

From: Jed Berliner <jed@berlinerlaw.com>
To: Rules_Comments@ao.uscourts.gov
Date: 08/30/2011 04:27 PM
Subject: Proposed Amendment to Official Form 6C

Dear Committee:

I have two concerns with the proposed amendment to Official Form 6C.

My first concern is the limitation of "Full fair market value of the exempted property." The proposed Amendment's alternative will have a debtor exempt the full market value, far more than the equity, and likely force a debtor into choosing a state or federal exemption scheme unnecessarily. A debtor is only concerned with exempting equity of a home and has no need to exempt the full fair market value. *Schwab v. Reilly* dealt with unencumbered equipment and did not present this concern. I suggest allowing an alternative of claiming "100% of equity" for encumbered assets.

Secondly is the use of the interplay between 11 U.S.C. 522(d)(1) and 11 U.S.C. 522(d)(5). The debtor should state how much, if any, of 522(d)(5) is elected for application even under a "100%" exemption claim to assist a trustee and court in determining the propriety of claimed exemptions. I propose an opportunity to state a fixed 522(d)(5) amount without being bound by a fixed dollar amount for the overall exemption, allowing the exercise of the *Schwab v. Reilly* option for federally exempted residences.

I have attached a filed Amended Schedule C in a particular case where I am attempting to protect the debtor's *Schwab* opportunity under these issues. You will see that I stated the 522(d)(1) amount in the Description column but not in the Value of Claimed Exemption column. The trustee wants the 522(d)(1) amount stated in the Value of Claimed Exemption column, but I believe this will force a claim of a fixed dollar amount and defeat the *Schwab* opportunity. You will also see that I used the phrase "100% of Equity" and not "100% of FMV" because there is no need to exempt the encumbered amount of the home.

Both issues are being briefed for determination by the bankruptcy court.

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Jed

L. Jed Berliner, Esquire
Berliner Law Firm

95 State Street, Suite 1010, Springfield 01103-2081 (413) 788-9877



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From: Jed Berliner <jed@berlinerlaw.com>
To: Rules_Comments@ao.uscourts.gov
Date: 08/31/2011 09:20 AM
Subject: Fwd: Proposed Amendment to Official Form 6C

Dear Committee:

My previous communication, below, violated one of your cardinal rules by raising concerns without proposing remedies.

My first concern was 100% of equity rather than 100% of market value. At first blush, the Committee may believe that this is a proposal which goes beyond the Supreme Court's "market value" wording. However, the Code states in one of two pertinent parts that the "property" which a debtor may exempt is actually the debtor's interest in the property to be exempted. Consider 522(b)(2)'s reference to 522(d)'s list of the federal exemption subsections, with each subsection addressing "the debtor's interest" in the designated property. This allows me to suggest that the addition to Schedule C should be "100% of market value of debtor's interest" as being consistent with both the Court and the Code.

The alternative 522(b)(3)(A) for state exemptions reads differently. It states "property" and not the debtor's interest in property. However, I believe that no interest is ever served by a debtor exempting more than the debtor's interest in property, so I continue with my suggestion that Schedule C be amended to allow the election of an exemption of "100% of market value of debtor's interest".

My second concern, first brought to my attention by the Chapter 13 trustee and the bankruptcy court, is that of needing to state the amount of the 522(d)(1) and 522(d)(5) amounts implicated in a 100% election. This could be achieved by changing the one of the column headings of Schedule C from "Specify Law Providing Each Exemption" to "Specify Law Providing Each Exemption, and Applicable Amount if Not Fixed". I believe that a debtor could state 522(d)(1) and 522(d)(5) amounts here without affecting a 100% election under the "Value of Claimed Exemption" column.

Thanks for your attention.

Jed
L. Jed Berliner, Esquire

B6C (Official Form 6C) (4/10)

In re **Adrian Gerald Luckham,
Karola Elvira Durette-Luckham**

Case No. **10-32633**

Debtors

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT - AMENDED

Debtor claims the exemptions to which debtor is entitled under:
(Check one box)

- 11 U.S.C. §522(b)(2)
- 11 U.S.C. §522(b)(3)

Check if debtor claims a homestead exemption that exceeds \$146,450. (Amount subject to adjustment on 4/1/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
Real Property			
68 Warregan Street, Chicopee, MA; purchased 08/1998 for \$98,800.00; 08/11/98 Homestead attached; City of Chicopee assessment at \$167,400; 11/18/10 Broker Price Opinion at \$140,000.00; debtors' opinion of value stated. (dollar figure of claimed (d)(1) exemption is \$21,600.00)	11 U.S.C. § 522(d)(1) per Schwab v Reilly, 130 S.Ct 2652, 2668 (2010)	100% of Equity	185,000.00
Cash on Hand			
Cash on hand as of 12/30/10.	11 U.S.C. § 522(d)(5)	100.00	32.63
Checking, Savings, or Other Financial Accounts, Certificates of Deposit			
TD Bank checking as of 12/30/10.	11 U.S.C. § 522(d)(5)	1,000.00	146.36
TD Bank checking as of 12/30/10.	11 U.S.C. § 522(d)(5)	4,000.00	582.34
TD Bank savings as of 12/30/10.	11 U.S.C. § 522(d)(5)	400.00	296.24
Household Goods and Furnishings			
Miscellaneous items under \$525 each.	11 U.S.C. § 522(d)(3)	11,500.00	2,000.00
Books, Pictures and Other Art Objects; Collectibles			
Miscellaneous items under \$525 each.	11 U.S.C. § 522(d)(3)	4,600.00	350.00
Wearing Apparel			
Miscellaneous items under \$525 each.	11 U.S.C. § 522(d)(3)	6,950.00	250.00
Furs and Jewelry			
Miscellaneous items under \$525 each.	11 U.S.C. § 522(d)(4)	2,900.00	1,000.00
Firearms and Sports, Photographic and Other Hobby Equipment			
Smith & Wesson 9mm	11 U.S.C. § 522(d)(5)	150.00	150.00
22 automatic	11 U.S.C. § 522(d)(5)	150.00	150.00
Walther 9mm	11 U.S.C. § 522(d)(5)	120.00	120.00
380 automatic	11 U.S.C. § 522(d)(5)	150.00	150.00
Interests in Insurance Policies			
Debtor interest in Primerica term life insurance policy.	11 U.S.C. § 522(d)(7)	100%	Undetermined
Interests in IRA, ERISA, Keogh, or Other Pension or Profit Sharing Plans			
TIAA/CREF as of 12/31/10: Center For Human Development DC Retirement Plan and Center For Human Development TDA; fully excluded or exempt under appl non-bankruptcy law.	11 U.S.C. § 522(d)(10)(E) 11 U.S.C. § 522(d)(12) 29 U.S.C.A. § 1056(d)	100% 100% 100%	1,929.46

B6C (Official Form 6C) (4/10) -- Cont.

In re **Adrian Gerald Luckham,
Karola Elvira Durette-Luckham**

Case No. **10-32633**

Debtors

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT - AMENDED

(Continuation Sheet)

Description of Property	Specify Law Providing Each Exemption	Value of Claimed Exemption	Current Value of Property Without Deducting Exemption
Ivey Industries, Inc. Profit Sharing Plan as of 12/31/09; fully excluded or exempt under appl non-bankruptcy law.	11 U.S.C. § 522(d)(10)(E) 11 U.S.C. § 522(d)(12) 29 U.S.C.A. § 1056(d)	100% 100% 100%	20,977.49
Other Liquidated Debts Owing Debtor Including Tax Refund			
Possible 2010 tax refs/ EIC's (\$1,724 received for 2009).	11 U.S.C. § 522(d)(5)	1,730.00	Undetermined
Other Contingent and Unliquidated Claims of Every Nature			
Possible claim against Debt Settlement USA; Monthly payments of \$750.12 from 11/08-12/09, two credit cards settled, one by debtor-wife.	11 U.S.C. § 522(d)(5)	2,020.00	Undetermined
Automobiles, Trucks, Trailers, and Other Vehicles			
2008 Honda Accord EX; purchased 2004 for \$18,000.00; approx 44,000 miles/good condition/kbb value as of 11/05/10 \$15,200.00.	11 U.S.C. § 522(d)(2)	0.00	15,200.00
2006 Hummer; purchased 2005 for \$36,000.00; approx 49,000 miles/good condition/ kbb value as of 11/05/10 \$15,175.00.	11 U.S.C. § 522(d)(2) 11 U.S.C. § 522(d)(5)	3,450.00 6,635.00	15,175.00
2003 Honda GL1800A Gold Wing	11 U.S.C. § 522(d)(2) 11 U.S.C. § 522(d)(5)	3,450.00 5,370.00	8,820.00
1969 Trailer; debtor's opinion of value; no related debt.	11 U.S.C. § 522(d)(5)	100.00	100.00
2008 Utility Trailer; debtor's opinion of value stated; no related debt.	11 U.S.C. § 522(d)(5)	500.00	500.00
Boats, Motors and Accessories			
1990 Renlau boat & trailer; purchased 2008 for \$800.00; debtor's opinion of value stated; no related debt.	11 U.S.C. § 522(d)(5)	1,500.00	1,500.00

Total: **147,095.85** **254,429.52**

**United States Bankruptcy Court
District of Massachusetts, Western Division**

In re **Adrian Gerald Luckham
Karola Elvira Durette-Luckham**

Debtor(s)

Case No. **10-32633**

Chapter **13**

**AMENDED
DECLARATION CONCERNING DEBTOR'S SCHEDULES**

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing Schedule C, consisting of 2 page(s), and that they are true and correct to the best of my knowledge, information, and belief.

Date April 19, 2011

Signature /s/ Adrian Gerald Luckham
Adrian Gerald Luckham
Debtor

Date April 19, 2011

Signature /s/ Karola Elvira Durette-Luckham
Karola Elvira Durette-Luckham
Joint Debtor

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

Certificate of Service

The undersigned certifies that this document was filed with the Court in a manner appropriate for automated service of true electronic images to all ECF Registrants in this Case or Proceeding, including the Case Trustee and the U.S. Trustee, at their registered electronic addresses.

Date: April 22, 2011

/s/ Jed Berliner
L. Jed Berliner