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Michael Kleinman

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Michael Kleinman, J.D. Candidate 2025

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Introduction

The United States Supreme Court's decision in *Till v. SCS Credit Corp.* established a formula approach for determining interest rates in cases filed under chapter 13 of title 11 of the United States Code (the "Bankruptcy Code").¹ The *Till* decision implemented the formula approach, requiring the national prime rate to be augmented by a risk premium to account for the debtor's heightened nonpayment risk.² *Till* is limited to chapter 13 cases, however, courts have applied the *Till* test in chapter 11 and 12 cases.

This memorandum examines the different methods utilized in bankruptcy to determine appropriate interest rates. Section I outlines the legal framework for determining interest rates in bankruptcy under the Bankruptcy Code. Section II examines the impact of the *Till* decision on interest rate strategies across chapters 11, 12, and 13.

¹ See *Till v. SCS Credit Corp.*, 541 U.S. 465, 480 (2004).

² See *id.*

Discussion

I. Interest Rate Determination and Statutory Frameworks in Bankruptcy Cases

The Bankruptcy Code does not explicitly prescribe the interest rates to be applied to debts under reorganization plans proposed in chapters 11, 12, or 13.³ Interest rates are pivotal in these contexts, especially where the plan proponent is seeking to obtain an order confirming its plan over the dissent of a class of creditors (i.e., cramdown).⁴ In a cramdown situation, the plan must provide that creditors receive payments equivalent to the present value of their allowed claims.⁵ These payments should be adjusted for an appropriate interest rate that compensates for risk and the time value of money.⁶ The determination of an appropriate interest rate is crucial in ensuring that creditors receive payments that accurately reflect the present value of their claims.⁷ Additionally, this rate compensates for the risk associated with delayed payments.⁸ This helps balance the debtor's need for a fresh start with the creditors' rights to fair repayment.⁹

Chapters 11, 12, and 13 plans must be feasible, proposed in good faith, and prioritize creditor interests.¹⁰ Specifically, chapter 12 cases must comply with Sections 1221, 1222, and 1225 of the Bankruptcy Code.¹¹ Chapter 11 plans are governed by Sections 1123 and 1129.¹² And chapter 13 requires adherence to Sections 1322, 1325, and 1328.¹³

³ See *id.* at 473.

⁴ See Bruce A. Markell, *Fair Equivalents and Market Prices: Bankruptcy Cramdown Interest Rates*, 33 EMORY BANKR. DEV. J. 91, 93 (2016).

⁵ See *id.* at 106–08.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

¹⁰ See 11 U.S.C. §§ 1129(a)(11), 1225(a)(5), 1325(a)(3).

¹¹ See 11 U.S.C. §§ 1221, 1222, 1225.

¹² See 11 U.S.C. §§ 1123, 1129.

¹³ See 11 U.S.C. §§ 1322, 1325, 1328.

Interest rates in bankruptcy cases under chapters 11, 12, and 13 are determined by court decisions specific to each chapter. For chapter 12, as demonstrated in *In re Topp*, the court confirmed a cramdown interest rate of 4%.¹⁴ With respect to chapter 11, the Fifth Circuit, in *In re Texas Grand Prairie Hotel Realty, L.L.C.*, confirmed a cramdown rate of 5%.¹⁵ For chapter 13, the *Till v. SCS Credit Corp.* decision confirmed a total interest rate of 9.5%.¹⁶ These rates demonstrate how courts apply different interest rate standards across various bankruptcy chapters.

II. Comparative Analysis of Interest Rate Determination Across Bankruptcy Chapters

A. *Till v. SCS Credit Corp.*: Setting the Standard for Interest Rate Determination

The Supreme Court's ruling in *Till v. SCS Credit Corp.* governs interest rate determination within chapter 13 bankruptcy cases.¹⁷ The Court examined four approaches to setting cramdown interest rates. The coerced loan approach suggests rates should mimic similar market loans to reflect what creditors might receive outside of bankruptcy.¹⁸ The presumptive contract rate approach uses the rate initially agreed upon in the debtor's pre-bankruptcy contracts.¹⁹ The cost of funds approach bases the rate on the creditor's cost to raise funds necessary for the loan.²⁰ The Court found these approaches inadequate due to their complexity and potential to lead to contentious, protracted litigation.²¹

¹⁴ See *Farm Credit Servs. of Am. v. Topp (In re Topp)*, 75 F.4th 959, 961 (8th Cir. 2023).

¹⁵ See *Wells Fargo Bank N.A. v. Tex. Grand. Prairie Hotel Realty, L.L.C. (In re Tex. Grand Prairie Hotel Realty, L.L.C.)*, 710 F.3d 324, 337 (5th Cir. 2013).

¹⁶ See *Till v. SCS Credit Corp.*, 541 U.S. 465, 491 (2004).

¹⁷ See *id.* at 468.

¹⁸ See *id.* at 478.

¹⁹ See *id.*

²⁰ See *id.*

²¹ See *id.*

The Court mandated the use of the formula approach for calculating interest rates on secured claims in chapter 13 plans, setting a binding precedent.²² It determined that the formula approach lacks the defects present in the other three approaches.²³ This approach allows for adding a risk premium to a selected basis rate, which can be the prime rate or another appropriate benchmark depending on the case specifics.²⁴ As a result, the total cramdown interest rate in *Till* was 9.5%, which included the national prime rate at 8% plus a 1.5% risk premium.²⁵ The Court's choice of the prime rate was driven by its widespread acceptance as a benchmark in the financial markets, offering a familiar and readily available starting point for adjustments.²⁶ This adjustment is meant to reflect the heightened risk associated with extending credit to bankruptcy debtors.²⁷

B. Chapter 11 Interest Rate Determination

In re Texas Grand Prairie Hotel Realty, L.L.C. illustrates the judiciary's application of the formula approach for determining interest rates in chapter 11 cases.²⁸ In this case, the Fifth Circuit confirmed a cramdown plan that proposed paying off the secured claim over ten years.²⁹ The interest rate was calculated using the prime rate at the time of the confirmation hearing, which was 3.25%, plus an additional 1.75% risk adjustment, totaling a 5% interest rate.³⁰ Both parties agreed to use the prime-plus formula, which meets chapter 11's legal requirements for

²² *See id.* at 479.

²³ *See id.*

²⁴ *See id.* (holding that "the approach then requires a bankruptcy court to adjust the prime rate accordingly.").

²⁵ *See id.* at 491.

²⁶ *See id.* at 479.

²⁷ *See id.* at 487–88.

²⁸ *See Wells Fargo Bank N.A. v. Tex. Grand. Prairie Hotel Realty, L.L.C. (In re Tex. Grand. Prairie Hotel Realty, L.L.C.),* 710 F.3d 324, 335 (5th Cir. 2013).

²⁹ *See id.*

³⁰ *See id.*

providing secured creditors with the present value of their claims.³¹ This approach begins with the national prime rate and incorporates a risk adjustment for factors such as the estate's circumstances, the nature of the security, and the plan's duration and feasibility.³²

Similarly, in *In re Pamplico Highway Development, LLC*, the prime-plus formula approach was upheld in determining the appropriate cramdown rate of interest for dissenting impaired creditors.³³ The South Carolina Bankruptcy Court confirmed a cramdown plan over objections.³⁴ It applied an interest rate of 5.5%, which was calculated starting from the national prime rate of 3.25% plus a risk premium of 2.25%.³⁵ This adjustment was deemed necessary to compensate for the circumstances of the bankruptcy estate, the nature of the creditor's security, and the duration and feasibility of the plan.³⁶ The *In re Pamplico* and *In re Texas Grand Prairie Hotel Realty, L.L.C.* decisions illustrate the consistent judicial application of the prime-plus formula in chapter 11 cases.

C. Interest Rates for Family Farmers and Fishermen

In chapter 12 cases, the judicial approach to determining interest rates under cramdown scenarios reflects the distinct challenges these debtors face.³⁷ For instance, the court in *In re Topp*, opted for the twenty-year treasury bond rate as a starting point due to its stability, crucial for long-term agricultural financing.³⁸ The choice of the treasury rate over the national prime rate was driven by its lower volatility and longer duration.³⁹ Such characteristics closely match the

³¹ *See id.* at 332.

³² *See id.*

³³ *See In re Pamplico Highway Dev., LLC*, 468 B.R. 783, 794 (Bankr. D.S.C. 2012).

³⁴ *See id.*

³⁵ *See id.* at 793.

³⁶ *See id.*

³⁷ *See Farm Credit Servs. of Am. v. Topp (In re Topp)*, 75 F.4th 959, 963 (8th Cir. 2023).

³⁸ *See id.*

³⁹ *See id.*

economic realities and financing cycles typical in agriculture.⁴⁰ Agricultural operations often deal with cyclic and seasonal income fluctuations that require more predictable and stable long-term financial planning.⁴¹ The treasury rate, typically lower and more stable than the prime rate, provides predictability and stability, reducing financial risk for debtors and creditors in agriculture.⁴²

At the time, the treasury rate was 1.87%, to which the court added a 2% risk adjustment, culminating in a final interest rate of 4%.⁴³ The chapter 12 case of *In re Woods* also illustrates the formula approach but starts with the national prime rate.⁴⁴ The prime rate at the time was 3.25%, and the court agreed with a 2% risk premium adjustment, resulting in a total interest rate of 5.25%.⁴⁵ These examples demonstrate the adaptability of chapter 12's formula approach to the unique risk profiles of debtor operations.

III. Conclusion

The Supreme Court's *Till v. SCS Credit Corp.* decision established a formula approach for setting interest rates in chapter 13 cases, influencing decisions in chapters 11 and 12 cases as well. Courts typically set chapter 13 rates at around 9.5%. For chapter 11, the common rate is about 5%. Chapter 12 rates vary, with some decisions applying the treasury bond rate for a 4% interest, while others use the national prime rate for rates around 5.25%. Courts retain discretion to choose the most suitable interest rate method, often selecting the national prime rate for its broad applicability. They may also opt for the treasury rate or other benchmarks to suit specific

⁴⁰ *See id.*

⁴¹ *See id.* at 962.

⁴² *See id.*

⁴³ *See id.* at 963.

⁴⁴ *See In re Woods*, 465 B.R. 196, 212 (B.A.P. 10th Cir. 2012).

⁴⁵ *See id.* at 211

case needs. These rates are subject to change based on prevailing economic conditions, judicial preferences, and other relevant factors at the time of the proceedings.