



THE MARSHALL CHRONICLES

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The Proverbial Temporal vs. Multiplier Issue

The Ninth Circuit Court of Appeals recently joined the majority of circuit courts – the Sixth, Eighth and Eleventh – previously holding that a plan cannot be confirmed unless its length is at least as long as the applicable commitment period, without regard to whether the debtor has positive, negative or zero disposable income. This is the proverbial Temporal v Multiplier issue bankruptcy courts have been struggling with since BAPCPA was enacted.

In an en banc opinion in the case of *Danielson v. Flores (In the Matter of Flores)*, No. 11-55452, – F.3d – (9th Cir. Aug. 29, 2013) the court held that a bankruptcy court may confirm a Chapter 13 plan of reorganization under section 1325(b)(1)(B) over the objection of a creditor or trustee only if the plan's duration is at least as long as the applicable commitment period under section 1325(b)(4), even if the Means Test shows a negative disposable income.

This decision overturns *In re Kagenveama* (541 F.3d 868, 9th Cir. 2008), which had held that three-year plans were permissible in such cases.

When a debtor files a Chapter 13 bankruptcy case, one of the documents he must file is the "Chapter 13 Means Test." The form averages all the money earned over the past six complete months. If that number is below the median household income in your state for a household of your size, the debtor is a "below-median debtor," and qualifies for a three-year plan. (A debtor is allowed to propose a longer plan as needed not to exceed five years.) If the six-month average is above the state's median household income for your household size, the debtor is an "above-median debtor." This debtor must determine his "disposable monthly income" (DMI) based on statutorily mandated deductions. That number is the minimum amount that, based on these calculations, a debtor's unsecured creditors must receive per month through the plan. (Unless other factors, such as assets and anticipated future income, require a greater amount).



Three distinct interpretations of the §1325(b)(1)(B) in the circuit courts have given rise to conflicting decisions regarding this issue. See *Baud v. Carroll*, 634 F.3d 327, 336–38 (6th Cir. 2011) cert. denied, 132 S. Ct. 997 (2012) for a discussion of the split of decisions and the cases.

A minority of bankruptcy courts view the "applicable commitment period" (ACP) solely as a monetary "multiplier." Under that approach, the number of months in the applicable commitment period is simply multiplied by the debtor's projected disposable monthly income to determine the total payments that a debtor must make, but the period has no

temporal significance. *Id.* at 336–38 & n.7. Other bankruptcy courts, including the Ninth Circuit in *Kagenveama*, have held that, although the statute does set forth a temporal requirement, that temporal requirement does not apply to debtors whose projected disposable income is less

than or equal to \$0. *Baud*, 634 F.3d at 337. Finally, a majority of courts have held that a plan cannot be confirmed unless its length is at least as long as the applicable commitment period, without regard to "whether the debtor has positive, zero, or negative projected disposable income." *Id.* at 336–37. The duration of the plan for an above-median debtor must be equal to the required applicable commitment period of five years (unless the debtor is paying 100% to all allowed unsecured claims. §1325(b)(4)(B) in which case the duration can be less.)

Before *Flores* the law in the Ninth Circuit under *Kagenveama* was that if that number (DMI) was negative (i.e., your allowed expenses exceeded your six-month average income), you could qualify for a three-year plan, even though you were an above-median income. But in 2010, the U.S. Supreme Court decided the case of *Hamilton v Lanning* (130 S. Ct. 2464, 2010), which rejected a "mechanical approach" to payments to unsecured creditors so that bankruptcy courts were required

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The Proverbial Temporal vs Multiplier Issue

(Continued from page 1.)

to take into consideration “known or virtually certain changes” in a debtor’s income in determining “projected disposable income” (PDI) – a term undefined in the statute. In *Flores*, the Court held that *Kagenvaama* was “clearly irreconcilable” with the rationale of *Lanning*.

In holding that the applicable commitment period is Temporal, rather than a Multiplier, the court relied in part on the fact that the statute defines the ACP as having duration: “3 years,” “not less than 5 years,” or “less than 3 or 5 years.” 11 U.S.C. § 1325(b)(4). The court also considered the language of §1325(b)(1)(B) itself that suggests payments as continuing into the future for the duration of the plan when stating that the plan must provide for payment of the debtor’s projected disposable income “to be received in the applicable commitment period.” Since a plan cannot pay income to be received during a specified time unless it lasts for that specified period, the applicable commitment period must be temporal. In deciding whether that temporal requirement applies to debtors who have no projected disposable income,

the court considered if there was any exception to its application in the statute, its relation to post-confirmation plan modification and discharge and legislative history.

Other decisions have suggested that since the “applicable commitment period” is exclusively linked to “projected disposable income,” the §1325(b)(1)(B) temporal requirement contains an implicit exception that if the PDI is zero or negative, then the ACP requirement does not apply. The Flores Court now disagrees saying there is no exception to the applicability of the temporal requirement of the ACP other than that found in §1325(b)(4)(b) requiring unsecured claims to be paid in full before a shorter term can be approved.

In addition, the applicable commitment period is expressly incorporated as a temporal limit for purposes of plan modification under §1329(a). That is so because the modification must occur before completion of payments and a modified plan “may not provide for payments over a period that expires after the applicable commitment period under section 1325(b)(1)(B) after the time that the first payment under the original confirmed plan was due.” 11 U.S.C. § 1329(c). The point is that the statute defines the temporal window within which modified payments under §1329 may be made by referring to the applicable commitment period. The ability to modify a plan under §1329 would be precluded were the plan to have ended earlier than the commitment period that should have been applied or required of the proposed plan at confirmation.

In reviewing legislative history, the *Flores* Court referred to the policies underlying the changes to the law when BAPCPA was enacted. That policy was and is to grant a fresh start to the honest but unfortunate debtor. But the court goes on to recognize that creditor’s interest in repayment is a concomitant policy of the law quoting *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 729 (2011) when it describes “BAPCPA’s core purpose [as] ensuring that debtors devote their full disposable income to repaying creditors.” Reading the applicable commitment period as temporal and applicable even when disposable income is zero or negative is consistent with that policy.

What does all this mean for us in the Seventh Circuit? It is certainly persuasive when a majority of circuit courts are ruling in one direction. It also means we are slowly getting closer to a similar determination in this circuit and perhaps the Supreme Court will even grant certiorari in a case in the near future due to this conflicting interpretation of the requirements of §1325(b)(1)(B). In the meantime, if you live in Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, or Washington, and your income is above the state median, be prepared to be in bankruptcy for five solid years.

Jay Tribou, Staff Attorney



THE MARSHALL CHRONICLES

The Editorial Staff: Cheryl Jones, Aaron Bowles, HVB and Dave Latz.

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Newsletter Information:

If you would like to contact us or submit ideas or articles for the newsletter, you can do so by:

- ✓ e-mailing us at newsletter@chi13.com,
- ✓ dropping your submission or idea in the anonymous newsletter folder located in the mail room, or
- ✓ leaving them with Dave Latz.

Please remember when making a submission to the newsletter, it must be:

- ✓ type-written and
- ✓ submitted by the third Wednesday of the month via e-mail, a Word document or an ASCII file.

We also ask that anyone who attends a seminar please be prepared to furnish the committee with a detailed article on its subject.

You may also view this edition of **THE MARSHALL CHRONICLES**, as well as all the previously published issues, all in full color, on the Chapter 13 Trustee website at <http://www.chicago13.com/>.

Trustee Matters

*Happy Thanksgiving to
the Staff of the Chapter 13
Trustee and Everyone in the
Bankruptcy Community!*

*Have a carefree
and safe holiday.*



Trustee Marilyn O. Marshall

Office Safety And Crime Prevention

As we are approaching the Holiday season and petty crime becomes more prevalent and as you add new employees to your staff and positions change within your organization, here are some important safety aspects which should be reiterated and observed to promote general safety within the office:

Reception Area:

- Entry doors should be locked when the reception area is unattended and after business hours.
- Screen Visitors – Make sure visitors to your office have appointments before granting them access. Make them wait in reception until the proper party comes out to receive them. Make sure repair personnel are legitimate. Ask to see identification and make sure someone in the office called for the repair before granting them access. Also, do not let repair people roam your office without being escorted by an employee.
- If a visitor replies that they do not have an appointment, but would like some specific information, try to obtain the information without giving away proprietary company data. Never leave a stranger alone in your reception area. This could be a ploy by them to take something and run.
- There is no soliciting allowed in the building. If a solicitor enters your office, contact the Office of the Building at 312-341-9431 or Security at 312-341-9436 immediately. Security will escort the solicitor from the building.

General Crime Prevention:

- Keep purses and personal valuables out of sight, preferably in a locked drawer.

- Keep laptop computers and other valuable small office equipment locked away when not in use. The building will not accept responsibility for lost or stolen valuables.
- Report Suspicious Activity – The building reserves the right to restrict certain activities such as soliciting, loitering, etc., within the Santa Fe Building. All such activities should be reported to Security immediately. Security will follow-up with tenants after any reported incident and complete a written report. A copy of the report will be provided to the authorized tenant representative upon request.
- Report lost or stolen access card keys – Since an active card key will permit anyone holding it building access and specific suite access, it is critical to promptly notify your Office Representative to deactivate the card and in turn the Office Representative will contact the Building Management Office to delete the card from the Building System.



It is our goal to provide a pleasant and safe working environment. However, that end result can only be achieved with everyone's cooperation. If you should ever have any specific safety concerns, please do not hesitate to bring them to the attention of Building Management.

Cathy Masterson
Assistant Asset Manager
Hamilton Partners, Inc.

Financial: Don't Take It Personally

The Trustee's office has not accepted personal checks since April, 2002.

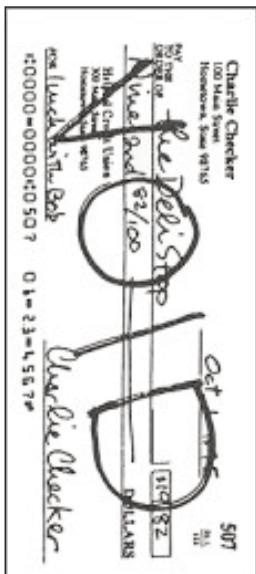
Debtors should not take it personally that they are not accepted. In the past, when the Trustee has accepted this form of payment, it would cost up to \$600 a year in fees, plus processing adjustments, paperwork and correspondence related to an unacceptable payment.

That being said, debtors should not submit plan payments in the form of a personal check. If they do, it will not be accepted and it will be returned to them in the mail. If they submit an on-line payment to our office from their personal bank account, it will also not be accepted. Please note that all payments to the Trustee should be in the form of a cashier's check or a money order.

Please remember, when you are providing phone service or holding a creditor meeting, to remind the debtors that we only accept guaranteed funds. One reason debtors are encouraged to participate in payroll control withholding is that it will eliminate the need for debtors to purchase a cashier's check or a money order. The employer will take the payment directly from their paycheck and submit it directly to the Trustee.

If a debtor wants plan payments to come directly from their paycheck, they can simply contact their attorney and let them know that they would like to have this set up.

Juliana Dunklin, Payroll Specialist



Legal: Blue Paper!

Every week the Trustee's staff attorneys appear in front of the bankruptcy judges to hear motions set by creditors, debtors, and their own office, as well as cases scheduled for confirmation. The process takes about four hours and requires constant vigilance and engagement. The Case Analysts here at the Office of the Chapter 13 Trustee, Marilyn O. Marshall are tasked with assembling, preparing, and reviewing the court call so that the staff attorney can effectively follow every matter that appears in front of the judge. This sounds easy enough, just print off a list from the court's website, right? While the process certainly starts there, it is but one step of many.

The printer is, in fact, where it all begins. The Case Analyst prints a blue header sheet called a "confirmation tracking sheet" for all the new cases scheduled for confirmation on a particular day. The sheet is a snapshot, a quick reference to the multitude of attached documents associated with a specific case. The blue sheet also creates a visual distinction between cases when they're all stacked together, or packed in a briefcase. The Case Analyst attaches all pertinent information, including required documents, notes, and clerical sheets, to the "confirmation tracking sheet" creating a packet for every case up for confirmation. We cross-reference these packets to the scanned PDF documents in any given case and determine what else is required, or verify that everything, in the way of documents, is satisfied.

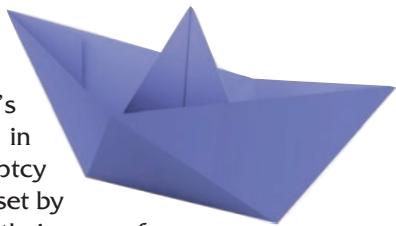
The original cases are ready for the attorney's review, so preparing the motion tracking sheets is our next step. Just as the name describes, these sheets list every motion – original, trustee's, and continued – that will be heard during the call. We simply pull up the court's website and transfer their information into our own software, creating a paper copy of every motion. Once the motion tracking sheets are sorted by time and number, they are handed over to the staff attorney for legal review. The confirmation packets and motion tracking sheets require constant review, as the court shuffles matters around and amendments are filed on PACER, so regularly revisiting the entire call is vital. In fact, so much happens between any two consecutive calls, the Case Analysts review a court call both the evening before and the morning of the date in which the matters will be heard.

This weekly process can be time consuming, but making sure our staff attorney has everything he or she needs for a successful day in court makes it all worth it!

Aaron Bowles, Case Analyst

Same As Cash?

Promotional deferred-interest credit card plans may seem like a good idea, but they can quickly backfire. With these plans, you are often given six or twelve months interest-free to pay your balance. But if you are unable to pay the entire balance at the end of the promotional period, or you are late with a payment at any time, you will most likely have interest charged retroactively. This means that you will pay interest all the way back to the beginning of the promotional period. A better plan is to save up and buy outright what you need right from the beginning.



Case Administration: Balancing Act

Since the revolution of the “working mom,” the issue of Work/Life Balance has become a standard topic of discussion when trying to define the meaning of success.

Over the last five to ten years, opinions have changed as to what is needed to achieve ultimate success and the definition of success has changed drastically. It used to be that success was defined by how much money you made. Lately more people are defining their success by whether or not there is a good Work/Life Balance.

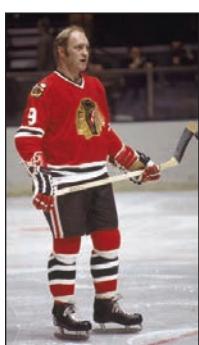
There have been many studies conducted to determine how crucial “balance” is to overall job performance/satisfaction. When your work life and personal life are out of balance, your stress level is likely to go up. This can create a number of complications in the work place, from lethargy, to depression, to moodiness, to inactivity. None of which add to a productive workflow. Experts are beginning to concede that seeking perfect balance between your personal and professional lives may be an exercise in futility, because there is no way to pre-plan for the surprises life throws you. Consider the following five tips to help you develop a strategy to bring a little more balance to your daily routine:

1. Build down time into your schedule – If you are a person who plans his or her week in advance, make it a point to schedule time with your family and friends, and activities that help you recharge.
2. Drop activities or negative people that sap your time or energy – take stock of activities that don’t enhance your career or personal life, and minimize the time you spend on them.
3. Rethink your errands – Consider whether some of your errands can be outsourced. You can also barter with your friends to swap chores that you prefer doing to more time-consuming ones.
4. Get moving – Exercising will boost your energy level and improve your ability to concentrate. Consider adding a regular exercise regime to your schedule.
5. Remember that a little relaxation goes a long way and always schedule some “down time” for yourself.

Of course, there are no concrete answers that apply to everyone. The key is to assess your personal situation and utilize the tools that work best for you.



Donna Eubanks, Case Administrator



By The Numbers: Hockey In The U.S.

 There are just over 500,000 players registered with the USA Hockey governing organization, representing all youth players in the U.S.

 The fastest speed ever clocked on a hockey puck was a world record 119 mph by the Chicago Blackhawk's Bobby Hull.

 There are 30 NHL hockey teams, drawing an average of 17,500 spectators to each game.

 The average value of an NHL team is \$282 million. Even though ticket prices rose an average of 5 percent last season, the NHL still filled its arenas to 96 percent of capacity on average each game.

Source: Plunkett Research, Ltd. and the NHL

December's Notable Events

Manager's Meeting on December 6th.

National Pearl Harbor Remembrance Day on December 7th.

Happy Birthday to **Cheryl Jones** on December 12th!

Happy Birthday to **Katrina Graves** on December 13th!

Happy 14th Anniversary to **Jay Tribou** on December 6th!

First Day of Winter on December 21st.

Festivus on December 23rd.

Christmas on December 25th (the office will be closed).

Kwanzaa is December 26th through January 1st.

Bacon Day on December 30th.

Happy Birthday to **Carlos Lagunas** on December 31st!

New Year's Eve on December 31st.



Seven Simple Strategies For Saving Money

1. Use a jar that you keep in plain sight to deposit your change at the end of the day. When it is full, take it to your bank and deposit it into a savings account. Having it visible each day will remind you to drop in your change.
2. Get rid of excess clutter and make some cash by selling things you don't use on eBay, Craigslist, or at a garage sale. Not only will you make money, but you will clean up your living spaces.
3. Take some time to examine your bills and find ways to reduce them. Shop around for cheaper insurance, telephone and cell phone service, and credit card rates.
4. Consider carpooling to reduce your monthly gas costs.
5. Make a plan for large purchases. Instead of borrowing, using loans or credit cards, set aside enough money each month for specific items – a new car, a refrigerator, a vacation – so that you will have the necessary funds to purchase them with cash.
6. If you know that you will have a large annual or semi-annual expense, like car insurance, property taxes, or holiday spending, start saving for it all year. Simply divide the expense by twelve and save that much each month. By the time the due date rolls around each year, you'll be ready.
7. Trading work with others is a great way to save money. You can barter everything from computer work to childcare to raking leaves. Anything that you can do around your house or work is something that another person might need. Talk with your friends and neighbors to see if they would be interested in trading some of their skills for yours.



20 Questions For: Lauren Tobiason

Office Title: Staff Attorney.

Do you have a nickname? No.

Where were you born? Milwaukee, WI.

What should we know about your family? We are all Green Bay Packers fans.

What's your favorite food? Thai food.

What's your favorite TV program? Downton Abbey.

What's your favorite color? Purple.

What's your favorite expression? "It ain't over 'til it's over." ~ Yogi Berra

What's your favorite smell? The ocean.

What's your favorite childhood memory? Traveling with my family.

If you could meet one person in the world, either dead or alive, who would it be? Sandra Day O' Connor.

What's most important in life? Family, friends, and achieving your goals.

Is the glass half full or half empty? Half full.

What's guaranteed to make you smile? Sunshine.

What's the first thing you do in the morning when you wake? Make myself a cup of coffee.

How would your friends describe you? They would say I'm funny and I give good advice.

What would be a perfect day for you? The day I win the lottery.

What's your most embarrassing moment? I plead the fifth.

What's your proudest moment? Graduating from law school.

Where do you see yourself in five years? Hopefully, taking my dream vacation to New Zealand.

Anything else you'd like to tell us? No.



Food Donation Basics

This is the time of year that many people donate food to food drives. To ensure that your donation can be used, remember these donation tips.

Non-perishable items are always needed. Donate items that are factory sealed and try to avoid dented or rusted cans. Most agencies will not accept home-canned or home-packaged foods, but be sure to ask – you may be surprised. Open or partially used items can usually not be accepted.

If you are planning on shopping for items to donate, call the agency first to see what they are low on. Try to contribute basic foodstuffs, including rice, pasta, canned tuna, canned soups and stews, peanut butter, canned milk, canned beans and vegetables, and hot or cold cereals. Extras like coffee, tea, spices, and condiments are nice to include as well.

If you have non-food items to donate, ask if the agency will accept those as well. Many people are in need of tooth care products, personal hygiene items, diapers, pet food, and basics such as cleaning supplies, trash bags, toilet paper, and laundry products.



Internet Tidbit

If you like to be on the cutting edge, check out the gadgets at Outgrow.me. Each is a crowdfunded project – the funding for each comes from people around the world, who pool their money to support innovative designs and products. At Outgrow.me, you'll find a marketplace for the best and most successful crowdfunded projects from websites like Kickstarter, Indiegogo, and other independent websites. Everything on the website is for sale, making one of the most unique marketplaces you'll ever visit.



Entertaining In Tight Spaces

Anyone who lives in an apartment or small home knows the difficulty of entertaining guests in a tight space. Even though it is challenging, it can be done, with you and all of your guests enjoying your time together. Although you can often extend your party to a deck or other outdoor area, weather conditions sometimes will not allow that to happen. In those cases, you'll have to find a solution inside your home.



To accomplish this, first clear up as much space as possible. Remove clutter from your living areas. Kitchen appliances should be tucked away to increase counter space. You might also want to push your furniture towards the walls to increase floor space.

Also consider if you can use the spaces in your home more efficiently. Expand your seating areas by using padded dining chairs in your living room and placing large throw pillows on the floor. Add a couple of barstools to your kitchen space for guests who like to linger in the kitchen. Add a card table to your living room to increase seating for dinner. Not everyone needs to sit at the same table to enjoy the company. You may find that your guests will enjoy eating in several small groups in the dining room, kitchen, and living room areas. You can also use a large ottoman as another serving area. Use a large, oversized tray to convert it into a firm surface.

When you are ready to serve food to your guests, go with a buffet style of service. You can also place trays of food in every corner of your rooms. That way, your guests will not be crowded into the same place, trying to access the food. With it scattered about, people will spread out, maximizing the use of your available space. Finally, keep any food you serve as simple as possible. Sauces and other messy foods can cause a problem in a tight space.

Healthy Teeth As You Age

A new report by Oral Health America reveals that more senior Americans are seeing a decline in oral health. Over half of adults in the country get only "fair" or "poor" dental care access. This stems from a lack of dental insurance coverage, fewer dentists specializing in seniors' dental care conditions, and a lack of prevention programs.



Every day over 10,000 Americans retire. Only two percent do so with dental health coverage in place. Forty-two percent of states do not provide coverage or only offer emergency coverage through adult Medicaid dental benefits. Not having access to regular dental care can lead to a number of problems.

For many older adults, medications causing dry mouth can be a challenge. A dentist can help with strategies to reduce this problem and associated oral health complications. Gum disease leads to tooth loss, and seniors are especially susceptible to this. Many people do not know that gum disease also increases your chances of developing heart disease or stroke, as the bacteria from your mouth can cause blockages in coronary arteries.

Diseases such as diabetes can aggravate gum disease. Gum disease can in turn make symptoms of diabetes worse. A dentist can help with managing both of these conditions. There is also a benefit to regular dental exams, as your dentist will check for any signs of oral cancer, which if found early, can often be successfully treated.

How can a senior find available and affordable oral health care? Visit the website toothwisdom.org. Here you will find articles about oral health, as well as resources such as local dentists, community health centers offering dental care, caregiving support, social services, and help with transportation.

Trivia Quiz Answers: Icy Iceland



- ① Reykjavik.
- ② 20 years old.
- ③ Elves.
- ④ Lazy Town.
- ⑤ Luttheranism.
- ⑥ About 13 percent.
- ⑦ 20 hours of sunlight.
- ⑧ Icelandic.
- ⑨ Iceland's legislature.
- ⑩ Fishing.

Did You Know? Pawnbrokers

December 6 is National Pawnbrokers Day.

- ➊ The word pawn comes from the Latin word "platinum" meaning cloth or clothing. It used to be that many people's only assets were their clothing, which they could sell or pawn to raise money.
- ➋ Christopher Columbus' voyage to America was funded by Queen Isabella of Spain pawning the crown jewels.
- ➌ In 1464, two Italian Franciscan monks founded the first modern version of a pawnshop. They gave out loans interest free so long as you could provide collateral and you tithed regularly to the church.



➍ The History Channel's television show *Pawn Stars* has aired almost 250 episodes and is one of the channel's highest rated reality shows.



➎ The universal symbol for pawn brokering is three gold balls suspended from a curved bar. This is often found on pawn brokers signs or hanging above the entrance to a pawn shop.

➏ Florida has more pawn shops than any other state in the United States, with over 1,300 stores open for business.

➐ In 1932, the famed Hope Diamond was pawned by heiress Evalyn Walsh McLean to help finance the search for the kidnapped child of famous aviator Charles Lindbergh.

OFFICE OF THE CHAPTER 13 TRUSTEE MARILYN O. MARSHALL

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The Marshall Chronicles is now available in full color,
both in print and on-line at www.chicago13.com

Trivia Quiz: Icy Iceland

Test your knowledge of Iceland with this fun trivia quiz. (*The answers are on page 7.*)

- ① What is the name of the capital of Iceland?
- ② Iceland has the highest legal drinking age in Europe. How old do you need to be to have a drink legally in Iceland?
- ③ Some roads in Iceland have been rerouted to avoid disturbing areas where these mythical creatures are thought to live. What are these creatures?



- ④ What popular Nick Jr. television show was created and is produced in Iceland?
- ⑤ What religion do 90 percent of Icelanders adhere to?
- ⑥ What percentage of Iceland is actually covered in ice?
- ⑦ Iceland is often referred to as "the land of the midnight sun." How much daylight does Iceland get in the summer?
- ⑧ What language is spoken in Iceland?
- ⑨ In Iceland, what is the Althing?
- ⑩ What is Iceland's main industry?

