

COMMERCIAL LAW & BANKRUPTCY SECTION
TIP OF THE MONTH
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Last month, the U.S. Supreme Court handed down its decision in [*Schwab v. Reilly*](#), an important decision regarding how debtors may claim their bankruptcy exemptions. The *Schwab* decision deals with the language found in section 522(l) of the Bankruptcy Code and rule 4003(b) of the Federal Rules of Bankruptcy Procedure. *Schwab* is of great practical importance and could have had an effect on almost all consumer bankruptcies.

The facts in *Schwab* are relatively straightforward. The debtor had claimed an exemption of \$10,718 in cooking and other kitchen equipment described as “business equipment” and had listed that amount as the value of the equipment. The bankruptcy trustee did not object to the debtor’s claimed exemption of the business equipment within the thirty-day period set forth in F.R.B.P. 4003(b). The bankruptcy trustee, however, did have the business equipment appraised, and the appraisal revealed that the total market value of the business equipment could be as much as \$17,200. The trustee moved the Bankruptcy Court for permission to auction the equipment so the debtor could receive the \$10,718 she claimed as exempt, and the estate could distribute the equipment’s remaining value (approximately \$6,500) to the creditors.

The debtor responded by pointing out the trustee had missed the thirty-day deadline for objection to exemptions in F.R.B.P. 4003(b) and argued that by equating on Schedule C the total value of the exemptions she claimed in the equipment with the equipment’s estimated market value, she had put the trustee and her creditors on notice that she intended to exempt the equipment’s full market value, even if that amount turned out to be more than the dollar amount she declared, and more than the Bankruptcy Code allowed. The trustee argued that he was not objecting to the exemption but only its valuation, and therefore the deadline did not apply. The bankruptcy court, district court, and the United States Court of Appeals for the Third Circuit all held for the debtor. In a 6-3 vote, the Supreme Court reversed.

At the core of the dispute in *Schwab*, was whether the debtor exempted a specific dollar amount, \$10,718, or the full market value of the business equipment. The Court held that because the debtor gave the value of her claimed exemptions on Schedule C in dollar amounts within the range permitted by the Bankruptcy Code, the trustee was not required to object to the exemptions in order to preserve the estate’s right to retain any value in the business equipment beyond the value of the exempt interest.

The real impact of *Schwab* stems from the guidance the Court provided for future cases. The Court noted that, in the future, if a debtor wants to exempt the full market value of certain property rather than a specific dollar amount, then “the debtor [should] declare the value of her claimed exemption in a manner that makes the scope of the exemption clear, for example, by listing the exempt value as ‘full fair market value (FMV)’ or ‘100% of FMV.’”

The Court noted, by way of footnote, that Schedule C entries listing the value of a claimed exemption as “unknown,” “to be determined,” or “100%” are “red flags to trustees and

creditors,' and therefore put them on notice that if they do not object, the whole value of the asset-whatever it might later turn out to be-will be exempt" (quoting 1 Collier on Bankruptcy ¶ 8.06[1][c][ii] (15th ed. rev. 2007) (citation and some internal quotation marks omitted)).

Accordingly, by including language on Schedule C such as "100% of fair market value," a debtor can attempt to exempt the full market value of an asset. This approach is not without its risks, however, as this language is very likely to prompt the trustee and creditors to object to the claimed exemption.