

Lou Jones Breakfast Club Meeting
June 13, 2006
Mary Grossman, Moderator

CURRENT MONTHLY INCOME

1. Why is Current Monthly Income important?

- Chapter 7 cases: Substantial abuse test under §707(b)
- Chapter 13 cases:
 - Determination of three or five year “applicable commitment period” under §1325(b)(4) for purposes of §1325(b)(1)(A):

Based solely on current monthly income; see In re Beasley, 2006 Bankr. LEXIS 711 (Bankr. C.D.Ill. 2006) where CMI was basis for applicable commitment period even though CMI was lower than schedule I income due to seasonal nature of employment and social security income;

- Component of “disposable income” under §1325(b)(2) for both above and below median income debtors; see

In re Kibbe, 2006 Bankr. LEXIS 793 (Bankr. D.N.H. 2006) where disposable income based on Schedules I and J of below median income debtor who received substantial increase in income after the 6 month period before filing.

In re Jass, 340 B.R. 411 (Bankr. D.Utah 2006) where CMI less expenses is starting point for projecting disposable income and equals projected disposable income unless debtor can show that CMI less expenses is not representative.

In re Hardacre, 338 B.R. 718 (N.D.Tex. 2006) where *projected* disposable income requires that income be based on anticipated future income.

In re Dew, In re Etress, In re Wilson, In re Wells, (N.D. Ala. 2006) where Schedules I and J should be used to determine projected disposable income for below median income debtors.

In re Barr, 341 B.R. 181 (Bankr. M.D.N.C. 2006) where paying disposable income (i.e.; CMI less expenses) was not bad faith even though Schedules I and J showed an ability to pay more.

In re Schanuth, (W.D.Mo. 2006) where Schedules I and J can be used to support a contribution of an amount that is greater than disposable income.

2. What is Current Monthly Income?

- Defined in §101(10A)

- Income received from all sources, without regard to whether income is taxable.
 - *Gifts?
 - *Property sales (gross or net)?
 - *Value of trade-ins?
 - *Child support?
 - *Employer contributions to health and retirement plans?
 - *Inheritances?
 - *Form B22C allows reduction for business expenses.
- Derived in 6 calendar months preceding filing or in 6 months prior to a date determined by the court if debtor does not file CMI statement

- Includes amount paid by a nondebtor on a regular basis for household expenses; see In re Quarterman, 2006 Bankr. LEXIS 790 (M.D.Fla. 2006) where the amounts contributed by nondebtor spouse to household expenses must be included in CMI.
- Does not include any social security benefits or war crimes or terrorism reparations.

- For purposes of disposable income (but not for determining applicable commitment period), CMI does not include child support, foster care payments or disability payments for a dependent