

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:	:	Chapter 13
	:	
PAMELA G. BARTON,	:	Case No. 06-41283-PWB
	:	
Debtor.	:	
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DAIMLERCHRYSLER FINANCIAL AMERICAS, LLC	:	
	:	
Objector,	:	
	:	
vs.	:	
	:	
PAMELA G. BARTON,	:	
	:	
Respondent.	:	
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ENTERED ON DOCKET
12-14-2006

**ORDER WITH REGARD TO TREATMENT OF CLAIM
OF DAIMLERCHRYSLER FINANCIAL SERVICES LLC**

DaimlerChrysler Financial Americas, LLC (the “Creditor”) objected to confirmation of the Debtor’s chapter 13 plan that proposed to satisfy the Creditor’s claim in full by surrender of a car in which the Creditor holds a purchase money security interest incurred within the 910 day period preceding the filing of the case. The so-called “hanging paragraph” following 11 U.S.C. § 1325(a)(9), added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), eliminates bifurcation under 11 U.S.C. § 506 of the Creditor’s claim into secured and unsecured portions based on the value of its collateral for purposes of § 1325(a)(5). The Debtor contends that, because the new provision thus requires that the claim secured by the car

be allowed as a secured claim in its full amount, without regard to the car's value, the surrender of the collateral under the plan in accordance with § 1325(a)(5)(C) results in full satisfaction of the claim. The Creditor argues that the new provision does not change pre-BAPCPA bankruptcy law that a creditor is entitled to an unsecured deficiency claim in a bankruptcy case if the liquidation of its collateral does not satisfy the debt.

The facts are undisputed. The Debtor purchased a 2004 Dodge Ram for her personal use on January 14, 2005. She paid for the car with a loan from the Creditor and granted the Creditor a security interest in the car to secure the debt. The Debtor filed her chapter 13 case on July 25, 2006. The car is now worth less than the debt.


The Court has carefully considered the arguments of the parties and the rulings of other courts that have reached conflicting results on this issue. The Court concludes that the better view is that the "hanging paragraph" does not apply to the surrender of collateral under § 1325(a)(5)(C). *Accord, e.g., Dupaco Community Credit Union v. Zehrung (In re Zehrung)*, 351 B.R. 675 (W.D. Wisc. 2006); *In re Particka*, 2006 WL 335018 (Bankr. E.D. Mich. 2006). *Contra, e.g., In re Payne*, 347 B.R. 278 (Bankr. S.D. Ohio 2006); *In re Brown*, 346 B.R. 868 (Bankr. N.D. Fla. 2006); *In re Ezell*, 338 B.R. 330 (Bankr. E.D. Tenn. 2006). The provision of Debtor's plan for full satisfaction of the Creditor's claim upon surrender of the vehicle that is worth less than the debt, therefore, does not provide proper treatment of the Creditor's claim.

The parties agreed that the plan could be confirmed with the proviso that, if the Court ruled in favor of the Creditor, it would be entitled to assert an unsecured deficiency claim. See Supplemental Order to Confirmation, Docket No. 29 (Dec. 6, 2006). In accordance with the Supplemental Order, the Creditor will be entitled to an unsecured claim in this case if such a

claim is otherwise allowable under applicable law.

The Clerk is directed to mail a copy of this Order to all parties in interest in this case.

SO ORDERED this 14th day of December, 2006.

A handwritten signature in black ink, reading "Paul W. Bonapfel". The signature is written in a cursive, flowing style. The first name "Paul" is written with a large, looped 'P'. The middle initial "W" is smaller and more compact. The last name "Bonapfel" is written with a large, looped 'B' and a trailing flourish.

Paul W. Bonapfel
United States Bankruptcy Judge