1st Cir. BAP 2007) (Chief Bankruptcy Judge Mark W. Vaughn) (as to income, Form 22C establishes a rebuttable presumption)

Second Circuit

Bankruptcy Courts

In re Lisenko, 2008 WL 780703 (Bankr. N.D. N.Y., March 24, 2008) (Bankruptcy Judge Margaret Cangilos-Ruiz) (the court would inquire into a disparity between Form 22C and Schedule J as to both income and expenses)

In re Roberts, 2008 WL 542503 (Bankr. D. Conn., Feb. 28, 2008) (Bankruptcy Judge Robert L. Krechevsky) (as to expenses, the means test controls for above-median debtors)

In re Brunner, 2007 WL 4373119 (Bankr. N.D. N.Y., Dec 7, 2007) (Bankruptcy Judge Robert E. Littlefield Jr.) (multiplicative approach; rejecting step-up upon completion of debt repayment)

In re McLain, 378 B.R. 39 (Bankr. N.D. N.Y., Oct. 24, 2007) (Bankruptcy Judge Robert E. Littlefield Jr.) (multiplicative approach; rejecting step-up upon completion of debt repayment)

In re Green, 378 B.R. 30 (Bankr. N.D. N.Y., Aug. 29, 2007) (Bankruptcy Judge Robert E. Littlefield Jr.) (multiplicative approach; “[u]nless ‘projected disposable income’ is related to ‘disposable income,’ § 1325(b)(2) is nothing more than a bizarre curiosity, a hanging definition with no meaning, relevance or importance”)

In re Sackett, 374 B.R. 70 (Bankr. W.D. N.Y., Aug. 28, 2007), as amended (Sept. 12, 2007) (Bankruptcy Judge John C. Ninfo II) (Code § 1325(b)(1)(B) specifically provides that any means test objection in Chapter 13 is determined as of the effective date of the plan; here, debtor could not deduct expense of repaying secured debt where the plan provided that the debtor would surrender the collateral for the debt)

In re Austin, 372 B.R. 668 (Bankr. D. Vt., Aug. 7, 2007) (Bankruptcy Judge Colleen A. Brown) (multiplicative approach; trustee argued that certain expense was unnecessary)

In re Vodek, Case No. 06-31645 (Bankr. N.D. N.Y., April 4, 2007) (Chief Bankruptcy Judge Stephen D. Gerling) (interprets *In re Rotunda*, below, to permit modification of projected disposable income on basis of change of circumstances; here, the debtor’s current monthly income included a one-time bonus, so actual income was less) ([view full opinion](#))

In re Rotunda, 349 B.R. 324, Bankr. L. Rep. ¶ 97,099 (Bankr. N.D. N.Y., Sept. 1, 2006) (Chief Bankruptcy Judge Stephen D. Gerling) (for above-median debtors, Form 22C, not Schedules I and J, determines PDI; time of application of tests not involved; Trustee contended that schedules showed that the debtors could pay more)

In re Diagostino, 347 B.R. 116, Bankr. L. Rep. ¶ 80,702 (Bankr. N.D. N.Y., Aug. 28, 2006) (Bankruptcy Judge Robert E. Littlefield Jr.) (expenses of above-median debtors are determined under means test)

Third Circuit

Bankruptcy Courts

In re Liverman, --- B.R. ---, 2008 WL 768727 (Bankr. D. N.J., March 5, 2008) (Chief Bankruptcy Judge Judith H. Wizmur) (Form 22C establishes a rebuttable presumption as to both income and expenses for an above-median debtor; calculate projected disposable income on the basis of Schedules I and J if the result on Form 22C is not an accurate prediction; the court specifically rejects the limitation of the debtors' expenses to those allowed under the means test, but an examination of some of the briefs filed in the case does not reveal that any non-means test expense was actually contested, and in *In re Brady*, below, the court explicitly rejected Schedule J in favor of the means test in calculating the expenses of an above-median debtor; the debtor husband's income increased because he found a new job)

In re May, 381 B.R. 498 (Bankr. W.D. Pa., Jan. 28, 2008) (Bankruptcy Judge Jeffery A. Deller) (Form 22C establishes rebuttable presumption as to both income and expenses; expenses for above-median debtors are determined under the means test; the debtors experienced decreased income, and increased expenses, postpetition)

In re Bardo, 379 B.R. 524 (Bankr. M.D. Pa., Sept. 7, 2007) (Chief Bankruptcy Judge John J. Thomas) (multiplicative approach; "[a] significant body of case law has developed premised on the conclusion that Congress could not have possibly meant to refer to the definition of 'disposable income' when discussing 'projected disposable income.' This seems hardly possible"; creditor contended the debtors could pay more)

In re Vaughn, Case no. 06-00788 (Bankr. M.D. Pa., June 8, 2007) (Bankruptcy Judge Mary D. France) (multiplicative approach, unless "the use of this formula will produce an absurd result mandating the consideration of other factors," such as the debtor's loss of employment or experiencing unexpected expenses) ([view full opinion](#))

In re Brady, 361 B.R. 765, 57 Collier Bankr. Cas. 2d 933 (Bankr. D. N.J., Feb. 13, 2007) (Chief Bankruptcy Judge Judith H. Wizmur) (for an above-median debtor, income and expenses are calculated using Form 22C, not Schedules I and J)

Fourth Circuit

Bankruptcy Courts

In re Moore, 2008 WL 895668 (Bankr. M.D. N.C., April 2, 2008) (Chief Bankruptcy Judge William L. Stocks) (the expenses of an above-median debtor are determined under the means test; the court has no authority to determine the reasonableness of those expenses)

In re Linn, 2008 WL 687448 (Bankr. N.D. W.Va., March 10, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (multiplicative approach unless the debtor's income has decreased, in which case the court will look to Schedules I and J; the court will adhere to the multiplicative approach where the debtor's income has increased; expenses of an above-median debtor are determined under the means test)

In re Wilson, 2008 WL 619196 (Bankr. M.D. N.C., March 3, 2008) (Bankruptcy Judge Thomas W. Waldrep Jr.) (as to income, Form 22C is presumptively correct; a party in interest must demonstrate that there has been a substantial change in the debtor's income using the methodology of Code § 101(10A); income may not be adjusted using "special circumstances" because Code § 1325(b)(3), referring to Code § 707(b)(2)(B), is concerned only with the calculation of expenses; the expenses of an above-median debtor are determined under the means test)

In re Scurlock, --- B.R. ---, 2008 WL 1735659 (Bankr. M.D. N.C., Feb. 19, 2008) (Bankruptcy Judge Catherine R. Carruthers) (the expenses of an above-median debtor are determined under the means test)

In re Waters, --- B.R. ---, 2008 WL 216312 (Bankr. N.D. W.Va., Jan. 24, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (multiplicative approach, although the debtor's income had increased)

In re Simms, 2008 WL 217174 (Bankr. N.D. W.Va., Jan. 23, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (multiplicative approach, although the debtor's schedules showed that he could pay more)

In re Buck, 2007 WL 4418145 (Bankr. E.D. Va., Dec. 14, 2007) (Bankruptcy Judge Kevin R. Huennekens) (multiplicative approach; the above-median debtors proposed using their schedules; as the difference was small, questions of infeasibility probably were not presented)

In re Musselman, 379 B.R. 583 (Bankr. E.D. N.C., Nov. 30, 2007) (Chief Bankruptcy Judge Randy D. Doub) (multiplicative approach, although debtors apparently could pay more)

In re Barnes, 378 B.R. 774 (Bankr. D. S.C., Oct. 26, 2007) (Chief Bankruptcy Judge John E. Waites) (adhering to *In re Edmunds*, below)

In re Williams, Case No. 07-00396-5-ATS (Bankr. E.D. N.C., Oct. 25, 2007) (Bankruptcy Judge A. Thomas Small) (multiplicative approach) ([view full opinion](#))

In re Hylton, 374 B.R. 579 (Bankr. W.D. Va., Aug. 22, 2007) (Chief Bankruptcy Judge Ross W. Krumm) (the expenses of an above-median debtor are determined under the means test)

In re Goins, 372 B.R. 824 (Bankr. D. S.C., Aug. 1, 2007) (Bankruptcy Judge David R. Duncan) (the expenses of an above-median debtor are determined under the means test)

In re Lynch, 368 B.R. 487 (Bankr. E.D. Va., May 8, 2007) (Chief Bankruptcy Judge Douglas O. Tice Jr.) (the expenses of an above-median debtor are determined under the means test)

In re Watson, 366 B.R. 523 (Bankr. D. Md., April 11, 2007) (Chief Bankruptcy Judge Duncan W. Keir) (Form 22C establishes a presumption as to projected disposable income; however, if by evidence a party demonstrates "a substantial change in circumstance such that the numbers contained in Form B22C are not commensurate with a fair projection of the debtor's budget in the future," then "a projected budget based upon the evidence, reflecting projected earnings and projected reasonable necessary expenses will govern the determination of "projected disposable income" for purposes of confirmation of the plan"; the expenses of an above-median debtor are determined under the means test)

In re Mitchell, 2007 WL 1075195 (Bankr. E.D. Va., April 4, 2007) (Bankruptcy Judge Stephen S. Mitchell) (the expenses of an above-median debtor are determined under the means test)

In re Plumb, 373 B.R. 429 (Bankr. W.D. N.C., March 16, 2007) (Bankruptcy Judge George R. Hodges) ("Form B22C is the starting point for determining projected disposable income for above-median income debtors, but because the income and expense components of projected disposable income in § 1325(b) are forward-looking concepts, debtors must take Schedules I and J into consideration when making that calculation"; the expenses of an above-median debtor are determined under the means test)

In re Enright, 2007 WL 748432 (Bankr. M.D. N.C., March 6, 2007) (Bankruptcy Judge Thomas W. Waldrep Jr.) (the expenses of an above-median debtor are determined under the means test)

In re Winokur, 364 B.R. 204 (Bankr. E.D. Va., Jan. 18, 2007) (Bankruptcy Judge Robert G. Mayer) (multiplicative approach, although debtors could pay more)

In re Crews, 2006 WL 3782865 (Bankr. M.D. N.C., Dec. 22, 2006) (Chief Bankruptcy Judge William L. Stocks) (the expenses of an above-median debtor are determined under the means test)

In re Cleary, 357 B.R. 369 (Bankr. D. S.C., Nov. 14, 2006) (Bankruptcy Judge David R. Duncan; the expenses of an above-median debtor are determined under the means test, while the expenses of a below-median debtor are the debtor's actual expenses from Schedule J, subject to the court's assessment of reasonableness)

In re Johnson, 2006 WL 2883243 (Bankr. M.D. N.C., Oct. 6, 2006) (Chief Bankruptcy Judge William L. Stocks) (the expenses of an above-median debtor are determined under the means test)

In re Girodes, 350 B.R. 31, Bankr. L. Rep. ¶ 80,813 (Bankr. M.D. N.C., Sept. 20, 2006) (Bankruptcy Judge Catherine R. Carruthers) (multiplicative approach; the expenses of an above-median debtor are determined under the means test, while the expenses of a below-median debtor are the debtor's actual expenses from Schedule J, subject to the court's assessment of reasonableness)

In re Edmunds, 350 B.R. 636 (Bankr. D. S.C., Sept. 18, 2006) (Chief Bankruptcy Judge John E. Waites) (both income and expenses are determined on a forward-looking basis; thus, income is determined by the actual income the debtor expects to receive over the term of the plan, and a debtor may not take a deduction for payments on a secured debt for which the debtor intends to surrender the collateral; while the expenses of an above-median debtor are determined under the means test, the categories of expenses that are based on the debtor's actual expenses are subject to a test of reasonableness under Code § 1325(b)(3))

In re Crittendon, 2006 WL 2547102 (Bankr. M.D. N.C., Sept 1, 2006) (Chief Bankruptcy Judge William L. Stocks) (the expenses of an above-median debtor are determined under the means test; however, because a debtor's expenses are determined as of the date of the confirmation of the debtor's plan, an above-median debtor may not take a deduction for payments on a secured debt for which the debtor intends to surrender the collateral; the court apparently held that income is determined under Form 22C, rather than on a forward-looking basis)

In re McPherson, 350 B.R. 38 (Bankr. W.D. Va., July 31, 2006) (Bankruptcy Judge William E. Anderson) (the expenses of an above-median debtor are determined under the means test; however, because a debtor's expenses are determined on a forward-looking basis, an above-median debtor may not take a deduction for payments on a secured debt for which the debtor intends to surrender the collateral; the court apparently viewed income as also being determined on a forward-looking basis, although income was not at issue)

In re Alexander, 344 B.R. 742, 56 Collier Bankr. Cas. 2d 427 (Bankr. E.D. N.C., June 30, 2006) (Chief Bankruptcy Judge J. Rich Leonard) (multiplicative approach, although debtors could pay more)

In re Barr, 341 B.R. 181, 55 Collier Bankr. Cas. 2d 1763, Bankr. L. Rep. ¶ 80,490 (Bankr. M.D. N.C., April 5, 2006) (Chief Bankruptcy Judge William L. Stocks) (the expenses of an above-median debtor are determined under the means test)

Fifth Circuit

Appellate Courts

In re Nowlin, 2007 WL 4623043 (S.D. Tex., Dec. 28, 2007) (District Judge Lynn N. Hughes) ("Debtors must use projected disposable income that includes expected changes to the allowed expenses during the term of the plan"; here, the calculation of the debtor's projected disposable income needed to reflect the fact that, in the 24th month of her 60-month plan, she would complete the repayment of her 401(k) account loan)

Bankruptcy Courts

In re Graham, 2008 WL 1775003 (Bankr. N.D. Tex., April 15, 2008) (Bankruptcy Judge D. Michael Lynn) (both income and expenses are determined on a forward-looking basis; thus, the above-median debtors were not permitted to deduct payments on a secured debt for which they intended to surrender the collateral)

In re Redmond, 2008 WL 1752133 (Bankr. S.D. Tex., April 14, 2008) (Bankruptcy Judge Letitia Z. Clark) (Form 22C establishes the presumptive amount of an above-median debtor's projected disposable income, but that presumption may be rebutted; the court assessed the reasonableness of the above-median debtor's expenses without explicitly considering whether the court is empowered to do so; the court determined that "the expense of owning and maintaining three vehicles for the use of the debtor and her roommate is not necessary," and that the debtor "presented no evidence with respect to the question of whether the payment of the student loan outside the plan is reasonably necessary to the support of the Debtor or the Debtor's dependents")

In re Louviere, 2008 WL 925824 (Bankr. E.D. Tex., April 4, 2008) (Chief Bankruptcy Judge Bill Parker) (the projected disposable income of the debtor may vary from the statutory disposable income calculation if "the debtor can show that there has been a substantial change in circumstances such that the numbers contained in Form 22C are not commensurate with a fair projection of the debtor's budget in the future"; "[o]nce a substantial change in circumstances occurs which significantly alters the income stream once enjoyed in the pre-petition period by a Chapter 13 debtor, the utility of that 22C

computation for the purpose of determining projected disposable income under § 1325(b)(1)(B) is undermined and it must be discarded under the statute in favor of a more contemporaneous net income calculation derived from Schedules I and J which recognizes and incorporates the changes occurring in the debtor's real-life circumstances" [footnotes omitted]; here, the debtor's income had decreased; expenses were not at issue; Code § 1325(b)(3) incorporates the special circumstances doctrine only as to expenses, not income; the expenses of an above-median debtor are determined under the means test)

Note: In both *In re Sadler* and *In re Sparks*, below, Chief Judge Parker stated that "special circumstances" may affect both income and expenses. He apparently receded from that position in *In re Louviere*.

In re Owsley, — B.R. —, 2008 WL 868044 (Bankr. N.D. Tex., March 31, 2008) (Bankruptcy Judge Russell F. Nelms) (the expenses of an above-median debtor are determined under the means test; the court has no authority to assess the reasonableness of those expenses)

In re Meador, 2008 WL 243673 (Bankr. S.D. Tex., Jan. 25, 2008) (Bankruptcy Judge Letitia Z. Clark) (Form B22C provides a presumptive definition of projected disposable income, but the presumption may be rebutted; the expenses of an above-median debtor are determined under the means test; under the forward-looking approach, the above-median debtors were not permitted to deduct payments on a secured debt for which the collateral had been repossessed; the plan also was required to reflect additional monies available for unsecured creditors when two debts were completely repaid during the plan term)

In re Dalton, 2007 WL 4554024 (Bankr. S.D. Miss., Dec. 19, 2007) (Bankruptcy Judge Edward R. Gaines) (multiplicative approach, although the debtors' schedules showed that they could pay more)

In re Zinser, 2007 WL 3479604 (Bankr. N.D. Tex., Nov. 15, 2007) (Bankruptcy D. Michael Lynn; Westlaw incorrectly identifies the author as Bankruptcy Judge Russell F. Nelms) (applying *In re Barraza*, below, to one debtor's child support payments and another debtor's 401(k) loan repayments, and permitting the deduction only of an average monthly amount in each case; the expenses of an above-median debtor are determined under the means test)

Note: Joint debtors Spalding and Higgins have appealed the court's decision on the 401(k) loan repayment amount. The appeal was docketed on February 1, 2008, with the district court as case number 4:08-cv-00064, assigned to Judge Terry R Means. The debtors assert that they should be able to deduct the full monthly payment, and the Trustee can seek modification of the debtors' plan when an expense ends.

In re Barfknecht, 378 B.R. 154 (Bankr. W.D. Tex., Nov. 7, 2007) (Bankruptcy Judge Leif M. Clark) (because Social Security benefits are excluded from "current monthly income" as defined in Code § 101(10A), they are excluded from the calculation of "projected disposable income," whether or not a forward-look approach is adopted)

In re Sadler, 378 B.R. 780 (Bankr. E.D. Tex., Oct. 9, 2007) (Chief Bankruptcy Judge Bill Parker) (projected disposable income may vary from the disposable income calculation if "the debtor can show that there has been a substantial change in circumstances such that the numbers contained in Form B22C are not commensurate with a fair projection of the debtor's budget in the future"; "the incorporation of the means test standards into the disposable income calculation established by § 1325(b) allows an affected higher-income

Chapter 13 debtor to establish the existence of 'special circumstances' which justify the recognition and allowance of additional categories of expense or an adjustment to the calculation of current monthly income"; "[i]n the opinion of this Court, the phrase 'in accordance with' as utilized in § 1325(b)(3) means that the standards imposed by that subsection cannot be violated during the determination of whether proposed expenditures are reasonable and necessary. However, the fact that a debtor proposes a plan with a payment amount to unsecured creditors equivalent to the B22C calculation does not necessarily constitute compliance with the § 1325(b)(1)(B) standard and does not preclude the Court from engaging in a further evaluation of the reasonableness of the debtor's expenses" [the editor confesses difficulty in understanding the latter holding; perhaps the court is saying that it retains the authority to assess the reasonableness of expenses that, under the means test, are derived from the debtor's actual expenses])

Note: In *In re Louviere*, above, Chief Judge Parker, without citing *In re Sadler*, explicitly held that, under Code § 1325(b)(3), "special circumstances" affect only expenses, not income.

In re Oltjen, 2007 WL 2329695 (Bankr. W.D. Tex., Aug. 13, 2007) (Bankruptcy Judge Robert C. McGuire) (the expenses of an above-median debtor are determined under the means test)

In re Knippers, 2007 WL 1239297 (Bankr. S.D. Tex., April 26, 2007) (Bankruptcy Judge Letitia Z. Clark) (Form B22C provides a presumptive definition of projected disposable income, but the presumption may be rebutted; the expenses of an above-median debtor are determined under the means test; the debtor claimed that his income had decreased, although the court found his evidence lacking)

In re Aprea, 368 B.R. 558 (Bankr. E.D. Tex., April 25, 2007) (Bankruptcy Judge Brenda T. Rhoades) (the expenses of an above-median debtor are determined under the means test)

In re Nowlin, 366 B.R. 670 (Bankr. S.D. Tex., April 11, 2007), aff'd 2007 WL 4623043 (S.D. Tex., Dec. 28, 2007) (Bankruptcy Judge Jeff Bohm) ("projected disposable income,' as it is used in § 1325(b), requires the Debtor to account for any events which will definitely occur during the term of the Plan that would alter either the income or expense side of the disposable income calculation"; here, the calculation of the debtor's projected disposable income needed to reflect the fact that, in the 24th month of her 60-month plan, she would complete the repayment of her 401(k) account loan; step-up required; however, the amount of step-up would be calculated on the basis that the debtor redirected her loan repayments to account contributions, up to the maximum allowable contribution)

In re Ceasar, 364 B.R. 257 (Bankr. W.D. La., March 6, 2007) (Bankruptcy Judge Robert R. Summerhays) (the expenses of an above-median debtor are determined under the means test)

In re Devilliers, 358 B.R. 849 (Bankr. E.D. La., Jan. 9, 2007) (Bankruptcy Judge Elizabeth W. Wagner) ("since 'projected' modifies "disposable income" in § 1325(b)(1)(B), the Court is required to consider not only a debtor's historical income and expenses, but also his or her anticipated income and expenses when confirming a plan"; the expenses of an above-median debtor are determined under the means test; while "the starting point for all debtors will be the IRS standard deductions regardless of their prepetition experience," the Trustee "is free to challenge the calculation of disposable income in the future if he believes the debtor's actual experience, over a sustained and reasonable period of time, does not necessitate the full allowance claimed"; this is due to "[t]he limitations of § 1325 requiring

that any expenditure be reasonably necessary"; all expenses under the means test, other than the IRS standard amounts, are subject to the requirements of necessity and reasonableness, although, for expenses that existed prepetition, the court would assume that these expenses were reasonable and necessary (but these deduction apparently may be challenged by the Trustee in the same manner as deductions for the IRS standard amounts); Code § 541(b)(7), excluding from "disposable income" contributions to a qualified retirement plan, imposes no limitations based on reasonableness or necessity)

In re Sparks, 360 B.R. 224 (Bankr. E.D. Tex., Oct. 18, 2006) (Chief Bankruptcy Judge Bill Parker) (projected disposable income may vary from the disposable income calculation if "the debtor can show that there has been a substantial change in circumstances such that the numbers contained in Form B22C are not commensurate with a fair projection of the debtor's budget in the future"; "the incorporation of the means test standards into the disposable income calculation established by § 1325(b) allows an affected higher-income Chapter 13 debtor to establish the existence of 'special circumstances' which justify the recognition and allowance of additional categories of expense or an adjustment to the calculation of current monthly income")

Note: In *In re Louviere*, above, Chief Judge Parker, without citing *In re Sparks*, explicitly held that, under Code § 1325(b)(3), "special circumstances" affect only expenses, not income.

In re Wayman, 351 B.R. 808 (Bankr. E.D. Tex., Aug. 16, 2006) (Chief Bankruptcy Judge Bill Parker) projected disposable income may vary from the disposable income calculation if "the debtor can show that there has been a substantial change in circumstances such that the numbers contained in Form B22C are not commensurate with a fair projection of the debtor's budget in the future"; here, the debtor's income may have decreased)

In re Barraza, 346 B.R. 724 (Bankr. N.D. Tex., Aug 1, 2006) (Bankruptcy Judge Russell F. Nelms) (extending forward-looking analysis of *In re Hardacre*, below, to also apply to the debtor's expenses; if an expense [here, court-ordered child support] will end prior to the completion of the plan, the debtor may deduct only a monthly average, i.e., the total dollars to be paid on the expense divided by the number of months in the plan's term; the expenses of an above-median debtor are determined under the means test)

In re Lara, 347 B.R. 198, Bankr. L. Rep. ¶ 80,745 (Bankr. N.D. Tex., June 28, 2006) (Chief Bankruptcy Judge Barbara J. Houser) (the expenses of an above-median debtor are determined under the means test)

In re Hardacre, 338 B.R. 718, 55 Collier Bankr. Cas. 2d 1293, Bankr. L. Rep. ¶ 80,506 (Bankr. N.D. Tex., March 6, 2006) (Bankruptcy Judge Russell F. Nelms) (the debtor's income is based, not on Form 22C, but on the "income that the debtor reasonably expects to receive during the term of her plan"; "[t]his does not mean that section 101(10A)'s definition of current monthly income is irrelevant to the calculation of projected disposable income. Section 101(10A) continues to apply inasmuch as it describes the sources of revenue that constitute income, as well as those that do not.")

Sixth Circuit

Bankruptcy Courts

In re Anderson, — B.R. —, 2008 WL 748416 (Bankr. S.D. Ohio, March 21, 2008) (Bankruptcy Judge Guy R. Humphrey) (multiplicative approach; the court recognized that, in some cases, this approach would preclude debtors from obtaining bankruptcy relief, although this was not such a case; for above-median debtors, the court does not retain the authority to determine whether expenses authorized under the means test are reasonable and necessary)

In re French, 383 B.R. 402 (Bankr. W.D. Ky., March 13, 2008) (Chief Bankruptcy Judge Joan A. Lloyd) (“Form B22C sets up a presumption that may be rebutted by the objecting party and the projected disposable income may be adjusted by the court accordingly”; only income was at issue in the case, but the court’s holding appears to apply to expenses as well)

In re Petro, 381 B.R. 233, Bankr. L. Rep. ¶ 81,094 (Bankr. M.D. Tenn., Jan. 23, 2008) (Chief Bankruptcy Judge George C. Paine II) (multiplicative approach, although the debtors could pay more)

In re Lacny, 2007 WL 3216627 (Bankr. E.D. Ky., Oct. 25, 2007) (Bankruptcy Judge Joseph M. Scott Jr.) (implementing *In re Riggs*, below, the court said that, when calculating Schedule J, debtors (including above-median debtors) shall include expenses that accurately portray the debtor’s situation after making an effort to reduce those expenses; all expenses must be “reasonably necessary”; the court made no reference to the means test or Code § 1325(b)(3))

In re Spurgeon, 378 B.R. 197 (Bankr. E.D. Tenn., Oct. 10, 2007) (Bankruptcy Judge R. Thomas Stinnett) (the expenses of an above-median debtor are determined under the means test; expenses are determined on a forward-looking basis, namely, “on the basis of events in the chapter 13 case and the terms of the proposed plan”; thus, the debtor could not deduct payments on a secured debt for which he would be surrendering the collateral; the court suggested that income is based simply on Form 22C, although the court did not need to decide the issue; the court clearly recognized the distinction between how income and expenses are calculated and as of when they are calculated: “The argument has been made that this method of determining deductible expenses amounts to ignoring the statutory definitions. [citations omitted] The court disagrees. The statutes still identify the kinds of expenses that can be deducted and limit the deductible amounts. The difference is the time of determining the relevant facts. The statutes apply, but they apply to the facts as changed by events in the chapter 13 case, including changes that will result from confirmation of the proposed plan”; the court stated, but did not apply, the principle that “[t]he statutes allow the debtor to rebut the result of the disposable income test—to show less disposable income—by proving lower income or larger expenses.”)

In re McCarty, 376 B.R. 819 (Bankr. N.D. Ohio, Sept. 28, 2007) (Chief Bankruptcy Judge Marilyn Shea-Stonum) (while Form 22C establishes the starting point, projected disposable income must reflect all of the income (as defined in Code § 101(10A)) that a debtor anticipates receiving over the applicable commitment period; expenses not in issue; the calculation can not rely on Schedule I because it requires the debtor to list certain types of income excluded under § 101(10A))

In re McGillis, 370 B.R. 720 (Bankr. W.D. Mich., May 15, 2007) (Bankruptcy Judge Jeffrey R. Hughes) (income is based on Form 22C, but all expenses, even those of an above-median debtor under the means test, must be both actual and reasonable; thus, the debtor may deduct only the lesser of the IRS standard amount and his or her actual expense, and the debtor may not deduct payments on a secured debt for which the debtor intends to surrender the collateral)

In re Kolb, 366 B.R. 802 (Bankr. S.D. Ohio; March 30, 2007) (Bankruptcy Judge Lawrence S. Walter) (multiplicative approach even where, as here, the debtor's income had decreased, and the result was an infeasible plan; "The court recognizes that this Debtor may never be able to propose a confirmable plan with a 100% return to unsecured creditors. The reason is simple. The Debtor's schedules of income and expenses reveal that she may not have the actual income necessary to pay her unsecured creditors in full within five years. This is the unfortunate result of a congressionally-created system that uses rigid formulas to calculate a debtor's chapter 13 plan payments rather than considering a debtor's present financial reality and ability to pay. Nonetheless, as noted elsewhere in this decision and by other courts interpreting these provisions of BAPCPA, it is not this court's function to legislate, but to interpret and apply the law as written"; while recognizing that "absurdity represents an exception to the doctrine of plain meaning," the court concluded that the multiplicative approach in general "does not rise to the level of absurdity, although the court did not consider whether the outcome of this particular case was absurd; the court recognized, but did not further discuss the application of, the principle that "because Congress specifically referenced subparagraph (B) of § 707(b)(2) in § 1325(b)(3), § 707(b)(2)(B) may allow for an adjustment to CMI or a debtor's expenses where 'special circumstances' exist")

In re Grant, 364 B.R. 656 (Bankr. E.D. Tenn., March 19, 2007) (Bankruptcy Judge Richard S. Stair Jr.) (Form 22C establishes a rebuttable presumption as to both income and expenses)

In re Upton, 363 B.R. 528 (Bankr. S.D. Ohio, March 14, 2007) (Bankruptcy Judge C. Kathryn Preston) (both income and expenses are to be determined as of the effective date of the plan; this should be based on Schedules I and J, amended as necessary to reflect postpetition changes in circumstances; while the court recognized that income is limited to those sources included under Code § 101(10A), the court disavowed the means test as the sole determinant of the expenses of an above-median debtor: "In the case where the debtor's actual expenses are less than those allowed under the Form 22 means test, her Schedule J may reflect that she has additional income available to pay into the plan that Form 22 does not")

In re Riggs, 359 B.R. 649, 57 Collier Bankr. Cas. 2d 1147 (Bankr. E.D. Ky., Feb. 27, 2007) (Bankruptcy Judge William S. Howard) (a debtor's projected disposable income must be determined by reference to his or her Schedules I and J; appears to ignore Form 22C)

In re Crews, 2007 WL 626041, 57 Collier Bankr. Cas. 2d 1207 (Bankr. N.D. Ohio, Feb. 23, 2007) (Bankruptcy Judge Arthur I. Harris) (expenses of above-median debtors are determined by applying the means test)

In re Davis, 348 B.R. 449, 56 Collier Bankr. Cas. 2d 905, Bankr. L. Rep. ¶ 80,736 (Bankr. E.D. Mich., Aug. 21, 2006) (Bankruptcy Judge Phillip J. Shefferly) (expenses of above-median debtors are determined by applying the means test)

In re Ford, 2006 WL 4458358 (Bankr. N.D. Ohio, July 26, 2006) (Bankruptcy Judge Arthur I. Harris) (expenses of above-median debtors are determined by applying the means test)

In re Risher, 344 B.R. 833 (Bankr. W.D. Ky., July 12, 2006) (Chief Bankruptcy Judge Joan A. Lloyd) (Form 22C establishes only the starting point for the determination of projected disposable income; only income was at issue in the case, but the court's holding appears to apply to expenses as well)

In re Chriss-Price, 376 B.R. 648 (Bankr. M.D. Tenn., July 5, 2006) (Bankruptcy Judge Marian F. Harrison) (as to both income and expenses, "a debtor must propose to pay unsecured creditors the number resulting from Official Form B22C, unless the proof shows that this number does not adequately represent the debtor's budget projected into the future")

Seventh Circuit

Appellate Courts

In re Mancl, 381 B.R. 537, Bankr. L. Rep. ¶ 81,111 (W.D. Wis., Feb. 12, 2008) (Chief District Judge Barbara B. Crabb) (multiplicative approach; "The term disposable income is used only once in the subsection, in the phrase 'projected disposable income.' To adopt the majority view, one must assume that Congress created the precise and objective current monthly income definition of § 101(10A), mandated that bankruptcy courts apply it to the § 1325(b) test, and then added the term 'projected' to empower bankruptcy courts to ignore the § 101(10A) definition, substituting their own sense of fairness by applying the former process of analyzing and comparing schedules I and J. Given the precision and detail of the statute, such an interpretation is untenable"; the trustee contended that the debtors could pay more because the husband debtor was temporarily unable to work during the six months prepetition)

Bankruptcy Courts

In re Spraggins, --- B.R. ---, 2008 WL 1744576 (Bankr. E.D. Wis., April 11, 2008) (Bankruptcy Judge Susan V. Kelley) (adopting multiplicative approach; the income shown on Form B22C, rather than Schedule I, should be used to calculate the projected disposable income of a below-median debtor)

In re Turner, --- B.R. ---, 2008 WL 834424 (Bankr. S.D. Ind., March 27, 2008) (Bankruptcy Judge James K. Coachys) (expenses of above-median debtors are determined by applying the means test as of the petition date; the trustee contended that the debtors could pay more because they were surrendering their house)

In re Van Bodegom Smith, --- B.R. ---, 2008 WL 613177 (Bankr. E.D. Wis., March 6, 2008) (Bankruptcy Judge Pamela Pepper) (expenses of above-median debtors are determined by applying the means test; projected disposable income is determined in a forward-looking manner; therefore, the debtors could not deduct payments on secured debt for which they intended to surrender the collateral; the court does not have the authority to apply a separate test of reasonable necessity)

In re White, 382 B.R. 751 (Bankr. C.D. Ill., Feb. 28, 2008) (Chief Bankruptcy Judge Thomas L. Perkins) (expenses of above-median debtors are determined by applying the means test)

In re Kalata, 2008 WL 552856 (Bankr. E.D. Wis., Feb. 27, 2008) (Chief Bankruptcy Judge Margaret Dee McGarity) (expenses of above-median debtors are determined by applying the means test; projected disposable income is determined in a forward-looking manner; therefore, the debtors could not deduct payments on secured debt for which they intended to surrender the collateral)

In re Franco, 2008 WL 444679 (Bankr. S.D. Ill., Feb. 12, 2008) (Chief Bankruptcy Judge Kenneth J. Meyers) (the court has no authority to determine the reasonable necessity of an above-median debtor's expense, as they are determined under the means test; thus, the debtors could deduct their payments on three automobiles)

In re Herbord, 2008 WL 149972 (Bankr. S.D. Ill., Jan. 14, 2008) (Chief Bankruptcy Judge Kenneth J. Meyers) (expenses of above-median debtors are determined by applying the means test)

In re Saffrin, 380 B.R. 191 (Bankr. N.D. Ill., Dec. 21, 2007) (Bankruptcy Judge A. Benjamin Goldgar) (expenses of above-median debtors are determined by applying the means test)

In re Burmeister, 378 B.R. 227 (Bankr. N.D. Ill., Nov. 16, 2007) (Bankruptcy Judge A. Benjamin Goldgar) (expenses of above-median debtors are determined by applying the means test; the test is applied as of the petition date; thus, the debtors could deduct payments on secured debt for which they intended to surrender the collateral)

In re Sallee, 2007 WL 3407738 (Bankr. S.D. Ill., Nov. 15, 2007) (Chief Bankruptcy Judge Kenneth J. Meyers) (the court has no authority to determine the reasonable necessity of an above-median debtor's expense, as they are determined under the means test; thus, the debtors could deduct their payments on four automobiles)

In re Ross, 377 B.R. 599 (Bankr. N.D. Ill., Oct. 31, 2007) (Bankruptcy Judge John H. Squires) (multiplicative approach; "[t]he function of § 707(b)(2)(B) in the context of a Chapter 13 case is to provide for special circumstances that justify expenses that were not previously deducted on the B22C Form"; the court rejected the debtor's assertion that § 707(b)(2)(B) permits a debtor to attempt to "rebut" the projected disposable income calculated on Form 22C; it is unclear [to the editor] whether the court is simply rejecting the debtor's garbled reasoning, or if the court is rejecting the potential application of § 707(b)(2)(B) to a change in income; although the debtor's income had decreased, the court was not faced with an infeasible plan, as the debtor was able to pay his unsecured creditors in full)

In re Moorman, 376 B.R. 694 (Bankr. C.D. Ill., Sept 28, 2007) (Bankruptcy Judge Mary P. Gorman) (expenses of above-median debtors are determined by applying the means test)

In re Ross, 375 B.R. 437 (Bankr. N.D. Ill., Sept. 13, 2007), amended on reconsideration on other grounds, 377 B.R. 599 (Bankr. N.D. Ill., Oct. 31, 2007) (Bankruptcy Judge John H. Squires) (multiplicative approach; the court quoted, but did not need to apply, the statement in *In re Miller*, 361 B.R. 224, 56 Collier Bankr. Cas. 2d 795 (Bankr. N.D. Ala., Jan. 18, 2007), below, that both income and expenses may be adjusted for special circumstances; infeasibility not in issue)

In re Mancl, 375 B.R. 514 (Bankr. W.D. Wis., Aug. 24, 2007), rev'd, 381 B.R. 537, Bankr. L. Rep. ¶ 81,111 (W.D. Wis., Feb. 12, 2008) (Bankruptcy Judge Thomas S. Utschig) (as to income, Form 22C establishes rebuttable presumption)

In re Gehrke, 2007 WL 2318479 (Bankr. E.D. Wis., Aug. 9, 2007) (Bankruptcy Judge Susan V. Kelly) (expenses of above-median debtors are determined by applying the means test)

In re Barrett, 371 B.R. 855 (Bankr. S.D. Ill., July 10, 2007) (Chief Bankruptcy Judge Kenneth J. Meyers) (multiplicative approach; rejecting step-up)

In re Barrett, — B.R. —, 2007 WL 2255097 (Bankr. S.D. Ill., July 10, 2007) (Chief Bankruptcy Judge Kenneth J. Meyers) (in the case of a debtor with above-median income, if an expense is allowed under the National or Local Standards referred to in Code § 707(b)(2)(A)(ii)(I), this fulfills the statutory definition of “reasonably necessary” in Code § 1325(b) and displaces the court’s subjective measure of whether the expense should be permitted)

In re Nance, 371 B.R. 358 (Bankr. S.D. Ill., July 10, 2007) (Chief Bankruptcy Judge Kenneth J. Meyers) (multiplicative approach)

In re Long, 372 B.R. 467 (Bankr. W.D. Wis., May 10, 2007) (Chief Bankruptcy Judge Robert D. Martin) (expenses of above-median debtors are determined by applying the means test)

In re Carlton, 362 B.R. 402, 57 Collier Bankr. Cas. 2d 1065 (Bankr. C.D. Ill., Feb. 28, 2007), reconsideration denied, 370 B.R. 188 (Bankr. C.D. Ill., June 18, 2007) (Bankruptcy Judge Mary P. Gorman) (as to income, the court must look to Schedule I so as to determine a debtor's actual income expected to be earned or available during the applicable commitment period; expenses of above-median debtors are determined by applying the means test; the court retains no authority to assess the reasonableness of the expenses)

In re Hall, 2007 WL 445517 (Bankr. C.D. Ill., Feb. 12, 2007) (Bankruptcy Judge Mary P. Gorman) (although the court states that a debtor’s current monthly income “need not be amended to address post-petition changes in a debtor's financial circumstances or to calculate projected disposable income which ultimately determines the amount of plan payments,” the court then holds that “the CMI analysis” is “the initial but not the ultimate measure of the debtor's financial condition and ability to fund their plan,” and Judge Gorman’s holding in *In re Carlton*, above, confirms that this is her position)

In re Balcerowski, 353 B.R. 581 (Bankr. E.D. Wis., Oct. 17, 2006) (Bankruptcy Judge Pamela Pepper) (following *In re Fuller*, below)

In re Farrar-Johnson, 353 B.R. 224, Bankr. L. Rep. ¶ 80,744 (Bankr. N.D. Ill., Sept. 15, 2006) (Bankruptcy Judge A. Benjamin Goldgar) (expenses of above-median debtors are determined by applying the means test)

In re Foster, 2006 WL 2621080 (Bankr. N.D. Ind., Sept. 11, 2006) (Chief Bankruptcy Judge Harry C. Dees Jr.) (as to income, CMI is merely the starting point)

In re Nevitt, 2006 WL 2433491, 56 Collier Bankr. Cas. 2d 807 (Bankr. N.D. Ill., Aug. 18, 2006) (Bankruptcy Judge Manuel Barbosa) (Schedule I, instead of Form B22C, should be used to calculate income; the expenses of a below-median debtor are the amount calculated on Schedule J minus any payments on account of secured debts, if not already listed therein)

In re Wiggs, 2006 WL 2246432 (Bankr. N.D. Ill., Aug. 4, 2006) (Bankruptcy Judge Manuel Barbosa) (expenses of above-median debtors are determined by applying the means test)

In re Demonica, 345 B.R. 895 (Bankr. N.D. Ill., July 31, 2006) (Bankruptcy Judge Manuel Barbosa) (Schedule I, instead of Form B22C, should be used to calculate income; expenses of above-median debtors are determined by applying the means test)

In re Guzman, 345 B.R. 640, 56 Collier Bankr. Cas. 2d 636, Bankr. L. Rep. ¶ 80,711 (Bankr. E.D. Wis., July 19, 2006) (Bankruptcy Judge Susan V. Kelley) (expenses of above-median debtors are determined by applying the means test)

In re Fuller, 346 B.R. 472 (Bankr. S.D. Ill., June 21, 2006) (Bankruptcy Judge Pamela Pepper) (income is determined from Schedule I as the debtor's actual income on the petition date; expenses for an above-median debtor are determined from Form 22C, i.e., the means test applied on the petition date)

Eighth Circuit

Appellate Courts

In re Lasowski, — B.R. —, 2008 WL 833971 (8th Cir. B.A.P., March 31, 2008) (Chief Bankruptcy Judge Barry S. Schermer [E.D. Mo.], Bankruptcy Judge Arthur B. Federman [W.D. Mo.], Bankruptcy Judge David P. McDonald [E.D. Mo.]) (expenses of above-median debtors are determined by applying the means test)

In re Frederickson, 375 B.R. 829, 58 Collier Bankr. Cas. 2d 719, Bankr. L. Rep. ¶ 81,022 (8th Cir. B.A.P., Sept. 24, 2007) (Bankruptcy Judge Robert J. Kressel [D. Minn.] and Chief Bankruptcy Judge Timothy J. Mahoney [D. Neb.], with Bankruptcy Judge Arthur B. Federman [W.D. Mo.] dissenting) (multiplicative approach; postpetition changes not involved, so infeasibility not in issue)

Bankruptcy Courts

In re Egbert, — B.R. —, 2008 WL 963399 (Bankr. E.D. Ark., April 10, 2008) (Bankruptcy Judge Richard D. Taylor) (expenses of above-median debtors are determined by applying the means test, even if the debtors' actual expenses are less)

In re Colclasure, 383 B.R. 463 (Bankr. E.D. Ark., March 12, 2008) (Bankruptcy Judge James G. Mixon) (multiplicative approach, even where the debtors' income decreased and the calculated payments were infeasible; although the U.S. Trustee urged recognition of changed circumstances, the Chapter 13 Trustee objected)

In re Coleman, 382 B.R. 759 (Bankr. W.D. Ark., Feb. 26, 2008) (Bankruptcy Judge Ben T. Barry) (while the expenses of above-median debtors are determined by applying the means test, only payments that first become payable after the date the petition is filed are deductible; thus, debtors may not deduct payments on secured debts for which they intend to surrender the collateral)

In re Davis, 382 B.R. 764 (Bankr. W.D. Ark., Feb. 26, 2008) (Bankruptcy Judge Ben T. Barry) (the expenses of above-median debtors are determined by applying the means test, even if the debtors' actual expenses are less)

In re Miller, 381 B.R. 736 (Bankr. W.D. Ark., Jan. 29, 2008) (Bankruptcy Judge Ben T. Barry) (multiplicative approach, even where the debtors' income decreased and the calculated payments were infeasible; debtors forced into Chapter 7 in this manner should not be subject to dismissal or conversion for abuse under Code § 707(b))

In re Jones, 2007 WL 4893472 (Bankr. D. Neb., Dec. 14, 2007) (Bankruptcy Judge Thomas L. Saladino) (the expenses of above-median debtors are determined by applying the means test; the court has no authority to determine whether expenses are reasonable and necessary)

In re James, 379 B.R. 903 (Bankr. D. Neb., Nov. 30, 2007) (Bankruptcy Judge Thomas L. Saladino) (the expenses of above-median debtors are determined by applying the means test, even if the debtors' actual expenses are less)

In re Riding, 377 B.R. 239 (Bankr. W.D. Mo., Oct. 30, 2007) (Bankruptcy Judge Arthur B. Federman) (multiplicative approach, even where the debtor's income decreased and the calculated payments were infeasible; under Code § 1325(b)(3), "special circumstances" under Code § 707(b)(2)(B) apply only to expenses, not to income)

In re Musgrave, Case No. BK07-80393 (Bankr. D. Neb., July 19, 2007) (Bankruptcy Judge Thomas L. Saladino) (the expenses of above-median debtors are determined by applying the means test) ([view full opinion](#))

In re Frederickson, 368 B.R. 825 (Bankr. E.D. Ark., May 16, 2007), aff'd, 375 B.R. 829, 58 Collier Bankr. Cas. 2d 719, Bankr. L. Rep. ¶ 81,022 (8th Cir. B.A.P., Sept. 24, 2007) (Bankruptcy Judge Richard D. Taylor) (expenses of above-median debtors are determined by applying the means test, even if the debtors' actual expenses are less)

In re Ward, 359 B.R. 741, Bankr. L. Rep. ¶ 80,846 (Bankr. W.D. Mo., Jan. 7, 2007) (Bankruptcy Judge Arthur B. Federman) (as to income, Form 22C establishes rebuttable presumption; statement of principle only, as postpetition changes not involved) (Judge Federman views opinion as abrogated by *In re Frederickson*)

In re Mitchell, 368 B.R. 845, 57 Collier Bankr. Cas. 2d 416 (Bankr. D. Neb., Jan. 5, 2007) (Bankruptcy Judge Thomas L. Saladino) (as to both income and expenses of an above-median debtor, Form 22C, rather than Schedules I and J, controls; postpetition changes not involved)

In re Pederson, 2006 WL 3000104, 98 A.F.T.R.2d 2006-7619 (Bankr. N.D. Iowa. Oct. 13, 2006) (Chief Bankruptcy Judge William L. Edmonds) (as to income, Form 22C establishes only the starting point) (abrogated by *In re Frederickson* if BAP decisions are binding within the circuit)

In re Zirtzman, 2006 WL 3000103, 56 Collier Bankr. Cas. 2d 1538 (Bankr. N.D. Iowa, Oct. 4, 2006) (Bankruptcy Judge Paul J. Kilburg) (the debtors' agreement with the Chapter 13 Trustee to pay their unsecured creditors \$300 per month, although their calculated projected disposable income was negative, rebutted the presumption that the Form 22C calculation was accurate)

In re Gress, 344 B.R. 919, Bankr. L. Rep. ¶ 80,765 (Bankr. W.D. Mo., June 14, 2006) (Bankruptcy Judge Arthur B. Federman) (as to both income and expenses, Schedules I and J, rather than Form 22C, control; “In enacting the means test, Congress intended to take away discretion from the courts as to higher income debtors, who were seen as abusers of the system. Arguably, for that reason, a mechanical test such as that argued by the Debtors should be applied here. As can be seen, however, the use of the means test in this fashion allows debtors to propose plan payments based on a sort of parallel universe, which sometimes has little or nothing to do with their actual situation. For that reason, the courts in this district have previously found that Congress could not have intended a purely mechanical application of the means test to determine the amount above-median debtors are required to pay to unsecured creditors.”) (Judge Federman views opinion as abrogated by *In re Frederickson*)

In re Schanuth, 342 B.R. 601, Bankr. L. Rep. ¶ 80,689 (Bankr. W.D. Mo., May 25, 2006) (Bankruptcy Judge Jerry W. Venters) (characterizes the rebuttable presumption approach as “well reasoned,” but is not called upon to decide the issue)

In re Renicker, 342 B.R. 304, 56 Collier Bankr. Cas. 2d 377, Bankr. L. Rep. ¶ 80,608 (Bankr. W.D. Mo., May 15, 2006) (Bankruptcy Judge Jerry W. Venters) (expenses of above-median debtors are determined by applying the means test, including the doctrine of “special circumstances,” rather than through an evaluation of whether the expenses are reasonable and necessary; here, the debtors’ actual expenses were greater; while the court also declared that “the plain language of § 1325(b)(2) unambiguously indicates that prospective—not historical—expenses are to be used to calculate disposable income,” the court did not have to apply that principle) (and the latter holding is abrogated by *In re Frederickson* if BAP decisions are binding within the circuit)

Ninth Circuit

Appellate Courts

In re Ransom, 380 B.R. 799 (9th Cir. B.A.P., Dec. 27, 2007) (Chief Bankruptcy Judge Redfield T. Baum, Sr. [D. Ariz.] and Bankruptcy Judges Randall L. Dunn [D. Or.] and Dennis Montali [N.D. Cal.]) (expenses of above-median debtors are determined by applying the means test)

In re Pak, 378 B.R. 257, Bankr. L. Rep. ¶ 81,059 (9th Cir. B.A.P., Nov. 7, 2007) (Bankruptcy Judges Peter H. Carroll [C.D. Cal.], Randall L. Dunn [D. Or.] and Christopher M. Klein [E.D. Cal.]) (“disposable income,” as defined in Code § 1325(b)(2), is the starting point for determining “projected disposable income,” subject to adjustment, based on evidence, to reflect reality going forward; although the cases involved only income, the court’s decision is not explicitly limited in this regard; the concurring opinion suggested applying the “special circumstances” doctrine to the income side)

Bankruptcy Courts

In re Ovalle, 2008 WL 926080 (Bankr. E.D. Cal., April 4, 2008) (Bankruptcy Judge W. Richard Lee) (expenses of above-median debtors are determined by applying the means test, even where the debtor’s actual expenses are greater)

In re Stubbs, 2007 WL 4287579 (Bankr. D. Mont., Dec. 6, 2007) (Bankruptcy Judge Ralph B. Kirscher) (adhering to multiplicative approach, without reference to *In re Pak*, although postpetition changes not involved; the debtor established special circumstances, permitting housing expense in excess of IRS standard)

In re Broers, 2007 WL 4166144 (Bankr. E.D. Wash., Nov 20, 2007) (Chief Bankruptcy Judge Frank L. Kurtz) (interprets *In re Pak*, above, to have decided the issue only as to income; the expenses of above-median debtors are determined by applying the means test; the court does not retain the authority to determine if the expenses of an above-median debtor are necessary and reasonable; however, the court retained certain discretion, which it would exercise here, as the IRS standard was unclear as to whether a debtor in a one-person household could claim ownership expenses for two vehicles; the court determined that this debtor's doing so would be unreasonable and denied the deduction)

In re Crabtree, 2007 WL 3024030 (Bankr. D. Mont., Oct. 12, 2007) (Bankruptcy Judge Ralph B. Kirscher) (adhering to multiplicative approach)

In re Rains, 2007 WL 2900534 (Bankr. N.D. Cal., Oct. 2, 2007) (Bankruptcy Judge Edward D. Jellen) ("[t]he court holds that, for purposes of this case, the calculation of the [above-median] debtors' projected disposable income is governed by the information the debtors provided in their Schedules I (Income) and J (Expenses), and that the debtors are not entitled to a fixed allowance of any expense that is in excess of their actual expenses that are reasonably necessary for their maintenance and support, even if such a fixed allowance might be included in the 'means test' under § 707(b)")

In re Bateman, 2007 WL 2781119, 58 Collier Bankr. Cas. 2d 691 (Bankr. N.D. Cal., Sept. 21, 2007) (Bankruptcy Judge Edward D. Jellen) (same as *In re Rains*, above, although debtor was below-median)

In re Meek, 370 B.R. 294 (Bankr. D. Idaho, June 27, 2007) (Chief Bankruptcy Judge Terry L. Myers) ("on the income side of the projected disposable income equation, current monthly income as defined by § 101(10A) and as evidenced by the debtor's properly completed Form 22C will control unless trustees, creditors or debtors challenge that historically calculated income average as unrealistically high or low given the debtor's actual factual circumstances and present evidence to support that claim and substantiate the magnitude of the variation" (footnotes omitted); expenses of above-median debtors are determined by applying the means test; however, "other Code language (*i.e.*, 'projected,' 'reasonably necessary' and 'to be expended') allows parties to contest and the Court to consider the provisions of the debtor's proposed plan as well as events that will definitely occur during the pendency of the plan"; while it is unclear whether this pertains to postpetition changes, allegedly unreasonable expenses, or both, the court did not have to apply this holding under the facts of the case)

In re Armstrong, 370 B.R. 323, 57 Collier Bankr. Cas. 2d 175 (Bankr. E.D. Wash., June 12, 2007) (Bankruptcy Judge Patricia C. Williams) (expenses of above-median debtors are determined by applying the means test)

In re Bennett, 371 B.R. 440 (Bankr. C.D. Cal., June 6, 2007) (Bankruptcy Judge Theodor C. Albert) (expenses of above-median debtors are determined by applying the means test)

In re Mullen, 369 B.R. 25 (Bankr. D. Or., May 14, 2007) (Bankruptcy Judge Randall L. Dunn) (Form 22C establishes rebuttable presumption, with the court not differentiating between income and expenses; the above-median debtors' providing for higher monthly payments in their proposed plan, in an amount consistent with Schedule J, rebutted the presumption)

In re Chamberlain, 369 B.R. 519 (Bankr. D. Ariz., April 26, 2007) (Bankruptcy Judge Randolph J. Haines) (expenses of above-median debtors are determined by applying the means test)

In re Swan, 368 B.R. 12 (Bankr. N.D. Cal., April 18, 2007) (Bankruptcy Judge Arthur S. Weissbrodt) (expenses of above-median debtors are determined by applying the means test)

In re Rezendes, 368 B.R. 55 (Bankr. D. Hawai'i, April 2, 2007) (Chief Bankruptcy Judge Robert J. Faris) (expenses of above-median debtors are determined by applying the means test, not under Schedule J)

In re Pfiefer, 365 B.R. 187 (Bankr. D. Mont., March 28, 2007) (Bankruptcy Judge Ralph B. Kirscher) (expenses of above-median debtors are determined by applying the means test, not under Schedule J)

In re Gordon, 360 B.R. 679 (Bankr. S.D. Cal., Jan. 8, 2007) (Chief Bankruptcy Judge Peter W. Bowie) ("[t]he B22C calculation is important, but not controlling on plan confirmation because § 1325(b)(1)(B) requires commitment of 'projected disposable income' on a going-forward basis, not historical CMI or 'disposable income' without regard to intervening changes in employment or other circumstances"; rule stated but not applied)

In re Tuss, 360 B.R. 684, 56 Collier Bankr. Cas. 2d 864 (Bankr. D. Mont., Jan. 5, 2007) (Bankruptcy Judge Ralph B. Kirscher) (adhering to multiplicative approach, although postpetition changes not involved; expenses of above-median debtors are determined by applying the means test, even where the debtor's actual expenses are greater)

In re Pak, 357 B.R. 549, 57 Collier Bankr. Cas. 2d 567 (Bankr. N.D. Cal., Dec. 14, 2006), aff'd, 378 B.R. 257, Bankr. L. Rep. ¶ 81,059 (9th Cir. B.A.P., Nov. 7, 2007) (Bankruptcy Judge Leslie Tchaikovsky) (the court should attempt to estimate the debtor's income during the plan; the debtor was unemployed for much of the six months prepetition but was earning \$100,000 annually on the petition date; rejects use of Schedule I because definition of "current monthly income" excludes Social Security income, which is included on Schedule I)

In re Bossie, 2006 WL 3703203 (Bankr. D. Alaska, Dec. 12, 2006) (Bankruptcy Judge Donald MacDonald IV) (as to income, CMI is starting point; expenses of above-median debtors are determined by applying the means test)

In re Tranmer, 355 B.R. 234 (Bankr. D. Mont., Nov. 16, 2006) (Bankruptcy Judge Ralph B. Kirscher) (adopting multiplicative approach, although postpetition changes not involved; expenses of above-median debtors are determined by applying the means test, even where the debtor's actual expenses are greater)

In re Naslund, 359 B.R. 781 (Bankr. D. Mont., Nov. 16, 2006) (Bankruptcy Judge Ralph B. Kirscher) (expenses of above-median debtors are determined by applying the means test)

In re Casey, 356 B.R. 519 (Bankr. E.D. Wash., Oct. 27, 2006) (Bankruptcy Judge Patricia C. Williams) (“for above-median income debtors, the disposable income calculated on Form B22C, as modified by any anticipated change in financial circumstances known at the time of confirmation, constitutes ‘projected disposable income’ for purposes of § 1325(b)(1)”; the court didn’t limit to income; the court stated the principle without applying it, as the case involved no postpetition changes; expenses of above-median debtors are determined by applying the means test)

In re Kagenveama, 2006 Bankr. Lexis 2759, Case No. 05-28079-PHX-CGC (Bankr. D. Ariz., July 10, 2006), as amended, (July 18, 2006) (Bankruptcy Judge Charles G. Case II) (multiplicative approach) ([view full opinion](#))

Note: *In re Kagenveama* is on appeal to the Ninth Circuit Court of Appeals (Maney v. Kagenveama, docket number 06-17083). The court heard oral arguments on August 17, 2007.

In re Oliver, 2006 WL 2086691 (Bankr. D. Or., June 29, 2006) (Bankruptcy Judge Randall L. Dunn) (expenses of above-median debtors are determined by applying the means test)

Tenth Circuit

Appellate Courts

In re Lanning, 380 B.R. 17, Bankr. L. Rep. ¶ 81,082 (10th Cir. B.A.P., Dec. 13, 2007) (opinion by Bankruptcy Judge William T. Thurman [D. Utah], author of *In re Jass*; also participating were Bankruptcy Judge Richard L. Bohanon [D. Colo.] and Bankruptcy Judge Peter J. McNiff [D. Wyo.]) (“disposable income” is only the starting point in determining “projected disposable income” under Code § 1325(b)(1)(B). Where it is shown that Form 22C disposable income fails accurately to predict a debtor’s actual ability to fund a plan, that figure may be subject to modification. Parties contending that a debtor’s Form 22C disposable income figure does not accurately project the debtor’s future ability to fund a plan must present documentation similar to that required by Code § 707(b)(2)(B)(ii) in support of their claim. However, deviation from the Form B22C determination of disposable income will be the exception rather than the rule; case involved debtor’s loss of income postpetition, but court’s reasoning is not explicitly limited to the income side)

Bankruptcy Courts

In re Allen, 2008 WL 451053 (Bankr. D. Kan., Feb. 15, 2008) (Bankruptcy Judge Janice Miller Karlin) (although not stating a general rule with regard to expenses, the court held that an above-median debtor who plans to cram down a secured debt in his or her plan may deduct the full contractual monthly payments, and is not limited to the payments on the crammed down amount; expenses of above-median debtors are determined by applying the means test)

In re McDevitt, 2007 WL 2479322 (Bankr. D. Kan., Aug. 28, 2007) (Bankruptcy Judge Robert D. Berger) (expenses of above-median debtors are determined by applying the means test)

In re Mondragon, 2007 WL 2461616 (Bankr. D. N.M., Aug. 24, 2007) (Chief Bankruptcy Judge Mark B. McFeeley) (adhering to *In re Edmondson* (Bankr. D. N.M., March 5, 2007), below)

In re Edmondson, 371 B.R. 482 (Bankr. D. N.M., July 11, 2007) (Chief Bankruptcy Judge Mark B. McFeeley) (expenses of above-median debtors are determined by applying the means test; while the court also held that the debtors could not include as expenses the mortgage payments for the rental house they intended to surrender, it is unclear whether this was based on a construction of Code § 707(b) or a construction of Code § 1325(b); if the holding was based on Code § 1325(b), then the court has applied a forward-looking approach to the determination of expenses; if not, then the holding provides no information on when expenses are calculated)

In re Puetz, 370 B.R. 386 (Bankr. D. Kan., June 22, 2007) (Bankruptcy Judge Robert D. Berger) (“[t]he monthly disposable income reported on Form B22C is presumptively the debtor’s ‘projected disposable income’ under § 1325(b)(1)(B) unless the debtor can show special circumstances [under Code § 707(b)(2)(B)] warranting an adjustment to either the debtor’s current monthly income or expenses”; “[t]he trustee may still direct the court’s attention to special circumstances or challenges to Form B22C deductions which justify adjustments to the debtor’s Form B22C calculations”; expenses of above-median debtors are determined by applying the means test; a creditor contended that the debtors’ Schedules I and J showed they could pay more)

In re Lanning, 2007 WL 1451999, Bankr. L. Rep. ¶ 97,773 (Bankr. D. Kan.; May 15, 2007) (Bankruptcy Judge Janice Miller Karlin) (the term “projected” is a forward-looking concept that not only allows, but requires, the court to consider at confirmation the debtor’s actual income as it is reported on Schedule I, as well as any reasonably anticipated changes in that income during the life of the proposed Chapter 13 plan; expenses of above-median debtors are determined by applying the means test)

In re Martin, 373 B.R. 731 (Bankr. D. Utah, May 8, 2007) (Bankruptcy Judge William T. Thurman) (expenses of above-median debtors are determined by applying the means test; the court retains no authority to assess the reasonableness of the expenses)

In re Howell, 366 B.R. 153 (Bankr. D. Kan., April 26, 2007) (Chief Bankruptcy Judge Robert E. Nugent) (expenses of above-median debtors are determined by applying the means test)

In re Shahan, 367 B.R. 732 (Bankr. D. Kan., April 23, 2007) (Chief Bankruptcy Judge Robert E. Nugent) (expenses of above-median debtors are determined by applying the means test)

In re Moore, 367 B.R. 721 (Bankr. D. Kan., April 13, 2007) (Bankruptcy Judge Robert D. Berger) (the incorporation of § 707(b)(2)(B) into Code § 1325(b)(3) “provides the Court with the ability to adjust both CMI and expenses”; here, the debtor’s income decreased, and the court applied the “special circumstances” doctrine to a change over time; expenses of above-median debtors are determined by applying the means test)

In re Edmondson, 363 B.R. 212, 57 Collier Bankr. Cas. 2d 1082 (Bankr. D. N.M., March 5, 2007) (Chief Bankruptcy Judge Mark B. McFeeley) (as to income, Form 22C establishes the starting point, but projected disposable income must take into account the debtor's actual current income as reported on Schedule I, projected to include the actual income the debtor expects to receive over the life of the plan; the expenses of above-median debtors are determined by applying the means test, rather than looking to Schedule J; here, debtors' income had decreased)

In re Lawson, 361 B.R. 215, 57 Collier Bankr. Cas. 2d 649 (Bankr. D. Utah, Jan. 25, 2007) (Bankruptcy Judge Judith A. Boulden) (multiplicative approach)

In re Hanks, 362 B.R. 494 (Bankr. D. Utah, Jan. 9, 2007) (Bankruptcy Judge Judith A. Boulden) (multiplicative approach, even where the debtors' income decreased, so the calculated plan payment was infeasible; "a harsh or even illogical result is not the same thing as an absurd result"; court may adjust both income and expenses via the incorporation of § 707(b)(2)(B) into Code § 1325(b)(3); however, loss of job did not constitute special circumstance, although the court apparently accepted the notion that changes over time could amount to special circumstances)

In re Jass, 340 B.R. 411, 55 Collier Bankr. Cas. 2d 1461, Bankr. L. Rep. ¶ 80,478 (Bankr. D. Utah, March 22, 2006) (Bankruptcy Judge William T. Thurman) ("[t]he Court will presume that the number resulting from Form B22C is the debtor's 'projected disposable income' unless the debtor can show that there has been a substantial change in circumstances such that the numbers contained in Form B22C are not commensurate with a fair projection of the debtor's budget in the future"; "[a] debtor attempting to meet this burden should present documentation similar to that required by § 707(b)(2)(B)"; "[i]f the Court finds adequate evidence to rebut the presumption in favor of Form B22C, the Court will allow the debtor to use a projected budget in the form of Schedules I and J to determine the debtor's 'projected disposable income'; the debtor husband had recently been hospitalized, increasing the debtors' expenses; it was unclear whether their income was also reduced)

Eleventh Circuit

Bankruptcy Courts

In re Vernon, --- B.R. ---, 2008 WL 859239 (Bankr. M.D. Fla., March 5, 2008) (Bankruptcy Judge Alexander L. Paskay) (the debtor may not deduct payments on secured debt where the debtor's plan provides for the debtor's surrender of the collateral; the court apparently adopted a general rule that an above-median debtor's expenses are determined by the means test applied as of the plan confirmation date)

In re Strickland, 2008 WL 205577 (Bankr. M.D. Ala. Jan. 24, 2008) (Chief Bankruptcy Judge Dwight H. Williams Jr.) (Form 22C establishes a rebuttable presumption of the debtor's projected disposable income; this presumption may be rebutted by evidence that "the debtor's expectancy of the future will alter that result"; although the court recognized that an above-median debtor's expenses are determined under the means test, the court held that where, as here, the debtors' actual vehicle ownership expenses were less than the IRS standard amounts, the debtors could deduct only their actual payments; this has the effect of reducing the means test deductions to the debtor's actual expense, under the guise of "expectancy")

In re Mulally, 2007 WL 4556680 (Bankr. S.D. Fla., Dec. 19, 2007) (Chief Bankruptcy Judge Paul Hyman) (as to income, Form 22C is the starting point; here, where the debtor wife had secured new employment, the debtors' income was properly based on their Schedule I; an above-median debtor's expenses are determined under the means test, rather than by the debtor's actual expenses; time of application of test not in issue)

In re Hughey, 380 B.R. 102, 21 Fla. L. Weekly Fed. B. 146 (Bankr. S.D. Fla., Dec. 14, 2007) (Chief Bankruptcy Judge Paul Hyman) (as to income, Form 22C is the starting point; reliance on Schedule I is appropriate unless the debtor's includes income excluded from "current monthly income" under Code § 101(10A); an above-median debtor's expenses are determined under the means test; the fact that the debtors would complete their automobile payments during the term of the plan did not require a step-up, as (1) the IRS vehicle ownership standard is a fixed amount, and (2) the method of calculating the deduction for payments on secured debts already results in a monthly average; the court does not appear to take a position on the time at which the means test is to be applied)

In re Warren, 2007 WL 2683837 (Bankr. M.D. Ala., Sept. 6, 2007) (Chief Bankruptcy Judge Dwight H. Williams Jr.) (the Form 22C calculation creates a presumptive starting point for determining projected disposable income that may be rebutted by evidence that "the debtor's expectancy of the future alters that result"; here, the debtor's income decreased; expenses were not in issue)

In re Morgan, 374 B.R. 353, 20 Fla. L. Weekly Fed. B. 515 (Bankr. S.D. Fla., Aug. 8, 2007) (Bankruptcy Judge A. Jay Cristol) (an above-median debtor's expenses are determined under the means test)

In re Purdy, 373 B.R. 142, 21 Fla. L. Weekly Fed. B. 5 (Bankr. N.D. Fla., Aug. 6, 2007) (Bankruptcy Judge Lewis M. Killian Jr.) ("[a] Chapter 13 debtor's 'projected disposable income,' as calculated by Form B22C, will be presumed accurate unless the debtor or trustee can show that the numbers contained in Form B22C do not reflect a fair projection of the debtor's budget into the future because the debtor has experienced a substantial change in circumstances"; here, the debtors' income had increased; the debtors' expenses were not at issue)

In re Arsenault, 370 B.R. 845, 20 Fla. L. Weekly Fed. B. 475 (Bankr. M.D. Fla., July 3, 2007) (Bankruptcy Judge Michael G. Williamson) (income is based on the debtor's projected income over the plan term, but expenses for an above-median debtor are calculated on the basis of the application of the means test as of the petition date; the court has no discretion in determining what expenses are reasonably necessary for the support of an above-median debtor)

In re Knight, 370 B.R. 429 (Bankr. N.D. Ga., June 27, 2007) (Bankruptcy Judge Paul W. Bonapfel) (an above-median debtor's expenses are determined under the means test, including the recognition of "special circumstances" under § 707(b)(2)(B); time of application of test not in issue; the court quoted the statement in *In re Moore*, 367 B.R. 721 (Bankr. D. Kan., April 13, 2007) that "[s]ection 1325(b)(3)'s incorporation of § 707(b)(2)(B) provides the Court with the ability to adjust both CMI and expenses," but the court did not actually consider any adjustment to income)

In re Berger, 376 B.R. 42 (Bankr. M.D. Ga., June 11, 2007) (Bankruptcy Judge James D. Walker Jr.) (multiplicative approach; the forward-looking approach “renders ... superfluous .. the entirety of subsection 1325(b)(2)”); step-up [upon completion of repaying loans from 401(k) account] not required; here, the debtors’ income had increased)

In re Shelton, 370 B.R. 861 (Bankr. N.D. Ga., June 11, 2007) (Bankruptcy Judge Margaret H. Murphy) (an above-median debtor’s expenses are determined under the means test)

In re LaPlana, 363 B.R. 259, 20 Fla. L. Weekly Fed. B. 230 (Bankr. M.D. Fla., Feb. 9, 2007) (“courts must consider changes in circumstances, both increases and decreases to income and expenses, to a debtor's financial situation, being always guided by the allowed methodology set forth in the means test”; the issue was the inclusion of the debtors’ future tax refunds, although the court’s holding, that the refunds needed to be reflected in the calculation of projected disposable income, also follows, as the court noted, from the means test itself, as the debtor’s deduction for taxes is limited to actual taxes paid, not the full amount withheld)

In re Miller, 361 B.R. 224, 56 Collier Bankr. Cas. 2d 795 (Bankr. N.D. Ala., Jan. 18, 2007) (Bankruptcy Judge Jack Caddell) (multiplicative approach; both expenses and income may be adjusted via a finding of “special circumstances,” although the court did not need to consider special circumstances here)

In re Thicklin, 355 B.R. 856 (Bankr. M.D. Ala., Oct. 25, 2006) (Chief Bankruptcy Judge Dwight H. Williams Jr.) (“[a] court must consider the future finances of the debtor—not just the historical”; while the expenses of a below-median debtor are the debtor’s actual expenses, not the IRS standards, here, the below-median debtor could deduct a reasonable amount for the expected cost of replacing his older automobile, even though the debtor had no actual vehicle ownership expense, although the debtor could not deduct the IRS standard amount)

In re Love, 350 B.R. 611, 56 Collier Bankr. Cas. 2d 1135 (Bankr. M.D. Ala., Aug. 30, 2006) (Bankruptcy Judge William R. Sawyer) (income is determined by Form 22C, but expenses, while limited to those authorized under the means test, are determined by a forward-looking approach; here, the debtors could not deduct payments on secured debts for which the debtors intended to surrender the collateral)

In re Johnson, 346 B.R. 256 (Bankr. S.D. Ga., July 21, 2006) (Bankruptcy Judge John S. Dalis) (an above-median debtor’s expenses are determined under the means test; the court’s authority to assess the reasonableness of an expense is limited to that provided under the means test, i.e., to those expenses that are deductible under the means test only if they are reasonable and necessary; tax refunds are not income, but the debtors’ expense for taxes must be limited to their actual tax liability)

In re Grady, 343 B.R. 747, 56 Collier Bankr. Cas. 2d 619 (Bankr. N.D. Ga., July 21, 2006) (Bankruptcy Judge C. Ray Mullins) (“Congress intended the Debtors to propose a monthly payment to unsecured creditors based on their financial situation as of the date when the first payment is due. The Debtors are authorized to pay the projected disposable income under Schedule J as opposed to the disposable income on the CMI form”; the debtors’ income had decreased; expenses were not in issue)

In re Dew, 344 B.R. 655 (Bankr. N.D. Ala., June 21, 2006) (Bankruptcy Judge James J. Robinson) (“in determining whether a below median income debtor is offering all of his projected disposable income under a plan, the first step, and in most cases the last step, is to look at the debtor's Schedules I and J. ... If a party in interest contends that the amount of monthly net income shown on Schedule J of a below median income debtor should not be considered as the debtor's projected disposable income for the purposes of determining compliance with Code § 1325(b)(1)(B), then for this Court to approve a different amount, that party must be prepared to present credible evidence that proves monetary adjustments in exact amounts are necessary, without resorting to conjecture, opinion, speculation or hearsay”; although the court’s holding, on its face, refers to Schedule I, rather than Form 22C, to determine income, the debtors’ incomes were not at issue in this consolidated opinion, and the court recognized the definition of “current monthly income”)

In re Clemons, No. 05-85163, 2006 Bankr. Lexis 1366 (Bankr. N.D. Ga., June 1, 2006) (Bankruptcy Judge James Massey) (“section 1325(b) permits a bankruptcy court to adjust CMI to approximate the income a debtor will receive during the plan term”; “if this case proceeded under Chapter 7, the Court could adjust the [debtors’] income to account for the special circumstances of a job loss,” but the authority to adjust CMI in a Chapter 7 case is not directly applicable to a Chapter 13 case; however, excluding from Chapter 13 bankruptcy those debtors who had recently lost their job but could not afford to wait six months to file a petition would defeat the purpose underlying the Bankruptcy Code; the debtors’ income decreased) ([view full opinion](#))

In re Quarterman, 342 B.R. 647, 19 Fla. L. Weekly Fed. B. 195 (Bankr. M.D. Fla., March 28, 2006) (Bankruptcy Judge George L. Proctor) (both below-median and above-median debtors are required to contribute all of their projected disposable income to the plan; an above-median debtor’s expenses are determined under the means test, while a below-median debtor’s expenses are his or her actual expenses)

District of Columbia Circuit

In re Briscoe, 374 B.R. 1, 58 Collier Bankr. Cas. 2d 850 (Bankr. D. Dist. Col., Sept. 4, 2007) (Bankruptcy Judge S. Martin Teel Jr.) (while Form 22C establishes a presumption of the debtor’s projected disposable income, this presumption may be rebutted with respect to either income or expenses; “[w]here an above-median income debtor is concerned, the debtor (or other party-in-interest) must demonstrate either a change or reasonably anticipated change in the debtor’s income using the methodology set forth in § 1325(b)(2) or a change in the circumstances giving rise to the applicable expense figures dictated by the Local and National Standards (or a change in actual expenses for those types of expenses falling under the Other Applicable Expenses category in the Financial Analysis Handbook) if he wishes to prove that his future income is any different from his current income”; Schedule I is “only marginally relevant” because it does not define income in the same manner as Code § 101(10A) defines “currently monthly income”; similarly, Schedule J does not follow the means test, under which an above-median debtor’s expenses are determined; under Code § 1325(b)(3), special circumstances only affect expenses, not income; a court does not retain the authority to independently assess the reasonableness of an expense permitted under the means test)

III. Trend of Decisions

A. Recent Decisions

The following lists decisions rendered since November 1, 2007:

In re Graham, 2008 WL 1775003 (Bankr. N.D. Tex., April 15, 2008) (Bankruptcy Judge D. Michael Lynn) (both income and expenses are determined on a forward-looking basis; thus, the above-median debtors were not permitted to deduct payments on a secured debt for which they intended to surrender the collateral)

In re Redmond, 2008 WL 1752133 (Bankr. S.D. Tex., April 14, 2008) (Bankruptcy Judge Letitia Z. Clark) (Form 22C establishes the presumptive amount of an above-median debtor's projected disposable income, but that presumption may be rebutted; the court assessed the reasonableness of the above-median debtor's expenses without explicitly considering whether the court is empowered to do so; the court determined that "the expense of owning and maintaining three vehicles for the use of the debtor and her roommate is not necessary," and that the debtor "presented no evidence with respect to the question of whether the payment of the student loan outside the plan is reasonably necessary to the support of the Debtor or the Debtor's dependents")

In re Spraggins, --- B.R. ---, 2008 WL 1744576 (Bankr. E.D. Wis., April 11, 2008) (Bankruptcy Judge Susan V. Kelley) (adopting multiplicative approach; the income shown on Form B22C, rather than Schedule I, should be used to calculate the projected disposable income of a below-median debtor)

In re Egbert, --- B.R. ---, 2008 WL 963399 (Bankr. E.D. Ark., April 10, 2008) (Bankruptcy Judge Richard D. Taylor) (expenses of above-median debtors are determined by applying the means test, even if the debtors' actual expenses are less)

In re Ovalle, 2008 WL 926080 (Bankr. E.D. Cal., April 4, 2008) (Bankruptcy Judge W. Richard Lee) (expenses of above-median debtors are determined by applying the means test, even where the debtor's actual expenses are greater)

In re Louviere, 2008 WL 925824 (Bankr. E.D. Tex., April 4, 2008) (Chief Bankruptcy Judge Bill Parker) (the projected disposable income of the debtor may vary from the statutory disposable income calculation if "the debtor can show that there has been a substantial change in circumstances such that the numbers contained in Form 22C are not commensurate with a fair projection of the debtor's budget in the future"; "[o]nce a substantial change in circumstances occurs which significantly alters the income stream once enjoyed in the pre-petition period by a Chapter 13 debtor, the utility of that 22C computation for the purpose of determining projected disposable income under § 1325(b)(1)(B) is undermined and it must be discarded under the statute in favor of a more contemporaneous net income calculation derived from Schedules I and J which recognizes and incorporates the changes occurring in the debtor's real-life circumstances" [footnotes omitted]; here, the debtor's income had decreased; expenses were not at issue; Code § 1325(b)(3) incorporates the special circumstances doctrine only as to expenses, not income; the expenses of an above-median debtor are determined under the means test)

In re Moore, 2008 WL 895668 (Bankr. M.D. N.C., April 2, 2008) (Chief Bankruptcy Judge William L. Stocks) (the expenses of an above-median debtor are determined under the means test; the court has no authority to determine the reasonableness of those expenses)

In re Owsley, --- B.R. ---, 2008 WL 868044 (Bankr. N.D. Tex., March 31, 2008) (Bankruptcy Judge Russell F. Nelms) (the expenses of an above-median debtor are determined under the means test; the court has no authority to assess the reasonableness of those expenses)

In re Lasowski, --- B.R. ---, 2008 WL 833971 (8th Cir. B.A.P., March 31, 2008) (Chief Bankruptcy Judge Barry S. Schermer [E.D. Mo.], Bankruptcy Judge Arthur B. Federman [W.D. Mo.], Bankruptcy Judge David P. McDonald [E.D. Mo.]) (expenses of above-median debtors are determined by applying the means test)

In re Turner, --- B.R. ---, 2008 WL 834424 (Bankr. S.D. Ind., March 27, 2008) (Bankruptcy Judge James K. Coachys) (expenses of above-median debtors are determined by applying the means test as of the petition date; the trustee contended that the debtors could pay more because they were surrendering their house)

In re Lisenko, 2008 WL 780703 (Bankr. N.D. N.Y., March 24, 2008) (Bankruptcy Judge Margaret Cangilos-Ruiz) (the court would inquire into a disparity between Form 22C and Schedule J as to both income and expenses)

In re Anderson, --- B.R. ---, 2008 WL 748416 (Bankr. S.D. Ohio, March 21, 2008) (Bankruptcy Judge Guy R. Humphrey) (multiplicative approach; the court recognized that, in some cases, this approach would preclude debtors from obtaining bankruptcy relief, although this was not such a case; for above-median debtors, the court does not retain the authority to determine whether expenses authorized under the means test are reasonable and necessary)

In re French, 383 B.R. 402 (Bankr. W.D. Ky., March 13, 2008) (Chief Bankruptcy Judge Joan A. Lloyd) ("Form B22C sets up a presumption that may be rebutted by the objecting party and the projected disposable income may be adjusted by the court accordingly"; only income was at issue in the case, but the court's holding appears to apply to expenses as well)

In re Colclasure, 383 B.R. 463 (Bankr. E.D. Ark., March 12, 2008) (Bankruptcy Judge James G. Mixon) (multiplicative approach, even where the debtors' income decreased and the calculated payments were infeasible; although the U.S. Trustee urged recognition of changed circumstances, the Chapter 13 Trustee objected)

In re Linn, 2008 WL 687448 (Bankr. N.D. W.Va., March 10, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (multiplicative approach unless the debtor's income has decreased, in which case the court will look to Schedules I and J; the court will adhere to the multiplicative approach where the debtor's income has increased; expenses of an above-median debtor are determined under the means test)

In re Van Bodegom Smith, --- B.R. ---, 2008 WL 613177 (Bankr. E.D. Wis., March 6, 2008) (Bankruptcy Judge Pamela Pepper) (expenses of above-median debtors are determined by applying the means test; projected disposable income is determined in a forward-looking manner; therefore, the debtors could not deduct payments on secured debt for which they intended to surrender the collateral; the court does not have the authority to apply a separate test of reasonable necessity)

In re Vernon, --- B.R. ---, 2008 WL 859239 (Bankr. M.D. Fla., March 5, 2008) (Bankruptcy Judge Alexander L. Paskay) (the debtor may not deduct payments on secured debt where the debtor's plan provides for the debtor's surrender of the collateral; the court apparently adopted a general rule that an above-median debtor's expenses are determined by the means test applied as of the plan confirmation date)

In re Liverman, --- B.R. ---, 2008 WL 768727 (Bankr. D. N.J., March 5, 2008) (Chief Bankruptcy Judge Judith H. Wizmur) (Form 22C establishes a rebuttable presumption as to both income and expenses for an above-median debtor; calculate projected disposable income on the basis of Schedules I and J if the result on Form 22C is not an accurate prediction; the court specifically rejects the limitation of the debtors' expenses to those allowed under the means test, but an examination of some of the briefs filed in the case does not reveal that any non-means test expense was actually contested, and in *In re Brady*, below, the court explicitly rejected Schedule J in favor of the means test in calculating the expenses of an above-median debtor; the debtor husband's income increased because he found a new job)

In re Wilson, 2008 WL 619196 (Bankr. M.D. N.C., March 3, 2008) (Bankruptcy Judge Thomas W. Waldrep Jr.) (as to income, Form 22C is presumptively correct; a party in interest must demonstrate that there has been a substantial change in the debtor's income using the methodology of Code § 101(10A); income may not be adjusted using "special circumstances" because Code § 1325(b)(3), referring to Code § 707(b)(2)(B), is concerned only with the calculation of expenses; the expenses of an above-median debtor are determined under the means test)

In re Roberts, 2008 WL 542503 (Bankr. D. Conn., Feb. 28, 2008) (Bankruptcy Judge Robert L. Krechevsky) (as to expenses, the means test controls for above-median debtors)

In re White, 382 B.R. 751 (Bankr. C.D. Ill., Feb. 28, 2008) (Chief Bankruptcy Judge Thomas L. Perkins) (expenses of above-median debtors are determined by applying the means test)

In re Kalata, 2008 WL 552856 (Bankr. E.D. Wis., Feb. 27, 2008) (Chief Bankruptcy Judge Margaret Dee McGarity) (expenses of above-median debtors are determined by applying the means test; projected disposable income is determined in a forward-looking manner; therefore, the debtors could not deduct payments on secured debt for which they intended to surrender the collateral)

In re Coleman, 382 B.R. 759 (Bankr. W.D. Ark., Feb. 26, 2008) (Bankruptcy Judge Ben T. Barry) (while the expenses of above-median debtors are determined by applying the means test, only payments that first become payable after the date the petition is filed are deductible; thus, debtors may not deduct payments on secured debts for which they intend to surrender the collateral)

In re Davis, 382 B.R. 764 (Bankr. W.D. Ark., Feb. 26, 2008) (Bankruptcy Judge Ben T. Barry) (the expenses of above-median debtors are determined by applying the means test, even if the debtors' actual expenses are less)

In re Scurlock, --- B.R. ---, 2008 WL 1735659 (Bankr. M.D. N.C., Feb. 19, 2008) (Bankruptcy Judge Catherine R. Carruthers) (the expenses of an above-median debtor are determined under the means test)

In re Allen, 2008 WL 451053 (Bankr. D. Kan., Feb. 15, 2008) (Bankruptcy Judge Janice Miller Karlin) (although not stating a general rule with regard to expenses, the court held that an above-median debtor who plans to cram down a secured debt in his or her plan may deduct the full contractual monthly payments, and is not limited to the payments on the crammed down amount; expenses of above-median debtors are determined by applying the means test)

In re Mancl, 381 B.R. 537, Bankr. L. Rep. ¶ 81,111 (W.D. Wis., Feb. 12, 2008) (Chief District Judge Barbara B. Crabb) (multiplicative approach; "The term disposable income is used only once in the subsection, in the phrase 'projected disposable income.' To adopt the majority view, one must assume that Congress created the precise and objective current monthly income definition of § 101(10A), mandated that bankruptcy courts apply it to the § 1325(b) test, and then added the term 'projected' to empower bankruptcy courts to ignore the § 101(10A) definition, substituting their own sense of fairness by applying the former process of analyzing and comparing schedules I and J. Given the precision and detail of the statute, such an interpretation is untenable"; the trustee contended that the debtors could pay more because the husband debtor was temporarily unable to work during the six months prepetition)

In re Franco, 2008 WL 444679 (Bankr. S.D. Ill., Feb. 12, 2008) (Chief Bankruptcy Judge Kenneth J. Meyers) (the court has no authority to determine the reasonable necessity of an above-median debtor's expense, as they are determined under the means test; thus, the debtors could deduct their payments on three automobiles)

In re Phillips, 382 B.R. 153 (Bankr. D. Mass., Feb. 7, 2008) (Bankruptcy Judge Joan N. Feeney) (the means test governs expenses for above-median debtors; here, the debtor's actual housing expense was less than the standard amount)

In re Miller, 381 B.R. 736 (Bankr. W.D. Ark., Jan. 29, 2008) (Bankruptcy Judge Ben T. Barry) (multiplicative approach, even where the debtors' income decreased and the calculated payments were infeasible; debtors forced into Chapter 7 in this manner should not be subject to dismissal or conversion for abuse under Code § 707(b))

In re May, 381 B.R. 498 (Bankr. W.D. Pa., Jan. 28, 2008) (Bankruptcy Judge Jeffery A. Deller) (Form 22C establishes rebuttable presumption as to both income and expenses; expenses for above-median debtors are determined under the means test; the debtors experienced decreased income, and increased expenses, postpetition)

In re Meador, 2008 WL 243673 (Bankr. S.D. Tex., Jan. 25, 2008) (Bankruptcy Judge Letitia Z. Clark) (Form B22C provides a presumptive definition of projected disposable income, but the presumption may be rebutted; the expenses of an above-median debtor are determined under the means test; under the forward-looking approach, the above-median debtors were not permitted to deduct payments on a secured debt for which the collateral had been repossessed; the plan also was required to reflect additional monies available for unsecured creditors when two debts were completely repaid during the plan term)

In re Waters, --- B.R. ---, 2008 WL 216312 (Bankr. N.D. W.Va., Jan. 24, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (multiplicative approach, although the debtor's income had increased)

In re Strickland, 2008 WL 205577 (Bankr. M.D. Ala. Jan. 24, 2008) (Chief Bankruptcy Judge Dwight H. Williams Jr.) (Form 22C establishes a rebuttable presumption of the debtor's projected disposable income; this presumption may be rebutted by evidence that "the

debtor's expectancy of the future will alter that result"; although the court recognized that an above-median debtor's expenses are determined under the means test, the court held that where, as here, the debtors' actual vehicle ownership expenses were less than the IRS standard amounts, the debtors could deduct only their actual payments; this has the effect of reducing the means test deductions to the debtor's actual expense, under the guise of "expectancy")

In re Simms, 2008 WL 217174 (Bankr. N.D. W.Va., Jan. 23, 2008) (Chief Bankruptcy Judge Patrick M. Flatley) (multiplicative approach, although the debtor's schedules showed that he could pay more)

In re Petro, 381 B.R. 233, Bankr. L. Rep. ¶ 81,094 (Bankr. M.D. Tenn., Jan. 23, 2008) (Chief Bankruptcy Judge George C. Paine II) (multiplicative approach, although the debtors could pay more)

In re Herbord, 2008 WL 149972 (Bankr. S.D. Ill., Jan. 14, 2008) (Chief Bankruptcy Judge Kenneth J. Meyers) (expenses of above-median debtors are determined by applying the means test)

In re Nowlin, 2007 WL 4623043 (S.D. Tex., Dec. 28, 2007) (District Judge Lynn N. Hughes) ("Debtors must use projected disposable income that includes expected changes to the allowed expenses during the term of the plan"; here, the calculation of the debtor's projected disposable income needed to reflect the fact that, in the 24th month of her 60-month plan, she would complete the repayment of her 401(k) account loan)

In re Ransom, 380 B.R. 799 (9th Cir. B.A.P., Dec. 27, 2007) (Chief Bankruptcy Judge Redfield T. Baum, Sr. [D. Ariz.] and Bankruptcy Judges Randall L. Dunn [D. Or.] and Dennis Montali [N.D. Cal.]) (expenses of above-median debtors are determined by applying the means test)

In re Saffrin, 380 B.R. 191 (Bankr. N.D. Ill., Dec. 21, 2007) (Bankruptcy Judge A. Benjamin Goldgar) (expenses of above-median debtors are determined by applying the means test)

In re Dalton, 2007 WL 4554024 (Bankr. S.D. Miss., Dec. 19, 2007) (Bankruptcy Judge Edward R. Gaines) (multiplicative approach, although the debtors' schedules showed that they could pay more)

In re Mulally, 2007 WL 4556680 (Bankr. S.D. Fla., Dec. 19, 2007) (Chief Bankruptcy Judge Paul Hyman) (as to income, Form 22C is the starting point; here, where the debtor wife had secured new employment, the debtors' income was properly based on their Schedule I; an above-median debtor's expenses are determined under the means test, rather than by the debtor's actual expenses; time of application of test not in issue)

In re Hughey, 380 B.R. 102, 21 Fla. L. Weekly Fed. B. 146 (Bankr. S.D. Fla., Dec. 14, 2007) (Chief Bankruptcy Judge Paul Hyman) (as to income, Form 22C is the starting point; reliance on Schedule I is appropriate unless the debtor's includes income excluded from "current monthly income" under Code § 101(10A); an above-median debtor's expenses are determined under the means test; the fact that the debtors would complete their automobile payments during the term of the plan did not require a step-up, as (1) the IRS vehicle ownership standard is a fixed amount, and (2) the method of calculating the deduction for payments on secured debts already results in a monthly average; the court does not appear to take a position on the time at which the means test is to be applied)

In re Buck, 2007 WL 4418145 (Bankr. E.D. Va., Dec. 14, 2007) (Bankruptcy Judge Kevin R. Huennekens) (multiplicative approach; the above-median debtors proposed using their schedules; as the difference was small, questions of infeasibility probably were not presented)

In re Jones, 2007 WL 4893472 (Bankr. D. Neb., Dec. 14, 2007) (Bankruptcy Judge Thomas L. Saladino) (the expenses of above-median debtors are determined by applying the means test; the court has no authority to determine whether expenses are reasonable and necessary)

In re Lanning, 380 B.R. 17, Bankr. L. Rep. ¶ 81,082 (10th Cir. B.A.P., Dec. 13, 2007) (opinion by Bankruptcy Judge William T. Thurman [D. Utah], author of *In re Jass*; also participating were Bankruptcy Judge Richard L. Bohanon [D. Colo.] and Bankruptcy Judge Peter J. McNiff [D. Wyo.]) (“disposable income” is only the starting point in determining “projected disposable income” under Code § 1325(b)(1)(B). Where it is shown that Form 22C disposable income fails accurately to predict a debtor’s actual ability to fund a plan, that figure may be subject to modification. Parties contending that a debtor’s Form 22C disposable income figure does not accurately project the debtor’s future ability to fund a plan must present documentation similar to that required by Code § 707(b)(2)(B)(ii) in support of their claim. However, deviation from the Form B22C determination of disposable income will be the exception rather than the rule; case involved debtor’s loss of income postpetition, but court’s reasoning is not explicitly limited to the income side)

In re Brunner, 2007 WL 4373119 (Bankr. N.D. N.Y., Dec. 7, 2007) (Bankruptcy Judge Robert E. Littlefield Jr.) (multiplicative approach; rejecting step-up upon completion of debt repayment)

In re Stubbs, 2007 WL 4287579 (Bankr. D. Mont., Dec. 6, 2007) (Bankruptcy Judge Ralph B. Kirscher) (adhering to multiplicative approach, without reference to *In re Pak*, although postpetition changes not involved; the debtor established special circumstances, permitting housing expense in excess of IRS standard)

In re Musselman, 379 B.R. 583 (Bankr. E.D. N.C., Nov. 30, 2007) (Chief Bankruptcy Judge Randy D. Doub) (multiplicative approach, although debtors apparently could pay more)

In re James, 379 B.R. 903 (Bankr. D. Neb., Nov. 30, 2007) (Bankruptcy Judge Thomas L. Saladino) (the expenses of above-median debtors are determined by applying the means test, even if the debtors’ actual expenses are less)

In re Broers, 2007 WL 4166144 (Bankr. E.D. Wash., Nov 20, 2007) (Chief Bankruptcy Judge Frank L. Kurtz) (interprets *In re Pak*, below, to have decided the issue only as to income; the expenses of above-median debtors are determined by applying the means test; the court does not retain the authority to determine if the expenses of an above-median debtor are necessary and reasonable; however, the court retained certain discretion, which it would exercise here, as the IRS standard was unclear as to whether a debtor in a one-person household could claim ownership expenses for two vehicles; the court determined that this debtor’s doing so would be unreasonable and denied the deduction)

In re Burmeister, 378 B.R. 227 (Bankr. N.D. Ill., Nov. 16, 2007) (Bankruptcy Judge A. Benjamin Goldgar) (expenses of above-median debtors are determined by applying the means test; the test is applied as of the petition date; thus, the debtors could deduct payments on secured debt for which they intended to surrender the collateral)

In re Zinser, 2007 WL 3479604 (Bankr. N.D. Tex., Nov. 15, 2007) (Bankruptcy D. Michael Lynn; Westlaw incorrectly identifies the author as Bankruptcy Judge Russell F. Nelms) (applying *In re Barraza* to one debtor's child support payments and another debtor's 401(k) loan repayments, and permitting the deduction only of an average monthly amount in each case; the expenses of an above-median debtor are determined under the means test)

In re Sallee, 2007 WL 3407738 (Bankr. S.D. Ill., Nov. 15, 2007) (Chief Bankruptcy Judge Kenneth J. Meyers) (the court has no authority to determine the reasonable necessity of an above-median debtor's expense, as they are determined under the means test; thus, the debtors could deduct their payments on four automobiles)

In re Pak, 378 B.R. 257, Bankr. L. Rep. ¶ 81,059 (9th Cir. B.A.P., Nov. 7, 2007) (Bankruptcy Judges Peter H. Carroll [C.D. Cal.], Randall L. Dunn [D. Or.] and Christopher M. Klein [E.D. Cal.]) ("disposable income," as defined in Code § 1325(b)(2), is the starting point for determining "projected disposable income," subject to adjustment, based on evidence, to reflect reality going forward; although the cases involved only income, the court's decision is not explicitly limited in this regard; the concurring opinion suggested applying the "special circumstances" doctrine to the income side)

In re Barfknecht, 378 B.R. 154 (Bankr. W.D. Tex., Nov. 7, 2007) (Bankruptcy Judge Leif M. Clark) (because Social Security benefits are excluded from "current monthly income" as defined in Code § 101(10A), they are excluded from the calculation of "projected disposable income," whether or not a forward-look approach is adopted)

B. Earliest Decisions

The following lists decisions rendered on or before August 1, 2006:

In re Barraza, 346 B.R. 724 (Bankr. N.D. Tex., Aug 1, 2006) (Bankruptcy Judge Russell F. Nelms) (extending forward-looking analysis of *In re Hardacre*, below, to also apply to the debtor's expenses; if an expense [here, court-ordered child support] will end prior to the completion of the plan, the debtor may deduct only a monthly average, i.e., the total dollars to be paid on the expense divided by the number of months in the plan's term; the expenses of an above-median debtor are determined under the means test)

In re Demonica, 345 B.R. 895 (Bankr. N.D. Ill., July 31, 2006) (Bankruptcy Judge Manuel Barbosa) (Schedule I, instead of Form B22C, should be used to calculate income; expenses of above-median debtors are determined by applying the means test)

In re McPherson, 350 B.R. 38 (Bankr. W.D. Va., July 31, 2006) (Bankruptcy Judge William E. Anderson) (the expenses of an above-median debtor are determined under the means test; however, because a debtor's expenses are determined on a forward-looking basis, an above-median debtor may not take a deduction for payments on a secured debt for which the debtor intends to surrender the collateral; the court apparently viewed income as also being determined on a forward-looking basis, although income was not at issue)

In re Ford, 2006 WL 4458358 (Bankr. N.D. Ohio, July 26, 2006) (Bankruptcy Judge Arthur I. Harris) (expenses of above-median debtors are determined by applying the means test)

In re Grady, 343 B.R. 747, 56 Collier Bankr. Cas. 2d 619 (Bankr. N.D. Ga., July 21, 2006) (Bankruptcy Judge C. Ray Mullins) (“Congress intended the Debtors to propose a monthly payment to unsecured creditors based on their financial situation as of the date when the first payment is due. The Debtors are authorized to pay the projected disposable income under Schedule J as opposed to the disposable income on the CMI form”; the debtors’ income had decreased; expenses were not in issue)

In re Johnson, 346 B.R. 256 (Bankr. S.D. Ga., July 21, 2006) (Bankruptcy Judge John S. Dalis) (an above-median debtor’s expenses are determined under the means test; the court’s authority to assess the reasonableness of an expense is limited to that provided under the means test, i.e., to those expenses that are deductible under the means test only if they are reasonable and necessary; tax refunds are not income, but the debtors’ expense for taxes must be limited to their actual tax liability)

In re Guzman, 345 B.R. 640, 56 Collier Bankr. Cas. 2d 636, Bankr. L. Rep. ¶ 80,711 (Bankr. E.D. Wis., July 19, 2006) (Bankruptcy Judge Susan V. Kelley) (expenses of above-median debtors are determined by applying the means test)

In re Risher, 344 B.R. 833 (Bankr. W.D. Ky., July 12, 2006) (Chief Bankruptcy Judge Joan A. Lloyd) (Form 22C establishes only the starting point for the determination of projected disposable income; only income was at issue in the case, but the court’s holding appears to apply to expenses as well)

In re Kagenveama, 2006 Bankr. Lexis 2759, Case No. 05-28079-PHX-CGC (Bankr. D. Ariz., July 10, 2006), as amended, (July 18, 2006) (Bankruptcy Judge Charles G. Case II) (multiplicative approach) ([view full opinion](#))

In re Chriss-Price, 376 B.R. 648 (Bankr. M.D. Tenn., July 5, 2006) (Bankruptcy Judge Marian F. Harrison) (as to both income and expenses, “a debtor must propose to pay unsecured creditors the number resulting from Official Form B22C, unless the proof shows that this number does not adequately represent the debtor’s budget projected into the future”)

In re Alexander, 344 B.R. 742, 56 Collier Bankr. Cas. 2d 427 (Bankr. E.D. N.C., June 30, 2006) (Chief Bankruptcy Judge J. Rich Leonard) (multiplicative approach, although debtors could pay more)

In re Oliver, 2006 WL 2086691 (Bankr. D. Or., June 29, 2006) (Bankruptcy Judge Randall L. Dunn) (expenses of above-median debtors are determined by applying the means test)

In re Lara, 347 B.R. 198, Bankr. L. Rep. ¶ 80,745 (Bankr. N.D. Tex., June 28, 2006) (Chief Bankruptcy Judge Barbara J. Houser) (the expenses of an above-median debtor are determined under the means test)

In re Dew, 344 B.R. 655 (Bankr. N.D. Ala., June 21, 2006) (Bankruptcy Judge James J. Robinson) (“in determining whether a below median income debtor is offering all of his projected disposable income under a plan, the first step, and in most cases the last step, is to look at the debtor’s Schedules I and J. ... If a party in interest contends that the amount of monthly net income shown on Schedule J of a below median income debtor should not be considered as the debtor’s projected disposable income for the purposes of determining compliance with Code § 1325(b)(1)(B), then for this Court to approve a different amount, that party must be prepared to present credible evidence that proves monetary adjustments

in exact amounts are necessary, without resorting to conjecture, opinion, speculation or hearsay”; although the court’s holding, on its face, refers to Schedule I, rather than Form 22C, to determine income, the debtors’ incomes were not at issue in this consolidated opinion, and the court recognized the definition of “current monthly income”)

In re Fuller, 346 B.R. 472 (Bankr. S.D. Ill., June 21, 2006) (Bankruptcy Judge Pamela Pepper) (income is determined from Schedule I as the debtor’s actual income on the petition date; expenses for an above-median debtor are determined from Form 22C, i.e., the means test applied on the petition date)

In re Gress, 344 B.R. 919, Bankr. L. Rep. ¶ 80,765 (Bankr. W.D. Mo., June 14, 2006) (Bankruptcy Judge Arthur B. Federman) (as to both income and expenses, Schedules I and J, rather than Form 22C, control)

In re Clemons, No. 05-85163, 2006 Bankr. Lexis 1366 (Bankr. N.D. Ga., June 1, 2006) (Bankruptcy Judge James Massey) (“section 1325(b) permits a bankruptcy court to adjust CMI to approximate the income a debtor will receive during the plan term”; “if this case proceeded under Chapter 7, the Court could adjust the [debtors’] income to account for the special circumstances of a job loss,” but the authority to adjust CMI in a Chapter 7 case is not directly applicable to a Chapter 13 case; however, excluding from Chapter 13 bankruptcy those debtors who had recently lost their job but could not afford to wait six months to file a petition would defeat the purpose underlying the Bankruptcy Code; the debtors’ income decreased) ([view full opinion](#))

In re Schanuth, 342 B.R. 601, Bankr. L. Rep. ¶ 80,689 (Bankr. W.D. Mo., May 25, 2006) (Bankruptcy Judge Jerry W. Venters) (characterizes the rebuttable presumption approach as “well reasoned,” but is not called upon to decide the issue)

In re Renicker, 342 B.R. 304, 56 Collier Bankr. Cas. 2d 377, Bankr. L. Rep. ¶ 80,608 (Bankr. W.D. Mo., May 15, 2006) (Bankruptcy Judge Jerry W. Venters) (expenses of above-median debtors are determined by applying the means test, including the doctrine of “special circumstances,” rather than through an evaluation of whether the expenses are reasonable and necessary; here, the debtors’ actual expenses were greater; while the court also declared that “the plain language of § 1325(b)(2) unambiguously indicates that prospective—not historical—expenses are to be used to calculate disposable income,” the court did not have to apply that principle)

In re Kibbe, 342 B.R. 411, 2006 BNH 17 (Bankr. D. N.H., April 14, 2006), affirmed and remanded, 361 B.R. 302, 57 Collier Bankr. Cas. 2d 1646, Bankr. L. Rep. ¶ 80,861 (1st Cir. BAP 2007) (Chief Bankruptcy Judge Mark W. Vaughn) (as to income, Form 22C establishes a rebuttable presumption)

In re Barr, 341 B.R. 181, 55 Collier Bankr. Cas. 2d 1763, Bankr. L. Rep. ¶ 80,490 (Bankr. M.D. N.C., April 5, 2006) (Chief Bankruptcy Judge William L. Stocks) (the expenses of an above-median debtor are determined under the means test)

In re Quarterman, 342 B.R. 647, 19 Fla. L. Weekly Fed. B. 195 (Bankr. M.D. Fla., March 28, 2006) (Bankruptcy Judge George L. Proctor) (both below-median and above-median debtors are required to contribute all of their projected disposable income to the plan; an above-median debtor’s expenses are determined under the means test, while a below-median debtor’s expenses are his or her actual expenses)

In re Jass, 340 B.R. 411, 55 Collier Bankr. Cas. 2d 1461, Bankr. L. Rep. ¶ 80,478 (Bankr. D. Utah, March 22, 2006) (Bankruptcy Judge William T. Thurman) (“[t]he Court will presume that the number resulting from Form B22C is the debtor's ‘projected disposable income’ unless the debtor can show that there has been a substantial change in circumstances such that the numbers contained in Form B22C are not commensurate with a fair projection of the debtor's budget in the future”; “[a] debtor attempting to meet this burden should present documentation similar to that required by § 707(b)(2)(B)”; “[i]f the Court finds adequate evidence to rebut the presumption in favor of Form B22C, the Court will allow the debtor to use a projected budget in the form of Schedules I and J to determine the debtor's ‘projected disposable income’; the debtor husband had recently been hospitalized, increasing the debtors’ expenses; it was unclear whether their income was also reduced)

In re Hardacre, 338 B.R. 718, 55 Collier Bankr. Cas. 2d 1293, Bankr. L. Rep. ¶ 80,506 (Bankr. N.D. Tex., March 6, 2006) (Bankruptcy Judge Russell F. Nelms) (the debtor’s income is based, not on Form 22C, but on the “income that the debtor reasonably expects to receive during the term of her plan”; “[t]his does not mean that section 101(10A)'s definition of current monthly income is irrelevant to the calculation of projected disposable income. Section 101(10A) continues to apply inasmuch as it describes the sources of revenue that constitute income, as well as those that do not.”)

IV. Other Issues in Calculating Projected Disposable Income

A. Retirement Account Contributions and Loan Repayments

There is no disagreement about the basics: Code § 1322(f) provides that 401(k) loan payments shall not constitute disposable income under Code § 1325. Further, Code § 541(b)(7) excepts from property of the estate any amount contributed to a qualified retirement plan, to the extent legally permitted. See, e.g., *In re Puetz*, 370 B.R. 386 (Bankr. D. Kan. 2007); *In re Wilson*, 2008 WL 619196 (Bankr. M.D. N.C. 2008); *In re Njuguna*, 357 B.R. 689, 2006 BNH 30 (Bankr. D. N.H. 2006); *In re Johnson*, 346 B.R. 256 (Bankr. S.D. Ga. 2006).

In considering the effect of 401(k) account loan repayments, one question that has arisen is how the debtor's projected disposable income is to be calculated when the loan will be fully repaid prior to the end of the plan term. While two early decisions allowed the debtor to deduct the full amount of the monthly payment, and then to in essence pocket that sum once the loan was repaid, most (but not all) recent cases have disagreed:

- *In re Lasowski*, — B.R. —, 2008 WL 833971 (8th Cir. B.A.P., March 31, 2008) (debtor could deduct only prorated monthly amount)
- *In re Anstett*, 383 B.R. 380 (Bankr. D. S.C., Feb. 8, 2008) (deduction of full amount followed by step-up; where, as here, even after step-up the debtor's projected disposable income was negative, a failure to redirect those funds to unsecured creditors, at least in significant part, would amount to plan lacking good faith under Code § 1325(a)(3))
- *In re Nowlin*, 2007 WL 4623043 (S.D. Tex., Dec. 28, 2007) (deduction of full amount followed by step-up)
- *In re Novak*, 379 B.R. 908 (Bankr. D. Neb., Dec. 12, 2007) (debtor could deduct only prorated monthly amount)
- *In re Brunner*, 2007 WL 4373119 (Bankr. N.D. N.Y., Dec. 7, 2007) (rejecting necessity of step-up upon completion of debt repayment)
- *In re Zinser*, 2007 WL 3479604 (Bankr. N.D. Tex., Nov. 15, 2007) (debtor could deduct only prorated monthly amount)
- *In re Berger*, 376 B.R. 42 (Bankr. M.D. Ga., June 11, 2007) (Bankruptcy Judge James D. Walker Jr.) (rejecting necessity of step-up upon completion of debt repayment)
- *In re Haley*, 354 B.R. 340, 2006 BNH 40 (Bankr. D. N.H., Oct. 18, 2006) (proration would materially alter the terms of the loan, in violation of Code § 1322(f); the Trustee's remedy was a motion for plan modification at the appropriate time)
- *In re Wiggs*, 2006 WL 2246432 (Bankr. N.D. Ill., Aug. 4, 2006) (proration would materially alter the terms of the loan, in violation of Code § 1322(f))

Where the debtor's plan calls for the deduction of the full monthly amount until the completion of repayment, followed by a step-up, the debtor may be able to reduce the amount of the step-up by increasing his or her plan contributions. See *In re Nowlin*, 366 B.R. 670 (Bankr. S.D. Tex., April 11, 2007), *aff'd* 2007 WL 4623043 (S.D. Tex., Dec. 28, 2007) (the amount of step-up would be calculated on the basis that the debtor redirected her loan repayments to account contributions, up to the maximum allowable contribution).

As to plan contributions, it should be noted that amounts withheld from wages for contribution to a qualified retirement plan are not included in the calculation of a Chapter 13 debtor's projected disposable income regardless of whether the contributions are reasonably necessary for the debtor's support. *In re Devilliers*, 358 B.R. 849 (Bankr. E.D. La. 2007); *In re Shelton*, 370 B.R. 861 (Bankr. N.D. Ga. 2007); *In re Oltjen*, 2007 WL 2329695 (Bankr. W.D. Tex. 2007). And the debtor's failure in the past to make consistent monthly contributions does not preclude the plan's providing for such contributions. *In re Oltjen*, *supra*.

B. Unsecured Creditors Comprehended by Code § 1325(b)(1)(B)

Code § 1325(b)(1)(B) requires the debtor's plan to either pay unsecured claims in full or provide "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," but "unsecured creditors" is not defined. Although some debtors have argued that the term "unsecured creditors" encompasses creditors holding both priority and nonpriority unsecured claims, that assertion has been uniformly rejected. The courts also have agreed that the debtor must pay the Chapter 13 Trustee's fee in addition to paying his or her projected disposable income to general unsecured creditors, although there is some disagreement as to whether the debtor's attorney's fees are paid from the debtor's projected disposable income. The following courts have interpreted the term "unsecured creditors" in Code § 1325(b)(1)(B):

- *In re Echeman*, 378 B.R. 177 (Bankr. S.D. Ohio, Nov. 7, 2007) (following *In re Puetz*, below; if a creditor's claim is not specifically and accurately budgeted for by § 707(b)(2)(A), as applied in Form 22C, then payment toward that unsecured creditor's claim, whether priority or nonpriority, must be paid out of projected disposable income pursuant to § 1325(b)(1)(B))
- *In re Chavez*, 2007 WL 3023145 (Bankr. D. Mont., Oct. 11, 2007) (the debtor must pay the Chapter 13 Trustee's fee in addition to paying his or her projected disposable income to general unsecured creditors)
- *In re Puetz*, 370 B.R. 386 (Bankr. D. Kan., June 22, 2007) (unless specifically and accurately budgeted for by § 707(b)(2)(A), all unsecured creditors, priority and nonpriority, are to be paid under § 1325(b)(1)(B); if allowed prepetition priority claims are more than that estimated by the debtors, then the additional sum shall be paid and deducted from the "unsecured claims" pool)

- *In re Amato*, 366 B.R. 348, Bankr. L. Rep. ¶ 80,914 (Bankr. D. N.J., March 20, 2007) (claims for the debtor's attorney's fees and trustee commissions do not fall within the class of "unsecured creditors")
- *In re McDonald*, 361 B.R. 527 (Bankr. D. Mont., Feb. 7, 2007) (the debtor must pay the Chapter 13 Trustee's fee in addition to paying his or her projected disposable income to general unsecured creditors)
- *In re Alexander*, 344 B.R. 742, 56 Collier Bankr. Cas. 2d 427 (Bankr. E.D. N.C., June 30, 2006) ("unsecured creditors" refers only to nonpriority unsecured creditors)
- *In re Wilbur*, 344 B.R. 650, 56 Collier Bankr. Cas. 2d 413, Bankr. L. Rep. ¶ 80,654 (Bankr. D. Utah, June 21, 2006) ("unsecured creditors" refers only to nonpriority unsecured creditors)

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