

1 THE COURT: Thank you, ladies and
2 gentlemen. Please be seated.

3 All right. Let me deal with the exemption ruling
4 first.

5 For purposes of the record, ladies and gentlemen,
6 on February the 15th of this year -- Hang on one
7 second, please.

8 On February 15th of this year, I entertained
9 objections to exemptions both by the Chapter 7
10 trustee, Mr. Studensky, and also the Chapter 13
11 trustee, Mr. Hendren. And while the -- I think it's
12 safe to say, notwithstanding the particular uniqueness
13 of each case, the objections that were raised to the
14 exemptions are of similar vein.

15 What I'm going to do is, first of all -- And none
16 of this is contested. None of the parties have
17 contested this Court's jurisdiction. The Court would
18 find the Court does have jurisdiction over these
19 matters, that an objection to exemption is a core
20 proceeding, these matters are referred to this Court
21 under the District's standing order of reference, and
22 that venue is proper under section 1408(1) of Title 28.

23 As I've indicated, both the Chapter 7 and --

24 Oh, one other thing. I'm sorry. Forgive me.

25 Inasmuch as this is also deemed a contested

1 matter under 9014, it's appropriate for the Court to
2 issue oral findings of fact and conclusions of law, as
3 allowed by Bankruptcy Rule of Procedure 7052.

4 As I've indicated, both the Chapter 7 and
5 Chapter 13 trustees object to the Debtors' use of
6 federal exemptions under 11 USC Section 521(d)(1)
7 through (d)(6). The Debtors assert that listing
8 one hundred percent of fair market value, one hundred
9 percent FMV, comports with the Supreme Court's ruling
10 in Schwab v. Reilly, found at 130 Supreme Court 2652,
11 2010.

12 Further, Debtors' attorneys assert that it would
13 be malpractice not to use the hundred percent fair
14 market value as the Supreme Court commands.
15 Nonetheless, Debtors state that upgrades to software
16 allow them to include numeric amounts with the hundred
17 percent fair market value designation, which was
18 discussed and acknowledged on the record earlier
19 today.

20 The trustees posit the following arguments.
21 And I'm going to go by each case.

22 In the Paige case, Case Number 10-61351, which
23 is a Chapter 13 case, in that case the Debtors elected
24 federal exemptions under 522(b)(2), argued that
25 without -- The trustee argued that without a specific

1 number reference, the trustee cannot tell if the
2 Debtors exceed the dollar limitations under 522(d).
3 The trustee in that case was requesting a finite
4 dollar amount. The Debtors, in response, indicated
5 that the trustee fails to identify which property he
6 thought might be -- exceed the designated dollar
7 limitation, and, moreover, the trustee can simply
8 refer to Schedules A and B for the dollar number.

9 In Seibel, Case Number 10-61381, also a
10 Chapter 13 case, the same arguments were advanced by
11 both the trustee and Debtor's counsel.

12 In Vehawn, Case Number 10-61404, which is a
13 Chapter 7 case, it was the trustee's contention that
14 using one hundred percent of fair market value
15 potentially allows debtors to exempt more value in
16 property than is allowed by the exemption; debtor only
17 allowed to claim certain dollar amounts, and not the
18 asset, itself. Furthermore, it was the contention of
19 the Chapter 7 trustee that market value can fluctuate
20 over time. The Debtors in that matter offered to file
21 an amended Schedule C with specific numbers, which
22 should make the objection moot. That was the
23 contention of Debtors' counsel.

24 In the Louis case, Case Number 10-61405, also a
25 Chapter 13 case, the same arguments were raised as

1 were in the Paige and Seibel cases. But also there
2 was an objection to Schedule C -- excuse me -- an
3 objection to sample Schedule C, to the extent that the
4 values exceed the numeric exemption limits under
5 522(d)(1).

6 In Dominguez, Case Number 10-61416, a Chapter 7
7 case, the trustee contended that the use of one
8 hundred percent of fair market is impermissible
9 because federal exemptions have a cap. The trustee in
10 that case asserted the Debtors are limited to a
11 certain dollar interest in an asset, not the entire
12 asset, itself. In response, the Debtors' counsel
13 filed a general denial in opposition.

14 In Case Number 10-61427, Monfreda, also a
15 Chapter 7 case, the same arguments that were made in
16 Dominguez were made in that case, as well.

17 At oral argument on February 15th of 2011, it
18 was -- the discussion was that one hundred percent of
19 fair market value designation encourages the trustee
20 to object promptly. Debtors using federal
21 exemptions can only exempt an interest dollar amount
22 in an asset, and it was the trustees' contention that
23 there must be the use of a dollar limit. It was
24 further the contention of the trustees that one
25 hundred percent of fair market value is the equivalent

1 of unknown. There was also the argument that the fair
2 market value changes over time, and that the argument
3 should be limited to whether it's a cap on the
4 exemption.

5 It was the Debtors' belief that the use of
6 one hundred percent of fair market value encourages
7 trustees to make prompt objections. It also was the
8 contention of Debtors' counsel that it would be
9 malpractice not to use one hundred percent of fair
10 market value. Nonetheless, at the time at which this
11 argument was being made, Debtors' counsel did make the
12 observation, and the offer, as I understood it, that
13 they now can include a dollar limitation.

14 The Court was invited to look at the, I'll call
15 order, in the Moore and Wilson decisions from the
16 Bankruptcy Court, Northern District of Texas, Fort
17 Worth Division. Those were decisions by Judge Lynn
18 and Judge Nelms.

19 As everyone knows, in Schwab v. Reilly, 130
20 Supreme Court 2652, the Supreme Court unequivocally
21 says at least two things; it may say other things in
22 addition to that.

23 One, that one hundred percent of fair market
24 value on Schedule C is permissible and correct.

25 And, second, the trustee may not be bound by the

1 30-day objection period under Federal Rule of
2 Bankruptcy Procedure 4003(b).

3 Now, it was also commended for my attention --
4 Not surprisingly, when we get a decision like this, I
5 use the word "magnitude," scholarship comes out
6 immediately attacking or supporting the analysis by
7 the Supreme Court.

8 One of the things that was commended to my
9 attention, which I was aware of, being a member of the
10 ABI, was an ABI article from September of 2010, which
11 was published shortly after the Schwab decision was issued.

12 In that article, it was observed that the trustee
13 or a party in interest must object to the value
14 claimed as exempt as not being within the statutory limits
15 or that the value claimed is unknown.

16 The trustee only has to object within the 30-day
17 time period under Rule 4003, if, number one, the
18 description of the claimed property is not clear or is
19 lacking; two, the Code provision governing the claimed
20 exemption is not cited on Schedule C; or, three, the
21 amount listed in the column titled "Value of the
22 Claimed Exemption" is not particularly described.

23 Also offered for my consideration was an ABI Law
24 Review article from the Winter of 2010 that also talks
25 about the valuation process as it relates to the

1 Schwab v. Reilly decision.

2 There was also offered--and these are
3 authorities which I'm relying upon, ladies and
4 gentlemen--was the Messina decision that was offered
5 for this Court's consideration, I believe a Third
6 Circuit decision under July 2010, which generally
7 follows the proposition that one hundred percent of
8 fair market value is precisely what Debtors' counsel
9 should be doing in these circumstances.

10 What I don't know, and I apologize for not
11 following up on, is when Messina was decided, I think, at
12 the time that Schwab had come out, but when the
13 district court issued its opinion, it did not have the
14 benefit of the Schwab opinion.

15 So, I looked at In re. Moore and Wilson from the
16 Bankruptcy Court in the Northern District of Texas,
17 Fort Worth. And the judges in that division had the
18 following observations.

19 First of all, fair market value of one hundred
20 percent is the correct methodology. It puts the
21 trustee on notice to object within 30 days. Then
22 there can be an evidentiary hearing as to -- regarding
23 whether or not that's a fair exemption.

24 For purposes of the proceedings here in Waco, I
25 agree with that. I think that's exactly what the

1 Supreme Court requires.

2 Second, as to the discussion that we had on the
3 record today about whether or not debtors may use a
4 numeric amount for the interest claimed as an aid,
5 they are free to do that, but they are not required to
6 do that. And I will leave it up to them as to whether
7 or not they want to do it.

8 So, for purposes of my ruling today, based upon
9 my analysis of Schwab, and the limited case law
10 construction that's come out subsequent to that, and
11 the academic discussion, if you will, that relates to
12 it, I'm going to find that, per Schwab, debtors may
13 use the hundred percent of fair market value for
14 federal exemptions. If so, the trustee should object
15 within 30 days or the asset is going to be removed
16 from the estate.

17 Second, I would encourage, but not require,
18 debtors to use a numeric amount, which, in turn, would
19 tell the trustee of the amount of the interest in the
20 value of the asset being exempted. I'm not requiring
21 you to do that, but I'm suggesting you may want to
22 consider that.

23 Now, what is the consequence to the Court? Well,
24 the consequence to the Court is, in those situations
25 where the trustee thinks that the debtors may be

1 exempting -- when they use the designation of one
2 hundred percent of fair market value, that it may
3 exceed the amount of the interest in an asset, the
4 trustee is going to have to object, and I'll have to
5 conduct a hearing on it, and we'll find -- we'll
6 figure out how that plays out.

7 I recognize that, ultimately, it may increase the
8 litigation in this court. But, by the same token, I'm
9 of the opinion, and I think it's unequivocally clear,
10 that what debtors are doing in that consequence is
11 precisely what the Supreme Court ordered, and I'm not
12 going to alter their methodology in terms of claiming
13 it.

14 I apologize both to Mr. Hendren and Mr. Studensky
15 if it increases their workload. That is not my
16 intent. Rather, I'm complying with what the Supreme
17 Court commands.

18 So, for the purposes of all the matters that I
19 took under advisement, and today, to the extent that
20 the Debtors used one hundred percent of fair market
21 value, that's an appropriate exemption, and the
22 trustees' claims of exemptions are denied. All right?

23 All right. Thank you for staying around. I
24 think we only have one matter left, which is with
25 Mr. Montez. Is that correct? I see the courtroom

1 clearing, so I'll assume that --

2 COURTROOM DEPUTY: Are you going to stamp
3 all those denied?

4 THE COURT: I'm going to -- Thank you.
5 That's an excellent point. I'm going to stamp all
6 those claims to objections -- all the trustees'
7 objections to exemption as denied for the reasons
8 stated on the record.

9 All right. Thank you. You all -- You all may
10 be excused.

11 (Other matter taken up.)

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15 I, Court approved transcriber, certify that the
16 foregoing is a correct transcript from the official
17 electronic sound recording of the proceedings in the
above-entitled matter.

18 /s/ Darla Messina June 6, 2011
19 Signature of Approved Transcriber Date
20

21 Darla Messina
22 Typed or Printed Name
23
24
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