IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TENNESSEE

In re STEVE E. JONES, Debtor.	No. 95-20509 Chapter 13
In re RODNEY MANTOOTH and SUSAN MANTOOTH, Debtors.	No. 95-20323 Chapter 13

M E M O R A N D U M

APPEARANCES:

ALAN C. LEE
Post Office Box 1357
Morristown, Tennessee 37816-1357
Attorney for Steve E. Jones

EVANS & BEIER
DOUGLAS R. BEIER
Post Office Box 1754
Morristown, Tennessee 37816-1754
Attorneys for Jefferson Financial Services, Inc.

RICHARD M. MAYER
PETER W. FREEMAN
1111 Northshore Drive
Suite S-570
Knoxville, Tennessee 37919
Attorneys for Rodney and Susan Mantooth

GWENDOLYN M. KERNEY
Chapter 13 Trustee
Post Office Box 228
Knoxville, Tennessee 37901

MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

These chapter 13 cases are presently before the court upon the objections to confirmation filed by Jefferson Financial Services, Inc. ("Jefferson Financial"). In both the *Jones* and *Mantooth* cases, Jefferson Financial asserts that the debtors' proposed plans do not provide for an appropriate rate of interest as required by 11 U.S.C. § 1325(a)(5)(B)(ii). Jefferson Financial also contends in *Mantooth* that the proposed plan does not provide it "adequate payment" with respect to the value of its collateral and monthly payment and that the plan has not been proposed in good faith. Because both cases require a determination of the "current market rate of interest" which must be paid to a secured creditor in a "cramdown" pursuant to 11 U.S.C. 1325(a)(5)(B) as interpreted by the Sixth Circuit Court of Appeals in *Memphis Bank & Trust v. Whitman*, 692 F.2d 427 (6th Cir. 1982), and because Jefferson Financial has offered identical proof in each case as to the appropriate interest rate, the court has consolidated these cases for the purpose of this memorandum opinion. This is a core proceeding. *See* 28 U.S.C. § 157(b)(2)(L).

I.

As set forth below, the facts of each case are relatively simple and straightforward.

Jones Case

The debtor, Steve E. Jones, commenced his chapter 13 case on April 10, 1995. The plan proposed by Mr. Jones provides that Jefferson Financial will retain its lien on a 1983 Mazda truck and will be paid $1,037.50, *i.e.*, the value of the truck, plus 12% at $40.00 per month. Jefferson Financial does not object to the value or monthly payment but asserts that the interest rate does not pay it a current market rate of interest as mandated by § 1325(a)(5)(B)(ii) of the Code.

The sole witness at the hearing on confirmation was Johnny Branson, a vice-president with Jefferson Financial. Mr. Branson testified that Jefferson Financial is in the lending business, making both unsecured and secured loans on older model automobiles and used mobile homes. Mr. Branson, who at the time of the hearing had been employed by Jefferson Financial for 14 years, the last 12 as vice-president, opined that the current market rate of interest for loaning money on a used vehicle such as the debtor's 1983 Mazda truck is "24% plus." Mr. Branson explained that the phrase "24% plus" referred to the maximum rate of interest under Tennessee law that finance companies can charge on a direct loan basis plus an additional four percent fee and monthly maintenance charges permitted by state law. According to Mr. Branson, the interest rate charged by finance companies is the current market rate of interest for a loan on a 1983 Mazda truck because only finance companies make loans on a vehicle this age.

Mr. Branson's opinion was based upon a telephone survey conducted by him on June 12, 1995. Using a local telephone directory,[1] Mr. Branson made a list consisting of one credit union

---

[1] Mr. Branson did not specify in his testimony which telephone directory he used or the "local" area to which he referred other (continued...)

(Lowland Credit Union), six banks (First Union, Hamblen County Bank, First Tennessee Bank, Third National Bank, United Southern Bank and National Bank of Newport), and fourteen finance companies.[2] He then telephoned these lending institutions and asked at what interest rate would they make an automobile installment loan on a 1988 Camaro.[3] Mr. Branson testified that all six banks surveyed informed him that they did not make installment loans on vehicles older than five years and therefore they would not make a loan on the survey example of a 1988 Camaro. Of the fourteen finance companies surveyed, Mr. Branson testified that all

---

[1](...continued) than that "he used the telephone book for the local area where Jefferson Financial is located." At no point during his testimony did Mr. Branson state what he considered to be the applicable market, although both Mr. Branson and the attorney for Jefferson Financial questioning Mr. Branson at various times during the hearing referred to "the local area in which we're at", "this area," and "your area." The court notes, however, ,hat the telephone survey conducted by Mr. Branson was also the basis for Mr. Branson's opinion as to the market rate of interest in *Mantooth* and during the *Mantooth* confirmation hearing, Mr. Branson testified that he obtained his list of banks and finance companies "from the local area in which we have finance companies" and later in his testimony stated that Jefferson Financial has three offices in Tennessee, located in the communities of Sevierville, Morristown and Newport.

[2]Although Mr. Branson testified that 14 finance companies were contacted, Mr. Branson only named 13 in his testimony: Transouth, City Finance, Blazer Finance, American General Finance, Norwest Financial, Colonial Loan, Pioneer Credit, Security Funding, Security Finance, Kentucky Finance, Newport Loan, Crown Credit and Express Finance. The court assumes that Mr. Branson included Jefferson Financial as the 14th finance company.

[3]Apparently, the survey was conducted by Mr. Branson not only for the purposes of the *Jones* and *Mantooth* cases, but also for another case in which Jefferson Financial was involved. The court assumes that a 1988 Camaro was used for the survey because such a car was involved in that other case.

but two advised him that their interest rate on such a loan would be 24% or 24% plus. Of the two exceptions, one did not make vehicle loans and the other stated that such a loan would be made at an interest rate of 23.99%. The one credit union telephoned by Mr. Branson informed him that it only made loans to its credit union members. Mr. Branson did not ask the credit union the interest rate it would charge members on older vehicles loans.

Mr. Branson further testified that Jefferson Financial charged the maximum 24% plus on all loans made by it, secured or unsecured, regardless of the type of collateral or the creditworthiness of the borrower, and that Jefferson Financial had not loaned at a lesser interest rate for at least the previous two years. In fact, according to Mr. Branson, Jefferson Financial's computer is set at 24% and in order to change the computer, Jefferson Financial would have to contact its computer support people and arrange for them to change the rate in the computer. Mr. Branson stated that this rate did not vary with fluctuations in Jefferson Financial's own cost of funds, which at the time of the hearing was 11.75%, *i.e.*, 2.75% over prime, with the prime rate then being 9%.

Mantooth Case

The debtors, Rodney and Susan Mantooth, filed a petition commencing their chapter 13 case on March 7, 1995. The debtors' Second Amended Chapter 13 Plan, which is presently before the court for confirmation, specifically provides for two secured claims held by Jefferson Financial. The first such claim is secured by a 1977

GMC pick-up truck and a 1985 Mercury Lynx automobile. The plan provides that with respect to this claim, Jefferson Financial will be paid a value of $1,900.00 plus 10% interest at a monthly payment of $45.00.

Jefferson Financial's second claim is secured by security interests in a stereo, diamond earrings, and other jewelry of the debtors. The debtors' proposed plan provides that the interests of Jefferson Financial in this collateral will be avoided pursuant to 11 U.S.C. § 522(f)(1)(B)[4] and that Jefferson Financial will be paid as an unsecured creditor with respect to this claim. Unsecured creditors under the debtors' proposed plan will receive 71% of their claims or funds available over 60 months, whichever is greater.

With respect to the claim secured by the two vehicles, Jefferson Financial asserts that the plan fails to provide "adequate payment" as to the value, monthly payment and interest rate and that the proposed interest rate of 10% is not the "current market rate of interest." Regarding the claim secured by the stereo and jewelry, Jefferson Financial has not specifically objected to the avoidance of its liens securing this claim, nor to its payment as an unsecured creditor, although it has alleged generally that the plan has not been proposed in good faith.

At the confirmation hearing, the only witnesses were the

[4]11 U.S.C. § 522(f)(1)(B) allows a debtor to avoid a nonpossessory, nonpurchase-money security interest in certain items of personalty to the extent the security interest impairs an exemption of the debtor.

debtor, Rodney Mantooth, and Johnny Branson, the vice-president with Jefferson Financial who testified in the *Jones* case. The evidence established that on June 28, 1994, the debtors borrowed the sum of $1,627.43 from Jefferson Financial (although after deduction for various types of insurance premiums and fees, the amount received by the debtors was $1,365.00), and, as security for the loan, gave security interests in a 1985 Mercury Lynx automobile, a Sound Design stereo, a .25 karat diamond solitaire ring and .25 karat diamond earrings owned by the debtors. The "Promissory Note - Security Agreement" executed by the debtors at the time of the loan recited that the annual percentage rate on the loan was 30.84% with the debtors to repay the sum borrowed plus the various finance charges in 24 monthly installments of $92.25.

The debtors also executed at the time of this loan a "Security Listing," which is a preprinted form setting forth nineteen categories of household goods and personal property and leaving a space for the insertion of the "present estimated market value" for each category. Handwritten on this form were the following items of collateral and amounts: "Sound Design stereo $350.00; .25 kt. Diamond sol. Ring $350.00 and .25 kt. diamond earrings (no value was listed for the earrings)." The bottom of the form included the following printed statement:

> I (WE) REPRESENT THE TOTAL FAIR MARKET VALUE (i.e., the current actual worth) OF THE ABOVE ITEMS TO BE $ 700.00. I (WE) UNDERSTAND THAT MY (OUR) REPRESENTATION OF THE FAIR MARKET VALUE OF THESE ITEMS IS BEING RELIED UPON BY JEFFERSON FINANCIAL SERVICES AND I (WE) REPRESENT THAT THESE ARE TRUE AND ACCURATE VALUES MADE TO INDUCE JEFFERSON FINANCIAL

SERVICES TO MAKE OR RENEW THIS LOAN ....

The Security Listing also included the representation that the collateral listed "will remain at the above address" and that applicant "will notify Jefferson Financial Services if property is taken to another location." Neither the "Promissory Note - Security Agreement" nor the "Security Listing" made any representation as to the value of the 1985 Mercury Lynx automobile although the note-security agreement recited that the debtors were obtaining credit life insurance coverage of $2,172.00 and automobile single interest insurance of $1,000.00.

On August 3, 1994, the debtors executed a second[5] note and security agreement which stated that a loan in the amount of $1,014.53 was being made to the debtors by Jefferson Financial (again the debtors received a lesser amount after deduction of various charges) to be repaid in 24 monthly installments of $56.50, including an annual percentage interest rate of 29.57%. As security for the debt, the promissory note provided that Jefferson Financial was being given a security interest in a 14 karat ruby cocktail ring owned by the debtors. As with the first loan, a similar security listing form was completed and thereafter signed by the debtors. That form listed the cocktail ring with a value of $2,500.00, although the specific certification of value on the

---

[5]Mr. Mantooth noted in his testimony that he and his wife had obtained several loans in the past with Jefferson Financial, so technically the August 3, 1994 loan was not the "second" loan. For ease of reference, however, the court will refer to this loan as the "second" loan because only three loans were outstanding at the time of the debtors' bankruptcy filing, and this was the "second" of those three loans.

bottom of the form was left blank. The security agreement indicated that credit life insurance of $1,356.00 was being purchased along with personal property insurance of $1,000.00.

On December 12, 1994, a third loan was made to the debtors by Jefferson Financial, this time for the purpose of financing the debtors' purchase of a 1977 GMC pick-up truck. The note-security agreement executed by the debtors recited that the amount financed was $2,634.16, although the actual cash received by the debtors was $2,204.00, which sum was to be repaid in 30 monthly installments of $124.25, including an annual percentage interest rate of 28.09%. The note-security agreement granted Jefferson Financial a security interest in the pick-up truck being purchased by the debtors, but did not list the purchase price of the truck (it did recite that the debtors were purchasing single interest automobile insurance of $2,500.00). Mr. Mantooth testified that he could not recall exactly how much he paid for the truck, but thought that it was in the neighborhood of $2,400.00 or $2,500.00 because he had to add $200.00 or $300.00 in cash to the $2,204.00 provided by Jefferson Financial in order to purchase the truck.

At the time of the loan, the debtor took the truck to Jefferson Financial to be appraised. Mark Trentham, the manager of Jefferson Financial at its Newport, Tennessee office, examined the truck and prepared an auto appraisal report which recited that there was no interior or exterior damage to the vehicle and that the fair market value of the vehicle was $2,500.00.

Except for the GMC pick-up truck, none of the collateral given as security for the loans by Jefferson Financial to the Mantooths was examined by Jefferson Financial at the time of the loans. However, on February 21, 1995, more than seven months after the June 28, 1994 loan which was secured in part by a 1985 Mercury Lynx automobile, and approximately two weeks before the debtors' bankruptcy filing, the debtors took the Mercury Lynx automobile to Jefferson Financial's office where it was examined by Mark Trentham of Jefferson Financial. Upon examining the car, Mr. Trentham prepared an auto appraisal report, similar to the one completed with respect to the GMC truck, which indicated that there was no body damage and that the interior of the vehicle was in fair condition. The report noted that the NADA retail value of the car was $1,575.00, the loan value $475.00, and the fair market value $1,500.00. The report was initialed by Mr. Trentham, but was not signed by either of the debtors. It is unclear as to the purpose of this visit to Jefferson Financial.

At the time of the confirmation hearing which was held on July 18, 1995, Jefferson Financial had not examined or appraised either the vehicles or any of the collateral in which it had an interest since the debtors' bankruptcy case was filed on March 7, 1995. Mr. Branson testified that employees of Jefferson Financial had attempted to get in touch with the debtors prior to the confirmation hearing in order to examine the collateral but were unable to reach the debtors. No continuation of the confirmation hearing was sought by Jefferson Financial in order to allow it to examine the collateral, nor did Jefferson Financial ask for an order requiring the debtors to make the collateral available for examination. Instead, Jefferson Financial relied solely on the loan documents in support of its objection to the values placed by the debtors on the automobiles, which loan documents as stated above indicated that the fair market value of the GMC truck was $2,500.00 and the fair market value of the Mercury Lynx automobile was $1,500.00 at the time Jefferson Financial examined the vehicles on December 12, 1994, and February 21, 1995, respectively.

Contrary to Jefferson Financial's assertion that the values of the vehicles are the values set forth in the loan documents, Mr. Mantooth testified that the vehicles in question are no longer in the condition that they were at the time they were examined by Jefferson Financial. Mr. Mantooth testified that subsequent to the examination of the Mercury Lynx automobile on February 21, 1995, but prior to the debtors' bankruptcy filing on March 7, 1995, the engine on the Mercury Lynx "locked up" resulting in the complete loss of oil and the subsequent "blowing" of the engine. Mr. Mantooth stated that the Mercury Lynx also had sustained body damage which occurred when the debtors attempted to push the Mercury Lynx out of their driveway with a Bronco. This incident resulted in the breaking of a rear light and a dent in the rear passenger side of the automobile's hatchback. Mr. Mantooth testified that because of these problems, the Mercury Lynx automobile was not operational at the time the debtors' bankruptcy case was filed. Although the debtors' schedule of personal property lists the value of the Mercury Lynx with its blown engine as $500.00, Mr. Mantooth testified that he thought the vehicle was worth no more than $100.00 as junk based on his having previously sold an automobile to a junk yard for $65.00.

Mr. Mantooth further testified that the 1977 GMC pick-up truck had similarly met disaster. Shortly after the purchase of the truck, Mrs. Mantooth drove it into a ditch against a telephone pole, breaking a side window. In getting the truck out of the ditch, the transmission was damaged and one entire side of the truck from the front fender to the bed was dented. Mr. Mantooth testified that the side window had been replaced and the problem with the transmission corrected, but that the extensive body damage to the truck remained. In Mr. Mantooth's opinion, the pick-up truck was worth approximately $1,000.00.

With respect to the other items of collateral, the Sound Design stereo, the diamond earrings, the diamond solitaire ring, and ruby and diamond cocktail ring, Mr. Mantooth testified that the debtors still have these items of collateral except for the ruby and diamond cocktail ring. Mr. Mantooth stated that he had "no idea" what had happened to this ring, but noted the debtors had moved three times and theorized that the ring may have been misplaced, lost or stolen during these moves. He stated that he did not notify Jefferson Financial of the ring's loss because he did not realize that particular item had been given as collateral.

Johnny Branson was Jefferson Financial's witness as to the appropriate interest rate. Giving similar testimony to that which he gave in *Jones* (although in less detail), Mr. Branson testified that he was familiar with the market rates of interests for finance companies, banks, and credit unions, and money in general, and that based on his experience in the finance business, it was his opinion that the market rate of interest for a loan on a 1985 Mercury Lynx and a 1977 GMC pick-up truck was 24%. As in *Jones*, Mr. Branson stated that his opinion was based on the survey which he had conducted of the banks and finance companies in the local area, which survey revealed that the only market for loans on vehicles older than five years is finance companies that all charge 24% interest.

II.

The debtors' proposed treatment of Jefferson Financial's claims as set forth in the debtors' plans is typical of the majority of chapter 13 plans which are filed in this district. The debtors are seeking to "cramdown" Jefferson Financial's secured claim to the extent of the value of its collateral. Such treatment is authorized by §§ 1322(b)(2)[6] and 1325(a)(5)(B)[7] of the Bankruptcy

---

[6] 11 U.S.C. § 1322(b)(2) provides that:

> "[s]ubject to subsections (a) and (c) of this section, the plan may —
>
> > (2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims.

[7] 11 U.S.C. § 1325(a)(5) states that "the court shall confirm (continued...)

Code which permit a debtor to modify the rights of a secured creditor (other than a claim secured only by a security interest in real property that is the debtor's principal residence) as long as the secured claim holder retains its lien, and is paid the value of its collateral as of the effective date of the plan. *See* 2 KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY § 5.46 (2nd ed. 1994). This treatment is generally referred to as a "cramdown" because a secured creditor is forced to accept secured status under the plan only to the extent of the value of its collateral. *U.S. v. Arnold*, 878 F.2d 925, 928 (6th Cir. 1989), *rehearing denied*, (1989).

The lowering of a secured claim from the total amount of the claim to the value of its collateral is based on 11 U.S.C. § 506(a) which provides that the allowed claim of a secured creditor is secured only to "the extent of the value of such creditor's interest in such property ...." As explained in the legislative history to § 506: "subsection (a) of this section separates an undersecured creditor's claim into two parts — he has a secured claim to the extent of the value of his collateral; he has an unsecured claim for the balance of his claim." *See* H.R. REP. No. 595, 95th Cong., 1st Sess. 356 (1977). And because this amount

---

[7](...continued)
a plan if —

> (B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and
>
> (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.

will not be paid immediately, but will instead be paid in installments, interest must be assessed on the secured claim to compensate the creditor for the time delay in payment. *Arnold*, 878 F.2d at 928.

A creditor objecting to confirmation bears the initial burden of going forward with the evidence in support of the objection, but the ultimate burden of persuasion rests with the debtor. *See In re Packham*, 126 B.R. 603 (Bankr. D. Utah 1991); *In re Fricker*, 116 B.R. 431 (Bankr. E.D. Pa. 1990); *In re Carver*, 110 B.R. 305 (Bankr. S.D. Ohio 1990). The court will first address Jefferson Financial's allegation that the plan in *Mantooth* was not proposed in good faith as required by 11 U.S.C. § 1325(a)(3). The Sixth Circuit Court of Appeals has spoken on many occasions concerning the requirement of good faith in chapter 13 cases, holding that the test is fact-specific, requiring a consideration of the totality of the circumstances. *See Society National Bank v. Barrett (In re Barrett)*, 964 F.2d 588 (6th Cir. 1992); *Hardin v. Caldwell (In re Caldwell)*, 895 F.2d 1123 (6th Cir. 1990); *Ohio Student Loan Commission v. Doersam (In re Doersam)*, 849 F.2d 237 (6th Cir. 1988); *Metro Employees Credit Union v. Okoreeh-Baah (In re Okoreeh-Baah)*, 836 F.2d 1030 (6th Cir. 1988). In the latest of these cases, the Sixth Circuit observed that "[t]he critical issue is whether there is a 'sincerely-intended repayment of prepetition debt consistent with the debtor's available resources.'" *In re Barrett*, 946 F.2d at 592, *quoting In re Okoreeh-Baah*, 836 F.2d at 1030. As noted recently by a bankruptcy court in the western district of this state, "[e]ssentially, a good faith analysis often comes down to whether the case filing or the plan proposal 'is fundamentally fair to creditors and, more generally, is the filing fundamentally fair in a manner that complies with the spirit of the Bankruptcy Code's provisions.'" *Norwest Financial Tennessee, Inc. v. Coggins (In re Coggins)*, 185 B.R. 762, 764 (Bankr. W.D. Tenn. 1995), *quoting Matter of Love*, 957 F.2d 1350, 1357 (7th Cir. 1992).

In *Barrett*, the most recent Sixth Circuit good faith case, the court noted that it had previously held in *Okoreeh-Baah* that there are at least twelve pre-petition and post-petition factors which a bankruptcy judge should weigh in making a good faith determination.

> These factors include (1) the debtor's income; (2) the debtor's living expenses; (3) the debtor's attorney fees; (4) the expected duration of the Chapter 13 plan; (5) the sincerity with which the debtor has petitioned for relief under Chapter 13; (6) the debtor's potential for future earning; (7) any special circumstances the debtor may be subject to, such as unusually high medical expenses; (8) the frequency with which the debtor has sought relief before in bankruptcy; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt; (11) the burden which administration would place on the trustee; and (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

In re Barrett, 964 F.2d at 592, *citing Okoreeh-Baah*, 836 F.2d at 1032 n.3. A consideration of these factors in adjudging the totality of the circumstances in the present case does not indicate that the debtors are acting in bad faith. The debtors have proposed a 60-month plan which provides that unsecured creditors will be paid the greater of 71% of the amount owed to them or funds available, for 60 months, the maximum length of a chapter 13 plan. The plan requires the debtors to make weekly plan payments to the trustee of $153.00, an amount which is almost half of the debtors' monthly income of $1,383.34, leaving a meager sum for living expenses for the debtors and their four children. There is no indication that the debtors have sought bankruptcy relief previously.

The only fact referenced in Jefferson Financial's brief in support of its good faith objection is that the debtors' 14 karat ruby and diamond cocktail ring is missing and that the debtors had an obligation under both state and bankruptcy law to safeguard the security for the benefit of the secured creditor. In explaining the disappearance of the ring, Mr. Mantooth testified that the ring had been lost, stolen, or misplaced during the debtors' three moves and that the ring's loss had not been reported to Jefferson Financial because he had forgotten that particular item was given as collateral for the loan.

While the debtors may have been negligent in failing to safeguard the ring, this negligence alone does not indicate a lack of good faith on the part of the debtors. There was no evidence presented to the court that would indicate the debtors are motivated by anything other than a sincere desire to reorganize and repay their debts to the best of their ability. The court will accordingly overrule Jefferson Financial's objection to confirmation based on lack of good faith.

With respect to the objections to value in the *Mantooth* case, Jefferson Financial contends that the 1977 pick-up truck and the 1985 Mercury Lynx are worth more than $1,900.00, the combined value the debtors have placed on these vehicles as set forth in their proposed plan. The sole evidence offered by Jefferson Financial in support of its objection to the $1,900.00 value is the documentation executed by the parties in connection with the various loans. Based on this documentation, Jefferson Financial asserts that the 1977 GMC pick-up truck is worth $2,500.00 and the 1985 Mercury Lynx automobile, $1,500.00. Addressing the value of the 1977 GMC truck first, it is undisputed[8] that the truck was worth $2,500.00 at the time of its purchase in December 1994. Thus, if value as of the date of purchase were the appropriate inquiry, then Jefferson Financial's value of $2,500.00 for the truck would be dispositive.

However, § 1322(b) requires that value "as of the effective date of the plan" be distributed to the creditor. Although the Bankruptcy Code does not define this phrase, this court has previously held and so holds today that the appropriate date for fixing the value of collateral for the purposes of §§ 506(a) and 1325(a)(5)(B) is the date of the filing of the petition. *See, e.g., Ford Motor Credit Company v. Phillips (In re Phillips)* 142

[8]Mr. Mantooth testified that he purchased the truck for $2,400.00 or $2,500.00, the auto appraisal report executed by the parties recited that as of December 12, 1994, the truck had a value of $2,500.00, and Mr. Mantooth admitted at the hearing on confirmation that he agreed with the value of $2,500.00 at the time he signed the report.

B.R. 15 (Bankr. D.N.H. 1992); *In re Frazier*, 33 B.R. 175 (Bankr. D. Md. 1983).

At the *Mantooth* confirmation hearing, the only proof submitted as to the value of the collateral as of the date of the bankruptcy filing, March 7, 1995, was the debtor's testimony in which he expressed his opinion of the value of the vehicles. The evidence offered by Jefferson Financial as to the value of the collateral shortly before the bankruptcy filing would be relevant and even persuasive in the absence of any evidence that the condition of the collateral changed between the time it was appraised by Jefferson Financial and the time of the bankruptcy filing. *Cf. Matter of Reynolds*, 17 B.R. 489 (Bankr. N.D. Ga. 1981)(recent purchase price of automobile paid by the debtor is *prima facie* evidence of value). But that is not the case here. Mr. Mantooth testified that after his purchase of the truck and after its examination by Jefferson Financial, the truck was extensively damaged when Mrs. Mantooth drove the truck into a ditch and during the resulting attempts to get the truck out of the ditch. In Mr. Mantooth's opinion, the truck was presently worth only $1,000.00 due to body damage. No evidence was offered that would contradict this value as of the bankruptcy filing. Johnny Branson, Jefferson Financial's witness, had neither examined nor even seen the truck.

Similarly, the loan appraisal conducted by an employee of Jefferson Financial approximately two weeks prior to the bankruptcy filing which indicated that the value of the 1985 Mercury Lynx was $1,500.00 is not sufficient evidence standing alone to rebut Mr.

Mantooth's testimony as to the value of the vehicle when the bankruptcy case was filed. Mr. Mantooth testified as indicated that after the Mercury Lynx was examined by Jefferson Financial, the vehicle "blew" its engine and sustained rear body damage. In Mr. Mantooth's opinion, the Mercury Lynx had only junk value of $100.00 due to its undriveable condition. This evidence is consistent with the debtors' bankruptcy schedules filed with the debtors' petition which indicate that the engine on the Mercury Lynx was blown. Although the fact that both vehicles suffered damage during the short time between their examination by Jefferson Financial and the debtors' bankruptcy filing is on its face unusual and questionable, the court found Mr. Mantooth credible. Because Jefferson Financial did not examine the vehicles after the bankruptcy filing and the only evidence before the court as to the condition of the vehicles as of the filing was Mr. Mantooth's testimony, this court finds that the combined value of $1,900.00 proposed in the debtors' plan for the 1977 GMC truck and the 1985 Mercury Lynx more than provides Jefferson Financial the fair market value of its collateral as of the date this bankruptcy case was filed. Therefore, Jefferson Financial's objection to value will be overruled.

Jefferson Financial also objects to the monthly payment that it will be paid, alleging that the monthly payment is not "adequate." As stated above, the *Mantooth* plan proposes that Jefferson Financial be paid the value of $1,900.00 plus 10% interest at the monthly payment of $45.00. Jefferson Financial did not specifically address in its brief or at the hearing how this payment is inadequate. Neither party presented any evidence to the court as to the payment duration of the proposed $1,900.00 plus 10% interest at $45.00 per month although the debtors' plan provides generally that it will run 60 months. Mr. Branson did testify that he questioned the surveyed finance companies as to what repayment term they would allow in making a hypothetical loan on the 1988 Camaro. According to Mr. Branson, one finance company advised 10 months, one company stated that the term depended on the customer, one company said 12 months, three companies said 24 months, six finance companies said 36 months and one finance company said 48 months. Mr. Branson testified that no finance company surveyed would finance a loan on a 1988 Camaro for 60 months. Based on this evidence, the court assumes that Jefferson Financial maintains that the proposed payout is too long even though this argument was never articulated.

Monthly payments to secured creditors in a cramdown serve two distinct purposes in a chapter 13 case, although one court has observed that these distinctions are sometimes blurred by the courts. *See In re Johnson*, 63 B.R. 550, 553 (Bankr. D. Colo. 1986). First, and most obvious, the monthly payments are a means of paying the secured creditor the value of its collateral and for the time delay in receiving this value. *See Arnold*, 878 F.2d at 928. Second, and less apparent, the periodic payments are to compensate the secured creditor for any depreciation in the underlying collateral.[9] As noted by Judge Lundin in his treatise, CHAPTER 13 BANKRUPTCY:

> [T]he power to modify secured claims is limited to the extent that the debtor must propose payments that equal or exceed the depreciation in value of the collateral that secures the claim. Otherwise, the delay in payments through the plan would take value from the creditor with the passage of time without compensating the creditor for its loss.

1 LUNDIN, CHAPTER 13 BANKRUPTCY § 4.30 (2nd ed. 1994); *see also General Motors Acceptance Corp. v. Miller (Matter of Miller)*, 13 B.R. 110, 117 (Bankr. S.D. Ind. 1981)(court rejected plan wherein payments to secured creditors did not equal average depreciation and did not compensate creditor for depreciation that was continually occurring under the chapter 13 plan); *General Motors Acceptance Corp. v. Lum (In re Lum)*, 1 B.R. 186, 187 n.1 (Bankr. E.D. Tenn. 1979)("If the collateral depreciates faster than the payments, the secured creditor becomes less secure. Payments at least equal to depreciation prevent that.")

As stated above, even though the debtor has the ultimate burden of proof upon confirmation, the creditor has the burden of going forward with the evidence. Jefferson Financial presented no evidence at the confirmation hearing as to how rapidly its collateral is depreciating and whether the monthly payments

[9] While the courts disagree as to whether this requirement arises out of 11 U.S.C. § 361, *i.e.*, whether adequate protection applies post-confirmation, *see In re Johnson*, 63 B.R. at 553-54; it is clear that modification of a secured claim pursuant to § 1322(b)(2) cannot impair the value of the creditor's lien during the period of repayment. 1 LUNDIN, CHAPTER 13 BANKRUPTCY § 4.30 (2nd ed. 1994).

proposed by the plan cover that depreciation. Due to absence of evidence on this point, the court is unable to find that the monthly payments to be paid to Jefferson Financial are not adequate to cover depreciation in its collateral.

Jefferson Financial's argument, as presented in its proof, that the monthly payments are "inadequate" because its survey establishes that no finance company would make a loan on a used vehicle for a period of time greater than 48 months, and the duration of the debtors' proposed plan is 60 months, is without merit. Although *Arnold* and *Memphis Bank* analogize a cramdown to a new coerced loan to the debtor by the secured creditor in the amount of the value of the collateral (*Arnold,* 878 F.2d at 428; *Memphis Bank*, 692 F.2d at 429); the new loan is not an actual loan but a hypothetical loan. Otherwise, confirmation would most always be denied because in the "real world," there is no market for the loan contemplated by the plan. No reasonable lender would make a loan at 100% loan to value ratio, with no down payment, to a debtor in bankruptcy whose credit unworthiness has been demonstrated. Courts considering this issue have rejected the argument that confirmation may be denied if there is no market for the type of loan contemplated by the plan because holding otherwise would give the market permission to repeal the Bankruptcy Code.[10] *See In re*

---

[10]Rather than deny confirmation in this regard, the term of the loan is one of the factors the court considers when establishing the market rate of interest. *See, e.g., General Motors Acceptance Corp. v. Jones*, 999 F.2d 63, 67 (3rd Cir. 1993)(in a chapter 13 case, the debtor must compensate secured creditor at the rate it would voluntarily accept for a loan of similar character, amount (continued...)

The Beare Company, 177 B.R. 883, 886 (Bankr. W.D. Tenn. 1994); *In re Birdneck Apartment Associates*, II, L.P., 156 B.R. 499, 508-509 (Bankr. E.D. Va. 1993); *In re Eastland Partners Ltd. Partnership*, 149 B.R. 105, 106 (Bankr. E.D. Mich. 1992); *see also In re Oaks Partners, Ltd.*, 135 B.R. 440, 445 (Bankr. N.D. Ga. 1991); *In re Aztec Co.*, 99 B.R. 388, 391 (Bankr. M.D. Tenn. 1989). Accordingly, Jefferson Financial's objection to the monthly payment must be denied.

III.

The court now comes to the most difficult issue in these cases and the basis for which *Mantooth* and *Jones* have been consolidated – the determination of the interest rate to be paid to Jefferson Financial. One court has noted that computing the appropriate interest rate to use when applying various sections of the Bankruptcy Code is one of the most difficult jobs of a bankruptcy judge. *In re Roberts*, 63 B.R. 372, 379 (Bankr. E.D. Mich. 1986). Its difficulty is not due to the complexity of the issue but because there is rarely an adequate record upon which to make such a determination. *Id.* While computing the appropriate interest rate may be difficult, the applicable standard is clear. The Sixth Circuit Court of Appeals held in *Memphis Bank* that in a chapter 13

---

[10](...continued)
and duration); *Federal Land Bank of Louisville v. Gene Dunavant & Son Dairy (In re Gene Dunavant & Son Dairy)* 75 B.R. 328, 335 (M.D. Tenn. 1987)(concept of present value assumes the use of market rate of interest for loans of similar duration, with similar security and with similar risks).

cramdown, a secured creditor must be paid a current market rate of interest absent special circumstances.[11] *Memphis Bank,* 692 F.2d at 431. This holding was reaffirmed by the Sixth Circuit in *Arnold,* 878 F.2d at 929.[12]

Before proceeding with the discussion of this issue, it must be observed that the interest that is being provided to the secured creditor by the debtors' chapter 13 plans should not be confused with the allowance of post-petition interest as a part of the creditor's claim or the entitlement of a creditor to interest because its contract provides for interest. Section 502[13] of the Code prohibits the accrual of post-petition interest as part of the

---

[11]The Sixth Circuit Court of Appeals in *Memphis Bank* did not elaborate on what constitutes "special circumstances," although in a footnote the court suggested that the market rate might be equitably adjusted up or down where there is a substantial difference between the market rate and the contract rate. *Memphis Bank,* 692 F.2d at 431 n.3. Similarly the Tenth Circuit Court of Appeals in *Hardzog v. Federal Land Bank of Wichita (In re Hardzog),* 901 F.2d 858 (10th Cir. 1990), in adopting the *Memphis Bank* approach, deliberately reserved the issue of the parameters of special circumstances, but gave as an example of special circumstances where "the market rate is higher than the contract rate." *Id.* at 858 n.10. This court observes that virtually no court, in applying the market rate approach, has found the existence of special circumstances other than a significant disparity between contract and market rates which would justify rejection of the market rate.

[12]Although *Arnold* was a chapter 12 case, the Sixth Circuit Court of Appeals applied the *Memphis Bank* standard, holding that because the cramdown provisions in each chapter are identical (*cf.* 11 U.S.C. § 1225(a)(5)(B) and 11 U.S.C. § 1325(a)(5)(B)), they should be similarly construed. *Arnold,* 878 F.2d at 928.

[13]Pursuant to 11 U.S.C. § 502(b)(2), a claim shall be determined as of the date of the filing of the petition and shall be allowed, "except to the extent that ... such claim is for unmatured interest."

creditor's claim unless the creditor is oversecured,[14] which undisputably Jefferson Financial is not. As stated above, § 1325(a)(5)(B)(ii) requires that in a cramdown, the secured creditor must receive the value of its collateral as of the effective date of the plan. Because the creditor is not receiving that value in a lump sum but rather in deferred payments over the life of the plan, the stream of future payments under the plan must be discounted to present value and the present value of the stream of future payments must be not less than the allowed amount of the creditor's claim. 2 LUNDIN, CHAPTER 13 BANKRUPTCY § 5.50 (2nd ed. 1994).

As the Sixth Circuit Court of Appeals noted in *Arnold*:

> [W]e held in *Memphis Bank* that as this amount will not be paid immediately, interest should be assessed on the amount which the debtor will repay to compensate the creditor for the use of his or her money. We explained "[s]ection 1325(a)(5)(B) seems to require the Bankruptcy Court to assess interest on the secured claim for the present value of the collateral (if it is not to be paid immediately) in order not to dilute the value of that claim through delay in payment.

Arnold, 878 F.2d at 928, *quoting Memphis Bank*, 692 F.2d at 429. Thus, although in actuality the rate to be determined is a discount

---

[14] 11 U.S.C. § 506(b) provides that:

> 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.

rate rather than a true interest rate, the courts and litigants usually speak in terms of interest rate because the easiest way to determine present value for purposes of § 1325(a)(5)(B)(ii) is to determine the allowed amount of the secured claim and then apply to that amount an appropriate interest rate to ensure that the present value of payments to the secured creditor will at least equal the allowed amount of the secured claim. 2 LUNDIN, CHAPTER 13 BANKRUPTCY § 5.50 (2nd ed. 1994).

While it is clear that the applicable standard is the "current market rate of interest," the manner by which the current market rate of interest is to be determined is not so apparent. Although determinations of factual issues are usually made by the court based solely on the presentation of evidence by the parties, the Sixth Circuit has suggested that the court may use its independent knowledge in these matters in the absence of proof. In *Memphis Bank*, after stating that bankruptcy courts should apply the "current market rate of interest used for similar loans in the region in the absence of special circumstances," the Sixth Circuit made the rather cryptic observation that:

> Bankruptcy courts are generally familiar with the current conventional rates on various types of consumer loans. And where parties dispute the question, proof can easily be adduced.

Memphis Bank, 692 F.2d at 431.

One bankruptcy court in this circuit has read this comment as imposing a requirement on bankruptcy judges to either keep current on market rates of interest or to do independent research on the topic whenever the issue arises. *See In re Independence Village, Inc.*, 52 B.R. 715, 731 n.13 (Bankr. E.D. Mich. 1985)(court took notice of rates set forth in the Wall Street Journal in the absence of evidence being offered by the parties as to market interest rates); *In re Roberts*, 63 B.R. at 380 n.11 (The Sixth Circuit in *Memphis Bank* "gave bankruptcy courts a certain amount of *carte blanche* to determine the appropriate interest rate in the absence of proofs.") Another court in the circuit has concluded that while testimonial evidence may be part of the court's consideration, it will not be the sole measure of the market rate of interest to be used in a particular case. *See In re Neff*, 89 B.R. 672, 679 (Bankr. S.D. Ohio 1988), *alteration granted in part on reconsideration*, 96 B.R. 800 (1989). As stated by that court:

> The difficulty with adopting the testimonial rate is that it can cause wide variation in rates for similarly situated debtors and may encourage litigation of matters which arise in all chapter 11, 12 and 13 cases. It may also cause the Court's decision to be unusually sensitive to a party's ability to retain and present a persuasive expert witness and may not be consistent with the vision of the process set forth in this circuit in *Memphis Bank*.

Id. See also Matter of Wichmann, 77 B.R. 718, 720 (Bankr. D. Neb. 1987) (court rejected a determination by expert testimony in every case, noting that allowing the discount rate to vary depending upon the quantity and quality of expert proof eliminates certainty and introduces delay and costs into the confirmation process); *In re Galvao,* 183 B.R. 23, 29 (Bankr. D. Mass. 1995) ("[C]ost of litigating the appropriate interest rate may be prohibitively expensive for most Chapter 13 debtors and inconsistent with the expeditious administration of Chapter 13 cases."); *Dominion Bank v. Cassell (In re Cassell)*, 119 B.R. 89, 94 (W.D. Va. 1990)(requiring testimony to prove discount rate for every claim imposes a wasteful burden on debtors, creditors and the court).

Because of these concerns, many courts have fashioned various "gimmicks" to set market rates of interest. Some use a guide, such as the prime rate or the T-bill rate to determine the risk-free rate with judicially determined upward adjustments to account for the risks in the particular case,[15] a few have used the post-judgment rate established by state law,[16] while others have assumed that the contract rate is the market rate.[17] Some courts have even, in a "search for certainty," established absolute directives, through either case law or local rules. *See, e.g., In re Wilmsmeyer*, 171 B.R. 61, 64 (Bankr. E.D. Mo. 1994)(local rule requiring interest to be paid at prime rate plus 3½%); *In re Harris*, 167 B.R. 813 (Bankr. D.S.C. 1994)(court-sanctioned

[15]*See, e.g., In re Eastland Partners Ltd. Partnership*, 149 B.R. at 107 (nine year Treasury rate); *Fleet Finance, Inc. v. Ivey (In re Ivey)*, 147 B.R. 109 (M.D.N.C. 1992)(T-Bill rate). *In re Jordan*, 130 B.R. 185 (Bankr. D.N.J. 1991)(prime rate); *In re Hudock*, 124 B.R. 532 (Bankr. N.D. Ill. 1991)(prime rate); *In re Breisch*, 118 B.R. 271 (Bankr. E.D. Pa. 1990)(T-Bill); *In re Lassiter*, 104 B.R. 119 (Bankr. S.D. Iowa 1989)(T-Bill); *In re Aztes Co.*, 99 B.R. 388 (Bankr. M.D. Tenn. 1989)(T-Bill).

[16]*Ford Motor Credit v. Johnston (In re Johnston)*, 44 B.R. 667 (Bankr. W.D. Mo. 1984); *In re Crockett*, 3 B.R. 365 (Bankr. N.D. Ill. 1980).

[17]*General Motors Acceptance Corp. v. Jones (In re Jones)*, 999 F.2d 63 (3rd Cir. 1993)(rebuttable presumption that contract rate is market rate); *In re Chapman*, 135 B.R. 11 (Bankr. M.D. Pa. 1990); *In re Frey*, 34 B.R. 607 (Bankr. M.D. Pa. 1983).

committee set discount rate on annual basis). While this court is tempted by the ease of applicability of these formulas and the desire to establish a method that will result in the inexpensive and expeditious confirmation of chapter 13 cases, the court is convinced that the only proper method[18] for establishing market rates in the face of a dispute, and the method specifically authorized by the Sixth Circuit Court of Appeals, despite that court's cryptic language in *Memphis Bank*, is by expert proof. The disadvantages of making such a determination other than by the presentation of proof have been appropriately recognized:

> Courts are not well suited to craft and determine interest rates. Judges are neither bankers nor lenders and do not have the expertise to set interest rates. A lender, in establishing interest rates to be charged to a borrower, will consider and utilize many factors, including what the competition charges, its costs of funds, the condition of

---

[18]The court notes with approval the method of determining market rate of interest suggested by the district court in *Cassell* wherein the court stated that:

> [T]he use of a predetermined formula that results in a figure approximating the market rate is appropriate if it is used merely as a rebuttable presumption of the market rate. Any formula used by the bankruptcy court initially should be determined by testimony ... [and] ... would probably contain a base rate, possibly a prime rate or a treasury bill or bond rate, that would move in tandem with the market rate. The bankruptcy court, in initially determining the formula, would then add a factor to the base rate so that the sum of the two amounts equals the market rate as determined by testimony and other competent evidence .... As noted, the use of a formula would establish only a rebuttable presumption.

In re Cassell, 119 B.R. at 94 (citations omitted).

> the local economy, its overhead, the character of the borrower, the capacity of the borrower to repay, the value of the collateral, the costs of servicing the loan, the status of the lender's loan portfolio, the lender's ratio of loans to assets, its liquidity, and a host of other factors.

Hardzog, 901 F.2d at 860; *see also In re Ivey*, 147 B.R. at 118 (courts are more adept at balancing rights than they are at expounding economic theory).

The problem of using this method of determining market rate of interest in the cases *sub judice* is the scarcity of proof presented to the court. The only evidence before the court as to the market rate of interest in both cases was the testimony of Mr. Branson.[19] Mr. Branson's opinion that the current market rate of interest is 24% was based on a limited survey of select financial institutions in a small community. The court finds such evidence to be insufficient and unpersuasive for several reasons.

As stated above, *Arnold* and *Memphis Bank* require a determination of current market rates for "similar loans in the region." Jefferson Financial limited its proof to loans on "older

---

[19]After the confirmation hearing in *Jones*, counsel for Mr. Jones filed a post-trial brief to which he attached copies of 12 proofs of claims filed by various creditors in other chapter 13 cases in which counsel is attorney for the debtors. These copies were tendered as proof to dispute Mr. Branson's testimony that banks do not make loans on older model vehicles and that the market rate of interest is 24%. Although Jefferson Financial has not moved to strike these proofs of claims, it has filed a response to Mr. Jones' brief, objecting to the court's consideration of these proofs of claims. Jefferson Financial is correct that this evidence can not be considered by this court for any purpose – it is hearsay tendered after the close of the hearing, in a manner where it is not subject to cross-examination by the opposing party.

model vehicles," although, this court is not convinced that "similar" requires a consideration of only loans on older automobiles. *See In re Ivey*, 147 B.R. at 114 (parties agreed that "similar loans" meant "motor vehicle loans"). In addition, Jefferson Financial's survey failed to include a consideration of all financial institutions. Although Mr. Branson testified that he contacted all finance companies in his local telephone directory, no credit union rates were included nor were all banks contacted. *Cf.*, 2 LUNDIN, CHAPTER 13 BANKRUPTCY § 5.51 (2nd ed. 1994)("The market rate for similar loans, if it is to be a meaningful concept at all, must include some blending of various kinds of lending institutions . . . .").

Most importantly, Jefferson Financial's surveyed region was too narrow. In this court's opinion, the appropriate "region" is broader than the community of Morristown, Tennessee, where Mr. Branson's particular branch of Jefferson Financial is located. This court takes judicial notice of the fact that Morristown, Tennessee, according to the 1990 census, had a population of 21,385. *Cf. Fleet Finance, Inc. v. Ivey (In re Ivey)*, 131 B.R. 43, 48 (Bankr. M.D.N.C. 1991)(relevant market is the state of North Carolina). In financing a loan, persons often shop a wide geographical area to find the most competitive rate. At a minimum, this court believes that the appropriate region would include the Northeastern Division of the Eastern District of Tennessee, where this court is located.

Counsel for Jefferson Financial suggested in his closing argument that this court must accept Mr. Branson's opinion as to market rate of interest because it was the only proof before it. However, the fact that disputed issues are determined by the court based on the presentation of evidence does not mandate that the court accept any evidence presented to it, regardless of its reliability, in the absence of contrary proof. Mr. Branson's opinion was based on a survey he conducted which was not scientific enough to be of any value. There was no indication as to who was contacted at each financial institution and whether that person had the authority to speak on behalf of the institution. Each interviewee was only asked to give a quote on a loan on an older vehicle and there was no consideration at all of the other factors which go into making a loan, such as the character of the borrower, the value of the collateral, *etc.* The bottom line is that Mr. Branson's survey is not of sufficient reliability to assist the court in determining the appropriate market interest rate.[20]

The court also refuses to rely solely on the rates charged

---

[20]The court also questions the appropriateness of having such a survey conducted by an officer of the secured creditor. While the court does not mean to suggest that Mr. Branson was lacking in credibility, clearly he was not a disinterested witness. His opinion as to market rate of interest was based on hearsay, and as a result, lacked the reliability that is normally expected of expert witnesses. *Cf., Logan v. Basic Distribution Corporation (In re Fred Hawes Organization, Inc.)*, 957 F.2d 239, 246 (6th Cir. 1992)(testimony of president of preference defendant to prove elements of § 547(c)(2) defense that preference payments were made according to industry standards lacked credibility and reliability); *Finley v. Mr. T's Apparel, Inc. (In re Washington Manufacturing Co.)* 144 B.R. 376, 380 (Bankr. M.D. Tenn. 1992)(creditor that only offered self-serving testimony of its president to establish industry's ordinary business terms had not met its burden of proving § 547(c)(2)(C)).

by the finance companies because they are not true "market rates." Mr. Branson testified that the interest rate charged by Jefferson Financial was not affected by changes in the prime rate of interest, by fluctuations in Jefferson Financial's own costs of funds, by the type of loan (secured or unsecured) involved, or the creditworthiness of the borrower. Unlike the market lender described by the Tenth Circuit in *Hardzog* which takes into account its competition, its charges, the costs of funds, the character of the borrower and a myriad of the other factors in establishing the market, the rate of interest charged by Jefferson Financial is the maximum rate of interest which may be charged under state law, the rate always charged by Jefferson Financial, and the rate charged by the other finance companies surveyed by Jefferson Financial. The courts applying market rates of interest have done so noting that market rates "are the best indicators of present value of deferred payments because they are products of supply and demand and reflect the interaction of economic variables that affect the costs of lending money." *In re Ivey,* 147 B.R. at 113, *citing In re Benford,* 14 B.R. 157, 160 (Bankr. W.D. Ky. 1981). Because the interest rates charged by finance companies lack these variables and are not responsive to changing economic conditions, the bankruptcy court in *Ivey* refused to consider finance companies' rates in its determination of a market rate of interest for a cramdown in a chapter 13 plan. *See In re Ivey*, 131 B.R. at 49.[21]

That being said, however, this court is not persuaded that the current market rate of interest is either the 10% proposed in the *Mantooth* case, or the 12% offered in *Jones*. The evidence was clear that Jefferson Financial's own cost of funds is 11.25%. Any market rate of interest would include not only the secured creditor's cost of funds, but also a certain amount of profit to compensate the creditor for delay and the risks inherent in any loan, including the coerced loan in a chapter 13 cramdown, in the chapter 13 process. *See In re Ridgewood Apartments of DeKalb County, Ltd.*, 183 B.R. 784, 791 (Bankr. S.D. Ohio 1995)(discount rate designed to protect creditor from dimunition in the dollar over time and to recognize some acceptable risk of nonpayment); *In re Cassell*, 119 B.R. at 92 (market rate includes element of profit). In the absence of proof which would provide the court with the current market rate for similar loans by financial institutions in this entire region, this court is unable to determine the appropriate rate. It is clear that the plans proposed by the debtors in *Mantooth* and *Jones* do not provide Jefferson Financial a market rate of interest. Accordingly, confirmation must be denied. *Cf., In re Wright*, 103 B.R. 905 (Bankr. M.D. Tenn. 1989)(confirmation denied

---

[21]Upon appeal, the district court in *Ivey* upheld the bankruptcy court's ruling as conforming with the requirements of § 1325(a)(5)(B), although the court disagreed with the bankruptcy court's complete rejection of rates charged by finance companies in its consideration of the "market." *In re Ivey*, 147 B.R. at 114. While this court agrees with the district court that rates charged by consumer finance companies must be considered, their rates alone are not representative of the market because of their unresponsiveness to economic conditions.

due to debtor's failure to introduce evidence regarding current market rates).

IV.

An order will be entered in accordance with this memorandum opinion sustaining the objections to confirmation based on the proposed plan interest rates, overruling the objections in all other respects, and allowing the debtors seven days to file amended plans in the cases which will provide the current market rate of interest. Jefferson Financial will have seven days thereafter to file any objection. The foregoing constitutes findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052.

ENTER: October 20, 1995

BY THE COURT

Marcia P. Parsons
MARCIA PHILLIPS PARSONS
UNITED STATES BANKRUPTCY JUDGE

mk