CASE NO. 07-3256

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

WACHOVIA DEALER SERVICES, et al.
Appellants

v.

EDWARD LEE JONES, et al.
Appellees

BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY IN SUPPORT OF THE APPELLEES

Appeal from Orders by the Honorable Robert D. Berger from the
United States Bankruptcy Court for the District of Kansas
In re Jones, No. 06-22074, *In re* Walters, No. 06-21113, *In re* Kinsey, No. 06-20921,
In re Thompson, No. 06-21083, *In re* Prince, No. 06-20679

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December 3, 2007

CORPORATE DISCLOSURE STATEMENT

Wachovia Dealer Services, et al. v. Edward Lee Jones, et al,
No. 07-3256

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure *Amicus Curiae* the National Association of Consumer Bankruptcy Attorneys makes the following disclosure:

1) For non-governmental corporate parties please list all parent corporations. **NONE.**

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock. **NONE.**

3) If there is a publicy held corporation which is not a party to the proceeding before this Court but which has a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests. **NONE.**

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.
NOT APPLICABLE.

_s/ Jill A. Michaux_____
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Dated: December 3, 2007

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Legislative History

Other Authorities

STATEMENT OF INTEREST OF NACBA AS AMICUS CURIAE

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 2,600 consumer bankruptcy attorneys nationwide. Member attorneys and their law firms represent debtors in an estimated 400,000 bankruptcy cases filed each year. NACBA members within the Tenth Circuit file thousands of bankruptcy cases per year.

NACBA's corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. Additionally, NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors. NACBA has filed *amicus curiae* briefs in various courts seeking to protect the rights of consumer bankruptcy debtors. *See*, *e.g.*, *Kawaauhau v. Geiger*, 118 S.Ct. 974 (1998); *In re Tanner*, 217 F.3d 1357 (11th Cir. 2000); *Capital Comm. Fed. Credit Union v. Boodrow (In re Boodrow),* 126 F.3d 43 (2d Cir. 1997).

The NACBA membership has a vital interest in the outcome of this case. NACBA members primarily represent individuals, many of whom own motor vehicles. The 2005 amendments to section 1325(a) added an

unenumerated, hanging paragraph at the end of the section that deals with certain claims secured by motor vehicles. The effect of this paragraph has been widely debated by creditors, debtors, counsel and commentators. This case presents the first opportunity for a circuit court of appeals to squarely address the question of whether a creditor can have an "allowed secured claim" without the application of section 506 of the Bankruptcy Code. The impact of the court's determination surely will be felt by NACBA's members and their clients across the country.

SUMMARY OF ARGUMENT

The hanging paragraph added to the end of section 1325(a)(5) plainly makes section 506 inapplicable to certain claims. Without the application of section 506, creditors' claims cannot be "allowed secured claims" entitled to treatment under section 1325(a)(5). While creditors continue to hold secured claims, those claims are subject to modification pursuant to section 1322(b)(2). Such a result is logical and consistent with longstanding bankruptcy decisions and policy.

By contrast, most court decisions to date either have assumed that the hanging paragraph prevents bifurcation of creditors' claims or have completely ignored the longstanding majority position under which, in chapter 13, the term "allowed secured claim" refers to a claim whose status has been determined pursuant to section 506(a). In limiting bifurcation of claims covered by the hanging paragraph, several courts have simply overreached in attempting to extend the very narrow and limited holding in *In re Dewsnup v. Timm*, 502 U.S. 410 (1992). The conclusion of these courts leads to the nonsensical result that the words "allowed secured claim" in section 1325(a)(5) carries two different definitions. One definition is determined with reference to section 506(a) and the other is not.

ARGUMENT

I. The plain language of the "hanging paragraph" following section 1325(a)(9) renders section 506 inapplicable for the purposes of 1325(a)(5).

The starting point for the court's inquiry should be the statutory language itself. *See Lamie v. U.S. Trustee*, 540 U.S. 526, 534, 124 S.Ct. 1023, 1030 (2004); *United States v. Ron Pair Enters., Inc.,* 489 U.S. 235, 241-42, 109 S.Ct. 1026, 1030-31 (1989); *United States v. Steele*, 147 F.3d 1316, 1318 (11th Cir.1998) (*en banc*) ("In construing a statute we must begin, and often should end as well, with the language of the statute itself."). In interpreting the statutory language, the court must assume that Congress said in the statute what it meant and meant in the statute what it said. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Thus, it has been well established that when the "statute's language is plain, the sole function of the court, at least where the disposition required by the text is not absurd, is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,* 530 U.S. 1, 6 (2000)(internal quotations omitted). A result will only be deemed absurd only if it is unthinkable, bizarre or demonstrably at odds with the intentions of its drafters. *See In re Spradlin*, 231 B.R. 254, 260 (Bankr. E.D. Mich. 1999), *citing Public Citizen v. Dept of Justice*, 491 U.S. 440, 109 S. Ct. 2558, 105 L.Ed.2d. 377 (1989).

A plain reading of the statutory language in results in an outcome that is neither absurd nor demonstrably at odds with the intentions of Congress.

The new paragraph added to the end of section 1325(a)(9) (hereinafter the "hanging paragraph") states in relevant part:

> For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debtor that is the subject of the claim, the debt was incurred within the 910-day preceding the date of filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor…

This paragraph plainly and clearly makes section 506 inapplicable for purposes of section 1325(a)(5) to a claim based on a purchase money security interest in a motor vehicle obtained within 910 days of the filing of the petition. While most courts have agreed that the statute is unambiguous on this point,[1] courts have differed dramatically on what it means to say that section 506 does not apply. *See, e.g.*, *In re Carver*, 338 B.R. 521 (Bankr. S.D. Ga. 2006)(910 car claims not "allowed secured claims"); *In re Brooks*, 344 B.R. 417 (Bankr. E.D.N.C. 2006)(910 car claims are allowed secured claims in the full amount of the debt); *In re Wampler*, 345 B.R. 730 (Bankr.

[1] *See, e.g., In re Turkowitch*, 355 B.R. 120 (Bankr. E.D. Wis. 2006); *In re Patricka*, 355 B.R. 616 (Bankr. E.D. Mich. 2006); *In re Payne*, 347 B.R. 278 (Bankr. S.D. Ohio)(finding the language of the hanging paragraph "unambiguous and clear"); *In re Brown*, 346 B.R. 868 (Bankr. N.D. Fla. 2006); *but see In re Duke*, 345 B.R. 806 (Bankr. W.D. Ky. 2006)(finding language of hanging paragraph ambiguous).

D. Kan. 2006)(910-car creditor does not have an "allowed secured claim" but has an allowed claim for the entire prepetition debt without post-petition interest).

Without the application of section 506, creditors' claims cannot be "allowed secured claims" entitled to treatment under section 1325(a)(5). While creditors continue to hold secured claims, those claims are subject to modification pursuant to section 1322(b)(2).

II. If section 506 does not apply to Creditor's claim, then Creditor cannot have an "allowed secured claim" subject to treatment in accordance with 1325(a)(5).

A. A claim becomes an allowed secured claim only after it has been "allowed" under section 502 and its secured status determined under section 506.

The "allowance," "status" and "treatment" of claims require three distinct inquiries under the Bankruptcy Code. Holders of "allowed secured claims" provided for in a chapter 13 plan are accorded special "treatment" of their claims under 11 U.S.C. § 1325(a)(5). Specifically, section 1325(a)(5) states that the court shall confirm a proposed chapter 13 plan if,

> (5) with respect to each **allowed secured claim** provided for by the plan—
>
> (A) the holder of such claim has accepted the plan;
>
> (B)(i) the plan provides that—
>
> (I) the holder of such claim retain the lien securing such claim until the earlier of—
>
> (aa) the payment of the underlying debt determined under nonbankruptcy law; or

> (bb) discharge under section 1328; and
> (II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;
> (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such a claim; and
> (iii) if—
> (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments, shall be in equal monthly amounts; and
> (II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than the amount sufficient to provide to the holder of such claim adequate protection during the period of the plan;
> (C) the debtor surrenders the property securing such claim to such holder.
> (emphasis added)

To achieve the status of a holder of an "allowed secured claim" and obtain the benefits of section 1325(a)(5) requires the operation of state law and sections 502 and 506 of the Bankruptcy Code.

State Law. Whether or not the amount owed to a creditor is secured by a lien on property is determined in accordance with the applicable law of the state in which the debtor resides or where the contract was formed. Similarly, the classification of such a lien as a "purchase money security interest" is also determined by state law. *See, e.g.*, *Citifinancial Auto v. Hernandez-Simpson*, 369 B.R. 36 (D. Kan. 2007); *In re Horn*, 338 B.R. 110 (Bankr. M.D. Ala. 2006).

Bankruptcy Code. The "allowance", "status" and "treatment" of that creditor's claim in the context of a federal bankruptcy proceeding is determined not under state law, but by the provisions of the Bankruptcy Code. Only after the claim has been "allowed" under section 502(a) and its secured "status" determined under section 506, can the claim be afforded the "treatment" specified in section 1325(a)(5). *See Ron Pair*, 489 U.S. 235, 238-39 (1989)(explaining that section 506 "governs the definition and treatment of secured claims."); *In re Fareed*, 262 B.R. 761 (Bankr. N.D. Ill. 2001)(explaining that the "'secured claim', arising from collateral valuation under section 506, if allowed under § 502, authorizes a secured creditor to demand the plan treatment specified in § 1325(a)(5)").

"Claim allowance" is determined by section 502, which establishes the amount of the creditor's allowed claim.[2] Section 502 does not address the status or treatment of a secured claim in a case, but merely creates a threshold for determining whether an asserted claim or interest is eligible for distribution from the estate, and if so, in what amount.

Once a claim is allowed its "secured status" is determined in accordance with section 506. *See In re Bailey*, 153 F.3d 718 (4th Cir.

[2] A proof of claim or interest that is filed in accordance with 11 U.S.C. § 501 is deemed allowed unless a party in interest objects. If an objection is made under section 502(b), the bankruptcy court is authorized only to determine if the claim should be allowed or disallowed. If allowed, the court may then determine the amount of such claim.

1998)(table, unpublished)("[t]he determination of an allowed claim's secured status is an independent inquiry governed by 11 U.S.C. § 506"). ***Absent the operation of section 506, the creditor does not obtain the status of a holder of an "allowed secured claim" under the federal bankruptcy law.*** However, the hanging paragraph only makes section 506 inapplicable with respect to section 1325(a)(5). As a result, the creditor with a purchase money security interest securing a debt described in the hanging paragraph has an allowed secured claim for purposes of chapter 13 with one exception. Under that exception the creditor is simply not entitled to the special treatment specified in section 1325(a)(5). *See* 8 Collier on Bankruptcy ¶ 1325.06 (A. Resnick and H. Sommer, eds., 15th rev. ed. 2006). To hold otherwise, would be to completely disregard the plain language of the statute.

B. Courts applying *Dewsnup* in chapter 13 have failed to recognize the absurd result in which the same words "allowed secured claim" in section 1325(a)(5) would have two different meanings.

Relying heavily on the Supreme Court's decision in *Dewsnup v. Timm*, 502 U.S. 410 (1992), some recent court decisions[3] hold that a claim allowed under section 502 and for which the creditor has a valid lien

[3] Many early case decisions on the effect of the hanging paragraph assumed that covered claims were fully secured without offering much analysis to support the assumption. *See, e.g.*, *In re Wright*, 338 B.R. 917 (Bankr. M.D. Ala.)("Simply put, the claims of these creditors must be treated as fully secured under the plan'); *In re Horn*, 338 B.R. 110 (Bankr. M.D. Ala. 2006); *In re Robinson*, 338 B.R. 70 (Bankr. W.D. Mo. 2006).

pursuant to state law is sufficient to create a "allowed secured claim." *See, e.g.*, *In re Morris*, 370 B.R. 796 (E.D. Wis. 2007); *In re Patricka*, 355 B.R. 616 (Bankr. E.D. Mich. 2006; *In re Brooks*, 344 B.R. 417 (Bankr. E.D.N.C. 2006); *In re Brown*, 339 B.R. 818 (Bankr. S.D. Ga. 2006). These courts conclude that the special treatment afforded "allowed secured claims" is available even when section 506 does not apply. In essence, these courts seek to extend the very narrow and limited holding in *Dewsnup*,[4] which held that a chapter 7 debtor could not use section 506(d) to strip down an undersecured lien bifurcated by section 506(a). In the process, they overreach in their attempts to apply the *Dewsnup* opinion to chapter 13 where it has long been held that the term "allowed secured claim" in section 1325(a) does have the section 506(a) meaning—a meaning the *Dewsnup* court rejected for purposes of section 506(d) in chapter 7 cases. *See, e.g., Bank One, Chicago, NA v. Flowers*, 183 B.R. 509 (N.D. Ill. 1995)("had the Supreme Court intended *Dewsnup* to apply specifically to chapter 13 proceedings, it most likely would have stated such in *Nobelman*"); *In re Gray*, 285 B.R. 379 (Bankr. N.D. Tex. 2002)(stating that a majority of courts have taken the position that *Dewsnup* is not controlling in chapter 13 cases);

[4] The *Dewsnup* majority opinion is explicitly limited to the facts of that particular case. *See Dewsnup*, 502 U.S. at 417 n. 3 (Accordingly, we express no opinion as to whether the word "allowed secured claim" have different meaning in other provisions of the Bankruptcy Code.")

see also In re Zimmer, 313 F.3d 1220 (9th Cir. 2003)(applying section 506 and determining mortgagee not "holder of secured claim" within the ambit of § 1322(b)(2)); *In re Lane*, 280 F.3d 663 (6th Cir. 2002); *In re Pond*, 252 F.3d 122 (2d Cir. 2001); *In re Dickerson*, 222 F.3d 924 (11th Cir. 2000); *In re Bartee*, 212 F.3d 277 (5th Cir. 2000); *In re McDonald*, 205 F.3d 606 (3d Cir. 2000). A thorough review of *Dewsnup*, *Nobleman v. American Savings Bank*, 508 U.S. 324 (1993), and the relevant legislative history show that sections 506, 1322(b)(2), and 1325(a)(5), when viewed as a whole, demonstrate that the words "allowed secured claim" are defined by section 506(a) in chapter 13 proceeding. *See Flowers*, 183 B.R. at 517.

The conclusion of the *Morris, Patricka*, *Brooks*, and *Brown* courts leads to the nonsensical result that the term "allowed secured claim" contained within section 1325(a)(5) now carries two different meanings. One meaning applies when dealing with claims covered by the hanging paragraph and merely refers to a claim that is allowed under section 502 and for which the creditor has a valid lien pursuant to state law. For claims not covered by the hanging paragraph, the term "allowed secured claim" refers to the amount of the creditors claim entitled to special treatment under section 1325(a)(5) **after** applying section 506. The latter meaning is, of course, dependent on the application of section 506.

That the *Dewsnup* majority disregarded the normal rules of statutory construction by giving identical words used in different parts of the same subsection distinct meanings is well known. *See Dewsnup*, 502 U.S. at 421 (Scalia, J., dissenting); *Sullivan v. Stroop*, 496 U.S. 478 (1990)(internal quotations omitted). However, neither the *Dewsnup* opinion nor any other authority can support the decisions such as *Morris*, *Patricka*, *Brooks*, and *Brown*, in which the same words "allowed secured claim" in the ***same*** paragraph of the same subsection—1325(a)(5) —have two different meanings.

C. Nothing in the Code suggests that claims covered by the hanging paragraph are transformed into wholly unsecured claims.

Several courts have mistakenly concluded that *amicus*' argument would transform the creditors' claims into unsecured claims. For example, in *In re Wright*, the court posited that if section 506 is the only means to achieve an "allowed secured claim" then the inapplicability of that section means that "the entire debt must be unsecured." 492 F.3d 829, 832 (7th Cir. 2007). Similarly, in *In re Trejos* the court stated that "COLLIER takes this position, and indicates that if Section 506 does not apply, then there cannot be a 'secured claim.'"[5] 352 B.R. 249, 260 (Bankr. D. Nev. 2006). These

[5] Amicus takes the same position as Collier on Bankruptcy. Collier's states in relevant part:

courts, however, fail to recognize that under the Bankruptcy Code there is a difference between a "secured claim" and an "allowed secured claim." *Compare* 11 U.S.C. § 1322(b)(2) (permitting debtors to modify the rights of holders of "secured claims") *with* 11 U.S.C. § 1325(a)(5) (referring to "allowed secured claims"). Neither amicus nor Collier's take the position that creditors with claims covered by the hanging paragraph are left only with unsecured claims. Indeed, there is no basis in the Code to suggest such a result.

Rather, secured claims are determined with reference to state law and may be modified in a chapter 13 case pursuant to section 1322(b)(2). *See* 11 U.S.C. 1322(b)(2) (stating that a plan may "modify the rights of holders of secured claims"). By contrast only "allowed secured claims" are entitled to treatment under section 1325(a)(5), and a "secured claim" only becomes an "allowed secured claim" in chapter 13 of the Bankruptcy Code by applying section 506. The inapplicability of section 506 to claims covered by the

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> It is possible that [the hanging paragraph] was intended to prohibit the use of section 506(a) to bifurcate a secured claim into an allowed secured claim and an allowed unsecured claim as part of the cramdown permitted by section1325(a)(5)(B), therefore, that such claims should be treated as fully secured claims regardless of the value of the collateral. But, even if that was the intent, because the new language added to section 1325(a) renders entirely inapplicable for some creditors the only section, section 506(a), that gives those creditors allowed secured claims, it does not to [sic] carry out such intent.

See 8 Collier on Bankruptcy ¶ 1325.06 (A. Resnick and H. Sommer, eds., 15th rev. ed. 2006).

hanging paragraph simply means that holders of such claims are not entitled to the treatment specified in section 1325(a)(5), including a present value payment for the claim. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

D. Limiting the applicability of section 1325(a)(5) for certain claims is not demonstrably at odds with what is at best ambiguous legislative history regarding the new hanging paragraph.

The plain language of the statute should be conclusive, "except in 'rare cases [in which] the literal application will produce a result demonstrably at odds with the intentions of the drafters.'" *Ron Pair,* 489 U.S. at 242; *see also Lamie*, 540 U.S. at 534-36; *In re Eubanks*, 219 B.R. 468 (B.A.P. 6th Cir. 1998)(concluding the provisions of 1322(c) permit modification of short term mortgages); *In re Thomas*, 179 B.R. 523 (Bankr. E.D. Tenn. 1995)(concluding § 362(b)(1) did not create an exception from the stay for actions against the property of the estate). Here, the sparse legislative history with respect to the hanging paragraph simply does not prove that Congress could not have intended the result reached by application of the plain language. *See Demarest v. Manspeaker*, 498 U.S. 184 (1991), *citing Griffin v. Oceanic Contract., Inc.,* 548 U.S. 564, 571 (1982).

Earlier versions of the 2005 bankruptcy legislation contained language that would have eliminated the bifurcation of certain claims pursuant to

section 506(a), but would not have eliminated their status as allowed secured claims. *See, e.g.*, H.R. 833, 106th Cong. 1st Sess. § 122 (1999). For example, section 122 of the Bankruptcy Reform Act of 1999 provided that "**subsection (a)** [of § 506] shall not apply to an ***allowed secured claim*** to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor within 5 years of filing of the petition."(emphasis supplied). *See also* Bankruptcy Reform Act of 1998, H.R. 3150, 105th Cong. § 128 (1998). Similarly, the 1997 version of the bill provided that "**Subsection (a)** [of § 506] shall not apply to an **allowed secured claim** to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor during the 90-day period preceding the date of filing of the petition."(emphasis supplied). Consumer Bankruptcy Reform Act of 1997, S. 1301, 105th Cong. § 302(c) (1997). Surely, had Congress intended only to prevent the bifurcation of claims under 506(a) while retaining the protections of section 1325(a)(5), it could have easily done so.

Indeed, Congress is fully aware of the language necessary to create an explicit exception to section 506. For example, under section 1111(b), the holder of a claim secured by a lien on property may elect that, notwithstanding section 506(a), such claim is a secured claim to the extent

such claim is allowed. The fact that Congress considered but ultimately rejected similar language that would have simply eliminated bifurcation of certain claims further supports the conclusion that it did not intend such an effect. *See Till v. SCS Credit Corp*. 541 U.S. 465, 480 n.8 (2004).

In amending section 1325(a), "if Congress enacted into law something different from what it intended, then it should amend the statute to conform to its intent." *Lamie*, 540 U.S. at 1034. Until that time, it is beyond the province of this court to refuse to give effect to the plain meaning of the statute where the result produced is neither absurd nor demonstrably at odds with the drafter's intent.

E. The court's best guess as to legislative intent is insufficient to overcome the plain language of the statute.

Despite the dearth of legislative history on the hanging paragraph, creditors have routinely argued in hanging paragraph cases that Congressional intent in enacting the provision was solely to benefit creditors. *See In re Kenney*, 2007 WL 1412921 (Bankr. E.D. Va. May 10, 2007)("Creditors argue that the hanging paragraph should always be read to provide heightened protection to 910 secured creditors, as that was the intent of Congress"); *In re Brown*, 346 B.R. 868 (Bankr. N.D. Fla. 2006)("Wells Fargo contends that the absurdity of the result originates from the fact that the changes in the Code wrought by BAPCPA were enacted to enhance the

rights of secured creditors in bankruptcy"). One court recently summarized the creditor's argument on the hanging paragraph as follows:

> The crux of Ford Motor Credit's argument is that § 1325 was amended to protect the interests of the 910 creditor and thus the statute should be interpreted to give the interests of the secured 910 creditor increased protection. Ford Motor Credit is in essence requesting this Court to find that the statute on its face is contrary to the intent of the drafters.

In re Williams, 2007 WL 2122131 (Bankr. E.D. Va. Jul. 19, 2007). Several courts have bought into the creditors' argument despite the absence of supporting legislative history. These courts have given significant weight to what they ***perceive*** as Congress' intent. For example, *In re Zehrung*, the court based its decision on what it found to be the "likely" and "extremely unlikely" intent of Congress. 351 B.R. 675, 678 (W.D. Wis. 2006). The Seventh Circuit in *In re Wright* reached a similar conclusion, in part, because the judges found it "hard to imagine" that Congress intended a different result. *See* 492 F.3d at 832. The obvious problem, however, with these decisions is that statutes should not be "interpreted" to match a court's determination of what Congress "meant" to say. Nor should courts attribute to Congress an official purpose based on the motives of particular groups that lobbied for or against certain provisions. *See Circuit City Stores v. Adams*, 532 U.S. 105, 120, 121 S. Ct. 1302, 149 L.Ed 234 (2001)(private

interest groups' roles in lobbying for or against legislation provide a dubious basis from which to infer intent); *see also Garcia v. United States*, 469 U.S. 70, 76, 105 S. Ct. 479, 83 L.Ed.2d 474 (1984)(courts should look only to Committee Reports that "represent[] the considered and collective understanding of those [legislators] involved in drafting and studying the proposed legislation."). Rather the plain language of the statute should be conclusive, except in rare cases in which the literal application will produce a result *demonstrably* at odds with the intentions of the drafters.

CONCLUSION

For all the foregoing reasons, amicus respectfully requests that this Court affirm the decision of the bankruptcy court below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief, exclusive of the certifications, tables of contents and authorities and the identity of counsel at the end of the brief, is 4128 words in text and footnotes as counted by Microsoft Word, the word processing system used to prepare this brief. This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

The text of the electronic brief and the hard copies are identical.

A virus check was performed on the electronic brief using Grisoft Company AVG Version 7.5.503 Virus software and no virus was detected.

I certify under penalty of perjury that the foregoing is true and correct.

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