BANKRUPTCY—EXEMPT PROPERTY—FAILURE OF A CHAPTER SEVEN TRUSTEE TO OBJECT TO THE VALIDITY OF A DEBTOR'S CLAIMED EXEMPTION WITHIN THIRTY DAYS OF THE INITIAL CREDITOR'S MEETING RENDERS PROPERTY EXEMPT, REGARDLESS OF WHETHER THE DEBTOR HAD A COLORABLE BASIS FOR CLAIMING SUCH EXEMPTION—*Taylor v. Freeland & Kronz*, 112 S. Ct. 1644 (1992).

Congress promulgated the Bankruptcy Reform Act of 1978 (Code), codified as 11 U.S.C. §§ 101-151302,[1] to provide the creditors of qualifying debtors with equitable treatment, to facilitate an aggrieved debtor's "fresh start," and to advance the economical administration of the estate to achieve finality.[2]

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[1] 11 U.S.C. §§ 101-151302 (1988 & Supp. II 1990). The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified as 11 U.S.C. §§ 101-151302 (1988 & Supp. II 1990)) *amended by* Pub. L. No. 98-249, 98 Stat. 116 (1984); Pub. L. No. 98-271, 98 Stat. 163 (1984); Pub. L. No. 98-299, 98 Stat. 214 (1984); Pub. L. No. 98-325, 98 Stat. 268 (1984); Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (1984); Pub. L. No. 98-454, 98 Stat. 1745 (1984); Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088 (1984).

In 1970, Congress appointed a commission to review the Bankruptcy Act of 1898. Act of July 24, 1970, Pub. L. No. 91-354, §§ 1-6, July 24, 1970, 84 Stat. 468, *as amended by* Pub. L. No. 92-251, March 17, 1972, 86 Stat. 63; Pub. L. No. 93-56, § 1, July 1, 1973, 87 Stat. 140. *See generally* REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. DOC. NO. 137, 93rd Cong., 1st Sess., pts. I, II (1973) [hereinafter COMMISSION REPORT] (addressing the suggestions and findings of the Commission), *reprinted in* 2 App. COLLIER ON BANKRUPTCY 1 (Lawrence P. King ed., 15th ed. 1992). The Commission, in suggesting reform, stated that bankruptcy law should further the rehabilitation of the debtor (fresh start) and provide security for the debtor-creditor relationship. *Id.* at 78. The Commission rationalized that by allowing debtors exemptions in property, the debtor comes through bankruptcy with adequate possessions to make a fresh start. H.R. REP. NO. 595, 95th Cong., 1st Sess. 1, 126 (1977) [hereinafter HOUSE REPORT], *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087; Thomas J. Reed, *Over the Hill to the Poorhouse — The Failure Of Section 522 Bankruptcy Exemptions Under the Bankruptcy Reform Act of 1978*, 61 DENV. L.J. 705, 706 (1984). Congress, accepting the suggestions, enacted the Bankruptcy Reform Act of 1978. *See* 11 U.S.C. §§ 101-151302 (1988 & Supp. II 1990) (repealing the Bankruptcy Act of 1898, Pub. L. No. 55-161, 30 Stat. 544 (repealed 1978)). *See* HOUSE REPORT, *supra* at 1-7, *reprinted in* 1978 U.S.C.C.A.N. 5963, 5963-68 (discussing generally the history and purposes of the Code and its revisions).

[2] COMMISSION REPORT, *supra* note 1, at 78. *See also* Reed, *supra* note 1, at 705-706 & n.9 (1984) (*citing* H.R. REP. NO. 595, 95th Cong., 1st Sess. 126-27 (1977), *reprinted in* 1978 U.S.C.C.A.N. 6087-88) (discussing exemptions and defining the goal of "fresh start" as allowing the debtor the ability to exempt from the estate the basic necessities of life); COMMISSION REPORT, *supra* note 1, at 76-79 (discussing equitable treatment of creditors). *See generally* Vern Countryman, *Consumers in Bankruptcy Cases*, 18 WASHBURN L.J. 1, 2 (1978) (noting the "fresh start" is achieved by debtor's retention of specified property absent creditor's claims). Fresh start is re-

Equitable treatment of the creditors involves restraining both a creditor's actions vis-a-vis other creditors and a debtor's actions vis-a-vis the creditors as a group.[3] "Fresh start" encompasses the general rehabilitation of the debtor.[4] Finally, the bankruptcy process is designed to achieve an efficient and economic administration of the case.[5]

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flected in the right of discharge and the distinguishing fact that future income, in contrast to present assets, is exempted from the debtor's estate. DOUGLAS G. BAIRD & THOMAS H. JACKSON, CASES, PROBLEMS AND MATERIALS ON BANKRUPTCY 87, 190 (2d ed. 1990).

[3] COMMISSION REPORT, *supra* note 1, at 76. The congressional commission determined:

> The individualistic creditors' rights laws, many of which are applicable equally to the enforcement of open credit economy debts and to the enforcement of all other debts, must be balanced in bankruptcy against rules for fair and equitable distribution collectively among all creditors of the debtor.

Id. The Commission further found that "external rules of creditors' rights," those rights outside of the bankruptcy process, were insufficient. *Id.* at 77. Instead, the Commission determined that two internal standards, those rights inside the bankruptcy process, should also govern: "[D]istributive standards that take into account the legal status of claims and allocative standards that reflect the social and economic consequences of the burden of loss." *Id.* As a second allocative rule, the Commission noted that the "distribution status" of a creditor "should vary directly with the claimant's contribution to the estate of the debtor." *Id.* at 78. A final standard found by the Commission to be of importance was "the process for recognizing the validity of claims and determining their amount should not be so costly, inconvenient, arcane, or slow as effectively to impair achievement of the substantive goals [set forth in the commission report]." *Id.* at 79.

Relevant to the case at bar, 11 U.S.C. § 549 (Post-Petition Transfers) demonstrates that the debtor's creditors should be treated equitably in regard to debtor's actions and the estate created at the onset of the bankruptcy proceeding. *See* 11 U.S.C. § 549 (1988) (stating in pertinent part: "[T]he trustee may avoid a transfer of property of the estate—(1) that occurs after the commencement of the case . . . .").

[4] COMMISSION REPORT, *supra* note 1, at 79. The Commission declared that: "In order to fully realize the goal of rehabilitation, relief for debtors must be flexible, comprehensive, lasting, and timely. There must be an integrated system of relief for debtors with regular income, who as income-producing and consumer-spending economic units must continue to exist after relief." *Id. See also* Anthony L. Martin, Comment, *Bankruptcy Exemptions: Whether Illinois's Use of the Federal "Opt Out" Provision is Constitutional*, 1981 S. ILL. U. L.J. 65, 65 (1981) (noting that "[C]ongress wanted individual debtors to be given 'adequate exemptions and other protections to ensure that bankruptcy will provide a fresh start.' " (citations omitted)).

[5] COMMISSION REPORT, *supra* note 1, at 81. In describing this goal and function of the bankruptcy process, the Commission noted:

> There should be four objectives in the administration of the bankruptcy process: *impartial*, *expert*, and *speedy* performance of decision-making and other functions necessary to bring a case to a fruitful conclusion; *economy* that avoids waste, duplication, dilatoriness, and inefficiency; *uniformity* in case procedure and in the application of substantive laws throughout the United States; and managerial *flexibil-*

In furtherance of these goals, the filing of a bankruptcy petition creates a bankruptcy estate under the authority of 11 U.S.C. § 541.[6] All the debtor's legal and equitable interests in both real and personal property, at the time a bankruptcy proceeding is instituted, comprise the estate.[7] A trustee appointed to administer the estate[8] has the authority to dispose of the property of the estate for the benefit of the debtor's creditors.[9] Specifically, the trustee may sell property of the estate "free and clear" of all interests in the property.[10] Restricting the trustee's absolute control and discretion under 11 U.S.C. § 522(*l*) and 11 U.S.C.

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ity that can adjust quickly and efficiently to changes in quantity, kind, size, and location of cases.

Id. at 81.

6 11 U.S.C. § 541 (1988 & Supp. II 1990). Section 541(a)(1) of the Code provided in pertinent part:

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal and equitable interests of the debtor in property as of commencement of the case.

11 U.S.C. § 541(a)(1) (1988). *See also* S. REP. No. 989, 95th Cong., 2d Sess. 1, 82 (1978) [hereinafter 1978 SENATE REPORT] *reprinted in* 1978 U.S.C.C.A.N. 5787, 5868 (discussing property of the debtor's estate).

7 *Id.*; 11 U.S.C. § 541(a)(1) (1988). Absent a federal definition, state law defines the debtor's legal and equitable interests under section 541(a). 4 COLLIER ON BANKRUPTCY ¶ 541.02 (Lawrence P. King ed., 15th ed. 1992) [hereinafter 4 COLLIER]. For a thorough discussion of what constitutes property of the estate see Susan C. Gieser, Recent Developments, *Property of the Estate: Section 541(a)(1)*, 4 BANKR. DEV. J. 123-24 (1987) (discussing the legal and equitable interests of a debtor in property as of the commencement of the case). *See also* 1978 SENATE REPORT, *supra* note 6, at 82, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5868 (recognizing that property of the estate is comprised of all property, real and personal, tangible and intangible, so long as the debtor has some interest in it).

8 *See* 11 U.S.C. §§ 701-704 (1988) (furnishing statutory precedent for appointment and disbursement of a trustee's obligations). Pursuant to §§ 701-702, the trustee presides over the estate. *Id.* §§ 701-702. The trustee must manage the estate with the best interests of the debtor and creditor in mind. *Id.* § 704(*l*).

9 11 U.S.C. § 363(b)(1) (1988). Section 363(b)(1) provides in pertinent part: "The trustee, after notice and a hearing may use, sell, or lease, other than in the ordinary course of business, property of the estate." *Id.* *See* T.N. Ambrose, *The Sale Of Assets From A Bankruptcy Estate*, 21 IDAHO L. REV. 583, 583-84 (1985) (defining the trustee's primary function in a Chapter 7 case as overseeing liquidation of property of the estate and distribution of the proceeds to the creditors); Jeffrey M. Zitron, *Use, Sale or Lease of Property: New Criteria for Disposition of Property Under Section 363(b)(1)*, 2 BANKR. DEV. J. 37, 37 (1985) (noting that § 363(b)(1) facilitates "quick, convenient and economical disposition of assets outside of" the cumbersome Chapter 11 reorganization).

10 11 U.S.C. § 363(f) (1988). This section provides, in relevant part: "The trustee may sell property under section (b) . . . of this section free and clear of any interest in such property of an entity other than the estate . . . ." *Id.*

§ 522(b), however, limits a trustee's power to dispose of all such property by entitling a debtor to exempt certain property, authorized under one of two classes of exemptions, from the estate.[11] The exemptions from which the debtor chooses are authorized either by state law,[12] federal nonbankruptcy law[13] or by the Code.[14] After the debtor elects one exemptory class and

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[11] *See* Michael T. Hertz, *Bankruptcy Code Exemptions: Notes On the Effect of State Law*, 54 AM. BANKR. L.J. 339, 339-40 (1980) (defining exemptions as rights given to debtors to retain certain property free from creditor hindrance to begin post-bankruptcy life anew).

[12] 11 U.S.C. § 522(b)(1) (1988). Section 522 (b)(1) permits state law to opt out of the federal scheme of exemptions. *Id.* The United States Constitution granted Congress the power "[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. CONST. art. I, § 8, cl. 4. Courts have held, however, that the required uniformity involves federal bankruptcy law rather than the implications of the particular states' laws upon the rights of the debtor and creditor. Thomas v. Woods, 173 F. 585, 590-91 (8th Cir. 1909); Stellwagen v. Clum, 245 U.S. 605, 613 (1918). Therefore, the ability to opt out varies from state to state depending on what property is under state law. *See* HOUSE REPORT, *supra* note 2, at 126, *reprinted in* 1978 U.S.C.C.A.N. 6087. The compromise of allowing state and federal exemption law to exist coterminously in the Code has caused a lack of uniformity. *Id.*; *Thomas*, 173 F. at 590-91; *Stellwagen*, 245 U.S. at 613.

A good portion of the states have "opted out" of the federal scheme. *See, e.g.*, DEL. CODE ANN. tit. 10, § 4914 (Michie 1975); FLA. STAT. ANN. § 222.20 (West 1989); N.Y. DEBT. & CRED. LAW § 284 (McKinney 1990). It should be noted that Pennsylvania, the jurisdiction in which *Taylor* was commenced, has not "opted out." *See* Taylor v. Freeland & Kronz, 112 S. Ct. 1644, 1647 (1992) (noting that Davis, the debtor, had no rights under state law to exempt proceeds of a discrimination lawsuit other than the exemptions allowed under the federal bankruptcy law).

[13] Numerous exemptions provided for in federal nonbankruptcy law include the following: Social Security payments under 42 U.S.C. § 407 (1988); Longshoreman's and Harbor Worker's Compensation Act death and disability benefits under 33 U.S.C. § 916 (1988); civil service retirement benefits under 5 U.S.C. § 8346 (1988); veteran's benefits under 38 U.S.C. § 3101(a) (1988); Railroad Retirement Act annuities and pensions under 45 U.S.C. § 231(m) (1988). *See* Martin, *supra* note 4, at 67-68 n.15 (listing federal nonbankruptcy statutes exempting property interests from bankruptcy proceedings); HOUSE REPORT, *supra* note 1, at 360, *reprinted in* 1978 U.S.C.C.A.N. at 6316 (enumerating property exempt from bankruptcy under federal nonbankruptcy statutes).

[14] 11 U.S.C. § 522 (1988 & Supp II 1990). The predecessors of the current exemption, 11 U.S.C. § 522, provided for debtor election of either exemptions under federal nonbankruptcy laws or state laws in force in the domicile of the bankrupt at the time of the filing of the petition. Bankruptcy Act of 1898 § 6, 30 Stat. 548, *amended* and *recodified* in 11 U.S.C. § 24 (1976) (repealed 1978). Currently, § 522(b) provides in pertinent part:

> [A]n 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 . . . . Such property is—
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> (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,

delineates the exempt property, 11 U.S.C. Bankr. R. 4003(b) mandates that other parties in interest opposed to a claimed ex-

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(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 . . . .

11 U.S.C. § 522(b) (1988). The federal list of exemptions in § 522(d) includes:

(1) The debtor's aggregate interest, not to exceed $7,500 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 burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $1,200 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $200 in value in any particular item or $4,000 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 $500 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 $400 plus up to $3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $750 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 $4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend of 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 or any dependent of the debtor;

(E) a payment under a stock bonus, pension, profit-sharing, 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

emption must object to the exemption within thirty days of the initial creditor's meeting.[15]

Collectively, the three Code provisions create manifest tensions among all parties involved.[16] Given the rapidity with which

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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), 408, or 409 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 401(a), 403(a), 403(b), 408 or 409).

(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 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 $7,500, 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 or any dependent of the debtor.

11 U.S.C. § 522(d) (1988). *See* Stephen F. Yunker, Comment, *The General Exemption of Section 522(d)(5) of the 1978 Bankruptcy Code*, 49 U. CHI. L. REV. 564, 572 (1982) (concluding that the categories of exempted property were "well chosen both to balance the . . . traditional justifications of debtor protection, creditor payment, and conservation of the fisc, and to meet the modern concern of maximizing social welfare in the context of consumer credit").

[15] FED. R. BANKR. P. 4003(b) (1988). Bankruptcy Rule 4003(b) stated in relevant part: "The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) . . . ." *Id.* Bankruptcy Rule 2003(a) provided: "The court shall call a meeting of creditors to be held not less than 20 nor more than 40 days after the order for relief . . . ." *Id.* 2003(a). Bankruptcy Rule 9006(b) stated that: "[w]hen an act is required or allowed to be done at or within a specified period by these rules . . . the court for cause shown may at any time in its discretion . . . (2) on a motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." *Id.* 9006 (b).

[16] James A. Gieske, Note, *Conversion of Nonexempt Assets into Exempt Homestead on the Eve of Bankruptcy*, 24 S. TEX. L.J. 909, 909 n.7 (1983) (noting that while it is the creditor's ultimate objective to keep as much of the property in the bankruptcy estate, "[t]he obvious goal of the debtor entering bankruptcy proceedings is to preserve as much of his property as possible.").

parties in interest must object, the debtor has a clear incentive to claim as exempt property that which would not otherwise be exempt, in anticipation of a negligent trustee.[17] To quell the improper incentives[18] created by the short statute of limitations, some courts have adopted equitable exceptions to the inflexible procedural rule.[19] The trustee's and creditors' frantic objections to claimed exemptions clash with the policy of finality in the bankruptcy case.[20] Additionally, affording the debtor a fresh start often gives rise to conflicts with creditors seeking an equitable distribution of the estate.[21] These competing incentives and tensions have yielded different approaches in federal courts to the problem of untimely objections to wrongfully claimed exemptions.[22]

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17 *See* Marla D. Wells, Note, *Federal Bankruptcy Exemptions: How Far Out is Opting Out?*, 37 BAYLOR L. REV. 811, 827 (1985) (explaining that "to re-establish himself, the [principal] objective of the bankrupt debtor is to retain as much of his property as possible").

18 "Improper incentives" connotes an inducement which leads the debtor to file for a bankruptcy proceeding or to act in a manner during the proceeding that is contrary to bankruptcy policy. *See generally* Butner v. United States, 440 U.S. 48, 55 (1979) (citing Lewis v. Manufacturers National Bank, 364 U.S. 603, 609 (1961) for the proposition that "[u]niform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving 'a windfall merely by reason of the happenstance of bankruptcy,' " thereby reducing improper incentives for filing a petition or for acting a certain way while in the case). The trustee in Taylor v. Freeland & Kronz, 112 S. Ct. 1644 (1992), claimed that a holding based on strict statutory interpretation would "create improper incentives." *Id.* at 1648. The trustee argued that the holding of the case would prompt debtors to claim as exempt property for which there was no basis for exemption on the chance that the trustee would fail to object in time. *Id.*

19 *See, e.g.*, *In re* Velis, 109 B.R. 64, 65 (Bankr. D.N.J. 1989) (choosing to adopt a method in which the full merits of the claimed exemption are examined); *see infra* notes 71-76 and accompanying text for a discussion of *Velis*; *see also In re* Bennett, 36 B.R. 893, 894 (Bankr. W.D. Ky. 1984) (determining that the relevant inquiry to the question is whether the debtor had a statutory basis for claiming the exemption); *see infra* notes 89-92 and accompanying text (providing an analysis of *Bennett*).

20 *See* Taylor v. Freeland & Kronz, 938 F.2d 420, 425 (3d Cir. 1991), *aff'd*, 112 S. Ct. 1644 (1992) (espousing the view that "the need for finality and certainty is especially acute" in the bankruptcy case).

21 *See supra* notes 1, 2 & 4 (providing a discussion of debtor fresh start); *see also* notes 2, 5 and accompanying text (providing a discussion of equitable distribution to creditors).

22 *See In re* Staniforth, 116 B.R. 127, 131 (Bankr. W.D. Wis. 1990) (finding that upon full meritorious review of Wisconsin law regarding the funding of Individual Retirement Accounts by self-employed persons, the debtor's claim of exemption was valid); *In re* Montgomery, 80 B.R. 385, 388 (Bankr. W.D. Tx. 1987) (adopting the literal interpretation that if an otherwise non-exempt property item was not objected to within 30 days after the initial creditor's meeting, the property claimed as exempt would be deemed exempt); Bass v. Hall, 79 B.R. 653, 656 (Bankr. W.D.

Recently, in *Taylor v. Freeland & Kronz*,[23] the United States Supreme Court settled a split among the circuit courts and held that the failure of a Chapter 7 trustee to object to the validity of a debtor's claimed exemption within thirty days of the initial creditor's meeting renders the property exempt, regardless of whether the debtor had a colorable basis for claiming the exemption.[24] Strictly interpreting 11 U.S.C. § 522(*l*) and 11 U.S.C. Bankr. R. 4003(b), the Court determined that the judiciary was not vested with authority to confine application of section 522(*l*) to exemptions asserted in good faith.[25]

In *Taylor*, Emily Davis filed a voluntary petition in bankruptcy.[26] At the time of the filing, Davis was pursuing an employment discrimination suit against Trans World Airlines (TWA) in the Pennsylvania state appellate courts.[27] Davis listed the potential proceeds of the discrimination suit on Bankruptcy Schedule

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Va. 1987) (determining that the homestead exemption claimed had a good-faith statutory basis under liberal application of Virginia homestead exemption law); *see also infra* notes 54-101 and accompanying text (examining the relevant caselaw, tensions created and the resultant differing approaches that courts have taken).

[23] 112 S. Ct. 1644 (1992).

[24] *Id.* at 1646, 1648. Relying on a literal reading of Bankruptcy Rule 4003(b), the Court eschewed the equitable considerations raised by the trustee and instead concentrated on the clarity and finality that a bright-line reading would produce. *Id.* at 1648.

Additionally, the Court relied on the public policy favoring finality in bankruptcy proceedings. *Id.* Justice Thomas concluded that although strict adherence to time limitations may produce unwelcome results, such strictures entice all parties to act in a timely fashion. *Id.*

[25] *Id.* at 1649. The Court averred that any limitation on bad-faith exemptions should be imposed by Congress and not the Court. *Id.* at 1648-49.

[26] Taylor v. Freeland & Kronz, 105 B.R. 288, 290 (Bankr. W.D. Pa. 1989), *aff'd*, 118 B.R. 272 (W.D. Pa. 1990), *rev'd*, 938 F.2d 420 (3d Cir. 1991), *aff'd*, 112 S. Ct. 1644 (1992). A voluntary petition commences a bankruptcy case and "constitutes an order for relief." 11 U.S.C. § 301 (1988).

[27] Taylor v. Freeland & Kronz, 118 B.R. 272, 273 (W.D. Pa. 1990), *rev'd*, 938 F.2d 420 (3d Cir. 1991), *aff'd*, 112 S. Ct. 1644 (1992). Initially, Davis had filed a complaint with the Pittsburgh Commission on Human Relations alleging that Trans World Airlines (TWA) had, on the basis of her sex and race, denied her promotional opportunities. *Id.* On December 16, 1980, the Commission ruled in favor of Davis on the issue of liability but did not calculate the damages owed by TWA. *Id.* The Pennsylvania Court of Common Pleas, upon review of the Commission's determination, reversed on September 23, 1981, with the Pennsylvania Commonwealth Court later reversing that decision and reinstating the Commission's ruling. *Id.* TWA entered an appeal to the Pennsylvania Supreme Court, *id.*, and that court finally affirmed the Commonwealth Court's determination in favor of Davis on October 1, 1986. *Id.* at n.1. Respondent, the law firm Freeland and Kronz, represented Davis in the employment discrimination suit. *Id.* at 273. Robert J. Taylor, Esq., was the trustee of the bankruptcy estate. *Taylor*, 105 B.R. at 291.

B-2 as personal property.[28] Concurrently, Davis claimed the same proceeds as exempt on Schedule B-4.[29]

Pursuant to a trustee's statutory duty under 11 U.S.C. § 341(a), Taylor, the trustee, held the required initial creditors meeting in January 1985 and advised all parties in interest of the case's status.[30] During this meeting, the debtor and her bankruptcy counsel estimated that the potential proceeds in the employment discrimination suit could reach $90,000.[31] Taylor made no formal objection to the exemption claim.[32] Nearly two years later, in October 1986, the Pennsylvania Supreme Court upheld a lower court ruling against TWA, and TWA settled the suit with a $110,000 payment to Davis.[33] Upon discovering the settlement amount, Taylor demanded that the respondents relinquish the money they had received, arguing that it was property of Davis's bankruptcy estate.[34]

When Davis refused to surrender the money, Taylor filed a Trustee's Complaint To Avoid Post-Petition Transfers against Freeland & Kronz in United States Bankruptcy Court for the

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28 *Id.* Davis, although listing the proceeds as personal property, listed the value as unknown. *Id. See* 11 U.S.C. app. Fed. Bankr. Form 6, Schedule B-2 (1988) (delineating what constitutes personal property).

29 *Taylor*, 105 B.R. at 291. Davis described the property as "[p]roceeds from lawsuit-[Davis] v. TWA" and "Claim for lost wages," and listed the value of this exemption as unknown. *Taylor*, 111 S. Ct. at 1646. *See* 11 U.S.C. app. Fed. Bankr. Form 6, Schedule B-4 (1988) (demonstrating how to set forth the exempt property).

30 *Taylor*, 112 S. Ct. at 1646. 11 U.S.C. § 341(a) provides: "Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors." 11 U.S.C. § 341(a) (1988).

31 *Taylor*, 112 S. Ct. at 1646. Subsequent to this meeting, Taylor contacted the debtor and respondents, and indicated that he believed the potential proceeds of the discrimination cause of action to be property of Davis' bankruptcy estate. *Id.* See *supra* note 15 for the text of Bankruptcy Rule 4003(b) and the formal filing of objections.

32 *Taylor*, 112 S. Ct. at 1647. Upon request, the respondents provided Taylor with information on the procedural posture of the discrimination case and conveyed to him the possibility of the judgment reaching $110,000. *Id.* at 1646-47. Taylor, however, doubted their optimism and explained in the record that his "past experience" led him to conclude that debtor's lawsuits often are not advantageous to the debtor's estate. *Id.* at 1647.

33 *Id.* TWA paid part of the settlement by issuing a check for $71,000 to Davis and respondents with Davis signing over the check to respondents as payment of legal fees. *Id.* The remaining amount was paid to Davis in cash and travel vouchers. Taylor v. Freeland & Kronz, 105 B.R. 288, 291 (Bankr. W.D. Pa. 1989), *aff'd*, 118 B.R. 272 (W.D. Pa. 1990), *rev'd*, 938 F.2d 420 (3d Cir. 1991), *aff'd*, 112 S. Ct. 1644 (1992).

34 *Taylor*, 112 S. Ct. at 1647.

Western District of Pennsylvania.[35] Taylor contended that the share of the settlement designated lost wages prior to the filing of the petition was estate property and that any transfer was therefore voidable under 11 U.S.C. § 549(a).[36] Defendants argued that the claimed exemptions should be allowed because the trustee did not object to the exemption within the statutory time period.[37]

Summarily rejecting the defendant's argument, the bankruptcy court declared that because there was no statutory basis for the exemption, it should not be allowed, regardless of the tardiness of the objection.[38] Concurrently, the court attested that the policy considerations of orderly administration of a debtor's estate and the prevention of ill-gotten debtor windfalls bolstered the decision.[39]

Shortly thereafter, the United States District Court for the

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[35] *Taylor*, 105 B.R. at 291-92.

[36] *Id.* at 290. The amount designated as lost wages was nearly $23,500. *Id.* at 291. Section 549(a) states in pertinent part: "[T]he trustee may avoid a transfer of property of the estate — (1) that occurs after the commencement of the case . . . ." 11 U.S.C. § 549(a) (1988).

[37] *Taylor*, 105 B.R. at 290.

[38] *Id.* at 292-93. The bankruptcy court cited *In re* Bennett, 36 B.R. 893 (Bankr. W.D. Ky. 1984), as precedent for that holding, and opined that the *Bennett* court articulated the "superior view." *Id.* at 292. The bankruptcy court further stated that other courts had:

> [V]oiced concern that rigid enforcement of § 522 (*l*), without further qualification, would permit what is tantamount to 'exemption by declaration'. [These courts] construe this subsection as implicitly containing the additional requirement that there be a statutory basis for the claimed exemption before the failure of any party in interest to timely object to it has any legal effect.

Id. The court also found persuasive the "explicit incorporation by reference" to § 522(b)(1) in § 522(*l*), which limited exemptions to "any property that is exempt under federal law . . . or state law . . . ." *Id.* at 293 (quoting 11 U.S.C. § 522(b)(1) (1988)). See *supra* note 14 for the text of § 522(b).

Section 522(*l*) stated in pertinent part:

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

11 U.S.C. § 522(*l*) (1988).

[39] *Taylor*, 105 B.R. at 293. The bankruptcy court concluded that debtors would be encouraged to claim all of their property as exempt, subsequently hindering the orderly administration of bankruptcy estates. *Id.* Additionally, the court opined that the congressional intent could not be to provide the debtor with ill-gotten windfalls. *Id.*

Western District of Pennsylvania affirmed.[40] The court, in cursory fashion, also found that 11 U.S.C. § 522(*l*) required a statutory basis for any claimed exemption.[41]

In an opinion by Judge Stapleton, the United States Court of Appeals for the Third Circuit reversed.[42] After reviewing three possible approaches to the issue,[43] the appellate court concluded that a strict, literal interpretation should govern the issue.[44] The court deemed the language of the statute unambiguous and therefore determined that the congressionally intended strict interpretation should not be circumvented.[45] In addition, the appellate court found that the evolution of bankruptcy law,[46] as well

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[40] Taylor v. Freeland & Kronz, 118 B.R. 272, 276 (W.D. Pa. 1990), *rev'd*, 938 F.2d 420 (3d Cir. 1991), *aff'd*, 112 S. Ct. 1644 (1992).

[41] *Id.* at 275. The court, using the bankruptcy court's reasoning and language to a great extent, found: "Allowing the debtor to recover proceeds for which there was no statutory basis would render § 522(b) negatory." *Id.* In a variation of the policy argument that the bankruptcy court noted, the district court found that "orderly administration of the debtor's estate would not be advanced by allowing her to claim as exempt any value that she had simply designated 'unknown.' " *Id.*

[42] Taylor v. Freeland & Kronz, 938 F.2d 420, 421 (3d Cir. 1991), *aff'd*, 112 S. Ct. 1644 (1992).

[43] *Taylor*, 938 F.2d at 423-24. For an examination of the three different approaches, see *In re* Bradlow, 119 B.R. 330, 331 (Bankr. S.D. Fla. 1990) (taking the literal approach); *In re* Stutterheim, 109 B.R. 1010, 1012 (D. Kan. 1989) (examining fully the merits of the case); *In re* Peterson, 920 F.2d 1389, 1393 (8th Cir. 1990) (finding that a good-faith statutory basis was sufficient for allowing the challenged exemption).

[44] *Taylor*, 938 F.2d at 423-24.

[45] *Id.* at 424-25. The court of appeals held:

> [T]he text of § 522(*l*) and Rule 4003(b) could not be much clearer in stating without exception that property claimed as exempt by the debtor is exempt unless a timely objection is filed with the court by a party in interest. That all but resolves this case, for the general rule of statutory interpretation is that 'where the terms of a statute [are] unambiguous, judicial inquiry is complete except in rare and exceptional circumstances.'

Id. at 424 (citing Demarest v. Manspeaker, 111 S. Ct. 599, 604 (1991)). The court further noted that "[s]uch circumstances are present only in the 'rare' case where 'the literal application of a statute will produce a result demonstrably at odds with the intentions of the drafters.' " *Id.* (citing United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242 (1989)). The appellate court found that the *Taylor* case was not one of those " 'rare' cases." *Id.* As to congressional intent, the court found that the text of the bankruptcy provisions were bright-line procedural rules, clear in their textual intent. *Id.* at 425.

[46] *Id.* The court addressed the history and evolution of bankruptcy exemptions and found that, with the most recent codification of the law, Congress intended to relieve the debtor of the onus of objection to exemptions, and to place the burden on the other parties in interest. *Id.* Pre-1978 bankruptcy law, specifically Bankruptcy Rule 403, placed on the trustee the burden of filing a report separating allowable and non-allowable exemption claims. *Id.* Section 47(a)(6) of the Bankruptcy Act required the trustee to " 'set apart the bankruptcy exemptions al-

as the legislative history of the relevant provisions,[47] warranted the adoption of an interpretation providing bright-line procedural conclusiveness.[48]

Taylor appealed. The United States Supreme Court granted certiorari[49] to resolve whether the failure of a Chapter 7 trustee to object to the validity of a claimed exemption within thirty days of the initial creditor's meeting renders the property exempt if the debtor had no colorable basis for the exemption.[50] The

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lowed by law, if claimed, and report the items and estimated value thereof to the courts . . . .' " 8 COLLIER ON BANKRUPTCY ¶ 4003.02[1] (Lawrence P. King ed., 15th ed. 1991) [hereinafter 8 COLLIER] (quoting 11 U.S.C. § 47(a)(6) (1986)). The debtor and the creditors were then permitted fifteen days to object. *Taylor*, 938 F.2d at 425. If no objections were registered, the only allowable exemptions were those to which the trustee attested. *Id. See* FED. R. BANKR. 403 (1976) (predecessor to § 522, statutorily setting forth the trustee's duties). *See also* H.R. REP. No. 595, 95th Cong., 2d Sess. 363-64, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6316-19 (1978) (discussing the changes in the new rule).

47 *Taylor*, 938 F.2d at 425. The Advisory Committee Note to Fed. R. Bankr. 4003 stated: "The Code changes the thrust of [the former rule] by making it the burden of the debtor to list his exemptions and the burden of the parties in interest to raise objections in the absence of which 'the property claimed as exempt on such list is exempt . . . .' " FED R. BANKR. 4003 advisory committee note (1988) (quoting 11 U.S.C. § 522(*l*)).

48 *Taylor*, 938 F.2d at 425. The appellate court's second line of reasoning focused on policy considerations inherent in the literal approach. *Id.* The court asserted that the time limitations for objections satisfied bankruptcy's finality goal. *Id.* The court found conclusive precedent in the Advisory Committee Notes to Bankruptcy Rule 9006, *id.*, which stated: "In the interest of prompt administration of bankruptcy cases certain time periods may not be extended." FED. R. BANKR. 9006 advisory committee note (1988). The court also stated than the finality provided by specifying a date at which the various parties' rights are determined would permit the parties to proceed with an understanding of which property belongs to the debtor, and which to the bankruptcy estate. *Taylor*, 938 F.2d at 425. The debtor would then be free to treat certain property as his own without the threat of further litigation on the issue. *Id.*

The court rejected policy considerations that other appellate courts had cited as precedent for exceptions to literal application of the statute. *Id.* at 425-26. The Third Circuit dismissed the Eighth Circuit's assertion that the debtor might receive an "undeserved windfall," and noted that enforcement of procedural rules often produces untoward results. *Id.* (citing *In re* Peterson, 920 F.2d 1389, 1393 (8th Cir. 1990)). In addition, the court rejected the lowers courts' reliance on *In re* Bennett, 36 B.R. 893, 895 (Bankr. W.D. Ky. 1984), declaring that the fear of "exemption by declaration" was unwarranted because of the sanctions authorized by Bankruptcy Rule 9011 and the trustee's ability to remedy the situation through simple diligence. *Id.* at 426. The court gave scant credibility to the equitable considerations that other courts had found relevant to the issue. *Id.*

49 Taylor v. Freeland & Kronz, 112 S. Ct. 632 (1991).

50 Taylor v. Freeland & Kronz, 112 S. Ct. 1644, 1646 (1992). Justice Thomas delivered the opinion of the Court, joined by Chief Justice Rehnquist and Justices White, Blackmun, O'Connor, Scalia, Kennedy and Souter. *Id.* Justice Stevens filed a dissenting opinion. *Id.*

Supreme Court steadfastly applied the Third Circuit's literal approach and affirmed the court of appeals by finding that objections to claimed exemptions outside of the Fed. R. Bankr. 4003(b) thirty day window were non-operative.[51] The Court held that a trustee in a Chapter 7 bankruptcy proceeding could not contest the validity of an exemption claimed by the debtor more than thirty days subsequent to the 11 U.S.C. § 341 creditor's meeting, regardless of whether the exemption lacked a colorable statutory basis.[52] Thus, by embracing a literal approach, the Court relegated to Congress the task of changing the statute to encompass equitable considerations.[53]

In an effort to properly reconcile the conflicting interests of debtors, creditors and bankruptcy trustees, and to prevent debtor windfall, courts have attempted to delineate the proper test for determining whether to allow debtor-claimed exemptions in the event of an untimely objection.[54] The most judicially expedient approach has been termed the literal approach or strict interpretation.[55] The federal bankruptcy judiciary most clearly

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[51] *Id.* at 1648.

[52] *Id.*

[53] *Id.* at 1648-49.

[54] *See* Taylor v. Freeland & Kronz, 938 F.2d 420, 423 (3d Cir. 1991), *aff'd*, 112 S. Ct. 1644 (1992). The Third Circuit delineated the three approaches taken by courts: 1) strictly applying the thirty day limit for objections under the literal approach; 2) conducting a full meritorious review of the validity of a claimed exemption; or 3) requiring that a good-faith statutory basis support the claimed exemption. *Id. See also supra* note 19 and accompanying text (setting forth additional cases and the approaches espoused by those courts).

[55] *See Taylor*, 112 S. Ct. at 1648 (noting that strict enforcement of "[d]eadlines may lead to unwelcome results, but . . . [would] prompt parties to act and . . . [would] produce finality"); *accord In re* Grossman, 80 B.R. 311, 312 (Bankr. E.D. Pa. 1987) (discussing how a strict interpretation of the time constraints in the bankruptcy rules afforded the debtor relief from an untimely objection when the debtor relied on the running of the thirty day objection period); *In re* Hawn, 69 B.R. 567, 568 (Bankr. E.D. Tenn. 1987) (finding that an untimely objection, which was filed thirty days subsequent to the § 341 meeting, would be disallowed absent a debtor's fraudulent or negligent concealment of pertinent facts relating to the exemption claimed); *In re* Keyworth, 47 B.R. 966, 970 (D. Colo. 1985) (rejecting the argument that Rule 4003(b) allowed an objection to be filed within thirty days of discovery of facts constituting grounds for objection to a claimed exemption and not just within thirty days of the § 341 meeting); *In re* Thomas, 43 B.R. 201, 207-08 (Bankr. M.D. Ga. 1984) (finding that absent a trustee's claim for an administrative expense to come out of a claimed exemption, the exemption claim was allowed in full with no offsetting of funds); *In re* Weisner, 39 B.R. 963, 965 (Bankr. W.D. Wis. 1984) (opining that "[o]nce property is exempted from the estate it revests in the debtor, and is no longer part of the estate."). The goal of finality is satisfied by the literal approach because once the deadline for objections has passed, the exemption is accepted for all purposes, including scope of exemption and valuation. 8 COLLIER, *supra* note 46, ¶ 4003.04[3]. Courts have explained that Congress intended, by the

delineated this literal approach in *In re Bradlow*.[56] In *Bradlow*, the Bankruptcy Court for the Southern District of Florida considered whether the debtor in a lien avoidance action[57] was entitled to the homestead exemption claimed, absent evidence that there had been a proper designation of homestead property.[58] The creditor, Sun Bank/South Florida N.A., asserted that under Florida law the designated homestead exemption lacked merit.[59] Having found that the creditor's objection was well beyond the thirty days statutorily allowed, the bankruptcy court ruled that because there was no timely objection to the claimed exemptions, the court would not address the merits of the creditor's argument.[60]

In *In re Duncan*,[61] a factually similar case, the Bankruptcy Court for the Western District of Oklahoma ruled identically to

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"lack of a more involved statutory test," to "prohibit the relitigation of settled exemption disputes." *In re* Hahn, 60 B.R. 69, 76 (Bankr. D. Minn. 1985). The *Hahn* court noted that the thirty day rule estopped creditors from litigating the issue outside the allowed time frame. *Id.* For an interesting twist to property revesting in the debtor after a successful exemption claim, see *In re* Kretzer, 48 B.R. 585, 586-88 (Bankr. D. Nev. 1985) (demonstrating that a debtor's victory in gaining an exemption could be short-lived because when exempt property revests in the debtor, repossession by a creditor does not violate the automatic stay of section 362). Section 362, in pertinent part, prohibits "[the] commencement or continuation . . . of a judicial . . . action or proceeding against the debtor that was or could have been commenced before the commencement of the [bankruptcy] case . . . ." 11 U.S.C. § 362(a)(1) (1988).

56 119 B.R. 330 (Bankr. S.D. Fla. 1990).

57 A lien avoidance action is one in which the debtor can avoid property liens of the debtor otherwise exempt from a creditor's claim. John W. Draskovic, Note, *United States v. Security Industrial Bank: A Final Determination of the Retrospectivity of Section 522(f)(2)*, 10 OHIO N.U. L. REV. 573, 574 (1983). *See also* 11 U.S.C. § 522(f) (1988). Section 522(f) provides in pertinent part:

> (f) Notwithstanding any waiver of exemptions, 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 that the debtor would have been entitled under subsection (b) of this section, if such lien is-
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> (1) a judicial lien . . . .

11 U.S.C. § 522(f) (1988). For a general discussion of the avoidance of liens, see M. Sheilah O'Halloran, Note, *Section 522(f) of Bankruptcy Code Held to Apply Prospectively Only*, 13 SETON HALL L. REV. 735 (1983).

58 *Bradlow*, 119 B.R. at 331. Debtor in this case moved to avoid liens that Sun Bank/South Florida N.A., had obtained in state court against the debtor's residence property. *Id.*

59 *Id.* (citing FLA. STAT. ANN. § 222.01 (West 1989)).

60 *Id.* at 331. Although the creditor's argument constituted an objection to the debtor's claimed exemption, the court ruled that because the creditor failed to object within the statutorily specified time period, the creditor was precluded from doing so at a later hearing. *Id.*

61 107 B.R. 754 (Bankr. W.D. Okla. 1988).

the court in *Bradlow*.[62] The court addressed whether the trustee in bankruptcy could sell a quarter section of land, 160 acres, which the debtors had claimed as exempt property under the Oklahoma homestead exemption.[63] The trustee argued that the exemption should be allowed only to the extent that the debtor had equity in the property.[64] Rejecting the trustee's reasoning, the court ruled that because there was no timely objection to the claimed homestead exemption, the property was therefore exempt in full.[65]

Notwithstanding the inflexible interpretations that some courts have given to the time period for registering objections, creditors have attempted to argue that in some circumstances the objection period has been extended by the debtor's own actions.[66] For example, in *In re Payton*[67] the Bankruptcy Court for the Western District of Texas examined whether any amendment to exemptions would reopen the thirty day objection period, even as to property that was not subject to the amendment.[68] The court determined that an amendment to the original exemptions did not reopen or extend the time period and that objections could not be made to any original exemptions outside of the initial thirty day period.[69]

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62 *Id.* at 757.

63 *Id.* Oklahoma law allows a homestead exemption of 160 acres located outside of a town, city or village. *Id.* (citing OKLA. STAT. ANN. tit. 31, § 2 (West 1991)).

64 *Duncan*, 107 B.R. at 757. The bankruptcy court firmly declared: "Since there was no timely objection, the homestead claimed as exempt is exempt." *Id.* For a case that has similarly definitive language, see *In Re* Barnes, 117 B.R. 842 (Bankr. D. Md. 1990). In *Barnes*, the court declared:

> The debtor's claim of exemptions is now inviolate, the time having long passed for filing objections. Whatever property has been claimed by the debtors to be exempt, in whatever guise, is now exempt and is no longer property of the estate that the Chapter 7 trustee could administer on behalf of the estate's creditors. The Court has no power to deny the debtors the exemptions that they have claimed without objection.

Id. at 845.

65 *Duncan*, 107 B.R. at 757-58.

66 *See In re* Gullickson, 39 B.R. 922, 923 (Bankr. W.D. Wis. 1984) (rejecting creditor bank's argument that debtor's amendments to the list of claimed exemptions extended the time for objection); *see also* 8 COLLIER, *supra* note 46, ¶ 4003.04[1] (noting that when exemption amendments or supplemental schedules are filed, parties in interest have 30 days from the amendment date to object to the new amendments and no challenge may be made to exemptions already finalized).

67 73 B.R. 31 (Bankr. W.D. Tex. 1987).

68 *Id.* at 33.

69 *Id.* The court noted that the objection time period for the trustee was clear and definite. *Id. See also Gullickson*, 39 B.R. at 923 (finding that amendments did not increase the time in which a creditor could object).

At the opposite end of the interpretive spectrum, some courts have embarked upon full meritorious review of the claimed exemption, and have expressed concern for the injustice created by absolute enforcement of the time deadline.[70] In *In re Velis*,[71] the Bankruptcy Court for the District of New Jersey evaluated whether, subsequent to the expiration of the statutory period allowed, a creditor could object to a debtor's claimed exemptions in pension plan interests, a KEOGH plan and an IRA, pursuant to the allowable exclusion of property under 11 U.S.C. § 541(c)(2).[72] The court also queried whether the property was alternatively exempt under 11 U.S.C. § 522(b)(2)(A) or 11 U.S.C. § 522(d)(10)(E)[73] subsequent to the expiration of the statutory period allowed.[74] The court addressed the merits of the governing caselaw[75] and found that the law of the jurisdiction prevented the debtor from claiming the property interests as exempt.[76]

Similarly, *In re Stutterheim*[77] posed the issue of whether Kansas law provided a basis for claiming that an annuity was life insurance, and thus subject to exemption.[78] Interpreting the Kansas Code, the district court rejected the appellant's argument that there was at least a good-faith statutory basis for claiming the objection.[79] After reviewing the actual merits of the claim,

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70 *See In re* Peterson, 920 F.2d 1389, 1393 (8th Cir. 1990) (discussing the case law and equitable considerations of full meritorious review).

71 109 B.R. 64 (Bankr. D.N.J. 1989).

72 *Id.* at 67. 11 U.S.C. § 541(c)(2) states in pertinent part: "A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title." 11 U.S.C. § 541(c)(2) (1988).

73 *Velis*, 109 B.R. at 67. See *supra* note 14 for the text of 11 U.S.C. §§ 522(b)(2)(A) & 522(d)(10)(E).

74 *Velis*, 109 B.R. at 66-67.

75 *Id.* at 70-72 (citing *In re* Clark, 711 F.2d 21 (3d Cir. 1983); *In re* Kochell, 732 F.2d 564 (7th Cir. 1984)). The court, after a review of Third Circuit and Seventh Circuit Courts of Appeals decisions, opined that the claimed exemptions had no statutory merit. *Id.* at 72. The district court noted that because the debtor had no present right to receive payment from the plans that the exemption did not fall within the meaning of 11 U.S.C § 522(d)(10)(E). *Id.* Relying on *In re* Clark, 711 F.2d 21 (3d Cir. 1983), for precedent as to the KEOGH plan, and its extension in *In re* Heisey, 88 B.R. 47 (Bankr. D.N.J. 1988), to an IRA retirement arrangement, the court denied the claimed exemptions. *Id.* at 71.

76 *Id.* at 73.

77 109 B.R. 1010 (D. Kan. 1989).

78 *Id.* at 1010.

79 *Id.* at 1013. The applicable Kansas statute, KAN. STAT. ANN. § 40-414(a), reads in pertinent part:

(a) If a life insurance company . . . issues any policy of insurance . . .

the court concluded that the annuity contract was not payable at the death of the insured and therefore there existed no basis for the claimed exemption.[80]

In re Owen[81] provided another example of a court's full review of a claimed exemption's merits.[82] In *Owen*, the Bankruptcy Court for the Central District of Illinois ruled that a debtor-husband was not entitled to claim a homestead exemption in a home owned solely by his wife but jointly occupied by the couple.[83] Interpreting the Illinois homestead exemption statute,[84] the court decreed that even absent a timely formal objection within the limits of Bankruptcy Rule 4003(b), the exemptions would not be allowed "for a debtor not otherwise entitled to one."[85] Therefore, because the debtor-husband neither owned, leased nor had rightful possession under the law, the court ruled that the exemption lacked a statutory basis and would not be allowed.[86]

As a third and more moderate approach, courts have considered whether there existed a good-faith statutory basis for a debtor's claimed exemptions.[87] This approach focuses on

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> upon the life of an individual and payable at the death of the insured, or in any given number of years, to any person or persons having an insurable interest in the life of the insured, the policy and its reserves, or their present value, shall inure to the sole and separate use and benefit of the beneficiaries named in the policy and shall be free from . . . (4) the claims and judgments of creditors . . . .

KAN. STAT. ANN. § 40-414(a) (1986). The district court, reiterating the opinion of the bankruptcy judge below, commented: " 'the mandated procedural timetable does not create an exemption where none exists . . . .' " *Stutterheim*, 109 B.R. at 1013. Judge Rogers continued: "Nor should it matter whether the exemption was requested in good faith, if a statutory basis for the exemption is lacking." *Id.*

80 *Id.*

81 74 B.R. 697 (Bankr. C.D. Ill. 1987).

82 *Id.*

83 *Id.* at 698, 700.

84 *See* ILL. ANN. STAT. ch. 110 para. 12-901 (Smith-Hurd 1984). This statute provided: "Every individual is entitled to an estate of homestead to the extent in value of $7,500, in the farm or lot of land and buildings thereon . . . owned or rightly possessed by lease or otherwise and occupied by him or her as a residence . . . ." *Id.*

85 *Owen*, 74 B.R. at 699. The court opined that the Illinois statute made clear that, to establish an exempt homestead estate within the meaning of the statute, the individual must demonstrate ownership or rightful possession. *Id.*

86 *Id.* at 699, 700.

87 *See In re* Kingsbury, 124 B.R. 146 (Bankr. D. Me. 1991). In *Kingsbury* the court ruled that the "claims will be examined to ascertain whether, in light of the substantive content of the statutes upon which [the Kingsburys] rely, there can be found a good faith basis for their assertion." *Id.* at 148; *accord*, Taylor v. Freeland & Kronz, 105 B.R. 288, 292-93 (Bankr. W.D. Pa. 1989), *aff'd*, 118 B.R. 272 (W.D. Pa. 1990), *rev'd*, 938 F.2d 420 (3d Cir. 1991), *aff'd*, 112 S. Ct. 1644 (1992) (specifically stating "[i]f Debtor may select in any manner her exemptions, then no purpose is served by the inclusion of [the limiting language of section 522(*l*)]. We decline to deter-

whether the debtor has convinced the court that he had at least a good-faith belief that the property being claimed as exempt was the subject of a lawful exemption.[88] *In re Bennett*,[89] the apparent fountainhead of this approach, stands for the proposition that a debtor's "exemption by declaration" will not pass bankruptcy court scrutiny.[90] Resolving the validity of an exemption claimed for property in a lien avoidance action, the court emphasized broader policy objectives, and concluded that justice would not be served if debtors were allowed to retain property rights when they had no right to do so.[91] Therefore, the bankruptcy court adopted what has become known as the good-faith statutory basis test for determining whether a claimed property exemption is valid.[92]

This approach was expanded in *In re Dembs*.[93] In determining whether joint creditors could reach property held in a tenancy by the entirety after a discharge of indebtedness had been granted, the court concluded that objections must be made within thirty days after the initial creditor's meeting or the right

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mine that Congress inserted the terms but refused to grant them meaning."); *In re* Ehr, 116 B.R. 665, 667-68 (Bankr. E.D. Wis. 1988) (determining that a debtor could not claim stock in a closely held corporation as worth $1000 and therefore exempt in full when the actual worth was far greater than that and exceeded the statutorily allowed amount). *See also In re* Sherk, 918 F.2d 1170, 1174 (5th Cir. 1990) (noting that § 522(*l*) referred to subsection (b) of § 522 and implicitly required that the claimed exemptions have a statutory basis). The relevant limiting language that the *Sherk* court cited was "any property that is exempt under federal law . . . or state or local law that is applicable on the date of the filing of the petition." *Id.* (quoting *In re* Davis, 105 B.R. 288, 292-93 (Bankr. W.D. Pa. 1989)).

88 *See* Taylor v. Freeland & Kronz, 938 F.2d 420, 423 (3d Cir. 1991), *aff'd*, 112 S. Ct. 1644 (1992) (noting that an exemption should be examined even absent an objection and upheld if a good-faith statutory basis for the exemption is proven).

89 36 B.R. 893 (Bankr. W.D. Ky. 1984).

90 *Id.* at 895. The court, in condemning "exemptions by declaration," referred to exemptions lacking a statutory basis forcing trustees and creditors to challenge all claimed exemptions. *Id.*

91 *Id.* at 895-96. The opinion reads:

> What we have chosen to call "exemption by declaration" is unacceptable for broader policy reasons. The obvious result of such a rule would be to encourage a debtor's claim that *all* of his property is exempt, leaving it to the bankruptcy trustee and creditors to successfully challenge that claim. We would revert to the law of the streets, with bare possession constituting not nine, but ten, parts of the law; orderly administration of estates would be replaced by uncertainty and constant litigation if not outright anarchy.

Id. at 895.

92 *In re* Dembs, 757 F.2d 777, 780 (6th Cir. 1985) ("there must be a good faith statutory basis for the exemption, and in that respect we fully approve *In re* Bennett," 36 B.R. 893, 895 (Bankr. W.D. Ky. 1984)).

93 *Id.*

to object was waived.[94] The court qualified this assertion by noting that it did not endorse "exemption by declaration," and stated that there must be a good-faith statutory basis for claiming an exemption.[95] The court warned that trustees and creditors would not be permitted to sit on their rights in the face of Bankruptcy Rule 4003(b).[96]

In re Peterson,[97] one of the most frequently cited cases using the good-faith statutory basis approach, involved a debtor who constructed a house on real property owned by his father, and who resided therein.[98] The *Peterson* court considered whether, absent any conveyance, the debtor could assert an interest in the house for purposes of claiming a homestead exemption.[99] After reviewing the three approaches that other courts had taken, the court determined that the most equitable approach would be to require the debtor to show that the exemption claimed had a good-faith statutory basis.[100] The court opined that the bright-line application of Bankruptcy Rule 4003(b) should not provide a malevolent debtor with an undeserved, ill-gotten windfall.[101]

Recognizing that the time was ripe to resolve the trifurcated balance of caselaw that the courts had developed, the United States Supreme Court definitively addressed the differing approaches in *Taylor v. Freeland & Kronz*.[102] The Court examined whether, absent a colorable basis, a trustee may dispute the legitimacy of a claimed exemption in a Chapter 7 bankruptcy case after the expiration of the thirty day period subsequent to the initial creditor's meeting as provided under Bankruptcy Rule 4003(b).[103]

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94 *Id.* at 778, 780.

95 *Id.* at 780 (citing *In re* Bennett, 36 B.R. 893, 895 (Bankr. W.D. Ky. 1984)).

96 *Id.* The court instructed those involved to voice the objection within the time period if there is uncertainty as to the existing law. *Id.*

97 920 F.2d 1389 (8th Cir. 1990).

98 *Id.* at 1390.

99 *Id.* The relevant Minnesota statute provided: "The house owned and occupied by a debtor as the debtor's dwelling place, together with the land upon that it is situated . . . shall constitute the homestead of such debtor . . . and be exempt from seizure or sale under legal process . . . ." MINN. STAT. ANN. § 510.01 (West 1990).

100 *Peterson*, 920 F.2d at 1393. The court found that such an approach avoided the difficulties inherent in "exemption by declaration." *Id.*

101 *Id.* at 1395. Rejecting a rigid construction, the court ruled that in light of the liberal Minnesota exemption law and because the debtors built and occupied the house, they had a good-faith statutory basis for claiming the exemption. *Id.* at 1394-95.

102 112 S. Ct. 1644 (1992).

103 *Id.* at 1646.

Writing for the majority, Justice Thomas succinctly reviewed the statutory framework that governed the opinion.[104] The Court observed that all parties had agreed that Davis lacked a statutory basis for all but a minimal amount of her claimed discrimination suit proceeds exemption.[105] Consequently, the Court found that Taylor, the trustee, could have validly objected pursuant to Section 522(*l*) and Bankruptcy Rule 4003(b) if he had responded diligently to the claimed exemption.[106]

Addressing the trustee's two main arguments, Justice Thomas first examined Taylor's argument that although the rule's time limit clearly allowed for objections, the relevant Code sections did not abrogate judicial inquiry into the veracity of the claimed exemptions.[107] Rather, Taylor argued, the time limit only narrowed judicial scrutiny to determining whether the debtor had a good-faith statutory basis or a reasonably disputable basis for the exemption.[108] Although recognizing other interpretations, Justice Thomas acknowledged that several circuit courts had adopted this approach, yet rejected it in favor of the literal interpretation approach.[109]

Justice Thomas pointed to the language of section 522(*l*) and Bankruptcy Rule 4003(b) and determined that by negative implication the property claimed was exempt, unless either the creditors objected within thirty days or an extension was granted.[110] Pursuant to this bright-line statutory interpretation, Justice Thomas opined that there could be no objection to Davis's claimed exemption regardless of whether a colorable basis existed.[111] Balancing policy considerations, the Court deter-

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104 *Id.* at 1646-48. Justice Thomas referred to § 522 and Bankruptcy Rule 4003 dealing with exemptions. *Id.* See *supra* notes 12-14 for a discussion of and the text of § 522; see *supra* note 15 regarding Bankruptcy Rule 4003.

105 *Taylor*, 112 S. Ct at 1647.

106 *Id.* at 1647-48. Justice Thomas noted that neither state nor federal exemption law provided a statutory shelter for Davis's claim. *Id.* at 1647.

107 *Id.* at 1648.

108 *Id.*

109 *Id.* The Court noted that several appellate courts would agree with Taylor's argument. *Id.* (citing *In re* Peterson, 920 F.2d 1389, 1393-94 (8th Cir. 1990); *In re* Dembs, 757 F.2d 777, 780 (6th Cir. 1985); *In re* Sherk, 918 F.2d 1170, 1174 (5th Cir. 1990)). The Court, however, did not find these decisions sufficiently persuasive precedent. *Id.*

110 *Id.* Justice Thomas cited the following language from section 522: " 'Unless a party in interest objects, the property claimed as exempt on such a list is exempt.' " *Id.* (quoting 11 U.S.C. § 522(*l*) (1988 & Supp. II 1990)).

111 *Id.* By way of contrast, dissenting Justice Stevens declared that the majority's adoption of the literal approach was a "mistake" which flew in the face of equity. *Id.* at 1652. (Stevens, J., dissenting).

mined that although time strictures could breed inequities in the bankruptcy context, they would also ensure finality in the process.[112] Justice Thomas further explained that despite repeated warnings, Taylor neglected to object and thus would not be afforded a second chance to bring the employment discrimination suit proceeds into the estate.[113]

Considering Taylor's alternative argument, the Court next addressed whether improper incentives were fostered.[114] The Court dismissed this argument, and concluded that the various penalty provisions provided in the Code precluded debtors and their attorneys from engaging in improper conduct.[115] Justice Thomas relegated to Congress the duty to change existing law to reflect good-faith considerations because the current provisions did not curb bad-faith claims.[116] The Court disclaimed any inherent authority to limit section 522(*l*) application to only those exemptions claimed in good faith.[117] The Court declined to consider whether the Court was empowered by section 105(a) to deny exemptions not claimed in good faith because Taylor had raised the issue for the first time on final appeal.[118] The Court

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112 *Id.* at 1648.

113 *Id.* Justice Thomas also noted that an extension to the objection period could have been obtained, but that Taylor had failed to request such an extension. *Id.*

114 *Id.* The Court pointed particularly to Taylor's assertion that the ruling would lead debtors to claim property as exempt, anticipating that the trustee would be negligent and fail to act within the short period of time provided in the Code. *Id.* Taylor argued that the requirement of good faith in claiming exemptions would prevent "exemption by declaration." *Id.*

115 *Id.* The Court cited § 727(a)(4)(B) (authorizing denial of discharge as a penalty for fraudulent claims), Bankruptcy Rule 1008 (requiring verified and sworn filings under penalty of perjury), Bankruptcy Rule 9011 (providing sanctions for signature of unwarranted documents), and 18 U.S.C. § 152 (providing criminal penalties for bankruptcy fraud). The congressional Commission appointed to revise the Code determined that the first of two additional internal goals that needed to be addressed concerned deterrents and sanctions against fraud as well as other dishonest conduct. COMMISSION REPORT, *supra* note 1, at 82. The Commission continued: "Dishonest resort to the bankruptcy process and dishonest conduct in anticipation of its use, by debtor or creditor, should be deterred and sanctioned directly by denial of relief and by criminal prosecution and conviction." *Id.* at 83.

116 *Taylor*, 112 S. Ct. at 1648-49.

117 *Id.* at 1649.

118 *Id.* Section 105(a) stated:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

held that the failure of a Chapter 7 bankruptcy trustee to object to the validity of a debtor's claimed exemption within thirty days of the initial creditor's meeting rendered the property exempt, regardless of whether the debtor had a colorable basis for claiming such exemption.[119]

In a vigorous dissent, Justice Stevens focused on equitable considerations and found the majority's literal interpretation baseless in light of equity, the common law, widespread bankruptcy court practice and the text of section 522(b).[120] Justice Stevens posited that there was no identifiable reason why ordinary statutory tolling principles should not apply in the bankruptcy context.[121] Justice Stevens further opined that due to the equitable foundations of bankruptcy law, these principles were particularly applicable to a bankruptcy proceeding.[122] Justice Stevens observed that even absent fraud or the lack of trustee

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11 U.S.C. § 105(a) (1988).

Citing Supreme Court Rule 14.1(a) and Supreme Court Rule 24.1(a), the Court declined review of questions that had not been set forth in the petition for certiorari, noting that additional issues raised would change the focus of the issues already presented. *Taylor*, 112 S. Ct. at 1649. Supreme Court Rule 14.1, dealing with the content of the Petition for a Writ of Certiorari, stated:

> (1) The petition for a writ of certiorari shall contain, in the order here indicated:
>
> (a) The questions presented for review, expressed in the terms and circumstances of the case, but without unnecessary detail. The questions should be short and concise and should not be argumentative or repetitious . . . . The statement of any question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition, or fairly included therein, will be considered by the Court.

Sup. Ct. R. 14.1(a) (1992).

Supreme Court Rule 24.1, dealing with the brief on the merits, in general states in pertinent part:

> (1) A brief of a petitioner or an appellant on the merits must comply in all respects with Rule 33, and must contain in the order here indicated:
>
> (a) The questions presented for review, stated as required by Rule 14. The phrasing of the questions presented need not be identical . . . but the brief may not raise additional questions or change the substance of the questions already presented in those documents.

S. Ct. R. 24.1 (1992).

119 *Taylor*, 112 S. Ct. at 1648.

120 *Id.* at 1649 (Stevens, J., dissenting).

121 *Id.* at 1650 (Stevens, J., dissenting).

122 *Id.* Justice Stevens relied on Bailey v. Glover, 88 U.S. (21 Wall.) 342, 349-50 (1875), for the precedential value that the inequitable effects of federal statutes of limitations have been avoided by the tolling of the statutory period. *Id.*

diligence in this case, the injured parties were the innocent creditors.[123] Noting that the exemption lacked a legitimate basis,[124] the dissenting Justice declared that absent the debtor's prejudicial reliance on the lapse of time, fraud had been committed by the filing of a frivolous claim.[125]

Justice Stevens praised the portion of the majority's opinion focusing on full meritorious review of the disputed exemption claimed.[126] In addition, Justice Stevens cited *In re Bennett*[127] for the proposition that a strict application of Bankruptcy Rule 4003(b) would improperly encourage the debtor to claim all property as exempt, leaving the trustee and creditors to assess the validity of the many exemptions claimed.[128] Evaluating the good-faith statutory basis test, Justice Stevens declared that "rejecting a literal reading of the relevant provisions" would achieve an appropriate equilibrium by preventing debtors from attempting "exemptions by declaration," while denying trustees a second opportunity to recover property claimed exempt in good faith.[129]

Finally, Justice Stevens determined that the statutory language of section 522(b) warranted a finding that the relevant Code sections implicitly required that the exemption be valid.[130] Justice Stevens reasoned that when the debtor's exemptions did not comport with the limiting language of sections 522(b) and 522(*l*), there was a basis for finding a non-complying filing that would toll the thirty day period.[131] Justice Stevens concluded

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123 *Id.*

124 *Id.* The majority also noted that neither of the parties to the suit claimed that there was a basis for the claimed exemption. *Id.* at 1647 (Stevens, J., dissenting).

125 *Id.* at 1650 (Stevens, J., dissenting). Justice Stevens argued that the fraud would toll the thirty day objection period. *Id.*

126 *Id.* at 1651 (Stevens, J., dissenting). Justice Stevens concluded that the equitable principles that motivated those courts to fully examine the basis for such claims should have governed the majority's review in *Taylor*. *Id.* (citing *In re* Hackett, 13 B.R. 755, 756 (Bankr. E.D. Pa. 1981), for the proposition that equitable considerations demand that a debtor should not be allowed exemptions to which she has no entitlement).

127 See *supra* notes 89-91 and accompanying text for a discussion of *Bennett*.

128 *Taylor*, 112 S. Ct. at 1651 (Stevens, J., dissenting).

129 *Id.* Reiterating the parties' concession that Davis lacked a statutory basis for her claimed exemption, Justice Stevens noted that the trustee would be successful in his objections under either the good-faith or full meritorious review tests. *Id.*

130 *Id.* at 1652 (Stevens, J., dissenting).

131 *Id.* Section 522(b) limited debtor claimed exemptions to "any property that is exempt under federal law . . . or state or local law that is applicable on the date of the filing of the petition." 11 U.S.C. § 522(b)(2)(A) (1988). Section 522(*l*) stated in pertinent part: "The debtor shall file a list of property that the debtor claims as

that the majority's literal interpretation of the statute apparently precluded further inquiry.[132] The Justice explicated that the Court would, under the current ruling, disregard egregious trustee fraud under the guise of the literal interpretation.[133]

Previously, debtors were confined to prison when they were not able to pay their outstanding debts.[134] The new Bankruptcy Code implements a shift in policy that favors the honest debtor and encourages equitable distribution of assets among the debtor's creditors.[135] Given the lenience that the Court has allowed debtors, it might prove advantageous for debtors and their attorneys to claim exemptions that have shaky bases.[136]

Striking a proper balance between conflicting incentives and policies is essentially the greatest obstacle that a court must surmount. Pursuant to the policies of fresh start, finality and efficient case administration, a court must define at what point in time the bankruptcy case must end so that the debtor can leave the distress of the bankruptcy proceeding behind and start anew.[137] Diametrically opposed to bright-line finality are equitable considerations concerning the ability of the trustee and other parties in interest to enhance the quality and quantity of the estate's assets. The debtor's incentive to exempt as much property as possible clashes with these equitable concerns. Until the United States Supreme Court decided *Taylor*, the federal bankruptcy courts, district courts and appellate courts had approached the issue of untimely objections to claimed exemptions from three divergent angles, each furthering bankruptcy policies yet containing weaknesses.[138] After weighing these conflicting considerations, the Court charted a conservative course, and ruled that the literal interpretation approach would best vindi-

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exempt under subsection (b) of this section." 11 U.S.C. § 522(*l*) (1988). Justice Stevens found that if exemption selection were allowed in any manner without limitation, the language would be meaningless. *Taylor*, 112 S. Ct. at 1652 (Stevens, J., dissenting) (citing *In re* Kingsbury, 124 B.R. 146, 148 n.9 (Bankr. D. Me. 1991)).

132 *Taylor*, 112 S. Ct. at 1652 (Stevens, J., dissenting).

133 *Id.* Qualifying that opinion, Justice Stevens noted that while this case was not as "strong" as a fraudulent one, equity and fair administration of bankruptcy cases called for the abrogation of the strict interpretative approach. *Id.*

134 R. Patrick Vance, *Bankruptcy*, 29 LOYOLA L. REV. 619, 619 (1983).

135 *Id.*

136 See *In re* Bennett, 36 B.R. 893 (Bankr. W.D. Ky. 1984) and *supra* notes 89-91 for an analysis of *Bennett* and debtor windfall based on "exemption by declaration."

137 COMMISSION REPORT, *supra* note 1, at 78-79.

138 *See supra* note 54 and accompanying text (providing a discussion of three different approaches).

cate the interests of all parties involved.[139]

The majority in *Taylor* wrongly focused on debtor fresh start as the foremost policy objective in bankruptcy.[140] The Court failed to recognize the importance of the competing policy objective of equitable creditor treatment.[141] Of the three goals that the Code advances, the equitable treatment of creditors was initially set forth as having a more exalted position than debtor fresh start.[142]

Disregarding this equitable consideration as irrelevant to the procedure set forth in Bankruptcy Rule 4003(b), the Court determined that judicial expediency and finality in the bankruptcy process were the appropriate interests to be advanced.[143] While finality in the process is a noble aspiration, the Court should instead have proffered the policy of innocent creditor debt satisfaction.[144] With this ruling, the Court has essentially opened the door for debtors to attempt what prior courts have termed "ex-

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139 *Taylor*, 112 S. Ct. at 1648-49.

140 The Congressional Commission on Bankruptcy philosophically determined that the external goal of bankruptcy was the furtherance of an "open-credit economy" — the role of private credit generally in the economy of the country. COMMISSION REPORT, *supra* note 1, at 68. The internal goals of bankruptcy, however, must prevail over the external rules, which if applied in the collective situation, would contravene bankruptcy policy. *Id.* at 75. Bankruptcy goals include, equality of distribution among creditors, debtor fresh start, and case administration. *Id.* The Commission Report stated that "[t]he fulcrum of the balance between external goals of the open credit economy and internal goals of the bankruptcy process lies [with the fair and equitable treatment of creditor's claims]." *Id.* at 76. In analyzing the changes that need to be implemented, the Commission declared: "It has frequently been stated that one of the principal aims of a system of bankruptcy administration is equality of distribution among unsecured creditors." *Id.* at 21.

141 *See supra* notes 1-3 and accompanying text (discussing equitable treatment of creditors and the rehabilitation of debtors).

142 *See id.*

143 *Taylor*, 112 S. Ct. at 1648. *See also* Albert A. Ciardi III, Note, *Third Circuit Requires Strict Compliance with Thirty Day Rule in Section 362(e) of Bankruptcy Code and Bankruptcy Rule 4001(b)*, 35 VILL. L. REV. 677, 678-79 (1990) (outlining the Third Circuit's position on a similar 30-day time limit in the bankruptcy code). In *In re* Wedgewood Realty Group, Ltd., 878 F.2d 693 (3d Cir. 1989), the Third Circuit held that the section 362(e) requirement that a court hold a hearing for a motion for relief from the automatic stay within thirty days should be strictly complied with or the stay would be lifted. *Id.* at 698. The court found that, as a result of the bankruptcy court's failure to observe the time limit set forth, the creditor would be allowed to proceed as if the automatic stay had been judicially lifted. *Id.*

144 *See* Wells, *supra* note 17, at 827 (observing that the primary means of providing the debtor a fresh start was the exemptive power of the debtor: "In order to reestablish himself, the objective of the bankrupt debtor is to retain as much of his property as possible."). *See also*, Zitron, *supra* note 9, at 41 (declaring that Congress's goal was "to ensure that the debtor's 'fresh start' does not become a 'head start' at the expense of the general creditors").

emption by declaration."[145] This bright-line rule sends an improper message to the unscrupulous debtor and his or her attorney, that craftily-claimed exemptions can be had when a trustee is negligent or indifferent.[146]

The Court's position, however, is not completely without merit. The *Taylor* decision augments the ideal that the debtor should be granted the opportunity to conclude his debtor status and begin life anew pursuant to the fresh start objective of the Code. This fresh start, however, must not work to the detriment of the creditors.[147]

Additionally, the Court's opinion has left open two issues. The majority failed to address how and whether courts should deal with wholesale fraud. Moreover, the interplay of section 105(a) with the relevant exemption provisions was not discussed.[148] The Court was surely aware of situations in which even the strict literal interpretation must bow in the face of trickery and deceit.[149] Yet the Court chose to limit the scope of the holding to the parameters of the equity provisions contained within the Code itself.[150] The dissent, delineating an extreme example, concluded that the literal interpretation could not be overcome even by outright fraud. Because the extent to which equity would play a role in the decision was never discussed in the majority's opinion, however, this is not a foregone conclusion.[151] Absent a directly applicable Code section, the Court may in the future conclude that strict interpretation may be overcome to effectuate the equitable treatment of creditors.

Another question left unresolved was the applicability of section 105(a). The interplay of this Code provision in conjunction with exemption by declaration has yet to be determined. As the Court declined to rule on the merits of the issue,[152] in the future,

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145 *Id.*

146 *See supra* notes 16, 39 & 108-09 and accompanying text. Taylor warned against the consequences of a strict interpretation. *See supra* notes 112-13 and accompanying text.

147 See *supra* notes 1-5 and accompanying text for a discussion of debtors' and creditors' rights and interests in bankruptcy. The Court has noted that "[o]ne of the primary purposes of the bankruptcy act is to 'relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh . . . .'" Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) (quoting Williams v. United States Fidelity Co., 236 U.S. 549, 554-55 (1915)).

148 *See supra* note 118 and accompanying text.

149 *See supra* notes 122-27 and accompanying text.

150 *See supra* note 119 and accompanying text.

151 *See id.*

152 *Taylor*, 112 S. Ct. at 1649.

it could be raised to try to topple the harsh inequities that will result from the strict-compliance rule. The broad equitable powers granted under section 105(a), however, are limited to those equitable actions taken that execute the Code provisions;[153] therefore, given the strict interpretation that the Court has given to section 522(b), it is highly unlikely that, upon review, the Court would find an order pursuant to section 105(a) appropriate in a situation such as the one in *Taylor*. An action for relief based on section 105(a) would be struck down under the current interpretation because any other interpretation would serve to enlarge the literal meaning of the statute.

The prior law addressing exemptions claimed under a good-faith statutory basis reveals the most insightful method for exemption review.[154] Full meritorious review, if adopted, would lead to increased litigation and judicial inefficiency.[155] Allowing disputed exemption claims to vest in the debtor pending review of whether the debtor had some colorable basis for such claims, however, would foster finality, fresh start and creditor equity. With a paucity of scholarly comment to provide guidance, the so-called "intermediate approach" would strike the proper balance between the competing Code goals and relevant parties' interests. By allowing review under a good-faith statutory basis test, the harsh inequities of the strict, literal approach would be avoided, while the voluminous litigation of full meritorious review would be circumvented.[156]

In response to the *Taylor* Court's allusion to the need for congressional action,[157] a model revision of section 522(*l*) and Bankruptcy Rule 4003(b) would be illuminating. For example, the revised statutes might read:

> § 522(*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 the property of the estate on behalf of the debtor. *Unless*

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153 *See* Cecelia N. Anekwe, Comment, *Responsible Officers Get Green Light at the Intersection of the Tax and Bankruptcy Codes; Bankruptcy Code Section 105 Can Be Used to Order the IRS to Apply Debtor Tax Payments to Trust Fund Taxes*, 21 SETON HALL L. REV. 868-69 & n.7 (1991) (setting forth the general proposition that section 105(a) is limited to carrying out Code provisions, not expanding or enlarging their meaning).

154 *See supra* notes 87-101 and accompanying text.

155 See *supra* notes 56-70 and accompanying text advancing, en masse, that case administration and finality in the process should be achieved.

156 *See supra* notes 87-101 and accompanying text.

157 *Taylor*, 112 S. Ct. at 1648-49.

a party in interest objects, the property claimed as exempt on such a list is exempt if, and only if, such claim of exemption is grounded in fact, law or in a good-faith belief, modification, extension and/or abolition of the current law.

Rule 4003(b): The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of the creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list of supplemental schedules unless, within such period, further time is granted by the court. *Nothing in this section shall preclude any party in interest from objecting in an untimely manner if the exemption claimed by the debtor is not grounded in fact, law or in a good-faith belief, extension, modification and/or abolition of existing law.*

The revisions set forth above, if implemented, would codify the existing school of thought that there must be at least some good-faith belief for the claimed exemptions.

The majority in *Taylor* seemed compelled to tether its interpretation to the plain meaning of the statute despite equitable considerations. The Court pronounced that if a change is to be implemented to allow only those exemptions claimed in good faith, it is Congress's duty to do so. If the future of bankruptcy exemption law is to be anything other than a chaotic skirmish, with debtor and creditors alike vying for assets, Congress must implement a statutory revision to eliminate the improper incentives inviting exemption by declaration.

Henry W. Wilson