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May 20, 2008

**VIA EMAIL**

Ms. Celia Winslow  
American Financial Services Association  
919 18<sup>th</sup> Street, NW  
Washington, DC 20006

**Re: Ford Motor Credit Company v. Carl G. Hebert, Civil Action Nos.  
6:08CV00034, 6:08CV00037, U.S. District Court, Western District of  
Louisiana (Bankruptcy Appeal-Amici Brief)  
Our File No. 08-0917**

Dear Celia:

Enclosed is a copy of the final unopposed motion for leave to file amici curiae brief, original brief of amici curiae of American Financial Services Association and National Automobile Dealers Association, and proposed Order granting leave to file amici curiae brief filed with the Court on May 15, 2008. Also attached is a copy of the motion to dismiss appeal as moot filed on behalf of the appellee, Carl G. Hebert, and notice of motion setting with oral argument for July 17, 2008. We will keep you advised of future developments as they occur.

Cordially yours,

SEALE, SMITH, ZUBER & BARNETTE



Lawrence R. Anderson, Jr.

LRA/ cf  
Enclosures

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**FORD MOTOR CREDIT COMPANY**

**CIVIL ACTION NO. 6:08CV00034**

**VERSUS**

**CHIEF JUDGE RICHARD T. HAIK, SR.**

**CARL G. HEBERT**

**MAGISTRATE JUDGE MILDRED  
METHVIN**

**consolidated with**

**FORD MOTOR CREDIT COMPANY**

**CIVIL ACTION NO. 6:08CV00037**

**VERSUS**

**CHIEF JUDGE RICHARD T. HAIK, SR.**

**CARL G. HEBERT**

**MAGISTRATE JUDGE MILDRED  
METHVIN**

**UNOPPOSED MOTION FOR LEAVE TO FILE  
AMERICAN FINANCIAL SERVICES ASSOCIATION AND  
NATIONAL AUTOMOBILE DEALERS ASSOCIATION  
ORIGINAL BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANT**

**NOW INTO COURT**, through undersigned counsel, come American Financial Services Association (“AFSA”) and National Automobile Dealers Association (“NADA”) who hereby file the following unopposed motion for leave to file their Original Brief of Amici Curiae in Support of Appellant as follows:

1.

The appeals before this Court are a by-product of the 2005 amendments to the Bankruptcy Code entitled the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”). The issues in this case relating to the definition of a “purchase money security interest” as that term is used in Section 1325(a) of the Bankruptcy Code are, as set forth below, of vital interest to AFSA and NADA and their respective members. The effect of this paragraph has been widely debated by creditors, debtors, counsel and commentators resulting in a split of authority in the courts. Because of such split, this case is one of a handful of similar cases that are progressing through the federal court appellate system from many bankruptcy courts.

2.

AFSA's interest in the outcome of this matter arises from the fact that AFSA is the national trade association (primarily consisting of motor vehicle installment sales lenders) for the consumer credit industry protecting access to credit and consumer choice. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

3.

Founded in 1917, NADA is a non-profit trade organization whose members hold franchises to sell passenger cars and trucks and related goods and services at retail as authorized dealers of the various motor vehicle manufacturers and distributors doing business in the United States. As of November 27, 2007, there were 20,899 franchised motor vehicle dealers in the United States. Of those, 19,307 are members of NADA. Among other services provided, NADA advises members of relevant legal and regulatory issues. NADA closely monitors federal statutes, state statutes, and court rulings interpreting such laws. NADA appears before and submits briefs to courts and other tribunals as *amicus curiae* to advocate interpretations of federal and state statutes that will advance the interests of its members as a group. NADA and its members have a substantial interest in this litigation, not only because it will impact franchised motor vehicle dealers in Louisiana, but also because it may impact motor vehicle dealers in other states.

4.

In this particular proceeding, the question raised on appeal is whether the Bankruptcy Court erred in finding that the Ford Motor Credit Company's entire security interest in the Debtor's vehicle did not constitute a "purchase money security interest" as that term is used in Section 1325(a) of the Bankruptcy Code. Amici Curiae, AFSA and NADA, believe that, as set forth in the brief attached hereto as Exhibit "A" and incorporated herein by reference, the Bankruptcy Court erred in its decision and this Court should therefore reverse the Decision of the Bankruptcy Court.

5.


Based upon the foregoing, AFSA and NADA seek leave of Court to file the brief attached hereto as Exhibit "A." Pursuant to the applicable local rules of this Court, AFSA's and NADA's counsel has conferred with the Appellant's and Appellee's counsel and they do not oppose the filing of the AFSA's and NADA's brief.

**WHEREFORE, PREMISES CONSIDERED,** American Financial Services Association and National Automobile Dealers Association pray that this Court grant their motion for leave to file their amicus curiae brief, and for such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted this 15<sup>th</sup> day of May, 2008.

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**EXHIBIT “A”**

**AMERICAN FINANCIAL SERVICES ASSOCIATION AND  
NATIONAL AUTOMOBILE DEALERS ASSOCIATION ORIGINAL BRIEF OF  
AMICI CURIAE IN SUPPORT OF APPELLANT FORD MOTOR CREDIT COMPANY**

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**FORD MOTOR CREDIT COMPANY**

**CIVIL ACTION NO. 6:08CV00034**

**VERSUS**

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**CARL G. HEBERT**

**MAGISTRATE JUDGE MILDRED  
METHVIN**

---

**AMERICAN FINANCIAL SERVICES ASSOCIATION AND  
NATIONAL AUTOMOBILE DEALERS ASSOCIATION ORIGINAL BRIEF OF  
AMICI CURIAE IN SUPPORT OF APPELLANT FORD MOTOR CREDIT COMPANY**

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## **IDENTITY AND INTEREST OF AMICI CURIAE**

### **A. Identity of Amicus Curiae – American Financial Services Association**

The American Financial Services Association (“AFSA”) is the national trade association for the consumer credit industry protecting access to credit and consumer choice. The Association encourages and maintains ethical business practices and supports financial education for consumers of all ages.

AFSA has provided services to its members for over ninety years. The Association's officers, board, and staff are dedicated to continuing this legacy of commitment through the addition of new members and programs, and increasing the quality of existing services.

### **B. Identity of Amicus Curiae – National Automobile Dealers Association**

Founded in 1917, the National Automobile Dealers Association (“NADA”) is a non-profit trade organization whose members hold franchises to sell at retail passenger cars and trucks and related goods and services as authorized dealers of the various motor vehicle manufacturers and distributors doing business in the United States. As of November 27, 2007, there were 20,899 franchised motor vehicle dealers in the United States. Of those, 19,307 are members of NADA. Among other services provided, NADA advises members of relevant legal and regulatory issues. NADA closely monitors federal statutes, state statutes, and court rulings interpreting such laws. NADA appears before and submits briefs to courts and other tribunals as amicus curiae to advocate interpretations of federal and state statutes that will advance the interests of its members as a group.

### **C. Interest of AFSA as Amicus Curiae**

The AFSA membership has a vital interest in the outcome of this case. AFSA members primarily represent motor vehicles installment sale financiers. The 2005 amendments to section

1325(a) added an unenumerated, hanging paragraph at the end of the section that deals with certain claims secured by motor vehicles. The effect of this paragraph has been widely debated by creditors, debtors, counsel and commentators, and there is a split of authority in the courts. This case affords the Court an opportunity to address this debate as it pertains to whether a creditor's claim is covered by the hanging paragraph where a portion of the financing is used to pay off negative equity from a trade-in vehicle.

**D. Interest of NADA as Amicus Curiae**

NADA and its members have a substantial interest in this litigation, not only because it will impact franchised motor vehicle dealers in Louisiana, but also because it may impact motor vehicle dealers in other states.

**STATEMENT OF THE ISSUES**

AFSA and NADA adopt the Statement of the Issues in the Brief of Appellant, Ford Motor Credit Company (“Ford Credit”), filed with this Court on March 31, 2008. The defined terms used in Ford Credit’s opening brief filed with this Court are used with the same meaning in this Amicus Curiae Brief.

AFSA and NADA also adopt the arguments made by Ford Credit with respect to the issue raised in its appeal--whether the payment of charges for gap insurance are protected from bifurcation and cramdown by the enactment of the “hanging paragraph” to 11 U.S.C. §1325(a). AFSA and NADA believe that Ford Credit has thoroughly covered this issue in its brief, and there is therefore no need for AFSA or NADA to address this issue in this Amici Curiae brief. This Amici Curiae brief will address only the second issue raised in Ford Credit’s appeal--whether a seller of a motor vehicle has a purchase-money security interest under the hanging paragraph when, as part of the sale

of the vehicle, the purchaser trades in another vehicle and the seller advances sums to discharge a pre-existing indebtedness on the trade-in vehicle.

### **SUMMARY OF ARGUMENT**

The question raised on appeal is whether the Bankruptcy Court erred in finding that the Ford Credit's security interest in the Debtor's vehicle did not constitute a "purchase money security interest" as that term is used in Section 1325(a) of the Bankruptcy Code to the extent the seller advanced sums to payoff the unpaid indebtedness on the Debtor's trade-in vehicle. Amicus Curiae, AFSA and NADA, believe that the Bankruptcy Court erred in its Orders and this Court should therefore reverse the Orders of the Bankruptcy Court on this issue.

This case is a byproduct of the 2005 amendments to the Bankruptcy Code. Those amendments are titled the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and are known to bankruptcy disciples as "BAPCPA." This case is one of a handful of similar cases that are bubbling up through the federal court system from many bankruptcy courts.<sup>1</sup>

Prior to BAPCPA, a debtor who owed \$15,000 on a car worth only \$10,000 could, in a wage earner's plan under Chapter 13, keep his car by paying only \$10,000 to his secured creditor. In a procedure inelegantly known as "bifurcation and cramdown" or "lien stripping," the debtor could divide his creditor's claim into a \$5,000 unsecured claim and a \$10,000 secured claim. He would then keep the car by paying \$10,000 over time to his creditor on the secured obligation and give the

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<sup>1</sup> See, e.g. *See In re Burt*, 2378 B.R. 352 (Bankr. D. Utah 2007); *In re Wall*, 376 B.R. 769 (Bankr. W.D.N.C. 2007); *In re Weiser*, 2007 WL 4570917 (Bankr. W.D.Mo. 2007), *In re Brown*, 339 B.R. 818 (Bankr. S.D. Ga. 2006); *In re Bufford*, 2006 WL 1677160 (Bankr. N.D. Tex. 2006); *In re Curtis*, 345 B.R. 756 (Bankr. D. Utah 2006); *In re Durham* 361 B.R. 206 (Bankr. D. Utah 2007); *In re Ezell* 338 B.R. 330 (Bankr. E.D.Tenn. 2006); *In re Honeycutt*, Case No. 06-48771 (Bankr. E.D. Mich. 11/2/06); *In re Particka* 355 B.R. 616 (Bankr. E.D. Mich. 2006). This issue is currently before the United States Courts of Appeal for the Second, Fourth, Sixth, Ninth, Tenth and Eleventh Circuits.

creditor little or nothing on the \$5,000 unsecured claim.

BAPCPA restricted this right to bifurcation and cramdown. For vehicles financed within 910 days of bankruptcy, the debtor was denied the power to divide his debt into secured and unsecured portions. To keep his car, the debtor had to pay the full amount to his creditor even if the value of the collateral (the car) was acknowledged to be less than the remaining balance on the debt.

This inartfully drafted provision of BAPCPA reflects a balancing of the interests of consumer creditors who specialize in secured credit (car creditors) and those other consumer creditors who specialize in unsecured credit (credit card issuers).

The issue in this case and in similar cases elsewhere is whether the entire interest secured by the new car is to be treated as a "purchase money security interest." To the extent that the security interest is not purchase-money, the creditor does not enjoy the protection of the new provision and the debtor may bifurcate and cramdown. If the entire security interest is "purchase money," bifurcation and cramdown are prohibited.

So what is so hard about "purchase money security interest"? Quite a bit, it turns out. Like many things in the Bankruptcy Code and in commercial law generally, there is more than meets the eye. In recent times it has become commonplace for debtors to pay for their cars over five or even seven years. Typically cars depreciate more quickly than the principal balance of the debt is paid down. When that happens the debtor is said to have a "negative equity" in his car or to be "upside down"; he owes more on the debt than the car is worth.

The problem in this case comes when the debtor returns for a new vehicle before he has paid off the debt on the old one. When he buys the new car, he incurs a new debt that includes not only the sticker price on the new vehicle, but also payments for dealer provided products and services

(such as extended service contracts), license fees, assorted taxes, **and** an amount to cover the "negative equity." The "negative equity" is the amount by which his debt against the trade-in exceeds the value of the trade-in. This transaction only works if the price paid to acquire the new vehicle covers the expense incurred to satisfy the negative equity.

Now there is a problem. Is a security interest that secures both the sticker price on the new car and the remaining balance on the old car regarded as a "purchase money security interest"? The Debtor, of course, says "no." Ford Credit says "yes." Relying principally on Louisiana state law for the definition of purchase-money security interest, the Bankruptcy Court held that the security interest covering the Debtor's vehicle was not a purchase-money security interest and was therefore not entitled to the new protection in BAPCPA against bifurcation and cramdown to the extent the dealer advances sums to repay the negative equity on the Debtor's trade-in vehicle.

Although it is stuffed with definitions, the Bankruptcy Code has no definition of "purchase money security interest." It seems likely that Congress intended the term to have a federal law meaning drawn from the language, from inferences about Congressional intent, from commercial practice, and by analogy to state law and to other federal law. It is also possible that Congress intended to use state law definitions. Whether one regards the words as federal or state, the outcome is the same. Even if Congress intended a federal definition, that definition would have to lean heavily on state statutes that define the term. If Congress wanted to adopt state law definitions, those same statutes would be applied directly.

## **ARGUMENT**

### **I. THE LANGUAGE OF THE STATUTE AND THE CONGRESSIONAL PURPOSE FAVOR FORD CREDIT**

#### **A. Congress' Purpose**

As its name proclaims (“Bankruptcy Abuse Prevention”) the 2005 Act was designed both to make it more difficult for consumers to cancel their debt and to move debtors with means to repay their bills. It came at the end of a twenty-year spurt in bankruptcy filings from 250,000 in 1978 to more than 1,500,000 filings in 2004. All but a small number of these filers are consumer debtors.

That is not to say that the birth of the Act was easy or quick. The original form of BAPCPA was first introduced in 1998. In the succeeding years it passed the House six times, passed the Senate four, and it cleared both houses of Congress in the same form twice. Once it even reached the President’s desk, only to suffer President Clinton’s pocket veto.

The opponents in Congress were as persistent and clever in opposition to the Act as the proponents were determined and united in support.

Among the principal creditor advocates for the bill were credit card companies.<sup>2</sup> By 2005 it was claimed that the credit card industry had spent over \$100 million in lobbying and other activity to promote the bill. In general, credit card companies make unsecured loans and fare poorly in Chapter 7 consumer liquidations. Many consumer Chapter 7s are “no asset” cases. A “no asset” debtor shields all of his assets by smart use of the exemption law and so makes no distribution to any unsecured creditor. To attempt to get something from some of the Chapter 7 debtors, the credit card companies and other unsecured creditors hoped to force some of those debtors into Chapter 13 where they would be required to give up a part of their wages for five years.

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<sup>2</sup> Egan, Timothy “Newly Bankrupt Raking in Piles of Credit Offers.” The New York Times, Dec. 11, 2005.

To the extent that changes in bankruptcy law take assets that the debtor would have kept for himself under the old law, the changes have the potential to benefit all creditors. But to the extent that a change in the law leaves the debtor with the same assets as he would have had under the old law, the change merely improves one creditor's lot at the expense of another creditor. Since, by hypothesis, most debtors in bankruptcy are insolvent, any change in an existing bankruptcy law has the high probability of taking from one creditor and giving to another without any change in the debtor's status. The provision in Section 1325 that is the subject of this case was probably intended to protect secured consumer creditors from the loss that they might otherwise suffer from debtors' migration from Chapter 7 to Chapter 13.

The secured creditors, particularly the auto creditors, must have feared that their interests would be injured by a bill that would move many debtors from Chapter 7 (liquidation), into Chapter 13 (wage earner plans). Secured creditors' concern would arise principally because of the probability of a cramdown in Chapter 13. In Chapter 7 by comparison, debtors frequently sign "reaffirmation" agreements under which they are obliged, even after the bankruptcy, to pay the full amount due on their cars, whatever the car's value. So a large-scale move out of Chapter 7 and into Chapter 13- of the kind hoped for by the credit card issuers- would favor the credit card companies (by giving them a five-year share of the debtor's future wages) and would injure the auto creditors (by substituting low-pay cramdowns for high-pay reaffirmation agreements).

When one considers the parties to the Congressional debate (unsecured creditors who would benefit from Chapter 13 growth v. secured creditors who would suffer), the goals of the principal creditor advocates (credit card issuers who openly advocated expansion of Chapter 13) and the evolving language of the Act (see I B below), it is unmistakable that Congress intended to protect



creditors who finance consumer vehicle purchases from cramdowns in Chapter 13. Congress appears to have been persuaded by the auto financiers' argument that, unless the anti-cramdown provision was added to the law, the increased costs of cramdown would ultimately be borne by consumers – including, in particular, some who would be priced out of the market as a result. (Bankruptcy: Hearings Before the Committee on the Judiciary House of Representatives on H.R. 333, 107th Cong. 371-372). That congressional purpose is served by a decision for Ford Credit.

### **B. Congress' Language**

The earliest response in the history of BAPCPA to secured creditors' concern is a provision in the 1998 House bill. That provision barred cramdowns, but it was quite narrow. It was not limited to motor vehicles, but it covered only:

the unpaid principal balance of the purchase price of the personal property acquired [within 180 days of the filing] and the unpaid interest and charges at the contract rate... (Sec 128, H.R.3150, 105th Cong. (1998)).

That provision would not have protected from cramdown much of the debt that is covered by a purchase-money security interest on a car. It would not have protected amounts attributable to title and taxes or negative equity on trade-ins, and, of course, it would not have touched any secured transaction that was done more than six months before the bankruptcy filing.

Meanwhile an amendment proposed by Senator Abraham of Michigan, inserting a different anti-cramdown provision, was adopted by the Senate Judiciary Committee. This amendment prohibited cramdowns for all security interests of whatever kind and whenever incurred:

Any "allowed claim [in a Chapter 13 case] that is secured under applicable non-bankruptcy law..." (Sec 302 1998 S. 1301)

Contemporary press reports made the unsurprising claim that Senator Abraham was responding to the interests of the "industry." The language proposed by Senator Abraham was presumably intended

to protect the interests of an important group of constituents, the auto companies and their auto finance arms.

By 1999 the Senate version covered a claim where

the debt that is the subject of the claim was incurred within the 5-year period preceding the filing of the petition and the collateral for that debt consists... of a motor vehicle... acquired for the personal use of the debtor... (Sec 306 1999 S. 625)

Note that the 1999 Senate version does not refer to a “purchase money security interest” and that one infers that the legislation deals with the **purchase** of a motor vehicle only from the use of the verb “acquired,” but the provision is now limited to motor vehicles bought for personal use.

The purchase-money language appears for the first time in 2000 when the section covers

a claim...if the creditor **has a purchase-money security interest securing the debt that is the subject of the claim**, the debt was incurred within the 5-year period preceding the filing of the petition, and the collateral for that debt consists of a motor vehicle... acquired for the personal use of the debtor... (emphasis added) (Sec. 306 2000 S. 3186)

As finally enacted, the Abraham amendment is an unnumbered “hanging paragraph” attached to Section 1325(a), sometimes now labeled 1325(a)(\*):

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle... acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

**C. Both The Language and Congress’ Purpose Support a Reading Favorable to Ford Credit**

There are two notable insights buried within Congress’ choice of words and in the progression from the early House language to the words that are now part of Section 1325(a). First is the probability that Congress chose the current language to exclude a certain kind of secured

creditor from the Section's protection, not to deal with the scope of "purchase money." Second is the breadth of the traditional purchase-money security interest.

### **1. Excluding Certain Secured Creditors**

The drafters may have chosen the purchase-money language to exclude non-purchase-money security interests in vehicles already owned by the debtor. Non-purchase-money security interests in property already owned by consumer debtors are frequently disfavored under the law. (See 16 C.F.R. 444.2(a) (4), where taking a non-purchase-money security in certain household goods is an unfair trade practice, and 522(f) (1) (B) of the Bankruptcy Code, avoiding nonpossessory nonpurchase-money security interests against certain consumer goods.) After the original House language, which referred to "purchase-money," was replaced with the 1999 version of the Abraham amendment, a non-purchase-money secured creditor who took a security interest in a car that the debtor had purchased outright within five years of the filing could have claimed the benefit of the provision. The automobile financiers---purchase-money creditors all---had no interest in enriching non-purchase-money secured creditors who take security interests in property already owned by a consumer debtor, nor would the consumer advocates have wished to benefit these creditors. So it is plausible that the purchase-money language was inserted only to deprive these non-purchase-money creditors from using the section, not to draw any distinction between parts of a secured debt incurred in the acquisition of the collateral. If that is the purpose of the language, i.e. to exclude a class of secured creditors, its presence does not justify the omission of negative equity from its protection against cramdown.

### **2. "Purchase Money Security Interest" Is Broader Than "Principal Balance"**

By using the generic term "purchase money security interest" instead of the original House

term “unpaid principal balance of the purchase price attributable” to property acquired within 180 days, Congress must have intended to include some parts of the debt that would have been omitted by the original House language. The House language, “unpaid principal balance... attributable to the goods purchased,” identifies the particular type of **debt** that is covered, whereas “purchase money security interest” refers to a type of **security interest**, not to a type of debt.

No purchase-money security interest is limited to the principal balance and unpaid interest. At a minimum, fees and taxes owed on the purchase of a motor vehicle would be covered and secured by any “purchase-money security interest,” see e.g. Comment 3 to Section 9-103, Uniform Commercial Code (“UCC”) (La. R.S. 10:9-103). But it would be easy to find that a claim for fees, taxes, and negative equity was not part of the “unpaid principal balance” or “interest.” So the words of the House and Senate versions are different, and the words of the Senate version bar cramdowns on more kinds of debt than the words of the House would bar.

Conceding that the Senate language is broader than the House language, can one infer that the Senate intended to treat negative equity amounts as covered by “purchase money security interests”? Yes. Representatives of the debtors and creditors must have known of the practice of rolling negative equity amounts from trade-ins into debts secured by purchase-money security interests on new cars. By 2005 as many as 38 percent of all new car purchasers rolled some part of the exiting debt on a trade-in into the new debt incurred to buy the new car.<sup>3</sup> This is not an obscure practice; it is commonplace and would have been well known to any informed debtor or creditor representative. By 2004 the practice was specifically permitted in the Motor Vehicle Sales Acts of more than 34 states, including Louisiana.

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<sup>3</sup> See e.g., FDIC Supervisory Insights, *The Changing Landscape of Indirect Automobile Lending*, June 23, 2005.

And it cannot be said that the cramdown provision on motor vehicles traveled below the Congress' radar. The topic was controversial; as we show in Section I B above, the provision was modified several times in different ways.<sup>4</sup> And, while it was one of the continuing points of dispute between the debtor and the creditor interests between 1998 and 2004, ultimately the language adopted reflected a compromise worked out over several years to gain the secured lenders' support.

Most importantly, the language chosen by Congress has a meaning found in practice and in state law (see Section III below). That law and practice show that a "purchase money" interest reaches not only a car's cash price but also other amounts that may be folded into the total purchase price. That this language was chosen in lieu of more restrictive language of the House buttresses the argument for a broad definition of "purchase money." That Congress was apparently adopting Senator Abraham's approach to help car creditors gives further support for the broad reading as a federal definition. In the Federal District Court, Judge Larimer held that "by its terms, the hanging paragraph prohibits the bifurcation of any claim if the debt is secured by a PMSI. To adopt the Trustee's position would in effect undo [BAPCPA]." *GMAC v. Peaslee*, 373 B.R. 252, 261 (W.D.N.Y. 2007). The Federal District Court found particularly persuasive the fact that Comment 3 to § 9-103 of the UCC's description of the price of collateral listed "obligations for expenses incurred in connection with acquiring rights in the collateral, sales taxes, duties, finance charges, interest, freight charges, costs of storage in transit, demurrage, administrative charges, expenses of collection and enforcement, attorney's fees, and other similar obligations." Since Comment 3 did not preface the "sales taxes, duties, et al." list with the words "including" or "such as" or a functionally equivalent phrase, the court determined that the Comment's reference to obligations is a general one, distinct from those expenses which followed.

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<sup>4</sup> See e.g., H.R. Rep. No. 107-617, 147 Cong. Rec. S2234-35.

## II. THE DEFINITIONS IN FEDERAL TRUTH IN LENDING LAW AND REGULATIONS SUPPORT FORD CREDIT

When Congress enacted BAPCPA in 2005, it is presumed to have known about other pertinent federal law governing purchase-money financing of motor vehicles.<sup>5</sup> The Truth in Lending Act (TILA) (15 U.S.C. §1600 et seq.) and the Act's regulation, Regulation Z (12 CFR 226), deal generally with the disclosures that are required in both consumer credit card debt (open ended credit) and purchase-money debt for items of personal property (closed end credit). Although that law does not give a definition as such of "purchase money security interest," the law does explain the kind of disclosures that must be made in a purchase-money transaction that generates a purchase-money security interest.

In 1999, the Federal Reserve Board amended the Official Staff Interpretations of Regulation Z to clarify how purchase-money vehicle financiers should disclose negative equity. Those amendments direct creditors to incorporate negative equity as a part of the "total sale price" of a new vehicle in a single financing transaction. 64 F.R. 16614-01, 16617 (adopting revisions to § 226.18(j) (3), Official Staff Interpretations). The Staff Interpretations define the Total Sale Price to include negative equity as follows:

*18(j) Total sale price.*

3. *Effect of existing liens.* When a credit sale transaction involves property that is being used as a trade-in (an automobile, for example) and that has a lien exceeding the value of the trade-in, the total sale price is affected by the amount of any cash provided. (See comment 2(a) (18)-3.) To illustrate, assume a consumer finances the purchase of an automobile with a cash price of \$ 20,000. **Another vehicle used as a trade-in has a value of \$ 8,000 but has an existing lien of \$ 10,000, leaving a \$ 2,000 deficit that the consumer must finance.**

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<sup>5</sup> See *Quality Tooling v. United States*, 47 F.3d 1569, 1584 (Fed. Cir. 1995) ("When Congress enacts legislation, it is presumed to know the pertinent law.")

i. **If the consumer pays \$ 1,500 in cash, the creditor may apply the cash first to the lien, leaving a \$ 500 deficit, and reflect a down payment of \$ 0. The total sale price would include the \$ 20,000 cash price, an additional \$ 500 financed under § 226.18(b) (2), and the amount of the finance charge.** (emphasis added) Alternatively, the creditor may reflect a down payment of \$ 1,500 and finance the \$ 2,000 deficit. In that case, the total sale price would include the sum of the \$ 20,000 cash price, the \$ 2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

ii. If the consumer pays \$ 3,000 in cash, the creditor may apply the cash first to extinguish the lien and reflect the remainder as a down payment of \$ 1,000. The total sale price would reflect the \$ 20,000 cash price and the amount of the finance charge. (The cash payment extinguishes the trade-in deficit and no charges are added under § 226.18(b) (2).) Alternatively, the creditor may elect to reflect a down payment of \$ 3,000 and finance the \$ 2,000 deficit. In that case, the total sale price would include the sum of the \$ 20,000 cash price, the \$ 2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

The highlighted part of the quoted paragraph shows that the Federal Reserve intended that any negative equity amount be added to the cash price on the new vehicle to be shown as a single amount in the “total sale price” disclosure. Elsewhere the Regulation (12 C.F.R. 226.18(b)) requires that negative equity amounts be shown as part of the “Amount Financed.” The implication to the buyer and to the creditor from this single disclosure of the “total price” and “amount financed,” (i.e. amount secured) is that the negative equity will have the same status as the cash price of the new vehicle. Since the seller’s security interest for the cash price of the new vehicle is indisputably a “purchase money” security interest, it follows that the Federal Reserve’s direction to bundle the negative equity with the cash price is a direction to secure it with a “purchase money security interest.”

### **III. STATE LAW, COMMERCIAL PRACTICE AND PUBLIC POLICY AFFIRM FORD CREDIT'S POSITION IN THIS CASE**

#### **A. The Uniform Commercial Code**

Whether Congress intended a federal definition or a state definition, the state law is a rich source of help.

First consider the breadth of the "purchase-money" umbrella under Article 9 of the UCC. Article 9 is the law of every state --- tantamount to federal law on this issue. Section 9-103(a)(2) of Article 9 of the Louisiana Uniform Commercial Code (La. R.S. 10:9-103(a)(2)) provides that "a security interest in goods is a purchase-money security interest . . . to the extent that the goods are purchase-money collateral with respect to that security interest." "Purchase-money collateral" is defined as "goods . . . that secur[e] a purchase-money obligation incurred with respect to that collateral." A "purchase-money obligation" is defined, in turn, as "an obligation . . . incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." La. R.S. 10:9-103(a)(2). Comment 3 to Section 9-103 explains that "purchase-money obligation" reaches more than just the listed price of the item purchased:

As used in subsection (a) (2), the definition of "purchase-money obligation," the "price" of collateral or at the "value given to enable" includes obligations for expenses incurred in connection with acquiring rights in the collateral, sales taxes, duties, finance charges, interest, freight charges, costs of storage in transit, demurrage, administrative charges, expenses of collection and enforcement, attorney's fees, and other similar obligations.

The concept of "purchase-money security interest" requires a close nexus between the acquisition of collateral and the secured obligation. La. R.S. 10:9-103(a)(2) , Comment 3, UCC (emphasis added).



The current commercial practice, discussed below, recognizes negative equity owed on a trade-in as a routine “expense incurred in connection with acquiring” the new vehicle, and the financing of the remaining debt on the trade-in has more than a “close nexus” to the acquisition of the new vehicle. Since buyers with negative equity on their trade-ins seldom have cash to pay off the amount owed, inevitably that amount must be financed by the creditor on the new vehicle or by some other creditor. So in many cases, the “nexus” is so close that the new car cannot be acquired without financing from the new purchase-money creditor to retire the negative equity.

#### **B. The Louisiana Motor Vehicle Sales Finance Act**

Further support for the argument that the term “price,” as used in Section 9-103 of Louisiana’s Article 9, includes charges for negative equity can be found in Louisiana’s Motor Vehicle Sales Finance Act. La. R.S. 6:969.6(4) of that Act provides that:

“4) ‘**Cash price**’ means the price for which the seller would have sold the motor vehicle to the consumer and the consumer would have bought from the seller if such sale had been a sale for cash instead of on credit. The cash price may include any sales taxes, documentary fees, notary fees, license, title, filing and lien release fees, **negative equity trade-in allowances, insurance premiums**, extended warranty, service contract, and similar fees, and charges for delivery, installation, repair, alteration, or improvement to the vehicle.” (Emphasis added)

In adopting this broad definition of the term “price,” the Louisiana legislature signaled its intent to authorize charges for negative equity in the sale of motor vehicles in order to facilitate the sale and financing of such vehicles in the state of Louisiana. It did so because it viewed charges for negative equity, as well as insurance premiums, extended warranty coverage and service contracts, as beneficial to consumers and as bearing a “close nexus” to the sale of automobiles in Louisiana. Section 9-103 and Comment 3 of Louisiana’s Article 9 therefore dictate that these charges are part of the “price” of the motor vehicle and are therefore “purchase-money obligations.” Since charges

for negative equity and gap insurance are “purchase-money obligations,” Ford Credit’s entire security interest in the Debtor’s vehicle is a purchase money security interest, protected from bifurcation and cramdown under the hanging paragraph.

### **C. Commercial Practice and Public Policy**

Since all decisions interpreting commercial law have the capacity to facilitate or impair commercial activity, courts should be sensitive to commercial practice when they are interpreting federal and state statutes. The commercial practice in this case supports the proposition that including negative equity into a new contract creates a purchase-money security interest. So far as one can tell from reading the cases, the law review literature, and the contracts, the consumer and creditor parties to these transactions treat the negative equity portion of the new debt in exactly the same as every other part of the debt. They regard it as secured by the newly sold vehicle in exactly the same way as every other part of the debt.

In evaluating the commercial practice that underlies these cramdown cases, one should remember that these debtors are always employed (otherwise they would not be in Chapter 13), and they are always the owners of vehicles. These cases do not involve powerless consumers who must accept anything that a creditor offers. Here the Debtor chose to purchase a new vehicle and asked the dealer to accept his used vehicle as a trade-in. The Debtor asked the dealer to finance the negative equity related to the trade-in vehicle so the purchase of the new vehicle could be completed. The Debtor and the dealer agreed upon financing terms for the purchase of the new vehicle, and those terms included the financing of the payoff of the negative equity. The dealer’s financing terms were thus knowingly accepted by the Debtor.

The Debtor chose to trade in his used vehicle on a new 2004 Ford Ranger; he bought the Ford Ranger less than 910 days before he filed Chapter 13. The dealer's willingness to finance the negative equity of \$11,488.59 on the Debtor's used vehicle enabled him to complete the deal as he chose and it facilitated his purchase of the new vehicle that he was under no compulsion to purchase.

It is a basic principle of American commercial law- learned from Karl Llewellyn, father of the Uniform Commercial Code - that the law should follow practice, not the other way around. That principle is particularly powerful where the practice appears to have been freely chosen by parties who had other alternatives.


#### **IV. CONCLUSION**

The words, the statutory history, the Congressional intent, the analogies to the federal Truth in Lending law and the breadth of the "purchase-money" umbrella under Section 9-103(a)(2) of Article 9 of the Louisiana Uniform Commercial Code (La. R.S. 10:9-103(a)(2)) and the Louisiana Motor Vehicle Sales Finance Act (La. R.S. 6:969.6(4)) direct this Court to reverse the Orders of the Bankruptcy Court.

Respectfully submitted this 15<sup>th</sup> day of May, 2008.

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-and-

  
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**Local Counsel for Amici Curiae American  
Financial Services Association and National  
Automobile Dealers Association**

**CERTIFICATE OF SERVICE**

I hereby that one copy each of the foregoing brief was mailed this date, through the United States Postal Service with postage prepaid and properly addressed, to the following: (1) D. Patrick Keating, P.O. Box 490, Opelousas, LA 70571; (2) Hamilton J. Chauvin, Jr., P.O. Box 3442, Lafayette, LA 70502-3442; and (3) Steven D. Wheelis, Wheelis & Rozanski, P.O. Box 13199, Alexandria, LA 71315-3199.

Baton Rouge, Louisiana, this 15<sup>th</sup> day of May, 2008.

  
/s/ Lawrence R. Anderson, Jr.  
Lawrence R. Anderson, Jr.

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**FORD MOTOR CREDIT COMPANY**

**CIVIL ACTION NO. 6:08CV00034**

**VERSUS**

**CHIEF JUDGE RICHARD T. HAIK, SR.**

**CARL G. HEBERT**

**MAGISTRATE JUDGE MILDRED  
METHVIN**

**consolidated with**

**FORD MOTOR CREDIT COMPANY**

**CIVIL ACTION NO. 6:08CV00037**

**VERSUS**

**CHIEF JUDGE RICHARD T. HAIK, SR.**

**CARL G. HEBERT**

**MAGISTRATE JUDGE MILDRED  
METHVIN**

**ORDER GRANTING LEAVE TO FILE BRIEF OF AMICI CURIAE**

Considering the Unopposed Motion for Leave to File American Financial Services Association and National Automobile Dealers Association Original Brief of Amici Curiae in Support of Appellant and it appearing that no party is opposed to the Motion:

IT IS ORDERED that American Financial Services Association and National Automobile Dealers Association be and they are hereby granted leave to file American Financial Services Association and National Automobile Dealers Association Original Brief of Amici Curiae in Support of Appellant Ford Motor Credit Company attached as Exhibit "A" to their Unopposed Motion.

Lafayette, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
JUDGE

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**FORD MOTOR CREDIT COMPANY**

**CIVIL ACTION NO. 6:08CV00034**

**VERSUS**

**CHIEF JUDGE RICHARD T. HAIK, SR.**

**CARL G. HEBERT**

**MAGISTRATE JUDGE MILDRED  
METHVIN**

**consolidated with**

**FORD MOTOR CREDIT COMPANY**

**CIVIL ACTION NO. 6:08CV00037**

**VERSUS**

**CHIEF JUDGE RICHARD T. HAIK, SR.**

**CARL G. HEBERT**

**MAGISTRATE JUDGE MILDRED  
METHVIN**

**CERTIFICATE OF SERVICE**

I hereby that one copy each of the Unopposed Motion for Leave to File American Financial Services Association and National Automobile Dealers Association Original Brief of Amici Curiae in Support of Appellant filed on behalf of American Financial Services Association and National Automobile Dealers Association on May 15, 2008, and the proposed Order Granting Leave to File Brief of Amici Curiae submitted to the Court on that date was mailed, through the United States Postal Service with postage prepaid and properly addressed to the following: (1) D. Patrick Keating, P.O. Box 490, Opelousas, LA 70571; (2) Hamilton J. Chauvin, Jr., P.O. Box 3442, Lafayette, LA 70502-3442; and (3) Steven D. Wheelis, Wheelis & Rozanski, P.O. Box 13199, Alexandria, LA 71315-3199.

\*\*\*\*\*

\*\*\*\*\*

\*\*\*\*\*

Baton Rouge, Louisiana, this 15<sup>th</sup> day of May, 2008.



/s/ Lawrence R. Anderson, Jr.

Lawrence R. Anderson, Jr. / #2470

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**Local Counsel for Amici Curiae American  
Financial Services Association and National  
Automobile Dealers Association**



**Motions**6:08-cv-00034-RTH-MEM Ford Motor Credit Co v. Hebert

LEAD

**U.S. District Court****Western District of Louisiana****Notice of Electronic Filing**

The following transaction was entered by Anderson, Lawrence on 5/15/2008 at 12:00 PM CDT and filed on 5/15/2008

**Case Name:** Ford Motor Credit Co v. Hebert

**Case Number:** 6:08-cv-34

**Filer:** American Financial Services Association  
National Automobile Dealers Association

**Document Number:** 33

**Docket Text:**

**Unopposed MOTION for Leave to File Brief of Amici Curiae in Support of Appellant by American Financial Services Association, National Automobile Dealers Association. Motions referred to Mildred E Methvin. (Attachments: # (1) Memorandum / Brief, # (2) Proposed pleading)(aty,Anderson, Lawrence)**

**6:08-cv-34 Notice has been electronically mailed to:**

American Financial Services Association lranderson@sszblaw.com

Lawrence R Anderson , Jr lranderson@sszblaw.com

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Richard A Rozanski richard@wheelis-rozanski.com, bvincent@wheelis-rozanski.com

Stephen D Wheelis steve@wheelis-rozanski.com, jennifer@wheelis-rozanski.com

**6:08-cv-34 Notice will not be electronically mailed to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:**Memorandum / Brief

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:**Proposed pleading

**Original filename:**n/a

**Electronic document Stamp:**

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**Other Documents**6:08-cv-00034-RTH-MEM Ford Motor Credit Co v. Hebert

LEAD

**U.S. District Court****Western District of Louisiana****Notice of Electronic Filing**

The following transaction was entered by Anderson, Lawrence on 5/15/2008 at 3:09 PM CDT and filed on 5/15/2008

**Case Name:** Ford Motor Credit Co v. Hebert

**Case Number:** 6:08-cv-34

**Filer:** American Financial Services Association  
National Automobile Dealers Association

**Document Number:** 34

**Docket Text:**

**CORRECTIVE DOCUMENT** entitled **Certificate of Service** filed by **American Financial Services Association, National Automobile Dealers Association** regarding [33] **Unopposed MOTION for Leave to File Brief of Amici Curiae in Support of Appellant.** (aty,Anderson, Lawrence)

**6:08-cv-34 Notice has been electronically mailed to:**

American Financial Services Association lranderson@sszblaw.com

Lawrence R. Anderson, Jr lranderson@sszblaw.com

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**6:08-cv-34 Notice will not be electronically mailed to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

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**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

FORD MOTOR CREDIT COMPANY      CIVIL ACTION NO: 6:08CV0034  
VERSUS      CHIEF JUDGE RICHARD T. HAIK, SR.  
CARL G. HEBERT      MAGISTRATE JUDGE MILDRED METHVIN

**CONSOLIDATED WITH**

FORD MOTOR CREDIT COMPANY      CIVIL ACTION NO: 6:09CV0037  
VERSUS      CHIEF JUDGE RICHARD T. HAIK, SR.  
CARL G. HEBERT      MAGISTRATE JUDGE MILDRED METHVIN

**MOTION TO DISMISS APPEAL AS MOOT**

**NOW INTO COURT**, through undersigned counsel, comes CARL HEBERT, Appellee herein, who, respectfully represents that there is no longer a controversy in this case and, as a result, this appeal should be dismissed and in support of this dismissal, represents as follows:

1.

Carl Hebert, Appellee, (hereinafter referred as "Hebert" or "Debtor") filed for voluntary relief under Chapter 13, Title 11 of the United States Bankruptcy Code on March 27, 2007 and on that day an order for relief was duly entered.

2.

The Debtor's original Chapter 13 Plan provided for the payment to FMCC for a secured claim in the sum of \$8,000.00.

3.

On June 4, 2007, Ford Motor Credit Company (hereinafter referred to as "FMCC") filed a proof of claim in this proceeding. A copy of the proof of claim filed by FMCC is attached hereto and made a part hereof as Exhibit 1. The proof of claim was filed as a secured proof of claim in the sum of \$20,514.64.

4.

On June 6, 2007, FMCC filed an Objection to the original Chapter 13 Plan filed by the Debtor.

5.

On June 25, 2007, the Debtor filed an Objection to the proof of claim filed by FMCC.

6.

After briefing, a hearing was held before the Honorable Robert Summerhays, U.S. Bankruptcy Judge on August 22, 2007 and a decision was taken advisement.

7.

On December 21, 2007, Judge Summerhays issued an opinion, in open court, sustaining, in part, the Debtor's objection to the proof of claim of FMCC and overruling, in part, FMCC's objection to plan confirmation. A copy of the oral opinion of Judge Summerhays is attached hereto and made a part hereof as Exhibit 2). It is this opinion that is currently before this Court on appeal.

8.

In essence, Judge Summerhays opinion held that while "negative equity" and Gap insurance were not to be considered a

part of the purchase money security interest of the transaction, all pre-petition payments made by the Debtor to FMCC would first be applied to the non-purchase money component of the claim of FMCC. (See Judge Summerhays oral opinion dated December 12, 2007 at pages 12-14.)

9.

In order to properly calculate the secured claim of FMCC pursuant to the ruling by Judge Summerhays, the Debtor needed the amount of pre-petition payments made by the Debtor to FMCC. A request for that information was made on December 12, 2007.

10.

FMCC filed a Notice of Appeal on December 21, 2007, and filed a Second Notice of Appeal from a separate order on January 4, 2008.

11.

Both appeals were docketed on January 7, 2008, with a Notice of Setting of the Bankruptcy Appeal filed in each case on January 15, 2008, setting briefing schedules and deadlines.

12.

A Joint Motion to Consolidate the two cases was filed on January 15, 2009 and granted on February 12, 2008.

13.

A Joint Motion to Set Aside the Notice of Setting Bankruptcy Appeal was also filed in each case on January 15, 2008 and granted on February 12, 2008.

14.

The District Court entered a renote of the setting of the Bankruptcy Appeal on February 14, 2008, setting forth briefing schedules and appropriate deadlines.

15.

On April 29, 2008, FMCC faxed to Debtor a list of all payments made to FMCC by the Debtor prior to the filing of the bankruptcy case. The list showed that the Debtor made a total of \$12,529.95 in pre-petition payments to FMCC. A review of the proof of claim of FMCC (Exhibit # 1) and the attachments thereto, will show the value given to "negative equity" is the sum of \$11,488.09, GAP insurance is the sum of \$595.00 together with other minor charges.

16.

In applying the pre-petition payments as required by Judge Summerhays' ruling dated December 12, 2007, virtually all of the pre-petition payments would be applied to the payment of "negative equity" and GAP insurance and not toward the reduction of the secured claim of FMCC.

17.

On April 30, 2008, Debtor filed an Amended Chapter 13 Plan providing for the payment of the secured claim of FMCC in the sum of \$20,514.64. A copy of the Amended Chapter 13 Plan is attached hereto and made a part hereof as Exhibit 3. A hearing on confirmation of the Amended Chapter 13 Plan is set for hearing June 4, 2008 in the bankruptcy proceeding.



18.

The Amended Chapter 13 Plan provides for the payment, in full, of the secured claim of FMCC as set forth in its proof of claim (Exhibit # 1).

19.

Since the secured claim of FMCC is now being paid in full pursuant to the Amended Chapter 13 Plan, there no longer a controversy between the Debtor and FMCC and, as a result, this appeal is now moot.

**WHEREFORE**, CARL G. HEBERT, through undersigned counsel, prays that this Motion be deemed good and sufficient and that the Motion be **GRANTED** and that this appeal be dismissed as now being **MOOT**.

Respectfully submitted by:

**GALLOWAY JEFcoat, LLP**

/s/ D. PATRICK KEATING

By: \_\_\_\_\_

D. Patrick Keating #14417/7230  
P.O. Box 61550  
Lafayette, LA 70596-1550  
Phone: (337)984-8020  
Fax: (337)984-7011  
Email:rickkeating@charter.net

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the above and foregoing Motion to Dismiss Appeal as Moot has been served upon the following parties: Debtor, Carl G. Hebert, 565 Market Street, Arnaudville, LA 70512; Ford Motor Credit, thru its attorney, Stephen Wheelis, Wheelis & Rozanski, P.O. Box 13199, Alexandria, LA 71315-3199; Chapter 13 Bankruptcy Trustee, Keith A. Rodriguez, P.O. Box 3445, Lafayette, LA 70502; Attorney for Movants, Lawrence R. Anderson, Jr., 8550 United Plaza Blvd., Suite 200, Baton Rouge, LA 70809 and, Office of U.S. Trustee, 300 Fannin St., Suite 3196, Shreveport, LA 71101, by placing same in the U.S. Mail, postage prepaid and properly addressed.

Lafayette, Louisiana, this 15<sup>th</sup> day of May, 2008.

**/s/ D. PATRICK KEATING**

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D. PATRICK KEATING [Bar:14417/7230]

**GALLOWAY & JEFcoat, LLP**

P.O. Box 61550

Lafayette, LA 70596

Telephone: (337) 984-8020

Fax : (337) 984-7011

Email : rickkeating@charter.net

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

FORD MOTOR CREDIT COMPANY

CIVIL ACTION NO: 6:08CV0034

VERSUS  
SR.

CHIEF JUDGE RICHARD T. HAIK,

CARL G. HEBERT

MAGISTRATE JUDGE MILDRED METHVIN

CONSOLIDATED WITH

FORD MOTOR CREDIT COMPANY

CIVIL ACTION NO: 6:09CV0037

VERSUS  
SR.

CHIEF JUDGE RICHARD T. HAIK,

CARL G. HEBERT

MAGISTRATE JUDGE MILDRED METHVIN

MOTION TO DISMISS APPEAL AS MOOT

EXHIBIT # 1

PROOF OF CLAIM FILED BY FORD MOTOR CREDIT CORPORATION

UNITED STATES BANKRUPTCY COURT Western District of Louisiana		PROOF OF CLAIM
<b>In re (Name of Debtor)</b> <b>CARL HEBERT</b>	<b>Case Number</b> <b>07BK-50372</b>	
<div style="float: right; text-align: right;"> <b>E-FILED</b>  <b>** PLEASE SEND DISBURSEMENTS TO: FMCC, Drawer 55-953, P.O. Box 55000, Detroit MI 48255-0953</b> </div>		
<b>Name of Creditor</b> <i>(The person or entity to whom the debtor owes money or property)</i> <b>Ford Motor Credit Company</b> <b>P.O. Box 537901</b> <b>Livonia, Michigan 48153-7901</b> <b>Name and addresses where notices should be sent:</b> <b>Stephen D. Wheelis</b> <b>P. O. Box 13199</b> <b>Alexandria, LA 71315-3199</b> <b>318-445-5600</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
<b>ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR</b> <b>FMCC Account Number: XXXX3067</b>		
<b>1. BASIS FOR CLAIM:</b> <input checked="" type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input checked="" type="checkbox"/> Money loaned <input checked="" type="checkbox"/> Personal injury/wrongful death <input checked="" type="checkbox"/> Taxes <input type="checkbox"/> Other - Priority Claim	<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensations (Fill out below) Your social security number _____ Unpaid compensations for services performed from _____ to _____	
<b>2. DATE DEBT WAS INCURRED: 01/31/05</b>	<b>3. IF COURT JUDGMENT, DATED OBTAINED:</b>	
<b>4. CLASSIFICATION OF CLAIM.</b> Under the Bankruptcy Code all claims classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM.		
<input checked="" type="checkbox"/> <b>SECURED CLAIM \$20,514.64</b> Attach evidence of perfection of security interest Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other (Describe briefly), plus all accrued interest, charges and fees Amount of arrearage and other charges included in secured claim above, if any \$ _____ <input type="checkbox"/> <b>UNSECURED NONPRIORITY CLAIM \$ _____</b> A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.	<input type="checkbox"/> <b>UNSECURED PRIORITY CLAIM \$ _____</b> Specify the priority of the claim. <input type="checkbox"/> Wages, salaries, or commissions (up to \$2000), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier -- 11 U.S.C. § 507(a)(2) <input type="checkbox"/> Contributions to an employee benefit plan -- U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$500 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -- 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Taxes or penalties of governmental units -- 11 U.S.C. § 507(a)(7) <input checked="" type="checkbox"/> Other -- 11 U.S.C. §§ 507(a)(2), (a)(9) -- (Describe briefly)	
<b>5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED:</b> \$ <u>Unsecured</u> <u>\$20,514.64</u> \$ <u>Secured</u> <u>\$20,514.64</u> \$ <u>Priority</u> <u>\$20,514.64</u> <u>(Total)</u> Plus all interest, charges and fees accrued. <input type="checkbox"/> Check this box if claim includes prepetition charges in addition to the principal amount of the claim. Attach Plus itemized statement of all additional charges.		
<b>6. CREDITS AND SETOFFS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to Debtor.		
<b>7. SUPPORTING DOCUMENTS.</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>8. TIME-STAMPED COPY:</b> To receive an acknowledgment of the filing of your claim, enclosed a stamped, self-addressed envelope and copy of this proof of claim.		
<b>Date</b> <b>06/04/07</b>	<b>Sign and print the name and title, if any of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)</b> <b>BY: /s/ Stephen D. Wheelis</b> <b>STEPHEN D. WHEELIS, Attorney</b>	

THIS SPACE IS FOR COURT USE ONLY

## GAP COVERAGE DISCLOSURE

**Buyer:**  
CARL G. HEBERT  
565 MARKET ST  
ARNAUDVILLE LA 70512

**Seller:**

HUB CITY FORD INC  
PO BOX 90670  
LAFAYETTE LA 70509

**Vehicle:**  
2004 FORD TRUCK RANGER

**Date:**  
01/31/2005

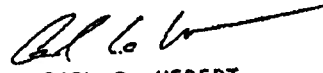
We are obligated under Louisiana law to provide you with the option of voluntarily purchasing GAP insurance or similar coverage in connection with the credit purchase of your vehicle. GAP coverage protects you if your vehicle is damaged beyond repair or is lost and can not be recovered, and the proceeds of your insurance or amounts you receive from third persons is not sufficient to fully pay and satisfy what you then owe under your vehicle financing contract. GAP coverage will pay this difference to the contract holder so that you may not be required to "come out-of-pocket" to pay this additional amount.

**YOU ARE NOT REQUIRED TO PURCHASE GAP COVERAGE FROM US AS A CONDITION OF OBTAINING CREDIT.** If you wish to purchase GAP coverage from us on a purely voluntary basis, you may do so by checking the appropriate box and signing below.

Cost of GAP coverage for a term of 60 months: \$ 595.00

☒ I (we) elect to voluntarily purchase GAP coverage from you for the above cost and term, and request that you finance this amount under my vehicle financing contract.

☐ I (we) decline to purchase GAP coverage from you. (By declining to purchase GAP coverage, you acknowledge that you may remain liable to the holder of your vehicle financing contract for the difference between (1) the amount you owe the contract holder following the total loss of your vehicle, and (2) the amount you receive in insurance proceeds and from third parties causing damage to the vehicle.)

  
CARL G. HEBERT  
Buyer

\_\_\_\_\_  
Co-Buyer

**Notice to Buyer:** Keep this form in your records along with your vehicle financing contract.



4T1221



# Deficiency Waiver Addendum

## CUSTOMER (BORROWER/LESSEE) INFORMATION

LAST NAME HEBERT FIRST NAME CARL MIDDLE INITIAL G  
 STREET ADDRESS 565 MARKET ST APT#   
 CITY ARNAUDVILLE STATE LA ZIP CODE 70512  
 HOME PHONE# (337)754-7367 BUS. PHONE# (337)839-0984

## COVERED VEHICLE INFORMATION

MANUFACTURER FORD TRUCK MODEL RANGER YEAR 2004  
 VEHICLE ID NUMBER 1FTYR14U34PB06497  
 CHARGE TO CUSTOMER FOR DEFICIENCY WAIVER ADDENDUM \$ 595.00 ORIGINAL DATE OF CONTRACT 01/31/2005

INSTALLMENT SALES CONTRACT/LOAN ☒ BALLOON LOAN/LEASE ☐ AMOUNT FINANCED/LEASE CAP 23995.09 TERM (IN MONTHS) 60 NEW VEHICLE ☒ USED VEHICLE ☐

## DEALER INFORMATION

DEALER#  DEALERSHIP HUB CITY FORD INC  
 STREET ADDRESS PO BOX 90670  
 CITY LAFAYETTE STATE LA ZIP CODE 70509

## ASSIGNEE INFORMATION

ASSIGNEE FORD MOTOR CREDIT INSTALLMENT SALES CONTRACT/LOAN/LEASE ACCT.#   
 STREET ADDRESS P.O. BOX 105704  
 CITY ATLANTA STATE GA ZIP CODE 30348-5704

I (CUSTOMER), WHOSE SIGNATURE APPEARS BELOW, ACKNOWLEDGE THAT THE INFORMATION CONTAINED ABOVE IS, TO THE BEST OF MY KNOWLEDGE, TRUE. I HAVE READ THE DEFICIENCY WAIVER ADDENDUM IN ITS ENTIRETY, AND AGREE TO ALL OF THE PROVISIONS HEREIN. THE PURCHASE OF THE DEFICIENCY WAIVER ADDENDUM IS VOLUNTARY AND IS NOT REQUIRED TO OBTAIN CREDIT. I UNDERSTAND I MAY OBTAIN GAP PROTECTION FROM AN ALTERNATE SOURCE. I UNDERSTAND I MAY CANCEL THIS GAP ADDENDUM AT ANY POINT DURING THE ORIGINAL TERM OF THE RETAIL INSTALLMENT CONTRACT/LOAN OR LEASE. I UNDERSTAND THAT A CANCELLATION REQUESTED WITHIN SIXTY (60) DAYS OF PURCHASE IS ELIGIBLE FOR A FULL REFUND. I UNDERSTAND THAT A CANCELLATION REQUEST RECEIVED AFTER SIXTY (60) DAYS OF PURCHASE WILL BE REFUNDED PRO-RATA, UNLESS OTHERWISE REQUIRED BY APPLICABLE STATE LAW.

☐ I WISH TO PURCHASE THE DEFICIENCY WAIVER ADDENDUM.

DATE 01/31/2005 CUSTOMER'S SIGNATURE [Signature] DEALER'S SIGNATURE [Signature]

## Waiver

Max loan amount: The lesser of \$100,000 or 150% of MSRP/NADA Retail; Max Term: 72 mos; Max vehicle age: 10 years from date of Sales Contract. This Addendum must be purchased at the time of execution of Installment Sales Contract /Loan/Lease Agreement. The named Customer is responsible to the named Dealer/Assignee under the terms of the described Installment Sales Contract/Loan/Lease Agreement for any indebtedness resulting from a Total Loss of the Vehicle. Due to this Addendum being in effect, the Dealer/Assignee agrees to cancel a portion of the Customer's indebtedness in the event of a Total Loss of the Vehicle as defined herein. Dealer/Assignee agrees to cancel a portion equal to the Unpaid Net Balance less the Actual Cash Value (ACV) of the Vehicle, both as defined herein. Any primary insurance deductible amount in excess of \$1,000 remains the Customer's responsibility. It is further agreed that the maximum amount canceled is limited to \$100,000.

## DECLINATION OF DEFICIENCY WAIVER ADDENDUM

☐ I DO NOT CHOOSE TO PURCHASE THE DEFICIENCY WAIVER ADDENDUM. I UNDERSTAND THAT BY NOT ACCEPTING THIS DEFICIENCY WAIVER ADDENDUM, I AM NOT ENTITLED TO ANY OF THE BENEFITS IN THE EVENT OF A TOTAL LOSS OF THE VEHICLE.

DATE  CUSTOMER'S SIGNATURE  DEALER'S SIGNATURE

GAP Coverage  
 PO Box 23038  
 San Diego, CA 92193-3850  
 1-888-768-0100

**LOUISIANA SIMPLE INTEREST PROMISSORY NOTE AND SECURITY AGREEMENT**

Buyer (and Co-Buyer, if any) and Seller (and Co-Seller, if any) agree to the terms and conditions of this Note and Security Agreement.

**Parties:** **BUYER:** J. G. WILSON, JR. -4051  
**SELLER:** HUB CITY FORD INC. PO BOX 90670  
HARRISVILLE LA 70512 CO. ST. LANDRY

**Vehicle:** 2004 FORD TRUCK, HARRISVILLE LA 70512 CO. ST. LANDRY

**Amount Financed:** \$23,000.00

**Annual Percentage Rate:** 10.00%

**Finance Charge:** \$2,300.00

**Total of Payments:** \$25,300.00

**Total Sale Price:** \$25,300.00

**Payment Schedule:** 36 months, \$702.78 per month, starting 03/17/2008

**Security Interest:** The Buyer grants to the Seller a security interest in the vehicle described herein.

**Arbitration:** Any dispute arising out of this contract shall be referred to arbitration.

**Signature:** J. G. WILSON, JR. (Buyer) and HUB CITY FORD INC. (Seller)

Program No. 10  
QUESTIONS?



PLEASE CALL US AT 1-800-727-7000  
or  
Visit us at [www.fordcredit.com](http://www.fordcredit.com)  
04-001  
ORIGINAL

TO: FORD MOTOR CREDIT COMPANY, P.O. BOX 390910, MINNEAPOLIS, MN 55439-0910

I UNDERSTAND THAT THE VEHICLE LISTED BELOW MUST BE COVERED BY BOTH COLLISION AND COMPREHENSIVE COVERAGES, OR FIRE AND THEFT AND COMBINED ADDITIONAL COVERAGES AND WITH \$1,000 MAXIMUM DEDUCTIBLES. INSURANCE MAY BE OBTAINED FROM A PERSON OF YOUR CHOICE.

My present insurance coverage includes the required coverage. I WILL MAINTAIN CONTINUOUS INSURANCE through the insurance company shown below, requesting my agent to note the lienholder's interest in the vehicle and endorse the policy with a loss payable endorsement in favor of the Lienholder at the above address.

Year 2004	Make FORD TRUCK	Model RANGER	Body Style SUPERCAB 4X2 2DR	Vehicle Identification Number 1FTYR14U34P806497
--------------	--------------------	-----------------	--------------------------------	--

## PURCHASER

Name	CARL G. HEBERT
Street Number	565 MARKET ST
City State Zip	ARNAUDVILLE LA 70512

## INSURANCE AGENT

Agent Name	DC G South
Street Number	P.O. Box 1633
City State Zip	Opel. LA. 70570

Telephone Number	(337) 942-4886
------------------	----------------

## INSURANCE COMPANY

Name (if known)	Progressive Ins
Policy or Binder No.	18379972-0
Effective Dates	From: 8-24-04 to 2-24-05
Coverage	<input type="checkbox"/> FIRE, THEFT, CAC <input type="checkbox"/> COLLISION DEDUCTIBLE \$ <input type="checkbox"/> COMPREHENSIVE    MAXIMUM DEDUCTIBLE - \$1000

For Ford Credit Use Only:

FORD CREDIT ACCOUNT NUMBER	COA13VH76R
----------------------------	------------

X. *Carl G. Hebert* 01/31/05  
 Purchaser Signature (REQUIRED) Date

*Harold*  
 Dealer/Salesperson Signature (REQUIRED) Date

## OPTIONAL INSURANCE QUOTE - ARE YOU READY TO SAVE HUNDREDS?\*

Ford Motor Company Insurance Services\* program would like to contact you with a personalized auto insurance quote built around your vehicle and your individual needs. For a no cost, no obligation auto insurance quote, complete the 3 easy steps below.

- ① Check one: (REQUIRED FOR QUOTE) ☐ YES ☐ NO

② Preferred Phone (include area code) (REQUIRED FOR QUOTE) ☐ AM ☐ PM  
 ( )  
 Email Address (optional)

③

Purchaser Signature (REQUIRED FOR QUOTE) Date

\*American Road Services Company ("AMRO"), a subsidiary of Ford Motor Company, and InsLogic Corporation ("InsLogic") are the licensed insurance agencies that provide all information for the Ford Motor Company Insurance Services program. Ford Motor Company is not an insurance company or agent. All insurance is underwritten by insurance companies that are not affiliated with Ford Motor Company, AMRO or InsLogic. In California and Massachusetts, AMRO does business as American Road Insurance Agency, One American Road, Dearborn, MI 48126 AMRO license #OC02678. In California, InsLogic does business as InsLogic Marketing Services Company, P.O. Box 5177, Oak Ridge, TN 37381 InsLogic license #OC84272. Phone: 1-866-673-3673 Fax: 1-877-263-1582.

+ Savings amount is based upon premium comparison information provided by customers who purchased policies through the Ford Motor Company Insurance Services program. Not all customers will save on their insurance premium. Individual savings will vary.



4T1221

## Louisiana Department of Public Safety and Corrections

**TO AVOID REJECTION:**

Complete all required information

Office of Motor Vehicles  
P.O. Box 64886, Baton Rouge, LA 70896-4886  
**VEHICLE APPLICATION**

Date Registered 01/31/2005		Type of Vehicle TRUCK		ELECTRONIC FUND TRANSFER CODE		DEALER CODE N2004-466	
VIN 1FTYR14U34P806497				Make FORD TRUCK		License No.	
Body SUPERC	Color BRIGHT RED	Year 2004	Mileage 5132	Model/Weight RANGER	If vehicle is a manufactured home, is it used as a residence? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Name of Owner CARL G. HEBERT					Driver's License or EIN 4417428		
Name of Joint Owner (if applicable)					Driver's License or EIN		
Owner's Principal Residence Address (or Business Location if Vehicle is Used for Commercial Purposes) 565 MARKET ST City ARNAUDVILLE Parish State/Zip LA 70512					Are you residing within the corporate limits of a municipality? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO ARNAUDVILLE		
					Are you residing within a special tax district or ward? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If yes, what ward or district?		
<input type="checkbox"/> Lessee <input type="checkbox"/> Mail To <input type="checkbox"/> Domestic <input type="checkbox"/> Renter				If lessee, domestic, or renter is indicated, renewal notice should be mailed to (check one): <input type="checkbox"/> Owner <input type="checkbox"/> Lessee, renter, or domestic address		Domestic Code	
Name					Driver's License or EIN of Lessee or Renter		
Street					Trade VIN TRI: 1FTRW07L13K003402		
City					Trade License No. TRI: W389342		

**VEHICLE IS SUBJECT TO SECURITY AGREEMENT AS FOLLOWS:**

ELECTRONIC LIEN TRANSFER CODE		First Lienholder's Name FORD MOTOR CREDIT		Second Lienholder's Name	
Street P.O. BOX 105704		City/State/Zip ATLANTA GA 30348-5704		Street	
City/State/Zip		City/State/Zip		City/State/Zip	

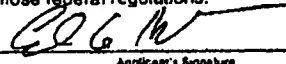
<input checked="" type="checkbox"/> New <input type="checkbox"/> Used	Date Acquired 01/31/05	Tax Date 01/31/05	Previous Title No.	State	Cost of Vehicle 18590.00	Less Trade 17500.00
Title Fee 18.50	Use Pen Credit N/A	Handling Fee 8.00	Rebate 4827.00	Tax Value -3737.00		
Mortgage Fee 10.00	Tax N/A	Tax Fee N/A	DUPLICATE TITLE AFFIDAVIT (Must be signed by owner and notarized.)			
License Fee 40.00	*Tax Penalty N/A	Macarthur Fee N/A	The certificate of title issued to me was <input type="checkbox"/> lost <input type="checkbox"/> mutilated <input type="checkbox"/> never received			
Lic Transfer Fee N/A	*Interest N/A	Total Fees 76.50	I make application for a duplicate copy of said certificate and agree to hold the Commissioner harmless if the previous title is obtained by another person.			
License Credit N/A	Vendor's Comp N/A	Total Taxes N/A	<input type="checkbox"/> I give the Commissioner permission to mail the title to the address on this application.			
License Penalty N/A	Tax Credit N/A	Grand Total 76.50				

**BE SURE TO SIGN AND DATE**

I do swear or affirm that the information contained in this document is true and correct to the best of my knowledge.

I have and will maintain, during this registration period, vehicle liability insurance (security) required by LRS Title 32:861-865. Failure to maintain as agreed will be a violation of law which may result in criminal prosecution and/or suspension of registration privileges.

If the vehicle being registered is defined as a commercial motor vehicle by the Federal Motor Carrier Safety Regulations and/or Federal Hazardous Material Regulations, by signature below registrant declares knowledge of those federal regulations.

 01/31/2005  
Applicant's Signature Date

Co-Applicant's Signature Date

**PROOF OF LIABILITY INSURANCE MUST BE FURNISHED AS PROVIDED FOR BY LAW BEFORE THIS FILE CAN BE PROCESSED.****TO AVOID PENALTY AND INTEREST:**

File must be submitted within 40 days from the date of purchase. For manufactured houses (mobile homes), file must be submitted by the 20th of the month following the month of delivery.

\*Tax Penalty: 5% of sales tax due for 30 days or fraction thereof (not to exceed 25%).

\*Interest: 1.25% of sales tax due for 30 days or fraction thereof (no maximum).

Owner's Signature (as For Duplicate Title)	
Witness	Witness
Sworn and subscribed before me this _____ day of _____.	
Notary Public or Motor Vehicle Officer	
<b>AFFIDAVIT OF NON-POSSESSION OF TITLE BY LIENHOLDER</b> Must be signed by lienholder and notarized.	
I hereby swear or affirm that title of above described vehicle showing lien in our favor was <input type="checkbox"/> never received <input type="checkbox"/> received and surrendered to the owner.	
Lienholder's Signature	
Witness	Witness
Sworn and subscribed before me this _____ day of _____.	
Notary Public or Motor Vehicle Officer	

RECEIVED/REJECTION DATE(S)

R14M RANGER 4X2 XLT SUPERCA  
2004 MODEL YEAR  
BRIGHT RED C/C  
MEDIUM DARK FLINT CLOTH

18120 00 16422 00

INCLUDED ON THIS VEHICLE  
.ORDER CODE 481A-S/C XLT 4X2  
.RALLY GAUGE CLUSTER  
.AM/FM STEREO/CLK/CD PLAYER  
.4-WHEEL ABS  
.AIR CONDITIONING-CFC FREE

T. Fortier's  
DEMO

99U .3.0L EFI V6 ENGINE	NC	NC
440 5-SPO AUTOMATIC O/D TRANS	1000 00	850 00
3.73 RATIO REGULAR AXLE	NC	NC
173 FLARESIDE BOX	495 00	421 00
4780 GVHR	NC	NC
510 P225 ALL-SEASON SPARE	110 00	93 00
52N SPEED CONTROL/TILT STRG WHL	325 00	277 00
529 LEATHER WRAP STEERING WHEEL		
JOB # 2 ORDER		
873 REAR JUMP SEAT	225 00	192 00
91A XLT APPEARANCE GROUP	405 00	344 00
.P225 OWL A/SEASON TIRES		
.WHEELS, CHROME 15"		
DISCOUNTED EQUIPMENT		
AIR CONDITIONING	675 00	574 00
TOTAL VEHICLE & OPTIONS	21355 00	19173 00
DESTINATION & DELIVERY	620 00	620 00
TOTAL BEFORE DISCOUNTS	21975 00	19793 00
NATL FLARESIDE BOX DISC	495 00-	421 00-
AIR CONDITIONING DISC	675 00-	574 00-
TOTAL SAVINGS	1170 00-	995 00-

SCHEDULE A (MEMO) .00

TOTAL FOR VEHICLE

20805 00

20 U.S. GAL FUEL CHARGE 30 20  
PRICED DORA  
BATCH-ID 4C10200374 N R8 2X  
PRICE LEVEL 440330R14  
VIN: 1FTYR14U34PB06497  
SHIPPING WEIGHT 3285 LBS.

Check No.

Key Code

Advt.

P &amp; G

HB

Inv. Cost

0341X

\$ 42,224 = 19,070.44

\$ 81.48

\$ 606.00

\$ 18,340.72

SC 19070.44

18,990  
3,000  
1,000  
14,990  
1,199.20  
148.50  
16,337.70

THIS INVOICE MAY NOT REFLECT THE FINAL COST OF THE VEHICLE IN VIEW OF THE POSSIBILITY OF FUTURE REBATES, ALLOWANCES, DISCOUNTS AND INCENTIVE AWARDS FROM FORD MOTOR COMPANY TO THE DEALER.					
FDA/AMDA ASSESSMENT	INVOICE TOTAL	USE NOT DEDUCT FOR DEATH ACCOUNT	USE APPROX. (TRANSFER TO DEATH ACCOUNT)	LEAD INVOICE (USE HEADLINE & THE COST)	A & O PLAN
200.00	19028.20	606.00		18422.20	X PLAN 19680.28

606.00 62.00 1756.00 .00 544.00 16327.00

SOLD TO

Hub City Ford, Inc.  
P.O. BOX 90670  
Lafayette LA 70509

23H271

SHIP TO IF OTHER THAN ABOVE

TO	IN	STATE	DATE	TIME	FROM	THROUGH
2	6	LA	03/10/04	23-A035	RF	13

SHIP THROUGH

INVOICE &amp; UNIT IDENTIFICATION NO

1FTYR14U34PB06497

FINAL ASSEMBLY POINT

TWIN CITIES

FINANCE COMPANY AND/OR BANK

Ford Motor Credit

0000001

# CERTIFICATE

## STATE OF LOUISIANA DEPARTMENT OF PUBLIC SAFETY - OFFICE OF MOTOR VEHICLES

VIN: 1FTYRL7D34PB06497				TITLE NUMBER: K2843591		DATE ISSUED: 02/07/2005	
MAKE: FORD	MODEL: FORD	BODY: PK	COLOR: RED	YR: 2004	DATE ACQUIRED: 01/31/2005	ODOMETER: 5132	TRU: N

FORD MOTOR CREDIT

PO BOX 105704  
ATLANTA GA

30348

OWNER:  
CARL E. HEBERT

665 MARKET ST  
BARNARDVILLE

LA 70513

DATE: 02/04/2005

FORD MOTOR CREDIT  
PO BOX 105704  
ATLANTA GA

30348

First Lien Released \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Lienholder \_\_\_\_\_

By \_\_\_\_\_ Authorized Representative \_\_\_\_\_

Second Lien Released \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_ Lienholder \_\_\_\_\_

By \_\_\_\_\_ Authorized Representative \_\_\_\_\_

The undersigned, as Vehicle Controller of the State of Louisiana, certifies that the applicant named herein has been duly registered in this office as owner of the motor vehicle described, subject to the laws of the State of Louisiana, subject to the mortgage and encumbrances, if any, herein set forth.

In witness whereof, I have affixed my signature at Baton Rouge.

*Key Hodges*

FORM

3634

G 176

2005

ANY ALTERATION OR ERASURE VOIDS THIS TITLE

KEEP IN SAFE PLACE

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

FORD MOTOR CREDIT COMPANY      CIVIL ACTION NO: 6:08CV0034  
VERSUS      CHIEF JUDGE RICHARD T. HAIK,  
SR.

CARL G. HEBERT      MAGISTRATE JUDGE MILDRED METHVIN

CONSOLIDATED WITH

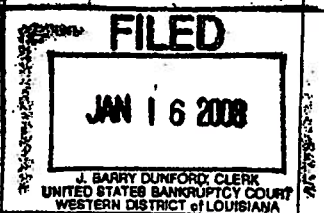
FORD MOTOR CREDIT COMPANY      CIVIL ACTION NO: 6:09CV0037  
VERSUS      CHIEF JUDGE RICHARD T. HAIK,  
SR.  
CARL G. HEBERT      MAGISTRATE JUDGE MILDRED METHVIN

MOTION TO DISMISS APPEAL AS MOOT

EXHIBIT # 2

ORAL JUDGMENT RENDERED December 12, 2007 by the HONORABLE  
ROBERT SUMMERHAYS, U.S. BANKRUPTCY JUDGE

1  
UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE



IN RE: CARL GERARD HEBERT,  
DEBTOR.

Case No. 07-50372

Chapter 13

Lafayette, Louisiana  
December 12, 2007

\* \* \* \* \*

HEARING,  
BEFORE THE HONORABLE ROBERT SUMMERHAYS,  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtor:

Law Office of D. Patrick Keating  
BY: D. PATRICK KEATING, ESQ.  
P.O. Box 490  
Opelousas, Louisiana 70571

For the Trustee:

Law Office of Hamilton Chauvin  
BY: HAMILTON CHAUVIN, ESQ.  
P.O. Box 3442  
Lafayette, Louisiana 70502

For Ford Motor Credit:

BRIAN ROBINSON, ESQ.

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P R O C E E D I N G S

(Wednesday, December 12, 2007)

\* \* \* \* \*

THE COURT: Please be seated. We're going to take up the Hebert case.

(Matter is called by Clerk)

MR. CHAUVIN: Hamilton Chauvin for the Trustee.

MR. KEATING: Rick Keating, Your Honor, for the Debtors.

MR. ROBINSON: Brian Robinson for Ford Motor Credit.

THE COURT: We were here back in August, and had arguments relating to a hanging paragraph issue. At that time, the Court took the matter under advisement. This deals with the thorny issue of the treatment of negative equity, and now that I have my notes, I can issue a ruling.

\* \* \* \* \*

R U L I N G

\* \* \* \* \*

THE COURT: This matter comes before the Court as an objection by the Debtor to a proof of claim of Ford Motor Credit. Ford's proof was filed as a fully secured claim for the amount of \$20,514.64. The debt is secured by a 2004 Ford Ranger. Ford contents that its claim is protected for modification by the hanging paragraph tacked to the end of 11 USC 1325.

1           The Debtor contends that a portion of the claim  
2 represents funds advanced to pay off the deficiency balance or  
3 negative equity for a vehicle, a previous vehicle that they had  
4 traded in when they bought the new vehicle. The Debtor  
5 contends that this portion of the claim is not protected by the  
6 hanging paragraph.

7           The Court took the matter under advisement, after a  
8 hearing on August 22, 2007, after considering the pleadings and  
9 arguments of Counsel and the relevant authorities. The Court  
10 is prepared to rule on the matter.

11           The hanging paragraph altered the treatment of  
12 certain allowed secured claims in Chapter 13 cases.  
13 Specifically, the hanging paragraph provides that:

14           "Section 506 shall not apply to a claim described in  
15 that paragraph, if the creditor has a purchase money  
16 security interest securing the debt that is the subject of  
17 the claim."

18           The debt was incurred within 910 days preceding the  
19 date of filing of the petition, and the collateral or debt  
20 consists of a motor vehicle acquired for the personal use of  
21 the Debtors. The parties do not dispute that the Debtor's  
22 vehicle was purchased within 910 days of filing, or that it was  
23 acquired for the personal use of the Debtor.

24           The present dispute centers on the requirement that  
25 creditor have a purchase money security interest, securing the



1 debt that is the subject of the claim, and whether a portion of  
2 the claim attributed to the financing of negative equity is  
3 security by a purchase money security interest.

4 Bankruptcy Code does not define "a purchase money  
5 security interest" or "a purchase money obligation." As a  
6 result, Bankruptcy Court looked to state law for guidance.

7 Louisiana Revised Statute 10:9-103(A)(2), which is a  
8 codification of the Uniform Commercial Code, defines "a  
9 purchase money security obligation" as:

10 "An obligation of an obligor incurred as all or part  
11 of the price of the collateral, or for value given to  
12 enable the Debtor to acquire rights in or use of the  
13 collateral, if the value is, in fact, so used."

14 The commentary to this provision explains that:

15 "As used in this provision, the definition 'purchase  
16 money obligation,' the 'price of collateral or the value  
17 given to enable,' includes obligations for expenses  
18 incurred in connection with acquiring the rights and the  
19 collateral, sales taxes, duties, finance charges,  
20 interest, freight charges, costs of storage and transit  
21 demurrage, administrative charges, expenses of collection  
22 and enforcement, attorney's fees, and other similar  
23 obligations. The concept of purchase money security  
24 interest requires a close nexus of the acquisition of  
25 collateral and the secured obligation."



1 The courts that have addressed this issue have  
2 recognized that the close nexus are what enables a debtor to  
3 acquire rights in property is fact intensive.

4 The extent of the purchase money obligation is not  
5 limited to the sticker price of the vehicle and that's clear  
6 from the commentary to 9-103. The commentary to 9-103 makes  
7 clear that after expenses related to the purchase, such as  
8 taxes and administrative fees, that these fall within the  
9 definition of a purchase money obligation.

10 However, each of these items are closely tied to the  
11 purchase of the new vehicle. Indeed, almost all of the items  
12 are required for the transaction -- and "the transaction" being  
13 the purchase of the new vehicle -- to go forward.

14 As Judge London recently observed in In Re: Hayes,  
15 376 BR 655 at 670, Bankruptcy Court, Middle District of  
16 Tennessee, November 1<sup>st</sup>, 2007:

17 "Not every dollar loaned becomes a purchase money  
18 obligation by relationship in time or circumstance to the  
19 financing of purchase money collateral."

20 Judge London held -- as I believe an emerging  
21 majority of courts, albeit slight majority, have been holding  
22 -- is that negative equity is not a purchase money obligation.  
23 It is not subject to the protection of the hanging paragraph.

24 The Court concludes that Judge London got it right in  
25 Hayes, that negative equity, or funds used to advance to pay

1 off negative equity on a trade in, does not constitute a  
2 purchase money obligation. It is not subject to protection  
3 under the hanging paragraph. Negative equity does not fall  
4 within any of the categories outlined in the commentary to  
5 9-103. It, in fact, relates to -- if you can characterize it  
6 as an expense -- an item that is wholly unrelated to the  
7 purchase or to the second vehicle.

8           The funds advanced to pay off negative equity  
9 constitute a separate transaction, whereby the creditors pays  
10 off the deficiency balance of an old vehicle that the debtor is  
11 trading in. This negative equity balance is tied to that prior  
12 vehicle and reflects different considerations, including the  
13 terms under which that prior vehicle was financed, as well as  
14 the extent to which that prior vehicle was depreciated.

15           It does not relate to the "specific collateral" that  
16 is protected under the hanging paragraph, collateral that has  
17 to meet the other requirements of the hanging paragraph -- in  
18 other words, the 910 day provision, as well as the personal use  
19 provision.

20           The fact that negative equity is financed is part of  
21 the same transaction, in the sense that it may be included on  
22 the same underlying finance documents and take place at the  
23 same time as the purchase of the second vehicle, while it's  
24 relevant to showing a connection, it's not the close connection  
25 required to convert that part of the financing into a purchase

1 money obligation. In fact, Judge London, in Hayes, observed  
2 that courts have given too much weight to the presence of a  
3 single contract with multiple transactions.

4 One argument that Ford raises is similar to an  
5 argument that many creditors have raised, and that is that:  
6 But for the financing of the negative equity, the debtor would  
7 not have been able to purchase a new vehicle.

8 A "but for" relationship, that's not supported by the  
9 text of the hanging paragraph, nor is it supported by the  
10 underlying case law or the Uniform Commercial Code.

11 More importantly, the Debtor contends, in its  
12 response, that it had the option of retaining the prior vehicle  
13 and continuing to make payments.

14 In any event, Judge Clark, in the In Re: Sanders  
15 case, 2007 WL 304:7233, Bankruptcy Court, Western District of  
16 Texas, October 18<sup>th</sup>, 2007, addressed this argument and  
17 dismissed the argument on the grounds that it proved too much.  
18 Because, under this argument, a debtor or a creditor could  
19 essentially finance the payoff of a credit card balance, if  
20 that credit card balance was standing in the way of purchasing  
21 a new car.

22 Now, with due respect to Judge Clark, the Court is  
23 not adopting that analogy, but I think that there is a closer  
24 connection between the negative equity and the financing of  
25 negative equity in the purchase of the new car, than in

1 Judge Clark's example. But, what Judge Clark's example points  
2 to is the problem of expanding the scope of what constitutes a  
3 close nexus.

4 The Court believes that that should be construed  
5 narrowly, and that's consistent with 9-103, which construes the  
6 nexus narrowly to include expenses that are specifically  
7 related to the collateral that, in this case, would be subject  
8 to the hanging paragraph.

9 The other argument that has been raised by Ford, and  
10 other creditors, is the impact of Louisiana's Motor Vehicle  
11 Sales Finance Act, which has a provision that defines "price"  
12 to include negative equity.

13 Courts have also addressed this argument and have  
14 rejected the argument. This Court agrees with the reasoning of  
15 those cases, and I will cite In Re: Pajot, 371 BR 139,  
16 Bankruptcy Court, Eastern District of Virginia, issued July  
17 17<sup>th</sup>, 2007, decided by Judge Douglas Tice. How Judge Tice  
18 dealt with this argument was that the Finance Act, which is  
19 similar to the provisions at issue here, deals with a different  
20 subject matter. The act was not enacted to define "purchase  
21 money obligations" or the "price of collateral" as used in  
22 Article 9. There's no connection.

23 The Court disagrees and declines to follow Ford's  
24 invitation to import the definitions from the Motor Vehicle  
25 Finance Act into Louisiana's version of the UCC.

1           The final argument, which Ford has alluded to and  
2   which many creditors have raised, and which many courts, who  
3   have gone the opposite way, have focused on, is congressional  
4   intent; the argument that, in enacting the hanging paragraph,  
5   that congress' intent was to protect this class of claims from  
6   modification, and to protect this class of creditors.

7           The Court can't disagree that that may have been  
8   congress' intent. It may have been congress' intent, but  
9   congress' intent, alone, does not control. A court must look  
10   to how congress instilled this intent into the actual language  
11   of the statute. A court cannot override unambiguous statutory  
12   language merely because a court believes that that language  
13   does not reflect congressional intent.

14          The Court rejects that argument, as well.

15          The other issue that has been raised is the treatment  
16   of gap insurance. The same standards apply to gap insurance,  
17   as well as the extent and whether or not there is a close nexus  
18   to the purchase of the new vehicle. The Court agrees with  
19   those courts who have held that gap insurance does not satisfy  
20   the close nexus test, and is not a part of the purchase money  
21   security obligation that is subject to protection under the  
22   hanging paragraph.

23          The Court cites in support Judge Magner's decision in  
24   In Re: White, 352 BR 633, Eastern District of Louisiana, 2006.  
25   I understand that Judge Magner had alternative bases for her

1 decision on gap insurance. The Court is relying on the nexus  
2 argument in its ruling, and not any interpretation, any other  
3 interpretation of the UCC or other related statutes that  
4 Judge Magner address in White.

5 The Court will also point to the Pajot case, as well,  
6 which came to the same conclusion.

7 In the end here, given the Court's ruling, the  
8 Court's ruling raises two additional issues, and that is:

9 What is the impact, now that we have two components  
10 to the claim, a purchase money and a non-purchase money  
11 component? How does that impact the purchase money component  
12 and how we treat it?

13 The courts have generally focused on two different  
14 tests. The first test is the so-called "transformation test,"  
15 which holds that a security interest that is part purchase  
16 money and part non-purchase money completely loses its purchase  
17 money character and is entirely transformed into a non-purchase  
18 security interest.

19 A minority of courts have followed the transformation  
20 rule.

21 The majority follows a dual status rule, which allows  
22 the court to treat the portion that is purchase money as  
23 purchase money, whereas the non-purchase money portion retains  
24 its non-purchase money character and is treated accordingly.

25 The Court, at this juncture, as far as which rule the



1 Court applies, the Court considers this a matter of bankruptcy  
2 law, and the Court considers, in this determination, it's  
3 appropriate to consider congressional intent, and congress'  
4 intent to protect this class of secured credits.

5 The Court adopts a dual status rule. The Court cites  
6 In Re: Pajot in support of the dual status rule.

7 The final question, which hasn't been raised by the  
8 parties, but naturally flows from the Court's ruling, is how to  
9 allocate and how pre-petition payments are to allocated.

10 The Pajot case, Judge Tice outlines three possible  
11 approaches. The first approach is to allocate pre-petition  
12 payments first to the purchase money component.

13 The second approach is to allocate pre-petition  
14 payments proportionately between non-purchase money and  
15 purchase money, given the relative sizes of each component.

16 And, then the third approach is to allocate it  
17 entirely, first, to the non-purchase money component.

18 As Judge Tice observes, that first approach, -- or  
19 the third approach, allocating it first to non-purchase money .  
20 component, is provided for in the UCC for non-consumer  
21 transactions. That's been incorporated into the Louisiana  
22 version of the statute. But, for consumer transaction, it  
23 leaves it to the court to decide how to allocate that, given  
24 the particular case in front of the court.

25 The Court also believes that congressional intent is

1 relevant to this inquiry, since the Court has the option to  
2 choose a method of allocation. And, given congressional intent  
3 to protect this class of creditors, pre-petition payments will  
4 go first to the non-purchase money component of the claim.

5 The Debtor's objection to claim is sustained, as set  
6 forth above.

7 The next question is where that leaves us? There's  
8 an objection to the plan. That objection is overruled, to the  
9 extent it's based on the treatment of negative equity, but  
10 there may be a question, Mr. Keating, as far as the allocation  
11 of that and how it's calculated.

12 \* \* \* \* \*

13 MR. KEATING: There will be. For instance, I'm not  
14 sure the extent of the pre-petition payments, since your ruling  
15 is it has to be applied first. You know, basically you  
16 bifurcate their claim and it's to be applied first to the non-  
17 purchase money part of the claim. I have no idea what that  
18 would leave.

19 THE COURT: In my initial look at the facts in this  
20 case, it doesn't look like there were too many pre-petition  
21 payments.

22 MR. KEATING: I'm not sure, Your Honor.

23 THE COURT: Okay.

24 MR. KEATING: I really don't know.

25 MR. CHAUVIN: One other thing, just so that we don't



1 forget -- and I know I had pointed it out before to  
2 Mr. Keating. We had talked, way back at the beginning.  
3 There's a problem on the means test. It requires 100 percent.  
4 We had calculated \$130 more to take care of it. I'm not sure  
5 whether that figure is still --

6 MR. KEATING: Well, we were going to wait to look at  
7 the claims that were filed and all of that.

8 MR. CHAUVIN: Right.

9 MR. KEATING: And so now we're at that point, now.  
10 That all has to be considered in what the new amended plan will  
11 look like. So, I need to get the numbers from Ford, and we  
12 need to look at the claims. And I understand that this is  
13 going to required to be 100 percent plan -- probably. I mean,  
14 if everything stays the way that it is now.

15 THE COURT: Okay. Thirty days to file an amended  
16 plan.

17 MR. KEATING: Do you think I could have from Ford  
18 relatively quickly?

19 THE COURT: And, we will set that for February 13<sup>th</sup>.

20 MR. KEATING: February 13<sup>th</sup>; okay.

21 THE COURT: The problem is I don't think we have the  
22 numbers to actually fix the claim. What I'm going to ask is  
23 that Mr. Keating, if you'll prepare an Order on your objection,  
24 granting the objection in part -- or granting the objection, to  
25 the extent that the Court has granted it in my oral reasons for

1 decision.

2 MR. KEATING: Right.

3 THE COURT: Basically, it's going to have to be  
4 calculated: Take the negative equity that was financed and  
5 back out the pre-petition payments out of that, and I believe  
6 that gets us our number.

7 MR. KEATING: Negative equity minus pre-petition  
8 payments --

9 THE COURT: And, gap insurance comes out, as well.

10 MR. KEATING: Pre-petition payments.

11 Yeah, negative equity and gap, minus pre-petition  
12 payments equals the amount of secured claims.

13 Does that sound right?

14 MR. ROBINSON: Yes.

15 \* \* \* \* \*

16 ADDITIONAL RULING

17 \* \* \* \* \*

18 THE COURT: And, one additional supplement to the  
19 Judge's reasons for decision: As far as the method of  
20 allocation, the Court recognizes that most of the courts to  
21 address it have used a proportional allocation process with  
22 virtually no real reasons, other than the fact that it seemed  
23 logical to them.

24 The Court believes, and with due consideration and  
25 respect for those courts, that there needs to be a reason

1 justifying it, and given congressional intent enacting the  
2 statute, that this is more of a case that ought to be in line  
3 with how non-consumer transactions are treated.

4 \* \* \* \* \*

5 THE COURT: Anything else?

6 MR. ROBINSON: Your Honor, I just want to say, for  
7 the record, I have discussed with Mr. Keating earlier some  
8 other issues that were not ruled on in Ford's objection  
9 regarding some proof of insurance, a lack of adequate  
10 protection provided in the plan, and then some lien release  
11 language that --

12 MR. KEATING: It's not really an issue, but I'll get  
13 that to him. But there's also some language about -- I put  
14 this particular language in my plan about retention of the lien  
15 and would they pay off all payments and --

16 THE COURT: Amend the plan in 30 days.

17 MR. ROBINSON: Cite for In Re: Hayes one more time.

18 MR. KEATING: What I have is a 376 BR 655.

19 THE COURT: Yes, 376 BR 655.

20 MR. ROBINSON: Thank you, Your Honor.

21 \* \* \* \* \*

22 (Hearing is Concluded  
23  
24  
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceeding in the  
above-entitled matter.

  
Dorothy M. Bourgeois

1/14/08  
Date

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

FORD MOTOR CREDIT COMPANY      CIVIL ACTION NO: 6:08CV0034  
VERSUS      CHIEF JUDGE RICHARD T. HAIK,  
SR.  
CARL G. HEBERT      MAGISTRATE JUDGE MILDRED METHVIN

CONSOLIDATED WITH

FORD MOTOR CREDIT COMPANY      CIVIL ACTION NO: 6:09CV0037  
VERSUS      CHIEF JUDGE RICHARD T. HAIK,  
SR.  
CARL G. HEBERT      MAGISTRATE JUDGE MILDRED METHVIN

MOTION TO DISMISS APPEAL AS MOOT

EXHIBIT # 3

AMENDED CHAPTER 13 PLAN FILED BY CARL HEBERT on April 30,  
2008

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE-OPELOUSAS DIVISION

CARL GERARD HEBERT

CASE NO. 07 BK-50372

Debtor

CHAPTER 13

AMENDED CHAPTER 13 PLAN

The future earnings of the Debtors is submitted to the supervision and the control of the Court and Debtors shall pay to the Trustee the sum of \$650.00 per month for sixty (60) months or until this Plan has been paid in full, whichever occurs first.

Payments shall be made to the Trustee by the Debtors and no payroll deduction shall be entered unless and until such time as voluntary payments to the Trustee are not maintained.

There shall be no payments made directly to any creditors outside this Plan.

EFFECTIVE DATE: The Effective Date of this plan shall be September 27, 2007.

From the payments received by the Trustee, the Trustee shall make monthly disbursements as follows:

CLASS NO. 1: ADMINISTRATIVE CLAIMS The Debtors propose to pay Rick Keating the sum of \$1,924.00 through this Plan as his initial attorney's fee in this matter. In addition, The Debtors also agree to pay Rick Keating the additional sum of \$1,560.00 (which represents 7.8 hours at the attorneys normal hourly rate of \$200.00 per hour) for the research, preparation and presentation of the Debtor's legal position regarding "negative equity" made in this bankruptcy proceeding. This payment shall be made concurrently with the Secured Claim listed in Class 2 and in advance of all other claims until the Effective Date of this Plan. Any tax refunds received by the Trustee will be first used to pay any remaining and outstanding attorney's fee.

After the claims in Class 1 are paid in full, the Debtor proposes that the Trustee pay the Secured Claim in Class 2 and the Priority Tax payments in Class 3, pro rata, out of the available funds on hand until the these claims have been paid in full.

CLASS NO. 2: SECURED CLAIM OF FORD MOTOR CREDIT Ford Motor Credit holds a security interest on a 2004 Ford Ranger with over 45,000 miles. The Debtors will recognize the secured claim of Ford Motor Credit in the sum of \$20,514.64 which represents the outstanding balance due this creditor on the date of filing. The Debtors propose that the Trustee pay Ford Motor Credit \$20,514.64 plus eight (8%) per



cent per annum interest over a term of sixty (60) months. After this creditor has received the aforesaid payments, the claim of Ford Motor Credit shall be deemed paid in full. The lien in favor of Ford Motor Credit shall remain in effect in accordance with 11 U.S.C. 1325. Ford Motor Credit shall receive adequate protection payments in the sum of \$150.00 per month until the Effective Date, at which time the full plan payment to Ford Motor Credit will commence.

**CLASS NO. 3: PRIORITY TAX CLAIMS** The Debtor owes a priority tax debt to the State of Louisiana in the sum of \$555.87. On the Effective Date, the Debtor proposes that the Trustee pay the priority claims pro rata out of the available funds on hand until the priority claims have been paid in full.

**CLASS NO. 4: UNSECURED AND UNDERSECURED CLAIMS** After the Administrative Claims in Class 1 and Secured Claims in Class 2 and the Cure of Default payments in Class 3 have been made, payments shall be made to those creditors holding allowed unsecured or undersecured claims. The filing of a Chapter 7 liquidation petition by the Debtor would have resulted in no dividend to the unsecured creditors, therefore, any payments to unsecured creditors will result in the unsecured/undersecured creditors receiving more than they would receive under a Chapter 7 liquidation proceeding. In keeping with the "best effort" attempt to pay unsecured/undersecured creditors and in order to exceed the amount that would be paid under a Chapter 7 liquidation, Debtor proposes to pay a dividend of one hundred (100%) per cent of each allowed unsecured/undersecured claim.

The Debtors will dedicate their tax refunds that is not earned income credit to the Trustee for the tax years 2007, 2008 and 2009.

All Debtors' property shall revert to the Debtors upon confirmation of the Plan.

Creditors will not pursue claims against any co-signers, co-debtors, co-makers or guarantors on any of the Debtor's obligations or any claim against property of the estate, except as authorized by the Bankruptcy Court.

All interest bearing debts being paid pursuant to the Plan shall cease bearing interest from the date of the filing of this Bankruptcy Petition, unless otherwise set forth herein.

No late charges, service charges or penalties shall be charged or collected by the creditors from the date of this Bankruptcy Petition.

The filing of the Debtors' Petition and the Debtors' Plan shall not be construed as a waiver of any of the Debtors' exemptions as claimed by them in the schedule of exemptions on file herein and as allowed by law.

This Plan specifically rejects, avoids, cancels and otherwise

releases the Debtors from any and all contractual provisions with any other party or entity, which could or may impose on the Debtors any duty, requirement or obligation to submit claims, demands or causes of action of the Debtors or any defenses, affirmative or otherwise, of any nature whatsoever, whether known or unknown, and whether arising pre-petition or post-petition, to any form of binding arbitration or alternative dispute resolution. Consequently, confirmation of this Plan shall constitute a finding that any such clauses, conditions or provisions, whether arising under the Federal Arbitration Act or any state rule, statute or regulation, are invalid, void and otherwise unenforceable as to the Debtors or the Chapter 13 Trustee.

DATE: 4/30/08

/s/ D. Patrick Keating  
D. PATRICK KEATING [14417]  
GALLOWAY JEFcoat, LLP  
Attorney for Debtor  
P.O. Box 61550  
Lafayette, LA 70596  
(337) 984-8020  
rickkeating@charter.net



**File a Plan or Disclosure Statement:**07-50372 Carl Gerard Hebert

Type: bk

Chapter: 13 v

Office: 4 (Lafayette/Opelousas)

Judge: RRS

Assets: y

Case Flag: RepeatFiler, Appeal

**U.S. Bankruptcy Court****Western District of Louisiana****Notice of Electronic Filing**

The following transaction was received from Keating, D. Patrick entered on 4/30/2008 at 10:47 AM CDT and filed on 4/30/2008

**Case Name:** Carl Gerard Hebert**Case Number:** 07-50372**Document Number:** 48**Docket Text:**

Amended Chapter 13 Plan Before Confirmation (Re: [3] Chapter 13 Plan) Filed by D. Patrick Keating on behalf of Carl Gerard Hebert (Keating, D.)

The following document(s) are associated with this transaction:

**Document description:**Main Document**Original filename:**R:\Bankruptcy\13 plans\New Chapter 13 plans\HebertCarl.apn.pdf**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=1011648726 [Date=4/30/2008] [FileNumber=9921821-0]  
[db2e4e35a44433dc75e0d4b1bb6564ac93de2795398c4aa9f43ddffe1b0d4cd00039971  
8196d927fe002762267cc5788eb242167cc9afa9bb7ede94e8e650790]]

**07-50372 Notice will be electronically mailed to:**

D. Patrick Keating rickkeating@charter.net

Keith A. Rodriguez ecf@keithrodriguez.com

Office of U. S. Trustee USTPRegion05.SH.ECF@usdoj.gov

Stephen D. Wheelis steve@wheelis-rozanski.com

Stephen D. Wheelis steve@wheelis-rozanski.com

**07-50372 Notice will not be electronically mailed to:**



**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE-OPELOUSAS DIVISION**

**FORD MOTOR CREDIT CO**

**CIVIL ACTION NO. 6:08CV34**

**VERSUS**

**JUDGE HAIK**

**CARL G HEBERT, ET AL**

**MAGISTRATE JUDGE METHVIN**

**NOTICE OF MOTION SETTING WITH ORAL ARGUMENT**

The **Motion to Dismiss (Document No. 35)** filed by Carl G Hebert on May 16, 2008 will be decided by the Honorable Richard T. Haik, Sr., in Lafayette, Louisiana, on **July 17, 2008 at 9:30 a.m.** Any response to said motion is due within **FIFTEEN DAYS AFTER SERVICE OF THE MOTION** (see LR7.5W). **OPPOSITION TO THE MOTION MUST BE FILED TIMELY OR THE MOTION WILL BE CONSIDERED UNOPPOSED.** No reply briefs may be filed without leave of court.

On order of Judge Richard T. Haik, Sr., **THERE WILL BE ORAL ARGUMENT** unless notified by the court.

**ORIGINAL** responses and briefs may be electronically filed or mailed for filing to:

U.S. Clerk of Court (**Alex, Mon, S'port cases**)  
300 Fannin Street, Suite 1167  
Shreveport, LA 71101-3083

U.S. Clerk of Court (**Laf & LC cases**)  
800 Lafayette St., Ste. 2100  
Lafayette, LA 70501

In order to **ENSURE A PROMPT HEARING**, **A COPY** should be mailed **DIRECTLY** to :

**Hon. Richard T. Haik, Sr.  
Chief United States District Judge  
800 Lafayette St., Suite 4200  
Lafayette, LA 70501**

**THUS DONE May 19, 2008.**

**ROBERT H. SHEMWELL  
CLERK OF COURT**

**COPY SENT**

**DATE: May 19, 2008  
BY: kk  
TO: RTH, G. Brazell**