

Dunagan Article Cited in Supreme Court Opinion

An article written by TIADA General Counsel Michael W. Dunagan has been cited in a U.S. Supreme Court opinion concerning the interest rate to be used in calculating payments to car creditors in Chapter 13 bankruptcies. Justice Antonin Scalia, in a dissenting opinion, referred to the article in support of using the contract finance rate as the rate to use in a bankruptcy. He was joined by Chief Justice William Rehnquist, Justice Sandra Day O’Conner, and Justice Anthony Kennedy in his dissent.

The plurality decision in the case of *Till v. SCS Credit Corp.* held that the contract rate should be disregarded, and the rate to be used would be the prime rate with additional points set by the bankruptcy judge to compensate for the risk to the creditor. That decision was written by Justice John Paul Stevens, joined by Justice David Souter, Justice Ruth Ginsburg, and Justice Stephen Breyer. Justice Clarence Thomas provided the swing vote, filing his own concurring opinion.

Dunagan’s article was first published in the Consumer Finance Law Quarterly Report, the journal of the Conference on Consumer Finance Law, in 1998. Entitled “Enforcement of Security Interests in Motor Vehicles in Bankruptcy: The Rash to Judgment – A Contrarian View from the Creditor’s Perspective,” the article pointed out the fallacies of the traditional wisdom that Chapter 13 bankruptcies should be encouraged over Chapter 7 bankruptcies. The article explored the abuses and distortions that arise from the current Chapter 13 system, especially for buy-here-pay-here dealers and sub-prime lenders. Dunagan has long been an advocate of reform in the Chapter 13 system and has sought relief for car creditors from the oppressiveness of the automatic

bankruptcy stay, the so-called cram-down provision, and the general one-sidedness of the entire process.