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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re: **MARK WALLACE SMITH,** **NOEL ETOLA SMITH,** **DEBTORS.**	**CASE NO. 99-41536-13** **CHAPTER 13**
In re: **MARK ALLEN GUY,** **RHONDA LYNN GUY,** **DEBTORS.**	**CASE NO. 99-41945-13** **CHAPTER 13**
In re: **ALEXANDER JOSEPH DeYOUNG,** **HEATHER LYNN DeYOUNG,** **DEBTORS.**	**CASE NO. 99-42272-13** **CHAPTER 13**
In re: **GINA LEANN LEAK,** **WAYNE EDWARD LEAK,** **DEBTORS.**	**CASE NO. 99-42481-13** **CHAPTER 13**

ORDER DENYING MOTION FOR RECONSIDERATION
OF JANUARY 29, 2002, ORDER

These matters are before the Court on a motion for reconsideration of the January 29, 2002, order it entered resolving a dispute common to all four cases. The motion was filed by creditor Household Automotive Finance Corporation ("HAFC") on February 7, and none of the debtors has filed any response to it. HAFC appears by counsel Susan A. Berson of Shook, Hardy & Bacon, L.L.P. of Kansas City, Missouri. The Court had thought these matters had been appealed, and only recently realized the motion for reconsideration was pending. The Court is now ready to rule.

The bulk of HAFC's motion appears to be a complaint that this Court cannot establish an interest rate that debtors must propose to pay to their secured creditors in chapter 13 cases that will be filed before the Court in the future in order for their plans to be confirmed even if the secured creditors

do not object. The motion states: "Because this Court is bound by the *Hardzog*[1] decision, HAFC submits that the determination of the appropriate market rate of interest in future cases in Kansas must be made on a case-by-case basis." The Court believes that HAFC has no standing to raise this complaint in these cases. The Court's January 29, 2002, order determined, based on the evidence presented, the interest rate that must be paid on HAFC's secured claims in these cases, and HAFC's pecuniary interest ended at that point. If HAFC disagrees with the interest rate proposed to be paid to it in any other case filed before this Court, it will be free to object to the proposal, as it did in these cases. However, it has no right to dictate to the Court how thousands of other chapter 13 cases filed here are to be administered, nor to force other secured creditors to litigate the interest rate to be paid them in every case, even though they may be satisfied with the Agreed Formula discussed in the earlier order.

Furthermore, the Court believes that the large number of chapter 13 cases filed here mandates a different approach than the Tenth Circuit appears to have contemplated in the chapter 12 *Hardzog* case. For example, from February 1, 2002, through August 31, 2002, 648 chapter 13 cases were filed in the Topeka division of the District of Kansas, and the vast majority of those cases would have involved at least one secured creditor. By contrast, only 15 chapter 12 cases were filed in the entire District during that time.[2] Requiring the parties to litigate the applicable interest rate in all those chapter

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[1]*Hardzog v. Federal Land Bank (In re Hardzog)*, 901 F.2d 858 (10th Cir. 1990).

[2]The authorization for chapter 12 has expired from time to time in recent years, and no chapter 12 cases were filed in the District in February, March, or April 2002. The Court is uncertain whether the lack of filings was because chapter 12 was not in effect during those months or because the farming cycle is such that financial crises rarely arise during those months. In any event, the volume of chapter 12 cases has never risen to a significant percentage of the chapter 13 volume in this District, probably never reaching as much as 10 percent.

13 cases with no guidance of any kind about a rate the Court would be likely to find reasonable would create an administrative nightmare without producing a significant mitigating benefit in return. It is especially ironic that HAFC champions its required-litigation-for-all-cases approach in cases in which the evidence presented showed that the Agreed Formula this Court has been using set rates that usually fell within the range of rates being charged by most of the institutions the witnesses worked for, and never missed the range by more than one-half of one percent. In other words, the Agreed Formula set rates that matched rates being charged in the market at the times relevant to these cases.

HAFC's other arguments about the interest rate testimony presented at trial by its opponents are all based on its insistence that *Hardzog*'s reference to "similar loans" means so-called "sub-prime" loans in these cases. The Court has already explained why it does not agree with this interpretation of *Hardzog*, and so rejects the arguments HAFC is now making. The Court would also point out that it did not understand any of HAFC's opponents' witnesses to be expressing expert opinions about market rates of interest, but to be testifying merely as fact witnesses familiar with the rates of interest in fact charged by the institutions they worked for, and familiar with interest rates generally charged in the Topeka area for auto loans.

For these reasons, HAFC's motion to reconsider is denied.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this _____ day of October, 2002.

JAMES A. PUSATERI
CHIEF BANKRUPTCY JUDGE