

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: S. M. BURT

CASE NO. 07-14617-DWH

ORDER

On consideration before the court is a motion to abandon property and lift the automatic stay filed by GMAC; a response thereto having been filed by the debtor, S.M. Burt; on proof in open court; and the court, having heard and considered same, hereby finds, orders, and adjudicates as follows, to-wit:

I.

The court has jurisdiction of the subject matter of and the parties to this contested proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A), (G), and (O).

II.

At the hearing on the motion for relief, the parties announced that all issues had been amicably resolved with the exception of the interest rate to be paid to GMAC on its secured claim. The parties requested the court to determine the appropriate rate. The court has reviewed the recent decision rendered by the Fifth Circuit Court of Appeals in *Drive Financial Services, L.P. v. Jordan*, 2008 WL 651547 (5th Cir., March 12, 2008). In its opinion, the Fifth Circuit reviewed the United States Supreme Court decision in *Till v. SCS Credit Corp.*, 541 U.S. 465, 124 S.Ct. 1951, 158 L.Ed.2d 787 (2004), which determined that a prime-plus interest rate was the proper rate to be applied to a secured creditor's claim being paid in installments under a debtor's Chapter 13 plan pursuant to the Bankruptcy Code's "cram-down" option. The Fifth

Circuit then concluded that this rate would also be applicable in circumstances where the “cram-down” option was not applicable. As such, in the Fifth Circuit, the *Till* prime-plus interest rate would be applicable to practically all conceivable Chapter 13 repayment scenarios.

At the present time, the prime rate of interest is approximately 5.25% per annum. The court is of the opinion that a 4.25% risk factor should be added to the prime rate for an effective repayment interest rate of 9.5% per annum for Chapter 13 purposes. Unless extraordinary circumstances are present, this rate will be considered the generally accepted rate at the present time in this District. This rate will be periodically reviewed and adjusted depending on fluctuations in the prime interest rate.

It Is, Therefore, Ordered and Adjudged that the prime-plus interest rate to be applied to the claim of GMAC in the above captioned case shall be set at 9.5% per annum. Unless extraordinary circumstances are present, this rate will be considered the generally accepted rate at the present time in this District until subsequently adjusted by the court.

ORDERED and ADJUDGED this the 1st day of May, 2008.

/s/ David W. Houston, III
DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE