

In The  
Supreme Court of the United States

— ♦ —  
WILLIAM G. SCHWAB, ESQUIRE,  
TRUSTEE FOR NADEJDA REILLY,

*Petitioner,*

v.

NADEJDA REILLY,

*Respondent.*

— ♦ —  
ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

— ♦ —  
BRIEF OF *AMICUS CURIAE*  
NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES  
IN SUPPORT OF PETITIONER

— ♦ —  
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November 24, 2008

**Motion for Leave to File a Brief of Amicus  
Curiae National Association of Bankruptcy  
Trustees in Support of Petitioner  
Pursuant to Rule 37.3**

On October 29, 2008 the undersigned gave notice to the parties of the intent of the National Association of Bankruptcy Trustees to file a brief of Amicus Curiae in Support of Petitioner. Consent to file the brief has been received from the Petitioner. The Respondent has not responded to the request.

The National Association of Bankruptcy Trustees is an association whose voting members consist of persons who regularly serve as Chapter 7 trustees as a result of their appointment to a panel of chapter 7 trustees by the Office of the United States Trustee in accordance with 28 U.S.C. § 586 (a)(1) or by the Bankruptcy Courts pursuant to equivalent procedures in North Carolina and Alabama.

NABT has over 800 voting trustee members, and a total membership of in excess of 1400. Its purpose is to address the needs of bankruptcy trustees and to promote the effectiveness of the system as a whole.

## Questions Presented

1. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, that is equal to the value placed on the asset by the debtor, is the exemption limited to the specific amount claimed or do the numbers being equal operate to “fully exempt” the asset, regardless of its true value?

2. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, must a trustee who wishes to sell the asset object to the exemptions within the thirty day period of Rule 4003, even though the amount claimed as exempt and the type of property are within the exemption statute?

3. Did the Third Circuit unconstitutionally encroach on Congress’ exclusive power to legislate in the field of bankruptcy when it created unlimited “in kind” exemptions where the statute contains specific dollar-value limitations?

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## **Interest of the Amicus Curiae**

The Amicus Curiae, is the National Association of Bankruptcy Trustees. NABT is an association whose voting members consist of persons who regularly serve as Chapter 7 trustees as a result of their appointment to a panel of chapter 7 trustees by the Office of the United States Trustee in accordance with 28 U.S.C. § 586 (a)(1) or by the Bankruptcy Courts pursuant to equivalent procedures in North Carolina and Alabama.

NABT has over 800 voting trustee members, and a total membership of in excess of 1400. Its purpose is to address the needs of bankruptcy trustees and to promote the effectiveness of the system as a whole.<sup>1</sup>

## **Statement of Jurisdiction**

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## **Statutory and Rule Provisions**

### **11 U.S.C. § 522(d)**

The following property may be exempted under subsection (b)(2) of this section:

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<sup>1</sup> No other person or entity, except for the amicus curiae, their members and their counsel, made a monetary contribution to the preparation and submission of this brief.

(1) The debtor's aggregate interest, not to exceed \$15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed \$2,400 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed \$400 in value in any particular item or \$8,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed \$1,000 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value \$800 plus up to \$7,500 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed \$1,500 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value \$8,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive -

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability,

death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless -

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to -

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent

reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed \$15,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

#### 11 U.S.C. § 522(I)

The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

**Federal Rule of Bankruptcy Procedure 1007.**  
Lists, Schedules and Statements; Time Limits

.....

(b) Schedules and statements required.

(1) Except in a chapter 9 municipality case, the debtor, unless the court orders otherwise, shall file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and unexpired leases, and a statement of financial affairs, prepared as prescribed by the appropriate Official Forms.

**Federal Rule of Bankruptcy Procedure 4003**

Exemptions

(a) Claim of exemptions.

A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objections to claim of exemptions.

A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

(c) Burden of proof.

In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by debtor of transfers of exempt property.

A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

### **Summary of the Argument**

Schedules filed in bankruptcy cases are filed following the format established in Official Form 6 promulgated by the Judicial Conference of the United States as contemplated by the Federal Rules of Bankruptcy Procedure. These forms require a debtor to provide discrete information. The Schedules implement various requirements of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

The Bankruptcy Code permits debtors to exempt some property subject to discrete dollar limitations. When those limits are the same as the value of an asset as reported by a debtor, there is no

reason to believe that the asset was rendered fully exempt, aside from an argument that hinges on a misreading of Taylor v. Freeland and Kronz, 503 U.S. 638 (1992). While there are time limits to object to exemptions, there is no time limit for a trustee to object to the scheduled value of an asset. None should be implied.

This issue is a recurring one around the nation. There is a split among the Courts of Appeals. In addition, the reasoning and outcome of the instant case results from a failure to consider the actual language of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

## **Reasons for Granting the Petition for Certiorari**

### **I. Introduction**

In asking this Court to review the instant case, the Petition for a Writ of Certiorari has focused on the conflict present in decisions of the United States Courts of Appeal on the questions herein presented. The Courts of Appeal for the Third, and Eleventh Circuits have recognized exemptions in excess of statutory limits when the scheduled value of an asset and the dollar value of the exemption claimed are the same. Schwab v. Reilly (In re: Reilly) 534 F.3d 173 (3<sup>d</sup> Cir. 2008); and Allen v. Green (In re: Green), 31 F.3d 1098 (1994). See also, Olson v. Anderson (In re: Anderson), 377 B.R. 865 (6<sup>th</sup> Cir. BAP 2007) This view has been rejected in the Courts of Appeals for the Eighth and Ninth Circuits. Stoebner v. Wick (In re: Wick), 276 F.3d 412 (8<sup>th</sup> Cir. 2002) and Hyman v. Plotkin (In re: Plotkin), 967 F.2d 1316 (9<sup>th</sup> Cir. 1992). No consensus has emerged.

The issues here recur in many bankruptcy cases. The issues involve understanding the meaning of information placed on bankruptcy schedules whose format is the subject of an Official Form approved by the Judicial Conference of the United States. The United States Court of Appeals for the Third Circuit determined in this case that reading the information provided on those forms by the debtor using a plain meaning approach to be flawed.

The amicus curiae, the National Association of Bankruptcy Trustees, share the concerns of the Petitioner about the conflict between the Courts of Appeal. NABT files this brief to emphasize the importance of the questions presented to the administration of the bankruptcy laws.

Bankruptcy cases are initiated by the filing of bankruptcy petitions to which numerous bankruptcy schedules are attached. The schedules require detailed financial information in a format established in Official Forms promulgated by the Judicial Conference of the United States as authorized by the Federal Rules of Bankruptcy Procedure.

Included in the Official Forms are forms pertaining to the disclosure of assets, their value, claims of exemptions, and the value of the exemptions claimed. Where exemptions established by statute contain specific dollar limitations, the schedule of the value of exemptions should objectively always be understood to claim the value of the dollar exemption so expressed as the exemption claimed.

The value of the asset reported on bankruptcy schedules by a debtor represents the debtor's opinion of value of the asset, but such value should have no impact on the understanding of what has been claimed exempt. To the extent that the value of the asset reported by a debtor has been considered by the lower courts as part the claim of exemptions, such an approach represents a misunderstanding of a prior decision of this Court in Taylor v. Freeland and Kronz, 503 U.S. 638 (1992). That misunderstanding encourages a departure from the accepted and usual course of judicial proceedings such that this Court should review this issue. Because the lower courts have become seriously divided on the proper approach to the understanding of what bankruptcy schedules mean, this Court should hear the instant case and resolve the conflict by reference to the underlying statutory scheme, specifically the Bankruptcy Code, as consistently augmented by the Federal Bankruptcy Rules of Procedure and the Official Forms.

## II. The Statutory Scheme

When an individual files for bankruptcy relief a bankruptcy estate is created. The estate consists of the property described in 11 U.S.C. § 541. Generally, all the assets of a debtor, whether real, personal, tangible, intangible, fixed or contingent, become assets of the estate. The estate can grow in the event property is recovered for the benefit of the estate.

To permit a debtor to have something with which to restart economic life, Congress has provided that a debtor may exempt property

described in 11 U.S.C. § 522. Debtors may choose to exempt property under provisions of state law, or under a scheme provided in the Bankruptcy Code. Nadejda Reilly claimed exemptions pursuant to the Bankruptcy Code, specifically under 11 U.S.C. § 522(d).

The Code permits the exemption of specific forms of property in different ways. Some specific forms of property may retained regardless of value. For example, professionally prescribed health aids may be retained without regard to value. 11 U.S.C. § 522(d)(9). Such property is generally said to be exempt "in kind."

Some specific forms of property may be exempt subject to discrete limitations on value. Vehicles, exempt up to a value of \$2,950<sup>2</sup>, under 11 U.S.C. § 522(d)(2); jewelry, exempt up to a value of \$ 1,225, under 11 U.S.C. § 522(d)(4); and, tools of the trade, exempt up to a value of \$1,850 under 11 U.S.C. § 522(d)(6); are examples of specific forms of property exemptions with dollar limitations.

A third type of exemption permits exemption of specific forms of property subject to a flexible limitation. A payment of alimony or support, for

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<sup>2</sup> All of the dollar limitations in 11 U.S.C. § 522 are indexed pursuant to the provisions 11 U.S.C. § 104. That provision causes the dollar limits to change on April 1 of every third year. The debtor, Ms. Reilly filed for bankruptcy on April 21, 2005. The amounts were adjusted upward once since that time, on April 1, 2007. The amounts in effect at the filing of the instant case continue to apply throughout a case per 11 U.S.C. § 104(c). Consequently those values have been used herein.

example, may be exempted in an amount “reasonably necessary for the support of a debtor or a dependent of the debtor.

Finally, the Bankruptcy Code provides a “wild card” or “catchall” exemption in 11 U.S.C. § 522(d)(5). This provision permits a debtor to exempt the aggregate interest in any property having a value of at least \$975, plus \$9,250, of the unused portion of a larger exemption provided for a residence in 11 U.S.C. § 522(d)(1).

It is the exemption of certain restaurant equipment by the debtor that is at issue here. The debtor reported the equipment had a “value” of \$10,718. She claimed part of the restaurant equipment having a value \$1,850 was exempt under the “tools of the trade” exemption. She also used an exemption under the “wildcard” provision to claim \$8,868 of the restaurant equipment as exempt. These amounts \$1,850 and \$8,868, total, \$10,718, the value of the property as reported by the debtor.

### **III. The Exemption Process**

As part of the filing process a debtor must file a “list of creditors” and a “schedule of assets and liabilities.” 11 U.S.C. § 521(a). A debtor must file “a list of property” that the debtor claims exempt pursuant to 11 U.S.C. § 522. Neither the word list or property is further defined in the Bankruptcy Code.

The Federal Rules of Bankruptcy Procedure do provide additional instruction about the schedule of assets, and the list of exemptions. Federal Rule of

Bankruptcy Procedure 1007(b)(1) requires a “schedule of assets and liabilities” as prescribed by the Official Forms. Federal Rule of Bankruptcy Procedure 4003 requires a debtor to “list the property” claimed as exempt on the schedule of assets required by Rule 1007. Federal Rule of Bankruptcy Procedure 9009 provides for Official Forms to be prescribed by the Judicial Conference and that said forms are to be construed to be consistent with the rules and the Code.

Official Form 6 prescribed a series of Schedules. Schedule A required a debtor to list real property. Schedule B required a debtor to list personal property. Schedule C required a debtor to set forth any claim that property is exempt.

Schedule A and B required a debtor to set forth a description of property and its location in a columnar format. In 2005, one of the additional columns on each schedule was titled “current market value of debtor’s interest in property, without deducting any secured claim or exemptions.”<sup>3</sup> Schedule C required a similar format, although the location of the property need not be repeated. Schedule C did require a debtor to report “value of the claimed exemption” in one column and “current market value of property without deducting exemption”<sup>4</sup> in another.

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<sup>3</sup> The word “market” was deleted by an amendment to the Official Form made between 2005 and 2008.

<sup>4</sup> The word “market” was deleted by an amendment to the Official Form made between 2005 and 2008, on this form as well.

Had their been a creditor with a secured claim against this kind of property, the amount of any secured claim would have been reported on Schedule B. The identity of the creditor, the property subject to the lien, the value of the property and the amount of the lien would have been required to be listed on Schedule D of the petition.

#### **IV. Two Views of the Bankruptcy Schedules**

The debtor claims that she listed the restaurant equipment as an asset on Schedule B. As part of Schedule B, and again on Schedule C, Ms. Reilly asserts she listed the current market value of the property at \$10,718. On Schedule C, she asserts she claimed exemptions of a like amount, using the tools of the trade and the catchall exemptions. She then asserts she has exempted all of the restaurant equipment and that because the trustee did not file a timely objection to the exemption, the bankruptcy estate has no further interest in the restaurant equipment.

The trustee on the other hand reasons that when he read Schedule C as filed by the debtor, he understood from a plain reading of the schedules that the debtor had claimed an exemption in restaurant equipment having a value of \$10,718. He knew that such an amount could be lawfully claimed as exempt under the statutes described by the debtor. He did not believe he could object that her claim of exemption was in any way incorrect.

For example, he had learned the debtor was a cook and had been running a restaurant. Her use of the tools of the trade exemption to the extent available for restaurant equipment was unobjectionable. Her use of the catchall exemption was for an amount lawfully available to her under that section was similarly unchallengeable. See, In re: Heflin, 215 B.R. 530 (Bankr. W.D. Mich. 1997).

The trustee did deny that Bankruptcy Rule 4003 obligated him to dispute the claimed market value of the property within the time limits prescribed in that Rule. The trustee moved to sell the restaurant equipment which he had come to believe was worth approximately \$18,000 to \$20,000. Had he been permitted to do so, the trustee would have distributed \$10,718 to the debtor in satisfaction of her exemption claim, paid the expenses of sale, and distributed the surplus to creditors.

#### **V. The Meaning of Property in Sections 522(d) and 522(l)**

In 11 U.S.C. § 522(d) the statute describes what may be exempt as “[t]he debtor’s aggregate interest, not to exceed \$ [a stated dollar amount] in value in ...[various described property]. This language is used in subsection 1 for residential property, in subsection 2 for a motor vehicle, in subsection 3 for household goods, in subsection 4 for jewelry, in subsection 5 for any property, in subsection 6 for tools of the trade, and in subsection 8 for the cash surrender value of life insurance policies. These are repeated dollar limitations on

exemption in a particular kinds of property. This language contrasts with the way unlimited exemptions on unmaturred life insurance contracts, and prescription health aids in subsections 7 and 9 were defined.

Section 522(l) of the Bankruptcy Code provides that a debtor shall "file a list of exempt property that the debtor claims as exempt...." This section does not say the debtor must list "the value of the exemption claimed in" the property claimed as exempt, although clearly value is an important limitation on many exemptions provided by Congress. The phrase identified here as having been omitted appears to be implied component of property when that term is use in subsection 522(l).

Implying the missing phrase, does cause a subtle shift in the meaning of the word property. Although often the same word in the same section should have the same meaning, the subtle shift is explained in the different purposes of the different subsections. For Congress to speak with particularity about the aggregate value of property as part of its description of discrete exemptions, but omit that precision when describing an obligation to file a list of exempt property is not surprising. Depending on the context, property is a word that can fairly encompass both the notion of property as an item or the value of an item. In re: Cormier, 382 B.R. 377, 396-97 (Bankr. W.D. Mich. 2008)

The alternative, avoiding this shift as part of statutory construction, would imply that listing any property as exempt would make it fully exempt.

Clearly this would render all the limitations on exemptions meaningless. That construction is more improbable. In creating the Official Forms, the Advisory Committee seemed to recognize the need for this kind of shifting interpretation of exempt property. Schedule C of Official Form 6 requires a debtor to describe the property and to set forth the "value of the claimed exemption."

## **VI. The Impact of Taylor v. Freeland and Kronz**

The debtor has apparently recognized that an effort to pursue a statutory interpretation of section 522(l) would be foolhardy and has not made this claim overtly. Still this is the essence of the claim being made in this litigation. The debtor asserts that the value of her claimed exemption was \$10,718. Despite having made such a report as part of Schedule C, she subsequently asserted that she had really claimed an exemption, not available to her overtly, of a 100% interest in restaurant equipment. Had she said so overtly, the trustee would have known of her improvident claim, and would have known her claim of exemption was not supported by statute. In re: Einhorn, 330 B.R. 570 (Bankr. E.D. Mich. 2005). The failure of the trustee to deduce her intent, the debtor insists, was the fault of the trustee.

An argument like this can only be the result of attempting to apply a discussion from a Court decision that was not intended to address the issue at hand. That is exactly what has happened here. In Taylor v. Freeland and Kronz, 503 U.S. 638 (1992) the Supreme Court granted certiorari to determine if

a trustee who had failed to object to an exemption within the time limit established in Federal Rule of Bankruptcy Procedure 4003, could object to an exemption to which a debtor had no colorable basis after the 30 day period had expired. In Taylor, this Court said that all objections had to be filed within the time period prescribed for objections.

Taylor arose in a factually odd case. The debtor had reported the value of an ongoing lawsuit as "unknown." Her schedule of exemptions described the exemption as proceeds from lawsuit and also described the value as "unknown." The trustee made a timely inquiry into the lawsuits potential and had apparently been accurately informed that a settlement of \$110,000 was optimistic, but conceivable. Thereafter, the trustee appears to have done very little. Significantly, he did not object to the exemption, as poorly stated as it was. The litigation did settle for \$110,000 and the trustee sought to administer the proceeds. His failure to file a timely objection was held fatal to his effort to do so.

One of the oddities about Taylor should be noted. The value of the lawsuit and the exemption were given as "unknown" in Taylor. This is unusual. Despite this language, the Supreme Court described the property as fully exempt. Either the parties agreed it had been fully exempted, or this Court may have decided that the description of the property, "proceeds of lawsuit" justified interpreting the list of exempt property as fully exempting all of the proceeds of the lawsuit. Trustees have reacted accordingly since. When unknown appears as the value of an exemption, trustees do routinely object to

such claims. Taylor's notion that deadlines lead to certainty has impacted the decision to object to poorly described exemptions, as well.

However what has made Taylor such a large part of the discussion on the instant question, arises from some language in the majority opinion. Noting that the trustee was bound by the deadlines of Federal Bankruptcy Rule of Procedure 4003, the opinion of the Court made the following observation:

If Taylor did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, see Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, see Rule 4003(b).

Id. at \_\_\_\_\_. This phraseology has led some lower courts to find that the value of the property claimed exempt is part of the process of objecting to exemptions. Some lower courts, including the Court of Appeals for the Third Circuit in this case, have concluded that where the market value of property reported by the debtor and the value of the exemption claimed by the debtor is equal in amount, the Schedules should be construed as reflecting an intent by the debtor to exempt the full value of the asset, and that the asset is fully exempt unless objected to by the trustee within the time period set forth by Rule 4003. Some courts have gone further and held that where the market value reported by a debtor, less the amount of the secured claim as reported by the debtor, i.e. the reported equity,

equals the amount claimed exempt, then the property is fully exempt.

The National Association of Bankruptcy Trustees, the amicus curiae here, contests the inevitability of these conclusions about Taylor. The reference to the "value of potential proceeds of the lawsuit" can be understood both as the value of the property and the value of the claimed exemption. If there was an issue about the value of the claimed exemption, certainly the process described in Rule 4003(c) would provide a method for determining that amount. Rule 4003 does not imply any reason for examination of the value of the property. Stoebner v. Wick (In re: Wick), 276 F.3d 412 (8<sup>th</sup> Cir. 2001); In re: DeSoto, 181 B.R. 704, 708 (Bankr. D. Conn. 1995). Courts which have performed such an analysis are wrong. Zupansic v. Hyman (In re: Zupansic), 259 B.R. 388, 391 n.3 (Bankr. M.D. Fla. 2001).

Where dollar values are attributed to exemptions, the exemptions should be determined objectively by the amount claimed. The debtor's opinion of the value of the debtor's property is not logically a factor to be considered in at all as part of the exemption process. To the extent that the lower courts have suggested it should be, there is no support in the language of the Code, the Rules or the Official Forms for such a view. Notes of the Advisory Committee relevant to the change in the Official Form which deleted the word "market," as a modifier for value as part of Schedule A, B and C, since 2005

actually undercuts reliance on what value is even being reported.<sup>5</sup>

### Conclusion

The Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Official Forms all impact how information is presented in filings. One might assume that the detail required by Code, the Rules and the Official Forms would establish an objective standard by which this information might be understood. Yet, the disagreement between the litigants here about the meaning of what has been reported on the bankruptcy schedules is not an isolated dispute. As reflected in the cases discussed below, the Courts of Appeals, and the lower courts, are spending an inordinate amount of time on something as fundamental as the meaning of information reported on bankruptcy schedules. This Court has the ability to provide fixed guidance about how to complete and how to read a bankruptcy petition. Explaining this simple, but fundamental, concept in the instant case would be of significant value to the bankruptcy community. This is the critical reason why the instant case should be heard by this Court.

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<sup>5</sup> In Associates Commercial Corp. v. Rash, 520 U.S. 953 (1997) this Court found value for some purposes under the Bankruptcy Code to be “replacement value.”

