IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No. 11-1992

In re: BARRY L. MICHAEL,
Debtor,

CHARLES J. DEHART, III, Chapter 13 Standing Trustee,
Appellant,
v.

BARRY L. MICHAEL,
Appellee.

On Appeal from the District Court for the
Middle District of Pennsylvania

AMICUS BRIEF OF THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS

Irv Ackelsberg, Esquire
LANGER GROGAN & DIVER, PC
1717 Arch Street, Suite 4130
Philadelphia, PA 19103
Tel: (215) 320-5660

Table of Contents

Table of Authorities

Cases

Statutes

Other Authorities

STATEMENT OF THE IDENTITY AND INTEREST OF THE AMICUS

Amicus Curiae National Association of Consumer Bankruptcy Attorneys (NACBA) is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA now has more than 4,500 members located in all 50 states and Puerto Rico. NACBA files amicus briefs in selected appellate and Supreme Court cases that could significantly impact consumer bankruptcy rights. This program has achieved national recognition and has influenced many important judicial decisions, some of which have specifically cited NACBA's briefs, many of which are available on the NACBA web site, www.nacba.org.

The issue involved in this appeal—regarding the proper disposition of undistributed wage-order funds in the possession of a chapter 13 trustee at the time a case is converted to chapter 7—is one with a substantial history, both in Congress and the courts. NACBA desires to share its knowledge of that history with this Court and believes that this contribution will assist the Court in reaching a result in accordance with legal authorities insufficiently discussed by the parties to this appeal. While NACBA supports affirmance, it believes, for the reasons stated in this Brief, that the proper analysis is somewhat different from the one presented by the Appellee debtor.

Both the Appellant and Appellee have consented to the filing of this Brief.

SUMMARY OF THE ARGUMENT

This is not a close case. Congress already decided in 1994, when adding 11 U.S.C. § 348(f) to the Bankruptcy Code, that when a case is converted from chapter 13 to chapter 7, the "property of the estate" in the converted chapter 7 case consists of the debtor's property as of the date of the original petition, unless the conversion was in bad faith, in which case the property of the estate is determined as of the date of conversion. Because a debtor's post-petition wages are *not* a component of a chapter 7 estate, *see* 11 U.S.C. § 541(a)(6), undistributed, post-petition wages in the possession of a chapter 13 trustee at the time a debtor converts to chapter 7 are, absent bad faith, the property of the debtor, not his creditors. Not only does the legislative history make clear that Congress intended to resolve the very dispute that this appeal seeks to reignite, Congress also expressly adopted the policy argument articulated by this Court in *In re Bobroff*, 766 F.2d 797, 803 (3d Cir. 1985), favoring interpretations of the Code that incentivize debtors to try to pay their debts through chapter 13 without penalty if those efforts fail.

The debtor-Appellee converted his case after years of submitting a portion of his earnings to a chapter 13 trustee pursuant to confirmed chapter 13 plan. As a result of those payments, his mortgage creditor received thousands of dollars in payments it would not have received had he filed a chapter 7 case originally.

When, due to circumstances beyond his control, his chapter 13 plan ceased being feasible and he abandoned his effort to save his house, he exercised his right to convert his case to chapter 7 and sought the return of his plan payments that were undistributed and still in the possession of the chapter 13 trustee. By virtue of 11 U.S.C. § 348(f), those funds are properly his, not his creditors'.

With minimal attention to the language and history of § 348(f) and the contrary, post-enactment decisions by other Circuits, and relying mainly on pre-enactment bankruptcy court decisions, the appellant and *amici* chapter 13 trustees argue that these undistributed funds remaining from appellee's wage order are the property of unidentified creditors who have a supposedly vested claim to this property. Their argument is without statutory basis and is grounded in a policy view rejected by Congress. The decisions below should be affirmed.

ARGUMENT

A. This Appeal Is Governed by 11 U.S.C. § 348(f), which Treats a Debtor's Post-Petition, Pre-Conversion Earnings as His Property, Not His Creditors'

Prior to the passage of 11 U.S.C. § 348(f) as part of the Bankruptcy Reform Act of 1994, Pub. L. 103-394, Act of Oct. 22, 1994, § 311, the courts were divided over what happens to undistributed funds in the possession of a chapter 13 trustee when a debtor converts the case to chapter 7. The pre-existing language in 11 U.S.C. § 348(a) provided that a conversion from one chapter to another "does not

effect a change in the date of the filing of the petition," but when debtors sought to use that provision to claim that property acquired post-petition and pre-conversion was rightfully theirs, the courts responded differently. Some decided that such funds belong to the debtor's creditors, *see, e.g.*, *In the Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991); *Resendez v. Lindquist*, 691 F.2d 397, 399 (8th Cir. 1982); *In re Waugh*, 82 B.R. 394 (Bankr. W.D. Pa. 1988), while others decided they belong to the debtor. *See, e.g.*, *In re Plata*, 958 F.2d 918 (9th Cir. 1992); *In re Doyle*, 11 B.R. 110 (Bankr. E.D. Pa. 1981).

This pre-1994 judicial split was, for the most part, an expression of differing policy approaches to a situation in which there was "no controlling statutory authority or case law mandating a result one way or the other, and the legislative history . . . [was] equally devoid of any guidance." *In re Plata*, 958 F.2d at 921. As observed by Judge Posner, one could reasonably interpret 11 U.S.C. § 348(a) as supporting a retroactive withdrawal of property from the estate back to the debtor, but could also adopt "an equally good alternative" reading "that conversion from Chapter 13 to Chapter 7 does not affect the bankruptcy estate but merely assures the continuity of the case for purposes of filing fees, preferences, statute of limitations, and so forth." *Matter of Lybrook*, 951 F.2d at 137.

On one side of the split was the Ninth Circuit, which first considered the issue in the context of a chapter 13 dismissal, rather than a conversion, meaning

that 11 U.S.C. § 349, not § 348, controlled the result. Relying on the legislative history of 11 U.S.C. § 349(b)(3),[1] the court sustained the debtor's claim to undistributed, post-petition wages in the possession of the chapter 13 trustee, reasoning that "the basic purpose of the subsection is to undo the bankruptcy case, as far as practicable, and to restore all property rights to the position in which they were found at the commencement of the case." *In re Nash*, 765 F.2d 1410, 1414 (9th Cir. 1985). When confronted later with the same situation in the context of a conversion to Chapter 7, that same court reasoned that there was "no justification for requiring a debtor to dismiss rather than convert . . . in order to preserve his exemption rights." *In re Plata*, 958 F.2d at 922.[2] *See also In re Boggs*, 137 B.R. 408, 411 (W.D. Wash. 1992) (decided before *Plata*, reasoning that "the Congressional policy of encouraging debtors to repay their creditors via Chapter 13 is furthered by debtors (and their counsel) knowing they will not be penalized for attempting Chapter 13"); *In re Luna*, 73 B.R. 999, 1003 (N.D. Ill. 1987) (adopting reasoning of *In re Nash*, concluding that 11 U.S.C. § 348(a), "which determines the operative date for the filing of [debtor's] Chapter 7 proceeding, protects her

[1] 11 U.S.C. § 349(b)(3) reads as follows: "Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title . . . (3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title."

[2] While *Plata* dealt with a conversion to Chapter 7 from Chapter 12 rather than Chapter 13, Chapter 12 (dealing with the adjustment of debts of family farmers with regular income) was modeled after Chapter 13 (adjustment of debts of individuals with regular income). *In re Plata*, 958 F.2d at 919 n. 1.

from being penalized by providing that the Chapter 7 estate is deemed to have been filed at the time the Chapter 13 estate was filed."); *In re Mann*, 160 B.R. 517 (Bankr. D. Vt. 1993).

Among the two Circuits making the opposite policy determination was the Seventh Circuit.[3] Rather than focusing on the need to incentivize Chapter 13 filings by allowing debtors, upon conversion, to reacquire their post-petition earnings and property, the Seventh Circuit viewed such a result as being unfair to creditors, concluding that "a rule of once in, always in is necessary to discourage strategic, opportunistic behavior that hurts creditors without advancing any legitimate interest of debtors." *Matter of Lybrook*, 951 F.2d at 137.

Several bankruptcy courts around the country used different reasoning than *Lybrook* to reach the same result. They viewed a "literal reading" of 11 U.S.C. § 348(a) as suggesting that post-petition earnings should be retroactively withdrawn from the estate and returned to the converting debtor, but found such a result to be "anomalous." *In re Redick*, 81 B.R. 881, 883 (Bankr. E.D. Mich. 1987). While agreeing with *Lybrook*'s interpretation of Congressional intent, they deduced the same "once in, always in" rule from other sections of the Bankruptcy Code, primarily 11 U.S.C. § 1326(b), inferring that funds voluntarily paid to a chapter 13 trustee vest, upon such payment, in the creditors designated by the chapter 13 plan.

[3] The other Circuit was the Eighth Circuit. *See Resendez v. Lindquist*, *supra*.

Redick., 81 B.R. at 885-87 (inferring creditor vesting from statutory duty of chapter 13 trustee to distribute the debtor's payments to creditors and concluding that a ruling supporting retroactive withdrawal of the funds by the debtor would encourage creditors to seek daily distributions); *In re Waugh*, 82 B.R. at 400 (interpreting § 1326(a) as "creating a non-divestible right to plan payments in creditors, notwithstanding conversion from chapter 13 to chapter 7").

This Circuit, while never deciding the precise issue of how to classify a converting debtor's undistributed, post-petition earnings, did confront a very similar issue in *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985). *Bobroff* held that a tort action, which accrued post-petition but pre-conversion, belonged to the debtor, not the bankruptcy estate. In so ruling, this Court adopted the same interpretation of Congressional intent with regard to the status of post-petition property as did the Ninth Circuit, reasoning as follows:

> This result is consonant with the Bankruptcy Code's goal of encouraging the use of debt repayment plans rather than liquidation. If debtors must take the risk that property acquired during the course of an attempt at repayment will have to be liquidated for the benefit of creditors if chapter 13 proves unavailing, the incentive to give chapter 13—which must be voluntary—a try will be greatly diminished. Conversely, when chapter 13 does prove unavailing "no reason of policy suggests itself why the creditors should not be put back in precisely the same position as they would have been had the debtor never sought to repay his debts...."

Id. at 803 (citations omitted).

The circuit split described above was resolved by Congress when it enacted 11 U.S.C. § 348(f). The pertinent statutory language provides as follows:

> (f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—
>
> (A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion;
>
> * * *
>
> (2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

Since a chapter 7 debtor's post-petition earnings belong to him, not the bankruptcy estate, 11 U.S.C. § 541(a)(6), such earnings that are in the possession of a chapter 13 trustee at the moment of conversion to chapter 7 revert to the debtor. Leaving no doubt that this is the result it intended, Congress explained the purpose of the amendment as follows in the House Report accompanying passage of the 1994 legislation:

> This amendment overrules the holding in cases such as *Matter of Lybrook*, 951 F.2d 136 (7th Cir. 1991) and adopts the reasoning of *In re Bobroff*, 766 F.2d 797 (3d Cir. 1985). However, it also gives the court discretion, in a case in which the debtor has abused the right to convert and converted in bad faith, to order that all property held at the time of conversion shall constitute property of the estate in the converted case.

H.R. Rep. 103-835, 103rd Cong., 2d Sess. 1994, 1994 U.S.C.C.A.N. 3340, 3366.

Since the passage of 11 U.S.C. § 348(f), all of the Circuits that have considered the question at issue here in light of § 348(f) have concluded that the policy reasoning expressed by this Court in *Bobroff* and by the Ninth Circuit in *Plata* and *Nash* has now become settled law. *See In re Stamm*, 222 F.3d 216, 217-18 (5th Cir. 2000) ("Congress added Section 348(f) 'to resolve the circuit split' . . . and 'took issue with *In re Lybrook*'"); *In re Young*, 66 F.3d 376, 378 (1st Cir. 1995) ("The Bankruptcy Reform Act of 1994 answered the very question that confronts us. It essentially codified the *Bobroff rule*. . ."). *Accord, In re Bell*, 225 F.3d 203, 217 (2d Cir. 2000) (in dicta, observing, "In the Bankruptcy Reform Act of 1994, Congress resolved this circuit split, . . . by enacting 11 U.S.C. § 348(f).") The leading bankruptcy treatise has reached the same conclusion. 3 Collier on Bankruptcy ¶ 348.07 (16th ed. 2010) ("The addition of [§ 348(f)] clarified that Congress had intended the result reached by cases that had not included in the postconversion chapter 7 estate the property acquired by the debtor during the preconversion chapter 13 case.")

Appellant fails to cite this extensive line of authority which stands against him in this appeal, and instead, points to a supposed "trend toward authorizing the trustee to distribute funds to creditors . . . in the most recent decisions." Brief for

Appellant at 13.[4] In Appellant's view, the legal issue he is raising on appeal is one "unresolved" in the courts, with the Bankruptcy Code "provid[ing] no clear direction." *Id*. at 4-5. That view is plainly wrong. While it is true that the issue was in dispute prior to the 1994 amendment to 11 U.S.C. § 348, that dispute was resolved when Congress added subsection (f). As made clear by the statutory language and legislative history, as interpreted by the relevant, post-enactment appellate decisions cited above, the Bankruptcy Code, through 11 U.S.C. § 348(f), now incorporates the policy preference articulated by this Court in *Bobroff* with regard to post-conversion property disputes between debtors and creditors. That governing policy is that creditors should be "put back in precisely the same position as they would have been had the debtor never sought to repay his debts...." *Bobroff*, 766 F.2d at 803. The overriding concern of the statute is to avoid creating

[4] Even worse, the amicus brief submitted by the other chapter 13 trustees in Pennsylvania not only ignores completely the three post-enactment Circuit decisions and the commentary that interpret 11 U.S.C. § 348(f), it *does not even contain a single reference to § 348(f)*. In support of their argument that "a majority of courts have held that the Chapter 13 trustee must distribute pre-conversion funds to creditors where there is a confirmed plan," the *amici* trustees cite fifteen bankruptcy court decisions. Amicus Brief of the Chapter 13 Standing Trustees Situate in the Third Circuit, at 14-15. Of those fifteen cases, only five were decided after the passage of § 348(f), and of those five, one decision involved a debtor trying to recover funds that the chapter 13 trustee had already distributed, not undistributed funds, *In re Mehan*, 2000 WL 1010577 (Bankr. E.D. Pa. July 19, 2000) and one involved a chapter 13 that had been improperly filed in the first place (and, therefore, could have probably been decided under the "bad faith" exception in § 348(f)(2)), *In re Carels*, 416 B.R. 153 (Bankr. E.D. Pa. 2009).

disincentives against debtors trying to pay their debts through Chapter 13, not the equally reasonable, but legislatively rejected, concern about fairness to creditors.

The result below in this case is plainly consistent with the rule Congress adopted. The debtor-appellee converted his case after years of submitting a portion of his earnings to a chapter 13 trustee pursuant to his confirmed chapter 13 plan. As a result of those payments, his mortgage creditor received thousands of dollars in payments it would not have received had he filed a chapter 7 case originally. When, due to circumstances beyond his control, his chapter 13 plan ceased being feasible and he abandoned his effort to save his house, he exercised his right to convert his case to chapter 7 and sought the return of his plan payments that were undistributed and still in the possession of the chapter 13 trustee. By virtue of 11 U.S.C. § 348(f), those funds are properly his, not his creditors'.

B. The Fact that the Debtor's Chapter 13 Plan Was Confirmed Prior to His Conversion to Chapter 7 Is Not a Valid Reason for this Court to Ignore 11 U .S.C. § 348(f) and Recognize an Implied Vested Right in Undistributed Wage-Order Funds in Favor of Unidentified Creditors.

In Appellant's view, despite the language and history of 11 U .S.C. § 348(f), once a chapter 13 plan has already been confirmed, he is not required to return undistributed wage-order funds to a debtor who has converted his case to Chapter 7. To the extent Appellant presents a coherent analysis explaining why he thinks § 348(f) does not apply, he relies on several erroneous premises.

First, Appellant argues—focusing not on the language of § 348(f) but, instead, on this Court's reasoning in *Bobroff*, which, Appellant concedes, Congress adopted—that § 348(f) does not apply to this case because *Bobroff* did not involve an already confirmed plan. According to Appellant, that fact alone supposedly makes § 348(f) inapplicable to this case, since the "binding nature of the confirmed plan . . . transforms the trial period considered in *Bobroff* to a completely different situation." Brief for Appellant at 6-7.

Applicant does not explain why the pre-conversion confirmation of debtor-Appellee's plan makes this "a completely different situation" with regards to the applicability of § 348(f). It is certainly true that the confirmation of a chapter 13 plan is a significant event in a chapter 13 case. Once confirmed, the plan becomes the equivalent of a legally binding contract. 11 U.S.C. § 1327(a). However, that binding plan is revocable upon the debtor's assertion of his right to convert the case to chapter 7. *See* 11 U.S.C. § 348(e) (effect of conversion is to terminate the duties of the chapter 13 trustee).

Nor is there anything in *Bobroff* suggesting that the pre-confirmation status of that bankruptcy case was critical, or anything in the language of § 348(f) indicating a Congressional intent that bankruptcy courts treat undistributed post-petition property differently depending on whether the chapter 13 case was converted before or after confirmation of the plan. By its own terms, the statutory

rule Congress established for "when a case under chapter 13 of this title is converted to a case under another chapter," 11 U.S.C. § 348(f), is not limited to cases converted before confirmation. Moreover, it makes little sense to infer a Congressional intent to limit § 348(f) in that way since the Code already provided that chapter 13 trustees must return to a debtor all his payments if a plan is not confirmed. 11 U.S.C. § 1326(a)(2). Since without a confirmed plan, a trustee would have no basis for distributing funds to any creditors at all, Congress could not have been *only* thinking about unconfirmed chapter 13 cases when it passed § 348(f). Indeed, given the pre-existing language in § 1326(a)(2), it is precisely the post-confirmation conversions where § 348(f) was needed to clarify the proper disposition of undistributed funds, as between the debtor and the creditors designated in the plan.

Another erroneous premise in Appellant's argument is that there is a third option, as between treating the undistributed funds as property of the debtor, on the one hand, or property of the estate on the other, that third option being to treat the funds as property directly vested in the creditors designated by the confirmed plan. *See* Brief for Appellant at 4 (citing *In re Waugh*, *supra*, a bankruptcy court decision from the Western District of Pennsylvania predating the enactment of § 348(f)). According to Appellant, the passage of § 348(f) removed the possibility of treating such funds as being available to creditors by virtue of the funds being

property of the estate, but not the alternative theory that that the funds had already been transformed into creditor property by virtue of the order of confirmation. Thus, according to Appellant, he is free to rely on pre-enactment decisions that adopt this alternative theory. But there are various reasons why the "third option" identified in *Waugh* and similar cases cannot exist in this case.

Initially, there is nothing in the Bankruptcy Code itself that classifies a debtor's post-petition wages, or any property for that matter, as belonging to a creditor. The Bankruptcy Code contemplates only two possible classifications of a debtor's property, that is, as being either in or out of the "estate." *See* 11 U.S.C. § 541(a) and § 1306. It is the property of the estate against which creditors can assert claims or interests under 11 U.S.C. §§ 501 and 502. Under chapter 7, a debtor's post-petition earnings are not in the estate, 11 U.S.C. § 541(a)(6), meaning that the debtor maintains possession and control over those earnings, free from the claim of creditors. In chapter 13, the debtor is afforded the opportunity of proposing a payment plan to pay his debts, and, in order to facilitate that right, his post-petition earnings are treated as property of the estate. 11 U.S.C. § 1306(a)(2). The duties placed in the chapter 13 trustee by the Bankruptcy Code regarding the collection and disposition of the debtor's payments concern the "administration of the *estate*." 11 U.S.C. § 1302(b)(1) (incorporating § 704(a)(9))(emphasis added). Once a chapter 13 case is converted to chapter 7, however, all such remaining

earnings are retroactively withdrawn from the estate, unless the conversion is in bad faith. 11 U.S.C. § 348(f). In the absence of bad faith, therefore, such funds are free from creditor claims.

Prior to the passage of § 348(f), some bankruptcy court decisions, like *Waugh*, had inferred a vesting of money voluntarily paid by a chapter 13 debtor in favor of creditors designated in a confirmed chapter 13 plan. These courts tended to locate the source of this vesting in 11 U.S.C. § 1326(a)(2), which provides that "[i]f a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable." *In re Waugh*, 82 B.R. at 400 (inferring that the word "shall" in that provision "creates the condition of a trust" in favor of the creditors designated in the confirmed plan as the beneficiaries of the debtor's payments). But as even *Waugh* acknowledged, once a chapter 13 is converted, the chapter 13 plan is effectively terminated. *Id*. (citing 11 U.S.C. § 348(e) which provides that conversion "terminates the service of any trustee").

While the vesting argument makes sense in the case of funds already distributed by a chapter 13 trustee to a plan-designated creditor prior to the conversion, *see, e.g., In re Carels*, *supra*, it loses its footing where, as here, the mortgagee designated by the plan to receive the money has refused all further payments towards the debtor's account, obtained relief from the stay in order to resume its foreclosure and returned the trustee's check. After the Appellant trustee

received the returned check back from the supposedly "vested" creditor, there was no basis for situating title to those funds in some other creditor. Indeed, how could the Appellant decide where to send the money, other than by interpreting and administering a now revoked chapter 13 plan?

As the district court correctly observed, 11 U.S.C. § 1326(a) only addresses the obligation of the trustee upon confirmation of a chapter 13 plan to distribute any accumulated money paid by the debtor to the creditors in accordance with the plan; it does not vest creditors with any property rights. *Dehart v. Michael*, 446 B.R. 665, 668 (M.D. Pa. 2011). As the court noted, "To hold otherwise would be to stretch the language of the statute beyond it['s] intended scope." *Id*.

The *amici* trustees, in their brief, claim that Appellant's vesting argument is "widely accepted" in the courts, but cite mainly pre-enactment bankruptcy court decisions. *See* Amicus Brief of the Ch. 13 Standing Trustees at 1-5. There are, admittedly, a few bankruptcy courts that have, notwithstanding the passage of 11 U.S.C. § 348(f), clung to the view advocated by the trustees here.[5] However, on the other side—and not even mentioned by the *amici*—are decisions of several Courts of Appeals and the leading bankruptcy treatise, *supra* at 9, all of which support what the courts below did here.

[5] Those cases are *In re Porreco*, 426 B.R. 529 (Bankr. W.D. Pa. 2010); *In re Pegues*, 266 B.R. 328 (Bankr. Md. 2001); *In re Parrish*, 275 B.R. 424 (Bankr. D.D.C. 2002); *In re Hardin*, 200 B.R. 312 (Bankr. E.D. Ky. 1996).

In the end, the position advocated by the Appellant and by the *amici* trustees boils down to little more than a strident policy argument against providing what they consider to be a "windfall" to the debtor Appellee.[6] But there is nothing unjust or anomalous about the lower court's proper disposition of this matter. On the contrary, having tried in good faith to use chapter 13 to save his home and having paid his mortgage holder thousands of dollars in payments that would not have been paid had he initially filed chapter 7, the debtor had the right, granted to him by Congress, to convert his chapter 13 case to chapter 7 and reclaim property that, under chapter 7, is his to keep. To deny this debtor his post-petition earnings still in the possession of the chapter 13 trustee, based on a fairness-to-creditors rationale, would be to adopt precisely the policy choice that Congress expressly rejected.

Because the Bankruptcy Code provides that a debtor's undistributed, post-petition, pre-conversion earnings are, in the absence of bad faith, the debtor's property, the result below is exactly the result Congress contemplated. For that reason, this Court should affirm.

---

[6] *See, e.g.*, Amicus Brief of the Ch. 13 Standing Trustees at 1 (arguing that the decisions below, if affirmed, will upset "the balance between the rights of the debtor and those of the creditors . . . which will result in abuse of the bankruptcy system) and at 10 (characterizing district court's decision as a "nonsensical" rewarding of the debtor).

Respectfully submitted,

Dated: October 26, 2011

/s/ Irv Ackelsberg
Irv Ackelsberg, Esquire
Pa. Id. No. 23813
Langer Grogan & Diver, P.C.
1717 Arch Street, Suite 4130
Philadelphia, PA 19103
(215) 320-5660

Attorney for Amicus National Association of Consumer Bankruptcy Attorneys

CERTIFICATION OF BAR MEMBERSHIP

I certify that I am a member in good standing of the bar of the United States Court of Appeals for the Third Circuit.

/s/ Irv Ackelsberg (Pa. Id. No. 23813)

CERTIFICATION UNDER FED.R.APP.P. 32(a)(7)(C)

I hereby certify under Fed.R.App.P. 32(a)(7)(c) that this brief was prepared using Microsoft Word 2007; Times New Roman; 14-point typeface, and contains 4,557 words, including the footnotes from the beginning of page 1 to "Respectfully submitted" on the last page.

/s/ Irv Ackelsberg (Pa. Id. No. 23813)

CERTIFICATION UNDER LOCAL RULE 31.1(C)

I, Irv Ackelsberg, hereby certify that (a) a virus check was performed on the pdf file of this brief using Norton Anti Virus and that no virus was found and (b) the text of the electronic brief is identical to the text in the papers copies.

/s/ Irv Ackelsberg (Pa. Id. No. 23813)

CERTIFICATE OF SERVICE

Irv Ackelsberg, Counsel for Amici Curiae, certifies that on this date I served a copy of the foregoing Amicus Curiae Brief on the following attorneys by way of ECF transmission:

James K. Jones, Counsel for Appellant DeHart,

John DiBerardino, Counsel for Appellee Michael and

Ronda J. Winnecour, Counsel for Amici Ch. 13 Standing Trustees.

Dated: October 25, 2011

/s/ Irv Ackelsberg (Pa. Id. No. 23813)
Irv Ackelsberg