

Chapter 13 Trustee's Memorandum on *Beaulieu v. Ragos* (5th Circuit- October 29, 2012)

Trustee Note: Prior to the issuance of this opinion, the Trustee required all Debtors' social security income to be disclosed on Schedule I and dedicated to their Chapter 13 Plans, even though such disclosure was not required on the CMI form/means test. Effective immediately, the Trustee will no longer require such disclosure of Social Security Income on Schedule I in light of this 5th Circuit opinion. Debtors may still elect to apply Social Security Income to their Plan.

Case Facts: The Debtors disclosed some but not all of the Debtors' social security income on Schedule I. The Chapter 13 Trustee objected to the proposed Plan contending that the Debtors' failed to dedicate all of their projected disposable income as mandated by 11 U.S.C. § 1325(b)(1) by their failure to include all of their social security benefits on Schedule I; and that the resulting Plan was proposed in bad faith as a result.

Holding: The Bankruptcy Court overruled the Trustee's objections and confirmed the Plan. The 5th Circuit Court of Appeals affirmed.

Reasoning: The Court acknowledged that the Bankruptcy Code failed to define *projected disposable income*. The Court looked to the definition of *disposable income*, which the Code defined as "current monthly income received by the debtor...less amount reasonably necessary for monthly expenses." The Court then looked to the definition of *current monthly income*, which specifically excluded social security benefits.

The Court reasoned that if current monthly income excluded social security income, then disposable income by definition could not include such income. The Court rejected the Trustee's argument that *projected* disposable income somehow differed from disposable income and that *projected* disposable income could still include social security. The Court opined that the term "projected" should not be used to circumvent Congress' obvious intent, in both the Bankruptcy Code and Social Security Act, to exclude social security income from the bankruptcy process.

Effect on Trustee's Procedures: The Trustee will no longer require Social Security Income to be included on Schedule I. However, the Debtors may still dedicate such income to their Plan.

The Trustee asserts that the Debtors' budgets must still support the proposed Plan payments. The exclusion of social security income may cause the Trustee to challenge the Debtor's eligibility to file a Chapter 13 bankruptcy (should the Debtor's projected disposable income on the budget reflect a negative number) or the feasibility of the Debtor in making his or her plan payments under the proposed Chapter 13 Plan (should the Debtor's projected disposable income on the budget be less than the proposed Plan payments).