CHAPTER 13 SEMINAR

NOVEMBER 20, 2019 -1pm-3pm

HELD AT THE UNITED STATES BANKRUPTCY COURT – NORFOLK

CHIEF JUDGE ST. JOHN'S COURTROOM

AGENDA

1:00 PM (Michael P. Cotter and Warren A. Uthe, Jr.)

Hurlburt vs. Black (Fourth Circuit)
---Its impact on chapter 13 practice

The HAVEN Act
---exclusion of VA disability benefits

New Local Rules

2:00 PM (R. Clinton Stackhouse, Jr. and Kelly M. Barnhart)

Recent Development in Chapter 13 Case Law

Practice Pointers from the Chapter 13 Trustee

MICHAEL P. COTTER – CHAPTER 13 TRUSTEE

Michael P. Cotter graduated from the Marshall-Wythe School of Law in 1980. He joined Vandeventer Black, LLP, in Norfolk in 1980 and became a partner there in 1985. Mr. Cotter was with Vandeventer Black for 30 years where he primarily performed work in the areas of bankruptcy and creditors' rights.

He was appointed the Chapter 13 Standing Trustee in May 2010 and commenced duties on July 1, 2010.

R. CLINTON STACKHOUSE, JR. – CHAPTER 13 TRUSTEE

Clint Stackhouse has been practicing bankruptcy law since 1981. Before he became one of the two Standing Chapter 13 Trustees, he was a Chapter 7 panel Trustee and also represented Trustees, creditors, businesses and individuals in reorganizations and workouts. He has lectured over the years at various seminars on several bankruptcy topics for organizations such as the Virginia State Bar and the Virginia Bar Association. He has served terms on the board and as President of the Tidewater Bankruptcy Bar Association, multiple terms on the Bankruptcy Bar/Clerk Liaison Committee and one term on the Local Rules Committee.

He began serving as Chapter 13 Trustee in Norfolk/Newport News on June 12, 2008.

Kelly M. Barnhart

is a partner with Roussos & Barnhart, PLC. Her practice focuses on bankruptcy, corporate reorganization, corporate finance and farm insolvencies. She represents debtors, creditors, and trustees, including one of the two standing chapter 13 trustees for the Norfolk and Newport News Divisions for the Eastern District of Virginia.

Warren A. Uthe, Jr.

Staff Attorney to Michael P. Cotter, Chapter 13 Trustee, Norfolk/Newport News Divisions

Warren A. Uthe, Jr. has been the staff attorney to a Chapter 13 Trustee since June 2006. Prior to this position, Warren Uthe was an associate attorney, bankruptcy manager and the chief bankruptcy litigator representing Debtors with Berg Legal Clinic, P.C., in the Eastern District of Virginia's Norfolk/Newport News Divisions, beginning in June 2001. From 1993 to 2001,Warren operated his own law practice in Columbus, Ohio (1993-2000) and in Virginia Beach, Virginia (2000-2001), chiefly practicing in the area of divorce/domestic relations.

PRESENTED BY MICHAEL P. COTTER

Hulburt vs. Black (May 24, 2019)

Factual Background

Rulings in Bankruptcy Court and District Court

Fourth Circuit's prior ruling in *In Re Witt* (113 F.3d 508) (1997)

The statutory language. Section 1322©(2) provides:

Notwithstanding subsection (b)(2) and applicable nonbankruptcy law…..in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

Key question: does the phrase "payment of the claim as modified" authorize the modification of the *claim* (which includes modifying the principal and doing a cram down) or does it only authorize the modification of the *payment* of the claim?

Impact on *Nobelman v. American Savings Bank* (Supreme Court 1993)

Fourth Circuit holds that 1322©(2) exempts a narrow class of home mortgages from the reach of *Nobelman*---namely, those mortgages where the final payment is due prior to the Debtor's last Plan payment.

Practical Effect:

How often will issue present itself?
What about acceleration clauses?
What about balloon payments?

PRESENTED BY WARREN A. UTHE, JR

NEW LOCAL RULES

INTRODUCTION

The U.S. Bankruptcy Court for the Eastern District of Virginia has recently published certain Amendments to the Local Bankruptcy Rules, the abrogation of a Local Rule and the adoption of a new Local Bankruptcy Rule, which are effective or will be effective by no later than November 15, 2019. It is important that all current and prospective members of the Bar of the United States Bankruptcy Court for the Eastern District of Virginia understand and follow these New and Amended Rules. Certain Rules are discussed below as they relate to the Norfolk and Newport News Divisions.

SELECTED AMENDED LOCAL BANKRUPTCY RULES CONCERNING CHAPTER 13 CASES

LBR 2090-1

Local Bankruptcy Rule 2090-1 provides the qualifications to be able to practice before the Bankruptcy Court in the Eastern District of Virginia. Pursuant to LBR 2990-1(B), effective September 1, 2019, to maintain the right to practice before the Court, all members in good standing must be admitted to practice before the United States District Court for the Eastern District of Virginia by no later than September 1, 2020. Failure to do so will result in the attorney not being permitted to practice in the Bankruptcy Court until he or she is admitted to practice in the District Court.

For Bankruptcy Attorneys practicing in the Western District who wish to practice in the Eastern District, please see LBR 2090-1(E).

Effective September 1, 2019, Attorneys who are members of the Bar of the United States Bankruptcy Court for the Eastern District of Virginia must complete a Form to affirm their admission in the United States District Court for the Eastern District Court for the Eastern District of Virginia by no later than September 1, 2020. ***See***

Standing Order 19-6, Exhibit A, Affirmation of Attorney Admission to Practice and Good Standing in the United States District Court for the Eastern District of Virginia. Said Form must be completed and submitted by email to the following address: Affirmation@vaeb.uscourts.gov using the following Example Header in the subject line: Affirmation Form—Norfolk/Newport News.

Failure to complete and submit the Form by September 1, 2020, shall result in the immediate suspension of an Attorney's ability to practice before the Bankruptcy Court for the Eastern District of Virginia until the Attorney satisfactorily complies with the Court's admission requirements.

LBRs 1006-1, 1007-1, 2003-1, 3015-2 and 3070-1

LBRs 1006-1, 1007-1, 2003-1, 3015-2 and 3070-1 concern the timely payment of the filing fees; timely filing of Lists, Schedules and Statements; attendance at the Meeting Of Creditors; timely filing of the Chapter 13 Plan (or Modified Plan); and timely commencement of plan payments in Chapter 13 cases.

Effective November 15, 2019, the Bankruptcy Court will no longer dismiss cases automatically (other than through consent) for failure to comply with these Local Rules. The Court shall issue an order for the Debtor to appear at a hearing and explain why the case should not be dismissed. These Local Rules were amended as a result of the holding in *No v. Gorman*, 891 F.3d 138 (4th Cir. 2018). *See* Standing Order 19-7. Note: Norfolk/Newport News Divisions are currently following these Amended Rules consistent with the *No v. Gorman* Opinion.

LBR 1017-3

LBR 1017-3 concerns Suspension of Automatic Dismissal regarding the non-compliance with certain Local Rules, as indicated herein, if a case was previously converted from another chapter of Title 11. This Rule has been abrogated as a result of the holding in No v. Gorman, 891 F.3d 138 (4th Cir. 2018).

LBR 1017-2

The Court has adopted the new LBR 1017-2 which concerns Voluntary Dismissal of Chapter 13 Cases, effective November 15, 2019. There has been confusion as to the required Notice period when filing a Motion to Voluntarily Dismiss a Chapter 13 case. Practitioners have been filing 7-day, 14-day or 21-day Notice periods with their Motion to Voluntarily Dismiss. The Court has determined that a 7-day Notice period is appropriate. See Public Notice, dated September 3, 2019.

PRESENTED BY R. CLINTON STACKHOUSE, JR.

I. INTEREST ISSUES

A. Cramdown Interest

1. 11 USC§ 1325 (a)(5)(B)(ii) provides that, as a requirement, allowed secured claims receive "the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim"…"not less than the allowed amount of the claim" and section (iii) further provides that, if the collateral is personal property, then there must also be adequate protection.

2. Because cram down inherently involves deferred periodic payments of the amount of the value of the collateral, interest is required.

3. Till v. SCS Credit Corp., 541 U.S 465 (2004) deals with the appropriate interest rate on cram downs.

4. Various rates were considered including the underlying contract rate, the rate the creditor would have to pay if it borrowed the cram down amount, and a "formula" amount using the prime rate of interest (the interest rate commercial banks charge their most credit worthy customers) plus an additional factor, in this case 1.5%, to account for the risk of nonpayment.

5. The Supreme Court said the "prime rate plus" was appropriate because of the following:

a. It serves the function of providing the secured creditor the present value of its collateral, as of the confirmation date, in light of the deferred payments;

b. Prime rate, as the starting point for the formula, is easily ascertained;

c. The other formulas involved significant evidentiary costs;

d. It results in payments which are not so high as to make plans with cram down fail to be feasible.

6. Because the extra percentage points beyond prime are in recognition of the default risk factor, the Court gave a range of 1-3% as being generally acceptable because some debtors are higher risks than others.

7. Factors considered in assessing risk are pre-petition arrearages, payment history, the debtor's income and occupation, the likelihood of depreciation of the collateral and the value of the collateral.

8. So in Chapter 13 cramdown plans, prime + 1-3% is not an ironclad legal rule, but more a "safe harbor" that will be generally accepted without excessive evidentiary inquiry and expense.

9. Payment of cramdown amounts plus interest at these rates is required for confirmation because of "present value" analysis above and because these periodic payments are also accepted as adequate protection along with appropriate insurance coverage.

10. Prime Rate is presently 5.25%.

B. Interest on Non Dischargeable Tax Debt

1. Taxes are generally non dischargeable in Chapter 13.
    a. Section 11 USC § 1328 (a)(2) and related code sections.

2. If the debt is non-dischargeable, the post-petition interest is not discharged and can be collected from the debtor after the bankruptcy case (Bruning v. United States, 376 U.S. 358 (1964).

3. 11 USC 507 (8)(A) and (C) taxes are both priority and non-dischargeable.

4. 11 USC § 1322 (a)(2) states that the plan "shall provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment."

5. The plain meaning of "full payment" includes interest.

6. The IRS interest rate is determined quarterly and the current rate is 5% until January 1, 2020.

7. Consider the legal and practical ramifications of failure to include interest on large tax debts, when required by 507, and the IRS takes collection action when for instance, a 5 year plan is completed.

C. Plan Cannot Bar Interest on Student Loan

1. Saralyn A. Wright, 29 C B N 558, 2019.

2. Debtor attempted to provide in her plan that interest would not accrue on non-dischargeable student loan during pendency of Chapter 13 case.

3. Because interest on non-dischargeable debt is also non dischargeable, denying the accrual of interest during the term of the plan would be partially discharging non-dischargeable debt, which Courts cannot do absent successful prosecution of an adversary proceeding.

II. MISCELLANEOUS ISSUES

A. 1325 Certifications – Necessity of Timely Filing.

B. Latest Jurisdictional Limits.

1. Adjusted every three years.

2. Effective April 1, 2019 limits are as follows:
$419,275.00 for non-contingent liquidated unsecured debts
$1,257,850.00 for non-contingent.

C. Use of percentages in plans to satisfy §1325 (a)(4) (liquidation equivalent requirement).

1. 11 USC § 1325 (a)(4) requires that each allowed secured claim be paid as much as would be received in a liquidation.

2. In an asset Chapter 7 case, the trustee, after liquidating the non-exempt assets, would end up with a certain number of dollars to be distributed to unsecured creditors.

3. The percentage of each unsecured allowed claim paid from estate funds depends upon claims filed and allowed, and the dollar amounts of those claims, so the liquidation equivalence requirement cannot be addressed, at the confirmation stage, by a plan provision which requires a certain percentage (less than 100%) be paid to unsecureds.

D. Nunc Pro Tunc Approvals/Changes in Circumstance.

1. Court concern and frequency

2. Periodic checks

3. Emphasize

DI. Handling Mistakes

1. Acknowledge

2. Address

3. Explain remedial action.

PRESENTED BY KELLY M. BARNHART

Recent Decisions

Fourth Circuit Decisions

Hurlburt v. Black, _ F.3d _____, 2019 U.S. App. Lexis 15551 (4th Cir. 2019) (Wynn, J.)

Background: Pre-petition, chapter 13 debtor purchased real estate, to be used as his primary residence, for $136,000 from Ms. Black, paying $5,000 in cash at closing. The balance was financed through a promissory note executed by the debtor in Ms. Black's favor, which note was secured by a deed of trust naming Ms. Black as the beneficiary. Pursuant to the documents, the principal balance would accrue interest at a rate of 6% per annum , payable over 119 months in installments of $785.41, with a balloon payment of the remaining principal and interest due in May 2014. If default occurred, the interest rate would accrue at 8%. The debtor failed to pay the loan by the maturity date, and Ms. Black initiated foreclosure proceedings, claiming the debtor owed her approximately $136,000. The debtor filed for chapter 13 relief and listed the property with a value of $40,000, and filed an adversary proceeding against Ms. Black to quiet title. Ms. Black filed a claim totaling $131,000, of which $40,000 was listed as secured and the balance as unsecured but then filed an amended claim for $180,971.72 and did not identify which portion of the claim was secured and which was unsecured. The debtor objected to the amended claim. The debtor filed an amended complaint seeking to acquire quiet title or avoid the deed of trust, while maintaining his objection to the claim. The Bankruptcy Court granted partial summary judgment in favor of Ms. Black, finding the deed of trust to be valid. After this ruling, the debtor filed his chapter 13 plan, seeking to bifurcate Ms. Black's claim into secured and unsecured (the secured portion being approximately $41,000 and the balance unsecured), with the unsecured portion not resulting in any payments to Ms. Black. Ms. Black filed an objection to the plan, arguing that the proposed modification and bifurcation

was barred and that the entire claim should be treated as secured. The Bankruptcy Court ruled that the plan violated § 1322, since it modified a claim secured by a securing interest on a debtor's principal residence. The District Court affirmed. The debtor appealed, and the Fourth Circuit panel affirmed the District Court's order in an unpublished, per curiam opinion issued in August 2018. The debtor requested for a rehearing en bank, which was granted.

Holding: Reversed and remanded, and in doing so, overruling its precedent (*Witt v. United Cos. Lending Corp.*, 113 F.3d 508 (4th Cir. 1997). The Fourth Circuit held that § 1322(c)(2) allows a debtor to strip down a claim on a mortgage against a primary residence that matures before the last payment is due under a chapter 13 plan, concluding that the plain language of § 1322(c)(2) allows modification of claims secured by a security interest on a principal unit, not just the payment schedule for such claims, but also through bifurcation and cram down.

Martineau v. Wier, 934 F.3d 385 (4th Cir. Aug. 12, 2019) (Harris, J.)

Background: Prior to filing for bankruptcy relief under chapter 7, debtor had been assaulted at an apartment complex and entered into a settlement that released tort claims against the owners of the complex. She filed for chapter 7 relief and received a discharge in her bankruptcy case. After the case was closed, she filed suit to rescind the settlement agreement, arguing that it had been fraudulently induced by the parties and to pursue a tort cause of action against them (they were the sister and brother-in-law of the individual who had assaulted her). The defendants moved to dismiss the suit, arguing, among other things, that the debtor lacked standing to pursue the tort claims because they belonged to her bankruptcy estate and could only be asserted by the trustee and that because she failed to disclose the claims originally, she was judicially estopped from asserting them. While the matters were pending before the District Court, the debtor reopened her bankruptcy case and the trustee abandoned any interest in the claims. The District Court entered judgment in favor of the defendants.

Holding: Reversed and remanded. The debtor had standing to pursue the claims and was legally entitled to do so on her own behalf. With respect to the judicial estoppel argument presented by the defendants, the District Court mistakenly relied on the presumption of bad faith standard, and so reached its decision without making a full inquiry of the matter. The District Court should not have relied on a presumption of bad faith standard but instead reviewed the facts of the case in their entirety in determining whether the debtor should have been estopped from pursuing the claims.

TKC Aerospace Inc. v. Muhs, 923 F.3d 377 (4th Cir. 2019) (Thacker, J.)

Background: Pre-petition debtor was the Vice President of Business Development for an aerospace contractor, TKCA, which specialized in aircraft procurement, logistics, and support. Given his position, he had access to his employer's proprietary information, including trade secrets and his employment contract prohibited him from disclosing confidential information to any third party or competing with the employer for six months after his employment ended. After he left his position with TKCA, he continued to work for it on a part-time basis and was also employed with an Arizona corporation and competitor of TKCA. The former employer sued the Arizona corporation in Arizona state court for misappropriation of trade secrets, intentional interference with business expectancy, unfair competition and conversion. It also filed suit against the debtor in Alaska, claiming that the debtor stole a corporate business opportunity from it and delivered it to a competitor, breach of contract, breach of implied covenant of good faith and fair dealing, breach of fiduciary duty, unjust enrichment, tortious interests with prospective business, fraud and violation of the Alaska Uniform Trade Secrets Act, which suit was stayed, pending the Arizona case to conclude. The Arizona state court conducted a trial and entered judgment for more than $20 million under Arizona's version of the UTSA. This court found that the new employer had engaged in willful and malicious conduct and had maliciously misappropriated TKCA's trade secrets. The ruling, however, was not based solely

on the debtor's actions but on actions of the president of the employer and her husband, the company's vice president. After the Arizona court ruling, the Alaskan court granted summary judgment in favor of TKCA, finding that the debtor was collaterally estopped from relitigating the issues raised in Arizona because he was in privity with the new employer. The Alaska court also entered judgment for more than $20 million. The debtor filed for chapter 7 relief, where TKCA objected to dischargeability of the judgment pursuant to § 523(a)(6) and the Bankruptcy Court denied a motion for summary judgment in favor of the plaintiff, which decision was appealed. The District Court granted leave to appeal and reversed the Bankruptcy Court and directed the Bankruptcy Court to enter judgment declaring the debt as nondischargeable since it was a willful and malicious injury. The debtor appealed to the Fourth Circuit.

Holding: Reversed and remanded. In reaching its decision, the Court found that neither the Arizona court nor the Alaska court found that the debtor intended to injure, which was required in concluding the debt to be nondischargeable. The courts found only that the actions were intentional. The standard for willful and malicious under the UTSA is less than the *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) standard and even the findings of intentional and purposeful misappropriation would be insufficient to meet this higher standard, and accordingly, the doctrine of collateral estoppel did not apply. It would also not apply as to the Alaska litigation since the debtor's intent to injure was not actually decided.

Dep't of Soc. Serv., Div. of Child Support Enf't v. Webb, 2018 U.S. App. LEXIS 32659 (4th Cir. Nov. 19, 2018) (Agee, J.)

Background: Prior to filing for bankruptcy relief, chapter 13 debtor owed approximately $75,000 in past due child support. While in chapter 13, the debtor made payments to the chapter 13 trustee, but the debtor was unable to get a plan confirmed and the case was dismissed. At the time of dismissal, the trustee had

$3,000 on hand (none of which was paid after the dismissal). Virginia's Department of Social Services, Division of Child Support Enforcement (the "Division") served the trustee with an order to withhold for child support indebtedness and the order directed the trustee to remit to the Division the $3,000 he had on hand. The Trustee filed a motion with the bankruptcy court seeking direction as to whom he should remit the funds, the debtor or the Division (per the order to withhold, the trustee could be made personally liable for the entire debt, plus interest, if the order was disregarded by the Trustee). The bankruptcy court conducted a hearing on the motion and directed the Trustee to return the funds to the debtor, per § 1326(a)(2) and noted that if it adopted the Division's position, there could be a flurry of creditors who race to the trustee to recover funds on hand in a dismissed case, which would be at odds with the impact of a dismissal under § 349(b)(3).

The Division appealed to the district court, which affirmed the bankruptcy court's decision, finding that the plain language of § 1326(a)(2) governed. The Division appealed to the Fourth Circuit.

Holding: Affirmed. The language of § 1326(a)(2) requires chapter 13 trustees to return funds on hand to the debtor and the Division could not issue a levy on the trustee to recover funds on hand but noted that once the funds are returned to the debtor, the Division (and any other creditor) would be free to levy upon the debtor or others who has the debtor's property. If Congress had intended a different result it could have made such an exception, but chose not to do so.

<u>District Court Decisions</u>

Breen v. Portfolio Recovery Assocs., LLC, 2019 U.S. Dist. LEXIS 111845 (E.D. Va. July 3, 2019) (Lauck, J.)

Background: Chapter 13 debtors purchased a vehicle, which purchase was financed by Ally Financial ("Ally"). The debtors identified Ally as holding a secured claim and alleging that the value of the vehicle was approximately $38,000. Ally timely filed a claim and a chapter 13 plan was confirmed in 2014. In July of 2017, Ally transferred its claim to Portfolio Recovery Associates, LLC ("PRA"). In February 2018, the debtors filed a modified chapter 13 plan, and as it related to claim secured by the vehicle, the plan provided that the debtors would surrender the vehicle and that PRA would have 60 days from the confirmation of the plan to liquidate its claim and file a claim for any unsecured debt and failure to do so would prohibit Portfolio from receiving distributions as an unsecured creditor. The debtors did not serve the plan in accordance with Fed. R. Bankr. P. 7004 (they did not mail it to an officer, managing or general agent, or other agent authorized to receive service of process) but did not disclose in the plan how they served PRA. While the modified plan had a service list attached to it, such list did not include PRA. In April 2018, the modified plan was confirmed, including the non-standard provision regarding PRA and the deadline to file an unsecured claim. On July 9, 2018, PRA filed an unsecured claim (approximately 90 days after the confirmation order was entered). The debtors objected to the claim, arguing that it should be disallowed since PRA did not timely file the claim in accordance with the terms of the modified plan (as confirmed). The Bankruptcy Court overruled the debtors' objection, concluding that although the terms of a confirmed plan are binding on all creditors that received proper notice of the plan and failed to object, such service did not occur, since the debtors failed to serve PRA in accordance with Fed. R. Bankr. P. 7004 (in reaching this decision the Court found that the modified plan constituted a contested matter, governed by Fed. R. Bankr. P. 9014, which, in turn, directs parties to Fed. R. Bankr. P. 7004). The debtors served the plan on PRA at a P.O. Box and thus it lacked proper notice of the modified plan and its terms so that the provision was not binding on it. The debtors appealed.

Holding: Affirmed. Because the debtors failed to properly serve the modified plan on PRA, the 60-day provision did not preclude PRA from filing its proof of claim. While the notice to PRA may have been adequate as required by Fed. R. Bankr. P.

2002, they did not properly serve the modified plan as required by Rules 3015 and 7004. The objection to the claim was correctly overruled.

Bankruptcy Court Decisions

In re Chu, 2019 Bankr. LEXIS 1164 (Bankr. E.D. Va. Apr. 10, 2019) (Kenney, J.)

Background: Pre-bankruptcy, chapter 13 debtor executed a casino credit application with PPE Casino Resorts Maryland LLC ("PPE"). While the marker was paid up and down, at the time that the debtor filed for chapter 13 relief, he owed approximately $17,000 to PPE. PPE filed a claim in the case and the debtor objected to the claim. The debtor also proposed a chapter 13 plan that separately classified the debt owed to PPE and proposed to pay 0% to it, on the ground that this debt was against public policy (since it was related to gambling). The trustee supported the separate classification of PPE's debt, because it was different than other creditors' claims. PPE objected to confirmation of the debtor's plan, arguing that the separate classification violated 1322(b).

Holding: Objection to claim overruled and PPE's objection to the debtor's chapter 13 plan sustained. While the debtor and trustee argued that the gambling related debt justified separate classification because such debts are different than other unsecured debt, the Court rejected this argument because gambling is a risk-taking opportunity and there is a cognizable risk that the casino could lose more than the credit it provided, and the Court did not see that credit to gamble was any different than other types of unsecured debt for classification purposes.

With respect to the debtor's objection to PPE's claim, the debtor argued the claim should not be allowed, because it was not an enforceable claim based on Va. Code Ann. § 11-14, which provides, in relevant part that all contracts for "gaming,

betting, or wagering, or to repay any money so lent to any person who shall, at such time and place, so pay, bet or wager, shall be utterly void," notwithstanding the fact that the credit agreement was legally contracted in Maryland, which agreement contained choice of law, submission to jurisdiction and venue provisions. The Court concluded that although Va. Code Ann. § 11-14 remained on the books, Virginia's public policy against gambling was no longer so fundamental as to justify rejection of Maryland law. The Court overruled the Debtor's objection to the claim.

In re Daniels, 2018 Bankr. LEXIS 3029 (Bankr. E.D. Va. Oct. 1, 2018) (Kenney, J.)

Background: Chapter 13 debtors owned home as tenants by the entireties. They had no joint unsecured debt. They filed a motion seeking permission to sell their home, to which the trustee filed an objection, objecting to the concept of the debtors keeping $90,000.00 in cash proceeds while paying 0% to their unsecured creditors. The sale was approved with the consent of the trustee, and $15,500 of the proceeds was to be paid to the trustee, to be held subject to a further court order. This amount, if the trustee is entitled to the funds, would allow the trustee to pay the administrative expenses of the estate and the unsecured creditors 100%. The debtors reserved the right to claim the proceeds as exempt (as tenants by the entireties property). The debtors also filed a second amended plan, proposing to pay $100/month for the remaining 31 months of the plan, plus $650 already paid to the trustee for a total of $3,750 (plus the $15,500 if the Court ruled in favor of the trustee), to which the trustee objected on good faith, feasibility and disposable income (the trustee later argued a lack of good faith and the disposable income portions of the objection).

Holding: Objections to confirmation overruled and amended plan confirmed. In reaching its decision, the Court noted that accepting the trustee's position that the debtors' refusal to contribute property that is exempt evidences a lack of good faith

would have the same effect as surcharging exempt property for debtor's bad conduct, which was rejected by the Supreme Court in *Law v. Seigel*. The Court rejected the trustee's other arguments of bad faith (related to the debtors' choice of chapter and amendments to Schedule I and J), as well as the objection on the ground that the amended plan failed to meet the disposable income test. This argument stated that the debtors should have to pay for all of their living expenses out of the sale proceeds for the duration of the case, freeing up a portion of the monthly income for 100% distribution to unsecured creditors. The Court again determined that accepting this argument would be equivalent to a surcharge of exempt property, which is prohibited. The exempt property is not property of the estate and is not to be considered as part of the disposable income of the debtors.

In re Dean, 2019 Bankr. LEXIS 2840 (Bankr. E.D. Va. Sept. 11, 2019) (Phillips, J.)

Background: Chapter 13 debtor filed his proposed chapter 13 plan, to which the trustee and the debtor's former spouse filed objections. The former spouse also filed a motion to dismiss, as well as a motion to convert and the trustee also filed a motion to dismiss, based upon an unreasonable delay that was prejudicial to creditors due to the debtor's failure to address the objections after filing three plans. The former spouse also argued that dismissal was appropriate due to the debtor's unreasonable delay that prejudiced creditors.

Holding: Objections sustained but relief requested in motions denied. Neither the trustee nor the former spouse presented evidence to prove their contentions that the debtor was uncooperative or that he could not get a plan confirmed. The parties did not meet their burdens to show that there was unreasonable delay or resulting prejudice to creditors, even after five failed attempts to get a plan confirmed.

In re Derby, 2019 Bankr. LEXIS 1998 (Bankr. E.D. Va. July 1, 2019) (Phillips, J.)

Background: A chapter 13 debtor initiated an adversary proceeding against Portfolio Recovery Associates, LLC ("PRA") by the filing of a compliant, arguing that PRA, in filing its claim, failed to comply with Fed. R. Bankr. P. 3001 and seeking various forms of relief because of the alleged non-compliance. The debtor also objected to the claim filed by PRA. The Bankruptcy Court consolidated the adversary proceeding and the objection to claim. PRA sought permission to amend its claim but also asked the Court to find that the proposed amended claim satisfied the itemization requirements of Fed. R. Bankr. P. 3001(c)(2)(A), as interpreted by the Court in *Maddux v. Midland Credit Mgmt., Inc. (In re Maddux)*, 567 B.R. 489 (Bankr. E.D. Va. 2016)(Huennekens, J.), and attached the proposed amended claim to the motion. The debtor opposed the motion, arguing that the proposed itemization attached to the proposed claim did not comply with the Rule requirements because the itemization did not list all interest and fees included in the claim amount from the inception of the account.

Holding: Motion granted. PRA did not need to incorporate the entire account history in order to comply with Fed. R. Bankr. P. 3001(c)(2)(A), so long as the attachment to the claim had a breakdown of principal, interest, fees, or finance charges reflected on the most recent statement attached to the claim.

In re Edwards, 2019 Bankr. LEXIS 2964 (Bankr. W.D. Va. Sept. 25, 2019) (Connelly, C.J.)

Background: Prior to filing for chapter 13 relief, debtor bought a motorcycle, which purchase was funded by B&E (she paid $2,500 at the time of purchase and financed $7,500). She filed for chapter 13 relief, and listed B&E as a creditor and it received notice of the bankruptcy. At the time the case was filed, she was current on her payments to B&E. Two days after filing for bankruptcy relief, B&E repossessed the motorcycle and then accelerated the note and demanded payment in full. The debtor's attorney reached out to B&E and explained that it was

violating the stay through its actions, which warnings were ignored. The debtor's husband also communicated directly with B&E regarding the violations, requesting the motorcycle to be returned. Such requests were also ignored. The debtor, in her plan, proposed to pay off the motorcycle through the plan, along with interest on the claim. The plan was confirmed. B&E still refused to return the motorcycle and so after numerous attempts to have this matter dealt with, the debtor initiated an adversary proceeding by the filing of a complaint, seeking damages for violations of the stay. B&E, although served, ignored the complaint and default was entered. Counsel for the debtor presented evidence to support the request for damages.

Holding: Attorney's fees and punitive damages were awarded, along with actual damages. The Court awarded approximately $39,800 to the debtor for actual and punitive damages and awarded attorney's fees of $3,125.65.

In re Fletcher, 2019 Bankr. LEXIS 1297 (Bankr. E.D. Va. Apr. 23, 2019) (Huennekens, J.)

Background: Debtors requested permission to convert from chapter 7 to chapter 13, pursuant to § 706. The debtor wife, however, had been in a previous chapter 13, which had been voluntarily dismissed by her, two years after the mortgage lender obtained relief from stay, following default by the debtor wife of the terms of the consent order resolving the motion for relief.

Holding: Motion to convert granted as to debtor husband but denied as to debtor wife, since she could not meet the eligibility requirements of § 109, specifically § 109(g)(2), which provides that an individual may not file for bankruptcy relief, if that person "…requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362… ." In reaching its decision, the Bankruptcy Court had to consider

three approaches in interpreting § 109(g)(2): the equitable approach, the strict approach, and the causal approach, and opted to follow the causal approach, which requires courts to look for a causal connection between a motion for relief from stay and a debtor's later request and receipt of a voluntary dismissal. Applying this standard, it was clear to the Court that a causal connection existed between the relief from stay and the debtor wife's request to voluntarily dismiss her prior chapter 13 case and the fact that the current case was filed in order to stop a foreclosure.

In re Hoffman, 2019 Bankr. LEXIS 872 (Bankr. W.D. Va. Mar. 15, 2019) (Connelly, C.J.)

Background: After the chapter 13 debtor successfully completed her case and received a discharge, she obtained a disability discharge of her student loans. The holders of the student loans issued a refund of the monies that had been disbursed, in accordance with the terms of the confirmed chapter 13 plan, on the student loan claims by the chapter 13 trustee. The trustee moved to reopen the case and to redistribute the funds to holders of allowed general unsecured claims. The debtor objected and requested the refund be remitted to her. The debtor filed an amended plan to decrease the gross amount to be paid under her plan and to provide that the funds in question be returned to her.

Holding: Motion to reopen granted and the trustee was to distribute the funds returned by the student loan companies to the other creditors with allowable unsecured claims and the Court further held that the debtor could not modify her plan per § 1329.

In re Ilyev, 2018 Bankr. LEXIS 3919 (Bankr. E.D. Va. Dec. 11, 2018) (Kindred, J.)

Background: The chapter 13 debtor and his former spouse entered into a s a property settlement agreement ("PSA") pre-petition, which provided she would transfer her interest in the marital residence to the debtor in exchange for $52,000. Before the bankruptcy case was filed, the debtor paid his former spouse $35,000, with the balance owed to be paid through the plan as a non-priority unsecured claim.

The parties also agreed that the property would be refinanced but given the debtor's financial situation, he needed a co-signer, which, the debtor and his former spouse agreed, would be an associate of the debtor's, a Mr. Hus. They transferred a one-half interest in the property to him.

In his chapter 13, the debtor proposed to pay $25,440 over 60 months, which would pay Wells Fargo in full for the pre-petition mortgage arrears and the chapter 13 trustee's fee. The balance of funds would be paid to the debtor's unsecured creditors, as well as paying in full a priority claim owed to the former spouse of approximately $10,947, as well as priority claims owed to the IRS. The former spouse filed an objection to the plan, arguing that the plan violated the disposable income test because the debtor did not pledge all of his disposable income to the plan. She argued that his income should be increased to include a raise he received during the pendency of the case and that he had not properly identified all of his monthly income. The former spouse also argued that the case was not filed in good faith.

Holding: Objection overruled in part and sustained in part. The Court rejected the former spouse's argument with respect to accounting for raises by the debtor for the duration of the case, since the raise was not substantial and the Court was not going to burden the chapter 13 trustee with having to monitor all cases to track raises for the duration of the cases, but did find that the debtor had failed to commit all of his disposable income since an adjustment to his income and expenses resulted in additional monthly income of $830. The debtor's plan also failed to

meet the liquidation test since his creditors holding general unsecured claims would receive more if the case had been filed under chapter 7. The Court, after weighing the totality of the circumstances, rejected the argument that the case had not been filed in good faith, concluding that the case passed both the objective and subjective tests for a good faith filing.

In re Love, 2019 Bankr. LEXIS 1791 (Bankr. E.D. Va. June 10, 2019) (Huennekens, J.)

Background: After filing for chapter 13 relief in 2015, the debtor wife was involved in a car accident in June 2017 and later that year their chapter 13 case was converted to one under chapter 7. They received their discharge and the case was closed. The debtors did not amend their schedules to disclose the personal injury claim arising from the car accident. In November of 2018, the debtors asked for their case to be reopened after the debtor wife negotiated a settlement of her personal injury claim. They wanted to reopen the case to amend their schedules and disclose the settlement and to declare it exempt. The case was reopened, and the chapter 7 trustee was reappointed. After the debtors filed their amended schedules, the trustee objected to the claimed exemption under Va. Code Ann. § 34-28.1, arguing that because the debtors did not disclose the claim before the case was converted, the exemption should be denied. The debtors responded to the objection and filed a motion asking the Bankruptcy Court to compel the trustee to abandon the personal injury proceeds from the settlement. All parties assumed that the personal injury claim was property of the estate.

Holding: The trustee's objection was overruled, and the debtors' motion was denied. The personal injury claim arose from the car accident that occurred after the petition date, and since, pursuant to § 348 the estate in a converted chapter 7 case is limited to property owned by the debtors as of the petition date as long as the conversion is in good faith, the claim and proceeds from the claim were not property of the estate and therefore there was no need to claim the asset as exempt.

There was no need for abandonment because the estate had no interest in the claim or the proceeds.

Brooks v. Midland Funding, LLC (In re Thomas), 2018 Bankr. LEXIS 2991 (Bankr. W.D. Va. Sept. 28, 2018) (Connelly, C.J.)

Background: Chapter 13 debtors initiated adversary proceedings against Midland Credit Management, Inc. ("Midland"), alleging that the company violated the FDCPA and Fed. R. Bankr. P. 3001 in the claims filed in their cases. Specifically, the debtors alleged that Midland had a business practice of filing claims it knew contained false statements regarding whether the amount claimed to be owed included interest, fees, or other charges, withholding the agreement when a written request was made pursuant to Rule 3001, then amending the claims only after the debtors filed adversary proceedings. Midland requested the bankruptcy court to order arbitration of the disputes between the parties and also sought dismissal of the amended complaints.

Holding: Motions to dismiss and compel arbitration denied. The Court found that the amended complaints of the debtors pleaded a cause of action under 15 U.S.C. § 1692(f) and Fed. R. Bankr. P. 3001 such that dismissal was not warranted. The Court found it inappropriate to compel arbitration of the bankruptcy question of whether Midland complied with Fed. R. Bankr. P. 3001, since it is a rule of procedure of the bankruptcy court.

In re Wobbleton, 2019 Bankr. LEXIS 3048 (Bankr. E.D. Va. Sept. 30, 2019) (Kindred, J.)

Background: Chapter 13 debtor filed an objection to claim filed as a domestic support obligation by a former spouse, which debt was classified as priority under

§ 507(a), although tied to an obligation to maintain the mortgage. The debtor argued that the claim should be a claim for equitable distribution and treated as a dischargeable unsecured non-priority claim and paid pro rata with his other unsecured debt under his plan.

Holding: Objection to claim overruled. Obligation to pay former spouse was a domestic support obligation even if the obligation was the equivalent of the mortgage and equity line of credit with the escrow amounts due and therefore was nondischargeable under §§ 523(a)(5) and 1328(a) given the disparity of incomes between the parties. The language and substance of the divorce decree also showed that the parties intended that the payment of this debt was in the nature of support.

Woodford v. Capital Bank NA (In re Woodford), 2019 Bankr. LEXIS 1367 (Bankr. W.D. Va. May 1, 2019) (Black, J.)

Background: The debtor was the president of a company that she claimed was controlled by her daughter and son-in-law. The debtor entered into a loan for the business with Capital Bank, NA (the "Bank") and guaranteed the loan. The Bank also requested that the debtor and her husband execute a deed of trust against their principal residence in favor of the Bank, which they did. The debtor filed for chapter 13 relief and following denial of confirmation of her proposed plan, she initiated an adversary proceeding against the Bank, seeking a determination that the Bank's requirement for the debtor's then husband to execute a deed of trust on their principal residence was a violation of ECOA, 15 U.S.C. §§ 1691-1691, and that the lien claimed by the Bank against the residence was void. The Bank filed a motion to dismiss, arguing the deed of trust executed by the husband and debtor was not a credit instrument and thus there was no ECOA violation.

Holding: Motion to dismiss granted. The deed of trust was not a credit instrument since it was not an instrument that created any personal repayment obligation. The execution of the deed of trust did not create a right to incur debt or defer payment and therefore it was not a credit instrument and the Bank's requiring the debtor's husband to sign it was not a violation of ECOA.

APPENDIX A

HAVEN Act – Frequently Asked Questions

Question: What does the Honoring American Veterans in Extreme Need Act of 2019 ("HAVEN Act" or the "Act") do?

Answer: The Act excludes certain benefits paid to veterans or their family members from the definition of Current Monthly Income ("CMI") found in the Bankruptcy Code. 11 U.S.C. § 101(10A). The types of compensation excluded from CMI under the Act include, but are not limited to, the following:

- Disability and death benefits paid by the Veterans Administration under title 38 of the United States Code.
- Monthly special compensation for catastrophic injuries or illnesses paid to servicemembers under 37 U.S.C. § 439.
- Any combat-related special compensation paid by the Department of Defense under 10 U.S.C. § 1413a.
- Disability severance pay paid by the Department of Defense under 10 U.S.C. § 1212.
- Any payment by the Department of Defense to a survivor in connection with the death of a member of the uniformed services. *See* 10 U.S.C. §§ 1431-1456.
- Disability-related military retired pay paid by the Department of Defense to a servicemember retired under 10 U.S.C. §§ 1201-1202, 1204-1205, except that such payments are excluded from CMI only to the extent that they exceed the military retired pay that the servicemember would have received if the servicemember had retired without a disability.

It should be noted, however, that certain benefits to current servicemembers are included in the CMI calculation, for example monthly special compensation from DOD, and retirement pay for people on the temporary disability retired list.

Question: How does the Act affect enforcement under section 707(b)(2) of the Bankruptcy Code and the determination of whether the presumption of abuse arises for veterans or their family members filing for chapter 7 relief under the Bankruptcy Code?

Answer: Veterans or their family members who file for bankruptcy relief under chapter 7 should exclude income covered by the Act from the calculation of CMI. The calculation of CMI is the starting point for determining whether a chapter 7 bankruptcy case is presumed abusive under section 707(b)(2).

Question: How does the Act affect chapter 13 cases?

Answer: Veterans and their family members who file for bankruptcy relief under chapter 13 should exclude income covered by the Act from the calculation of CMI, which may affect the determination of projected disposable income available for a chapter 13 plan.

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HAVEN ACT Provides Military Veterans With Increased Income Protections In Bankruptcy

Article By:
Jill C. Walters

Military veterans often pay a heavy toll for their service from a physical, emotional and even financial standpoint. A new federal law— the Honoring American Veterans in Extreme Need Act of 2019 or the HAVEN Act— aims to address the latter hardship, providing disabled military veterans with greater protections in bankruptcy proceedings.

Prior to the passage of the HAVEN Act, federal Department of Veterans Affairs (VA) and Department of Defense disability payments were included when calculating a debtor's disposable income when in bankruptcy. In other words, this income is subject to the reach of creditors.

By contrast, Social Security disability benefits are exempt from calculating a debtor's disposable income. The HAVEN Act places military disability benefits in the same protected category as Social Security disability.

The actual language of the new exception reads as follows:

"(IV) any monthly compensation, pension, pay, annuity, or allowance paid under title 10, 37, or 38 in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services, except that any retired pay excluded under this subclause shall include retired pay paid under chapter 61 of title 10 only to the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title."

The HAVEN Act received strong bipartisan support in both the House and Senate, and was endorsed by both the American Bankruptcy Institute and a host of veterans' advocacy organizations, including the American Legion and VFW. Reps. Lucy McBath (D-GA) and Greg Steube (R-FL) co-sponsored the legislation in the House, while Sen. Tammy Baldwin (D-WI) and John Cornyn (R-TX) co-sponsored the Senate legislation. President Donald Trump signed the HAVEN Act into law August 23, 2019 and it became effective immediately.

Specific benefits protected under the Haven Act are:

- Permanent Disability Retired Pay
- Temporary Disability Retired Pay
- Retired or Disability Severance Pay for Pre-Existing Conditions
- Disability Severance Pay

- Combat Related Special Compensation
- Survivor Benefit Plan for Chapter 61 Retirees
- Special Survivor Indemnity Allowance
- Special Compensation for Assistance with Activities of Daily Living
- VA Veterans Disability Compensation
- VA Dependency and Indemnity Compensation, and
- VA Veterans Pension.

Veterans advocates pushed for the HAVEN Act following five recent Bankruptcy Court Decisions that held that under previous bankruptcy law, disabled veterans were required to include military disability in their disposable income in bankruptcy proceedings.

The new law also provides relief to a segment of the population that needs assistance. According to the 2018 VA Annual Benefits Report, 4.74 million US veterans—or 25 percent of the total veteran population—receive VA disability benefits.

Veterans also make up a disproportionate share of bankruptcy filers. Nearly 15 percent of both Chapter 7 and Chapter 13 bankruptcy filers are veterans, who make up approximately 10 percent of the overall population. Approximately 125,000 veterans filed for bankruptcy in 2017 alone.

Source URL: https://www.natlawreview.com/article/haven-act-provides-military-veterans-increased-income-protections-bankruptcy

Addendum A: Military Service-Related Benefits Protected by the HAVEN Act (to be codified at 11 U.S.C. § 101(10A)(B)(ii)(IV))
Below is a noncomprehensive list of benefits that can qualify for protection under the HAVEN Act. Other benefits paid by the Department of Defense and the Department of Veterans Affairs might also be protected under the HAVEN Act, and thus, all income received by a debtor from the DOD and VA should be evaluated to determine whether such income qualifies for protection.[79]

Benefit	Citation	Description[80]
Disability Retired Pay[81] **Permanent Disability Retirement** **Temporary Disability Retirement**	10 U.S.C. §§ 1201, 1204 10 U.S.C. §§ 1202, 1205 (Chapter 61, Title 10)	Paid monthly to former or current servicemember upon permanent or temporary military retirement due to disability; pay computed under 10 U.S.C. § 1401 https://www.dfas.mil/retiredmilitary/disability/disability.html
Disability Severance Pay	10 U.S.C. § 1212; *see also* 10 U.S.C. §§ 1203, 1206	Paid as lump sum to servicemember upon military separation due to disability when circumstances do not meet criteria for disability-based military retirement https://www.dfas.mil/retiredmilitary/plan/separation-payments/disability-severance-pay.html
Combat-Related Special Compensation (CRSC)[82]	10 U.S.C. § 1413a; *see also* 38 U.S.C. §§ 5304-5305	Paid monthly to military retiree who has a combat-related disability; cannot be paid concurrently with CRDP https://www.dfas.mil/retiredmilitary/disability/crsc.html
Concurrent Retirement & Disability Payment (CRDP)[83]	10 U.S.C. § 1414; *see also* 38 U.S.C. §§ 5304-5305	Paid monthly to military retiree who is concurrently eligible to receive VA Disability Compensation and who has VA disability rating of at least 50%; cannot be paid concurrently with CRSC https://www.dfas.mil/retiredmilitary/disability/crdp.html
Survivor Benefit Plan Annuity (as to Disability Retirees under Chapter 61 of Title 10 only)	10 U.S.C. § 1448; *see also* 10 U.S.C. §§ 1201, 1202, 1204, 1205	Paid monthly to military retiree's eligible beneficiary, after retiree's death https://www.dfas.mil/retiredmilitary/provide/sbp.html

[79] In many cases, whether a benefit is protected will be clear. However, because the HAVEN Act does not list specific benefits paid under Titles 10, 37, and 38 that can be excluded from "current monthly income," some cases will require a practitioner to investigate the basis for the debtor's receipt of a particular benefit to determine whether the income can arguably be excluded. Additional information about benefits can be found at https://warriorcare.dodlive.mil/benefits/compensation-and-benefits/ and https://www.va.gov/.

[80] Benefit descriptions, including website links, are provided for basic informational purposes only. The descriptions should not be relied upon in evaluating potential eligibility for a listed benefit because not all eligibility criteria are stated.

[81] Military retirements based upon disability are governed by Chapter 61 of Title 10 (10 U.S.C. §§ 1201-1222). The HAVEN Act permits the exclusion of Chapter 61-based retired pay from "current monthly income" **only to the extent that such retired pay exceeds the amount of retired pay that the debtor would be entitled to receive if retired under another provision of Title 10.** Information about retired pay computation can be found in Chapter 71 of Title 10 (10 U.S.C. §§ 1401-1415), as well as on the Defense Finance and Accounting Service's website at https://www.dfas.mil/retiredmilitary/plan/estimate.html.

[82] CRSC has "Special Rules for Chapter 61 Disability Retirees," 10 U.S.C. § 1413a(b)(3). Given that the HAVEN Act has Chapter 61-related limiting language, *see supra* note 3, additional analysis could be required for a debtor who receives CRSC.

[83] CRDP has "Special Rules for Chapter 61 Disability Retirees," 10 U.S.C. § 1414(b). Given that the HAVEN Act has Chapter 61-related limiting language, *see supra* note 3, additional analysis could be required for a debtor who receives CRDP.

Special Survivor Indemnity Allowance	10 U.S.C. § 1450(c), (m)	Paid monthly to military retiree's surviving spouse or former spouse, after retiree's death, if Survivor Benefit Plan Annuity payments are offset by VA Dependency and Indemnity Compensation payments https://www.dfas.mil/retiredmilitary/survivors/Understanding-SBP-DIC-SSIA.html
Special Compensation for Assistance with Activities of Daily Living	37 U.S.C. § 439	Paid monthly to current or recent servicemember who requires help with activities of daily living due to catastrophic injury or illness incurred or aggravated in line of duty; cannot be paid concurrently with Aid and Attendance Allowance paid under 38 U.S.C. § 1114(r)(2) https://warriorcare.dodlive.mil/benefits/scaadl/
VA Disability Compensation **Also known as "Service-Connected Disability Compensation" and "Veterans Compensation"**	38 U.S.C. §§ 1104, 1110, 1114(a)-(j), 1115, 1131, 1134	Paid monthly to veteran who has a disability due to disease or injury incurred or aggravated while serving on active duty, or otherwise related to that service; payment amount depends upon disability rating (10% to 100%) and whether the veteran has qualifying dependents https://www.va.gov/disability/ https://www.benefits.va.gov/COMPENSATION/resources_comp01.asp
VA Special Monthly Compensation **Can include Aid and Attendance Allowance or Housebound Allowance**	38 U.S.C. §§ 1114(k)-(s), 1134	Paid monthly to veteran who receives VA Disability Compensation and who has special circumstances warranting additional compensation such as having specific service-connected anatomical losses or having need for daily in-home personal health care services https://www.benefits.va.gov/COMPENSATION/resources_comp02.asp
VA Dependency and Indemnity Compensation **Can include Aid and Attendance Allowance or Housebound Allowance**	38 U.S.C. §§ 1304, 1310-1318	Paid monthly to eligible survivors after servicemember's in-service or service-connected death or veteran's death due to service-connected disability (or equated as such) https://www.va.gov/burials-memorials/dependency-indemnity-compensation/
VA Veterans Pension[84] **Also known as "Non-Service-Connected Disability Pension"** **Can include Aid and Attendance Allowance or Housebound Allowance**	38 U.S.C. §§ 1502, 1513, 1521, 5312	Paid monthly as subsistence benefit to veteran who meets low income and net worth criteria, satisfies service requirements, and is either at least age 65 or "permanently and totally disabled" (generally due to non-service-connected disability); payment amount depends upon whether the veteran has qualifying dependents and in-home health care needs https://www.benefits.va.gov/pension/vetpen.asp
VA Vocational Rehabilitation & Employment Subsistence Allowance	38 U.S.C. § 3108	Paid monthly to veteran who has service-connected disability and who is participating in vocational rehabilitation program under Chapter 31 https://www.benefits.va.gov/vocrehab/subsistence_allowance_rates.asp

[84] As indicated in the description, this benefit can be paid based upon age without a qualifying disability. If so paid, the income would not be excludable from "current monthly income" under the HAVEN Act. If a veteran is eligible for the benefit based upon age and, separately, based upon a qualifying disability, it might be possible to rely upon the latter eligibility and to exclude the income from "current monthly income." *See* 38 U.S.C. § 1513(b).

SUPPLEMENTAL HANDOUT

GIVEN AT SEMINAR

HAVEN Act: Application

Retirement-related Examples

Retired due to disability (chapter 61) after serving 25 years and receives $3,000 per month Disability Retired Pay based upon severity-of-disability calculation but would have received $2,500 per month based upon time-in-service calculation

- Can exclude $500 of Disability Retired Pay from CMI because that is "the extent that such retired pay exceeds the amount of retired pay to which the debtor would otherwise be entitled if retired under any provision of title 10 other than chapter 61 of that title"

HAVEN Act: Application

Retirement-related Examples

Retired after serving 25 years (not chapter 61) and is eligible to receive $2,500 per month Retired Pay (taxable and paid by DOD under Title 10) but is separately entitled to receive $617.73 per month VA Disability Compensation (nontaxable and paid by VA under Title 38) based upon a 40% service-connected disability rating and having no dependents

- Is not one who qualifies to receive both payments in full concurrently and has waived $617.73 Retired Pay to instead receive VA Disability Compensation (reducing tax liability)
  - Cannot exclude $1,882.27 Retired Pay from CMI
  - Can exclude $617.73 VA Disability Compensation from CMI