

**§ 349.1 Claims Not Provided for by the Plan or Disallowed under § 502**

[27] An issue rarely addressed in reported decisions but often present in Chapter 13 cases is whether a debt paid directly to a creditor by the debtor—other than a long-term debt provided for under § 1322(b)(5)<sup>42</sup>—is discharged upon completion of payments to other creditors under the plan. The Chapter 13 debtor can act as a disbursing agent to make some payments directly to creditors, without the assistance of the Chapter 13 trustee.<sup>43</sup> Arguably, a claim is provided for by a plan that specifies payments by the debtor directly to the creditor. It would seem to follow that upon completion of payments under the plan, the debtor is entitled to a discharge of all debts, including those paid directly to creditors.

[28] If the debt paid directly has been paid in full, no obvious problems attend its discharge. But what happens to discharge when the claim being paid directly has not been paid in full when payments to other creditors through the trustee are concluded? At what point does the debtor complete “all payments under the plan”? Are payments under the plan completed when payments to the Chapter 13 trustee are completed or when all creditors are paid according to the plan, including those paid directly by the debtor? Does the discharge relieve the debtor of personal liability to creditors being paid directly by the debtor that are not yet paid in full? The Bankruptcy Code does not answer these questions.

[29] If the Chapter 13 plan says that the debtor will make direct payments to a creditor, it is not unreasonable to require the “completion” of those payments as a condition for discharge under § 1328(a). But as a practical matter, the Chapter 13 trustee will not know when the debtor has completed payments directly to a creditor. The usual practice is that the Chapter 13 trustee signals completion of payments when the trustee has received all that the plan requires the trustee to disburse to creditors. Discharges are routinely entered in Chapter 13 cases without regard to whether the debtor has completed payments directly to creditors.

[30] A creditor to be paid directly by the debtor should insist on a provision of the confirmed plan that excepts its debt from discharge until it is fully paid whatever the plan provides. Otherwise, the completion of payments to other creditors puts the claim in jeopardy of discharge before the debt has been paid in full.<sup>44</sup> If the debt paid directly by the debtor is a long-term debt of the sort contemplated by § 1322(b)(5), then that claim is excepted from discharge upon completion of payments to other creditors by § 1328(a)(1).<sup>45</sup>

[31] One reported decision holds that direct payment by the debtor does not provide for the debt, with a devastating consequence for the debtor: the debt is not dischargeable at the completion of payments notwithstanding that the debt would have been dischargeable had the plan provided for payments through the Chapter 13 trustee. In *Mayflower Capital Co. v. Huyck (In re Huyck)*,<sup>46</sup> the confirmed plan cured prepetition mortgage arrearages through the Chapter 13 trustee but paid the continuing monthly mortgage payment “outside the plan.” The debtor completed payments, and discharge was entered. After discharge, the debtor defaulted, and the mortgage holder foreclosed. A \$61,529.07 deficiency resulted. The mortgage holder filed a complaint for a declaration whether the deficiency was discharged. The bankruptcy court held that payment “outside the plan” did not provide for the debt for purposes of discharge under § 1328(a):

Defendants [the debtors] chose not to modify the rights of Community Bank. . . . Accordingly, Defendants, consistent with 11 U.S.C. § 1322(b)(2), left unaffected the bundle of rights of [sic] Community Bank had under its Note—this bundle of rights included the right to pursue a deficiency. . . . “The most natural reading of the phrase to ‘provid[e] for the plan’ is to ‘make provision for’ or ‘stipulate to’ something in the plan.” . . . Here, the Defendants’ Plan split Community Bank’s secured claim into two separate categories: (1) the amount to cure—paid through the Plan and (2) the regular monthly payments—paid outside of the Plan. The amount to cure was “provided for” under the Plan. The regular monthly payments—i.e., the maintenance of the underlying Note and Deed of Trust during the pendency of the bankruptcy—were not “provided for” under the Plan. . . . The Defendants simply chose to