

A Rash Decision

By

The Honorable Jim D. Pappas
Chief United States Bankruptcy Judge
District of Idaho

Recall my recent article entitled [Car Wars](#) wherein I discussed the issues surrounding the valuation of secured claims in Chapter 13 cases pending before the Supreme Court? I explained how the Courts of Appeal in the various circuits were badly split as to the proper standard to employ in valuing a secured creditor's collateral in bankruptcy cases. Well, on June 16, 1997, the Court issued its decision to resolve these issues in *Associates Commercial Corporation v. Rash*, 1997 WL 321231.

Speaking for eight of the nine justices, [Justice Ginsburg](#) decreed that the amount of a creditor's allowed secured claim in a Chapter 13 bankruptcy cases should be based upon the "replacement value" of that collateral. The Court rejected the notion that wholesale value, or what the creditor would receive were it to repossess and sell the collateral, was appropriate. Justice Stevens' dissent complained that use of replacement value amounts to a windfall in favor of undersecured creditors at the expense of unsecured creditors. He also warned that since the Court was interpreting Section 506(a) of the Bankruptcy Code, the decision could be employed in many different contexts (i.e. Chapter 7, 11 and 12 cases ???).

So the bankruptcy "car wars" are finally concluded? As predicted in my prior article, maybe not.

First, there is footnote #2 in the decision, wherein the Court explains:

By using the term "replacement value", we do not suggest that a creditor is entitled to recover what it would cost the debtor to purchase the collateral brand new. Rather, our use of the term replacement value is consistent with the Ninth Circuit's understanding of the meaning of fair market value [as expressed in *In re Taffi*, 96 F.3d 1190 (9th Cir. 1996) (*en banc*)]; we mean the price a willing buyer in the debtor's trade, business, or situation would pay a willing seller to obtain property of like age and condition.

Then, the Court *really* explains what it means in footnote # 6, where it states that:

Our recognition that the replacement value standard, not the foreclosure standard, governs in cram down cases leaves to bankruptcy courts, as triers of fact, identification of the best way of ascertaining replacement value on the basis of the evidence presented. Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: a creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, such as warranties, inventory storage, and reconditioning. . . . Nor should the creditor gain from modifications to the property --e.g., the addition of accessories to a vehicle -- to which a creditor's lien would not extend under state law.

Those infamous footnotes! Could there be a basis in the Court's opinion to squeeze off a few more shots in the valuation skirmishes, or even a full-blown sequel? Only time will tell.