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No. 08-538

IN THE
Supreme Court of the United States

WILLIAM G. SCHWAB, ESQUIRE,
Trustee for Nadejda Reilly,
Petitioner,

v.

NADEJDA REILLY,
Respondent.

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Whether a Chapter 7 trustee is required by Federal Rule of Bankruptcy Procedure 4003(b) and this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), to object to a debtor's claimed exemption when the claimed exemption itself is proper, but the debtor incorrectly lists the value of the exempt property as being equal to the amount of the exemption.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit (Pet. App. 1a-18a) is reported at 534 F.3d 173 (3d Cir. 2008). The opinion and order of the United States District Court for the Middle District of Pennsylvania (Pet. App. 19a-25a, 26a) and the order of the United States Bankruptcy Court for the Middle District of Pennsylvania (Pet. App. 27a-28a) are unreported.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The Court of Appeals entered its judgment on July 21, 2008. The petition for a writ of certiorari was filed on October 20, 2008, and granted on April 27, 2009.

STATUTORY PROVISIONS INVOLVED

The text of the applicable provisions—11 U.S.C. § 522 and Federal Rule of Bankruptcy Procedure 4003—is reproduced in full in the statutory appendix, contained *infra* at pp. 1a-12a.[1]

INTRODUCTION

Section 522 of the Bankruptcy Code permits an individual debtor to exempt certain property from her estate. These exemptions fall into two categories. Certain property—such as professionally prescribed health aids and an unmatured life insurance contract—is exempt "in kind," meaning that the debtor is permitted to retain the asset (rather than have it liquidated with the proceeds distributed to creditors) regardless of the asset's value. *See* 11 U.S.C. § 522(d)(7), (9). Other exemptions are subject to monetary limits. For example, a debtor may exempt her interest, "not to exceed

[1] The versions of Section 522 and Rule 4003 set forth in the statutory appendix, and cited throughout this Brief, were the versions in effect at the time Respondent Nadejda Reilly filed her bankruptcy petition in April 2005, and therefore apply to this case. *See* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1501, 119 Stat. 23, 216. Both Section 522 and Rule 4003 were subsequently amended. *See id.*; Fed. R. Bankr. P. 4003 advisory committee note (2008 amendments). Those amendments are immaterial to the issues raised in this case.

$2,950 in value, in one motor vehicle," *id.* § 522(d)(2), her interest, "not to exceed $1,225 in value, in jewelry held primarily for the personal … use of the debtor," *id.* § 522(d)(4), and her interest, "not to exceed $1,850 in value, in any implements, professional books, or tools" of the debtor's trade, *id.* § 522(d)(6).[2]

In order to claim an exemption, the debtor must file a list in which the debtor sets out her claimed exemptions on the form prescribed by the Bankruptcy Rules. *See* 11 U.S.C. § 522(*l*); Fed. R. Bankr. P. 4003(a); *id.* 1007(b). That form requires the debtor—both for property that may be exempted "in kind," and for property in which the permitted exemption is subject to dollar limits—to identify the property in which she claims an exempt interest and to provide both the "value of [the] claimed exemption" and the "current market value of [the] property without deducting [the] exemptions." Fed. R. Bankr. P. Form 6, Schedule C (1991), *reprinted at* 135 F.R.D. 713, 737 (1991); JA 57a.

Subject to certain exceptions not relevant here, "[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." Fed. R. Bankr. P. 4003(b). Unless the trustee or another party in interest objects, the "property claimed as exempt on such list"—in the case of "in kind" exemptions, the entire item, and in the case of monetary exemptions, the debtor's interest in the

[2] The exemption amounts are adjusted every three years, *see* 11 U.S.C. § 104(a), and were last adjusted in 2007, *see* 72 Fed. Reg. 7082, 7082 (Feb. 14, 2007). The amounts listed in the text are the pre-2007 amounts, *see id.*, which apply to Reilly because she filed her bankruptcy petition in 2005, *see* 11 U.S.C. § 104(c).

property up to the statutory dollar limit—"is exempt." 11 U.S.C. § 522(*l*).

In this case, respondent Nadejda Reilly, a Chapter 7 debtor, claimed an exemption for the tools of her trade—kitchen equipment. On the official form, she claimed an exemption of $10,718, and also listed the value of the equipment as $10,718. JA 58a. That amount was within the cap set by Section 522 (combining Reilly's Section 522(d)(6) exemption for tools of the trade with her Section 522(d)(5) "wild-card" exemption). Reilly's claimed monetary exemption was therefore proper, and Petitioner William Schwab, the Chapter 7 trustee administering Reilly's bankruptcy case, accordingly did not object to it. Believing that the equipment might be worth considerably more than $10,718, however, Schwab sought to sell the equipment and distribute any proceeds in excess of Reilly's $10,718 exempt interest to creditors.

The court of appeals held that Schwab's failure to object to Reilly's claimed $10,718 exemption within the 30-day deadline set by Rule 4003 barred him from later recovering for the estate any value in the equipment in excess of $10,718. It reasoned that, by listing the value of the equipment in an amount equal to the amount of her claimed exemption, Reilly had effectively claimed an "in kind" exemption in the entire value of the equipment, whatever that value ultimately turned out to be. It therefore held that Schwab was required to object to Reilly's claimed exemption even though, on its face, the exemption claimed was entirely proper.

For that conclusion, the court of appeals relied on this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), opining that *Taylor* "controlled." Pet. App. 11a. The court of appeals "read *Taylor* to

mean that, where the debtor signals her intention to exempt certain property in its entirety by listing an identical entry for the property's value and the amount of the exemption, the trustee must object pursuant to Rule 4003 lest the property be rendered fully exempt." Pet. App. 14a.

The court of appeals' reliance on *Taylor* was misplaced. *Taylor* stands for the unsurprising proposition that where a debtor's claim of exemption is in fact objectionable, a trustee is required to assert his objection before the deadline set forth in Bankruptcy Rule 4003. The trustee in *Taylor*, having failed to file a timely objection to a claim of exemption that all parties agreed was objectionable, asked the Court to find an exception to the deadline for cases in which the debtor had no colorable basis for claiming the exemption. This Court declined to do so, enforcing the deadline as written.

That decision says nothing at all about the circumstance presented in this case—where the debtor's claim of exemption is proper, such that the trustee has no reason or occasion to assert an objection. *Taylor* thus has no application here.

Further, contrary to the court of appeals' statement that "it was important to the *Taylor* Court that the debtor meant to exempt the full amount of the property by listing 'unknown' as both the value of the property and the value of the exemption" (Pet App. 11a), *Taylor* makes no mention of the debtor's valuation of her property. Indeed, the debtor's list of exemptions in *Taylor* did not even provide the debtor's estimation of the property's value, only the amount of the claimed exemption, which the debtor listed as "unknown."

Because Reilly's claimed exemption was entirely proper, neither Section 522 nor Rule 4003 required

Schwab to object to it within 30 days of the creditors' meeting in order to retain his ability to liquidate the kitchen equipment and distribute to creditors the realized value in excess of the amount Reilly specifically and correctly claimed as exempt. The court of appeals' contrary conclusion is unmoored from the text of the statute and rules and would be wholly unworkable in practice.

STATEMENT OF THE CASE

A. Statutory Background

Exemptions in bankruptcy. Federal bankruptcy law provides a means for an "honest but unfortunate debtor" to be relieved of her obligations to creditors and obtain a fresh start. *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934); *see also Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007). The fundamental bargain of a Chapter 7 bankruptcy is that in exchange for the discharge of all pre-bankruptcy debts, an individual debtor is required to turn over all of her non-exempt property to a Chapter 7 trustee for distribution to creditors. *See Marrama*, 549 U.S. at 367.

The filing of a Chapter 7 bankruptcy petition creates a bankruptcy estate, which includes (subject to certain narrow exceptions) "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). A Chapter 7 trustee is then appointed to liquidate the property of the estate and distribute the proceeds to creditors in accordance with their statutory priority. *See id.* §§ 701, 704(a)(1), 726. A debtor who successfully navigates the Chapter 7 process obtains a discharge of her prepetition debts. *Id.* § 727. The discharge effectuates the debtor's "fresh start" by "voiding any past or future judgments on [pre-bankruptcy] debt and by operating as an injunc-

tion to prohibit creditors from attempting to collect or to recover the debt." *Tennessee Student Assistance Corp.* v. *Hood*, 541 U.S. 440, 447 (2004).

To permit a debtor to obtain certain basic necessities and to facilitate the "fresh start" policy, the Bankruptcy Code provides that some of the debtor's property—such as her car or home, up to certain monetary values—is exempt from inclusion in the bankruptcy estate and distribution to creditors. *Rousey* v. *Jacoway*, 544 U.S. 320, 325 (2005); *see* 11 U.S.C. § 522. Subject to certain exceptions, "property exempted [from the bankruptcy estate] is not liable during or after the case for any debt of the debtor that arose … before the commencement of the case." 11 U.S.C. § 522(c).

Section 522 of the Bankruptcy Code governs exemptions. Under Section 522, a debtor may elect either the exemptions that would be available under applicable state and federal non-bankruptcy law or the federal bankruptcy exemptions specified in that section, unless a debtor's home State "opts out" of the federal exemptions. 11 U.S.C. § 522(b).[3]

Section 522(d) specifies the types of property in which a debtor can claim an exempt interest under federal bankruptcy law. With respect to certain types of property, it also sets a cap on the monetary amount of any claimed exemption. For example, under the federal homestead exemption, a debtor may exempt "[t]he debtor's aggregate interest, not to exceed $18,450 in

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[3] Debtors living in opt-out States may not invoke the federal bankruptcy exemptions and are limited to the exemptions provided in applicable state and federal non-bankruptcy law. *See* 11 U.S.C. § 522(b); *Owen* v. *Owen*, 500 U.S. 305, 308 (1991).

value, in real property … that the debtor … uses as a residence." 11 U.S.C. § 522(d)(1). Similarly, a debtor may exempt her interest, "not to exceed $2,950 in value, in one motor vehicle," *id.* § 522(d)(2), her interest, "not to exceed $1,225 in value, in jewelry held primarily for the personal … use of the debtor," *id.* § 522(d)(4), and her "interest, not to exceed $1,850 in value, in any implements, professional books, or tools, of the trade," *id.* § 522(d)(6). In addition to the specifically enumerated monetary exemptions, Section 522(d) also permits a debtor to claim the so-called "wild-card" exemption, under which a debtor may exempt her "interest in any property, not to exceed in value $975 plus up to $9,250 of any unused amount" of the federal homestead exemption. *Id.* § 522(d)(5).

In contrast, other types of property are exempt "in kind" without any cap on the amount that may be exempted. For example, a debtor may exempt "[p]rofessionally prescribed health aids for the debtor," 11 U.S.C. § 522(d)(9), "[a]ny unmatured life insurance contract owned by the debtor," *id.* § 522(d)(7), or the "debtor's right to receive … an award under a crime victim's reparation law," *id.* § 522(d)(11)(A), without any limitation on the amount of the exemption.

The determination to subject many (indeed, most) of the statutory exemptions to specific monetary caps reflects a specific congressional judgment about how to strike the balance between providing for an individual debtor and the repayment of creditors. For example, by limiting the exemption in an automobile to $2,950, Congress permitted a debtor who owned an older, relatively inexpensive vehicle to keep the vehicle itself (because trustees, in practice, will not liquidate an asset that will not generate proceeds in excess of the debtor's exempt interest). But a Chapter 7 debtor who owns a

late-model luxury car cannot keep the vehicle: she must turn the car over to the trustee, who will sell the car, pay the debtor $2,950 in cash (representing the debtor's exempt interest in the vehicle), and distribute the excess value to creditors.

The process for claiming exemptions, and for objecting to claimed exemptions, is spelled out in the Federal Rules of Bankruptcy Procedure. A debtor is required to "file a list of property that the debtor claims as exempt" at the outset of the bankruptcy case, 11 U.S.C. § 522(*l*), as one of the schedules that must accompany the bankruptcy petition, Fed. R. Bankr. P. 4003(a). That schedule—Schedule C—must be filed in the format "prescribed by the Official Forms." *Id.* 1007(b); *see id.* 4003(a).

Schedule C—"Property Claimed As Exempt"—first requires the debtor to state whether she is invoking the federal bankruptcy exemptions or applicable state and federal non-bankruptcy exemptions. The form then provides a space for the debtor to identify the specific exemptions claimed. That portion of the form is divided into four columns. The first column requires the debtor to provide a "description of [the] property" in which she claims an exemption. The second column requires the debtor to "specify [the] law providing each exemption." The third column requires the debtor to list the "value of [the] claimed exemption." And the fourth asks the debtor to provide the "current market value of [the] property without deducting exemptions." Fed. R. Bankr. P. Form 6,

Schedule C (1991), *reprinted at* 135 F.R.D. 713, 737 (1991); JA 56a-57a.[4]

Here, as elsewhere in bankruptcy law, the term "property" is used very broadly. It includes not only tangible items themselves, but may also include the debtor's partial interest in such property. *Cf.* 11 U.S.C. § 541(a)(1) ("property of the estate" includes "all legal or equitable interests of the debtor in property"). Accordingly, because many of the statutory exemptions are subject to monetary limits, the "property" claimed as exempt need not refer to a specific object in its entirety. For example, in a case in which the debtor fills out Schedule C to claim a $2,950 exemption in a luxury car whose value she lists as $50,000, the "property that the debtor claims as exempt," *id.* § 522(*l*), is her exempt interest—$2,950—in that vehicle.

Federal Rule of Bankruptcy Procedure 4003 further sets out the process for objecting to claimed exemptions. It provides that "a party in interest," including a Chapter 7 trustee, "may file an objection to the list of property claimed as exempt" within 30 days of the creditors' meeting required by Section 341 of the Bankruptcy Code (or within 30 days after any amendment to the list of exemptions, whichever is later). Fed. R. Bankr. P. 4003(b). In the typical case, a trustee is able to ascertain from reviewing the schedules themselves whether the debtor's claim of exemption is le-

[4] Form Schedule C was revised in 2005 to ask the debtor to provide the "current value" (rather than the "current market value") of the property. *See* Fed. R. Bankr. P. Form 6 advisory committee note (2005 amendment). The language quoted in the text appears on the version of Schedule C used in this case. *See* JA 57a.

gally valid.[5] Where the trustee has a basis for objecting (such as a case in which the debtor claims an exemption in property that is not exemptible under applicable law, or claims an exemption in an amount that exceeds an applicable monetary limit), a trustee will typically assert an objection within 30 days of the initial meeting of creditors. The time to object to an exemption may be extended, however, "for cause … if, before the time to object expires, a party in interest files a request for an extension." *Id.* The party asserting the objection bears the burden of proving that the challenged exemption is improper. *Id.* 4003(c). If no party in interest objects, "the property claimed as exempt [by the debtor] is exempt," 11 U.S.C. § 522(*l*), and the exemption cannot later be contested, *see Taylor* v. *Freeland & Kronz*, 503 U.S. 638, 642 (1992).

The role of the Chapter 7 trustee. Shortly after a Chapter 7 petition is filed, the United States Trustee appoints an interim trustee to administer the bankruptcy estate. *See* 11 U.S.C. §§ 323, 701, 704. The trustee plays a central role in a Chapter 7 bankruptcy:

> The trustee is a fiduciary charged with protecting the interests of all estate beneficiaries …. To properly represent the estate, the trustee must secure for the estate all assets properly obtainable under applicable provisions of the Bankruptcy Code, object to the debtor's discharge where appropriate, defend the estate

[5] Some claims of exemption may require some measure of factual investigation. For example, a trustee may need to conduct such an investigation in order to determine whether a debtor's walker is a "[p]rofessionally prescribed health aid[]" exempt under 11 U.S.C. § 522(d)(9).

> against improper claims or other adverse interests, and liquidate the estate as expeditiously as possible for distribution to creditors.

U.S. Dep't of Justice, Executive Office for U.S. Trustees, *Handbook for Chapter 7 Trustees* 6-2 (2002);[6] *see* 11 U.S.C. § 704 (delineating trustee's statutory duties).

One of the interim trustee's first duties is to convene the meeting of the debtor's creditors required by Section 341 of the Bankruptcy Code. 11 U.S.C. § 341(a). The trustee is required to hold the Section 341 meeting "no fewer than 20 and no more than 40 days after the [filing of the petition]." Fed. R. Bankr. P. 2003(a). That meeting is "the official forum where the debtor must appear and answer under oath questions from the trustee, creditors, and other parties in interest regarding the estate." *Handbook for Chapter 7 Trustees* 7-1. At the Section 341 meeting, creditors may elect to replace the interim trustee with a trustee of their choosing. 11 U.S.C. § 702(b), (c). If not, the interim trustee serves as the trustee in the case. *Id.* § 702(d).

The trustee must determine whether the case is an "asset case" or a "no-asset case," that is, whether there is sufficient non-exempt property in the estate to justify liquidating the property and distributing the proceeds to creditors. If the trustee determines that the case is a no-asset case, he submits a No Distribution Report ("NDR"). *Handbook for Chapter 7 Trustees* 8-1. "An NDR certifies that the trustee has reviewed the schedules, investigated the facts, and determined that

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[6] The *Handbook for Chapter 7 Trustees* is available at http://www.usdoj.gov/ust/eo/private_trustee/library/chapter07/docs/7handbook1008/Ch7_Handbook.pdf.

there are no assets to liquidate for the benefit of creditors. It also certifies that the trustee has examined the debtor's claimed exemptions and concluded that there is no purpose served [by] object[ing] to their allowance." *Id.*; *see* 11 U.S.C. § 704(a)(9). "Historically, the vast majority (about 95 to 97 percent) of chapter 7 cases yield no assets." U.S. Dep't of Justice, U.S. Trustee Program, *Preliminary Report on Chapter 7 Asset Cases 1994 to 2000*, at 7 (June 2001).

In an asset case, the trustee will generally liquidate the estate property through either a private sale or public auction if the "assets will generate sufficient proceeds to ensure a distribution to unsecured creditors, priority or general." *Handbook for Chapter 7 Trustees* 8-17. This necessarily requires the trustee to engage in a cost/benefit analysis: if the cost of liquidating an asset is likely to consume most or all of the value in excess of the debtor's exempt interest, the trustee may determine that liquidating the asset will not benefit creditors and may therefore elect to abandon the property to the debtor. *See* 11 U.S.C. § 554; *Handbook for Chapter 7 Trustees* 8-3 ("Property should be abandoned when the total amount to be realized [from its liquidation] would not result in a meaningful distribution to creditors or would redound primarily to the benefit of the trustee and professionals.").

When the trustee is ready to close the case, he must prepare and submit, for the court's approval, a Trustee's Final Report in which he lays out, among other things, the disposition of all the estate assets and a proposal for distribution of the proceeds to creditors. *See* 11 U.S.C. § 704(a)(9); Fed. R. Bankr. P. 5009. After the debtor receives the value of her exemptions, the trustee distributes the remaining proceeds to creditors

pursuant to the statutory priority scheme. *See* 11 U.S.C. § 726.

A Chapter 7 trustee's compensation turns on the value distributed to creditors. The trustee receives a nominal portion—$60—of the debtor's filing fee in every case. *See* 11 U.S.C. § 330(b). While the bankruptcy court may award a Chapter 7 trustee "reasonable compensation" paid out of the bankruptcy estate, a trustee's compensation is capped at a certain percentage of the money that was distributed to the debtor's creditors. *Id.* § 326(a). The result is that, in no-asset cases, the trustee receives only $60 in compensation for administering the estate.

B. Factual Background

On April 21, 2005, Nadejda Reilly—who owned a catering business in Conyngham, Pennsylvania—filed a petition for Chapter 7 relief. JA 9a; *see* JA 26a-136a. Reilly elected to claim the federal bankruptcy exemptions.[7] JA 56a. Reilly's assets included kitchen equipment from her business. JA 49a, 51a-55a. On her Schedule C ("Property Claimed as Exempt"), Reilly claimed as exempt a monetary interest in the kitchen equipment amounting to $1,850 under Section 522(d)(6), the tools of the trade exemption, and a monetary interest in the equipment amounting to $8,868 under Section 522(d)(5), the wild-card exemption. JA 58a. In the column headed "Value of Claimed Exemption," Reilly thus claimed a total exemption of $10,718 for the equipment. In the column headed "Current Market Value of Prop-

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[7] Pennsylvania, Reilly's domicile and the location of her bankruptcy filing, has not opted out of the federal exemption scheme. *See In re Brannon*, 476 F.3d 170, 174 (3d Cir. 2007).

erty Without Deducting Exemptions," Reilly listed the market value of the equipment—incorrectly, as it turned out—as $10,718, the same amount as the claimed exemption. JA 58a. In addition to allocating $8,868 of her wild-card exemption to her kitchen equipment, Reilly also allocated $2,306 of her wild-card exemption to exempt food goods on hand at her restaurant (JA 58a) and $26 to exempt cash held in bank accounts (JA 57a).[8]

William Schwab was appointed trustee for Reilly's bankruptcy case. JA 9a. He suspected, but did not know, that Reilly's kitchen equipment might be worth more than $10,718. Before the Section 341 meeting, Schwab had an auctioneer appraise the equipment. *See* JA 164a. The auctioneer thought that the equipment could be worth at least $17,000, perhaps materially more. JA 164a. Schwab, however, had no objection to Reilly's "list of property claimed as exempt," Fed. R. Bankr. P. 4003(b). JA 163a. Section 522(d)(6) permits the debtor to exempt an interest up to $1,850 in tools of the trade, including the kitchen equipment here, and Reilly was entitled to invoke the wild-card exemption of $8,868 under Section 522(d)(5). Schwab accordingly acknowledged that Reilly was entitled to exempt an interest of $10,718 in her kitchen equipment. *See* JA

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[8] In fact, the $975 exemption in food goods listed at the bottom of Reilly's Schedule C exceeded the amount that Reilly was entitled to claim under the wild-card exemption. *See* 11 U.S.C. § 522(d)(5). Because perishable items such as food goods, by their nature, do not preserve their value long enough to be marketed and sold so as to generate value for creditors, trustees in bankruptcy rarely object to claimed exemptions in such goods. *See* *Handbook for Chapter 7 Trustees* 8-2, 8-3.

164a. He therefore made no objection to Reilly's list of property claimed as exempt.

Schwab held the Section 341 meeting of creditors on June 22, 2005. JA 11a. At that meeting, Schwab indicated that there might be value in Reilly's kitchen equipment in excess of the exempt amount, and said that he would seek to auction the equipment, providing Reilly with her exempt interest of $10,718, and distributing any excess value to creditors. JA 137a; *see also* JA 141a-143a. On June 29, 2005, Reilly moved to dismiss her bankruptcy case. That motion makes no claim that Reilly was entitled to, or intended to, exempt her kitchen equipment in its entirety. To the contrary, she acknowledged that at her Section 341 meeting, it had been determined that she was "not entitled to a full exemption in her tools of the trade/personal property in reference to her business equipment" (JA 137a), and indicated that she therefore "no longer wishes to continue with her petition in bankruptcy" (JA 137a-138a).

The bankruptcy court, however, did not immediately act on Reilly's motion to dismiss the bankruptcy case, and on August 10, 2005, Schwab filed a motion with the bankruptcy court seeking permission to auction Reilly's kitchen equipment so that he could turn over the $10,718 in exempt value to Reilly and distribute the excess value, less costs, to her creditors. *See* JA 13a, 141a-143a.

In response to Schwab's motion to sell, Reilly argued for the first time that because the amount of the exemption she claimed in the kitchen equipment was the same as her estimate of the equipment's value, she had in fact claimed that the equipment was exempt in full. JA 165a; *see also* JA 145a-147a. Because no party in interest had objected to the list of exempt property

within 30 days of the creditors' meeting, Reilly contended, the equipment was fully exempt regardless of its actual value, and Schwab was thus barred from selling it. JA 146a, 165a-166a.

The bankruptcy court denied Reilly's motion to dismiss (JA 162a), but sustained Reilly's objection to the sale of her property (Pet. App. 27a-28a; JA 167a-169a). Schwab appealed to the district court, which affirmed. Pet. App. 25a, 26a. Schwab then appealed to the Court of Appeals for the Third Circuit, which also affirmed. The court of appeals invoked this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), as "[t]he starting point for [its] analysis." Pet. App. 7a. In *Taylor*, this Court held that when a debtor improperly claimed as exempt the proceeds of a lawsuit, listing the value of the exemption as "unknown," the trustee's failure to object within the time period set out by the rules meant that the proceeds of the suit were fully exempt. 503 U.S. at 643. *Taylor* rejected the trustee's argument that, if an exemption is not permitted by Section 522, a trustee need not object within the statutory deadline to have the exemption disallowed. *Id.* at 643-644.

The court of appeals "read *Taylor* to mean that, where the debtor signals her intention to exempt certain property in its entirety by listing an identical entry for the property's value and the amount of the exemption, the trustee must object pursuant to Rule 4003 lest the property be rendered fully exempt." Pet. App. 14a. Concluding that "this case [is] controlled by *Taylor*" (Pet. App. 11a), the court of appeals held that Schwab was required to object to Reilly's claimed exemption—even though he had no objection to the exemption Reilly actually claimed—and that his failure to do so

meant that Reilly was entitled to exempt the full value of the kitchen equipment (Pet. App. 17a-18a).

SUMMARY OF ARGUMENT

The court of appeals' holding is erroneous. It stems from a misapprehension of the statutory scheme and of this Court's decision in *Taylor*. The deadline for objections set by Rule 4003 applies only to objections to "the list of property claimed as exempt." Fed. R. Bankr. P. 4003(b). Section 522 likewise provides only that if no party makes such an objection, "the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(*l*). In this case, however, "the list of property [Reilly] claimed as exempt" was entirely unobjectionable: Reilly sought to exempt a $10,718 interest in her kitchen equipment, which she was entitled to do under the statute. And Schwab does not dispute that "the property claimed as exempt" on Reilly's schedules—a $10,718 interest in the equipment—is in fact exempt. The statute and rule go no further: they do not require a trustee to object to a debtor's valuation of the property in which she claims to have an exempt interest. And they do not require the trustee to object to a claim of exemption that is valid on its face in order to liquidate and distribute to creditors value in property beyond what the debtor has specifically claimed as exempt—and that the debtor is not entitled to exempt. *See infra* Part I.A.

The court of appeals concluded that, by listing the same value for her claimed exemption in the kitchen equipment and for the equipment itself, Reilly had in fact claimed an exemption in the entire value of the equipment, regardless of what that value might be. But the court articulated no reason why that should be the case. Reilly specified that she sought to exempt

$10,718—an amount the statute permitted her to exempt. Nothing in her schedules could have put Schwab on notice that she claimed an exemption in a greater amount. And, contrary to the court of appeals' belief, this Court's decision in *Taylor* v. *Freeland & Kronz* provides no support for that incongruous conclusion. The *Taylor* Court made no mention at all of the debtor's valuation of the property she claimed as exempt. Indeed, the debtor in *Taylor* did not even list a value for the property on her list of exemptions, since the form used at that time (the predecessor to Schedule C) did not require the debtor to do so. Rather, the debtor claimed an exemption in the proceeds of a lawsuit, and listed the value of the *exemption* as "unknown." As everyone in *Taylor* agreed, that claimed exemption was objectionable on its face. This Court therefore held that the trustee was required to object to it within the 30-day deadline set by Rule 4003. That holding, while plainly correct, is irrelevant to this case, which asks whether a trustee must object to a clearly *proper* exemption in order to preserve the ability to distribute additional value to creditors. As the statute and rules themselves make plain, there is no such requirement. *See infra* Part I.B.

Nor would such a requirement be sensible or workable in practice. Chapter 7 trustees—who handle hundreds of cases every year—lack the time or resources to investigate the value of every item of property in which a debtor claims an exemption, and thus to determine if such an objection is necessary, within the time frame set out by Rule 4003. And forcing them to do so would create perverse incentives for debtors: those who accurately value their assets would receive only the exemptions to which the statute entitles them, while those who improperly undervalue their assets

would, if an overburdened trustee failed to object, reap a windfall, retaining property that should go to their creditors. Neither the Bankruptcy Code nor the Rules require such a result. *See infra* Part II.

ARGUMENT

I. SCHWAB WAS NOT REQUIRED TO OBJECT TO REILLY'S PROPERLY CLAIMED EXEMPTION IN ORDER TO LIQUIDATE PROPERTY WHOSE ACTUAL VALUE EXCEEDED THE CLAIMED EXEMPTION

A. The Bankruptcy Code And Rules Set A Deadline Only For Objections To "The List Of Property Claimed As Exempt," Not To The Valuation Of The Property

The text of the Bankruptcy Code and Rules themselves make clear that Schwab was not required to object to Reilly's facially valid exemption in order to liquidate property worth more than the claimed exemption. Bankruptcy Rule 4003 sets a deadline only for objections to "the list of property claimed as exempt." Fed. R. Bankr. P. 4003(b). In the case of exemptions that are subject to monetary caps (as opposed to "in kind" exemptions), that "list of property claimed as exempt" will typically include the debtor's exempt interest in items of property, up to specific statutory dollar values.

Section 522 provides that if no objection is filed to that list of property, "the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(*l*). Neither the statute nor the Rule sets a deadline for anything other than objections to "the list of property claimed as exempt" by the debtor. The court of appeals' holding, requiring a trustee to object to the debtor's valuation of her property, even if the claimed exemption is entirely

proper, thus finds no home in the text of the Code or Rules.

In this case, there was nothing objectionable about Reilly's claimed $10,718 exemption in her kitchen equipment. Reilly has never suggested that there is any statutory basis for exempting her kitchen equipment "in kind." And there is not and never has been any reason to read her Schedule C to claim an entitlement to such an exemption. Rather, Reilly asserted an exemption in a $10,718 interest in that equipment. That assertion was proper. Reilly's interest in the equipment up to $1,850 could properly be exempted under the "tools of the trade" exemption of Section 522(d)(6), and the remaining $8,868 could properly be exempted under the wild-card exemption of Section 522(d)(5). Schwab accordingly had no reason to object to the list of property Reilly claimed as exempt, and nothing in the Bankruptcy Code or Rules required him to do so to preserve his ability to distribute to creditors amounts in excess of the $10,718 exemption that the statute permitted and that Reilly claimed.

Section 522(*l*) of the Bankruptcy Code and Federal Rule of Bankruptcy Procedure 4003 govern the process through which a debtor claims exemptions and parties in interest, including the Chapter 7 trustee, may object to the claimed exemptions. Section 522(*l*) requires the debtor to "file a list of property that the debtor claims as exempt." Rule 4003(a) makes clear that Schedule C contains that list by requiring the debtor to "list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007." Rule 1007(b), in turn, requires the debtor to file schedules of assets and liabilities "prepared as prescribed by the appropriate Official Forms."

Rule 4003 sets out the procedure and deadlines for objections to a debtor's claimed exemptions, providing that "[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," and that the deadline may be extended for cause on a party's timely motion. Fed. R. Bankr. P. 4003(b). "After hearing on notice, the court shall determine the issues presented by the objections," and "the objecting party has the burden of proving that the exemptions are not properly claimed." *Id.* 4003(c).

Under the statute, if no objection is filed, "the property claimed as exempt" on Schedule C "is exempt." 11 U.S.C. § 522(*l*). Here, all parties agree that no objection was filed. Any property claimed as exempt on Schedule C, therefore, is exempt. The only question, then, is the extent of Reilly's claimed exemption on Schedule C. And the answer to that appears on the face of Reilly's Schedule C itself: Reilly "claimed as exempt" a $10,718 interest in her kitchen equipment. That $10,718 interest became exempt when no one objected. But it does not follow that because no one objected, Reilly was entitled to exempt a greater interest than Section 522(d) permitted, and a greater interest than she had in fact claimed.

Reilly's contrary argument, and the argument adopted by the Third Circuit, runs as follows: because Reilly listed the same amount—$10,718—in both the column headed "Value of Claimed Exemption" and the column headed "Current Market Value of Property," Schwab should have been on notice that she was claiming as exempt the entire value of her kitchen equipment, whatever that value turned out to be. But that is

wrong. It simply does not follow that, because Reilly listed the same value for her equipment and her claimed exemption, she was claiming an exemption in the full value of the equipment (regardless of its actual value), and the court of appeals offered no explanation for that conclusion. To be sure, Reilly's Schedule C did suggest that—if it ultimately turned out that her kitchen equipment was in fact worth only $10,718—all of that value would be exempt. But the form nowhere indicates that Reilly was claiming that the equipment was exempt "in kind"—that she was entitled to exempt the entire asset regardless of what its actual value turned out to be. To the contrary, Reilly clearly and unequivocally stated that the "value of [her] claimed exemption" was $10,718—an amount the statute permitted her to exempt.

Indeed, reading Reilly's schedule as the court of appeals did runs contrary to the common-sense presumption that parties act in accordance with the law. In cases like this, where the claimed exemption is subject to a statutory cap, the debtor is legally entitled to claim only that amount as exempt. When a debtor specifies that she is claiming an exemption within the amount of the statutory cap, the natural conclusion is that the debtor is claiming an exemption only to the extent permitted by law, and not some greater exemption that would be legally impermissible. *Cf., e.g., Walsh* v. *Schlecht*, 429 U.S. 401, 408 (1977) ("Since a general rule of construction presumes the legality and enforceability of contracts, ambiguously worded contracts should not be interpreted to render them illegal and unenforceable where the wording lends itself to a logically acceptable construction that renders them legal and enforceable." (citation omitted)). Moreover, even if Reilly's Schedule C were viewed as being ambiguous on that score—and

it is difficult to see what might be ambiguous about Reilly's claim that she had a $10,718 exemption in her kitchen equipment—such an ambiguity cannot be a basis for granting an "in kind" exemption. "[I]t is most fair to place on the debtor the burden of claiming exemptions unambiguously," both because "in legal documents ambiguity is traditionally construed against the drafter," and because, "after *Taylor*, a failure to object to a claimed exemption has very harsh consequences for the estate." *In re Barroso-Herrans*, 524 F.3d 341, 345 (1st Cir. 2008).[9]

By its plain terms, Rule 4003(b) requires a trustee to object only to a debtor's claim of exemption—not her asserted valuation, which by definition cannot be ascertained until a purchase price is negotiated with a willing buyer. *See In re Hyman*, 967 F.2d 1316, 1320 (9th Cir. 1992) (an asset sale can be "a relatively complex financial transaction and the trustee cannot be certain

[9] *See also In re Hyman*, 967 F.2d 1316, 1320 n.6 (9th Cir. 1992) ("Given that the debtor controls the schedules, we construe any ambiguity therein against him."); *In re Mitchell*, 400 B.R. 503, 509 (Bankr. N.D. W. Va. 2009) (debtor did not put trustee "on notice that she was claiming property as wholly exempt by equating the value of her property and her claim of exemption when the claim of exemption is proper and below the statutory cap [because] it is the Debtor's burden to unambiguously claim an exemption"). Insofar as the debtor's claim of exemption contained on Schedule C may be analogized to a complaint asserting a claim for relief (here, a determination that the debtor's interest in certain property is exempt under 11 U.S.C. § 522), this Court's decision in *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544 (2007), suggests that a debtor claiming that an item of property is exempt "in kind" must make that assertion with "enough heft" to make it clear—not merely assert facts that would be "consistent with" an "in kind" exemption. *Id.* at 557.

of what he will reap until he has taken bids on the property"). For that reason, the court of appeals was off the mark in asserting that "[o]nce the period for objection lapses, all parties involved know what property belongs to the bankruptcy estate and what remains with the debtor." Pet. App. 16a. To be sure, Reilly was entitled to know upon the expiration of the deadline that she was entitled to keep her interest—to the extent of $10,718—in her kitchen equipment. But nothing in the statute or the Rule entitled her to know at that time whether her interest would ultimately be returned to her in the form of the equipment itself or in the form of cash, a matter that cannot be resolved, and that the statute and Rule do not require to be resolved, until the trustee seeks to sell the underlying asset.

The court of appeals thus erred in extending the rule beyond the subject to which its text is addressed—the list of property that the debtor claims as exempt—to require the trustee to object to the debtor's valuation of her assets.[10] In short, because Schwab had no

[10] Because the only question presented in this case is whether Reilly's claim of exemption, as set forth on her Schedule C, is limited to a $10,718 interest in her kitchen equipment, this case can and should be fully resolved simply by examining the exemption Reilly claimed on Schedule C. Reilly's contention that because she "sought to exempt [the] full value" of her equipment (Opp. 15), she is now entitled to an "in kind" exemption, thus invites a wholly irrelevant inquiry into her subjective intent at the time she filed that schedule. Even if such an inquiry were appropriate, however, it would not further Reilly's cause. Specifically, Reilly's Schedule C does not allocate her entire wild-card exemption to her kitchen equipment. Rather, she expressly allocates $2,332 in value to other property. JA 57a-58a. The only logical conclusion, therefore, is that Reilly made a specific determination to claim a monetary exemption in her kitchen equipment that was limited to $10,718. In addition, Reilly's motion to dismiss her bankruptcy case further

objection to the "list of property" Reilly "claimed as exempt," Fed. R. Bankr. P. 4003, neither the statute nor the rules required him to assert any objection to that list within the 30-day period in order to preserve his ability to distribute excess value to creditors.

B. *Taylor* v. *Freeland & Kronz* Does Not Support The Court Of Appeals' Holding

Nothing in this Court's decision in *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), supports a contrary conclusion. *Taylor* is readily distinguishable, standing for the unremarkable proposition that a trustee is required to file a timely objection in circumstances in which the debtor's claimed exemption is *improper*. The court of appeals' belief that *Taylor* dictates the outcome of this case—where the debtor's claimed exemption was *proper*—rests on a significant misunderstanding of the facts and reasoning of *Taylor*.

The debtor in *Taylor* filed a Chapter 7 bankruptcy petition in 1984, while she was pursuing a discrimination suit against her employer, Trans World Airlines. In her Schedule B-4 (the predecessor to Schedule C), the debtor claimed an exemption in the proceeds of her lawsuit and listed the value of the claimed exemption as "unknown." 503 U.S. at 640. At the Section 341 meeting, debtor's counsel in the discrimination suit told the trustee that they estimated the debtor might recover $90,000 in the lawsuit. *Id.* The trustee then wrote to

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confirms Reilly's recognition that her claim of exemption in her kitchen equipment was not an "in kind" exemption—rather, it was subject to a $10,718 monetary cap. JA 137a ("it was determined [at Reilly's Section 341 creditors' meeting] that the debtor is not entitled to a full exemption in her tools of the trade/personal property in reference to her business equipment").

debtor's counsel saying that he believed the proceeds of the suit were non-exempt property of the estate, and asked for more details about the suit. *Id.* In response, debtor's counsel "expressed optimism that they might settle with TWA for $110,000." *Id.* The trustee nonetheless "decided not to object to the claimed exemption," because he "doubted that the lawsuit had any value." *Id.* at 641. He was wrong; the debtor ultimately settled with TWA for $110,000, part of which went to debtor's counsel. *Id.* The trustee then sued the debtor's counsel to recover the money they had received, arguing that it was property of the estate. *Id.*

This Court held that the trustee had waited too long to assert that the proceeds of the lawsuit were estate property, and that he should have objected to the debtor's claimed exemption within the deadline set by Rule 4003. 503 U.S. at 642. Both parties agreed that the Bankruptcy Code did not permit the debtor to claim the exemption. *See id.* The parties did not contest that the debtor's schedules constituted a claim of exemption in all of the proceeds of her lawsuit. *See* Pet. Br. 20, 30-32, *Taylor* v. *Freeland & Kronz*, No. 91-571 (U.S.). In contending that the proceeds of the lawsuit should not be exempt, notwithstanding his failure to assert a timely objection, the trustee argued that "courts may invalidate a claimed exemption after expiration of the 30-day period if the debtor did not have a good-faith or reasonably disputable basis for claiming it." 503 U.S. at 643. This Court rejected that argument, reasoning that "Rule 4003(b) gives the trustee … 30 days from the initial creditors' meeting to object. … The Bankruptcy Court did not extend the 30-day period. Section 522(*l*) therefore has made the property exempt." *Id.*

The court of appeals here concluded that "this case [is] controlled by *Taylor*" because it believed *Taylor* presented the same facts:

> Just as we perceive it was important to the *Taylor* Court that the debtor meant to exempt the full amount of the property by listing "unknown" as both the value of the property and the value of the exemption, it is important to us that Reilly valued the business equipment at $10,718 and claimed an exemption in the same amount. Such an identical listing put Schwab on notice that Reilly intended to exempt the property fully.

Pet. App. 11a; *see also* Pet. App. 14a ("[W]e read *Taylor* to mean that, where the debtor signals her intention to exempt certain property in its entirety by listing an identical entry for the property's value and the amount of the exemption, the trustee must object pursuant to Rule 4003 lest the property be rendered fully exempt."). But this reading of *Taylor*, simply put, is incorrect.

Contrary to the court of appeals' belief, *Taylor* never mentioned—let alone deemed it "important"—that "the debtor … list[ed] 'unknown' as both the value of the property and the value of the exemption." Pet. App. 11a. Indeed, in 1984, when the debtor in *Taylor* filed for bankruptcy, the schedule on which the debtor listed her exemptions did not contain a column requiring the debtor to list the value of the property. It required the debtor only to list the value of the *exemption*. The column that appears on the 2005 form used by Reilly, asking the debtor to list "the current market value of the property," was added to the form only in 1991. *See* Fed. R. Bankr. P. Form 6 advisory commit-

tee note (1991 enactment) ("[Schedule C] adds a new requirement that the debtor state the market value of the property in addition to the amount claimed as exempt."); *see also* Fed. R. Bankr. P. Form 6, Schedule B-4 (1990) (requiring the debtor to list only the "value claimed exempt"); Joint Appendix 18, *Taylor* v. *Freeland & Kronz*, No. 91-571 (U.S.) (reproducing schedule filed by debtor in *Taylor*).[11]

More fundamentally, there was no dispute in *Taylor* that the debtor's schedules clearly indicated that she was claiming as exempt the entire proceeds of her lawsuit, and no dispute that the exemption was objectionable on its face. The only dispute was over whether the trustee was required to object to that claimed exemption within the 30-day period set out by Rule 4003, or whether there was an exception to the 30-day deadline for cases in which the debtor lacked a colorable basis for claiming the exemption. *See* 503 U.S. at 642-643; *see also, e.g., Barroso-Herrans*, 524 F.3d at 344 ("*Taylor* does not tell us *what* has been claimed as exempt—only that *whatever* has been claimed as exempt is beyond the estate's grasp once the deadline has elapsed").

Accordingly, the basic premise of the court of appeals' decision—that *Taylor* involved facts similar to those here and thus controls the outcome of this case—is wrong. *Taylor* has no bearing on this case. It has

[11] At the time of *Taylor*, the debtor was required to list the value of the property itself on the schedule that was the predecessor to the current Schedule B—then Schedule B-2—on which the debtor was required to estimate the value of all of her assets. *See* Fed. R. Bankr. P. Form 6, Schedule B-2 (1990). That schedule, however, was not part of the "list of property claimed as exempt" within the meaning of Rule 4003(a).

nothing to say regarding the import of the debtor's providing, in her list of exemptions, the same amount for the value of a claimed exemption and the value of the property—because that did not occur in *Taylor*. Indeed, the debtor in *Taylor* provided no value at all for the claimed exemption, listing it as "unknown"—an exemption that was objectionable on its face. And *Taylor* does not—nor could it—address the question whether a trustee's failure to object to the list of property the debtor claimed as exempt precludes the trustee from liquidating and distributing to creditors property exceeding the amount the debtor specifically claimed as exempt.

The only reasonable, common-sense answer to that question—and the only answer that comports with the language of the statute and the Rule—is no. Because the statute and the Rule require the trustee only to object to "the list of property claimed as exempt," Fed. R. Bankr. P. 4003(b), and because failure to object results only in "the property claimed as exempt on such list" becoming exempt, 11 U.S.C. § 522(*l*), a party in interest is not required—under either the statute, the Rule, or this Court's decision in *Taylor*—to object when "the property claimed as exempt" is properly exempted under the statute. And the consequence of a failure to object is that the debtor receives an exemption *only* in the amount of the interest she specifically claimed as exempt, not some greater interest that the debtor's schedule did not claim and that there would be no basis to claim.

II. THE RULE ADOPTED BY THE COURT OF APPEALS WOULD BE UNWORKABLE IN PRACTICE AND WOULD ENCOURAGE GAMESMANSHIP BY DEBTORS

In addition to resting on an untenable interpretation of the statutory scheme and this Court's decision in *Taylor*, the rule adopted by the court of appeals would impose an unnecessary and unworkable burden on already overloaded bankruptcy trustees.

The principal work of a Chapter 7 trustee is determining whether there is sufficient value in the debtor's property to justify liquidation. The trustee begins that process with only the debtor's description of the property and estimate of the property's value as provided in the debtor's schedules. Unless and until the trustee is able to inspect the debtor's property himself or arrange for an appraisal, or until he receives further information from a creditor or another third party, he has no way to know whether the debtor's estimate is reliable. And, even where the trustee does acquire some additional indication of the property's value beyond the debtor's bare assertion on her schedules, the true "value" of the property—and the only value that matters for liquidation purposes—cannot be determined until the property is sold. Unlike the determination of whether there is a proper legal basis for a claimed exemption, which can typically be ascertained simply by comparing the debtor's Schedule C to the text of the Bankruptcy Code, the sale of property is often "a relatively complex financial transaction and the trustee cannot be certain of what he will reap until he has taken bids on the property." *Hyman*, 967 F.2d at 1320. For valuation purposes, "the relevant figure is the actual sale price of the property, not the value of the property listed by the debtor on his schedule of assets." *Id.* at 1320 n.9.

The court of appeals' rule, however, requires the trustee to value property in which the debtor claims an exempt interest at the very beginning of the bankruptcy process. Because Rule 4003(b) requires objections to the debtor's claimed exemptions within 30 days of the Section 341 creditors' meeting, and Rule 2003(a) requires the Section 341 meeting to be held between 20 and 40 days after the debtor files her petition, the trustee has only 50 to 70 days to value such property. Cases in which there are assets to administer, however, can take "one to four years" to complete. U.S. Dep't of Justice, U.S. Trustee Program, *Preliminary Report on Chapter 7 Asset Cases 1994 to 2000*, at 7 (June 2001). Accordingly, in the cases where valuation matters most, the court of appeals' rule would force the trustee to make valuation decisions that have permanent consequences in the nascent stages of the bankruptcy, when full information about the property's value is often lacking.

Aside from the difficulties that attend valuation decisions under ideal conditions, Chapter 7 trustees do not practice under ideal conditions. There are approximately 1,140 Chapter 7 trustees nationwide.[12] In the 12-month period ending March 31, 2009, there were

[12] *See* U.S. Dep't of Justice, Office of the Inspector General, *The United States Trustee Program's Oversight of Chapter 7 Panel Trustees and Debtors*, at i (Mar. 2008) ("As of June 2007, there were 1,140 Chapter 7 panel trustees operating nationwide, who processed a total of 484,162 Chapter 7 filings. Annually, Chapter 7 panel trustees are responsible for collecting over $2.7 billion in funds through the liquidation of debtors' estates, and distributing those funds to creditors, in accordance with the Bankruptcy Code."), *available at* http://www.usdoj.gov/oig/reports/OBD/a0819/final.pdf.

819,362 Chapter 7 filings—an average of approximately 719 cases per trustee.[13] That heavy case load makes it impracticable for trustees to value every item of property in which a debtor claims an exempt interest on the expedited schedule required by the court of appeals. Nor do trustees usually have the financial resources to outsource the investigatory work. In the vast majority of cases—no-asset cases—the trustee's compensation is limited to $60. *See* 11 U.S.C. § 330(b). Trustees simply do not have the time or resources to make complex factual judgments about value within the narrow time frame that the court of appeals' rule would demand.

Although, as *Taylor* recognized, Rule 4003 allows a trustee to request an extension of time to object or a hearing on a debtor's valuation of property, *see* 503 U.S. at 644; Fed. R. Bankr. P. 4003, widespread resort to those remedies would simply exacerbate the inefficiencies created by the court of appeals' rule by unnecessarily requiring bankruptcy courts routinely to address valuation questions in the early stages of the case, when they might never need to be addressed at all. As one bankruptcy court explained, a requirement that trustees object to the debtor's valuation of property in which an exempt interest is claimed

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[13] *See* Admin. Office of the U.S. Courts, *Business and Nonbusiness Bankruptcy Cases Commenced, by Chapter of the Bankruptcy Code, During the Twelve Month Period Ending Mar. 31, 2009*, *available at* http://www.uscourts.gov/Press_Releases/2009/bankrupt_f2table_mar2009.pdf; *see also* Admin. Office of the U.S. Courts, *Judicial Business of the United States Courts* 26 (2008) ("Chapter 7 filings rose 40 percent to 679,982 in 2008, climbing in 90 of the 94 districts."), *available at* http://www.uscourts.gov/judbus2008/JudcialBusinespdfversion.pdf.

> may result in thousands of otherwise unnecessary objections to exemptions. Some trustees may feel compelled to object to exemptions when it is then impossible to determine the actual *value* of property. Alternatively, it may be necessary to file a multitude of motions to request additional time to file objections to scheduled value. Each motion will require some justification with stated reasons. Each motion will require notice and opportunity to be heard or an actual hearing. Each motion will require an attendant order which grants or denies the requested relief.

In re Cormier, 382 B.R. 377, 398 n.31 (Bankr. W.D. Mich. 2008). Rather than reading the statute and the Rule to require trustees to file omnibus extension or valuation motions, and courts to decide such matters, in every situation like this one, it is more sensible to read them to mean what they say—that a trustee must object only when he takes issue with the "list of property claimed as exempt," not when he agrees that the claimed exemption is proper but is unsure whether the debtor's valuation of the property is correct. *Cf.* Fed. R. Bankr. P. 1001 (bankruptcy rules "shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding"); *In re Wick*, 276 F.3d 412, 417 (8th Cir. 2002) ("We do not think that the Bankruptcy Code and Rules oblige a trustee to object every time a debtor partially exempts an asset in order to preserve the estate's interest. [If such objections were required], objections would multiply greatly [and] the judge would have nothing to determine after the objections, except that the debtor is exempting the asset to the extent the Code allows—a result that is clear from the face of the exemption schedule and § 522.").

In addition to burdening trustees and courts unnecessarily, the court of appeals' rule would give debtors a perverse incentive to game the system by undervaluing their assets, and grant dishonest (or mistaken) debtors a windfall that more honest or diligent debtors would not receive. In this case, for example, if Reilly had correctly listed the value of the kitchen equipment as approximately $17,000, she would have had no basis to object to the trustee's selling the equipment and distributing the value above $10,718 to her creditors. Yet, under the court of appeals' rule, because Reilly incorrectly undervalued her kitchen equipment, she is entitled to exempt the equipment "in kind." And, under that rule, any debtor would be able to obtain the same benefit simply by listing the same value for a claimed exemption and the property in which she claims an exempt interest.

To be sure, as this Court recognized in *Taylor*, the Bankruptcy Code provides "penalties under various provisions for engaging in improper conduct in bankruptcy proceedings." 503 U.S. at 644. But the court of appeals' rule would nonetheless "provide an incentive for savvy (or less than candid) debtors to purposely underestimate the fair market value of the property in the hope that a trustee would fail to object and then be prevented from subsequently administering the property on behalf of the estate." *In re Einkorn*, 330 B.R. 570, 572 (Bankr. E.D. Mich. 2005) (citation and internal quotation marks omitted). The Bankruptcy Code and Rules should not be interpreted to produce such inequitable and anomalous results.

CONCLUSION

For the foregoing reasons, the judgment of the Third Circuit should be reversed.

Respectfully submitted.

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STATUTORY APPENDIX

11 U.S.C. § 522 (2005)—Exemptions

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;

(2) a debt secured by a lien that is

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title;

(B) a tax lien, notice of which is properly filed; or

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory

agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $18,450[1] 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 $2,950[1] in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $475[1] in value in any particular item or $9,850[1] 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 $1,225[1] 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 $975[1] plus up to $9,250[1] of

any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,850[1] 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 $9,850[1] 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 $18,450,[1] 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.

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt—

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, di-

vorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

(ii) to the extent that such debt—

(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.[2]; or

(B) a nonpossessory, nonpurchase-money security interest in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor—

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such

implements, professional books, tools of the trade, animals, and crops exceeds $5,000.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

> (1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and
>
> (2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(*l*) 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 be-

half of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

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[1] Dollar amount as adjusted by the Judicial Conference of the United States. *See* Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.

[2] So in original. Period probably should not appear.

Federal Rule of Bankruptcy Procedure 4003 (2005)—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) Objecting to a 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.