

OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

**THE SUPREME COURT  
OF THE  
UNITED STATES**

CAPTION: LEONARD NOBELMAN, ET UX., Petitioners v.

AMERICAN SAVINGS BANK, ET AL.

CASE NO: 92-641

PLACE: Washington, D.C.

DATE: Monday, April 19, 1993

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IN THE SUPREME COURT OF THE UNITED STATES

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LEONARD NOBELMAN, ET UX., :  
Petitioners :  
v. : No. 92-641  
AMERICAN SAVINGS BANK, ET AL. :

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Washington, D.C.  
Monday, April 19, 1993

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States at  
11:44 a.m.

APPEARANCES:  
PHILIP PALMER, ESQ., Dallas, Texas; on behalf of the  
Petitioners.  
MICHAEL J. SCHROEDER, ESQ., Dallas, Texas; on  
behalf of the Respondents.

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1 P R O C E E D I N G S

2 (11:44 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument  
4 next in No. 92-641, Leonard Nobelman against the American  
5 Savings Bank.

6 Mr. Palmer.

7 ORAL ARGUMENT OF PHILIP PALMER

8 ON BEHALF OF THE PETITIONERS

9 MR. PALMER: Mr. Chief Justice and may it please  
10 the Court:

11 The basic issue in this case is whether section  
12 506(a) of the Bankruptcy Code and section 1322(b)(2) are  
13 compatible and can be harmonized, or whether they are  
14 hostile and conflict. It is the position of the  
15 petitioner that they are compatible and they can be  
16 harmonized.

17 The function of Code section 506(a) is to divide  
18 a claim into secured and unsecured parts. A creditor who  
19 is undersecured under 506(a) may wind up with two claims,  
20 one of which is a secured claim to the extent of the value  
21 of the collateral, and the excess, or any amount above  
22 that, becomes an unsecured claim.

23 We know that 506(a) does apply in Chapter 13,  
24 because the Code tells us it does in section 103(a). But  
25 does it apply specifically to Chapter 13, Code section

1 1322(b)(2)?

2 Everything I've said so far is little in dispute  
3 between the parties, but we now reach the point where the  
4 ways divide. The respondents argue that it does not  
5 apply, in an argument that is based upon the "other than"  
6 clause that is found in section 1322, the clause that  
7 reads "other than a claim secured only by security  
8 interest in the real property that is the debtor's  
9 principal residence."

10 As you look at the various respondent positions  
11 taken, they differ somewhat between themselves as to why  
12 the "other than" clause excludes the application of  
13 506(a). American Savings and Freddie Mac specifically  
14 focus on the word "rights" to tell us that the "other  
15 than" clause modifies only the word "rights."  
16 Nationsbank, Fannie Mae, and the Chapter 13 Trustee look  
17 to almost the same thing, "rights of holders."

18 Whereas the Realtor Group, Fannie Mae again, and  
19 Freddie Mac look to the word "claims," which they define  
20 by going back to the definitional section of the Code to  
21 determine that a claim is both a secured and an unsecured  
22 claim -- indeed, a right to payment. None of the  
23 respondents look to the word "secured" or "secured claim"  
24 together.

25 Now, the argument for the application of 506(a)

1 can be made first by the rule of last antecedent, which  
2 was applied by the Ninth Circuit in the Bellamy case to  
3 say you should look to the words that immediately precede  
4 the clause in question. Not just claims, but Bellamy  
5 looked to the adjective as well, secured claims.

6 Another approach is that when several words are  
7 followed by a clause and the clause is just as applicable  
8 to the first word or the last word or middle words, that  
9 clause should be read as applicable to all, which was an  
10 approach espoused by Justice O'Connor and Kennedy in the  
11 Ron Pair dissent.

12 Either approach is fatal, because either  
13 approach puts the word "secured" back into 1322(b)(2).  
14 And it is "secured" that is as fatal as an assassin's  
15 bullet here, because a secured claim is determined by  
16 506(a), and 506(a) is what the respondents must avoid.

17 Now if, as those opposed to the application of  
18 506(a) would argue, that it was not meant to apply, one  
19 thought which occurs is that the clause could have been  
20 put at the very first of 1322(b)(2), or at the very end.  
21 In effect, to start off by saying "other than" what I'll  
22 call a homestead mortgage, the debtor may modify secured  
23 or unsecured claims, and you could reach the same  
24 reasoning at the end.

25 Or as another alternative, Congress intended

1 that both the secured and the unsecured homestead lands  
2 were untouchable, and put in something equivalent to the  
3 1111(b) option that is found in Chapter 11 and with which  
4 all respondents seem to be happy.

5 But none of those things happened. And if you  
6 simply take the statute as it reads, 506(a), for the  
7 determination of what is a secured claim, and 1322 by  
8 either of the techniques of the "other than" clause, you  
9 come out with a statute that is consistent. It  
10 harmonizes, there is no conflict. We do not need to  
11 search further for the intention of Congress because it is  
12 expressed clearly.

13 QUESTION: You mean your clients weren't trying  
14 to alter a secured claim.

15 MR. PALMER: They were not and, in fact, have  
16 not. But in answering that, of course, the key, the  
17 operable words are secured claim. If you accept, as we  
18 do, 506(a), that secured claim is only the \$23,500 the  
19 condominium was worth, we're not altering.

20 QUESTION: Mr. Palmer, I'm not sure that  
21 1332(b)(2) refers to secured claim. It -- the language is  
22 "a claim secured only by a security interest." I'm not  
23 sure that necessarily means the same thing.

24 MR. PALMER: And that argument --

25 QUESTION: It's an identification of the



1 instance in which the -- where there is a security  
2 interest in real property that is the principal residence,  
3 it says no modification of the rights of holders could be  
4 made. And I think you also have to deal with the  
5 language, modify the rights of holders. I suppose a  
6 holder can hold both rights to secured and unsecured  
7 claims.

8 MR. PALMER: Let me answer or state to the first  
9 one first, and then we'll come to the rights of holders.  
10 The secured claims that I was referring to is the language  
11 that is before the comma in 1322(b)(2): the "secured only  
12 by a security interest."

13 The argument has been made that to really say  
14 clearly what I am arguing, you would have to say secured  
15 claim secured. And that is rejected by Bellamy upon the  
16 proposition that that would be a wooden and awkward way to  
17 force Congress to express its intent; that there is really  
18 no significant difference between a secured claim and a  
19 claim secured. And, of course, our position would be the  
20 same as Bellamy.

21 On the rights of holders, if I may borrow your  
22 own language from the Ron Pair dissent.

23 QUESTION: Well, that's dangerous business, I  
24 suppose.

25 (Laughter.)

1 MR. PALMER: It's been cited several times for  
2 the grammatical analysis which, frankly, does appeal to me  
3 at this moment.

4 (Laughter.)

5 MR. PALMER: If you take -- or if you accept  
6 that there is some uncertainty as to what the "other than"  
7 clause applies, if you do not accept the Bellamy rule of  
8 last antecedent, then we seem to fall right into the  
9 analysis that you made -- with considerable and  
10 respectable authority, I might add -- that it must apply  
11 to the whole thing, rights of holders of secured claims.

12 But what are the rights of the holders of the  
13 secured claims? And that brings us back, I think, to the  
14 operative word, "secured claim." We're not now speaking  
15 about the rights of holders of secured, or partially  
16 secured, or secured and unsecured claims, but only secured  
17 claims.

18 There are some other points that lead to  
19 somewhat the same analysis.

20 QUESTION: Mr. Palmer, I hope you will discuss  
21 either now or after we return from the noon recess, the  
22 bearing you think the Dewsnap -- our opinion in Dewsnap  
23 against Timm has on this. It seems to me that that --  
24 although it may not be controlling, it certainly cuts  
25 against some of your arguments.

1 MR. PALMER: Dewsnap and lien pass through, we  
2 can certainly start it now and may not finish.

3 There is a question of whether or not Dewsnap  
4 forecloses the argument that was made here. And, of  
5 course, all are aware that that was a Chapter 7 case. All  
6 are aware that that was dealing to 506(d). And I think  
7 all are aware that that was -- the issue there was whether  
8 or not an abandonment would revive the lien that appeared  
9 by its terms to be cut off under 506(d). And what I think  
10 the Court held, and properly, was that 506(d) applies only  
11 when it is not an allowed secured claim claim.

12 Because otherwise, Code liens would not pass  
13 through the act the way that Act liens did. Now, when I  
14 say pass to -- through, I think this Court was speaking in  
15 terms of unadministered. They come into the estate at the  
16 beginning, but they are abandoned out of the estate and  
17 they should go out as they came in, with the same lien  
18 encumbered.

19 That was the old Bankruptcy Act rule and it  
20 was -- the Court found nothing in the Code or the  
21 legislative history to indicate any intent to change that.  
22 And the results of implying such a change would be a  
23 rather unfair windfall to the debtor, because it would be  
24 a permanent reduction even though it no longer served a  
25 bankruptcy purpose.

1 But none of those considerations apply here.  
2 Chapter 13, as indeed do Chapter 11 and 12, have a built  
3 in protection against the windfall problem. Chapters 11  
4 and 12 keep -- and 13 keep the property in the estate;  
5 abandonment is not a problem.

6 I see nothing in the Dewsnap case that indicates  
7 that it would move beyond the Chapter 7 abandonment  
8 factual situation the Court applied it to. There is a  
9 reference in Dewsnap -- and the Chapter 13 trustee here  
10 speaks to it in her brief -- that 506(a) does not, by  
11 itself, avoid liens; it simply classifies claims into  
12 secured and unsecured. But that something further -- as I  
13 recall, she used the word catalyst -- some catalyst is  
14 required.

15 And this Court determined that 506(d) did not  
16 apply in Chapter 7. Even if you were to assume that the  
17 Dewsnap opinion should be expanded to say 506(d) does not  
18 apply in Chapter 13 either, that's not the catalyst that  
19 avoids the excess lien in Chapter 13.

20 Instead, it's section 1327(c), which is the  
21 effect of confirmation rule, that reduces the property to  
22 the value -- by -- well, mechanically it reverts the  
23 property in the debtor free and clear of whatever amount  
24 has been determined to be an excessive value. So a  
25 1327(c) trigger, and a discharge under 1328, except as to



1 long-term debts assumed by the plan, which would include  
2 the mortgage, as reduced in --

3 Obviously, Dewsnup spoke to none of those  
4 issues. I don't think they were before the Court. And I  
5 see Dewsnup as a case somewhat limited in its scope to  
6 arrive at a proper result.

7 QUESTION: We'll resume there at 1:00.

8 (Whereupon, at 12:00 p.m., the oral argument in  
9 the above-entitled matter was recessed, to reconvene at  
10 1:00 p.m., this same day.)  
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1 AFTERNOON SESSION

2 (12:59 p.m.)

3 CHIEF JUSTICE REHNQUIST: Mr. Palmer, you may  
4 resume.

5 MR. PALMER: When we took our noon break, we  
6 were discussing Dewsnap, and I'd like to pick up again at  
7 that point.

8 Dewsnap, of course, was a Chapter 7 case.  
9 Dewsnap did not involve homestead or residence; it  
10 involved farmland in Utah. And the argument was made in  
11 Dewsnap that because there had been a valuation of the  
12 property at a value well below the total amount, the total  
13 amount of the debt, that that was something akin to  
14 albatross branded to that property, even after that  
15 property was abandoned from the bankruptcy estate so that  
16 no distribution purpose in the bankruptcy remained.

17 The Court felt, and I think with justification,  
18 that that was an unfair result. Should the property  
19 appreciate in value, it would create a windfall to the  
20 debtor. The Court found 506(d) ambiguous, and having made  
21 that initial determination then determined that the Court  
22 was uncomfortable in changing pre-Code law on ambiguous  
23 language when there was no legislative history whatever to  
24 support it.

25 But we turn then to Chapter 13 and its

1 differences. Chapter 13, of course, is one of the  
2 rehabilitation sections. The property is not abandoned  
3 from the estate but remains in the estate, and that is  
4 true even if there is no objection to the exemption status  
5 as homestead.

6 Exempt property does not pass from the Chapter  
7 13 estate until after the plan has been confirmed, and  
8 only then under 1327 does it pass from the estate. The  
9 purpose of determining exemptions in Chapter 13 is not, as  
10 in Chapter 7, to have it pass from the estate, but to  
11 determine whether or not the debtor must include in its  
12 payments to creditors an amount equal to all of its  
13 nonexempt property.

14 Now, that's all a Chapter 7 debtor does, is  
15 surrender his nonexempt property. But a Chapter 13 debtor  
16 is required to do more than that. The Chapter 13 debtor  
17 must not only pay the value of all of his nonexempt  
18 property, but must also pay his nondisposable income --  
19 that is to the excess under his monthly budget, his  
20 nondisposable income for 3 years to get the benefits of a  
21 Chapter 13.

22 Chapter 13 is a favored chapter in bankruptcy,  
23 and that has been a consistent purpose of Congress and  
24 that's well reflected in legislative history throughout.

25 QUESTION: Favored over Chapter 7, Mr. Palmer?

1 MR. PALMER: Favored over Chapter 7. Because  
2 Chapter 13 presents a man who is doing more than the legal  
3 minimum that he would have to do to receive a discharge of  
4 his debts.

5 QUESTION: Under Chapter 7.

6 MR. PALMER: Than he would have to do under  
7 Chapter 7, yes.

8 QUESTION: But he also gets some benefits from  
9 Chapter 13 that a Chapter 7 debtor doesn't.

10 MR. PALMER: That is true. Otherwise, I assume  
11 it would be very hard to sell. But those benefits are  
12 these.

13 First, he will consider Chapter 7 when he needs  
14 to take an Internal Revenue Service, a tax debt otherwise  
15 nondischargeable, and wants to pay it out over a period of  
16 time. Or he wishes to save a homestead, because Dewsnup  
17 now makes it clear Chapter 7 will not help him save a  
18 homestead. Or in those States where exemptions are  
19 parsimonious and he would rather value and pay for his  
20 furniture, car, et cetera than give them up.

21 Those are the benefits of Chapter 13. Saving a  
22 homestead, I will not deny, is a major benefit in Chapter  
23 13, and one reason why many people select Chapter 13. But  
24 if the respondents prevail today, that incentive will be  
25 taken away and there will be more people filing Chapter 7



1       than 13.

2               Well, there is another I should mention, and  
3       that is that the grounds for objection to discharge in  
4       Chapter 13 are more restrictive than they are in 7.  
5       That's really not a major consideration for the average  
6       couple, but it's also a benefit of 13 over 7.

7               QUESTION: Mr. Palmer, would you explain --  
8       explain how your system works? How can it be that where  
9       you have a single instrument of indebtedness that covers  
10      both the secured and the unsecured claim, you can comply  
11      with what you contend the provision says, and that is  
12      allow the instrument to be modified as to the unsecured  
13      claim, but not allow it to be modified as to the secured  
14      claim. How does one go about doing that?

15              MR. PALMER: Let me begin by explaining it in an  
16      area where there is absolutely no controversy between the  
17      parties, the \$50,000 lien on the \$100,000 automobile. All  
18      the same -- instruments are the same. Security agreement  
19      instead of the deed of trust, but other than that exactly  
20      the same.

21              506(a) and 1322(b)(2) clearly permit the  
22      valuation of the lien, the secured claim, to \$1,000, on  
23      the proposition that that's all the car is worth. If the  
24      car were abandoned, the lienholder could get no more than  
25      the \$1,000 fair market value and have an unsecured claim

1 for \$49,000.

2 If we move it to a homestead, the result is  
3 exactly the same unless, of course, the "other than"  
4 clause gives more protection than we say it does. The  
5 debtor -- the creditor will have a \$23,500 secured claim  
6 in this case.

7 QUESTION: No, I understand that. I mean, I'm  
8 not asking for the difference between the secured and the  
9 unsecured; I understand that. But for the car or for the  
10 homestead, I have the same problem about how you can --  
11 how you can allow a unitary instrument which covers a  
12 claim -- part of which is secured and part of which is  
13 unsecured, but it's just one instrument.

14 How can you allow it to be modified as to the  
15 secured portion of the claim but not as to the unsecured  
16 portion of the claim, or vice versa, which is what  
17 1322(b)(2) requires? How can you do that? It's a single  
18 instrument that covers both.

19 MR. PALMER: Well, the single instrument is  
20 defined as between the parties and in a nonbankruptcy  
21 context. But when you go into a bankruptcy, 506(a)  
22 applies whether it -- the debt's in one instrument or two  
23 instruments.

24 QUESTION: Well, I understand that. But the  
25 other side says we don't have to worry about this problem.

1 Given our interpretation, you simply -- you simply can't  
2 modify it, if it's a homestead. You say, yes, you can,  
3 but you can only modify it -- you can only modify it as to  
4 the unsecured. How does one go about modifying it just  
5 as to the unsecured?

6 MR. PALMER: Well, at the inception we apply 506  
7 and 1322(b)(2), and we've talked about that. Then we have  
8 confirmation. The confirmation section, which is 1327,  
9 provides in section (c) that all of the property of the  
10 estate not otherwise dealt with reverts in the debtor free  
11 and clear of any amount other than the secured claim. So  
12 that's how we get our one instrument down to a \$23,5 --

13 QUESTION: Well, but we're not talking about the  
14 revesting provision. What we're talking about is whether  
15 the rights can be modified in the plan. That's the  
16 provision we're discussing here. Now, give me an example  
17 of how one can modify the rights pertaining to this  
18 unitary instrument only as to the unsecured portion, but  
19 not as to the secured portion. How does one go about  
20 doing that?

21 MR. PALMER: Well, we're not going to modify the  
22 unsecured rights. We're going to treat them as unsecured  
23 rights under the plan. The remaining portion of the claim  
24 was unsecured; the plan will treat of unsecured claims.

25 QUESTION: No, but the provision we're talking

1 about is a provision that allows rights to be modified,  
2 right? I mean that's the provision before us.

3 MR. PALMER: That's 506(a).

4 QUESTION: And -- right. And as at issue is  
5 whether the exception to that which says you can't modify  
6 rights as to homestead -- whether that covers all rights  
7 in the homestead agreement or only those rights that are  
8 secured. And you say the latter, right?

9 MR. PALMER: I say the latter.

10 QUESTION: And just give me an example of a real  
11 life mortgage agreement in which you modify the unsecured  
12 portion but not the secured portion. How -- I really  
13 don't understand what it means to say that.

14 MR. PALMER: That approaches it backwards, I  
15 have to admit, from the way I've always looked at it.

16 QUESTION: Well, I do things that way, I guess.

17 (Laughter.)

18 MR. PALMER: I've always looked at it that we're  
19 modifying the secured portion and thereby automatically  
20 making the rest unsecured. I don't know of any case that  
21 ever dealt with modifying the unsecured portion of the  
22 claim. Once it's become an unsecured portion, the debtor  
23 can deal with it in his claim.

24 QUESTION: Well, I don't care if there's a case  
25 or not. But if it's impossible to do, if you can't give



1 me an example of how it might be done, I will be inclined  
2 to think that your reading of the provision is wrong since  
3 it makes no sense. Just tell me how? You know, how one  
4 would do it if one wanted to do it?

5 MR. PALMER: All right. I would think that you  
6 could propose a plan that says we will value down all  
7 secured claims, homestead, car, et cetera, to fair market  
8 value, and we will pay 25 cents on the dollar for all  
9 unsecured claims. There I've modified unsecured claims,  
10 which I have a right to do. That's not in dispute. I  
11 have a right to modify unsecured claims.

12 QUESTION: Does the -- in 13 does -- if the  
13 secured creditor wants to participate, does he have to  
14 file a claim?

15 MR. PALMER: All claims are supposed to be filed  
16 in a 13.

17 QUESTION: Yeah. Did --

18 MR. PALMER: There's nothing equivalent to  
19 111(a) where --

20 QUESTION: Under 506 -- under 506 does a secured  
21 creditor -- with 506 in mind, does he just file a claim  
22 for the full amount of his security?

23 MR. PALMER: Traditionally, yes.

24 QUESTION: And he never then files a claim for  
25 the unsecured portion.

1 MR. PALMER: No. The debtor draws the issue by  
2 filing the plan.

3 QUESTION: Yes.

4 MR. PALMER: Which says we value -- as they did  
5 here -- we value your equity at \$23,500. That will be the  
6 amount of your secured claim.

7 QUESTION: But the secured creditor has filed a  
8 claim for the full amount.

9 MR. PALMER: Has filed a claim for the full  
10 amount.

11 QUESTION: As a secured creditor -- as a secured  
12 claim.

13 MR. PALMER: It -- as a secured claim.

14 QUESTION: And so he has an -- so the secured  
15 creditor, whether it's a -- whether it's a homestead or  
16 not, he has a -- he has a chance to litigate the value  
17 that they assign.

18 MR. PALMER: That is so. And that was, in  
19 effect, done here at the confirmation hearing. But of all  
20 the court of appeals cases, the four that conflict with  
21 the Fifth Circuit decision, every one of those, the values  
22 were agreed or stipulated. Apparently, it's not a big  
23 batch.

24 QUESTION: Yeah.

25 MR. PALMER: But the opportunity is always

1 there. There's one thing that --

2 QUESTION: Mr. -- is this another point or are  
3 you still responding to the same one?

4 MR. PALMER: No, it was another point.

5 QUESTION: Before you do that, let's take a --  
6 I'm not satisfied or I don't understand your answer to my  
7 previous question. Suppose you have a mortgage that  
8 provides for payments of \$500 a month, all right. And  
9 that's for the whole thing, for the secured and the  
10 unsecured.

11 How do you modify the unsecured portion of that  
12 mortgage without modifying the secured portion? Don't the  
13 payments still have to be \$500 a month?

14 MR. PALMER: They do. They do. That's what we  
15 contend is the meaning of the "other than" clause. We  
16 must continue to pay the same mortgage amount.

17 QUESTION: But even if that is so, you're still  
18 modifying it because you're not going to pay the same  
19 mortgage amount for -- or the same periodic payment amount  
20 for the same period of time.

21 MR. PALMER: No.

22 QUESTION: No matter how you cut it, you've got  
23 to modify something with respect to what's left of the  
24 secured portion.

25 MR. PALMER: Well, the -- if you reduce the

1 balance that's due -- the unpaid principal, if you will,  
2 to the \$23,500, when the payments, after interest service,  
3 have reached \$23,500, that lien will be paid off.

4 QUESTION: Yeah. And the lien would also be  
5 paid off if you make the same number of payments you had  
6 agreed to make before, but they were smaller payments,  
7 sure. So no matter -- no matter which way you go, you've  
8 modified something with respect to the secured claim  
9 beyond the amount of the lien.

10 MR. PALMER: I have reduced the amount of the  
11 debt by what we have determined to be unsecured.

12 QUESTION: Thank you, Mr. Palmer.

13 Mr. Schroeder, we'll hear from you.

14 ORAL ARGUMENT OF MICHAEL J. SCHROEDER

15 ON BEHALF OF THE RESPONDENTS

16 MR. SCHROEDER: Mr. Chief Justice, and may it  
17 please the Court:

18 Mr. Palmer was correct when he said that this  
19 case involves an interpretation of one or more statutes.  
20 I would like to reread section 1322 for the Court, the  
21 pertinent portions of that statute, and if the Court wants  
22 to follow along, that statute is reprinted in page 3 of  
23 American Savings' brief.

24 The pertinent provisions of 1322(b)(2) state  
25 that "the plan may modify the rights of holders of secured



1 claims, other than a claim secured only by security  
2 interest in real property that is the debtor's principal  
3 resident."

4 Taking a plain and clear look at the language of  
5 this statute, it appears that the word "rights" is the  
6 grammatical object of the word "modify." Modify. What  
7 are modifying? We're modifying the rights.

8 In addition, the term "secured claim," again in  
9 that first phrase, is preceded by the preposition "of."  
10 It's our contention that those three words together, "of  
11 secured claim" is merely definitional and defines the type  
12 of holder that the Congress was talking about when they  
13 passed the statute. They're talking about a holder of a  
14 secured claim.

15 Now, applying Mr. Palmer's rule --

16 QUESTION: "Other than the holder of a claim  
17 secured only by a security interest."

18 MR. SCHROEDER: That's correct, Your Honor.

19 QUESTION: Yes, uh-huh, all right.

20 MR. SCHROEDER: And applying Mr. Palmer's rule  
21 of last antecedent, several courts which have allowed lien  
22 strip-down have simply gone back and applied the "other  
23 than" words simply to the phrase "secured claim." It's  
24 our position that the better application, according to  
25 that particular rule, is to apply the "other than" phrase

1 to the rights of holders of secured claims.

2 QUESTION: Under your view, what is the result  
3 if there is a second mortgage as to which there is no  
4 adequate security at all? Say that in this case there  
5 were a second mortgage, even the first is not satisfied.  
6 Is the second mortgagee a holder of a secured claim?

7 MR. SCHROEDER: So long as he had a perfected  
8 security interest in the property at the time of the  
9 filing of bankruptcy, he would be a secured creditor,  
10 that's correct. The debtor --

11 QUESTION: Even though the value of the property  
12 does not support any portion of his secured -- any portion  
13 of his claim as a secured claim.

14 MR. SCHROEDER: That's correct. He would be a  
15 secured creditor. However, his security interests would  
16 be undersecured. In your example, there would be no value  
17 in the property to support his security interest.  
18 Nonetheless, because he has, for example, a second lien  
19 mortgage or deed of trust, he would ostensibly be  
20 classified as a secured creditor because he has a security  
21 interest claim against property of the debtor in the  
22 bankruptcy proceeding.

23 QUESTION: It's difficult for me to square that  
24 with 506(a). I know we're not talking about a second  
25 here, but I want to see how the statute works.

1 MR. SCHROEDER: I understand that, Your Honor.  
2 And until the legislature clarifies your concern, it's our  
3 interpretation that the same treatment must be accorded to  
4 a first, second, or third lienholder against residential  
5 real property, without regard to the value of the  
6 property. And let me, if I can, explain how I arrive at  
7 that conclusion.

8 Mr. Palmer's client would have this Court  
9 believe that 506(a) automatically kicks in to affect the  
10 claim or secured claim rights of a holder as defined in  
11 section 1322. It's our position that 506(a) doesn't  
12 necessarily automatically kick in to define the term  
13 "secured claim" in that instance. The term "secured  
14 claim" is merely definitional, again, of the type of  
15 holder that the statute's talking about.

16 QUESTION: Well, I suppose your colleague on the  
17 other side would -- the meaning he would ascribe to  
18 1322(b)(2) would be the same if it just read "the plan may  
19 modify secured claims other than a claim secured by."  
20 Which the meaning for him, the meaning wouldn't change if  
21 you left out the words "the rights of holders of." Is  
22 that right?

23 MR. SCHROEDER: I think for Mr. Palmer's  
24 position that would be correct. But what the -- the  
25 way -- the statute's not written that way. The statute is

1 written that it's the rights that are protected by the  
2 "other than" clause, in a clause that fits after the  
3 comma.

4 QUESTION: And but you -- but rights you figure  
5 are those rights defined by State law.

6 MR. SCHROEDER: That's -- I'll get into that  
7 argument --

8 QUESTION: Well, I know, but you have to get to  
9 it because otherwise you can say -- you could argue that  
10 well the rights are those that are -- that are described  
11 in 506. Namely, you've got a secured claim only to the  
12 extent of the value of the property.

13 MR. SCHROEDER: Well, we would take the  
14 position, Your Honor, that the term "rights," as opposed  
15 to the words "claim," and "security interest" and "lien"  
16 and other words of art in the Bankruptcy Code -- the word  
17 "rights" is not defined anywhere in the Bankruptcy Code  
18 itself.

19 QUESTION: So it's State law rights, I guess.

20 MR. SCHROEDER: Well, this -- this Court, in  
21 Dewsnap, gave us some direction as to some of the rights  
22 that a holder of a mortgage has, with respect to its note  
23 and deed of trust, a mortgage. And it comes into the  
24 bankruptcy court as a creditor of the bankruptcy estate.

25 This Court, for example, in Dewsnap has said



1 that it is the creditor, not the debtor, who has the  
2 benefit of increase in value, so as to avoid a windfall to  
3 the debtor in that case. I believe that's one right.  
4 Another right that the Dewsnup Court set forth was the  
5 right to have the lien pass through bankruptcy unaffected.

6 In addition, this Court in the Barnhill case, in  
7 interpreting the words property and interest in property,  
8 said that in the absence of a controlling Federal law, we  
9 may look to State laws. So by analogy, I think -- to  
10 answer your question -- yes, we may look to State law in  
11 determining what rights are.

12 QUESTION: Well I -- I'm surprised this is even  
13 an issue. I mean the provision doesn't mean very much if  
14 it means the only rights you may modify are the lien  
15 rights in particular. I mean surely it means you can --  
16 you can modify the rights that are the substantive rights  
17 to which the lien attaches. The right to payment by a  
18 certain date, the right to a certain amount of payments  
19 every month, and so forth and so forth.

20 MR. SCHROEDER: And that's exactly --

21 QUESTION: Certainly everybody understands  
22 that's what it means.

23 MR. SCHROEDER: And that's exactly --

24 QUESTION: And those are State rights, aren't  
25 they?

1 MR. SCHROEDER: That's correct.

2 QUESTION: So why isn't your answer to Justice  
3 White simply yes, it includes State rights?

4 MR. SCHROEDER: Yes, it does include State  
5 rights.

6 (Laughter.)

7 MR. SCHROEDER: But what --

8 QUESTION: How about not -- but limited to.  
9 Under 1322, you're talking -- the word "rights" refers  
10 only to the rights of the holder that he acquired prior to  
11 bankruptcy under State law.

12 MR. SCHROEDER: Yes. Because I think the rights  
13 that any creditor would have in bankruptcy are those  
14 defined by the Bankruptcy Code.

15 QUESTION: Yes, all right.

16 MR. SCHROEDER: So, yes. And Justice Scalia,  
17 your analysis is exactly our point. The "other than"  
18 clause must affect all those rights, those bundle of  
19 rights that a secured creditor such as my client would  
20 take with him in the bankruptcy.

21 In addition --

22 QUESTION: Mr. Schroeder, could I just interrupt  
23 you for a second --

24 MR. SCHROEDER: Yes.

25 QUESTION: -- With what I assume is an easier

1 question. But I take it on your theory, if the one lien  
2 holder had a second mortgage on a separate piece of  
3 property, he wouldn't have any protection.

4 MR. SCHROEDER: That's correct.

5 QUESTION: Okay.

6 MR. SCHROEDER: If it's not homestead, for  
7 example.

8 QUESTION: The second one is not homestead,  
9 that's right.

10 MR. SCHROEDER: If that's --

11 QUESTION: One, he's got a lien on the homestead  
12 and then he's got a second mortgage. He doesn't get  
13 protected.

14 MR. SCHROEDER: That would be our  
15 interpretation, yes. Because --

16 QUESTION: Rights means the rights to which the  
17 lien that's a lien on a homestead relates.

18 MR. SCHROEDER: Correct.

19 QUESTION: Okay.

20 QUESTION: No, but you're -- but you're also  
21 identifying the person who can claim anything as the  
22 person whose sole lien is -- whose lien is solely on the  
23 homestead property.

24 MR. SCHROEDER: And that's -- yes, sir. And  
25 that's because that's -- in our view, that's the way the

1 statute is written. The "other than" clause refers to  
2 those creditors having a claim on real property that is  
3 the debtor's principal residence. So it's under that --

4 QUESTION: And that alone.

5 MR. SCHROEDER: And that -- under that statute  
6 alone, that seems where that protection is directed,  
7 that's correct.

8 In addition, under that second clause, the  
9 "other than" clause, the "other than" clause of 1322(b)(2)  
10 refers to a claim in the singular. It does not refer a  
11 second time to secured claim or to secured portion of a  
12 claim, or something else; it refers to a claim. And under  
13 section 101(5)(a) of the Bankruptcy Code, "claim" is  
14 defined as any right to payment, whether or not such right  
15 is secured or unsecured.

16 QUESTION: To be fair, it refers -- it refers  
17 not just to a claim, but to a claim secured, which is  
18 poetic for secured claim.

19 (Laughter.)

20 MR. SCHROEDER: Some courts have interpreted it  
21 that way, yes, Your Honor. Other commentators have found  
22 that there is a difference between the term "secured  
23 claim" as may be defined in 506(a) and "claim secured by,"  
24 where the word "secured" is definitional.

25 QUESTION: Only lawyers could come up with that



1 sort of a distinction.

2 (Laughter.)

3 QUESTION: And so you are.

4 (Laughter.)

5 MR. SCHROEDER: That's what I was told when I  
6 got my certificate from this Court.

7 (Laughter.)

8 QUESTION: Counsel, what can the debtor in a  
9 Chapter 13 proceeding do, then, in a situation such as the  
10 Nobelmans have? Just leave the residence out of the  
11 proceeding altogether and let it be taken by the mortgage  
12 holders.

13 MR. SCHROEDER: They have several elections or  
14 alternatives, and some of the alternatives are not very  
15 realistic. One alternative would be to cure any existing  
16 arrearage immediately so there is no problem with the  
17 mortgage company. Most debtors wouldn't be in bankruptcy  
18 in the first place if they had that ability to do that.

19 Another alternative would be -- and this is what  
20 I believe the legislature intended and Senator DeConcini's  
21 comments went to, is that a claim such as the one claimed  
22 by American Savings Bank, the debtor would elect to cure  
23 and maintain payments under section 1322(b)(5).

24 Under 1322(b)(5), a homestead debtor typically  
25 takes a prepetition arrearage, that arrearage that existed

1 on the mortgage loan prior to bankruptcy, puts it into his  
2 plan, and, depending on what district you're in, either  
3 makes direct regular monthly postpetition payments to the  
4 creditor or through the trustee to the creditor. That's  
5 an election that a creditor in the Nobelmans' position  
6 could take.

7 QUESTION: Yeah, but he's got to keep -- he's  
8 not only got to make up arrearages; he's got to pay his  
9 current amounts due.

10 MR. SCHROEDER: That's correct. And that's the  
11 way the Code's read.

12 QUESTION: Well, and in your position, pay off  
13 the whole principal balance even though the property isn't  
14 worth it at all.

15 MR. SCHROEDER: Well --

16 QUESTION: So does he have another alternative,  
17 just walk away from it?

18 MR. SCHROEDER: He can walk away from it. He  
19 can go into a Chapter 7 and get his personal liability  
20 discharged, which is going to get him potentially better  
21 off than if he were to go through a Chapter 13.

22 QUESTION: Well, if he wants to walk away from  
23 it, would he have to do it in a Chapter 7 proceeding, very  
24 likely?

25 MR. SCHROEDER: If he wants to avoid personal

1 liability, that's correct, Your Honor. And Chapter 13,  
2 the discharge provision, section 1328, has an exception.  
3 There are certain debts which are excepted to discharge in  
4 Chapter 13 which are not excepted to in Chapter 7. For --  
5 and one of those is long-term debt, where the last payment  
6 on the debt is on a date further into the future than the  
7 last payment date on the Chapter 13 case.

8 So potentially in the situation we're talking  
9 about, a debtor may be better off going into a 7 because  
10 he would have the receipt of a Chapter 7 discharge, would  
11 receive that personal liability relief. But obviously he  
12 would lose his home. The creditor, more than likely,  
13 would ask the court to lift the stay or modify the stay to  
14 allow foreclosure to proceed.

15 QUESTION: Now, a majority of the circuits have  
16 gone the other way.

17 MR. SCHROEDER: That's correct.

18 QUESTION: How do you -- how do you explain  
19 that? They just take your -- the petitioners' view of  
20 this thing, I guess, in terms of how to read the statute.

21 MR. SCHROEDER: Well, if I might answer your  
22 question, Your Honor, by addressing the four specific  
23 cases individually.

24 In the Houglan case which came out of the Ninth  
25 Circuit, which was the first of the pro lien-stripping

1 cases, it appears from a reading of the text that that  
2 court was predisposed as to its decision. There was some  
3 verbiage in that decision which says we can't believe that  
4 a mortgage creditor wouldn't have an equity cushion in the  
5 first place. They also do, as my opponent is suggesting,  
6 automatically take 506(a) and force it into 1322(b)(2),  
7 just because 506 -- the Chapter 5 provisions of the  
8 Bankruptcy Code are ones of general applicability to all  
9 other substantive provisions.

10 The Wilson case is somewhat distinguishable.  
11 The same result was reached there, but in that case the  
12 creditor had additional collateral beyond the homestead.  
13 And so the court, in part -- almost in passing, but it did  
14 recognize that additional collateral beyond the homestead  
15 was claimed by the mortgage company in that case, so that  
16 case is somewhat distinguishable.

17 In the Hart case we have the same situation  
18 where we had a mobile home on real property and other  
19 collateral. Again, that is somewhat distinguishable.  
20 That's not what the court necessarily -- the facts that  
21 that court necessarily relied on in reaching its decision,  
22 but those were considered by that court in the result that  
23 took place.

24 In the most recent case, the Bellamy case, the  
25 court there takes a somewhat circular analysis of the



1 statutes in effect. The court, by that time, had heard  
2 several arguments. And as a matter of fact, the creditor  
3 involved in that case, the Federal Home Mortgage  
4 Corporation, made the argument that it was rights and not  
5 the secured claim that was subject to modification at  
6 1322(b)(2).

7 The Bellamy court on one page of its decision  
8 said yeah, that might be the case. You may be correct in  
9 saying that it is the rights that are the subject of the  
10 adjective modified. However, the real question is whether  
11 it means unsecured rights or secured rights.

12 And then it goes on to make a statement about  
13 the Code being a substantial change from the Act, which it  
14 was. And therefore -- without really looking at the terms  
15 of the statute, therefore we must only be talking about  
16 secured claims.

17 A couple of pages later in that same decision  
18 that court goes and automatically, as the Hougland,  
19 Wilson, and Hart courts did, take the "other than" phrase  
20 and apply it to the words "secured claim," just as if it  
21 had forgotten that it already used the rule of last  
22 antecedent to apply to the entire phrase of that preceding  
23 phrase.

24 QUESTION: So your submission is that a plan may  
25 not be confirmed unless it provides for the payment of the

1 entire principal amount.

2 MR. SCHROEDER: To a home mortgage lender.

3 QUESTION: Yes.

4 MR. SCHROEDER: That's correct.

5 QUESTION: And no part of it can be treated as  
6 an unsecured claim. What may --

7 MR. SCHROEDER: Not necessarily.

8 QUESTION: How may the rights of unsecured  
9 creditors be modified in a Chapter 13 proceeding?

10 MR. SCHROEDER: How may the unsecured rights --

11 QUESTION: Uh-hum.

12 MR. SCHROEDER: -- Be modified?

13 QUESTION: Do they have to pay them at all?

14 MR. SCHROEDER: In a Chapter 13 proceeding, a  
15 debtor is required to submit to the court, as required by  
16 the Code, his disposable income.

17 QUESTION: Right.

18 MR. SCHROEDER: That income that is over and  
19 above his living expenses, simply.

20 QUESTION: Right.

21 MR. SCHROEDER: That disposable income goes in  
22 part to pay certain claims in the bankruptcy case.  
23 Priority claims.

24 QUESTION: Sure.

25 MR. SCHROEDER: Potentially, attorney fees.

1 QUESTION: Yes.

2 MR. SCHROEDER: Unsecured creditors.

3 QUESTION: How about secured creditors?

4 MR. SCHROEDER: Secured creditors are dealt

5 with -- and potentially secured creditors. For example,

6 the prepetition arrearage on a home-mortgage loan.

7 QUESTION: Well, how about the -- how about the

8 principal amount, the unpaid principal amount?

9 MR. SCHROEDER: The unpaid principal amount in a

10 typical residential mortgage situation --

11 QUESTION: Yes.

12 MR. SCHROEDER: -- Is going to be included, in

13 part, in the prepetition arrearage.

14 QUESTION: Yes.

15 MR. SCHROEDER: Because the prepetition

16 arrearage --

17 QUESTION: Right. But now the rest of the

18 unpaid amount.

19 MR. SCHROEDER: But now -- the unpaid amount?

20 QUESTION: The rest of it, yeah.

21 MR. SCHROEDER: It's our position that there

22 cannot be any modification on that, whether it is secured

23 or not. Because the reading of the statute says that

24 the -- it is the rights, whether secured or not.

25 QUESTION: Yeah.

1 MR. SCHROEDER: Those rights cannot be modified  
2 as against a residential --

3 QUESTION: But when -- when the -- suppose the  
4 disposal income is not enough to pay anything more than,  
5 say -- it just obviously isn't enough ever to pay off  
6 unsecured claims, all of them.

7 MR. SCHROEDER: Usually that's the case, yes.

8 QUESTION: Yes. And so the balance is -- when  
9 he pays what he can, he's discharged from --

10 MR. SCHROEDER: Debt. That is correct. Except  
11 as to, again, either -- the 1328 discharge, certain debts.  
12 There are certain sections including long-term debts.

13 QUESTION: But in any event, the principal  
14 amount, the unpaid principal amount of the contract or on  
15 the mortgage on the principal residence just lingers.  
16 He's never discharged from that, in your position.

17 MR. SCHROEDER: That is our position, yes, sir.

18 QUESTION: May I just ask to get one thing clear  
19 in my mind. You do -- or what is your position on whether  
20 the interference with your right, otherwise existing right  
21 to foreclose, would be a modification of your rights?

22 MR. SCHROEDER: That is -- my position on that,  
23 Your Honor, is that is dealt with by another section of  
24 the Bankruptcy Code, specifically section 362 of the  
25 Bankruptcy Code and, in certain cases, section 1301 of the



1 Bankruptcy Code which imposes upon the filing of a  
2 bankruptcy petition an automatic stay.

3 QUESTION: So this is done by statute rather  
4 than by a plan.

5 MR. SCHROEDER: That's correct. That's correct.  
6 And what 1322 speaks to, Your Honor, is "a plan may  
7 modify" --

8 QUESTION: I see.

9 MR. SCHROEDER: "Other than."

10 QUESTION: That is not a modification caused by  
11 the plan.

12 MR. SCHROEDER: That's correct. That's a  
13 statutory modification, and that is something that we  
14 were -- we live with.

15 QUESTION: Yeah.

16 MR. SCHROEDER: In addition --

17 QUESTION: Mr. Schroeder, what -- what if you  
18 have two mortgages on a property, okay?

19 MR. SCHROEDER: Yes.

20 QUESTION: And even the first one is  
21 undersecured. Under your reading, is the second mortgage  
22 also protected?

23 MR. SCHROEDER: Under our reading of the  
24 statute, the way it is currently written, yes.

25 QUESTION: Even though that second mortgage

1 doesn't even qualify as a secured claim at all. It's not  
2 even a -- under 506.

3 MR. SCHROEDER: Under 506 it may not be secured,  
4 that's correct. But --

5 QUESTION: It is not secured. Now, don't say  
6 "may not" now. In the hypothetical I gave you, it is not.

7 MR. SCHROEDER: That --

8 QUESTION: It is not a secured claim under  
9 506(a).

10 MR. SCHROEDER: That's correct, Your Honor.

11 QUESTION: But under your reading it would have  
12 full protection under -- as a second mortgage even though  
13 the first mortgage gobbles up the entire value of the  
14 security, right?

15 MR. SCHROEDER: That's correct, Your Honor.

16 QUESTION: Wow.

17 MR. SCHROEDER: And so our position would be  
18 that the debtors need to make some elections and some  
19 choices about whether that home is worth keeping or not.  
20 In addition, Your Honor, in our case American Savings Bank  
21 is, according to the findings of the bankruptcy court  
22 below, undersecured. They have a first lien on the  
23 property, but the value of the property, as found by the  
24 bankruptcy court, is less than the total of that.

25 QUESTION: Well, they --

1 MR. SCHROEDER: The --

2 QUESTION: I would think under your position in  
3 this case, it would be better for the -- for the homeowner  
4 just to say go ahead and foreclose, just abandon the  
5 property to you.

6 MR. SCHROEDER: Yes. That would be an election  
7 that I think would make sense for a homeowner.

8 QUESTION: And then -- and what rights would you  
9 have, then, by the way? Would -- say you foreclose.  
10 Would you have any security claim that you might have  
11 to -- that you could get paid off or possibly get paid off  
12 under the plan?

13 MR. SCHROEDER: No secured claim after  
14 liquidation of the collateral through foreclosure.

15 QUESTION: Yeah, yeah.

16 MR. SCHROEDER: That's correct.

17 QUESTION: But you'll still have a deficiency.

18 MR. SCHROEDER: That's correct.

19 QUESTION: And that is still -- except for the  
20 bankruptcy, he would still owe it.

21 MR. SCHROEDER: That's correct.

22 QUESTION: Well he still owe it to you if he  
23 abandons the property to you?

24 MR. SCHROEDER: Yes. If he -- well, it --

25 QUESTION: Wouldn't it be --

1 MR. SCHROEDER: -- Let me answer that question  
2 this way. It may depend on how he abandons the property  
3 to the creditor. There is a practice in the Northern  
4 District Bankruptcy Court of Texas whereby certain debtors  
5 attempt to abandon property in full satisfaction of the  
6 debt to the creditor.

7 QUESTION: But I would have thought that your  
8 deficiency would be discharged in the -- in the  
9 proceeding.

10 MR. SCHROEDER: It may be discharged, and that's  
11 a question that I don't think is before this Court today,  
12 but --

13 QUESTION: Well, it may not be, but it's kind of  
14 an interesting question, isn't it?

15 (Laughter.)

16 MR. SCHROEDER: That -- you're right. And the  
17 answer I would give to your question is that I don't -- I  
18 do not believe -- the way that Chapter 13 is set up is  
19 that that deficiency would be discharged because of  
20 section 1328.

21 QUESTION: 1328.

22 MR. SCHROEDER: Which has the certain exceptions  
23 to discharge for Chapter 13. And one of the exceptions is  
24 long-term debt, and that note is still due and payable 25  
25 years in the future, or whatever the maturity date is,



1     which may be outside the 3 or 5 year plan that the Chapter  
2     13 debtor is in. So potentially, yes, even a deficiency  
3     after foreclosure in a bankruptcy may not be  
4     nondischargeable.

5             Now --

6             QUESTION: Well say it was -- it didn't exceed  
7     the length of time that -- say it would -- it didn't  
8     exceed that length of time, would it be discharged?

9             MR. SCHROEDER: Yes, it would.

10            QUESTION: Because why?

11            MR. SCHROEDER: Because it does not fall within  
12     the exception of section 1322.

13            QUESTION: Well, I know. But why in the first  
14     place would be -- would it be discharged? Did you --  
15     would you have filed a deficiency? Filed --

16            MR. SCHROEDER: We -- my client would --

17            QUESTION: Your client -- your client would  
18     have -- would have scheduled it.

19            MR. SCHROEDER: Would have filed and mended.

20            QUESTION: Exactly.

21            MR. SCHROEDER: Proof of claim for the  
22     deficiency after foreclosure.

23            QUESTION: And that would be discharged.

24            MR. SCHROEDER: If the last payment fell within  
25     the 3 or 5 year period --

1 QUESTION: Yeah.

2 MR. SCHROEDER: -- Of the Code -- of the plan.

3 QUESTION: May I just be sure I understood one  
4 of your answers to Justice Scalia. Assume the  
5 hypothetical, the second mortgage in this case in which  
6 the first mortgage is undersecured, is the person who  
7 holds the second mortgage -- does he have a secured or an  
8 unsecured claim?

9 MR. SCHROEDER: When he comes into the  
10 bankruptcy proceeding before there's any claim  
11 determination or any action by the debtor, that creditor  
12 holds a security agreement or mortgage on property that is  
13 the debtor's that becomes property of the estate when the  
14 debtor files bankruptcy. At that point in time, he's a  
15 secured creditor. He is a creditor who has security. His  
16 security may be nothing. His security may be 0, or --

17 QUESTION: All right, but then go to 506. Under  
18 506(a), is he a secured creditor?

19 MR. SCHROEDER: Under 506(a), I believe he's a  
20 secured creditor only where he falls within the protection  
21 of the "other than" provision of section 1322(b)(2). Now,  
22 a debtor in bankruptcy has the opportunity in an adversary  
23 proceeding under bankruptcy rule 7001 to bring an action  
24 to determine the extent, validity of a -- of a lien or of  
25 a claim.

1 QUESTION: Well, but it seems to me your  
2 argument is circular, because of -- (b)(2) does not apply  
3 except to the holders of secured claims. And under  
4 506(a), he's not secured in any degree. So it seems to me  
5 perfectly plausible --

6 MR. SCHROEDER: He --

7 QUESTION: -- To read (b)(2) as applying to  
8 someone who has a -- a holder who has some portion of his  
9 claim secured.

10 MR. SCHROEDER: That --

11 QUESTION: But in the situations -- the cases  
12 supposed and put to you by Justice Stevens and Justice  
13 Scalia and earlier by me, that is not the case with the  
14 second mortgagee.

15 MR. SCHROEDER: Yes, Your Honor, that is a  
16 plausible reading of the two statutes together.

17 QUESTION: Mr. Schroeder, I'm sure it's in the  
18 interests of your clients to protect the second mortgage  
19 as well as the first mortgage. But, in fact, I can agree  
20 with you on the first mortgage here without agreeing with  
21 you on the second.

22 MR. SCHROEDER: I understand that, Your Honor.

23 QUESTION: I can read the word -- as Justice  
24 Kennedy said, the word, the phrase "holder of secured  
25 claim," it's thoroughly in accord with your position on

1 the first mortgage to read that to mean a person who holds  
2 a claim that is, at least in part, a secured claim under  
3 506(a).

4 MR. SCHROEDER: Your Honor, that may be a  
5 plausible reading.

6 QUESTION: You would rather -- you would want us  
7 to go further, but we really don't have to to agree with  
8 you on the first mortgage.

9 MR. SCHROEDER: That's correct.

10 QUESTION: Yes.

11 CHIEF JUSTICE REHNQUIST: Thank you, Mr.  
12 Schroeder. The case is submitted.

13 (Whereupon, at 1:45 p.m., the case in the  
14 above-entitled matter was submitted.)  
15  
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## CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of: 92-641

Leonard Nobelman, et ux., petitioners v. American Savings

Bank, et al.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Ann Marie Federico

(REPORTER)