

874 F.3d 787, *, 2017 U.S. App. LEXIS 20596, **;
Bankr. L. Rep. (CCH) P83,176; 64 Bankr. Ct. Dec. 216

borrower to compensate for the opportunity costs of the loan, the risk of inflation, and the relatively slight risk of default. A bankruptcy court should then hold a hearing to determine a proper plan-specific risk adjustment to that prime rate, at which the debtor and any creditors may present evidence. Using this approach, courts have generally approved adjustments above the prime rate of 1% to 3%.

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[HN8] Many courts have relied on footnote 14 of the United States Supreme Court's plurality opinion in *Till v. SCS Credit Corp.* to conclude that efficient market rates for cramdown loans cannot be ignored in Chapter 11 bankruptcy cases. Most notably, in *In re American HomePatient, Inc.*, the United States Court of Appeals for the Sixth Circuit, taking its cue from footnote 14 of the *Till* plurality, adopted a two-part process for determining an appropriate interest rate in Chapter 11 cramdowns. The Sixth Circuit found that the market rate should be applied in Chapter 11 cases where there exists an efficient market, but where no efficient market exists for a Chapter 11 debtor, then a bankruptcy court should employ the formula approach endorsed by the *Till* plurality. In applying that rule, courts have held that markets for financing are efficient where, for example, they offer a loan with a term, size, and collateral comparable to the forced loan contemplated under a cramdown plan.

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[HN9] The United States Court of Appeals for the Second Circuit adopts the two-step approach the United States Court of Appeals for the Sixth Circuit adopted in *In re American HomePatient, Inc.* for determining an appropriate interest rate in Chapter 11 cramdowns, which best aligns with the Bankruptcy Code and relevant precedent. The Second Circuit does not read the United States Supreme Court's plurality opinion in *Till v. SCS Credit Corp.* as stating that efficient market rates are irrelevant in determining value in the Chapter 11 cramdown context. And, disregarding available efficient market rates would be a major departure from long-standing precedent dictating that the best way to determine value is exposure to a market. In *Bank of Am. Nat'l Trust and Sav. Ass'n v. 203 N. LaSalle St. P'ship*, the Supreme Court noted that one of the Bankruptcy Code's innovations was to narrow the occasions for courts to make valuation judgments, and expressed a disfavor for decisions untested by competitive choices when some form of market valuation may be available.

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[HN10] When dealing with a sub-prime loan in a Chapter 13 bankruptcy context, "value" can be elusive because the market is not necessarily efficient and the borrower is typically unsophisticated. However, where an efficient market may exist that generates an interest rate that is apparently acceptable to sophisticated parties dealing at arms-length, such a rate is preferable to a formula improvised by a court.

Contracts Law > Negotiable Instruments > Discharge & Payment > Payment > Time for Payment

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