DISPOSABLE INCOME UNDER 11 U.S.C. §1325(a)(2)

prepared for the Thirty-first Annual Southeastern Bankruptcy Law Institute

by

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February 2005

I. **11 U.S.C. §1322(b)**

A. **Statutory Text:**

> ***(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 three-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.*
>
> ***(2)*** *For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended--*
>
> > ***(A)*** *for the maintenance or support of the debtor or a dependent of the debtor, including charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of the 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.*

B. **Burden of Proof**: An objecting creditor has the initial burden of producing satisfactory evidence to support the contention that the debtor is not applying all disposable income to plan payments under §1325(b), but once creditor meets the initial burden, the ultimate burden of persuasion rests with the debtor. Education Assistance Corp. v. Zellner, 827 F.2d 1222 (8th Cir. 1987); In re McNichols, 249 B.R. 160 (Bankr. N.D. Ill. 2000); In re Fries, 68 B.R. 676 (Bankr. E.D. Pa. 1986)

C. **Standing**: One court has held that the U.S. Trustee lacks standing to file an objection under 11 U.S.C. §1322(b) because the specific language of that section omits a

reference to the U.S. Trustee. In re Eaton, 130 B.R. 74 (Bankr. S.D. Iowa 1991)

II. Income Stream from Exempt Assets in Chapter 7

A. Income from ERISA qualified pension considered in §707(b) analysis – In re Taylor, 212 F.3d 395 (8th Cir. 2000) (relevant inquiry is not whether the payments are exempt from creditors in a Chapter 7 proceeding but whether the challenged payments would constitute income in a hypothetical proceeding under Chapter 13)

B. Income from disability payments exempt under state law considered in §707(b) analysis – In re Koch, 109 F.3d 1285 (8th Cir. 1997)

C. Income from exempt military pension considered in §707(b) analysis – In re Rogers, 168 B.R. 806 (Bankr. M.D. Ga. 1993)

III. What Is Included As Disposable Income in Chapter 13 Cases?

A. Income Stream from Exempt Assets Considered Disposable Income

1. Social Security benefits – In re Hagel, 184 B.R. 793 (9th Cir. B.A.P. 1995)

2. Exempt interest in military pension – In re Satterwhite, 271 B.R. 378 (Bankr. W.D. Mo. 2002)

3. Worker's compensation benefits exempt under state law – In re Lush, 213 B.R. 152 (Bankr. C.D. Ill. 1997)

B. Exempt Assets Not Currently Producing Income

1. Exempt cash equivalent asset:

   a. In re Solomon, 67 F.3d 1128 (4th Cir. 1995) (funds invested in IRA (but not being drawn as income) held not disposable income)

   b. Matter of Smith, 222 B.R. 846 (Bankr. N.D. Ind. 1998) (disposable income test does not compel debtor to take distributions from exempt profitsharing plan during the chapter 13 case)

   c. In re Baker, 194 B.R. 881 (Bankr. S.D. Cal. 1996) (exempt lump sum

life insurance benefits is not disposable income but interest to be earned is disposable income)

2. Potential future proceeds of exempt personal injury claims: Compare In re Graham, 258 B.R. 2001 (Bankr. M.D. Fla. 2001) (exempt settlement proceeds of personal injury claim is not disposable income); In re Hunton, 253 B.R. 580 (Bankr. N.D. Ga. 2000) (same), citing In re Gamble, 168 F.3d 442 (11th Cir. 1999); In re Ferretti, 203 B.R. 796 (Bankr. S.D. Fla. 1996) with In re Gebo, 290 B.R. 168 (Bankr. M.D. Fla. 2002) (exempt worker's compensation settlement proceeds received pre-confirmation held to be disposable income); In re Claude, 206 B.R. 374 (Bankr. W.D. Pa. 1997) (exempt proceeds of personal injury claim considered disposable income) (collecting cases). See also Part III.C., infra.

3. Anticipated earned income credits – In re Sohn, 300 B.R. 332 (Bankr. D. Minn. 2003) (held part of disposable income)

C. **Income of Non-debtor Spouse**

1. "Most courts include the debtor's spouse's income in the budget for purposes of calculating projected disposable income under §§ 1325(b) notwithstanding that the spouse is not a debtor in the Chapter 13 case. The theory is that the nonfiling spouse's income is available to defray the debtor's reasonably necessary expenses, thus freeing a larger portion of the debtor's separate income for satisfaction of unsecured claims." In re McNichols, 249 B.R. 160, 169 (Bankr. N.D. Ill. 2000); accord, In re Bottelberghe, 253 B.R. 256 (Bankr. D. Minn. 2000)

2. Compare In re Harmon, 118 B.R. 68 (Bankr. E.D. Mich. 1990) (spouse's income not considered where spouses had a established arrangement to divide expenses equally)

D. **Distinction Between Actual and Projected Disposable Income**

1. Is projected disposable income distinguishable from actual disposable income?

2. Compare In re Richardson, 283 B.R. 783 (Bankr. D. Kan. 2002) (projected disposable income is determined as of confirmation and after confirmation, the trustee can expect to receive this projected amount over the next three years, not the actual disposable income received by the debtor, which could be a greater amount); In re Bass, 276, B.R. 812 (Bankr. S.D. Ohio 2002) (overruling trustee's objection to confirmation based on debtor's refusal to sign certification to increase payments based on actual income); In re McCray, 172 B.R. 154 (Bankr. S.D. Ga. 1994) with In re Midkiff, 342 F.3d 1194 (10th Cir. 2003) (in case where plan defined disposable income as including tax refunds, rejecting argument that refunds were not disposable income because they were not "projected")

3. Bonuses – In re McGovern, 278 B.R. 888 (Bankr. S.D. Fla. 2002) (absent evidence that the Debtor is certain to receive bonuses or raises of a known amount, such bonuses or raises are too speculative to include in income)

IV. Selected Commentary On Scope of Court's Role in Considering Debtor's Expenses in Determining Disposable Income Under §1325(b)

A. *Bankruptcy law does not impose an ascetic existence upon a Chapter 13 debtor. "A court determining the debtor's disposable income is not expected to, and should not, mandate drastic changes in the debtor's lifestyle to fit some preconceived norm for [C]hapter 13 debtors. The debtor's expenses should be scrutinized only for luxuries which are not enjoyed by an average American family".* Sarasota, Inc. v. Weaver, 2004 WL 2514290 (E.D. Pa. 2004), quoting In re Navarro, 83 B.R. 348, 355 (Bankr. E.D.Pa. 1988) quoting 5 Collier on Bankruptcy ¶ 1325.08[4][b] at 1325-48 to 1325-49 (15th ed. 1987))

B. *When examining disposable income, courts need not go so far as to require that the debtor lower his expenses to the poverty level. . . . In fact, when examining disposable income a court "is not expected to, and should not, mandate dramatic changes in the debtor's lifestyle to fit some preconceived norm for chapter 13 debtors."* 8 Collier on Bankruptcy §§ 1325.08[4][b][ii], at 1325-54 (15th ed. rev.1999). *A court may, however, determine that some*

lifestyle changes may be necessary so that debtors are not "allowed to continue in the lifestyle that drove them to file bankruptcy and at the expense of their creditors. In re Tibbs, 242 B.R. 511 (Bankr. N.D. Ala. 1999)

C. *Chapter 13 debtors are not required to live as paupers; neither are they allowed to continue an extravagant lifestyle at the expense of creditors. . . . Courts apply §1325(b) to allow debtors to maintain a reasonable lifestyle while simultaneously insuring they make a serious effort to pay creditors by eliminating unnecessary and unreasonable expenses.* In re McGilberry, 298 B.R. 258 (Bankr. M.D. Pa. 2003)

D. *If a debtor is not paying 100% of unsecured creditors' claims, then courts may require a debtor to forego the luxury expense. . . . In making that determination, courts must require the debtor to "demonstrate a degree of belt tightening" but should not "impose its values on a debtor's spending habits."* In re Lindsey, 243 B.R. 30, 32 (Bankr. E.D. Tenn. 1999), quoting In re Gibson, 142 B.R. 879 (Bankr. E.D. Mo. 1992).

E. *[t]he primary intent of the definition of disposable income is to prevent large expenditures by chapter 13 debtors on luxury goods and services which cause holders of unsecured claims to receive reduced payments. Hence, a court determining the debtor's disposable income is not expected to, and should not, mandate drastic changes in the debtor's lifestyle to fit some preconceived norm for chapter 13 debtors. The debtor's expenses should be scrutinized only for luxuries that are not enjoyed by an average American family. . . . Such conclusions leave the court with only a bit more than a "Gestalt test" for excessive expenses. Maybe that is for the best (or at least the better). Although "objectifying" the disposable income test would contribute to certainty, a strict formula, allocating so many dollars or a given percentage of available income to permissible discretionary expenses each month, would hold significant potential for unfairness and could defeat informed, case-by-case analysis. Dollar limitations would quickly be outdated. And a percentage test could penalize low income debtors unfairly.* In re Woodman, 287 B.R. 589 (Bankr. D. Maine 2003)

F. *[I]t [is] appropriate to amend a debtor's budget when one of four factors [is] present: (a) the debtor proposes to use income for luxury goods or services; (b) the debtor proposes to commit a clearly excessive amount to non-luxury goods or services; (c) the debtor proposes to retain a clearly excessive*

amount of income for discretionary purposes; (d) the debtor proposes expenditures which would not be made but for a desire to avoid payments to unsecured creditors. Sarasota, Inc. v. Weaver quoting Navarro, 83 B.R. at 355-56.

V. Selected Issues

A. Base Plans v. Percentage Plans

Some courts have questioned whether "percentage plans" comply with §1325(b). In re Bass, 267 B.R. 12 (Bankr. S.D. Ohio 2002) & authorities cited therein

B. Extension of Plan Beyond 36 Months to Remedy a Disposable Income Shortfall

1. Held Permissible: In re Mendoza, 274 B.R. 522 (Bankr. D. Ariz. 2002)

2. Held Not Permissible: In re Gilliam, 228 B.R. 849 (Bankr. S.D. Ind. 1998)

C. Prepayment of Plans Before Expiration of 36 Months

1. Implicates 11 U.S.C. §1327(a) (binding effect of plan), §1327(b) (vesting of property) and 11 U.S.C. §1329 (plan modification)

2. division of authority as to whether §1325(b) applies at all to plan modification under §1329(b). See In re Sounakhene, 215 B.R. 801 (9th Cir. B.A.P.) (collecting cases)

3. Principles articulated in In re Richardson, 283 B.R. 783 (Bankr. D. Ariz. 2002):

    a. after confirmation, prepetition creditors are entitled only to the debtor's projected disposable income paid according to the plan

    b. when the debtor completes paying the projected disposable income, the plan obligation is satisfied and the debtor is due a mandatory

discharge

c. the Code requires only that the projected disposable income over 36 months be paid; it does not say that this payment *must* be made over a 36 month period.; therefore, if the debtor is able to pay off the plan in advance, so long as the source of payment came to the debtor from some outside, independent source, not property over which the debtor had control before filing, the debtor may do so ("The focus must be on this confirmed statutory contract. There is nothing in the Code that says the debtor must suffer through three years of paying projected disposable income if good fortune would allow him or her to make an earlier payoff.")

4. But see In re Martin, 232 B.R. 29 (Bankr. D. Mass. 1999) (permitting prepayment of plan based on home refinance but considering ability to pay at time of prepayment in evaluation satisfaction of disposable income test)

D. **Postpetition Realization of Assets**

1. Insurance proceeds

a. Insurance proceeds received 10 months after confirmation held to be neither property of the estate nor subject to disposable income test. In re Richardson, 283 B.R. 783 (Bankr. D. Ariz. 2002)

b. But see In re Florida, 268 B.R. 875 (Bankr. S.D. Fla. 2001) (insurance proceeds arising from death of husband-debtor treated as disposable income of wife-debtor)

2. Post-confirmation income tax refunds

a. In re Freeman, 86 F.3d 478 (6th Cir. 1996) (whether unexpectedly large tax refund is disposable income is fact-based and dependent on whether refund was projected disposable income as of date first plan payment was due and whether it was reasonably necessary for debtor to expend refund for maintenance or support of debtor or dependent of debtor).

b. Compare In re Kuehn, 177 B.R. 671 (Bankr. D. Ariz. 1995) (rejecting blanket requirement that plans provide for submission of tax refunds to the trustee in order to satisfy disposable income test) with In re Jones, 301 B.R. 840 (Bankr. E.D. Mich. 2001) (court requires plan to provide for submission of tax refunds)

c. In re Grissom, 137 B.R. 689 (Bankr. W.D. Tenn. 1982) (absence of objection to confirmation precludes consideration of whether subsequent tax refunds are disposable income). See also In re McCray, 172 B.R. 154 (Bankr. S.D. Ga. 1994)

3. Sale of real estate – In re Burgie, 239 B.R. 406, 410 (9th Cir. B.A.P. 1999) ("Postpetition disposable income does not include prepetition property or its proceeds. This is the chapter 13 debtor's bargain. Creditors of a chapter 13 debtor have no claim to any of these assets"); In re Golek, 308 B.R. 332 (Bankr. N.D. Ill. 2004); In re Kerr, 199 B.R. 370 (Bankr. N.D. Ill. 1996)

4. Personal injury proceeds – See Part III.B, supra

5. Lump sum worker's compensation settlement benefits – In re Pohl, 316 B.R. 862 (Bankr. W.D. Pa. 2004) (for benefits received post-confirmation, evidentiary hearing needed to determine extent to which award represents payment for past or future lost wages and/or payments for past or future medical expenses, or payment of some other form of claim)

E. **Contingency Funds**

1. Most courts hold that a reasonable reserve or contingency fund in a debtor's budget would not violate the disposable income test. In re Greer, 60 B.R. 547 (Bankr. C.D. Cal. 1986) ($75/month); In re Fries, 68 B.R. 676 (Bankr. E.D. Pa. 1986) ($92/month)

2. Compare Matter of Smith, 222 B.R. 846 (Bankr. N.D. Ind. 1998) (contingency fund acceptable in principle but $175/month reduced to $100/month)

F. **Charitable Contributions**

1. 11 U.S.C. §1325(b)(2)(A) codifies the Religious Liberty and Charitable Donation Act of 1998), Pub.L. No. 105-183

2. Some courts hold that charitable contributions, whether "reasonably necessary" or not, may not be treated as unapplied disposable income if the contribution amounts to less than fifteen percent of a debtor's gross income. In re Cavanaugh, 250 B.R. 107 (9th Cir. B.A.P. 2000); In re Kirschner, 259 B.R. 416 (Bankr. M.D. Fla. 2001). However, a qualified charitable contribution expense, although an allocation protected from the disposable income inquiry under §§ 1325(b), may nevertheless evidence a lack of good faith in proposing a Chapter 13 plan under §1325(a)(3). Id.

3. Other courts hold that the contributions must still be reasonably necessary. In re Stanley, 296 B.R. 402 (Bankr. E.D. Va.. 2002); In re Davis, 272 B.R. 5 (Bankr. D. Wyo. 2001); In re Buxton, 228 B.R. 606 (Bankr. W.D. La. 1999). See also In re Saunders, 214 B.R. 524 (Bankr. D. Mass. 1997) (holding tithing not a reasonable and necessary expense)

G. **Insurance**

1. Payments for term life insurance have been held to be reasonably necessary under the disposable income test. In re Presley, 201 B.R. 570 (Bankr. N.D. Fla. 1996). See also In re Smith, 207 B.R. 888 (9th Cir. B.A.P. 1996) (permissibility of life insurance payments to be made on case by case basis)

2. A whole life policy resulting in a monthly premium of $600/month has been held not to be an allowable expense under the disposable income test. In re Williamson, 296 B.R. 760 (Bankr. N.D. Ill. 2003)

3. Expenses for medical insurance are reasonably necessary so that the debtor and the debtor's dependents will enjoy good health in the future. In re Awuku, 248 B.R. 21 (Bankr. E.D.N.Y. 2000)

H. **Contributions to retirement plans and repayment of retirement plan loans**

1. Contributions are generally held not reasonably necessary for maintenance or support. In re Prout, 273 B.R. 673 (Bankr. M.D. Fla. 2002); In re Helms, 262 B.R. 136 (Bankr. M.D. Fla. 2001); Matter of Smith, 222 B.R. 846 (Bankr. N.D. Ind. 1998); In re Feldmann, 220 B.R. 138 (Bankr.N.D.Ga.1998). But see In re Awuku, 248 B.R. 21, 28 (Bankr. E.D.N.Y. 2000) ("in this day and age, it is 'reasonably necessary' throughout a debtor's entire employment history to contribute to a tax-qualified plan to supplement social security benefits. With the "miracles" of modern medicine, the life expectancy of the average American citizen continues to increase. There can be no legitimate dispute that social security benefits will be radically insufficient to meet the basic needs of our population in their retirement years.")

2. Similarly, repayment of loans from retirement plans are generally held not reasonably necessary for maintenance or support. In re Anes, 195 F.3d 177 (3d Cir. 1999); In re Aliffi, 285 B.R. 550 (Bankr. S.D. Ga. 2002)

3. Another line of cases employs a totality of the circumstances approach to consideration whether pension contributions or pension loan repayments are reasonably necessary. In re Taylor, 243 F.3d 124, 129 (2nd Cir. 2001) (it is within discretion of bankruptcy court to determine based on the facts of each individual case, whether or not the pension contributions qualify as a reasonably necessary expense for that debtor); In re King, 308 B.R. 522 (Bankr. D. Kan. 2004) (collecting cases); In re Guild, 269 B.R. 470 (Bankr. D. Mass. 2001)

4. The factors identified in Taylor are:

    a. the age of the debtor and the amount of time until expected retirement

    b. the amount of the monthly contributions and the total amount of pension contributions debtor will have to buy back if the payments are discontinued

    c. the likelihood that buy-back payments will jeopardize the debtor's fresh start

    d. the number and nature of the debtor's dependents

e. evidence that the debtor will suffer adverse employment conditions if the contributions are ceased

f. the debtor's yearly income

g. the debtor's overall budget

h. who moved for an order to discontinue payments

i. any other constraints on the debtor that make it likely that the pension contributions are reasonably necessary for that debtor

5. Most of the cases do not seem to discuss the tax implications of termination of pension loan repayments. What if cessation of repayment triggers a tax liability which (if paid over life of plan) exceeds the monthly amount of the loan repayment? See In re Pedro, 252 B.R. 809 (Bankr. M.D Fla. 2000) (stating in conclusory fashion without quantification that adverse tax consequences do not justify expenditure under 1325(b)), followed in In re Helms, 262 B.R. 136 (Bankr. M.D. Fla. 2001)

6. Some courts draw a distinction between mandatory (as a condition of employment) and non-mandatory contributions to retirement plans.

   a. In re Davis, 241 B.R. 704 (Bankr. D. Mont. 1999) (collecting cases on both sides of the issue) (citing Collier on Bankruptcy for proposition that expenses over which the debtor has no control, or which are necessary to the debtor's employment, are undoubtedly 'reasonably necessary')

   b. Compare In re Tibbs, 242 B.R. 511, 518 (Bankr. N.D. Ala. 1999):

> *even an "involuntary" expense must be considered in light of each debtor's unique circumstances to determine whether it is reasonably necessary. If a retirement contribution is truly involuntary, the court must then examine what consequences would result from the debtor losing his job. In determining whether the involuntary contribution is reasonably necessary in light of the circumstances, the Court will examine and balance several factors. These include: (1) whether the debtor is seeking to*

shelter income through the retirement contributions; (2) the debtor's ability to find similar or better employment elsewhere; (3) the harm to creditors if the contributions are excluded from disposable income; (4) the type of unsecured debt to be paid; (5) the purpose or reason for which the debt was originally incurred; (6) other reasonably necessary expenses of the debtor; and (7) the types of assets the debtor owns and/or for which he is paying.

I. **Support of Parents and Adult Children**

1. What is the scope of statutory term "dependent"?

2. In In re Gonzales, 297 B.R. 143 (Bankr. D.N.M. 2003), the court made the case for an expansive, or at least a flexible, construction of the term "dependent". The court reasoned:

   a. the standards set by the Social Security administration or health care companies, whether for purposes of limiting outlays, administrative convenience or maximizing profit, or for any other reason, should not drive this Court to disregard the cultural and societal norms inherent in what are called, in this country, "extended" families. While Ward and June Cleaver and their two sons Wally and Beaver may represent for many people the "typical" or "normal" family, tens of millions (or more) of the population of this country live in family or household units that include one or more adult children and/or their children, (great)grandparents and (great)grandchildren, uncles and aunts, nieces and nephews, and cousins of various degrees of relationship, to say nothing of "blended" families (children from their parents' previous marriages brought together into one family), and families that foster a child or take in a neighbor child escaping a bad situation at home.

   b. in "drawing the line", the line should be drawn "to recognize and protect any genuine family unit"

3. See also In re Bauer, 309 B.R. 47 (Bankr. D. Idaho 2004) (adopting case-by-case approach and permitting payments in support of the debtor's mother whose only income was Social Security survivor's benefits).

4. Another definition of dependent: a person who reasonably relies on the debtor for support and whom the debtor has reason to and does support financially. In re Sequeira, 278 B.R. 851 (Bankr. D. Ore. 2001).

5. Compare In re Meier, 295 B.R. 625 (D. Ariz. 2003) (collecting cases and holding, in 707(b) context that support of live-in girlfriend and her four (4) children did not qualify as the support of dependents); In re Mastromarino, 197 B.R. 171 (Bankr. D. Maine 1996) (in §707(b) context, court disregards unmarried debtor's choice to support domestic partner and her four children)

J. **Private/Parochial School and Tuition for the Debtor's Own Education**

A. Some courts have stated the general rule that, in the absence of special circumstances, private school tuition is not reasonably necessary. In re Webb, 262 B.R. 685 (Bankr. E.D. Tex. 2001), citing Univest-Coppell Village, Ltd. v. Nelson, 204 B.R. 497 (E.D.Tex.1996)

B. When considering the potential permissibility of the expense, some bankruptcy courts have examined the reason for the private schooling, the adequacy of the public school alternative as a general matter and with respect to the particular educational needs of the student in question. Mere preference for private schooling is not sufficient. In re Watson, 309 B.R. 652 (1st Cir. B.A. P. 2004).

C. When the student has special needs, the expense may be allowable. Webb, supra

D. Analysis of the issue often blends in with consideration of the debtor's good faith and subjective effort to maximize distribution to creditors. For a representative discussion of the issue, see In re Burgos, 248 B.R. 446 (Bankr. M.D. Fla. 2000):

> There is no bright line rule for what constitutes a reasonably necessary expense. *In re Reyes,*.Ill.1989). A split of authority exists as to whether payment of school tuition is a reasonably

necessary expense for a Chapter 13 debtor. *In re Nicola*, 244 B.R. 795, 797-98 (Bankr.N.D.Ill.2000). Such is determined by looking at the facts of each case on a case by case basis. Some courts find the facts of certain cases support that private school tuition is a reasonably necessary expense. *See In re Nicola,* 244 B.R. at 797-98 (distinguishing various cases and finding expense reasonably necessary); *see also In re Riegodedios,* 146 B.R. 691 (Bankr.E.D.Va.1992); *In re Navarro*, 83 B.R. 348 (Bankr.E.D.Pa.1988); *In re Gonzales,* 157 B.R. 604 (Bankr.E.D.Mich.1993) (approximately twenty percent payment to unsecured creditors, debtor's college tuition expense deemed discretionary but dependents' college support payment not discretionary). While some courts do not. *See In re Ehret,* 238 B.R. 85 (Bankr.D.N.J.1999); *In re MacDonald*, 222 B.R. 69 (Bankr.E.D.Pa.1998); *Univest-Coppell Village, Ltd. v. Nelson,* 204 B.R. 497 (E.D.Tex.1996) (tuition expenses for private school not reasonably necessary); *In re Jones,* 55 B.R. 462 (Bankr.D.Minn.1985). Debtors note that the amount paid for the private education of their two minor children is less than the amount to be distributed to the unsecured creditors. Debtors retain no real property other than their home. Additionally, Debtors note strong religious beliefs carried out by their feeling that their children should receive education in a Christian school and that these children have always attended private Christian school. These factors support a finding that the private school tuition is a reasonably necessary expense in this case.

E. It is difficult to classify tuition for the debtor's own educational expenses for advanced degrees as a necessary expense. In re Gonzales, 157 B.R. 604 (Bankr. E.D. Mich. 1993)

K. **Cigarettes**

1. Most cases referring to cigarette spending lump it together with other "discretionary" expenditures being challenged in the proceeding. See In re Woodman, 287 B.R. 589 (Bankr. D. Maine 2003)

2. Sarasota, Inc. v. Weaver, 2004 WL 2514290 (E.D. Pa. 2004) (rejecting

argument that cigarette expenses are *per se* unreasonable)

L. **Amount of Non-Discretionary Budget Items**

1. Prior categories in this outline deal with expenditures which as to which there is judicial debate, on a categorical basis, as to whether a debtor may make the expenditure consistent with the disposable income test.

2. Other categories of expenses are indisputably permissible (e.g., Schedule J categories), but courts are called upon to determine if the amount of the expenditure is excessive.

3. These are fact intensive determinations as to which reference to caselaw has only limited utility. As one court observed after collecting cases where courts held that food expenses were excessive, "The examples illustrate why counsel did not bother to cite any specific cases on the subject. Trying to extrapolate what would be a reasonable food budget from southern Ohio in 1988 . . . to southern New Mexico in 2003 would be a pointless exercise." In re Gonzales, 297 B.R. 143 (Bankr. D.N.M.) (food budget of $700 per month claimed by debtor whose household included debtor's wife and two teenage offspring, was not unreasonable)

4. Internet charges – In re Bauer, 309 B.R. 47 (Bankr. D. Idaho 2004) (collecting cases and observing that internet access appears to be an increasingly common household expense and is becoming more of a necessity but finding unexplained monthly expense of $120 for internet and cable excessive)

5. Automobiles

6. In re Williamson, 296 B.R. 760 (Bankr. N.D. Ill. 2003) (lease payments on 7 year old Porsche not unreasonable where vehicle provided needed transportation and consequences of termination of lease would not materially benefit creditors)

7. In re McGovern, 278 B.R. 888 (Bankr. S.D. Fla. 2002): "Courts have routinely held that luxury vehicles are not reasonably necessary expenses. *See, e.g.,* In re Zaleski, 216 B.R. 425, 432 (Bankr.D.N.D.1997) (1996

Blazer "absurd luxury bordering on the lifestyles of the rich and famous"); In re Reyes, 106 B.R. 155, 158 (Bankr.N.D.Ill.1989) (payments for Blazer not reasonably necessary); In re Rogers, 65 B.R. 1018 (Bankr.E.D.Mich.1986) (payments for a Corvette not reasonably necessary)."