UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

In Re:	)	Case No. 92-32048
	)	Chapter 13
WALTER L. PECK, and	)	
JACQUELINE PECK,	)	
	)	
Debtors.	)	
	)	JUDGEMENT ENTERED ON MAY 03 1993

MEMORANDUM OF DECISION ON DEBTORS' OBJECTION TO CLAIM

This matter is before the court on the debtors' objection to the claim of Avco Financial Services. Avco filed a proof of claim for $11,720.81 secured by the debtors' automobiles and a second mortgage on their residence. Avco asserts that its claim is oversecured and therefore it is entitled to payment of interest on its secured claim at the contract rate of interest stated in its loan documents. The debtors agree that Avco is oversecured, but they assert that Avco's claim should accrue interest at the Trustee's default rate of interest paid to undersecured creditors. The court has reviewed the record and the appropriate case law and concludes that the debtors' objection to Avco's claim should be sustained in part and overruled in part -- that is, that Avco should be paid interest on its claim at its contract rate for the period between the filing date and confirmation; and at the Trustee's default rate for the period after confirmation of the debtor's Chapter 13 Plan.

FINDINGS OF FACT

1. Debtors, Walter and Jacqueline Peck, filed a Chapter 13 petition in this court on November 30, 1992.

2. On July 26, 1990 the debtors borrowed $14,999.64 from Avco Financial Services evidenced by a promissory note. The loan was secured by the debtors' two automobiles and a second mortgage on the debtors' residence. The debtors used the proceeds of the Avco loan to pay off various of their creditors.

3. The promissory note bore an interest rate of 18.93% and specified that the debt was to be repaid in sixty monthly installments of $388.51.

4. Avco filed a proof of claim in the debtors' bankruptcy proceeding evidencing a secured indebtedness of $11,720.81.

5. The combined value of the automobiles listed in the petition is $15,000. The value of the residence listed in the petition is approximately $115,000.00 subject to a $96,852.00 first mortgage. The value of the collateral is not in dispute.

6. At the first meeting of the debtors' creditors Avco asserted that its claim was oversecured and that its claim should be paid at the contract rate of interest specified in its note.

7. On February 16, 1993 the debtors filed the Objection to the Claim of Avco Financial Services to the extent that it requests interest to be paid at the contract rate of interest.

STATEMENT OF THE ISSUE

The court is called upon to address the interplay of § 506(b) and § 1325(a)(5)(B)(ii) of the Bankruptcy Code. Both sections deal with the accrual of interest on secured claims post-petition. The dispute in this case involves the interest rate to be applied to Avco's oversecured claim. As an oversecured creditor, Avco asserts

that its claim should be paid out at the contract rate of interest specified in the promissory note. The debtors contend that the secured claim should be paid at the Chapter 13 Trustee's default rate of interest used for undersecured creditors' claims. There are two issues to be addressed: 1) when do §§ 506(b) and 1325(a)(5)(B)(ii) apply; and, 2) what is the appropriate rate of interest under each section.

The court concludes that § 506(b) authorizes interest to accrue on oversecured claims for the time period between the filing date of the petition and confirmation of the debtor's plan. Landmark Fin. Servs. v. Hall (In re Morgan), 918 F.2d 1150, 1155 (4th Cir. 1990); 3 Collier on Bankruptcy, ¶ 506.05, at 506-44 (15th ed. 1993). Interest shall accrue during that period at the rate specified in the original contract. The accumulation of interest, fees and costs as provided for in § 506(b) are then added to the secured claim to comprise the creditor's entire allowed secured claim to be paid pursuant to the debtor's plan of reorganization.

Upon confirmation, § 1325(a)(5)(B)(ii) requires that the secured creditors receive property from the debtor equal to the present value of their allowed claims as of the effective date of the plan. 11 U.S.C. § 1325(a)(5)(B)(ii). The amount of their allowed secured claim is determined in accordance with the provisions of section § 506(a) and (b). The Chapter 13 present value provision provides compensation for the creditor's delay in receiving the value of its secured claim as of the date of confirmation through the use of a discount factor. This can be

accomplished by selecting an interest rate that would compensate the creditor for the time value of money or the cost of funds during the payout of its secured claim. The interest rate to be applied in this context then, is not the contract rate, but the prevailing market rate for the cost of obtaining funds equal to the secured claim in the open market. 5 Collier on Bankruptcy, ¶ 1325.06[4][b][iii][B], at 1325-46. Within the Chapter 13 context, the Chapter 13 Trustee must examine market conditions and assess what best approximates the current market rate for the cost of funds over the three to five year period of a Chapter 13 plan. The Trustee's determination is a rebuttable presumption of the market rate. In this instance, Avco's secured claim to be paid in the debtors' plan should be $11,720.81 plus any accrued post-petition interest calculated at the contract rate up to the date of confirmation. Thereafter, pursuant to the debtor's confirmed plan, Avco will receive the present value of its secured claim over the course of the debtors' plan, computed at the Trustee's default rate of interest, which presently is set at ten percent (10%).[1]

DISCUSSION

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[1] On March 22, 1993 the United States Supreme Court heard oral arguments in Rake v. Wade, a bankruptcy case out of the Tenth Circuit concerning payment of interest to oversecured creditors on arrearages incident to curing a default on the mortgage of the debtor's principal residence in a Chapter 13. The rate of interest to be applied was not directly before the Court and was not briefed, however during oral arguments Justice White and Justice Rehnquist inquired about the applicable interest rate under §§ 506(b) and 1325(a)(5)(B)(ii) and the possibility of deciding the issue. As a result, the forthcoming opinion from the Supreme Court may have direct impact on this court's ruling today. 61 U.S.L.W. 3661-63.

A. Section 506(b) Interest.

Section 502(b)(2) of the Code prohibits the accumulation of post-petition interest on allowed claims. An exception to the prohibition for oversecured claims is found in § 506(b).[2] Section 506(b) allows an oversecured claim to include post-petition interest that accrues from the filing date through confirmation. Landmark, 918 F.2d 1150, 1155; Warehouse Home Furnishings Distrib., Inc. v. Gladdin (In re Gladdin), 107 B.R. 803, 806 (Bankr. M.D. Ga. 1989). A few courts have improperly extended the application of § 506(b) interest beyond confirmation when § 1325(a)(5)(B)(ii) should have been applied. See, In re Marx, 11 B.R. 819 (Bankr. S.D. Ohio 1981); 3 Collier on Bankruptcy, ¶ 506.05, at 506-45; c.f. In re Gladdin, 107 B.R. 803, 806 (recognizing the proper application of the two Code sections). Section 506(b) merely establishes what can be included in the allowed secured claim, i.e. post-*petition* interest. Post-*confirmation* interest on allowed secured claims is governed by § 1325(a)(5)(B)(ii) or its Chapter 11 and Chapter 12 counterparts: §§ 1129(b)(2)(A)(i)(II) and 1225(a)(5)(B)(ii).

Having determined when § 506(b) interest applies, the next issue is at what rate interest should be calculated. The language

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[2] 11 U.S. § 506(b) provides:

> (b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs or charges provided for under the agreement under which such claim arose.

of the section does not indicate what the applicable interest rate should be. Most jurisdictions adopt the contract rate of interest. This court concludes that interest pursuant to § 506(b) should be calculated at the contract rate stated in the loan documents; or, if there is none, at the legal rate for non-consensual secured claims.[3]

The Supreme Court's 1989 decision in In re Ron Pair Enterprises, Inc., added dimension to the debate concerning the proper rate of interest pursuant to § 506(b). In re Ron Pair Enterprises, Inc., 489 U.S. 235 (1989). Ron Pair decided the issue of whether oversecured nonconsensual liens were entitled to post-petition interest pursuant to § 506(b), but did not address the issue of what interest rate should be applied. The Court ruled that the recovery of post-petition interest under § 506(b) was not limited to holders of consensual liens. Id. at 242. The Court's analysis of § 506(b) revealed that the phrase "interest on such claim" was not modified by the clause "provided for in the agreement" because "'interest on such claim' is set aside by commas, and separate from the reference to fees, costs, and charges by the conjunctive words 'and any.'" Id. at 241-42.

Applying the Supreme Court's same grammatical analysis to the issue of *what* interest rate should be utilized, a reasonable argument is that the applicable interest rate should also not be modified by the clause "provided for in the agreement." That

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[3] The legal rate shall be calculated in accordance with Title 28 U.S.C. § 1961 or appropriate state law when applicable.

argument has ultimately been rejected. In In re Laymon, 117 B.R. 856 (Bankr. W.D. Tex. 1990) the oversecured creditor sought interest on its claim at the 18% contract default rate specified in its promissory note pursuant to § 506(b). The bankruptcy court found that Ron Pair divorced the entire issue of interest from "either the existence or the content of any underlying agreement." Id. at 859. The bankruptcy court reasoned that the purpose of § 506(b) is to "compensate the oversecured creditor for the delay caused by the bankruptcy case itself." Id. at 863. Coupling that premise with the "principle of equitable, ratable distribution of assets among creditors" supported the use of the federal rate, as opposed to the contract rate, in computing § 506(b) interest. Id. The District Court affirmed the bankruptcy court's ruling by unpublished opinion. On appeal, the Fifth Circuit reversed the District Court's ruling, and consequently, the bankruptcy court's ruling. Bradford v. Crozier (In re Laymon), 958 F.2d 72 (5th Cir. 1992), reh'g denied, 964 F.2d 1145 (5th Cir. 1992), cert. denied, 61 U.S.L.W. 3284. The Fifth Circuit held that because Ron Pair did not address the issue of what interest rate is applied under § 506(b), it was not controlling on that issue. 958 F.2d at 74. Instead the Court looked to pre-Code practice to reach its conclusion that § 506(b) interest should, unless the equities dictate otherwise, be calculated at the contract rate of interest. Id. at 75.

Collier has also commented on the impact of Ron Pair in determining the proper interest rate under § 506(b) in the following passage:

> Indeed, the Supreme Court's holding in Ron Pair that the phrase "provided for under the agreement under which such claims arose" does not qualify "interest on such claims," together with the Court's failure in that decision to address the rate at which interest should accrue under section 506(b), may result in additional uncertainty in the future. Nonetheless, postpetition interest should be computed at the rate provided in the agreement or law under which the claim arose, the so-called "contract rate" of interest. . . Section 506(b) does not have the type of express authorization, standards and protections contained in Bankruptcy Code provisions intended to permit modification of the rate at which interest accrues on secured claims. [footnote: 11 U.S.C. §§ 1129(b)(2)-(A)(i)(II), 1225(a)(5)(B)(ii) and 1325(a)(5)(B)(ii).]

Collier, ¶ 506.05, at 506-45, 46. Additionally, most courts considering the issue prior to Ron Pair utilized the contract rate of interest. Id.

The practice in this court has generally been to allow interest to accrue pursuant to § 506(b) at the contract rate of interest. In Independence Nat'l Bank v. Dye Master Realty, Inc. (In re Dye Master Realty, Inc.), 15 B.R. 932 (Bankr. W.D.N.C. 1981), the court was called upon to determine the priority status of a creditor and the extent of the oversecured claim with respect to § 506(b) of the Code. In that case the court looked to the contract to determine the applicable rate of interest. Id. at 935. The contract specified that after default interest would accrue at the highest rate permitted under North Carolina law. The court then found that the highest rate allowed by law at the time the loan was made would be the appropriate interest rate. Id.

The majority of cases which hold that interest should be calculated at the contract rate rely on the "provided for under the agreement" language of § 506(b). See generally, In re Laymon, 117 B.R. 856, 859 (citing cases which directly or indirectly rely on the "provided for under the agreement" language). The grammatical analysis of § 506(b) in Ron Pair now leaves that reasoning subject to question. Nevertheless, there are other reasons to adopt the contract rate of interest as the applicable rate: the function of § 506(b) is to determine the entire amount of the secured claim to be paid out in the debtor's bankruptcy plan. Although the filing date fixes the amount of most claims as of that date, oversecured creditors receive special consideration under § 506(b) -- their claims continue to increase until confirmation. The bankruptcy court in In re Laymon made a well-reasoned argument that the accrual of interest on the secured creditor's claim should be limited to the legal rate of interest by balancing the basic bankruptcy principle of equality of distribution with the oversecured creditor's compensation for delay. 117 B.R. 856, 860. However, as noted earlier, that argument was rejected by the Fifth Circuit. This court is in agreement with the Fifth Circuit on the ultimate issue -- interest should accrue at the contract rate from the filing date through confirmation.

The time to modify the agreement between the debtor and the creditor with respect to interest is at confirmation, not at the filing of the petition. The bankruptcy court in Maimone v. Columbia Savs. Bank (In re Maimone), 41 B.R. 974 (Bankr. D. N.J.

1984) rejected the grammatical analysis of § 506(b), and concluded that the appropriate time to consider modification of the oversecured creditor's rights regarding interest was at confirmation of the plan. The issue before the court was whether post-petition interest on a senior secured claim should be subordinated to the pre-petition claim of a junior secured creditor. The senior lender was oversecured and therefore entitled to interest, fees and costs pursuant § 506(b). The collateral was sold by the Trustee and all liens attached to the proceeds. There were sufficient proceeds to pay the senior lien in full as it existed on the petition date; however the senior lienholder's post-petition interest consumed the balance of the proceeds. The junior lienholder argued that the accrual of § 506(b) interest should be subordinated to the junior lienholder's secured claim. Id. at 978. The court ultimately rejected the junior lienholder's argument that the post-petition interest should be subordinated to its secured claim. Id. at 982-83. In reaching its conclusion the court first addressed the issue of the appropriate interest rate under § 506(b). The court noted that most courts have concluded that the contract rate of interest is the proper rate. Id. It then rejected the grammatical approach adopted by some courts stressing that "the placement of a comma is simply too unreliable a source from which to deduce Congressional intent as to the proper rate of interest to be awarded on oversecured claims." Id. at 979. The court recognized, as does this court, that the basic question is whether the contract rate may or should be modified upon the filing

of the petition or upon confirmation. Id. "Such a change in the creditors' rights is more justifiable upon the successful confirmation of a plan than upon the mere filing of a petition." Id. Although this court recognizes that the filing of the petition is a significant event, which affects almost all creditors rights, the Code has excepted oversecured creditors for the limited purposes under § 506(b) and the court concludes that allowing pre-confirmation interest to accrue at the contract rate best fulfills that exception.

The Maimone court, like the Fifth Circuit in In re Laymon, qualified its holding to account for "equitable considerations" that might result in the application of a different interest rate. In re Maimone, 41 B.R. 974, 980; In re Laymon, 958 F.2d 72, 75; see also, In re Courtland Estates Corp., 144 Bankr. 5, 9 (Bankr. D. Mass. 1992). This court, too, elects to define its holding to account for equitable justifications which would limit or enlarge the rate of interest to be applied pursuant to § 506(b).

In summary, the majority of courts addressing the issue of the proper interest rate under § 506(b) conclude that interest should accrue at the contract rate. Notwithstanding the Supreme Court's decision in Ron Pair, there are other justifications for finding that the contract rate of interest should apply during the post-petition period prior to confirmation. Thus, absent contrary equitable considerations, this court concludes that interest

pursuant to § 506(b) should accrue at the contract rate of interest.[4] Applying this holding to the present case the court concludes that Avco's allowed secured claim should include post-petition interest that accrues until confirmation at the contract rate of 18.93%.

B. Post-Confirmation Interest § 1325(a)(5)(B)(ii).

Interest on secured claims post-confirmation in a Chapter 13 case is governed by § 1325(a)(5)(B)(ii). This section is essentially the "cram-down" provision of Chapter 13; the counterparts in Chapters 11 and 12 are §§ 1129(b)(2)(A)(i)(II) and 1225(a)(5)(B)(ii). This component of Chapter 13 confirmation requires the debtor's plan to provide all secured creditors with value over the course of the plan which is equal to the present value of their allowed secured claims.[5] To calculate the present value of future payment(s) the court must determine the appropriate discount factor that will fairly compensate the secured creditor

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[4] Although not presently before the court, there are often instances involving non-consensual liens where the creditor is oversecured and, according to Ron Pair, entitled to interest post-petition. The appropriate rate of interest in this context is the legal rate as provided in 28 U.S.C. § 1961 or appropriate state law when applicable.

[5] 11 U.S.C. § 1325(a)(5)(B)(ii):

> (a) Except as provided in subsection (b), the court shall confirm a plan if --
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> . . .
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> (5) with respect to each allowed secured claim provided for by the plan --
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> . . .
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> (B)(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim.

for the delay in receiving the value of the secured claim upon confirmation. Because the creditor is deprived of that value at confirmation, an appropriate measure of compensation is the creditor's cost of obtaining funds in the open market equal to the value of the secured claim for the term of the debtor's proposed payout. The appropriate interest rate is therefore, not the contract rate provided for in the original agreement between the parties, but rather, a market rate for the cost of obtaining funds that reflects the value of the secured claim and the duration of the proposed payout.

Collier best summarizes this court's position with respect to the present value determination under § 1325(a)(5)(B)(ii):

> The purpose of the present value requirement is to place the holder of an allowed secured claim in the same position economically as if the debtor exercised the option of surrendering the collateral. Through the payment of interest, the creditor is compensated for the delay in receiving the amount of the allowed secured claim, which would be received in full immediately upon confirmation if the collateral were liquidated... [T]he appropriate discount rate is one which approximates the creditor's cost of funds in its business borrowings.
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> Thus, contrary to the holdings of a number of courts, it is rarely appropriate to select the rate charged to the debtor in the original transaction as the present value discount rate.
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> . . .

5 Collier, ¶ 1325.06[4][b][iii][B], at 1325-47.

While this approach seems simple enough, there is a great deal of disparity among the courts on the appropriate rate of interest to be charged. Most courts agree that a "market rate" is the appropriate rate for the discount factor. However, there is no agreement on how to determine the market rate. See, In re Oaks

Partners, Ltd., 135 B.R. 440, 444 (Bankr. N.D. Ga. 1991). Fueling the disparity are passages from Collier on Bankruptcy construing the § 1325(a)(5)(B)(ii) counterparts in the Chapter 11 and Chapter 12 contexts which seem to suggest a different approach to calculating the appropriate discount factor. See, 5 Collier, ¶ 1225.03[4][c], at 1225-22, 23 ("The present value requirement of section 1225(a)(5)(B)(ii) is identical to the present value requirement of sections 1129(a)(9), 1129(b)(2)(A)(i)(II), and 1325(a)(5)(B)(ii)"). In both the Chapter 11 and Chapter 12 contexts Collier notes that the discount factor should be determined on the basis of a forced loan with reference to a term equal to the payout period, the quality of the security and the risk of subsequent default. 5 Collier, ¶ 1225.03[4][c], at 1225-23, 24; ¶ 1129.03[4][f][i], at 1129-85. The focus under this approach is an individual market analysis of each secured claim versus an overall market analysis of the cost of funds for all claimants. See, e.g., In re Camino Real Landscape Maintenance Contractors, Inc., 818 F.2d 1503, 1506 (9th Cir. 1987). In the Chapter 13 context, Collier specifically rejects the new loan or forced loan theory. 5 Collier, ¶ 1325.06[4][b][iii][B], at 1325-46. As a result, there seem to be two possible approaches that have been adopted by the courts: first, is a forced loan theory which, in turn, would give great deference to the contract rate of interest as evidence of similar loans in the region; and second, a cost of funds or time value of money approach which would support a more standardized discount factor for all secured claims. This court

considers the cost of funds or time value of money approach as the appropriate method to calculate the discount factor in the Chapter 13 context.

The Fourth Circuit recently stated its position concerning the appropriate calculation of a discount factor in a Chapter 11 cram-down context in Travelers Ins. Co. v. Bryson Properties, XVIII (In re Bryson Properties, XVIII), 961 F.2d 496 (4th Cir. 1992), cert. denied, 61 U.S.L.W. 3260. The court looked to Collier for the often quoted passage that encourages market rates for similar loans with similar terms and similar security. Id. at 500. The Court ultimately rejected the contract rate as the appropriate discount factor and adopted the evidence brought forth by the debtor to find that a lower discount rate more accurately represented the market rate for similar loans. Id. at 501. Bryson Properties was essentially a single asset case involving one principle secured creditor; there was no reason to consider a discount factor that would apply to market conditions generally. The Fourth Circuit has not addressed the applicable discount rate in the Chapter 13 context other than to note that "the present value test of § 1325 is designed to factor in the time value of the deferred payments in order to assure full satisfaction of secured claims." Landmark Fin'l Servs., 918 F.2d 1150, 1154. The only Circuit Court case to squarely address the proper interest rate pursuant to § 1325(a)(5)(B)(ii) is Memphis Bank & Trust Co. v. Whitman, 692 F.2d 427 (6th Cir. 1982). There the Court recognized that the purpose of the section was to prevent the dilution of the value of the

claim through the delay in payment. Nevertheless, the Court adopted a coerced loan theory and applied the "market rate of interest used for similar loans in the region." Id. at 431.

A recent bankruptcy court opinion, In re Jordan, 103 B.R. 185 (Bankr. D. N.J. 1991), analyzed the status of the "present value" requirement within the Chapter 11, 12 and 13 contexts:

> [C]ircuit courts have opted for a prevailing market rate standard under a "coerced loan" theory--the current rate for similar types of loans in the region, as opposed to a "time value of money" theory... Typically, applying the "coerced loan theory", the bankruptcy court is required to review, case by case, the nature of the collateral, the risk of default, and the market interest rates for similar loans, which might include lender costs and profits.

103 B.R. at 189. Yet, other courts have rejected the coerced loan theory and have adopted a formula approach whereby the court begins with a standard riskless investment rate, such as the current treasury bill rate for the proposed payment term, and adds to that a risk factor which takes into account claim by claim, the unique risk on that particular claim. In re Fowler, 903 F.2d 694 (9th Cir. 1990); United States v. Doud, 869 F.2d 1144 (8th Cir. 1989). The approach adopted by the court today is essentially a formula approach. However, the formula that the Chapter 13 Trustee should use is not dependant on the type or the terms of each secured claim and does not include an independent risk analysis. Instead, the discount factor merely addresses the cost of obtaining funds in the open market for the proposed payment term.

The risk factor for the individual creditor can be more easily and more appropriately addressed in other bankruptcy provisions

such as, § 361 for adequate protection. The nature of the collateral and the prior dealings between the parties are elements to be considered in an adequate protection determination. Additionally, the feasibility test and the creditor's right to seek relief from the automatic stay encompass, to the extent possible, the risk of non-payment. 5 Collier, ¶ 1325.06[4][b][iii][B] at 1325-47.

The rationale for using the cost of funds approach is that it best approximates the time value of money for Chapter 13 purposes. It compensates "the creditor at a rate equal to the creditor's cost of borrowing to replace funds that would otherwise be available upon liquidation of its collateral." In re Jordan, 130 B.R. 185, 190; c.f., Dominion Bank v. Cassell (In re Cassell), 119 B.R. 89 (W.D. Va. 1990) (Collier and "cost of funds" analysis rejected and adopting the current market rate for similar loans in the region via a rebuttable formula); In re Ivey, 131 B.R. 43 (Bankr. M.D. N.C. 1991) (adopting similar-types-of-loans-in-the-area as the proper method).

The remaining task is to determine an interest rate that reflects the creditor's cost of borrowing. The practice in the Western District has been for the Chapter 13 Trustees to select an appropriate discount factor. The rate chosen has never been tied directly to one particular market indicator. Rather, based on several market indicators, the Trustees determine a rate that they believe best represents the cost of funds for the three to five year period of Chapter 13 plans. Several courts elect to include

an allocation for risk of default in the discount factor. This court declines to include such a risk factor in its analysis. As mentioned earlier, the risks associated with non-payment or subsequent default are encompassed in other Code sections, such as, relief from the automatic stay and adequate protection. Moreover, such a risk analysis necessarily involves speculation into each bankruptcy case that would be difficult to quantify or substantiate. The court is confident that the current procedure employed by the Trustees results in a fair and reasonable estimate of the proper discount factor. Notwithstanding that, the discount rate selected by the Trustees serves only as a rebuttable presumption of the current market rate for the costs of funds. In any case, the debtor or an objecting secured creditor may present evidence to challenge the Trustee's determination and the court will make its determination of the appropriate rate from the evidence offered.

CONCLUSION

The dispute in this case involves the payment of post-petition interest on the oversecured claim of Avco Financial Services. This is an issue that Chapter 13 Trustees and debtors in possession face on a regular basis and this Order shall serve as guidance in future cases before this court. The principle Code sections addressed in this Order are §§ 506(b) and 1325(a)(5)(B)(ii). Both sections address post-petition interest on secured claims and the issues before the court were: 1) when the two Code sections applied; and, 2) at what rate interest should accrue under each section.

The court concludes that interest on oversecured claims may accrue pursuant to § 506(b) from the filing date of the petition through confirmation. Most courts hold, as does this court, that interest shall accrue at the contract rate provided the entire claim does not exceed the value of the collateral. In unique circumstances equitable considerations may exist that will alter the rate at which interest shall accrue. The purpose of § 506(b) is to help establish the amount of the secured claim to be paid out pursuant to the debtor's plan. Once the claim is established, interest post-confirmation is paid pursuant to § 1325(a)(5)(B)(ii). Section 1325(a)(5)(B)(ii) does not provide for post-confirmation interest per se, instead, that provision requires the Chapter 13 debtor to provide secured creditors with value over the proposed payout equal to the present value of their secured claim at confirmation. This is accomplished by paying interest on the secured claim which fairly compensates the creditor for its delay in receiving the value of the secured claim at confirmation. The court concludes that the best measure of the cost of that delay is the creditor's cost of borrowing funds in the open market equal to the value of the secured claim for the proposed payout. The cost of funds is calculated by the Chapter 13 Trustees, taking into consideration various market indicators. The rate established by the Trustee is a rebuttable presumption of the market rate for the cost of obtaining funds and is subject to challenge by interested parties, and determination by the court.

Application of this Order to the case at hand leads to the following conclusions:

1) The debtors' objection to the claim of Avco Financial Services is hereby **SUSTAINED IN PART** and **OVERRULED IN PART**;

2) Avco Financial Services claim should be allowed as filed and may include interest at the contract rate of 18.93% that accrues from the filing date to confirmation;

3) Post-confirmation interest will be paid on Avco Financial Services' secured claim at the Trustee's default rate of interest of 10%; and

4) A separate final judgment shall be entered in accordance with this Order.

It is so **ORDERED**.

This the 30th day of April, 1993.

George R. Hodges
United States Bankruptcy Judge