

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WISCONSIN**

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IN RE:           Andrew John Kiedrowski and  
                  Sherri Ann Kiedrowski,

Case No. 06-24318-PP

Debtors.

Chapter 13

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**ORDER SUSTAINING THE TRUSTEE'S OBJECTION TO DEBTORS'  
MODIFIED CHAPTER 13 PLAN**

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On July 2, 2007, the trustee filed an objection to confirmation of the debtors' modified Chapter 13 plan (hereinafter "plan"). The Court heard this objection on July 31, 2007. For the reasons that follow, the Court sustains the trustee's objection to the debtors' plan.

The debtors filed their original chapter 13 plan on August 7, 2006, and their amended plan on September 29, 2006. They filed an amended Statement of Current Monthly Income Form (hereinafter "B22C Form") on December 5, 2006. The trustee alleges that, due to the debtors' responses on the B22C Form, the debtors' chapter 13 plan fails to provide all of the debtors' disposable income to the plan, in violation of 11 U.S.C. §§ 1325(a)(3) and (b)(1)(B).

The debtors own two vehicles, a 2000 Dodge Neon and a 2005 Chevrolet Colorado. GMAC holds a lien on the 2005 Chevrolet Colorado and the debtors own the 2000 Dodge Neon outright. On their B22C Form, the debtors claimed two vehicle ownership/lease expenses, even though the debtors own only one vehicle that is subject

to a lien. The trustee argues that, because only one of the debtors' vehicles is subject to a lien or lease agreement, the debtors may claim only one ownership deduction on their B22C Form. At the hearing on this matter, the trustee argued that the decision in In re Ross-Tousey, 2007 WL 1466647 (E.D.Wis.2007) is the governing law in this district and, hence, that the debtors may not claim more than one ownership deduction on their B22C Form. The debtors argue that the decision in Ross-Tousey is distinguishable from the facts in the present case, because Ross-Tousey dealt with a chapter 7 bankruptcy case and the present case deals with a chapter 13. The debtors state that the basis for the decision in Ross-Tousey was the fact that the Court in Ross-Tousey was dealing with a chapter 7 debtor. The debtors urge this Court to follow the reasoning in In re Sawdy, 362 B.R. 898 (Bankr. E.D.Wis.2007) and overrule the trustee's objection to confirmation of their plan.

The Court took this matter under advisement to review the pertinent case law cited by the parties. The Court has reviewed its own decision in Sawdy and the subsequent decision by the district court in Ross-Tousey, and has concluded that the holding in Ross-Tousey governs the disposition in this case. In both Sawdy and Ross-Tousey, the courts analyzed the language of 11 U.S.C. § 707(b)(2)(A)(ii)(I). That section of the statute states that "the debtor's monthly expenses shall be the debtor's *applicable* monthly expense amounts specified under the National Standards and Local Standards, and the debtor's *actual* monthly expenses for the categories specified as Other Necessary Expenses." 11 U.S.C. § 707(b)(2)(A)(ii)(I) (emphasis added).

The debtor in Sawdy filed bankruptcy under chapter 13. In reviewing the issue in the chapter 13 context, this Court concluded that “debtors . . . are entitled to deduct on their Form B22C the IRS Local Standard expense amount for vehicle ownership, even though they own their vehicles outright and do not make monthly note or lease payments.” 362 B.R. at 914. In Sawdy, the Court reasoned that, by using the terms “actual” and “applicable” in the same sentence, Congress had signaled its intent that the definition of the term “applicable” should be different from the definition of the term “actual”. Sawdy, 362 B.R. at 911-12. The Court stated that it based its

decision solely on two rationales—first, the fact that Congress used the word “applicable” instead of the word “actual” in referring to the expenses enumerated in the National and Local Standards, and second, the fact that Congress appears to have considered importing the language from the Internal Revenue Manual and the Financial Collection Analysis into § 707(b)(2)(A)(ii)(I) but chose not to do so.

Id.

In Ross-Tousey, the district court analyzed 11 U.S.C. §707(b)(2)(A)(ii)(I), as it applies to a chapter 7 debtor, and reached the opposite conclusion. The Ross-Tousey court looked at the terms “actual” and “applicable,” and noted that “[f]or some expenses, the statute allows debtors to take their exact (actual) deductions. For other expenses, such as car ownership expenses, the statute’s fixed deduction simply treats all debtors who make car payments the same.” 2007 WL 1466647 \*4. The Ross-Tousey court concluded that

the term ‘applicable’ does not simply mean a debtor must only apply the Standard based on the number of cars he owns; he must apply the Standard based on how many cars for which he has monthly ownership

*expenses.* The fact that Congress has chosen to standardize the amount allowed for ownership expenses does not mean it also chose to make the Standards into fixed allowances guaranteed to every car owner.

Id. at \*5.

While the debtors argue that the decision in Ross-Tousey is distinguishable from this case because Ross-Tousey involved a chapter 7 debtor, it is clear that the decisions in Ross-Tousey and Sawdy both turn on the definition of the term “applicable.” Although the purpose of the means test is different in a chapter 7 case than in a chapter 13 case, this difference does not distinguish the holding in Ross-Tousey from the holding in Sawdy. This Court is bound by the decision of the district court in Ross-Tousey, notwithstanding the fact that this Court’s decision in Sawdy is still on appeal in front of the Honorable United States District Court Judge J.P. Stadtmueller. Accordingly, pursuant to the holding in Ross-Tousey, this Court sustains the trustee’s objection to the debtors’ modified plan and orders the debtors to amend their B22C form to reflect only one vehicle ownership/lease expense.

**WHEREFORE**, the Court hereby **SUSTAINS** the objection of the trustee to confirmation of the debtors’ modified plan. The debtors have thirty (30) days from the date of this Order to file an amended Form B22C.

**SO ORDERED** this 9th day of August, 2007.

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HON. PAMELA PEPPER  
United States Bankruptcy Court