

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

DO NOT PUBLISH

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)
)
 DANIEL MCCLENDON BERKSTEINER,)
)
 Debtor)
 _____)

Chapter 13 Case
Number 03-13203

BARNEE C. BAXTER,)
)
 CHAPTER 13 TRUSTEE)
)
 Movant)

FILED
2004 SEP -9 P 4:32

vs.)
)
 DANIEL MCCLENDON BERKSTEINER)
)
 Respondent)
 _____)

IN RE:)
)
 GLENN EDWARD CURRY and)
)
 CAROL BUSSEY CURRY,)
)
 Debtors)
 _____)

Chapter 13 Case
Number 03-13645

BARNEE C. BAXTER,)
)
 CHAPTER 13 TRUSTEE)
)
 Movant)

vs.)
)
 GLENN EDWARD CURRY,)
)
 CAROL BUSSEY CURRY)
)
 Respondents)
 _____)

IN RE:)
)
WILEY ANTHONY LINDEMUTH and)
JOYCE JAMES LINDEMUTH,)
)
Debtors)
_____)

Chapter 13 Case
Number 03-13765

BARNEE C. BAXTER,)
CHAPTER 13 TRUSTEE)
)
Movant)
)
vs.)
)
WILEY ANTHONY LINDEMUTH)
JOYCE JAMES LINDEMUTH)
)
Respondents)
_____)

IN RE:)
)
JANET DELORIS MURRAY)
)
)
Debtor.)
_____)

Chapter 13 Case
Number 03-13242

BARNEE C. BAXTER,)
CHAPTER 13 TRUSTEE)
)
Movant)
)
vs.)
)
JANET DELORIS MURRAY)
)
Respondent)

MEMORANDUM

As the issue presented is identical in each of the above referenced cases, the clerk is directed to file a copy of this memorandum in each file.

In each of these cases, a dispute arose between the

Chapter 13 Trustee and the debtors regarding the appropriate rate of interest to be paid on allowed secured claims from disbursements through the Office the Chapter 13 Trustee. The court has jurisdiction to decide this issue under 28 U.S.C. §157(b)(2)(A) and (B).

Generally, the facts in each case are identical. In each case, the debtors filed a Chapter 13 plan which did not provide an interest rate to be paid on allowed secured claims. In each case, at least one creditor holding an allowed secured claim set forth an interest rate on the face of its claim. In analyzing the debtors' plan the Chapter 13 Trustee proposes to pay the allowed secured claim at the interest rate specified on the face of the claim. The debtors object contending that the Trustee is obligated to apply an interest rate of 12% per annum in compliance with Local Bankruptcy Rule for the Southern District of Georgia 3001-2 ("LBR 3001-2") which provides

INTEREST ON CLAIMS IN CHAPTER 13 CASE

Without in any way limiting or amending any provision of the Code or Rules that govern the filing of proofs of claim, all claims filed in this Court shall be filed for the net principal balance only as of the date of the debtor's filing of his or her case.

Unless otherwise ordered by the Bankruptcy Judge, the Chapter 13 Trustee is directed to pay interest at a rate of 12% per annum on all allowed secured claims and is further directed to file objections to or notify debtor's counsel with respect to any claim which is not filed in accordance with the terms of this order.

The sanction provisions of Bankruptcy Rule 9011 apply to claims filed in violation of applicable provisions of the Bankruptcy Code and Rules.

The debtors are correct. The decision of the United States Supreme Court in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004) and the above referenced Local Bankruptcy Rule controls. LBR 3001-2 provides unequivocal guidance to the Chapter 13 Trustee. "Unless otherwise ordered by the Bankruptcy Judge, the Chapter 13 Trustee is directed to pay interest at a rate of 12% per annum on all allowed secured claims." Typically, the court "otherwise" orders by order confirming a Chapter 13 debtor's plan which plan specifies an interest rate to be paid. As stated in Till, 124 S.Ct. at 1955

To qualify for court approval under Chapter 13 of the Bankruptcy Code, an individual debtor's proposed debt adjustment plan must accommodate each allowed, secured creditor in one of three ways: (1) by obtaining the creditor's acceptance of the plan; (2) by surrendering the property securing the claim; or (3) by providing the creditor both a lien securing the claim and a

promise of future property distributions (such as deferred cash payments) whose total "value, as of the effective of the plan . . . is not less than the allowed amount of such claim." The third alternative is commonly known as the "cram down option" because it may be enforced over a claim holder's objection. . . .

In Till, the Supreme Court adopted the formula approach in establishing the appropriate interest rate on allowed secured claims so that the creditor receives disbursements whose total present value equals or exceeds that of the allowed claim in order to meet

the confirmation criteria of 11 U.S.C. §1325(a)(B) which

simply requires bankruptcy courts to ensure that the property to be distributed to a particular secured creditor over the life of the bankruptcy plan has a total 'value as of the effective date of the plan,' that equals or exceeds the value of the creditor's allowed secured claim . . .

Till, 124 S.Ct. at 1958.

This formula approach is the method by which the present value requirement for confirmation of a debtor's plan is met. It has nothing to do with claim allowance. In re Hill, 304 B.R. 800, 804 (Bankr. S.D. Ohio 2003); In re Hudson, 260 B.R. 421, 430-31 (Bankr. W.D. Mich. 2001); In re Vincent, 252 B.R. 91, 95 (Bankr. E.D. Va. 2000). Under Till, the Supreme Court placed the evidentiary burden squarely on the creditors to establish an interest rate higher than the interest rate proposed by a debtor in a Chapter 13 plan. Till, 124 S.Ct. at 1961. This evidentiary burden applies equally to the default rate of 12% provided by LBR 3001-2. Therefore, in circumstances where the debtor has proposed an interest rate in the plan, which plan has been distributed to all parties in interest, the creditors holding allowed secured claims must object to confirmation and present evidence to meet the burden of proof by a preponderance of the evidence that a higher rate is required to comply with 11 U.S.C. §1325(a)(5)(B)(ii). Additionally, where the debtor's plan is silent and the creditor believes it should receive more than the 12% default rate established by LBR 3001-2, the

creditor must also object to confirmation and meet this same burden of proof.

The Chapter 13 Trustee's reliance on In re Davis, 314 F.3d 568 (11th Cir. 2002) is misplaced. Under Davis the Chapter 13 Trustee cannot unilaterally act without bankruptcy court approval to modify a creditor's claim after a Chapter 13 plan had been confirmed. In re Davis, 314 F.3d at 570. Claim allowance under 11 U.S.C. §506 establishes the amount of the claim and the status, i.e. general unsecured, unsecured priority or secured. Once the amount and the status of the allowed claim is established, the plan confirmation process establishes the interest rate required to provide the secured creditors with "'value, as of the effective date of the plan,' [under 11 U.S.C. §1325(a)(5)(b)(ii)] that equals or exceeds the value of the creditor's allowed secured claim." Till, 124 S.Ct. at 1958.

Order is entered this date in each above referenced case in conformity with this memorandum.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 9th Day of September, 2004.