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THE RASH DECISION: "REPLACEMENT VALUE" IS THE NEW VALUATION STANDARD

In the *Associates Commercial Corporation v. Rash* case, 117 S.Ct. 1879 (1997), a creditor objected to a Chapter 13 Plan which proposed that the debtors would retain the creditor's collateral, a tractor truck, for use in one of the debtor's freight-hauling businesses. The debtor valued the truck at $28,500.00. The creditor sought relief from the stay and filed a Proof of Claim, alleging that it was secured for the full value of its claim of $41,171.00. The debtor objected to the creditor's claim, and a subsequent valuation hearing took place. The Bankruptcy Court valued the collateral at $31,875.00. The creditor appealed and the case went all the way to the United States Supreme Court.

The Supreme Court held that the lower Court should have looked to the second sentence of 11 U.S.C. 506(a), rather than the first sentence of the section, because the second sentence of 506(a) provides that "such value shall be determined in light of the purpose of the valuation and of the proposed disposition of such property". The Court further stated that the proposed use of the collateral by the debtor will determine the valuation standard to be used by the Bankruptcy Court. If the debtor intends to forfeit the collateral to the creditor, then the foreclosure standard should be utilized. However, if the debtor intends to keep the collateral and to use it, the standard should be a replacement value standard. The Supreme Court defines replacement value to be the price a willing buyer in the debtor's trade, business, or situation would pay to obtain like property of like age and condition from a willing seller. The Court also held that the measure of replacement value is retail value for the purposes of determining the amount of the creditor's secured claim. The Court stated that it is not necessary to reduce the retail value where the debtor does not receive such things as warranties, inventory, storage, and reconditioning. However, the Court said that the creditor should not gain value from the modifications or additions made to the property. For example, if a debtor were to add specially-fit racing wheels to a vehicle secured by a creditor, the value of the wheels would have to be deducted before the Court could arrive at the replacement value for the collateral.

The Chapter 13 decision may also be applied in Chapter 11 cram down cases, another situation where valuation is required under the Bankruptcy Code. *In re: Inner City Beverage Company*, 209 B.R. 931(Bankr. W.D. Mo. 1997) is a Chapter 11 case decided after the Supreme Court's decision in *Rash*. In this case, the Court applied the *Rash* rationale. The Court held that Section 506(a) applies to the case at bar, so the rationale of *Rash* in interpreting that situation applies here as well. Hence, when the debtors filed their petition in bankruptcy, by operation of Section 506(a), the creditor was secured as to the replacement value of the vehicles.

The Supreme Court specifically rejected the "split the difference" approach. This approach was widely used by Bankruptcy Judges because it allowed the Court to easily settle valuation issues by advising counsel that the Court intends to pick the midpoint between foreclosure and replacement values, which many times eliminated the need to conduct a valuation hearing.

The Supreme Court in the *Rash* ruling sent a message to low Courts that debtors should not recei a windfall in the valuation of colla eral.