

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE: WHITTLEF, DALYN J.
WHITTLEF, TERRY L.

CHAPTER 7
BKY. CASE NO. 03-47273

Debtor(s).

NOTICE OF MOTION AND MOTION OBJECTING TO EXEMPT PROPERTY

TO: Entities specified in Local Rule 9013-3.

1. Terri A. Georgen, trustee (the "Trustee") of the bankruptcy estate of the above-named Debtor(s) moves the Court for the relief requested below and gives notice of hearing.

2. A hearing will be held on this motion by the Honorable Nancy C. Dreher, Courtroom 7 West, 300 South Fourth Street, Minneapolis, Minnesota on **January 14, 2004 at 2:30 p.m.**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than January 9, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than January 5, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005 and LOCAL RULE 1070-1. This is a core proceeding.

The petition commencing this Chapter 7 case was filed on 10/16/03 and is now pending before this court.

5. This motion arises under 11 U.S.C. §522, FED. R. BANKR. P. 4003 and Local Rule 4003-1(a). This motion is filed under FED. R. BANKR. P. 9014 and Local Rules 9001-1 to 9001-6 and 9013-1 to 9013-5. The Trustee requests relief with respect to the Debtor(s)'s claims of exemption.

6. The Debtor(s) have claimed as exempt a Workers Compensation claim (the "WC Claim") under 11 U.S.C. § 522 (d)(10)(C): unknown amount.¹ The Debtor(s) have also claimed the WC Claim exempt under 11 U.S.C. § 522 (d)(11)(E) for an unknown amount, and under 11 U.S.C. § 522 (d)(11)(D) in the amount of \$34,850.

7. The Trustee objects to the Debtor(s)' claimed exemption in the WC Claim under §522(d)(11)(D) on the grounds that there is no evidence that the WC Claim qualifies as a tort related payment on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss. In addition, even if the WC Claim qualified as exempt under §522(d)(11)(D), the exemption would be limited to a maximum of \$17,425.

8. The Trustee objects to the Debtor(s)' claimed exemption under §522(d)(11)(D) in its entirety.

9. The Trustee objects to the Debtor(s)' claimed exemption in the WC Claim under §522(d)(11)(E) on the grounds that there is no evidence that the WC Claim qualifies as a tort-related payment in compensation of loss of future earnings of the Debtor. In addition, even if the WC Claim qualified as exempt under §522(d)(11)(D), the

¹ The Trustee does not object to the Debtor(s)' claimed exemption under 11 U.S.C. §522(d)(10)(C).

exemption would be limited to an amount reasonably necessary for the support of the Debtor and any dependent of the debtor.

10. The Trustee objects to the Debtor(s)' claimed exemption under §522(d)(11)(D) in its entirety.

WHEREFORE, the Trustee moves the Court for an order sustaining the Trustee's objection(s) to claimed exempt property and such other relief as may be just and equitable.

Dated: December 26, 2003

LAW OFFICES OF TERRI A. GEORGEN
A Professional Corporation

By: /e/ Terri A. Georgen
Terri A. Georgen (No. 238338)
P.O. Box 16355
St. Paul, MN 55116

(651) 699-6980
(651) 292-1234 *Facsimile*

ATTORNEYS FOR THE TRUSTEE

VERIFICATION. I, Terri A. Georgen, the moving party declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: December 26, 2003

/e/ Terri A. Georgen
Terri A. Georgen, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION OBJECTING TO EXEMPT PROPERTY**

INTRODUCTION

The Trustee submits this Memorandum of Law in Support of Motion Objecting to Claimed Exempt Property. The Trustee requests that the Court deny the Debtor(s) claimed exemptions in the Worker's Compensation Claim under 11 U.S.C. §§522(d)(11)(D) and (E) in their entirety.

FACTS

The facts set forth in the Motion are incorporation by reference.

LEGAL ANALYSIS

The Bankruptcy Code provides an exemption for:

[A] payment, not to exceed \$17,425, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependant.

11 U.S.C. §522(d)(11)(D).

The Bankruptcy Code also provides an exemption for:

[A] payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependents of the debtor.

11 U.S.C. §522(d)(11)(E).

Section 522(d)(11) is generally construed to relate to tort related awards. *In re Evans*, 29 B.R. 336, 339 (Bankr. D. N.J. 1983). The exemptions of 522(d)(11) are distinguished from the exemptions of §522(d)(10) which are akin to future earnings. H.R.Rep. No. 595, 95th Cong., 1st Sess. 362 (1977), reprinted in U.S.Code Cong. & Ad.News, 5787, 6318.

There is no evidence that the Workers Compensation Claim is a tort related claim that would qualify as exempt under 11 U.S.C. §§522(d)(11)(D) or (E). As a result, the Court should deny the Debtors' claimed exemptions under those sections in their entirety.

CONCLUSION

For the foregoing reasons, the Court should sustain the Trustee's objection to the Debtor(s)' claimed exemptions.

Dated: December 26, 2003

LAW OFFICES OF TERRI A. GEORGEN
A Professional Corporation

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ATTORNEYS FOR THE TRUSTEE

UNITED STATES BANKRUPTCY COURT
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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Terri A. Georgen, declare that on the date indicated below, I served the following:

- (1) Notice of Hearing and Motion Objecting to Exempt Property; (2) Memorandum of Law in Support of Motion Objecting to Claimed Exempt Property; (3) Unsworn Declaration for Proof of Service; and (4) Proposed Order

upon each of the entities named below, by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

UNITED STATES TRUSTEE
1015 U.S. COURTHOUSE
300 SOUTH FORTH STREET
MINNEAPOLIS, MN 55415

WHITTLEF, DALYN J.
WHITTLEF, TERRY L.
16328 105TH ST NW
SOUTH HAVEN, MN 55382-2920

ROBERT J. HOGLUND
P.O. BOX 13098
ROSEVILLE, MN 55113

J. WARD HOLLIDAY & ASSOC. PC
510 ELM STREET, STE 400, LB 13
DALLAS, TX 75202

And I declare under penalty of perjury that the foregoing is true and correct.

Date: December 26, 2003

/e/ Terri A. Georgen

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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ORDER

At Minneapolis, Minnesota, _____, 2003

The above-entitled matter came before the Court on the Objection to Claimed Exempt Property filed by the Trustee. Appearances, if any, were as noted upon the record. Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

That the Trustee's objection is sustained, and

Debtor(s) claims of exemption in a Worker's Compensation Claim under 11 U.S.C. §§522(d)(11)(D) and (E) are denied in their entirety.

Nancy D. Dreher
UNITED STATES BANKRUPTCY JUDGE