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2023 Rocky Mountain
Bankruptcy Conference

CONCURRENT SESSION

Interest Rates and Valuation

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2023

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Salt Lake City, Utah

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Case summaries

Texas Commerce Bank, N.A. v. Licht (In re Pengo Indus., Inc.), 962 F.3d 543 (5th Cir. 1992)

The issue in Pengo was whether a face value exchange of debt instruments in a consensual out-of-court workout creates original issue discount that constitutes unallowable "unmatured interest." The Fifth Circuit held it did not. First, the Circuit explained that "original issue discount results when a [debt instrument] is issued for less than its face value. The discount, which compensates for a stated interest rate that the market deems too low, equals the difference between a debt instrument's face amount (stated principal amount) and the proceeds, prior to issuance expenses, received by the issuer." The discount, which is deduced from a purchase price lower than the face value, is considered "in the nature of additional interest." The Fifth Circuit then noted that the Bankruptcy Code prohibits the payment of "unmatured interest" on unsecured claims. The Circuit then noted that as a matter of policy the bankruptcy courts favor out-of-court settlements and that if the courts were to hold that OID generated by consensual pre-bankruptcy workouts equaled unmatured interest, parties would be less likely to cooperate with a struggling debtor because their claims in a bankruptcy case would be reduced by the amount of unamortized OID. Such a rule would create a "windfall" to holdouts.

Onink v. Cardelucci (In re Cardelucci), 285 F. 3d 1231 (9th Cir. 2002)

The Ninth Circuit held that Section 726(a)(5) mandates application post-petition interest at the federal judgment rate to an unsecured claim when a debtor is solvent.

After entry of a state court judgment in favor of the Oninks against Cardelucci in the amount of $5.4 million plus interest at 10% per annum, Cardelucci filed for protection under chapter 11. The plan of reorganization provided for payment in full of the Oninks' claim in full with post-confirmation interest at the rate of 5% and post-petition interest pursuant to the Bankruptcy Code. It is not expressly discussed in the opinion whether the Oninks' claim was impaired. The parties agreed that the Oninks were entitled to post-petition interest but disputed whether the applicable interest rate was California's state statutory rate of 10% or the federal judgment rate.

The Ninth Circuit premised its holding on the declaration that "Where a debtor in bankruptcy is solvent, an unsecured creditor is entitled to "payment of interest at the legal rate from the date of the filing of the petition" prior to any distribution of remaining assets to the debtor. 11 U.S.C. § 726(a)(5). The issue was what interest rate applied.

The Ninth Circuit found that principles of statutory interpretation supported a conclusion that Congress intended that the federal judgment rate should be used. First, the court noted that Section 726(a)(5) used the language "interest at the legal rate" which replaced the originally proposed "interest on claims allowed." Because it must be assumed that Congress intentionally and carefully chooses the language used in the statute, Congress expressly chose not to use a more general statement for the allowance of interest.

Next, the Court noted that the statute used the definite article "the" instead of the indefinite "a" or "an" indicating that Congress intended a single source to be used to calculate the post-petition interest. Further, the Court found that the term "at the legal rate" at the time the Bankruptcy Code was enacted was a rate fixed by statute. It concluded that Congress uses of the phrase "interest at the legal rate" suggested that it intended that a uniform rate defined by federal statute be used to calculate post-petition interest.

The Court found that creditors with a claim against a bankruptcy estate must pursue their rights to the claim in federal court and entitlement to a claim is a matter of federal law. The allowed claim is like a judgment entitled the holder to an award of interest pursuant to federal law. Interestingly, the court also noted that the award of post-judgment interest was procedural in nature and thereby dictated by federal law.

The Court further reasoned that policy considerations favor a uniform interest rate.

Lastly, applying a single, easily determined interest rate to all claims for post-petition interest ensures equitable treatment of creditors. An overriding policy consideration in an award of interest to a creditor is the balancing of equities among the creditors. By using a uniform interest rate, no single creditor will be eligible for a disproportionate share of any remaining assets to the detriment of other unsecured creditors.

In addition to promoting fairness among creditors, application of the federal rate is the most judicially efficient and practical manner of allocating remaining assets. Calculating the appropriate rate and amount of interest to be paid to a myriad of investors has the potential to overwhelm what could otherwise be a relatively simple process pursuant to 11 U.S.C. § 726(a)(5).

Solow v. PPI Enter. (U.S.), Inc. (In re PPI Enter. (U.S.), Inc., 324 F.3d (3rd Cir. 2003)

This is not an unmatured interest case but a rent limitation case under § 502(b)(6), in which the Third Circuit addresses the meaning of impairment. Because § 502(b)(6) limits the amount of a claim, it is not an impairment of a claim by the plan. As part of its analysis, the circuit discussed the repeal of § 1124(3) and the *New Valley* decision it intended to resolve along with the solvent debtor exception.

Delaware Trust Co. v. Energy Future Intermediate holding Co., LLC (In re Energy Future Holdings Corp.), 842 F.3d 247 (3rd Cir. 2016)

Bankruptcy Court, 540 B.R. 109 (Bktcy. Del. 2015), concluded both first and second position noteholders were not entitled to early redemption premium and district court affirmed. Third Circuit reversed holding that a make-whole premium is not abrogated by an acceleration due to bankruptcy filing.

Energy Future Holdings filed chapter 11 for the express purpose of refinancing its notes to obtain more favorable interest rates and avoid the make-whole premiums. Indenture Trustee filed adversary proceeding for declaration that acceleration could be rescinded. Bankruptcy Court denied the relief. Bonds were refinanced by the debtors. Bankruptcy Court later held that debtors did not have to pay make-whole premiums and that bonds could not be de-accelerated because of the automatic stay. Third Circuit reversed after analyzing the language of the bond indentures and controlling New York law, ultimately factually determining that the redemption occurred and that it was voluntary.

Wells Fargo Bank, N.A. v. The Hertz Corp. (In re The Hertz Corp.), 637 B.R. 781 (Bktcy. Del. December 22, 2021)

Bond Indenture Trustee of multiple issuances sought declaratory relief that chapter 11 debtors must pay redemption premium (of $247 million) and post-petition interest (of an additional $125 million) with respect to the unsecured notes. Debtors moved to dismiss. Court dismissed claim for post-petition interest and limited claim for redemption premium to certain notes.

The Indenture Trustee's complaint asserted that the solvent debtors must pay the redemption premium (aka make-whole premium) of the unsecured notes due to redemption prior to maturity. The debtors claimed that the redemption premium was not allowed under the notes or that the premium constituted unmatured interest. As to one group of notes, the Court ruled that the make-whole premium did not apply and dismissed the claim.

As to other notes, the Court could not conclude as a legal matter that the make-whole premium is the "economic equivalent of unmatured interest." The Court read the Third Circuit's controlling precedent in Energy Future Holdings as factually dependent and more limited than the Indenture Trustee argued. There being a factual issue the motion to dismiss was denied as to those notes. The Court disagreed with the Fifth Circuit's decision in Ultra Petroleum and instead decided that the solvent debtor exception was eliminated with the adoption of the Bankruptcy Code, except to the extent preserved in three sections of the statutory language. Those being § 506(b) as to over-secured creditors, and §§ 1129(a)(7) and 726(a)(5) as to unsecured creditors. The Court stated that equitable principles cannot displace the prohibition on unmatured interest in § 502(b). Further, the debtors treated the noteholders as unimpaired denying them the right to vote on the plan. The plan provided that noteholders would receive the allowed claim as of the petition date plus post-petition interest at the federal judgment rate until paid. The Court determined that failure to pay post-petition interest at the contract rate is not impairment because it is done by the Code not the plan.

Ad Hoc Committee of Holders of Trade Claims v. Pacific Gas & Electric (In re PG&E Corporation), 46 F.4th 1047 (9th Cir. Aug. 29, 2022)

In PG&E, the Ninth Circuit held that in a solvent debtor case, that (a) unsecured creditors have an "equitable right" to post-petition interest, (b) absent compelling equitable considerations to the contrary, unsecured creditors are presumptively entitled to their contractual or state law interest rate, and (c) the failure to provide for post-petition interest impairs the affected claims. *In re PG&E Corp*., 46 F.4th 1047, 1061 (9th Cir. 2022)

In January 2019, PG&E filed for protection under chapter 11 to address $30 billion of potential liabilities related to catastrophic wildfires in Northern California. But PG&E was solvent at the time of the filing with assets exceeding its known liabilities by $20 billion. PG&E never contested its ability to pay non-wildfire creditors in full.

PG&E's plan classified non-wildfire related claims as unimpaired general unsecured creditors to be paid in full with post-petition interest at the federal judgment rate. The bankruptcy court and the district confirmed the plan holding that they were bound by *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002) which held that post-petition interest is calculated at the federal judgment rate. The Ad Hoc Committee of Trade Claims appealed arguing the common law solvent debtor exception survived adoption of the Bankruptcy Code and that interest should be calculated at the rate in their contracts or the default interest rate under California law which is 10%.

The solvent debtor exception simply provides that a solvent debtor must generally pay post-petition interest accruing during bankruptcy at the contractual or state law rates before collecting surplus value from the bankruptcy estate. This rule was imported from English common law and applied under the Bankruptcy Act of 1898.

After an historical summary of the solvent debtor exception, the Ninth Circuit addressed whether the doctrine survived adoption of the Bankruptcy Code. The Court began with Section 1124(1), which provides that a claim is impaired unless it "leaves unaltered the [creditor's] legal, equitable, and contractual rights . . .." Noting that this concept of impairment is extremely broad and was intended to capture any alteration of rights, the Ninth Circuit considered whether the unsecured creditors of PG&E held any such legal, equitable and contractual right to receive post-petition interest, and if so, at what rate.

The Court turned next to Section 1129(a)(7)(A)(ii) contains the so-called best-interests test applicable in a cramdown stating that creditors must receive not less than what they would have received in a chapter 7 liquidation. In a cramdown, Section 726(a)(5) provides that unsecured, impaired creditors are entitled to the "legal rate" of interest, which the Ninth Circuit held to mean the federal judgment rate in *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002). However, the Ninth Circuit noted, no Code provision applies § 726(a)(5) to unimpaired chapter 11 claims. Because *Cardelucci* involved the interpretation of Section 726(a)(5), which pertains in chapter 11 cases only when the best-interests test must be applied, it is not applicable to unimpaired claims in a chapter 11 case.

The Court cited the Supreme Court for the proposition that the Bankruptcy Code will not be read to "erode" past practice "'absent a clear indication that Congress intended such a departure." Thus, because no Code provisions — alone or together — unambiguously displace the long-established solvent-debtor exception. The Ninth Circuit noted that Section 502(b)(2) merely recodified Section 63 of the Bankruptcy Act under which the solvent debtor exception was applied. Further, Section 502(b)(2) excluded post-petition interest from "the amount of" a claim but did not ban interest entirely as the text of the section allows for creditors to receive interest "on" their allowed claim. Next, the Court noted that in 1994, Congress repealed Section 1124(3) after a court held that a creditor is unimpaired if it is paid the full principal of its claim without post-petition interest. The Court concluded that Congress' repeal confirmed that unimpaired creditors of a solvent debtor must receive post-petition interest despite Section 502(b)(6).

When determining what interest rate to employ the Ninth Circuit started with the proposition that unimpaired creditors' equitable rights under Section 1124(1) entitle them to recovery of interest pursuant to their contracts. However, the Ninth Circuit did not specify the rate to impose on remand, be it the contract rate or the default rate under state law, instead remanding to the bankruptcy court "to weigh the equities and determine what rate of interest plaintiffs are entitled to in this instance." Even so, he said that the bankruptcy court would not have "free-floating discretion."

In "most cases," a court will enforce a creditor's contractual right to interest, unless the "payment of contractual or default interest could impair the ability of other similarly situated creditors to be paid in full." The Ninth Circuit saw "no sign of any 'compelling equitable considerations' in this case that would defeat the presumption that plaintiffs are entitled to contractual or default pos-petition interest."

According to the Ninth Circuit, PG&E sought to "have its cake and eat it too . . . seek[ing] to pay plaintiffs the same, reduced interest rate as impaired creditors, while depriving them of the statutory protections that impaired creditors enjoy." PG&E estimated that the higher rates of interest for general, unsecured creditors would cost about $200 million. The Court noted that it declined to allow PG&E to reap such a windfall.

DISSENT

The dissenting opinion is worth noting as it argued that the majority failed to follow basic principles of statutory construction (i.e., plain meaning analysis) outlining the Supreme Court's framework for interpreting the Bankruptcy Code:

First, Congress "says in a statute what it means and means in a statute what it says there."

Second, "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms."

Third, "as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute."

Fourth, "[w]here the meaning of the Bankruptcy Code's text is itself clear ... its operation is unimpeded by contrary ... prior practice."

Fifth, reliance on pre-Code practice is used merely to clarify ambiguities in the text of the Code, or to "fill in the details of a pre-Code concept that the Code had adopted without elaboration."

Sixth, "[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent."

Applying these principles, the dissent found that Section 502(b)(6) clearly established that general unsecured creditors are not entitled to unmatured interest as part of their claims.

Next, the dissent argues that the solvent debtor exception applied in pre-Bankruptcy Code practice was partially incorporated into the Bankruptcy Code in Sections 725(a)(5) and 1129(a). Thus, the dissent concludes that Congress knew how to adopt the portions of the solvent debtor exception it wanted to and not adopt those that it did not want to use. Thus, the dissent argued that unsecured creditors holding unimpaired claims are governed by the general rule disallowing post-petition interest even in the solvent debtor case. Importantly, the dissent notes that the parties in PG&E conceded that the non-wildfire trade claims were unimpaired.

Ultra Petro. Corp. v. Ad Hoc Comm. of OpCo Unsecured Creditors (In re Ultra Petro. Corp.), 51 F.4th 138 (5th Cir. Oct. 14, 2022)

In early 2016, Ultra Petroleum Corporation, a family of natural gas exploration and production companies, filed for bankruptcy protection while deeply insolvent. During the course of the chapter 11 cases, natural gas prices soared and the Debtors became "supremely solvent." The Debtors proposed a $2.5 billion chapter 11 plan pursuant to which they paid their creditors all of their outstanding principal and all pre-petition interest in full in cash, plus post-petition interest at the Federal Judgment Rate for the duration of the chapter 11 cases. The Debtors classified creditors as unimpaired under their plan, deemed them to accept the plan, and did not allow them to vote. Two groups of creditors objected, arguing that they were (1) entitled to the Make-Whole Amount, and (2) owed post-petition interest at a contractually specified rate that was materially higher than the Federal Judgment Rate. The creditors asserted that this entitled them to recover an additional $387 million and, as a result, they were impaired and entitled to vote to reject the plan.

First, the Fifth Circuit determined that the Bankruptcy Code ordinarily would prohibit the payment of the "Make-Whole Amount" as it represents unmatured interest. However, because the Fifth Circuit determined that the "solvent debtor" exception applied in this case, the Debtor was thus required to pay the "Make-Whole Amount." Specifically, when a debtor is solvent and is able to pay its valid contractual debts, it must do so, "bankruptcy rules" notwithstanding. The Fifth Circuit determined that nothing in the Code unambiguously overruled pre-Bankruptcy Code practice regarding the solvent debtor rule. And that therefore, the Debtor was required to pay not only interest on unsecured claims but the contractual rate of interest.

Wells Fargo Bank, N.A. v. The Hertz Corp. (In re The Hertz Corp.), Adv.Pro.No. 21-50995 (MFW) Round 2 – Update **Nov. 9, 2022 Oral Ruling, Not Reported**

Hertz confirmed a plan of reorganization that provided for the notes, categorized as unimpaired, to be paid in cash in full on the effective date of the plan. However, the plan only provided interest up to the effective date at the federal judgment rate – a rate lower than the contract default rate. A new round of summary judgment motions followed with the Indenture Trustee seeking reconsideration of the round 1 decision in light of the Ninth Circuit decision in Pacific Gas & Electric and the Fifth Circuit decision in Ultra Petroleum. In an oral ruling on November 9, 2022, the Court was not swayed by the non-precedential opinions of other circuits and the debtors prevailed as to all issues – the make-whole premium is unmatured interest, the redemption premium is unmatured interest, and there is no solvent-debtor exception. Recognizing the lack of Third Circuit controlling authority, the split opinions of the Fifth and Ninth Circuits and a forthcoming petition for certiorari in February 2023, the Court certified the issue of the solvent-debtor exception for direct appeal to the Third Circuit.

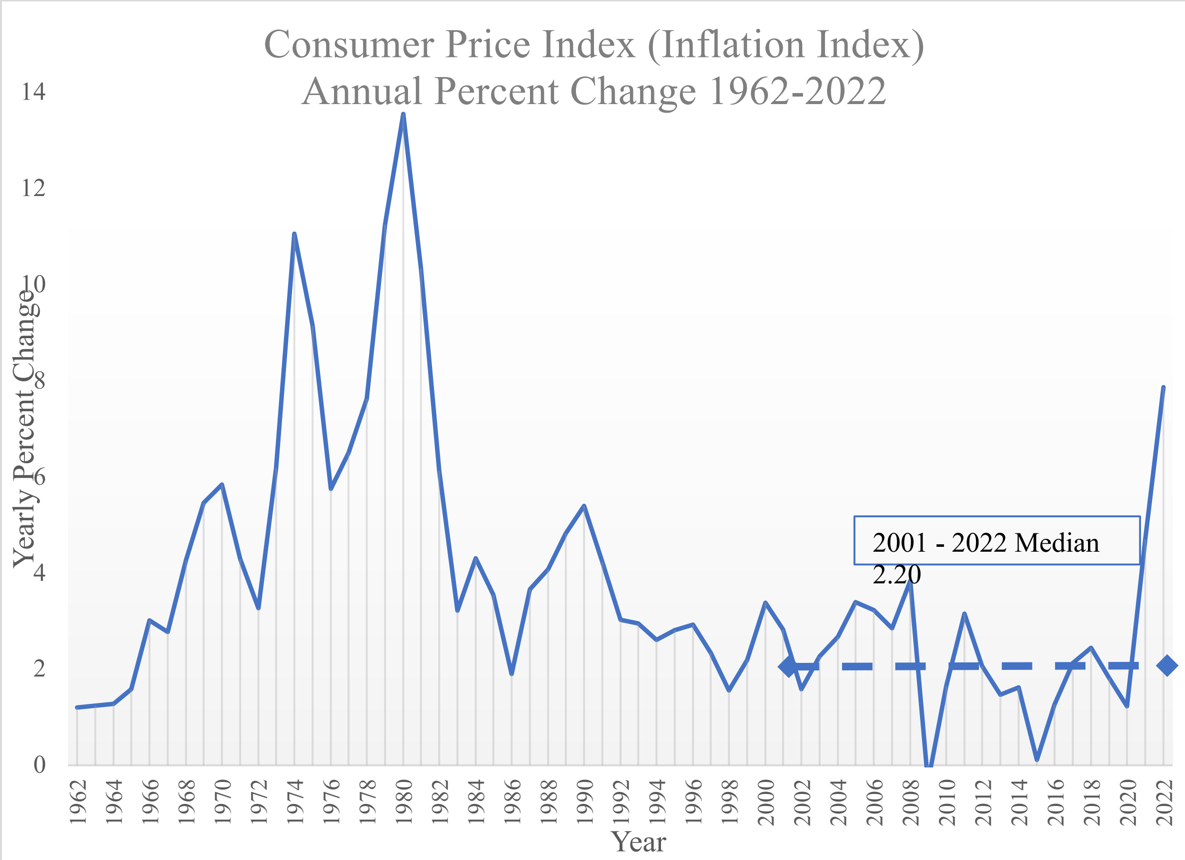
TLA Claimholders Group v. LATAM Airlines Group, S.A., (In re LATAM Airlines Group, S.A.), (2nd. Cir. Dec. 14, 2022)

LATAM confirmed a plan of reorganization in which unsecured claims were designated as "unimpaired" and pursuant to which unsecured claims would be paid in full, except for any post-petition interest. The unsecured claimholders objected to the plan asserting that their claims were impaired unless they were to receive post-petition interest and that the Debtor/LATAM was "solvent" thus triggering the "solvent debtor" exception. The Second Circuit disagreed with the unsecured noteholders on all counts. First, the Second Circuit held that Section 502(b) of the Bankruptcy Code codifies the rule against post-petition interest. The Second Circuit then held that Section 1124(1) of the Bankruptcy Code, which defines "impairment" only includes situations in which the plan itself is a source of limitation on a creditor's legal, equitable or contractual rights. In other words, because the Bankruptcy Code is the source of the limitation upon the claimholders' rights, they are not "impaired" for purposes of the Code. The Court next determined whether the Debtor was "solvent" and held that the lower court did not abuse its discretion in finding that the Debtor was insolvent.

Considerations on Interest Rates and Inflation and their Impact to Valuation

1. Overview of Present Value and Discount Rates.
    a. Converting future cash flows (monetary sums) to present value.
    b. The conversion involves a "discounting" of the future monetary sums.
    c. The discount rate is based on the expected risk of achieving the future monetary sums.
    d. The discount rate is meant to reflect the opportunity cost of capital of the rate of return investors would expect from an investment with a comparable risk profile.
    e. The discount rate for equity capital is generally comprised of at least the following elements.
        i. Risk-free rate of earnings,
        ii. Equity risk premium,
        iii. Industry risk premium,
        iv. Size premium, and
        v. Company specific risk.
    f. The discount rate for debt capital is the company's cost of debt capital as indicated by market rates the company can attain or some proxy, such as Moody's Baa Corporate Bond Yield or the B of A BBB US Corporate Index.
    g. In a period of rising interest rates, it is expected that the "cost of capital" or the discount rate, will rise.
    h. **The discount rate and the company value have inverse relationships. As the cost of capital increases, the company value decreases**.
2. Impact of Inflation on a Business Valuation.
    a. Inflation will impact different businesses in different ways.
    b. An appraiser should take thought to model these impacts. An average of the last five years' earnings may be inappropriate, COVID impacted businesses in different ways.
    c. What will inflation do to the subject company's sales or revenue?
    d. Is the subject company experiencing supplier issues?
    e. Is the subject company having labor shortage issues?
    f. How has or is the subject company responding to these issues?
        i. Rising prices – is it impacting demand?

   ii. Rising wages?
   iii. Rising costs of goods sold?
3. Considerations for Business Appraisers.
   a. What is reasonable to include in a forecasted cash flow analysis to determine the value of the enterprise?
      i. Current rates may not be expected in the long-term horizon.
      ii. Is it appropriate to adjust the discount rate in different periods of the projection analysis?
   b. What considerations have been made to projected cash flow to take into consideration the impacts of inflation?
   c. Does the company have observable data demonstrating the impacts of inflationary pressures?
4. Considerations for Judges and Lawyers.
   a. Keep the business appraiser involved in conversations. The more they understand the economics of the entity and the legal issues it is facing, the more they should be prepared to model these events.
   b. Valuation experts should be able to run scenario analyses
   c. Business valuation is both art and science, fortunately and unfortunately.
   d. It's a bit of the wild west. Circumstances often dictate rationale for methodologies employed.
   e. Appraisers must stay within accepted methodologies but also need the flexibility to build well-reasoned analyses based on observable or supportable inputs if possible.
   f. Lawyers need to convey the proper standard of valuation to be used and the reason for that legal basis.
   g. Finance is an evolving science.


Consumer Price Index (Inflation Index)
Annual Percent Change 1962-2022
Yearly Percent Change
0
2
4
6
8
10
12
14
2001 - 2022 Median
2.20
Year
1962
1964
1966
1968
1970
1972
1974
1976
1978
1980
1982
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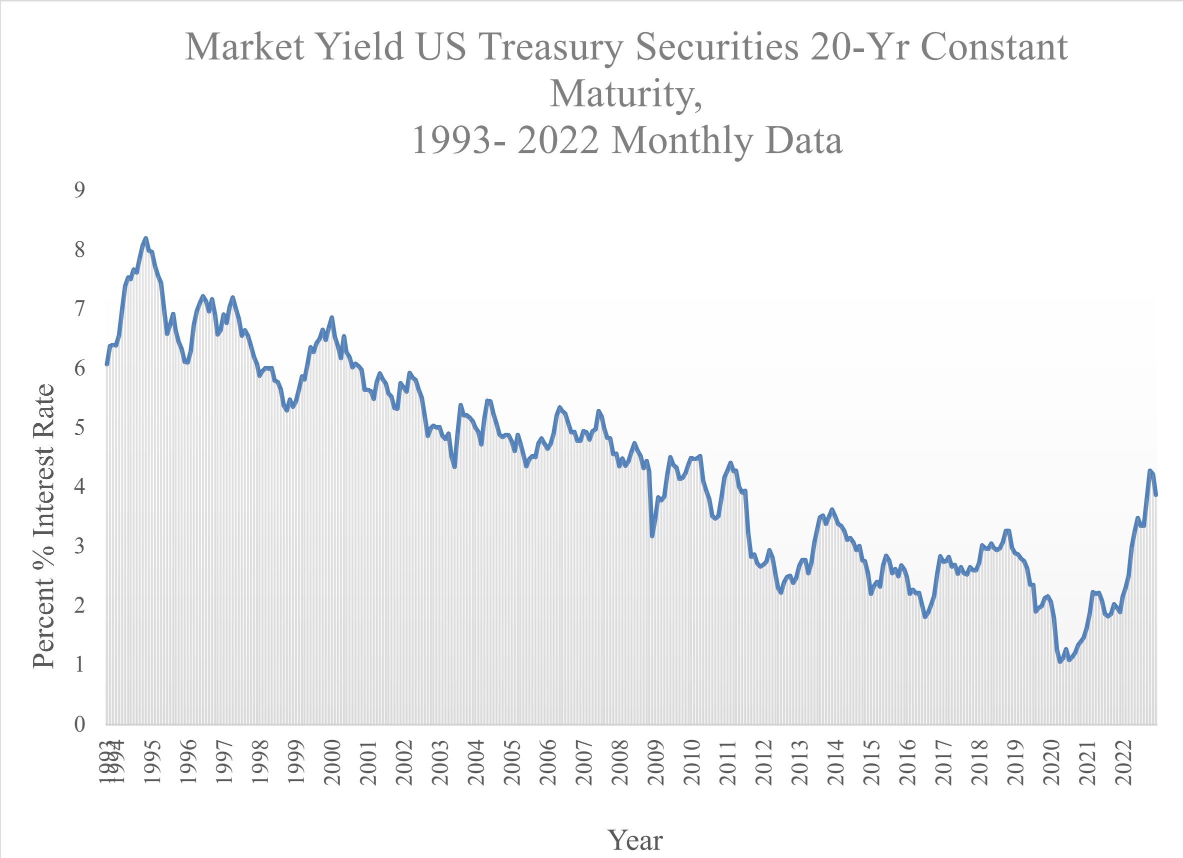
Market Yield US Treasury Securities 20-Yr Constant Maturity,
1993- 2022 Monthly Data
Percent % Interest Rate
0
1
2
3
4
5
6
7
8
9
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
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2019
2020
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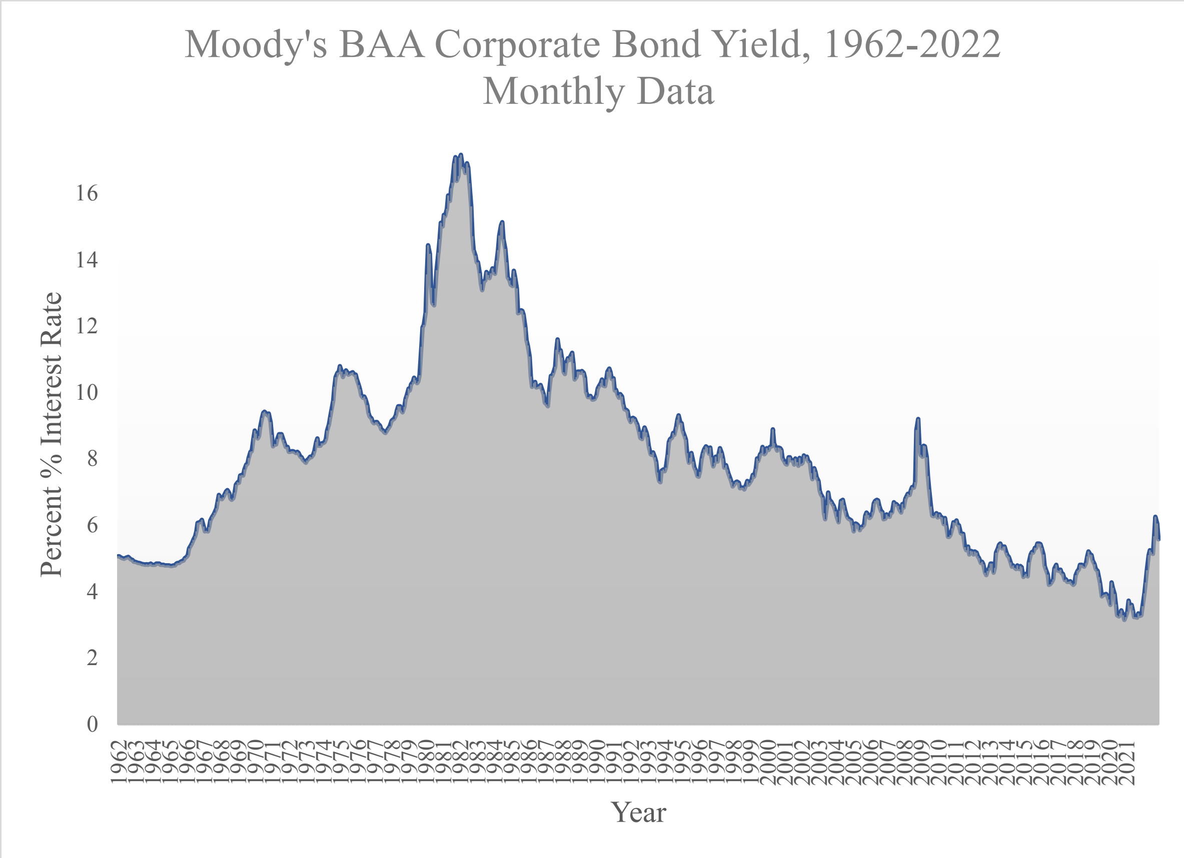
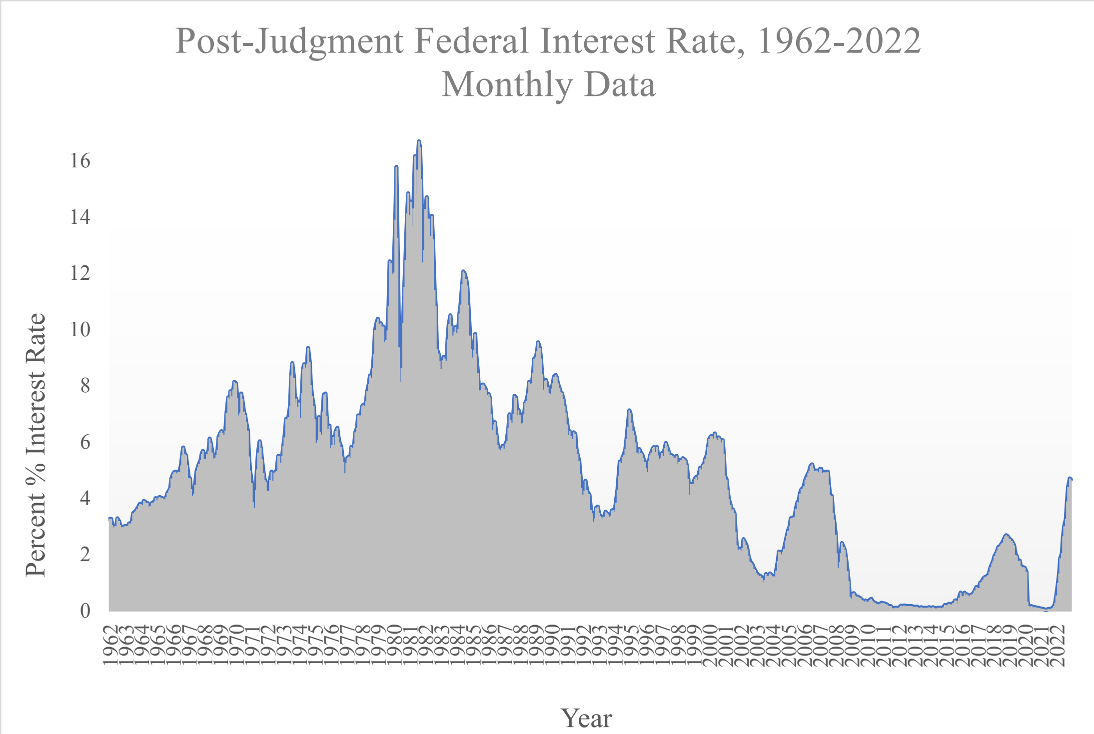
2022
Year


Moody's BAA Corporate Bond Yield, 1962-2022
Monthly Data
Percent % Interest Rate
Year
0
2
4
6
8
10
12
14
16


Post-Judgment Federal Interest Rate, 1962-2022
Monthly Data
Percent % Interest Rate
0
2
4
6
8
10
12
14
16
Year

Interest Rates Primer

Interest Rate
This is a percentage (typically) charged by the lender to the borrower for use of an asset (usually money). Anyone can be a lender or borrower at any point in time. You and your bank may each take each role. When you "deposit" funds in your bank account, you are a lender lending the bank money and the bank is the borrower and pays you interest at the agreed rate. When you borrow money from the bank to purchase a product then you are the borrower and pay interest at the agreed rate. Essentially, the interest rate is the agreed percentage, typically expressed annually, for the use of an asset, typically money.

Federal Funds Rate
Probably the most talked about interest rate in the media is the Federal Funds Rate. This is the rate that is mentioned when the media states the outcome of Federal Reserve meetings. The Federal Open Market Committee ("FOMC") of the Federal Reserve (the central bank of the United States) meets about every six weeks to discuss the economy and inflation, and to vote on setting the target Federal Funds Rate. The Federal Funds Rate is used as a monetary policy tool to stimulate or cool the economy – enhance investment through borrowings or stifle inflation – through managing the supply of money in the economy. In 2022, the FOMC raised rates at seven of its eight meetings because of inflation.
The Federal Funds Rate is the interest rate charged for commercial banks that borrow or lend excess cash funds overnight. The rate has a direct or indirect impact on all other rates.

Prime Rate
There is no single prime rate. Unlike the Federal Funds Rate that is a single rate set by the FOMC, each individual bank sets its own prime rate or follows the rate set by another bank. Notwithstanding the separate identity of a prime rate from the Federal Funds Rate, the two generally move in tandem with a bank's prime rate typically being about three percent higher than the Federal Funds Rate. Banks may use a prime rate as a base for calculating variable interest rate loans with an adjustment based upon risk or credit profile.

London Interbank Offered Rate (LIBOR)
Like prime rates, LIBOR is used as a benchmark base rate for variable loan products. LIBOR was a generally accepted global benchmark based on the global intra-bank estimated borrowing rates, but is now disfavored due to manipulation. Most LIBOR loans are being phased out and LIBOR is to stop being used as of June 30, 2023.

Secured Overnight Financing Rate (SOFR)
SOFR was developed starting in 2017 as a new global benchmark for dollar based loans to replace LIBOR after the 2008 financial crisis and issues with LIBOR manipulation.

The rate is based on Treasury repurchase transactions. As a benchmark, SOFR is used to determine fixed interest rates or as a base for variable rate products.

Mortgage Rate

Probably the second most discussed interest rate in the media, and the one rate that impacts nearly all households. Mortgage rates are not tied to the Federal Funds Rate but may move in the same direction as it does (some exceptions including in mid-2022 exist) because of an indirect impact. Fixed mortgage rates more typically relate to Treasury bond rates because most mortgages are sold as mortgage-backed securities. Typically, longer maturities require higher rates as with the Treasury bond market.

Yield Curve (normal or inverted)

Often in interest rate discussions a reference will be made to the yield curve. Typically, in the bond market the longer the maturity, the higher the interest rate. Bond rates may be charted with maturity and rate on the axes; this typical scenario results provides an upward sloping curved line. However, there are situations in which shorter maturity bonds have a higher rate than longer maturity bonds. This results in an inverted yield curve (discussed in media reports) producing a downward-sloping curve. An inverted yield curve is one of the most consistent predictors of an economic recession.

Faculty

Hon. Daniel P. Collins is a U.S. Bankruptcy Judge for the District of Arizona in Phoenix, appointed on Jan. 18, 2013. He served as chief judge from 2014-18 and is presently a conflicts judge in the Districts of Guam, Hawaii and Southern California. Previously, Judge Collins was a shareholder with the Collins, May, Potenza, Baran & Gillespie, P.C. in Phoenix, practicing primarily in the areas of bankruptcy, commercial litigation and commercial transactions. He is president of the National Conference of Bankruptcy Judges, is a Fellow in the American College of Bankruptcy, served on ABI's Board of Directors, is on the board of the Phoenix Chapter of the Federal Bar Association and is a member of the University of Arizona Law School's Board of Visitors. He also is a founding member of the Arizona Bankruptcy American Inn of Court. Judge Collins received both his B.S. in finance and accounting in 1980 and his J.D. in 1983 from the University of Arizona.

Matthew H. Connors, ASA, CPA, ABV, CFE is a managing member at Rocky Mountain Advisory, LLC in Salt Lake City and leads the firm's business and intellectual property valuation practice. His expertise includes expert witness services in complex commercial litigation disputes and valuing equity securities in and outside of litigation disputes. Mr. Connors has testified in federal and state courts multiple times. He is an expert in calculating economic damages, business valuation, intellectual property valuation, intangible asset valuation and damages related to such intangible assets. Mr. Connors has expertise in preparing and rebutting expert opinions in the above areas. His practice also includes the valuation of intangible assets, intellectual property and goodwill for purposes of post-transaction financial reporting. Mr. Connors has experience investigating fraud schemes of various types and has spent significant time investigating alleged fraud schemes including Ponzi schemes, misappropriation of assets, Foreign Corrupt Practices Act investigations, and evaluating business solvency. He received a B.S. in accounting and a B.S. in information systems, both *magna cum laude*, and his M.B.A. from the University of Utah.

Eric J. Fromme is a trial attorney with Pacheco & Neach, PC in Costa Mesa, Calif., and has more than 20 years' experience in complex bankruptcy and business litigation matters. His spent several decades in some of America's top law firms, such as Gibson, Dunn & Crutcher and the New York city office of Hughes Hubbard & Reed LLP. Mr. Fromme continues to maintain a national practice and has served as lead debtor's counsel in chapter 11 cases pending in bankruptcy courts, and as lead counsel in commercial litigation cases in state and federal courts across the U.S. He has handled a wide range of litigation and chapter 11 representations and other high-stakes insolvency-related matters, including "bet-the-company" litigation involving trade secret, RICO, fraud, business torts, fiduciary duties, corporate governance, chapter 11 restructurings for U.S. and non-U.S. companies, cross-border insolvency matters, out-of-court restructurings, real and personal property foreclosures, corporate acquisitions and investments. His clients include business owners, officers and directors of mid-market and publicly traded companies, high-net-worth individuals, chapter 11 debtors, special committees of boards of directors, equity sponsors, traditional and nontraditional secured lenders, and financial and strategic buyers. Mr. Fromme is a member of ABI's Board of Directors. He received his B.A. in philosophy from University of California, Berkeley and his J.D. *cum laude* from Santa Clara University School of Law.

Jennifer M. Salisbury is a partner with the law firm of Markus Williams Young & Hunsicker, LLC in Denver, where she concentrates her practice in commercial litigation and the enforcement of creditors' rights in bankruptcy and insolvency proceedings. She has represented secured creditors, unsecured creditors, official committees and trustees in all aspects of bankruptcy, including relief-from-stay proceedings, cash-collateral disputes, plan negotiations and avoidance actions. Ms. Salisbury represents lenders in all aspects of state collection proceedings, including receiverships, foreclosures and replevins. She also litigates a full spectrum of commercial and business disputes, including those arising from partnership agreements, intercreditor agreements, shareholder agreements, landlord/tenant leases, loan agreements, equipment leases, insurance agreements and deeds of trust. Ms. Salisbury is licensed to practice in Colorado, Wyoming and Texas. She received her undergraduate degree from Rice University and her J.D. in 1998 from Columbia University School of Law.

Steven T. Waterman is a partner with Dorsey & Whitney LLP in Salt Lake City. He focuses on assisting financial institutions with commercial loans and special assets, and his work spans both real and personal property collateral. Mr. Waterman has foreclosed on planes, trains and automobiles, as well as cattle, crematoriums, country clubs and turkeys. He regularly litigates cases involving the Uniform Commercial Code and foreclosure. In addition, he helps protect the interests of banks in chapter 11 bankruptcy reorganizations, as well as receivership and insolvency proceedings. Mr. Waterman has litigated cases in federal, tribal and state trial and appellate courts for financial institutions, trustees, receivers, franchisors and creditor committees. His experience includes out-of-court workouts in numerous industries and agriculture, including cooperatives. Mr. Waterman was an adjunct professor teaching secured transactions at the J. Reuben Clark Law School at Brigham Young University from 2012-20 and co-chaired the Admissions Committee of the Utah State Bar from 1996-2020. He also is a former co-chair of Dorsey & Whitney's firm-wide Bankruptcy and Financial Restructuring practice group. A frequent lecturer, Mr. Waterman has been honored in *The Best Lawyers in America* for Bankruptcy and Creditor/Debtor Rights and is AV-rated by Martindale-Hubbell. He is admitted to the Utah and Wyoming Bars, and before the U.S. Supreme Court, the U.S. Courts of Appeals for the Eighth and Tenth Circuits, the Courts of the Shoshone and Arapahoe Tribes, and the U.S. District Courts for the District of Utah, District of Colorado, District of Wyoming, Northern District of Illinois and District of Nebraska. Mr. Waterman received his B.S. in business management-finance from Brigham Young University and his J.D. from the University of Utah, where he was a William H. Leary scholar.