

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)	Chapter 7
)	BKY Case No. 03-40673-NCD
Cristina Renee Hanson,)	
)	
Debtor.)	<u>VERIFIED NOTICE OF HEARING</u>
)	<u>AND MOTION OBJECTING TO</u>
)	<u>CLAIMED EXEMPT PROPERTY</u>

TO: The United States Bankruptcy Court, the United States Trustee, the debtor, the debtor's attorney, and all parties who requested notice under Bankruptcy Rule 2002:

1. Julia A. Christians, Trustee herein, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005, and Local Rule 1071-1. This motion is filed pursuant to Bankruptcy Rule 9014 and Local Rules 9013-1 through 9013-5. This proceeding arises under 11 U.S.C. § 522 and Local Rule 4003-1(a).

3. The Court will hold a hearing on this objection on August 4, 2004, at 2:30 p.m. in Courtroom No. 7 West, U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415, or as soon thereafter as counsel can be heard.

4. Any entity opposing the motion under Local Rule 9013-2 is required to file and serve a response, including a memorandum of facts and law and any opposing affidavit, not later than July 30, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than July 26, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **If no response is timely**

served and filed, the Court may grant the relief requested without a hearing.

5. The undersigned trustee hereby objects to the debtor's claim that the following property is exempt under the applicable exemption statute: Proceeds expected from personal injury case re: 1-31-02 auto accident; settlement amount requested = \$75,000.00, exact amount unknown, and any proceeds awarded for wages lost due to inability to work as a result of accident.

6. The objection is made for the following reason: Debtor asserted the exemption in the personal injury claim pursuant to 11 U.S.C. § 522(d)(5) to the extent of \$6,975.00, 11 U.S.C. § 522(d)(11)(D) to the extent of \$17,425.00 and 11 U.S.C. § 522(d)(11)(E) to the extent of 100%. When debtor filed her case on January 28, 2003, she failed to disclose the personal injury claim. When debtor testified under oath at the 11 U.S.C. § 341 Meeting held on March 6, 2003, debtor failed to disclose the personal injury claim. Debtor continued to conceal the asset until the trustee was contacted in May, 2004 by debtor's personal injury attorney, Gregory Malush, who indicated he had been representing the debtor on her pre-bankruptcy claim and that an arbitration proceeding had recently taken place regarding no-fault claims for medical bills. Ms. Hanson had been receiving treatment for her injuries since the January 2002 accident date on an ongoing basis. The debtor has never disclosed the existence of the asset in a Schedule B and only filed an amended Schedule C a year and a half after her filing and then only after the Trustee applied to re-open the case to administer the undisclosed asset. The debtor is not entitled to amend her exemptions to claim as exempt an asset she concealed from the Bankruptcy Court. See, In re: Park, 246 B.R. 837, 840 (Bankr. E.D. Tex. 2000) (a debtor may not claim as exempt property which he knowingly concealed and failed to disclose to the trustee which normally would be exempt had it been properly scheduled and claimed."); In re: Miller, 255 B.R. 221, 222 (Bankr. D. Neb. 2000) (concluding "a debtor may not claim as exempt property intentionally omitted from schedules"); In re: St. Angelo, 189 B.R. 24,

26 (Bankr. D.R.I. 1995) (“intentional concealment of estate property will bar the debtor from claiming such property as exempt, after it surfaces as an asset.”). Accordingly, the debtor’s attempt to claim the undisclosed asset exempt in an amended schedule filed more than a year after her case had been closed, and only after the trustee filed and served her Application to Reopen the bankruptcy case to administer the undisclosed asset, should be disallowed.

Dated: July 6, 2004

/e/ Julia A. Christians
Julia A. Christians, Trustee
One Financial Plaza, Suite 2500
120 South Sixth Street
Minneapolis, MN 55402
(612) 338-5815

VERIFICATION

Julia A. Christians, being duly sworn, says that she is the Chapter 7 Trustee in this action, that she has read this Verified Notice and Objection To Claimed Exempt Property and that it is true of her own knowledge, to the best of her information.

/e/ Julia A. Christians
Julia A. Christians

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)	
Debtor.)	
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ORDER RESPECTING OBJECTION TO CLAIM OF EXEMPTION

The objection of the trustee to the debtor's claim that the following property is exempt under 11 U.S.C. §§522 (d)(5), (d)(11)(D) and (d)(11)(E): Proceeds expected from personal injury case re: 1-31-02 auto accident; settlement amount requested = \$75,000.00, exact amount unknown; and, any proceeds awarded for wages lost due to inability to work as a result of accident, came duly on for hearing on August 4, 2004. Appearances were as noted in the record.

Upon said objection and for cause shown, and upon all the files, records, and proceedings herein,

IT IS ORDERED,

That the debtor's claim of exemption in proceeds expected from personal injury case, re: 1-31-02 auto accident, and any proceeds awarded for wages lost due to inability to work as a result of accident, is hereby disallowed.

Dated:

Nancy C. Dreher
United States Bankruptcy Judge

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UNSWORN CERTIFICATE OF SERVICE

I, Sarah L. Fortin, declare under penalty of perjury that on July 6, 2004, I mailed copies of the attached **Notice Of Hearing And Motion Objecting to Claimed Exempt Property; and proposed Order** by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Craig W. Andresen, Esq.
2001 Killebrew Drive, Suite 330
Bloomington, MN 55425

Cristina Renee Hanson
3010 Winnetka Avenue
Apt. 227
Minneapolis, MN 55427

American Express Travel Related Services
Co., Inc.,
c/o Becket & Lee LLP, Barbara K. Hamilton
PO Box 3001 Dept.
Malvern, PA 19355-0701

Executed on: July 6, 2004

/s/ Sarah L. Fortin
Sarah L. Fortin, Legal Secretary
Lapp, Libra, Thomson, Stoebner &
Pusch, Chartered
120 South Sixth Street, Suite 2500
Minneapolis, MN 55402
612/338-5815