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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
AKRON

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:) ADMINISTRATIVE ORDER NO. 18-05
)
ADMINISTRATION OF CHAPTER 13)
CASES IN THE AKRON BANKRUPTCY) JUDGE ALAN M. KOSCHIK
COURT)

**ADMINISTRATIVE ORDER CONCERNING CONFIRMATION
PROCEDURES FOR PROPOSED CHAPTER 13 PLANS (AKRON COURT ONLY)
AND INTEREST RATES ON SECURED CLAIMS**

This Administrative Order is effective for all bankruptcy cases filed under Chapter 13, or converted to Chapter 13, on or after December 1, 2017, in the United States Bankruptcy Court, Northern District of Ohio, Akron location (the “Akron Bankruptcy Court”). This Administrative Order is intended to address and clarify both substantive and procedural issues involving application of the presumptive interest rate for secured claims (*i.e.*, the so-called “*Till* rate”), the timing for setting the rate, ensuring that the order confirming the Chapter 13 plan properly sets the correct interest rate, and the procedures whereby debtors proposing an alternative rate have an opportunity for a hearing on their proposed plan.

This Administrative Order has proven necessary because the adoption of the new rules and forms applicable to cases filed in the Akron Bankruptcy Court has disrupted the Court’s previous Chapter 13 plan confirmation practice. The new rules and forms include the new national Chapter 13 plan form, mandated by Bankruptcy Rule 3015(c), as amended and made effective on and after December 1, 2017, other amended Bankruptcy Rules also made effective

on and after December 1, 2017, and this Court's Administrative Order No. 17-2, which establishes a presumptive interest rate for secured claims in Chapter 13 plans. The new rules and forms have resulted in a significant measure of confusion, and raise a variety of substantive legal issues, that have delayed plan confirmation in certain cases. With this Administrative Order, the Court seeks to clarify its interpretation and implementation of the new rules and related procedures in order to streamline the plan confirmation process and ensure all parties are equally aware of the Court's position. This Administrative Order does not limit in any way any party's right to litigate these issues or procedures to the extent they believe any aspect of this Administrative Order is inconsistent with applicable law as it applies to their specific case.

A. **When the Court's Presumptive Interest Rate for Secured Claims Under *In re Till* Becomes Fixed in a Chapter 13 Case.**

Administrative Order No. 17-2 provides that the presumptive interest rate for all secured claims in Chapter 13 plans (other than claims "secured only by a security interest in real property that is the debtor's principal residence," *see* 11 U.S.C. § 1322(b)(2)) shall be "the U.S. prime rate shown in the Wall Street Journal for Money Rates *at the time of confirmation*," plus a risk factor of 2 percent. By operation of this Administrative Order, the Akron Bankruptcy Court will, in any specific case, fix the Chapter 13 presumptive rate under Administrative Order No. 17-2 and *Till v. SCS Credit Corporation*, 541 U.S. 465 (2004), as of the date the Chapter 13 Trustee recommends plan confirmation. Any delays in entry of a confirmation order after that date will not affect the applicable presumptive rate, provided that no further amendments to the plan are proposed other than correcting interest rates for secured claims so as to conform with the presumptive rate.

B. Scope of Application of *Till* Rates to Various Secured Claims In the Mandatory National Plan Form.

The Akron Bankruptcy Court will apply the *Till* rate doctrine and the presumptive interest rate provided by Administrative Order 17-2 to all secured claims in Chapter 13 cases other than claims secured only by the debtor's principal residence. *See* 11 U.S.C. § 1322(b)(2). The presumptive rate will not be limited to claims secured by personal property, as stated in Administrative Order No. 17-2. It will also extend to claims secured by real property, with the exception of claims secured only by the debtor's principal residence.

C. Interest Rates Are Plan Confirmation Issues, Not Claim Allowance Issues; Therefore the Confirmed Plan Sets the Interest Rate, Not the Proof of Claim or an Order Allowing a Claim.

Contrary to the law applicable to Chapter 13 cases filed or converted in the Akron Bankruptcy Court prior to December 1, 2017, and as set forth in orders confirming Chapter 13 plans in those cases, in cases governed by the new rules, allowed secured claims will be paid as provided by Section 3.1, 3.2, and 3.3 of the confirmed plan, while the claim is generally allowed pursuant to the proof of claim filed by the creditor. *See* Administrative Order 18-02, Presumptive Form of Order Confirming Chapter 13 Plans (Akron Court Only), Paragraph 4.. However, as explained by the Court's recent ruling in *In re Khalfani*, Case No. 18-50112, Docket No. 31, entered July 20, 2018, allowance of any secured claim identified in Section 3.2 of a debtors Chapter 13 plan and properly served on the secured creditor pursuant to Rules 3012(b) and 7004 of the Federal Rules of Bankruptcy Procedure will be deemed allowed as set forth in the confirmed plan. Fed. R. Bankr. P. 3015(g)(1). Interest rates established for secured claims in a confirmed plan govern the treatment of those claims in Chapter 13 notwithstanding any contrary interest rates asserted in a creditor's proof of claim. *In re Khalfani, supra*. Unless

the Court orders otherwise, the Chapter 13 Trustee is authorized to pay interest on secured claims on the terms provided for in Sections 3.1, 3.2, or 3.3 of the debtor's confirmed plan.

The Court expects debtors proposing a Chapter 13 plan to use the then-current presumptive interest rate applicable under Administrative Order 17-2 and adjust it, as necessary, as of the date of the Trustee's recommendation, or, alternatively, request a hearing on confirmation seeking approval of a rate that varies from the presumptive rate in accordance with the procedures described below. The Court encourages secured creditors to evaluate proposed Chapter 13 plans and object to confirmation if they disagree with the treatment of their claims, including the applicable interest rate. Secured creditors should no longer rely on their proofs of claim to set the applicable interest rate.

D. Exceptions to the Presumptive Interest Rate (*Till* Rate) under Administrative Order No. 17-2.

There are several exceptions to the application of the presumptive "*Till* rate" provided by the Court's Administrative Order No. 17-2.

First, the *Till* rate does not and cannot apply to claims "secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2).

Second, even with respect to other secured claims that are subject to modification by a Chapter 13 plan, the Court will consider for purposes of confirmation whether a secured creditor's proof of claim includes an interest rate below the then-presumptive *Till* rate and treat such proof of claim as the creditor's acquiescence in a rate proposed in the debtor's plan that is a lower rate than the presumptive rate, provided that the interest rate in the plan is equal to or greater than the rate asserted by the creditor in its proof of claim.

Third, the debtor and the secured creditor may agree to an interest rate that varies from the presumptive *Till* rate. If the debtor and secured creditor consent to an agreed order setting

the interest rate, the Court will confirm the debtor's proposed plan if, and only if, the plan is consistent with the prior agreed order. While not relevant to plan confirmation, in the event the debtor and secured creditor later consent to an alternative interest rate after the debtor's plan has been confirmed, the Court will enter an agreed order presented by those parties altering the interest rate, but only after notice and an opportunity for a hearing. If the Court enters such an agreed order after plan confirmation, the Chapter 13 Trustee is authorized to pay interest on that secured claim as provided in the agreed order notwithstanding the interest rate established by the confirmed plan. The Trustee shall not reamortize interest paid prior to the parties' post confirmation agreed order unless the Court specifically orders the Trustee to do so.

E. Procedure Governing Proposed Plans Otherwise Ready for Confirmation, but with Interest Rates Inconsistent with the Presumptive Rate.

When all timely objections to plan confirmation have been resolved, and the Chapter 13 Trustee has resolved all of his potential objections to plan confirmation and concerns regarding its feasibility, the Trustee ordinarily files his recommendation of confirmation. As provided in Section A of this Administrative Order, that event will fix the presumptive rate for secured claims based on Administrative Order 17-2.

However, if at the time the Trustee is otherwise ready to recommend confirmation, the debtor's most recently proposed plan includes interest rates in Sections 3.2 and/or 3.3 of the plan, and/or Section 3.1 with respect to secured arrearage claims that are not secured only by the debtor's principal residence, the Trustee may and is encouraged to file a limited objection to confirmation with respect to only the interest rate proposed for secured claims. This may be necessary because the debtor originally proposed a plan with a non-presumptive interest rate, or because the prime rate has changed between the time the original plan was filed and the Trustee's confirmation recommendation date. Trustee's limited objection shall constitute the

Trustee's recommendation of confirmation for purposes of fixing the presumptive interest rate pursuant to Section A of this Administrative Order. The debtors and their counsel will then be invited to prepare a final amended plan adjusting only the interest rate only so as to comply with the presumptive rate.

Alternatively, at the debtor's option, the debtor may request a confirmation hearing on his or her proposed plan seeking approval of an interest rate that varies from the presumptive rate under Administrative Order 17-2.

F. Plan Amendments Only Adjusting an Interest Rate in Response to the Trustee's Limited Objection Do Not Require Further Notice and Opportunity to Object.

Adjustments made to the interest rate for secured claims in a proposed plan following the limited objection of the Chapter 13 Trustee as permitted by Section E of this Administrative Order are excused from any and all obligations to serve creditors or provide notice of a further opportunity to object. All creditors and other parties-in-interest are already on notice of the presumptive interest rate required by Administrative Orders 17-2, as well as the periodic adjustments to the interest rate market and specifically the United States prime rate. Such amendments, however, must be limited to the adjustment of the interest rate applicable to secured claims under Section 3.1, 3.2, and/or 3.3 of the proposed plan. Any proposed amendments that revise the proposed plan in any other ways must be served on other creditors as with any other amended plan. *See* Section H, *infra*.

G. Plan Confirmation Procedure Following Interest Rate Adjustment with an Amended Plan in Response to Trustee's Limited Objection.

Once the debtor has amended his/her plan to conform with the presumptive interest rate identified by the Trustee in a limited objection, pursuant to Sections E and F of this Administrative Order, the Trustee's limited objection shall automatically be deemed moot and

resolved without the necessity of formal withdrawal and the debtor's amended plan may be set for confirmation at the next available confirmation hearing.

H. Clarification of the Notice Period for Amended Plans.

Whenever a debtor amends a proposed Chapter 13 plan after the date that is 28 days before the most recently-noticed confirmation hearing, *see* Fed. R. Bankr. P. 2002(a)(9) and (b)(3), the debtor must serve the amended plan on all creditors along with a notice that expressly provides for an objection deadline that is at least 21 days after the service of the amended plan and notice. Fed. R. Bankr. P. 2002(a)(9).

Early in a case, the Court issues a notice of a variety of deadlines, including the date of the first meeting of creditors pursuant to 11 U.S.C. § 341. In a Chapter 13 case, that notice also provides notice of the confirmation hearing date. While the rules provide that that notice must be at least 28 days in advance, *see* Fed. R. Bankr. P. 2002(b)(3), as amended and effective December 1, 2017, that standard notice is often served several months prior to the scheduled confirmation hearing date. Any amended plan filed early in the case does not require an additional objection notice because the face of the plan form provides notice of an objection deadline that is seven days prior to the confirmation hearing. As long as an amended plan is served 28 days or more before the confirmation hearing date, that paragraph in the plan provides the minimum 21-days notice of the objection deadline as required by Bankruptcy Rule 2002(a)(9). However, any later amendment, including amendments after the originally scheduled confirmation date, require an additional notice containing the objection deadline.

Notwithstanding this explanation and interpretation of the applicable rules for notice of proposed Chapter 13 plans generally, please take note, as provided in Section F of this Administrative Order, that if an amended plan is filed only to adjust the interest rate applicable to

secured claims under Section 3.1, 3.2, and/or 3.3 of the proposed plan consistent with Administrative Order No. 17-2, no further service or notice is required.

I. Debtor's Opportunity to be Heard at Confirmation Hearing Regarding Non-Presumptive Interest Rate.

Any debtor seeking a variance from the Court's presumptive interest rate for secured claims may request a hearing on their proposed plan and at that hearing be prepared to offer legal argument and evidence in support of their alternative interest rate, or set a schedule for an evidentiary hearing or other further hearings that may be necessary. Alternatively, any debtor may, at an earlier stage of the Chapter 13 case, file a motion for approval of a variance from the presumptive rate in their proposed plan on notice to the affected creditors as well as the Chapter 13 Trustee.

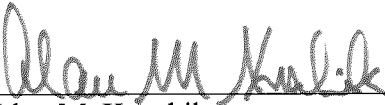
J. Request for Assistance from the Chapter 13 Trustee.

The Court authorizes and encourages the Chapter 13 Trustee not to file a standard unconditional recommendation for plan confirmation in a Chapter 13 case without first confirming that the interest rates proposed by the debtor in Sections 3.1, 3.2, and/or 3.3 match the then-current presumptive interest rate (except for interest rates proposed for secured claims secured only by the debtor's principal residence or claims in which the creditor acquiesces in an interest rate lower than the presumptive rate in its proof of claim). With the assistance of the Chapter 13 Trustee and his office, the Court hopes and expects that it will be able to process confirmation orders on plans recommended for confirmation on a more expeditious basis notwithstanding the disruption to past local practice caused by the amendments to the bankruptcy rules and the adoption the national Chapter 13 plan form.

K. Effect of Confirmation.

In this Administrative Order, the Akron Bankruptcy Court seeks to clarify certain plan confirmation procedures, as well as its presumptions regarding whether a plan is or is not confirmable. Notwithstanding this Administrative Order and the procedures and presumptions described herein, the Court reminds all parties that “the provisions of a confirmed plan bind the debtor and each creditor.” 11 U.S.C. § 1327(a). Each debtor should be vigilant about the Chapter 13 plans s/he proposes. Each creditor should carefully examine proposed Chapter 13 plans that may affect its rights and object to plans that it believes are inconsistent with its legal rights and/or the Bankruptcy Code. The confirmation order, after the resolution of any timely appeals, constitutes a final judgment of the Court notwithstanding any provisions later found to have been erroneous. *See, e.g., United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

IT IS SO ORDERED.



Alan M. Koschik
United States Bankruptcy Judge