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September 27, 2006

Honorable Michael J. Kaplan
U.S. Bankruptcy Judge
Olympic Towers, Suite 350
300 Pearl Street
Buffalo, New York 14202

Honorable Carl L. Bucki
U.S. Bankruptcy Judge
Olympic Towers, Suite 350
300 Pearl Street
Buffalo, New York 14202

Dear Judges Kaplan and Bucki:

The recent decision of the District Court for the Western District of New York (per Honorable William M. Skretny) has rendered inappropriate the long-standing practice utilized in the Buffalo division of the District regarding applicable "present value" rate for purposes of U.S.C. 1325. For many years – pursuant to the direction of the Court – I had used the State judgment rate (9%). Now, the decision of Judge Skretny in the case of *In re Pringle,* 05-CV-144S, itself based upon the Second Circuit decision in the case of *In re Valenti,* 105 F.3d 55 (2nd Cir. 1997) and the decision of the United States Supreme Court in the case of *Till v. SCS Credit Corporation,* 541 U.S. 465 (2004) has mandated a new method of determining the appropriate present value rate.

In the case of *In re Pringle* the Bankruptcy Court was directed to "(1) select an appropriate standard of risk free measure, such as the United States Treasury instrument or the national prime rate; (2) determine what that rate was [at the applicable time in the Debtor's case], and (3) add a suitable risk premium, such as between 1% and 3%, to reflect the risk to Debtor's secured creditors in receiving deferred payments under the Chapter 13 Plan."

Based upon our discussions regarding the proper method of applying the *Pringle* decision, I propose the following as a new rule of administrative convenience to be applied to all unconfirmed Chapter 13 cases now pending in this part of the District.

The applicable "present value" rate will be the average of two national market standards on the date of confirmation, those being the rate for five-year U.S. Treasury notes and the prime rate; and then added to that average will be an additional percentage factor to reflect the risk of plan default by the Chapter 13 debtor in the case at bar. I propose to recommend a standard 1% addition for such risk of default. Naturally, creditors may argue for a higher risk factor in a particular case.

I believe we all felt that this approach should be adopted because the risk of inflation during the life of any Chapter 13 plan is adequately reflected, by definition, in five-year Treasury note interest rates (although not in short-term Treasury notes, such as six-month notes). Similarly, the risk of inflation is reflected, by definition, in the prime rate. But neither the long-term U.S. Treasury note rate nor the prime rate reflects the risk of default by a non-commercial borrower. However, the decision to average the two rates is intended to eliminate the inherent unfairness, either to debtor or to creditors, that would result at times like the present when there is an unusually large gap between the rate for five-year U.S. Treasury notes and the prime rate.

Naturally, as this is a "rule of administrative convenience" only, any party would remain free, in any individual case, to argue the consequences of the District Court's decision in *Pringle* to the extent that it is believed that the rule of administrative convenience is not in accord with the District Court's command in a particular case.

It is my present intention – to the extent that Your Honors do not feel an alternate or amended rule is appropriate – to implement the rule of administrative convenience set forth in this letter immediately. If the rule is acceptable to the Court, I would hope that Clerk of the Court Paul Warren might be able to take appropriate measures to insure that it is disseminated among the practicing Bar as soon as practicable.

Naturally, I am, as always, at the Court's disposal if further discussion – or alteration to the proposed rule – is thought advisable.

Respectfully,

Albert J. Mogavero
Trustee

AJM/mlk
Pc: Paul R. Warren, Clerk of Court