United States Bankruptcy Court, Southern District of Alabama
Quarterly Bankruptcy Section Meeting, August 12, 2025

1. Section chair Alex Garrett

2. Mobile Bar Association President Judson Wells

3. Judges Callaway and Oldshue
   - Filing numbers – see attached chart. Chapter 13 filings through July are up 9.7% from 2024, chapter 7 filings up 4.5%
   - New administrative order 2025-06 regarding negative notice motions
   - Case summaries are attached

4. Troy Baas, Deputy Clerk of Court

5. Mark Zimlich, Bankruptcy Administrator

6. Chris Conte, Chapter 13 Trustee

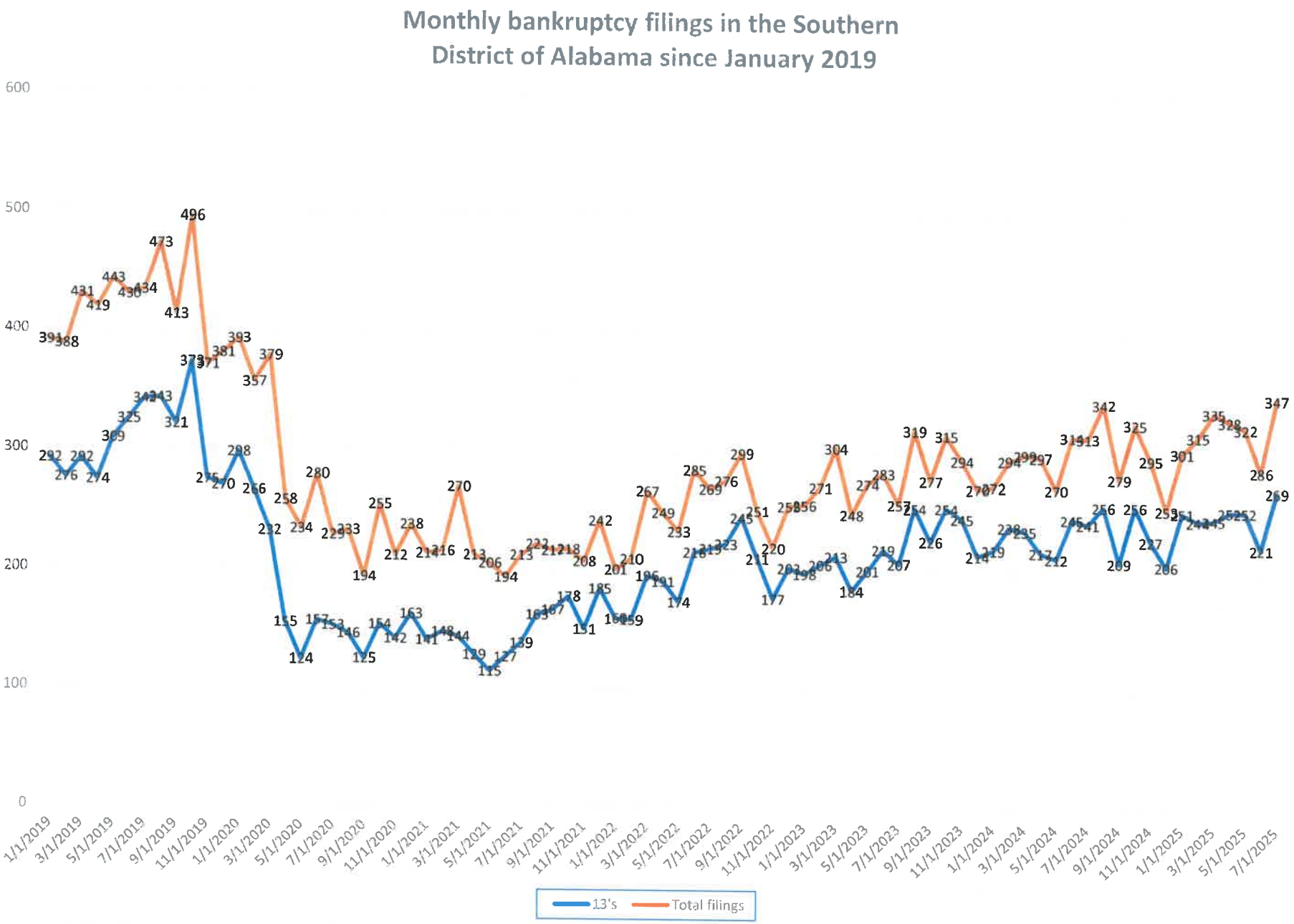
7. Joshua Crownover, counsel with Mobile County Revenue Commission – taxes in bankruptcy and tax liens

8. Consumer committee – Lacy Robertson
   - Recent Eleventh Circuit argument in Conte v. Hill/Profitt (opinion attached)

9. Business committee – Evan Parrott

10. Open the floor

11. Next meeting Tuesday, November 18, 2025, jury assembly room, second floor of Federal Courthouse, with Microsoft Teams component. Let Andrea Redmon know if you would like to sponsor.


Monthly bankruptcy filings in the Southern District of Alabama since January 2019
600
500
400
300
200
100
0
1/1/2019
3/1/2019
5/1/2019
7/1/2019
9/1/2019
11/1/2019
1/1/2020
3/1/2020
5/1/2020
7/1/2020
9/1/2020
11/1/2020
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7/1/2024
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1/1/2025
3/1/2025
5/1/2025
7/1/2025
13's
Total filings

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:	)	
	)	
Matters Which Can Be Filed Negative Notice	)	Administrative Order No. 2025-06
	)	
	)	

MATTERS WHICH CAN BE FILED NEGATIVE NOTICE

Pursuant to Local Bankruptcy Rule 9007-1 as amended effective January 1, 2020, the court may consider without a hearing under the negative notice procedure described in that rule the following types of motions, objections, or other matters:

(a) Notices of abandonment or motions to abandon pursuant to Bankruptcy Rule 6007(a), except by chapter 7 trustees when the notice or motion is filed in conjunction with the final report.

(b) Motions by the chapter 13 trustee to modify a confirmed plan to (1) increase plan payments, (2) treat a governmental claim filed after confirmation, or (3) increase the percentage paid on unsecured claims and/or reduce the plan term because a secured or priority claim is no longer being paid through the plan.

(c) Motions for discharge in chapter 13 filed using Local Form LBF283.

This order supersedes Administrative Order No. 2021-1, which is hereby rescinded.

Dated: 8/11/25

Jerry C. Oldshue
Chief U.S. Bankruptcy Judge

Henry A. Callaway
U.S. Bankruptcy Judge

2025 WL 2179249
Only the Westlaw citation is currently available.
United States Court of Appeals, Eleventh Circuit.

In re: JOHNNY BRACKSTON HILL,
LISA JO ANN BOUTWELL, Debtors.
CHRISTOPHER T. **CONTE**, Plaintiff-Appellant,
v.
JOHNNY BRACKSTON HILL, LISA JO ANN BOUTWELL, Defendants-Appellees.
In re: PEGGY BEDSOLE PROFFITT, Debtor.
CHRISTOPHER T. **CONTE**, Plaintiff-Appellant,
v.
PEGGY BEDSOLE PROFFITT, Defendant-Appellee.

No. 24-10264, No. 24-10265
|
Filed: 08/01/2025

Appeal from the United States District Court for the Southern District of Alabama D.C. Docket No. 1:23-cv-00221-KD-N

Appeal from the United States District Court for the Southern District of Alabama D.C. Docket No. 1:23-cv-00219-KD-N

Before Branch, Abudu, and Kidd, Circuit Judges.

Opinion

PER CURIAM:

***1** In these consolidated cases, Lisa Jo Ann Boutwell and Peggy Proffitt (collectively "the debtors"), two debtors in Chapter 13 bankruptcy, received post-petition personal-injury settlement payments. Christopher T. **Conte**, their bankruptcy-estate trustee ("the trustee"), sought to take that money and distribute it to the debtors' creditors on top of the debtors' regular payments to their creditors. The bankruptcy court declined to modify the debtors' payment schedules, and the district court affirmed.

The trustee argues on appeal that the bankruptcy court should have granted his motions for modification because the proposed plans met the requirements of 11 U.S.C. § 1329, and the settlement proceeds increased the debtors' ability to pay their unsecured creditors. We conclude, however, that the bankruptcy court did not abuse its discretion by denying the trustee's motions. Accordingly, after careful review and with the benefit of oral argument, we affirm.

I. Background

A. Lisa Jo Ann Boutwell

On June 11, 2018, Boutwell filed for Chapter 13 bankruptcy. That October, the bankruptcy court confirmed her Chapter 13 payment plan, which provided for monthly payments of $852 for 66 months to her unsecured creditors. All told, Boutwell's unsecured creditors would receive 40.25% of their full claims under Boutwell's confirmed plan, a figure referred to as a 40.25% "dividend."

Subsequently, in August 2019, Boutwell was injured at a Dollar General when merchandise fell onto her head. As a result, Boutwell suffered several bulged discs requiring surgery. Boutwell's doctor also told her to stay in bed for three months and to not lift anything "heavier than a dinner plate." Boutwell testified in May 2023 that she was "still recovering" from her injuries. Boutwell continued to see a pain management doctor and wear a Transcutaneous Electrical Nerve Stimulation ("TENS") unit because of the accident.

Boutwell received a $45,000 settlement from Dollar General. Of that figure, $15,750 went to attorneys' fees, $3,463.65 went to expenses incurred by special counsel, and $6,100.74 paid for subrogation and medical bills. Accordingly, Boutwell received $19,685.61 in net settlement proceeds.

During the bankruptcy court proceedings, Boutwell also testified about her financial situation. She does not work; she receives Social Security disability payments. Her husband (and co-debtor) works at a paper mill. Boutwell testified they live "paycheck to paycheck." They have one working vehicle. Boutwell's husband had also borrowed Boutwell's mother's truck, but he hit a deer with the truck, incurring over $6,000 in damages that they could not pay to fix the truck. After Boutwell's accident and surgery, Boutwell's husband took time off work to help care for her, and they had to borrow $3,500 from her parents to help pay the bills.

B. Peggy Proffitt

On November 12, 2018, Proffitt filed for Chapter 13 bankruptcy. The following April, the bankruptcy court confirmed her Chapter 13 payment plan, which provided that she would pay $964 per month for 60 months to her

unsecured creditors. All told, Proffitt's unsecured creditors would receive a 62.19% dividend.

***2** Subsequently, in July 2022, Proffitt was involved in a slip-and-fall accident at a Walmart. Proffitt was walking out the door of the store when her foot caught on a rug, and she fell flat onto the concrete outside. She suffered a deep cut on her elbow (which did not require stitches) and a gash on her nose. Proffitt's nose still has a scar from the gash. Proffitt would need additional surgery to have the scar removed, which was estimated to cost about $500. The fall also exacerbated pre-existing back pain. Her income did not change as a result of the accident.

In November 2022, Proffitt received a $13,000 settlement from Walmart. Of that figure, $4,550 went to attorneys' fees, $189.57 went to expenses, and $575.04 went to subrogation. Accordingly, Proffitt received $7,685.39 in net settlement proceeds.

C. Procedural History

In the debtors' respective bankruptcy proceedings, the trustee moved under 11 U.S.C. § 1329 to modify the debtors' payment plans to have all of their net settlement proceeds paid to the trustee. The trustee sought to use the money to increase Boutwell's unsecured creditors' dividend from 40.25% to 77.07% and to increase Proffitt's unsecured creditors' dividend from 62.19% to 76.86%. The bankruptcy court held an evidentiary hearing on the trustee's motions for modification.

Applying 11 U.S.C. § 1329, which governs modifications of Chapter 13 bankruptcy plans, the bankruptcy court denied the trustee's motions. The bankruptcy court first determined that the debtors' net settlement proceeds were property of their bankruptcy estates. The bankruptcy court then determined that the Bankruptcy Code did not require the court to modify the debtors' bankruptcy plans to account for the post-petition personal-injury net settlement proceeds. Finally, the bankruptcy court determined that the settlement proceeds did not increase the debtors' ability to pay their unsecured creditors' claims. Thus, the bankruptcy court found "no legitimate reason for the modification requested by the trustee" and denied the motions, invoking its discretionary authority.

The trustee appealed to the United States District Court for the Southern District of Alabama. The bankruptcy court stayed enforcement of its order denying modification. In that order, the bankruptcy court provided that the debtors would continue to make their plan payments and could apply for a discharge upon completion of their plans, but such completion and discharge would be "without prejudice to the trustee's right to pursue modification of the plans to apply the nonexempt Settlement Funds to the cases and increase the percentage paid on unsecured claims." [1]

***3** The district court affirmed the bankruptcy court. The trustee appealed to us.

II. Standard of Review

In bankruptcy cases, we "sit[ ] as a second court of review and thus examine[ ] independently the factual and legal determinations of the bankruptcy court and employ[ ] the same standards of review as the district court." *In re Brown*, 742 F.3d 1309, 1315 (11th Cir. 2014) (quotation omitted). "Where, as here, the district court affirms the bankruptcy court's order, we review the bankruptcy court's decision." *In re Rosenberg*, 779 F.3d 1254, 1264 (11th Cir. 2015).

Here, the decision of whether to modify a confirmed Chapter 13 plan is committed to the discretion of the bankruptcy court. *See* 11 U.S.C. § 1329(a) ("At any time after confirmation of the plan but before the completion of payments under such plan, the plan *may* be modified ...." (emphasis added)); *In re Guillen*, 972 F.3d 1221, 1229 (11th Cir. 2020) (observing that § 1329 "reserves to the discretion of the bankruptcy court whether to confirm a modified plan"). Accordingly, we review the bankruptcy court's decision for an abuse of discretion. *See SuVicMon Dev., Inc. v. Morrison*, 991 F.3d 1213, 1225 (11th Cir. 2021). A court "abuses its discretion if it applies an incorrect legal standard, follows improper procedures in making the determination, or makes findings of fact that are clearly erroneous." *Id.* (quotation omitted). A court may "also abuse its discretion by committing a clear error in judgment." *Id.* (alteration adopted) (quotation omitted).

III. Discussion

On appeal, the trustee raises several issues with the bankruptcy court's decision not to modify the debtors' Chapter 13 plans. We conclude, however, that the bankruptcy court did not abuse its discretion.

As mentioned, 11 U.S.C. § 1329 governs modifications of confirmed Chapter 13 bankruptcy plans.[2] For a plan to be modified under section 1329, the proposed modification must conform with "[s]ections 1322(a), 1322(b), and 1323(c) of this title and the requirements of section 1325(a) of this title." 11 U.S.C. § 1329(b)(1). If a proposed modification meets the relevant requirements, then "the plan may be modified." *Id.* § 1329(a). We have recognized that "[n]othing prevents a bankruptcy court from refusing to confirm a modified plan put before it," even "where modified plans satisfy" the requirements of section 1329. *Guillen*, 972 F.3d at 1229. Accordingly, our review turns on (1) whether the trustee's proposed modifications met the requirements of section 1329; and (2) if so, whether the bankruptcy court abused its discretion by denying the proposed modifications.

***4** Turning to section 1329, that statute requires, in relevant part, modified plans to comply with "the requirements of section 1325(a)." 11 U.S.C. § 1329(b)(1). Section 1325, in turn, among other things, sets minimum requirements for what the debtor must pay to his unsecured creditors pursuant to the proposed plan under consideration. *See generally id.* § 1325(a)(4), (b)(1). The "liquidation test," codified in § 1325(a)(4),[3] sets a floor on the total value of the debtor's payments to her unsecured creditors: the total value of the payments under the Chapter 13 plan must be "not less than" the proceeds the unsecured creditors would receive in a hypothetical Chapter 7 liquidation. *Id.* § 1325(a)(4). And the "disposable-income test," codified in § 1325(b)(1),[4] provides a floor for how much of the debtor's projected disposable income must be paid to unsecured creditors: all of it. *Id.* § 1325(b)(1)(B).

The parties and amici dispute several issues about whether and how the liquidation and disposable-income tests apply to modified plans under section 1329. We, however, need not decide those issues today. Notably, the debtors do not contest that even under their reading of sections 1325 and 1329, the trustee's proposed modified plans met the applicable minimum requirements of those statutes. The debtors' position makes sense: as discussed, sections 1325 and 1329 set floors for what the debtors must pay their creditors, and the trustee in this case sought to have the debtors pay *more* to their unsecured creditors than the debtors were previously paying. Unsurprisingly, the trustee also contends that his proposed modified plans met the requirements of section 1329. Accordingly, we will assume without deciding that the trustee's proposed modified plans met all relevant requirements of section 1329.

We next turn to "the discretion of the bankruptcy court whether to confirm a modified plan" that meets the requirements of section 1329. *Guillen*, 972 F.3d at 1229. Here, after an evidentiary hearing, the bankruptcy court decided not to modify the debtors' plans. The bankruptcy court reasoned that both debtors were still experiencing pain from their injuries as of the bankruptcy court's hearing, Boutwell was living paycheck-to-paycheck and needed money to pay for car repairs and to repay her parents, and Proffitt needed additional surgery. Accordingly, the bankruptcy court found that the settlement proceeds did not increase the debtors' ability to pay their unsecured creditors in a way sufficient to justify approval of the trustee's proposed modifications. The bankruptcy court's conclusion finds ample support in the record based on Boutwell's and Proffitt's testimony at the bankruptcy court's evidentiary hearing. Accordingly, we find no "clear error in judgment" here. *SuVicMon Dev., Inc.*, 991 F.3d at 1225 (quotation omitted).

***5** The trustee disagrees and asserts that the bankruptcy court erred in its judgment because the settlement proceeds increased the debtors' ability to pay their unsecured creditors.[5] We have explained, however, that while "an unforeseen change in circumstances is a good reason to permit a modification that ... satisfies § 1329," modification is not required: "*[n]othing* prevents a bankruptcy court from refusing to confirm a modified plan put before it." *Guillen*, 972 F.3d at 1229 (emphasis added).

In sum, we assume the trustee's proposed modifications of the debtors' Chapter 13 bankruptcy plans met the requirements of 11 U.S.C. § 1329. The bankruptcy court, however, was within its discretion to deny the proposed modifications, and it had satisfactory reasons for doing so here. Accordingly, we affirm the denial of the trustee's motions to modify the debtors' bankruptcy plans.

IV. Conclusion

For the foregoing reasons, we affirm.

AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2025 WL 2179249

Footnotes

1 In August 2024, the debtors both received discharges from their Chapter 13 bankruptcy plans. In light of these discharges, we asked the parties to brief the following question: "What effect, if any, do those discharges have on the justiciability of the Chapter 13 Trustee's appeal?" *See Neidich v. Salas*, 783 F.3d 1215, 1216 (11th Cir. 2015) (holding that "the dismissal of a Chapter 13 case moots an appeal arising from the debtor's bankruptcy proceedings" and observing that the debtor no longer had "a Chapter 13 plan ... that the trustee objects to"). A case is moot if "a court finds that it can no longer provide a plaintiff with effective relief." *In re Stanford*, 17 F.4th 116, 121 (11th Cir. 2021). Here, however, we conclude that the bankruptcy court's stay order kept this appeal from becoming moot. By staying its order denying modification, the bankruptcy court essentially discharged the debtors *except for* the settlement proceeds, which would be held off to the side until the trustee's appeal was resolved. Thus, as the trustee notes, if we affirm, the settlement proceeds "would be disbursable to the Debtors," but if we reverse, the proceeds "would be disbursable to the unsecured creditors as an additional dividend." With a remaining dispute about who gets the settlement proceeds, we may still provide relief in this case. Accordingly, this appeal is not moot. *See id.*

2 For relevant background, "Chapter 13 of the Bankruptcy Code is designed to facilitate adjustments of the debts of individuals with regular income through extension and composition plans funded out of future income, under the protection of the court." *Brown*, 742 F.3d at 1315 (quotation omitted). "Under Chapter 13, any individual with regular income may file for Chapter 13 reorganization and make payments to a trustee under bankruptcy court protection, with the trustee fairly distributing the funds deposited to creditors until all debts have been paid." *Id.* at 1315–16 (quotation omitted). Unlike Chapter 7 bankruptcy, in which a debtor's assets are liquidated and his creditors are paid with the proceeds, a Chapter 13 debtor gets to "retain his non-exempt assets and use his regular income (instead of those assets) to repay his debts" according to his confirmed bankruptcy plan. *Id.* at 1316. Sections 1321 through 1325 of Title 11 of the United States Code govern initial plan confirmation, and section 1329 governs post-confirmation modification of plans. *See* 11 U.S.C. §§ 1321–25, 1329.

3 The liquidation test provides, in full, that under a Chapter 13 plan, "the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim [cannot be] less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date." 11 U.S.C. § 1325(a)(4).

4 The disposable-income test provides, in full, that

> [i]f the trustee or [an unsecured creditor] 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.

11 U.S.C. § 1325(b)(1). In other words, under a Chapter 13 plan, unsecured creditors must be receiving everything they are owed, otherwise the debtor must be paying everything she can. *See id.*

5 The trustee also argues that the bankruptcy court's decision conflicts with our decision in *In re Waldron*, 536 F.3d 1239 (11th Cir. 2008). Not so: our decision in *Waldron* merely reaffirmed the trustee's and unsecured creditors' right to *request* modification. 536 F.3d at 1245–46. We did not hold that the trustee or unsecured

creditors are *entitled* to modification. Again, "[n]othing prevents a bankruptcy court from refusing to confirm a modified plan put before it." *Guillen*, 972 F.3d at 1229.

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re:

_____ CASE NO: _____

DEBTOR

ORDER

This matter is before the Court pursuant to 11 U.S.C. § 1329(b) and FRBP 3015(g) on the motion of the Chapter 13 Trustee (hereinafter the "Trustee") to modify the Debtor's confirmed Chapter 13 plan [Doc.#___] to incorporate the proceeds of a post-petition settlement and increase the percentage paid to unsecured creditors accordingly. This Court has discretion to grant or deny a Motion to Modify by the Trustee based upon the facts before it. The parties have agreed to a split of the Settlement Funds and have requested that the agreement be memorialized by the Court. As such the Trustee's Motion is hereby GRANTED IN PART and it is ORDERED AS FOLLOWS:

1. The Trustee is currently holding $_____ related to Debtor's post-petition settlement (hereinafter the "Settlement Funds").

2. The Debtor's confirmed Chapter 13 plan is hereby modified pursuant to both 11 U.S.C. §541 and 1306 to include $_____ of the Settlement Funds as part of the Debtor's Chapter 13 estate, with the percentage paid to unsecured creditors to increase to _____%.

3. The remainder of the Settlement Funds are to be paid to the Debtor.

4. The above agreed split of the Settlement Funds is within the discretion of the Court and the Trustee, and the Court finds that it is in the best interests of the creditors, the Debtor, and the bankruptcy estate.

ORDER PREPARED BY:
Chapter 13 Trustee's Office

Recent Decisions of the Bankruptcy Court of the Southern District of Alabama

Updated August 11, 2025

The following case summaries are intended solely to assist the bankruptcy bar in identifying cases with pertinent issues and facts. These summaries might not include or reflect any subsequent case history or appeals. It is the user's responsibility to examine the full opinion to determine the court's holding. Later changes in the bankruptcy code or state law may also render cases obsolete.

480. In re Conley, 2025 WL 1870657 (Bankr. S.D. Ala. July 7, 2025) (JCO) July 7, 2025

The court allowed the creditor to amend its proof of claim from unsecured to secured because: (1) the initial claim was prepared and filed without the benefit of counsel; (2) the defect in the initial claim was attributable to mistake; (3) the amended claim was based on the same certificate of judgment that was attached to the initial claim; (4) the amended claim was more akin to an amendment of the initial claim rather than a new claim; (5) there was no dispute that the creditor had a perfected prepetition judgment lien; (6) no other creditors would be prejudiced by allowance of the amended claim; (7) allowance of the amended claim would not delay administration of the case; and (8) disallowance of the amended claim would result in disparate treatment of similarly situated creditors and bestow a windfall upon the debtors. The court was not persuaded by the debtors' argument that they included a provision in their plan proposing to avoid the lien, explaining that such statement did not comply with LBR 4003-1, there was no substantive adjudication on the issue of lien avoidance, and the attempt to avoid a lien through the use of a nonstandard provision in a chapter 13 plan was ineffective.

479. In re CDF Inc., No. 25-10197 (JCO) August 7, 2025

The court denied a creditor's motion for relief from stay to appeal a ruling of the Oklahoma Court of Appeals regarding a prepetition garnishment and proceed with state law remedies. The court found that: (1) the creditor was adequately protected; (2) there was not sufficient cause for relief; (3) such relief would be prejudicial to the debtor and creditors; (4) duplicitous litigation related to the debtor's assets in more than one forum is contrary to the spirit and purpose of the Bankruptcy Code; and (5) extraneous litigation could lead to inconsistent results, waste estate resources, increase the debtor's expenses, detract from the management of the estate, and deprive the estate of funding that is necessary for an effective reorganization.

478. Merchant v. Breland, 2025 WL 2246963 (Bankr. S.D. Ala. Aug. 6, 2025) (JCO)

The court dismissed the adversary proceeding because adjudication of the plaintiff's claims, arising from alleged breach of a contract executed by plaintiff and a non-debtor third party entity, was not appropriate in the context of the bankruptcy. The plaintiff was not a creditor in the bankruptcy, the individual debtor and chapter 11 trustee were not a party to the contract, the contract was entered into without bankruptcy court approval, the time for filing administrative claims had expired, and the administration of the bankruptcy cases was nearing its conclusion. The adversary claims did not arise under the provisions of Title 11, were not core

proceedings, and did not concern the administration of the estate. The fact that the individual debtor held an interest in the third-party entity was not sufficient for the bankruptcy court to exercise jurisdiction over postpetition, postconfirmation claims involving a non-debtor. The court further noted that even if it had jurisdiction over the claims, permissive abstention was warranted in the interest of justice, judicial economy, and respect for state law because revesting had occurred, state law issues predominated, and the state courts are well suited to handle such matters.

477. In re Richardson, No. 25-10839 (HAC) August 5, 2025

Alabama law defines a PMSI in terms of the manner in which the interest was created rather than in terms of the entity in favor of whom the interest was created. An assignment of a security interest in a vacuum thus did not destroy its status as PMSI. Because there was no dispute about the purchase-money nature of the original transaction or that the vacuum qualified as a "consumer good," the court overruled the debtor's objection asking the court to reclassify the creditor's claim as unsecured.

476. In re Tunsill, No. 25-40091 (HAC) Bankr. N.D. Fla. August 5, 2025

Following the debtor's failure to respond to the court's order to show cause, the court dismissed the pro se debtor's chapter 7 bankruptcy case because he did not pay the filing fee. The court also dismissed the case because the debtor claimed to be a trust and thus was not an eligible debtor under Bankruptcy Code § 109. Further, a trust cannot appear pro se and must be represented in federal court by an attorney.

475. In re CDF Inc., No. 25-10197 (JCO) July 11, 2025

The court granted the debtor's motion to sell real property over creditor's objection that the debtor lacked the requisite interest and authority to sell it. Property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case" and the expansive language of § 541 should be construed generously. Since the debtor's interest in the subject Oklahoma property was governed by state law, and was already adjudicated by the Oklahoma state court, it was not appropriate for the court to relitigate that issue. Thus, the court found that the debtor had the requisite interest to sell the property and the motion to sell was due to be granted because there was no dispute as to the reasonableness of the proposed sale price or the mortgage lien to be paid from the proceeds.

474. Breland v. Galloway et al., AP No. 24-1037 (JCO) July 11, 2025

The court granted the debtor's motion to abstain and remanded the removed action back to state court. As the remaining claims involved allegations of malpractice against debtor's prior bankruptcy counsel, the court noted that abstention was not mandatory. But permissive abstention was warranted because the alleged malpractice related to a prior bankruptcy that was closed in 2016, the outcome of the state court litigation would have no effect on the bankruptcy proceeding, a jury trial was demanded, and the state court is best able to resolve the state law matters.

473. Maxwell v. Cain, 2025 WL 1871039 (Bankr. S.D. Ala. July 7, 2025) (JCO)

The plaintiffs' nondischargeability claims under § 523(a)(2)(A) and (a)(6) were not supported by the evidence. Every breach of contract does not give rise to a nondischargeable obligation. Although the debtor agreed to repair the plaintiffs' boat and failed to satisfactorily complete the work, the facts did not establish that the debtor received money, property, services, or an extension, renewal, or refinancing of credit by false pretenses, a false representation, or actual fraud as required to prevail under § 523(a)(2(A) or that debtor's actions and inactions constituted willful or malicious injury under § 523(a)(6). To the contrary, the evidence established that at the outset of the agreement the debtor believed that he could complete the work and that he tried to do so, but it was more daunting than he anticipated, and he encountered a litany of issues and delays, including health issues, employee issues, other work obligations, and difficulty obtaining engine parts.

472. Garvin v. West Coast WinSupply, Inc., AP No. 23-3008 (HAC) Bankr. N.D. Fla. July 25, 2025

Depositions themselves are generally not admissible into evidence at trial. But a deposition can be used to refresh a witness's recollection or as a prior inconsistent statement under Federal Rules of Evidence 612 and 613, which does not have the same requirement.

471. In re Tracy, No. 24-12071 (HAC) June 18, 2025

A debt arising from a co-debtor wife's personal guaranty of company debt put her over the unsecured debt limit of Bankruptcy Code § 109(e), and the court thus dismissed her as a debtor from the joint case with her husband. Unlike a conditional guaranty, an absolute guaranty imposes no duty upon the creditor to attempt collection from the principal debtor before looking to the guarantor. The guaranty signed by the debtor did not contain any provisions making liability contingent on an event other than default, so it had to be included in the eligibility analysis as a noncontingent debt.

470. In re Dickey, No. 24-12681 (HAC) June 10, 2025

Assuming the other statutory requirement are met, the owner of a life insurance policy is entitled to claim the life insurance exemptions in Alabama Code §§ 6-10-8 and 27-14-29 in his or her bankruptcy case.

469. In re Steger, 2025 WL 1520069 (Bankr. S.D. Ala. May 28, 2025) (JCO)

The court sustained the chapter 13 trustee's objection to confirmation and granted the creditor's motion to convert to chapter 7. The totality of the circumstances and *Kitchens* factors established a lack of good faith because: (1) the debtor had not been forthright with regard to his financial transactions; (2) the debtor undervalued his wholly owned business and other personal property in his initial bankruptcy schedules; (3) the debtor contrived an elaborate scheme to move money out of his business account, conceal assets, and transfer funds into his son's account before filing bankruptcy; (4) the debtor refused to provide discovery; (5) the debtor failed to comply with this court's order compelling production; (6) the debtor's lack of recall at

the evidentiary hearing appeared to be intentionally evasive; and (7) the debtor's motivation for filing bankruptcy was questionable and his bankruptcy schedules reflected that his income exceeded his expenses.

468. In re Johnson, 2025 WL 1428022 (Bankr. S.D. Ala. May 16, 2025) (JCO)

An auctioneer was not entitled to a commission on vehicles for which he obtained a buyer because: (1) the auctioneer failed to obtain court approval of his employment prior to the auction; (2) the auctioneer failed to produce a complete contract signed by the debtor authorizing the terms or referencing the vehicles; and (3) and the vehicles were the property of non-debtor third parties or otherwise encumbered by liens. The auctioneer's failure to exercise reasonable care in confirming ownership, existing liens, and the condition of the items offered for sale prior to the auction was at his peril. Notwithstanding the foregoing, the court allowed a commission on other items of personal property in an amount conceded by the debtor as the proceeds from the auction of such items benefitted the estate.

467. In re Gibson, No. 25-10399 (JCO) May 2, 2025

The court dismissed the debtor's chapter 13 bankruptcy with an injunction finding that the totality of the circumstances indicated a lack of good faith. The court noted that: (1) the debtor had paraded a plethora of schedules before it, depicting wildly different expenses and disposable income, casting doubt on the veracity thereof; (2) the six differing financial scenarios espoused by the debtor over the past two years also raised questions about the debtor's motivations and sincerity in seeking relief under the provisions of chapter 13; (3) a debtor's bankruptcy schedules cannot be whimsically formulated or prepared with an ulterior motive; (4) the number and nature of the debtor's amendments together with the lack of sufficient justification and documentary evidence therefore indicated a lack of candor; (5) the delays occasioned by the debtor's amendments and continuances in a prior bankruptcy, culminating in dismissal and followed by the filing of this case less than a week later also supported finding a lack of good faith; (6) the debtor lingered in his prior bankruptcy for 610 days, forestalling his creditors from collection efforts; (7) the debtor failed to satisfactorily address the inconsistent information in his schedules, provide requested discovery, or respond to the motion to dismiss; and (8) the debtor's cavalier conduct was not consistent with that of an honest but unfortunate debtor.

466. In re Rivers, No. 23-12785 (HAC) April 21, 2025

The chapter 13 debtor lived in a mobile home on real property owned by his mother. The real property had been sold for taxes and the holder of the tax deed filed a motion for relief to proceed with an ejectment action against the debtor. The debtor's mother had not redeemed the real property under Alabama law, and the debtor proposed to pay any redemption amount through his chapter 13 plan. However, under Alabama law, only the owner, her heir, devisee, vendee or mortgagee can redeem from a tax sale. The debtor was not the owner of the property and was not an heir (because his mother was still alive), so he could not redeem through his plan unless his mother conveyed the real property to him.

465. Breland v. Hudgens et al., 2025 WL 1089103 (Bankr. S.D. Ala. April 4, 2025)

The court dismissed claims and sanctioned the debtor and his counsel for attempting to pursue creditor in a state court lawsuit in violation of a compromise and release in the bankruptcy. The court noted that: (1) the creditor timely removed the state court action under 28 U.S.C. § 1452(a); (2) the court has jurisdiction to interpret and enforce its own orders; (3) and the plain language of the compromise, order and release prohibited the debtor from suing the creditor for any "claims, demands, obligations, liability, actions, causes of action, suits at law or in equity of whatsoever kind or nature, whether based in tort, contract, warranty, or other theory of recovery, and whether for compensatory or punitive damages, known or unknown, . . . with respect to any act or omission" through the date of execution. Considering the totality of the circumstances including the litigious history between the parties, the debtor's blatant disregard for the terms of the compromise and release, and the creditor's demand for dismissal prior to removal, the court found that the imposition of monetary sanctions was necessary and appropriate.

464. Bryant Bank v. Simmons, et al., AP No. 25-1002 (HAC) April 2, 2025

The plaintiff brought claims under Bankruptcy Code §§ 523 and 727 against the debtors, as well as multiple state law claims against two other defendants. The non-debtor defendants demanded a jury trial. Generally, a defendant does not have a jury trial right with respect to claims brought under Code §§ 523 and/or 727. But that is not the case for state law claims. The court thus ordered the parties to show cause why the court should not abstain from hearing the state law claims against the non-debtor defendants.

463. In re Nicholas, No. 24-13102 (HAC) March 31, 2025

The court overruled the debtors' objections to two secured claims, contending that the court should reclassify the claims as unsecured because they were leases. One claim was treated as a lease in the plan, so the objection was unnecessary. The debtors had not treated the other claim at all – either as a secured claim or as a lease. The court thus overruled the objection and ordered the debtors to file an amended plan to treat the claim.

462. In re Palfi, Case No. 24-30978 (JCO) Bankr. N.D. Fla. March 25, 2025

The court conditionally denied a motion for relief from stay related to a vehicle driven by the daughter of the chapter 11, subchapter V debtors. The court found that retention of a vehicle for the dependent child was necessary for an effective reorganization because: (1) each debtor needed a vehicle for work; (2) they did not live on a bus route and their sixteen-year-old daughter required transportation to and from school and activities; (3) the debtors' employment prevented them from transporting their daughter; and (4) if their daughter did not have a vehicle, Mrs. Palfi would have to resign from her travel nursing job to provide transportation, reducing the debtors' income and impairing their ability to fund the case.

461. In re Andrews, No. 24-12442 (HAC) March 12, 2025

Two creditors with pending state court cases for breach of contract and fraud against the debtor and others filed nondischargeability actions under Bankruptcy Code § 523(a)(2) against the chapter 7 debtor. The bankruptcy court lifted the stay in part to allow the state court cases to proceed to final judgment. The bankruptcy court requested that the state court make findings on