

***In re Nachon-Torres* – Case No. 11-36161**
***In re Martinez* – Case No. 12-23696**
***In re Garcia* – Case No. 09-30391**
***In re Luyando* – Case No. 10-25816**

**Memorandum Opinion Regarding
Modification of Chapter 13 Plans**

SUMMARY

The Court held that modification of a Chapter 13 plan requires a two-step process: first, the requirements of 11 U.S.C. § 1329 must be met, and second, the Court must decide if, under the circumstances, modification should be allowed. The Court determined the second prong requires the modification be due to circumstances either unknown or not virtually certain at the time of modification. The Court also held the “best interests of creditors test,” or “chapter 7 test,” must be calculated from the modification date and not the original petition date. Thus, any appreciation or depreciation in an asset must be factored into the plan as of the modification date. A debtor’s post-petition abandonment of an asset is not “virtually uncertain” and the debtor cannot choose to abandon an asset post-petition at the expense of creditors.