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APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 22-2577

In re: William Howard Topp

Debtor

Farm Credit Services of America, FLCA

Appellant

v.

William Howard Topp, also known as Bill Topp,
doing business as Bill Topp Farm,
doing business as William Topp Farm

Appellee

Carol Dunbar

Trustee

Appeal from United States District Court for the
Southern District of Iowa - Central

Submitted: June 13, 2023
Filed: August 2, 2023

Before GRUENDER, ARNOLD, and KELLY, Circuit Judges.

GRUENDER, Circuit Judge.

This bankruptcy appeal arises from a dispute between a farmer and his creditor over their proposed repayment plan. The two could not agree on the appropriate discount rate that should apply to the farmer's deferred payments so as to satisfy the creditor's present claim. Unsurprisingly, the farmer's proposed rate was lower than his creditor's. The bankruptcy court[1] sided with the farmer. We do too.

I.

Farmer William Topp raises crops and livestock in Monroe County, Iowa. After several rough years, he filed for Chapter 12 bankruptcy—intended for "family farmer[s]." *See* 11 U.S.C. §§ 109(f), 101(18)(A); *see also In re Fisher*, 930 F.2d 1361, 1362 (8th Cir. 1991). Farm Credit Services of America had financed part of Topp's farm operation and filed a $595,000 claim as a secured creditor. The claim arose from five loans of various durations, with interest rates ranging from 3.5% to 7.6%. Together, the loans were secured by $1.45 million of Topp's real estate.

In Chapter 12 bankruptcy, the debtor proposes a plan to pay back his creditors from his future earnings.

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[1] The Honorable Anita L. Shodeen, United States Bankruptcy Judge for the Southern District of Iowa.

11 U.S.C. § 1222(a). Secured creditors, like Farm Credit, are entitled to full payment, while unsecured creditors might receive only a portion or nothing at all. *See id.* § 1225(a)(5), (b). Once the debtor proposes a plan, the court must hold a hearing on whether to confirm it. *Id.* § 1224. The plan must accommodate each secured creditor in one of three ways: (1) by obtaining the creditor's acceptance of the plan; (2) by surrendering the property securing the claim; or (3) by providing the creditor both a lien securing the claim and a promise of future property distributions whose total value "as of the effective date of the plan" is not less than the allowed amount of the claim. § 1225(a)(5). The third is a last resort, commonly referred to as the "cramdown" option because it may be enforced over a claim holder's objection. *Fisher*, 930 F.2d at 1362.

Farm Credit objected to Topp's plan, and Topp did not surrender his property. For the cramdown option, both sides have agreed to a twenty-year repayment period. But they disagree on the appropriate interest rate for determining the present value of future payments. Topp proposes starting with the twenty-year treasury bond rate (1.87% at the relevant time) and adding a 2% risk adjustment. Farm Credit opts for the national prime rate (3.25% at the time) but otherwise agrees with a 2% risk adjustment. The bankruptcy court sided with Topp and, after rounding up, found that a 4% rate was appropriate and confirmed the plan.

Farm Credit appealed to the district court,[2] which affirmed. *See* 28 U.S.C. § 158(c)(1). Farm Credit now appeals to us. *See* § 158(d).

II.

We review only the underlying bankruptcy court decision. *In re Luebbert*, 987 F.3d 771, 778 (8th Cir. 2021). We review legal conclusions *de novo* and factual findings for clear error. *Id.*

The goal here is to ensure that the total present value of future payments to Farm Credit over the plan period equals or exceeds the allowed value of the claim. 11 U.S.C. § 1225(a)(5); *see Till v. SCS Credit Corp.*, 541 U.S. 465, 474 (2004) (plurality opinion). Farm Credit's claim is over-secured, so the whole claim is "allowed." *See* 11 U.S.C. § 506(a).

Generally, money now is worth more than money later. *See* Charles J. Woelfel, *Encyclopedia of Banking & Finance* 1131 (10th ed. 1994). Accordingly, future payments must be discounted before adding them up to see whether the total equals the present value of a claim. *Rake v. Wade*, 508 U.S. 464, 472 n.8 (1993); *Till*, 541 U.S. at 474. Discounting is achieved by applying an interest rate that captures the time value of money—often called the "discount rate." But there are no guarantees in life. A lot can happen in twenty years, and deferred payments come with risk. The debtor may not

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[2] The Honorable Rebecca Goodgame Ebinger, United States District Judge for the Southern District of Iowa.

be able to pay. Or market conditions may shift unexpectedly. So a proper discount rate accounts for risk too. *See United States v. Doud*, 869 F.2d 1144, 1146 (8th Cir. 1989).

Because Farm Credit objected to Topp's plan, the bankruptcy court had to determine the appropriate discount rate to ensure that future payments would satisfy the present value of Farm Credit's claim. The parties agree that this task calls for a "market rate" or "formula" approach. *See Doud*, 869 F.2d at 1146; *Till*, 541 U.S. at 477-79. At its core, that approach says that the appropriate interest rate "should consist of a risk-free rate, plus additional interest to compensate a creditor for risks posed by the plan." *See Doud*, 869 F.2d at 1146. Farm Credit and Topp disagree over the proper risk-free starting point: the prime rate or the treasury rate. Topp cites *Doud* for the treasury rate, while Farm Credit cites *Till* for the prime rate.

Like here, *Doud* was a Chapter 12 case. But unlike here, it did not present the explicit choice between starting with the prime rate or the treasury rate. Rather, we affirmed the overall rate as not clearly erroneous because the bankruptcy court had "rationally analyzed its preference" for starting with the treasury rate and considered "all the elements" relevant to risk adjustment. *Id.* Around that time (the late 1980s and early 1990s), many courts started with the treasury rate before adjusting upward for risk. *See* 8 Collier on Bankruptcy ¶ 1225.03 n.29 (16th ed. 2023).

Till came later, in 2004, and was a Chapter 13 case.[3] Until then, courts sometimes took non-formula approaches. *See* 541 U.S. at 477-78. Against those, the *Till* plurality favored the formula approach, which it characterized as requiring a court to begin with the national prime rate and then adjust upward for the typically greater risk of nonpayment that bankrupt debtors pose. *Id.* at 479. According to the plurality, the prime rate "reflects the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate for the opportunity costs of the loan, the risk of inflation, and the relatively slight risk of default." *Id.; see* Woelfel, *supra*, at 923. Still, like *Doud, Till* did not explicitly analyze the merits of starting with the prime rate versus the treasury rate. The Court discussed the prime rate simply because that was what the formula-approach proponents used. As for the appropriate risk adjustment on top of the prime rate, the plurality did not decide; it merely observed that courts had generally approved adjustments of 1% to 3%. *Id. at* 480.[4]

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[3] Chapter 13 plan confirmation resembles that of Chapter 12. *See* 11 U.S.C. § 1325; *see Till*, 541 U.S. at 474 & n.10. For our purposes, any distinction is immaterial, *see Hall v. United States*, 566 U.S. 506, 516 (2012), and Topp has not suggested otherwise.

[4] Justice Thomas concurred only in the judgment on the ground that the ultimate rate satisfied the statute's condition that the total payments be not less than the creditor's claim. *Till*, 541 U.S. at 491; *see* § 1325(a)(5)(B)(ii). But he did not endorse the plurality's formula approach. Instead, he believed that "[i]n most, if not all, cases, where the plan proposes simply a stream of cash payments, the appropriate risk-free rate should suffice" and no risk adjustment is necessary. *Id.* at 487. Like the plurality,

To the extent that Farm Credit relies on *Till* for the proposition that the prime rate is *the* rate with which to start and that starting with the treasury rate is legal error, we disagree. *Doud* and *Till* are not cases about particular starting rates. They are about the proper approach to satisfying the plan-confirmation requirement that secured creditors receive at least "the value, as of the effective date of the plan," of their claims. *See* § 1225(a)(5)(B)(ii). That approach begins with risk-free or low-risk lending practices and then accounts for case-specific risk factors. *See Doud*, 869 F.2d at 1146. Naturally, the appropriate risk adjustment depends on the risk already accounted for in the starting rate. *See* April E. Kight, *Balancing the Till: Finding the Appropriate Cram Down Rate in Bankruptcy Reorganizations After* Till v. SCS Credit Corporation, 83 N.C. L. Rev. 1015, 1028 (2005) ("Whereas the rate on a treasury bond is risk-free, the prime rate includes a risk premium to reflect the inherent risk of default present in a loan to the most creditworthy borrower."). In agreeing with the bankruptcy court's 2% adjustment, Farm Credit wants to keep the risk factor constant while choosing between a risk-free rate (treasury) and a *some*-risk rate (prime). This is backwards—the starting point will influence the risk adjustment. We see no legal significance to whether a court starts with a risk-free rate and adds *full* risk or starts with a *some*-risk rate and adds some more. If the court properly follows the formula approach, the

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Justice Thomas did not analyze the merits of starting with the prime rate versus the treasury rate.

ultimate discount rate, not the starting point, is what matters. *See id.*

To be sure, in *Till*'s wake, most courts start with the prime rate. *See* Alexandra Power Everhart Sickler, *Betting on the Farm: Feasible Chapter 12 Plans*, 95 Am. Bankr. L.J. 279, 305 (2021). But *Till* did not make the treasury rate obsolete as a matter of law. *See In re Texas Grand Prairie Hotel Realty, LLC*, 710 F.3d 324, 331 (5th Cir. 2013) ("*Till* was a splintered decision whose precedential value is limited even in the Chapter 13 context"); *see also* Kight, *supra*, at 1024-27. The treasury rate persists as a base rate, even if only rarely. *See, e.g.*, *In re Fuelling*, 601 B.R. 665, 674 (Bankr. N.D. Iowa 2019); *In re Vasquez*, No. 12-30834, 2012 WL 3762981, at *2 (Bankr. S.D. Tex. Aug. 29, 2012); *In re Thomas*, No. 13-44201-13, 2014 WL 1761954, at *1 (Bankr. W.D. Mo. May 1, 2014) (referring to the district's presumed Chapter 13 rate, set by local rule, which relied on treasury rates); *see also* Diane Lourdes Dick et al., *Reevaluating Risk and Return in Chapter 11 Secured Creditor Cramdowns: Interest Rates and Beyond*, 93 Am. Bankr. L.J. 175, 222 n.317 (2019) ("[W]e note that bankruptcy courts presiding over chapter 13 cases have also used the Treasury rate in recent years.").

Thus, Farm Credit's reliance on *Till* is simply a red herring—an attempt to pitch the starting-rate choice as a purely legal question calling for *de novo* review rather than what it is: a factual finding about the appropriate discount rate in this particular case reviewed for clear error. *See Doud*, 869 F.2d at 1146. After

all, Farm Credit argues that the bankruptcy court erred by "ignoring the ordinary lending practices" of the parties' particular "commercial business world," by relying on an "outdated interest rate model based on the Treasury bond yield in the 1980s," and by giving too much weight to the length of the repayment plan and the nature of the collateral.

Reviewing the bankruptcy court's factual finding for clear error, we see none. The bankruptcy court studied the *Till*/*Doud* relationship and the prevalence of post-*Till* decisions using the prime rate. The court considered the length of the proposed maturity period, the fact that Farm Credit's claim was substantially oversecured, and the overall risk of nonpayment. It specifically noted that Farm Credit's claim was secured by real estate and that those "types of transactions are generally financed over a longer period of time which justifies use of the treasury bond as the base rate." In the end, the court approved a 4% rate—the treasury rate plus 2% for risk. Note, too, that this 4% rate happens to equal the prime rate of 3.25% plus a modest risk adjustment of 0.75%. When asked at argument whether Farm Credit would have appealed *that* 4% rate, counsel demurred, suggested no, and veered back to arguing about the starting rate. By focusing on the starting rate rather than the ultimate rate, Farm Credit has failed to show that the bankruptcy court clearly erred in its determination that a 4% rate was sufficient to ensure full payment on "the value, as of the effective date of the plan," of the secured claim. *See* § 1225(a)(5)(B)(ii).

III.

For the foregoing reasons, we affirm the judgment of the bankruptcy court.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FARM CREDIT SERVICES OF AMERICA, FLCA, Appellant, v. WILLIAM HOWARD TOPP, Appellee.	**No. 4:21-cv-00293-RGE-HCA** **ORDER RE: APPEAL FROM BANKRUPTCY COURT** (Filed Jul. 19, 2022)

I. INTRODUCTION

Appellant Farm Credit Services of America appeals the bankruptcy court's Memorandum and Order setting the interest rate to be applied to Farm Credit's secured claim in Appellee William Howard Topp's underlying Chapter 12 bankruptcy case. Farm Credit contends the bankruptcy court erred by using the 20-year treasury rate, as opposed to the national prime rate, as the starting point to determine the applicable interest rate. After de novo review, the Court finds no error. The Memorandum and Order is affirmed.

II. BACKGROUND

Topp is a farmer in Monroe County, Iowa. Appellee's Appeal Br. 7, ECF No. 5. He filed a petition for reorganization under Chapter 12 of the United

Bankruptcy Code in June 2020. Appellant's Appeal Br. 4, ECF No. 4. In July 2020, Farm Credit filed a proof of claim asserting a claim in the amount of $595,538.53, secured by real property valued at $1,447,000. Appellant's App. Supp. Appeal, Banks. Ct. Memo. & Order at FC App 106, ECF No. 4-6.

Topp filed his initial proposed Chapter 12 Plan of Reorganization, proposing Farm Credit receive the value of its secured claim through a restructured loan amortized over 20 years at 3% interest, with an annual payment each December. ECF No. 5 at 8; ECF No. 4 at 5. Farm Credit objected to the Plan, contending an interest rate of 5.25% (2% above the prime rate of 3.25%) was required to obtain the present value of its claim, among other objections. Appellant's App. Supp. Appeal, Appellant's Obj. Reorganization Plan at FC App 049-50, ECF No. 4-3. All other objections were resolved as part of Topp's Modified Plan. ECF No. 5 at 8. The bankruptcy court held an evidentiary confirmation hearing on the only outstanding objection the interest rate to be applied to Farm Credit's claim. *See* Appellant's App. Supp. Appeal, Bankr. Ct. Hr'g Tr., ECF No. 4-5. On September 16, 2021, the bankruptcy court overruled Farm Credit's remaining objection and determined the appropriate interest rate on the restructured 20-year Farm Credit loan was 4% (staring with the 1.87% rate for a twenty-year treasury bill, plus a 2% risk adjustment, and rounding up). ECF No. 4-6 at FC App 109.

Consistent with the bankruptcy court's order, Topp filed an amended plan, reflecting the 4% interest rate on the Farm Credit claim mandated by the

bankruptcy court. ECF No. 4 at 5. Farm Credit filed an appeal from the bankruptcy court's September 16 Order. Notice of Appeal from Bankr. Ct., ECF No. 1. Topp elected to have Farm Credit's appeal heard in this Court, under Rule 8005(a) of the Federal Rules of Bankruptcy Procedure. ECF No. 1 at 17 (Statement of Election to Proceed in District Court).

III. LEGAL STANDARD

Having jurisdiction under 28 U.S.C. § 158(a)(1), the Court considers this appeal.

The district court reviews the bankruptcy court's conclusions of law de novo and its factual findings for clear error. *In re Roso*, 76 F.3d 179, 181 (8th Cir. 1996). As the parties acknowledge, "determination of the factors that appropriately may be considered when calculating the market rate of interest is an issue of law, while the final determination of the market rate is an issue of fact." ECF No. 4 at 6 (quoting *In re Roso*, 76 F.3d at 181); *see also* ECF No. 5 at 12 (citing *In re Roso*, 76 F.3d at 181).

IV. DISCUSSION

The question before the Court is finite: Did the bankruptcy court err in using the treasury bond rate, as opposed to the prime rate, as the starting point to determine the interest rate applied to achieve the present value of a Chapter 12 creditor's secured claim. Although Tapp raises a number of other issues in his

resistance to the appeal, there is no cross appeal, and no other issue is before the Court.

In deciding whether the bankruptcy court erred, the Court considers whether the plan adequately provides for "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." 11 U.S.C. § 1225(a)(5)(B)(ii). Farm Credit asserts the Court is required to follow the plurality opinion in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), and start with the prime rate to achieve the proper value for the claim. Topp contends *Till*s approach need not be applied in this Chapter 12 proceeding, and argues instead that *United States v. Doug* 869 F.2d 1144 (8th Cir. 1989) provides the appropriate method of determining the value of Farm Credit's claim.

A number of courts have applied the *Till* approach, which involved valuation in a Chapter 13 case, in the Chapter 12 context. *See*, *e.g.*, *In re Prescott*, No. 11-10789, 2011 WL 7268057, at *1-2 (Bankr. S.D. Ga. Dec. 21, 2011); *In re Hudson*, No. 208-09480, 2011 WL 1004630, at *6-7 (Bankr. M.D. Tenn. Mar. 16, 2011); *In re Whitten*, Nos.BK10-43545-TLS, BK10-43548-TLS, 2012 WL 4839119, at *3 (Bankr. D Neb. Oct. 10, 2012). Other courts have declined to extend *Tills* "prime-plus" or "formula" approach outside the Chapter 13 context, at least as to Chapter 11 cases "where efficient markets" exists. *In re Am. HomePatient, Inc.*, 420 F.3d 559, 568 (6th Cir. 2005); *see also Matter of MPM Silicones, L.L.C.*, 874 F.3d 787 (2d Cir. 2017)

(adopting the *American HomePatient* approach and rejecting the bankruptcy court's use of the *Till* approach without first considering market rates in a Chapter 13 case); *but see In re Riverbend Leasing*, 458 B.R. 520, 538 n.19 (Bankr. S.D. Iowa 2011) (adopting the *Till* formula approach in a Chapter 11 proceeding, noting the resulting rate would be the same under *Doud* because of similarities between the prime rate and the 15-year treasury bond rate).

Both *Till* and *Doud* are formula method cases. They simply start from different risk-free market rates. *Compare Till*, 541 U.S. at 479 (starting from the prime rate and adding, if necessary, an adjustment to account for risk of nonpayment) *with Doug* 869 F.2d at 1145 (starting from the yield on a treasury bond and adding 2% for risks associated with a Chapter 12 reorganization). Although *Till* suggests Congress intended a consistent approach to valuation under any of the bankruptcy provisions, 541 U.S. at 474, nothing in the plurality opinion in *Till* undermines the approach affirmed by the Eighth Circuit in *Doud*. In *Doug* the Eighth Circuit noted the bankruptcy court "rationally analyzed its preference for using the yield on treasury bonds as the preferable riskless rate and the court's discussion of the risk rate properly emphasized the nature of the agricultural economy as Chapter 12 is geared toward farmers." 869 F.2d at 146. The bankruptcy court followed the same approach here.

Upon de novo review, the Court finds no error in the bankruptcy court's conclusions of law. Nor is the factual finding of a 4% interest rate clearly erroneous.

V. CONCLUSION

For the reasons set forth above, the Court finds that the Bankruptcy Court's determination of the interest rate to be applied to Farm Credit's claim is not clearly erroneous.

IT IS ORDERED that the Appeal of Appellant Farm Credit Services of America, FLCA, ECF No. 1, is **DENIED**. Accordingly, the Bankruptcy Court's Memorandum and Order of September 16, 2021 is **AFFIRMED**.

IT IS SO ORDERED.

Dated this 19th day of July, 2022.

/s/ Rebecca Goodgame Ebinger
REBECCA GOODGAME EBINGER
United States District Judge

APPENDIX C

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF IOWA

William Howard Topp **Case No. 20-01191-als12**

Debtor(s)

MEMORANDUM OF DECISION
(date entered on docket: September 16, 2021)

Before the Court is an objection by Farm Credit Services to the interest rate proposed by the Debtor William Topp (hereinafter "Topp") in his chapter 12 plan. Hearing on this matter was conducted on June 22, 2021 and post-trial briefs have been submitted. Jurisdiction of this matter is conferred pursuant to 28 U.S.C. sections 157(b)(1) and 1334. For the reasons that follow the objection is overruled.

DISCUSSION

Farm Credit Services' (hereinafter "Farm Credit") amended proof of claim reflects that it holds a debt in the amount of $595,538.53, which is secured by real estate valued at $1,447,000.[1] Topp's proposed plan repays this obligation over a term of 20 years with

[1] Farm Credit's secured claim includes 5 separate notes (and amendments thereto) with interest rates ranging from 3.5% to 7.60% and various repayment periods ranging from 10 to 20 years.

interest at 3%[2] and has Farm Credit retaining its lien. Farm Credit objects to the stated interest rate and suggests that 5.25% is appropriate.[3] Because Farm Credit does not accept its treatment the bankruptcy code requires that "the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim." 11 U.S.C. §1225(a)(5)(B)(ii). Accordingly, to confirm Topp's proposed plan Farm Credit must receive the "present value" of its secured claim. Central to the issue of determining the present value of the secured claim is applying the appropriate interest rate under the plan. *US. v. Doud*, 869 F.2d 1144 (8th Cir. 1989); *aff'g. In re Doud*, 74 B.R. 685 (1987); *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Topp contends the *Doud* rate has consistently been used in this District and therefore applies here. *Doud*, 869 F.2d 1144. Farm Credit counters that the prime rate plus formula is controlling. *Till*, 541 U.S. 465. Each of these cases endorse a formula approach to calculate interest rates but use different metrics.

Doud involved cram down of a secured creditor's loan in a chapter 12 case where the treasury bond rate with a maturity date matching the term of repayment for the secured obligation was adopted as the riskless

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[2] The court presumes that this calculation is based upon the 20-year bond rate on June 21, 2021 at 1.87% plus the 2% risk adjustment under *Doud* which is then adjusted downward to 3%.

[3] This interest rate is based upon the prime rate of 3.25% plus a 2% adjustment for risk.

component of the discount rate. 869 F.2d at 1145. After weighing a number of factors, a 2% risk adjustment was identified to "adequately compensate[s] a conventional lender for the overall risk associated with a Chapter 12 reorganization." *Id.* at 1145. *Till* addressed the calculation of the interest rate to be applied to an undersecured vehicle loan in a chapter 13 plan. 541 U.S. 465. The plurality opinion adopted a formula approach utilizing the prime rate with no specific risk adjustment identified, and instead simply observed that "other courts have generally approved adjustments of 1% to 3%." *Id.* at 480.

Farm Credit argues that the *Till* case has "suspended" application of the *Doud* formula. While many courts have adopted *Till* in determining interest rates, there is no legal authority to suggest that the holding in *Doud* has been abrogated, or otherwise formally rejected. See generally, Dian Lourdes Dick, et al., *Revaluating Risk and Return in Chapter 11 Secured Creditor Cramdowns: Interest Rates and Beyond*, 93 AM. BANKR. L.J. 175 (2019). Although some courts do apply *Till* in both chapter 11 and 12 cases the use of that formula is not mandated.

> *Till* was a splintered decision whose precedential value is limited even in the Chapter 13 context. While many courts have chosen to apply the *Till* plurality's formula method under Chapter 11, they have done so because they were *persuaded* by the plurality's reasoning, not because they considered *Till* binding.[33] Ultimately, the plurality's suggestion that its

> analysis also governs in the Chapter 11 context—which would be dictum even in a majority opinion—is not "controlling . . . precedent."

Wells Fargo Bank NA. v. Tex. Grand. Prairie Hotel Realty, L.L. C. (In re Tex. Grand Prairie Hotel Realty, L.L.C.), 710 F.3d 324, 331 (5th Cir. 2013) (citation omitted). Also noteworthy is the treasury rate analysis has been approved in a "modified" application of the *Till* formula. In affirming a decision issued by the bankruptcy court in Delaware the Second Circuit stated:

> Judge Drain chose the Treasury rate because it is "often used as a base rate for longer-term corporate debt such as the [R]eplacement [N]otes." In contrast, the prime rate may be a "more appropriate base rate for consumer, although [the Second Circuit in] *Valenti* chose the Treasury rate." The Court agrees with Judge Drain that *Till* does not obligate a bankruptcy court to choose the national prime rate as the risk-free base rate.

U.S. Bank N.A. v. Wilmington Sav. Fund Soc'y (In re MPM Silicones, LLC), 531 B.R. 321, 334 (S.D.N.Y. 2015), *rev'd sub nom., In re MPM Silicones*, 874 F.3d 787.

In some cases, such as here, where the secured claim involves a transaction that is usually financed over a longer period of time the treasury rate is relevant to the consideration of calculating present value. Black's Law Dictionary describes Treasury Bonds as a risk-free "long-term debt security issued by the federal government, with a maturity of 10 to 30 years." Black's

Law Dictionary (11th ed. 2019). In contrast the prime-rate is "one of several base rates used by banks to price short-term business loans."[4]

Farm Credit relies upon testimony by its witness to establish the risks of repayment of its loan. Much of that evidence relates to state court proceedings involving the debtor which are unrelated to the farming operation. On cross-examination the witness did not clearly respond to whether such risk factors were routinely applied or monitored by Farm Credit. The record is unclear whether Topp was delinquent or in default on his loans on the petition date. In support of its proposed risk adjustment under *Till*, the testimony, in part, was described in the context of "pricing a loan." The use of such a characterization implies that this process is used when determining an interest rate for a new loan, a consideration that is not relevant in the calculation of present value on a secured claim.[5] Farm Credit raised no objection to feasibility of the proposed plan, which the court could construe as acknowledgment, at least tacitly, that Farm Credit's claim will be paid. *Doud*, 74 B.R. at 869 ("risk is reduced because a confirmed plan presumes repayment under the

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[4] *In re Sparks*, 346 B.R. 767, 772 (Bankr. S.D. Ohio 2006) ([T]he prime rate published daily in the *Wall Street Journal* or the bank prime loan rate published daily by the Federal Reserve at www.federalreserve.gov/releases/H15 meet the requirements of the Supreme Court to start with the "national prime rate" in calculating the rate of interest due to creditors").

[5] See generally, *In re Key Farms, Inc.*, 2020 WL 3445425 (Bankr. E.D. Wash. 2020) (unpublished), citing, *Till* 541 U.S. at 477-78.

feasibility finding"); *In re Ridgewood Apartments*, 183 B.R. 784, 792 (Bankr. S.D. Ohio 1995) ("If a plan of reorganization is feasible, qualification of the 'borrower' is established"). Farm Credit alleges that the value of its collateral is not guaranteed and that real estate prices could decline over the course of the loan repayment. No data or testimony was supplied to quantify such a risk. The real estate securing the claim is worth substantially more than what is owed with a loan to value ratio in excess of 1:2. Although application of a ratio has been abandoned in Farm Credit's current review process in extending credit, it is a relevant factor to consider in this dispute. *Doud* evaluated many of the concerns expressed by Farm Credit:

> . . . Chapter 12 reorganizations have aspects that heighten risk. Arguably the greatest source of risk is the unpredictable nature of the agricultural economy itself. Though a plan must meet the feasibility requirements of 11 U.S.C. section 1225(a)(6), the court is keenly aware that the assumptions contained in the plan and otherwise found reasonable at the time of confirmation are subject to the vicissitudes of the farm economy. Prices relied upon in February may not be the prices paid in November. Yields anticipated in the spring may not be the yields harvested in the fall. The numerous variables affecting commodity prices—the value of the dollar, the weather, foreign production, interest rates, government policy—make predictions challenging for even the most enlightened.

Doud, 74 B.R. at 869. Based upon these considerations the *Doud* bankruptcy court concluded that a 2% risk adjustment is appropriate. The same percentage requested by Farm Credit.

Farm Credit holds notes and mortgages against real estate and these types of transactions are generally financed over a longer period of time which justifies use of the treasury bond as the base rate. The fact that the treasury bond rate is lower than the prime rate, standing alone, does not support a rejection of the *Doud* formula.

The available data suggests that in the month of September 2021 a treasury bond with a maturity rate of 20 years is within the range of 1.88% which Topp uses in his plan.[6] Applying *Doud's* risk adjustment of 2% yields an interest rate of 3.88% which is properly rounded to 4%.

IT THEREFORE ORDERED that:

1. Farm Credit's objection to the plan is overruled.
2. The interest rate to be applied to Farm Credit's secured claim is 4%.

/s/ Anita L. Shodeen
Anita L. Shodeen
U.S. Bankruptcy Judge

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[6] https://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield (last visited Sep. 13, 2021).

Parties receiving this Memorandum of Decision from the Clerk of Court: Electronic Filers in this Chapter Case

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 22-2577

In re: William Howard Topp

Farm Credit Services of America, FLCA

Appellant

v.

William Howard Topp, also known as Bill Topp,
doing business as Bill Topp Farm,
doing business as William Topp Farm

Appellee

Carol Dunbar

Appeal from U.S. District Court for the
Southern District of Iowa - Central
(4:21-cv-00293-RGE)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

September 20, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans