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Date: 08/30/2011 07:09 PM  
Subject: Comments on proposed change to Form 6C

I suggest that the revised Schedule C should provide both a way to incorporate one of the two red-flag signals approved by the Court in Schwab and a way to indicate the amount of equity that the debtor believes is exempt. According to Collier's, these signals are available only when debtors have "a good faith basis to claim that the value of [their] interest in the asset does not exceed the dollar amount cap for the available exemption." 4 Collier on Bankruptcy § 522.05[2][d] (A. Resnick & H. Sommer 16th ed.) In order that trustees be able to see, without consulting other schedules, that such is the case, Schedule C should continue to provide for stating an exemption value.

While there are doubtless many ways to accomplish both goals, one simple way is as follows: change the caption of the fourth column to read "Current Value of Debtor(s)' Interest", and add a fifth column to receive a check mark, or a "Y", if the debtor claims 100% of that value as exempt. Column 3 would continue to contain the amount to be charged against the cap(s) for the exemption(s) identified in the second column.

Use of the word "property" in the current fourth column has no clear referent in the Code. All clauses of subsection 541(a) except (6) state that the debtor's INTEREST in property becomes part of the estate. The value that goes in current column 4 is apparently the market value of the property, which bears no obvious relationship to the equity that a debtor may exempt if the property itself is subject to a lien or if the debtor has only a partial ownership interest.

Instructions to the form should clarify (unless the point is obvious) that "100% of FMV" or "full fair market value (FMV)" refers to the market value of the debtor's equity rather than to the value of the property itself. The Chapter 13 Trustees in my district have interpreted the phrase literally to mean the latter rather than the former, and have objected to full-value exemptions on that basis.

These changes to form 6C will easily permit debtors to accept the Court's invitation to use one of two red-flag phrases when "it is important to the debtor to exempt the full market value of the asset or the asset itself." They will also make it easier than at present for trustees to evaluate the debtor's exemption claims without reference to other schedules.

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