SUMMARY OF CRAMDOWN INTEREST RATE CASES

Case	Type of Property	Debtors' Position on Interest Rate	Lender's Position on Interest Rate	Court's Outcome on Rate	Length of Maturity	Relevant Facts & Consideration
In re Bloomingdale Partners, 155 B.R. 961 (Bankr. N.D. Ill. June 7, 1993)	Apartment building valued at $10M	8%; debtor initially argued cost-of-funds approach, then later advocated risk-adjusted rate of return	Treasury rate plus risk factor	Treasury rate plus adjustment for risks to creditor of plan. Court found risk factor in range of 325 to 350 basis points, or 9.5%, and determined plan not fair and equitable.	7.5 years	Risks of plan on creditor must be quantified to compensate lender for level of risk imposed. Court describes details of testimony by 6 expert witnesses as to risk, including market risk, project risk, and management risk. Court would not accept rate below rates on standard loans where market semi-efficient.
In re Dindiyal, 1993 WL 540373 (Bankr. E.D.N.Y. Sept. 30, 1993)	Three residential rental properties	Market rate, which is equal to 8.5%	Market rate, which is equal to 9%	"Market" rate of 9% plus 1% risk factor = 10%	25 years	Long period of time for repayment; premises need major repairs; debtors' outside income is limited which could lead to deterioration of property
In re River Village Assocs., 161 B.R. 127 (Bankr. E.D. Pa. Oct. 29, 1993)	Apartment complex in economically depressed area	9%: Treasury bill rate of 6% plus 3% risk premium	Coerced loan rate should apply; 9% too low	9%: Treasury rate of 6% plus 3% for risk	15 years	Amount and quality of the collateral; risk of default; length of payout period
In re Woodmere Investors Ltd. P'ship, 178 B.R. 346 (Bankr. S.D.N.Y. Feb. 3, 1995)	"Older" apartment complex	7.62%: Six year treasury note plus risk factor of 225 basis points	Risk factor should be 450 to 500 basis points	6 year treasury rate plus 350 basis points	6 years	100% loan-to-value ratio; debt service coverage below the norm

SUMMARY OF CRAMDOWN INTEREST RATE CASES

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In re Gramercy Twins Assocs., 187 B.R. 112 (Bankr. S.D.N.Y. Sept. 26, 1995)	Commercial office building in Manhattan	Parties agreed to formula approach, but debtor argued 8% was proper rate	Parties agreed to formula approach, lender argued for 500 to 575 basis points risk factor	Minimum of 9.43%: 5 year treasury note with risk factor of at least 425 basis points	5 years, with balloon payment at end of 5 years	Relatively high loan to value factor (85%) increases risk factor; debtor's option to refinance or sell property increases risk of repayment
In re Duval Manor Assocs., 191 B.R. 622 (Bankr. E.D. Pa. Jan. 30, 1996)	Apartment building	7%: Interest rate for government bond for same time period as loan (7 years, 5.92%) plus 1% risk premium	Coerced loan rate = 12.44% (equal to 5.77% risk free rate + 6.11% risk premium + 0.56% prepayment premium)	Risk free rate (7 year government bond) plus 1% risk premium = court rounds this to 7%	7 years	Vacancy rate of apartment complex has decreased from 28%-20% in year loan originally obtained to 18% at plan confirmation; improvements in earned income; reduced expenses and "other efficiencies"; environmental problems have been contained
In re Valenti, 105 F.3d 55 (2d Cir. Jan. 15, 1997), *overruled on other grounds*, 520 U.S. 953 (1997)	Automobile: 1990 Pontiac Bonneville	9%: cost of funds approach, assuming creditor could make new loans at prevailing rates in commercial market	15.7%: "Forced loan": Rate charged by creditor at time of plan confirmation to consumers in same geographic area	U.S. Treasury rate with maturity equal to repayment schedule plus risk premium of 1%-3% (remanded to Bankruptcy Court)	Remanded to Bankruptcy Court for determination	Circumstances of the debtor, including prior credit history, and viability of plan. If parties are unable to stipulate as to risk premium, court may conduct hearing limited to determination of that premium.
In re Marfin Ready Mix Corp., 220 B.R. 148 (Bankr. E.D.N.Y.	Real property; property taxes not paid	9%, as reasonable market rate	18%: provided by statute for delinquent taxes	Applying *Valenti*, U.S. Treasury rate	Left to parties to stipulate	Circumstances, including debtor's payment history, viability of plan. Court

SUMMARY OF CRAMDOWN INTEREST RATE CASES

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Apr. 28, 1998)				with maturity equal to repayment schedule plus risk premium of 1%-3%		stated that if parties cannot stipulate to reasonable risk premium, evidentiary hearing would be held.
In re Danny Thomas P'ship, 231 B.R. 298 (Bankr. E.D. Ark. Mar. 18, 1999)	Apartment complex	7.64%: 10-year treasury rate plus 2% risk factor	8.5%-9%: 30-year treasury obligation plus 2.5-3% risk factor	7.64%: 10-year treasury rate plus 2% risk factor	10 years	<u>General</u>: debt service coverage ratio; loan to value ratio; age and condition of property <u>Positive</u>: location has well developed, stable, strong economic base; property values are appreciating in the area; local economy supports this kind of development <u>Negative</u>: Considerable amount of property maintenance has been deferred; a number of units were out of service; recent excessive tenant turnover
Till v. SCS Credit Corp., 541 U.S. 465 (2004) (plurality)	Truck	9.5%: prime plus risk factor	21%: rate lender would obtain if it could foreclose on vehicle and reinvest proceeds in loans of	Formula approach: national prime rate plus risk premium, generally in	Remanded to Bankruptcy Court for determination	Chapter 13; undersecured creditor Considerations of the court include state of financial markets, circumstances of

SUMMARY OF CRAMDOWN INTEREST RATE CASES

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			equivalent duration and risk	range of 1%-3% (remanded to Bankruptcy Court)		estate, nature of security, duration and feasibility of plan, and effectiveness of Ch. 13 protections. *Burden of proof on creditors to support upward adjustment on risk factor*. Rate should be high enough to compensate creditor for nonpayment risk, but not so high as to doom plan.
In re Prussia Assocs., 322 B.R. 572 (Bankr. E.D. Pa. April 5, 2005)	Hotel	6.5%: Formula approach = prime rate of 4.5% plus 2% for risk	"Market" rate of interest would be a blended rate of 9.72% based on mix of senior financing and mezzanine financing	7.25%: Formula approach = prime rate of 5.75% (on date of plan confirmation) plus 1.5% risk factor	25-year amortization, with balloon payment of outstanding principal and interest due in 7 years	Chapter 11 plan (confirmation denied due unwarranted releases and preferential treatment to certain creditors); creditor is oversecured; this is debtor's second chapter 11 case Court preferred formula approach over market rate because evidence presented for market rate was so widely divergent and low in probative value. Debtors' operations are improving; value of collateral was appreciating, hence the risk

SUMMARY OF CRAMDOWN INTEREST RATE CASES

Case	**Type of Property**	**Debtors' Position on Interest Rate**	**Lender's Position on Interest Rate**	**Court's Outcome on Rate**	**Length of Maturity**	**Relevant Facts & Consideration**
						component of the formula approach was set at 1.5% because the risks attendant to the loan were neither negligible nor extreme.
In re American Homepatient, Inc., 298 B.R. 152 (M.D. Tenn. May 15, 2003), *affirmed*, 420 F.3d 559 (6th Cir. Aug. 16, 2005)	Healthcare company's assets	6.785% based on coerced loan theory: 6-year treasury rate plus 350 basis points for risk	Blended rate of 12.16% based on a combination of senior debt, mezzanine debt and equity	Coerced loan theory (i.e. market rate): 6.785%	6 years	Chapter 11; undersecured lenders Court's considerations include repeated Sixth Circuit precedent upholding "coerced loan" theory in cramdown confirmations; current generally applicable market rates are best approximation of present value of secured claim; prepetition negotiated interest rate between the parties approximately the same as rate determined under "coerced loan" theory. Affirmance distinguishes *Till* because it was a Ch. 13 case; where there is an efficient market for a Ch. 11 debtor, the market rate

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						should prevail.
In re Cantwell, 336 B.R. 688 (Bankr. D.N.J. Jan. 5, 2006)	Real property	*Till* formula method: prime rate with no risk adjustment	12%: this was the default interest rate in the loan documents. Also, this number is supported by NJ Law	*Till* formula method: prime plus 1% (risk of nonpayment "negligible")	1 year (second mortgage to be refinanced in a year, at which point oversecured creditor would be paid in full with interest)	Chapter 11; oversecured creditor; plan confirmed Court determined that the risk of nonpayment was small, considering that the equity cushion in the property was approximately $520,000; the confirmed plan required debtors to refinance within a year of effective date; secured lender retained the right to continue foreclosure proceedings up to the point of judgment; and secured lender would continue to receive adequate protection payments from the debtors
In re Valencia Flour Mill, Ltd., 348 B.R. 573 (Bankr. D. N. M. Aug. 22, 2006).	Flour mill and other real assets; as well as fixtures and equipment used at the mill	5%: market rate	6.5%: contract rate	6.5%: contract rate; no reference to *Till*	Not discussed	Chapter 11; confirmation denied; undersecured creditor
In re Northwest Timberline	Gas station and convenience store	8%: based on recent similar	*Till* formula method: prime	13.75%: *Till* formula	Amortized over 25	Chapter 11 plan; undersecured creditor;

SUMMARY OF CRAMDOWN INTEREST RATE CASES

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Enterprises, Inc., 348 B.R. 412 (Bankr. N.D. Tex. Aug. 24, 2006)	assets	loans about which debtors' expert testified	plus 5%-6% for risk adjustment	approach; prime (8%) plus 5.75% risk adjustment = 13.75%	years, with a 7 year balloon feature	Court found persuasive that on the eve of trial the debtors obtained a loan at 13% interest rate, further supporting this number as the appropriate interest rate.
In re Sylvan I-30 Enters, 2006 WL 2539718 (Bankr. N.D. Tex. Sept. 1, 2006)	Retail gas facility	7.55%: no indication of how this was computed	8.19%: pre-petition contractual rate, which was the Citicorp commercial paper rate of 5.94%, plus a spread of 225 basis points	5%: Efficient market approach.	15 years	Chapter 11; plan confirmed; oversecured creditor The court found an "efficient market" based on the various transactions entered into by the Debtor. The court concluded there was no evidence that the risk of non-payment or non-performance was any greater than when the loan was initially made. The court also considered that the creditor was oversecured, in settling for a 5% interest rate.
In re Seaspan Dev. Corp., Nos. 04-21339, 04-21340, 2:05-CV-315, 2006 WL	Marina and floating store	Not discussed	9.69%; basis not discussed	4%: contract interest rate; since market rate could not	24 years	Chapter 11; oversecured creditor

SUMMARY OF CRAMDOWN INTEREST RATE CASES

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2672298 (E.D. Tenn. Sept. 18, 2006)				be determined		
Mercury Capital Corp. v. Milford Connecticut Assocs., L.P., 354 B.R. 1 (D. Conn. Oct. 12, 2006)	Connecticut real estate with dilapidated buildings	6.125%: *Till* formula approach	15%: coerced loan method	Formula approach if no "efficient market" rate exists; remanded to lower court to determine (1) if efficient market rate exists, and if not, appropriate rate using formula method	30-year amortization with final payment of the balance due 30 months after confirmation date	Chapter 11; no indication whether creditor is over- or under-secured
In re Winn-Dixie Stores, Inc., 356 B.R. 239 (Bankr. M.D. Fla. Nov. 16, 2006)	Tax liens on debtors' property	7%: LIBOR plus 150 basis points	10%-18%: interest rates should be statutory rates for tax liens	7%: Market rate of LIBOR plus 150 basis points	Not discussed	Chapter 11 plan; [no indication re whether claimants are over- or undersecured; suspecting that it will be paid in full however since it is a tax claim] Court considered that debtors' search for exit financing attracted 14 offers; the existence of an efficient market; seniority

SUMMARY OF CRAMDOWN INTEREST RATE CASES

Case	Type of Property	Debtors' Position on Interest Rate	Lender's Position on Interest Rate	Court's Outcome on Rate	Length of Maturity	Relevant Facts & Consideration
						of secured claimants' debt and resultant low risk of nonpayment. Also, secured tax claimants presented no evidence to support their proposal for they deemed an appropriate interest rate.
In re Dargahi, 2008 WL 618954 (Bankr. C.D. Ca. Mar. 3, 2008)	Gasoline station	9%; formula approach	13-25%: based on the conclusions that (1) no traditional lender would be willing to make a loan to the debtors; (2) a hard money lender willing to finance no more than 70% of the debt would require 13-14% and (3) only an equity/joint venture lender would lend above 70% and would in that case require an interest rate of 25%	11%: 9% plus a risk premium of 2%-5% depending upon the various tranches of debt; no reference in the court opinion to *Till*, but applied the prior Ninth Circuit precedent	30-year amortization with balloon feature	Chapter 11; not clear if the creditor was over- or under-secured (amount of creditor's claim still needed to be determined at pending adversary proceeding)

SUMMARY OF CRAMDOWN INTEREST RATE CASES

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Drive Fin. Servs., Inc. v. Jordan, 521 F.3d 343 (5th Cir. Mar. 12, 2008)	Automobile (Chevy truck)	6%: basis not discussed	17.95%: contract rate	7.5%: *Till* formula method	Not discussed	Chapter 13; fully secured claim pursuant to hanging paragraph of 11 U.S.C. § 1325(a); court found that since the facts were similar to *Till*, the *Till* decision would be binding
In re Jones, 530 F.3d 1284 (10th Cir. July 7, 2008)	Automobile	No interest (0%)	*Till* formula method (remanded to bankruptcy court to determine interest rate pursuant to *Till*)	*Till* formula method (remanded to bankruptcy court to determine interest rate pursuant to *Till*)	Not discussed	Chapter 13; creditor's entire claim is secured pursuant to hanging paragraph of 11 U.S.C. § 1325(a) (because vehicle was purchased within 910 days preceding debtor's bankruptcy filing); court concludes that *Till*'s method for determining interest rates applies to 910 car claims.
In re Brice Road Devs., LLC, 392 B.R. 274 (B.A.P. 6th Cir. Aug. 14, 2008)	Apartment complex	6%: efficient market rate	8%: tiered financing with blended interest rate, based on a mix of mezzanine debt and equity	6%: efficient market rate	Amortized over 40 years, with a 6-year balloon feature post confirmation	Chapter 11, undersecured creditor
In re Good, 413 B.R. 552 (Bankr. E.D. Tex. Apr. 13, 2009)	Real estate	prime + 1%: *Till* formula approach	15%: contractual default rate	15%: contractual default rate	Not discussed	Chapter 11; plan confirmed; oversecured creditor

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						Despite acknowledging *Till*'s mandate, the court decided that the solvent debtor did not satisfy its burden to rebut the assumption that oversecured creditor was entitled to interest at the contractual default rate
In re American Trailer & Storage, Inc., 419 B.R. 412 (Bankr. W.D. Mo. Nov. 9, 2009)	Portable container units & trailers	5% or such other rate as determined by the court: *Till* formula	10-18%: lender's interpretation of "prevailing market rate" by submitting to "vulture lenders"	5.5%: *Till* formula approach, with a risk premium of 2.25%	Amortization over 10 years, with balloon payment at the end of 5 years	Chapter 11; plan confirmed The court defaulted to the formula approach after finding the was no "efficient market" to use as a guide. Court also considered that the secure creditor enjoys a substantial equity cushion of approximately $3 million; the debtor's projections regarding future earning capacity are reasonable and historically-based; and the collateral is unlikely to decline significantly in value during the reorganization.

SUMMARY OF CRAMDOWN INTEREST RATE CASES

Case	Type of Property	Debtors' Position on Interest Rate	Lender's Position on Interest Rate	Court's Outcome on Rate	Length of Maturity	Relevant Facts & Consideration
In re G-I Holdings Inc., 420 B.R. 216 (D. N.J. Nov. 12, 2009)	Priority tax claim	formula method; LIBOR plus 1%	Lender proposed several options: (1) formula method using US prime rate, not LIBOR (6.25%), (2) efficient market rate (8.2-12.6%), or (3) statutory rate mandated by Congress for unpaid federal tax debts (approx. 6%)	formula method; LIBOR plus 1%	6 years	Chapter 11; secured creditor in this case is the IRS which did not have impaired claims
In re Griswold Building, LLC, 420 B.R. 666 (Bankr. E.D. Mich. Dec. 7, 2009)	Office buildings and parking garages	Floating rate based on the prime rate of interest published by the Wall Street Journal; no upward adjustment for risk of nonpayment	Excess of 10%: *Till* formula approach	8.25% (risk premium of 5%): *Till* formula approach	30-year amortization with a 5-year maturity	Chapter 11; plan confirmation denied (plan was neither feasible nor "fair and equitable"; undersecured creditor The court ruled on a higher risk adjustment relative to the base rate because it determined that the debtors presented a significant risk of nonpayment
In re South Canaan Cellular Investments,	Cell sites of telecommunications	6%: no indication as to	Contract rate under the original	6% : *Till* formula	Not discussed	Chapter 11; plan confirmed; oversecured

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Inc., 427 B.R. 44 (Bankr. E.D. Penn. Mar. 25, 2010)	company	how this figure was computed	loan; the prepetition rate; no indication in the opinion what that figure was. Lender also offered testimony, unconvincing to the court, proposing a market rate existed at a minimum of 10%	approach; using a risk premium of 2.75%		creditor Court found that there was no evidence that a market rate existed
Good v. RMR Investments, Inc., 428 B.R. 249 (E.D. Tex. Mar. 31, 2010)	Acres of unimproved land, and all mineral rights and contracts relating to the property	5.25%: Prime plus formula approach	15%: contractual rate of interest.	Presumptive contract approach, using prepetition contract default rate of 15%	Not discussed	Chapter 11; oversecured creditor; solvent debtor; challenge to cramdown interest rate brought after entry of order confirming the plan Court also concluded that payment of the contractual default rate would not reduce the payment that any other secured or unsecured creditor is entitled to receive under the plan.
SPCP Group, LLC v.	Assisted living	Not discussed	6.5-20+% based	5.25%: Formula	Amortized	Chapter 11; undersecured

SUMMARY OF CRAMDOWN INTEREST RATE CASES

Case	Type of Property	Debtors' Position on Interest Rate	Lender's Position on Interest Rate	Court's Outcome on Rate	Length of Maturity	Relevant Facts & Consideration
Cypress Creek Assisted Living Residence, Inc., 434 B.R. 650 (M.D. Fla. Apr. 9, 2010)	facility		current/efficient market rates	method	over 20 years, with a 6-year balloon feature post confirmation	creditor; debtors had ample cash flow and had been paying non-amortized interest rate of 7.25%; debtors' established ability to financially operate the assisted living facility and simultaneously accumulate cash Court opted for the formula method after determining that an efficient market for debtor's financing was lacking; hence the absence of a "market rate."
In re Mendoza, 2010 WL 1610120, Case No. 09-11678 (April 20, 2010)	60-unit apartment house	3.75%: *Till* formula approach; prime rate of 3.25%.	5.15%: *Till* formula approach; prime rate of 3.25%.	4.4%: *Till* formula approach	3 years	Chapter 11; plan conditionally confirmed if the debtor increased interest rate from 3.75% to 4.4%; no indication if the secured lender was over- or undersecured. The interest rate offered by the debtor was accepted by other similarly situated lenders. Other factors considered by the court

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						were: (1) an additional 0.15% increase to the interest rate to account for the increased risk associate with the addition of a junior deed of trust in violation of due-on-encumberance provision; (2) apartment house is extremely well-managed, renovated ad vacancy rate is zero and (3) cash flow is more than sufficient to cover payments to the objecting secured lender
In re Seasons Partners, LLC, 439 B.R. 505 (Bankr. D. Ariz. Oct. 28, 2010)	Student housing apartment complex	6.25%: market rate	9.15%: market rate as well, but different result from the Debtor's rate	6.25%: market rate, on the side of the Debtor. Court found Debtor's testimony to be more to the point, believable and persuasive.	Amortized for 25 years, with balloon 12 years from confirmation	Chapter 11; fully secured creditor Nature of creditor's security is predictable and realizable; Debtor stabilized itself from past financial problems: Debtors received new infusion of capital worth $1.5 million; new management that successfully raised occupancy rate to 83% range, convincing the Court

Summary of Cramdown Interest Rate Cases

Case	Type of Property	Debtors' Position on Interest Rate	Lender's Position on Interest Rate	Court's Outcome on Rate	Length of Maturity	Relevant Facts & Consideration
						of the prospects of better cash flow post-confirmation. Also creditor's prepetition contract rate was 6.125%
In re Mace, No. 08-06124, 2011 WL 284435 (Bankr. M.D. Tenn. Jan. 26, 2011)	Rental real properties	6%; efficient market	Efficient market	6%: efficient market	6% fixed for 20 years: 5 years, with adjustment to prime plus 2% floating monthly with a floor of 6% and a ceiling of 11%, amortized over a period of 20 years.	Chapter 11; unclear if creditor is over- or undersecured Courts considerations: Prior to bankruptcy petition, debtor never missed, or made late, any payments to secured creditor bank; no challenge to the feasibility of Trustee's plan.
In re 20 Bayard Views, LLC, Case No. 09-50723, 2011 WL 797442 (Bankr. E.D.N.Y. Mar. 7, 2011)	37 condominium units and 40 parking spaces, as well as related rents and leases	4.75%: formula approach (after concluding no efficient market existed for the debt)	11.68%: blended rate based on three tranches of mortgage, mezzanine and equity interests	Formula approach. The Court determined that the debtor failed to show by a preponderance of the evidence that the risk component in	5 years	Court denied the Plan; chapter 11; fully secured lender Other factors: loan proposed by debtor's plan is for the full amount of the property's value, leaving no equity cushion in the event the value of the property

SUMMARY OF CRAMDOWN INTEREST RATE CASES

Case	Type of Property	Debtors' Position on Interest Rate	Lender's Position on Interest Rate	Court's Outcome on Rate	Length of Maturity	Relevant Facts & Consideration
				its proposed rate sufficiently addressed the risks to the creditor; however the court did not itself suggest what an appropriate rate would be. Rather the Court denied the plan.		decreases or the proceeds of a sale are less than expected; risk premium proposed by debtor does not provide a source of funds for the costs of a sale outside of the "war chest' for litigation expenses; possibility debtor's plan to sell condominiums may not succeed, since it would require purchasers to seek financing from a weak real estate financing market; equity holders' failure to indicate a willingness to fund any shortfalls; failure of debtor to indicate an alternate source of funds.
In re Red Mountain Machinery Co., 2011 WL 1428266 (Bankr. D. Ariz. April 14, 2011)	Large earth-moving equipment (caterpillars)	6%: formula approach	8.5-10.5%: blended rate based on a survey of publicly-reported debt issued by borrowers roughly comparable to the	6.5%: formula approach	20-year amortization with full balance due in 15 years	Chapter 11; fully-secured lender The court decided in favor of the Debtor's rate and payment period because (1) no market for a loan equivalent to the plan's treatment of secured

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			Debtor			lenders debt existed; (2) the Court found the Debtor's expert to be more persuasive; (3) the debt was guaranteed by solvent guarantors; (4) the debt would be significantly amortized over 15 years; and (5) lender proposed no facts, opinions or testimony to counter Debtor's position
In re Moultonborough Hotel Grp., LLC, Bk. No. 10-14214-JMD (Bankr. Ct. D.N.H. Nov. 8, 2012)	Hotel	3.25%: the national prime rate because the lender is substantially over-secured	6.2%: the lender claimed that a risk increment of 2.95% over the prime rate was necessary because the lender wasn't being provided with ordinary creditor protections	The Court applied the formula approach because neither party produced evidence that an efficient market existed. The Court did not explicitly state what an acceptable risk adjustment would be but suggested that an interest rate that fell in	20-year amortization with a balloon payment due on the 7th anniversary of the effective date	Chapter 11; over-secured lender Court's consideration: the lender had a significant equity cushion; risk of lending to a company that declared bankruptcy; the fact that the debtor will have to refinance in seven years to make the balloon payment.

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				between the Debtor's proposed rate and the Lender's proposed rate would be appropriate.		