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MEMORANDUM FOR ASSOCIATE DISTRICT COUNSEL, PACIFIC NORTHWEST
DISTRICT, PORTLAND (CC:WR:PNR:POR)

FROM: Alan C. Levine
Chief, Branch 1 Collection, Bankruptcy and Summonses

SUBJECT: Bankruptcy Code Sections 1226(b) and 1326(b):
Application of In re Parker, 15 B.R. 980 (Bankr. E.D. Tenn.
1981), to a Chapter 12 Case

You have requested our views on the above referenced matter. This memorandum is advisory only and is not to be relied upon or otherwise cited as precedent.

ISSUE

Whether Bankruptcy Code § 1226(b)(1) forbids the distribution of payments to prepetition creditors under a Chapter 12 plan when administrative expenses accrued and due at the time of the proposed distribution are not paid in full?

CONCLUSION

Section 1226(b)(1) does not forbid the distribution of payments to prepetition creditors under a Chapter 12 plan when accrued administrative expenses are not paid in full. In other words, administrative expenses and general unsecured claims may be concurrently.

FACTS

This issue arises in the following scenario. The debtor files a Chapter 12 case and then accrues an administrative tax liability. The debtor's proposed plan provides that the administrative tax liability will be paid over a multiple year period, e.g., three years. The plan also provides that the debtor will simultaneously be making payments to other prepetition general unsecured creditors. The Government objects to the plan, arguing that the Bankruptcy Code forbids distribution of payments to any of the debtors' prepetition general unsecured creditors until all administrative expense claims have

been paid in full. The bankruptcy court rejects the Government's argument and confirms the plan.

LAW AND ANALYSIS

B.C. § 1326(b)(1) states, in pertinent part:

(b) Before or at the time of each payment to creditors under the plan, there shall be paid –

(1) any unpaid claim of the kind specified in section 507(a)(1)

B.C. § 1326(b)(1). 1/

The seminal case interpreting section 1326(b)(1) is In re Parker, 15 B.R. 980 (Bankr. E.D. Tenn. 1981), aff'd, 21 B.R. 692 (E.D. Tenn. 1982), which addressed the question whether administrative expenses incurred in a given chapter 13 case must be completely paid before any payments are made to unsecured creditors. Parker held that “the trustee can make payment on priority claims concurrently with payment on general unsecured claims” Parker, 15 B.R. at 983. “[This bankruptcy] court rejects the argument that administrative expenses must be paid in full before any payments can be made to other creditors.” Id. at 983. As Parker noted, a Chapter 13 plan, by being required to provide for payment of priority claims in full in “deferred cash payments,” may allow for the making of payments after the plan is confirmed, and in more than one payment. Id. at 982. In addition, section 1322(b)(4) states that the Chapter 13 plan “shall ... provide for payments on any unsecured claim.” B.C. § 1322(b)(4). Thus, we agree with Parker's conclusion that section 1326(b)(1) allows for concurrent payments of administrative expenses and general unsecured claims in a confirmed Chapter 13 plan.

Holdings in Chapter 13 cases are generally regarded as instructive in Chapter 12 cases, as the legislative history of Chapter 12 reflects that Congress modeled Chapter 12 on the provisions of Chapter 13. See, e.g., In re BDT Farms, Inc., 21 F.3d 1019, 1021 n.3 (10th Cir. 1994). Accordingly, the analysis contained in Parker would be validly invoked in Chapter 12 cases, and in fact has been invoked in several published bankruptcy court decisions. See, e.g., In re Ryan, 228 B.R. 746 (Bankr. D. Ore. 1999)

1/ Chapter 12 contains an identical provision, B.C. § 1226(b)(1).

(Chapter 12 case following Parker); Polombo, supra (Chapter 12 case employing same reasoning as in Parker, while not specifically relying on Parker). We have found no authority rejecting the Parker analysis in Chapter 12 or Chapter 13 cases. Accordingly, since we view Parker as accurately interpreting the relevant provisions of the Bankruptcy Code, we see no reason to refrain from relying on the Parker analysis in cases arising in either of these chapters.

If you have any further questions, please contact Branch 1 at (202)622-3610.