

**FILED**

**MAY 21 2003**

**T.S. MCGREGOR, CLERK  
U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF WASHINGTON

In Re:	)	
	)	No. 03-00165-W13
GRANTHAM, ANTHONY S.,	)	
	)	MEMORANDUM DECISION RE:
Debtor(s).	)	CONFIRMATION OF PLAN
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THIS MATTER came on for hearing before the Honorable Patricia C. Williams<sup>1</sup> on April 22, 2003 for confirmation of the Chapter 13 Plan. The Chapter 13 Trustee was represented by Joseph Harkrader; debtor was represented by Timothy Durkop; and the State of Washington was represented by Art Hayashi. The court reviewed the files and records herein, heard argument of the parties, and was fully advised in the premises. The court now enters its Memorandum Decision.

This case was chosen by debtor's counsel as a "test case" in which the court would consider the addition of certain special provisions in Chapter 13 plans. Counsel for the debtor consistently adds language to the form Chapter 13 plan prescribed in this District at page 7, Paragraph VII. Those eight additional paragraphs are attached to this decision, but generally provide for an interest rate on secured claims of nine percent (9%) or the contract rate if less than 9%; an automatic

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<sup>1</sup>Oral argument regarding confirmation of this plan was held before both Judges Williams and Klobucher as the issues in this case are present in several Chapter 13 proceedings pending in the District.

*Re 4  
x 22*

*33*

1 increase in the plan base, if necessary, to pay all secured and priority  
2 claims; pro rata payment of any secured or priority claims of \$750 or  
3 less not provided for in the plan; and payments to be made at the  
4 contract amount if paid outside the plan.

5 For a Chapter 13 plan to be confirmed, it must meet the  
6 requirements of 11 U.S.C. § 1322(a) and may contain provisions described  
7 in 11 U.S.C. § 1322(b). Subsection (b)(10) specifically provides that  
8 plans may include "any other appropriate provision not inconsistent with  
9 this title."

10 Pursuant to Local Bankruptcy Rule 2083, this court has adopted a  
11 prescribed local form plan. General Order No. 02-32-1. That form was  
12 adopted after a lengthy process involving input from counsel for  
13 creditors and debtors, the Chapter 13 Trustee and other interested  
14 parties. That form complies with the requirements of 11 U.S.C. §  
15 1322(a) and contains the optional matters referenced in 11 U.S.C. §  
16 1322(b), including at page 7, a heading entitled "Special Provisions  
17 (Optional)" and a blank area for debtors to add language to the form.

18 The debtor argues that since both the Code and the prescribed local  
19 form plan expressly allow a debtor to add matters not appearing in the  
20 Code or plan, debtors are able to do so in the manner proposed.  
21 Additionally, debtor argues that nothing in the suggested additional  
22 provisions are inconsistent with the Code. As to the latter argument,  
23 the court agrees that the additional provisions are not inconsistent  
24 with the literal confirmation requirements contained in 11 U.S.C. §  
25 1322. They fail, however, for the reasons cited below.

26 A review of the additional provisions reveals there are issues  
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1 raised in those provisions which could be of significance in particular  
2 cases. For example, one provision states that if the base amount to be  
3 paid under the plan is not sufficient to pay secured and priority claims  
4 in full, the base amount will automatically increase to pay such claims.  
5 Giving effect to this provision results in a debtor not knowing how much  
6 must be paid under the plan in order to receive a discharge. There is  
7 no limit to this automatic increase. Typically in situations where plan  
8 payments are modified, the court requires evidence in the form of  
9 amended schedules to support the modification. Automatically increasing  
10 the plan payment would excuse the requirement of debtor and debtor's  
11 counsel to provide evidence to support the modification. Conceivably,  
12 a debtor could be forced to double monthly payments made under the plan  
13 to meet the automatically increased base when filed secured and priority  
14 proofs of claims are much greater than anticipated by the debtor. It is  
15 the duty of the debtor's counsel to calculate and propose a base amount  
16 sufficient to pay anticipated secured and priority claims in full. If  
17 the calculation is discovered to be incorrect due to the proofs of  
18 claims filed, it is the duty of the debtor's counsel to recalculate the  
19 base, and the debtor must be afforded an opportunity to make an informed  
20 decision on whether he or she will be able to make the monthly plan  
21 payments required for that new base. This special provision simply  
22 abrogates the duty of the debtor's counsel to calculate and propose a  
23 base amount and, if necessary, to recalculate it if claims are much  
24 greater than expected.

25 This case contains an example of an unambiguous plan provision  
26 rendered ambiguous by the additional non-standard provisions. The plan  
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1 states that debtor shall pay directly to Americredit \$663 per month at  
2 the "contract" interest rate. One of the specific provisions states  
3 secured creditors shall receive nine percent (9%) interest or the  
4 contract rate, whichever is lesser. According to Americredit's Proof of  
5 Claim, the contract rate is 13.95%. Which interest rate does the debtor  
6 propose to pay?

7       Some of the special provisions are redundant with language already  
8 appearing in the form plan. For example, one provision states that the  
9 language in Section I, "D" of the plan "shall control and shall have its  
10 ordinary literal meaning." If that language in the prescribed plan form  
11 was not intended to be controlling, it would not appear in the form  
12 plan.

13       Some of the special provisions may be helpful to debtors in  
14 particular cases. For example, one provision provides that a secured  
15 claim of \$750 or less not provided for in the plan may be paid by the  
16 Trustee if debtor does not object to the claim. Assuming funding is  
17 available under the proposed plan, that alleviates the necessity of  
18 filing a modification to the plan simply to provide for a small  
19 undisputed claim. In other cases, [for example where the base is  
20 \$1,800] payment of even such a small sum under this special provision  
21 section could result in a significant increase in the term of the plan  
22 and the resulting burden on the debtor.

23       One of the principal reasons for the adoption of a form plan is  
24 that a standard form in use throughout the District assists all  
25 interested parties. It facilitates review of plans by the Trustee, the  
26 court, and creditors. A standard form allows relevant information to be

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1 located quickly and efficiently and allows an interested party to focus  
2 only on the portion of the plan of most interest to that party. The use  
3 of a standard form results in predictability and uniformity. For  
4 example, the prescribed local form contains a provision that a debtor  
5 must insure collateral and expressly identify creditors proposed to be  
6 paid directly by the debtor rather than through the Trustee. Allowing  
7 debtor's counsel to develop their own plan language is contrary to the  
8 purpose of the prescribed plan form. It creates inefficiency and  
9 uncertainty. It requires any creditor to carefully review the  
10 additional page and a half of language added to determine if anything in  
11 that language effects that creditor's rights. It requires the standing  
12 Chapter 13 Trustee to carefully review each of the hundreds of plans  
13 filed in the District to determine if special language has been added  
14 which would require him to administer the case differently than other  
15 cases. It circumvents the requirement in the local rules that the  
16 prescribed form plan be utilized and burdens everyone in the system.

17 The prescribed form plan does have an optional section where a  
18 debtor may add special provisions. The purpose of that option is not to  
19 circumvent the prescribed form, but a recognition that there can be  
20 unique circumstances in a specific case which require some treatment  
21 different than the prescribed form. "Special provisions" are just that-  
22 special. They may arise in a specific case based on unusual facts.  
23 They should not appear as standard deviations from the prescribed  
24 standard form plan. If the form plan prescribed by local rule should be  
25 improved or clarified, a process exists in the District to address those  
26 issues.

1 The court therefore finds and holds that these special provisions  
2 create an undue burden on creditors, the Trustee and the court,  
3 circumvents debtor's interests in some cases and may also needlessly  
4 create ambiguity where none exists under the standard form plan.  
5 Therefore, the court will not confirm Chapter 13 plans which contain  
6 these special provisions. This plan is otherwise confirmable without  
7 the additional provisions appearing at page 7. Debtor shall file a  
8 modified plan by June 6, 2003.

9 DATED this 21<sup>st</sup> day of May, 2003.

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12 PATRICIA C. WILLIAMS, Bankruptcy Judge

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