

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

BKY No. 02-41020  
ADV No. 04-4105

Michael R. Russell and Kimberly A. Russell,  
  
Debtor(s).

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Terri A. Georgen, Trustee,  
  
Plaintiff,

vs.

**AMENDED COMPLAINT**

Kimberly A. Russell,  
  
Defendant.

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Terri A. Georgen, Trustee (“Trustee”) of the Bankruptcy Estate of Michael R. Russell and Kimberly A. Russell (“Debtors”) as and for her Complaint against Kimberly A. Russell (“Defendant”), states and alleges as follows:

1. Trustee is the duly appointed Chapter 7 Trustee of the bankruptcy estate of the Debtor.
2. This bankruptcy case was commenced on March 19, 2002 by the filing of a voluntary Chapter 7 petition.
3. This adversary proceeding is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).
4. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§157 and 1334. This case arises under 11 U.S.C. §§541, 542 and 544.

5. On March 19, 2002, the Debtors commenced their bankruptcy case as a Chapter 13 proceeding. Listed among the property belonging to Kimberly A. Russell was a “structured settlement, personal injury action, payable \$15,000 in 2007 and \$71,739.00 in 2012.” (“Structured Settlement”). A true and correct copy of that portion of Schedule B is attached hereto as Exhibit A.

6. The Defendant attempted to claim the Structured Settlement as exempt pursuant to Minn. Stat. §550.37(22). A true and correct copy of the Defendant’s Schedule C to that effect is attached hereto as Exhibit B.

7. The Chapter 13 Trustee objected to the claim Structured Settlement exemption and a hearing was set on the objection for June 5, 2002. The Defendant did not file a response to the objection but, on June 4, 2002, one day before the scheduled hearing, converted the case to one under Chapter 7.

8. In the Defendant’s Schedule B filed in conjunction with the Chapter 7, the Defendant changed her position asserting in the converted case that the Structured Settlement was not property of the estate. A copy of that Schedule B is attached hereto as Exhibit C. The Defendant did not seek to claim the Structured Settlement as exempt in the converted case.

9. The Structured Settlement is an annuity with group annuity contract number GA001. A true and correct copy of Group Annuity Certificate is attached hereto as Exhibit D (“Annuity”). The Annuity was “self-settled” because it was established at the direction of the Debtor for the benefit of the Debtor, using settlement monies owed to the Debtor. The annuitant is Kimberly A. Sullivan n/k/a Kimberly A. Russell.

10. Because among other things, the Annuity is “self-settled” the Annuity does not qualify as a “spend thrift trust” under state law, and the Annuity became property of the estate upon the filing of a Chapter 7 petition.

11. Upon information and belief, while the Annuity states that it cannot be pledged or assigned as security, the Debtors' rights in the Annuity can be sold or transferred by the Debtor.

12. The Plaintiff seeks a determination by the court that the Annuity and/or rights to payment from the Annuity became property of the bankruptcy estate at the commencement of this bankruptcy case, and remain property of the estate.

13. Because the Annuity and/or rights to payment from the Annuity are property of the bankruptcy estate, the Trustee also seeks an order from the court requiring the Defendant to turnover to the Trustee the Annuity and/or rights to payment from the Annuity, and declaring that the Trustee is the owner of the Annuity and/or rights to payment from the Annuity.

#### **COUNT 2**

14. Plaintiff realleges and reaffirms paragraphs 1 through 13 above.

15. The Annuity and/or rights to payment from the Annuity are not subject to any applicable exemption by the Debtor, nor has the Debtor claimed the Annuity and/or rights to payment from the Annuity as exempt in this case.

16. As of commencement of the bankruptcy case, the Trustee had all the rights and powers set forth under 11 U.S.C. §544.

17. Because the Annuity and/or rights to payment from the Annuity are not subject to exemption, the lien interest held by the Trustee pursuant to 11 U.S.C. §544 against the Annuity and/or rights to payment from the Annuity is superior to any claimed interest of the Debtor in the Annuity and/or rights to payment from the Annuity.

WHEREFORE, Plaintiff respectfully requests that this Court make its Order:

1. Determining that the Annuity and/or rights to payment from the Annuity are property of the bankruptcy estate, and ordering the Defendant, Kimberly A. Russell, to turnover to the bankruptcy estate the Annuity and/or rights to payment from the Annuity.

2. Determining that the Defendant's claimed interest in the Annuity and/or rights to payment from the Annuity are inferior to the rights held by the Trustee pursuant to 11 U.S.C. §544 and determining that the Defendant is entitled to nothing from the Annuity and/or rights to payment from the Annuity until such time as all Chapter 7 administrative expenses and creditor claims have been paid in full.

3. Awarding the Plaintiff her costs and expenses in this matter.

4. For such other and further relief as the court deems just and equitable.

**FULLER, SEAVER & RAMETTE, P.A.**

Dated: September 27, 2004

By: /e/ Randall L. Seaver

Randall L. Seaver 152882  
12400 Portland Avenue South, Suite 132  
Burnsville, MN 55337  
(952) 890-0888

Attorneys for Plaintiff

In re **Michael R. Russell**

**Kimberly A. Russell**

Case No.

Debtor

(if known)

## SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
14 Government and corporate bonds and other negotiable and nonnegotiable instruments	<b>X</b>			
15 Accounts receivable	<b>X</b>			
16 Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	<b>X</b>			
17 Other liquidated debts owing debtor including tax refunds. Give particulars.		<b>2001 State and Federal Income Tax Refunds</b>	<b>J</b>	<b>unknown</b>
18 Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.		<b>Structured settlement, personal injury action, payable \$15,000.00 in 2007 and \$71,739.00 in 2012</b>	<b>W</b>	<b>86,739.00</b>
19 Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	<b>X</b>			
20 Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	<b>X</b>			
21 Patents, copyrights, and other intellectual property. Give particulars.	<b>X</b>			
22 Licenses, franchises, and other general intangibles. Give particulars.	<b>X</b>			
23 Automobiles, trucks, trailers, and other vehicles and accessories		<b>1997 Jeep Cherokee</b>	<b>W</b>	<b>14,200.00</b>
		<b>2000 GMC Sonoma</b>	<b>H</b>	<b>17,000.00</b>
		<b>2000 Oldsmobile Alero</b>	<b>W</b>	<b>11,500.00</b>
		<b>2002 Polaris XC 600 Snowmobile</b>	<b>H</b>	<b>5,100.00</b>
24 Boats, motors, and accessories.	<b>X</b>			
25 Aircraft and accessories	<b>X</b>			
26 Office equipment, furnishings, and supplies		<b>Computer</b>	<b>J</b>	<b>200.00</b>

In re **Michael R. Russell****Kimberly A. Russell**

Case No. \_\_\_\_\_

Debtor. \_\_\_\_\_

(If known)

## SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemption to which debtor is entitled under:

(Check one box)

- 11 U.S.C. § 522(b)(1) Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**
- 11 U.S.C. § 522(b)(2) Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
1997 Jeep Cherokee	11 USC § 522(d)(2)	1.00	14,200.00
2000 GMC Sonoma	MSA § 550.37(12a)	1.00	17,000.00
Homestead of Debtors located at 1303 Roberts Road, Buffalo, MN 55313, legally described as	MSA §§ 510.01, 510.02	1,500.00	140,000.00
Lot 3, Block 1, Roberts Ridge, Wright County, Minnesota			
Household goods and furnishings	MSA § 550.37(4)(b)	4,000.00	4,000.00
Profit sharing plan	MSA § 550.37(24)	1,000.00	1,000.00
Public Employees Retirement	MSA § 550.37(24)	5,400.00	5,400.00
Structured settlement, personal injury action, payable \$15,000.00 in 2007 and \$71,739.00 in 2012	MSA § 550.37(22)	86,739.00	86,739.00
Universal Life Insurance	MSA § 550.37(23)	1,000.00	1,000.00
Wearing apparel	MSA § 550.37(4)(b)	500.00	500.00

In re **Michael R. Russell**

**Kimberly A. Russell**

Case No. **02-41020**

Debtor

(if known)

## SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
14. Government and corporate bonds and other negotiable and nonnegotiable instruments	<b>X</b>			
15. Accounts receivable	<b>X</b>			
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars	<b>X</b>			
17. Other liquidated debts owing debtor including tax refunds. Give particulars	<b>X</b>			
18. Equitable or future interests, life estates and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.		<b>Structured settlement, personal injury action annuity, payable \$15,000.00 in 2007 and \$71,739.00 in 2012. (Annuity contains anti-alienation clause; not part of Bankruptcy Estate; shown for information only).</b>	<b>W</b>	<b>86,739.00</b>
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust	<b>X</b>			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each		<b>Worker's Compensation claim against Hennepin County. January, 2002 injury. Disputed claim.</b>	<b>H</b>	<b>unknown</b>
21. Patents, copyrights, and other intellectual property. Give particulars	<b>X</b>			
22. Licenses, franchises, and other general intangibles. Give particulars	<b>X</b>			
23. Automobiles, trucks, trailers, and other vehicles and accessories		<b>1997 Jeep Cherokee</b>	<b>W</b>	<b>14,200.00</b>
		<b>2000 Oldsmobile Alero</b>	<b>W</b>	<b>11,500.00</b>
		<b>2002 Polaris XC 600 Snowmobile</b>	<b>H</b>	<b>5,100.00</b>
24. Boats, motors, and accessories	<b>X</b>			
25. Aircraft and accessories	<b>X</b>			
26. Office equipment, furnishings, and supplies		<b>Computer</b>	<b>J</b>	<b>200.00</b>

# American Family Life Insurance Company

## GROUP ANNUITY CERTIFICATE

American Family Life, referred to in this certificate as the Company, certifies that, under a Group Annuity Contract issued to:

Contractholder: American Family Mutual Ins. Co.

Group Annuity Contract #: GA0001

an annuity has been purchased on behalf of the Annuitant. The Annuitant and annuity benefits are described in the Schedule of Annuity Benefits.

The Group Contract contains all of the conditions and provisions affecting this certificate. Selected provisions are included in this certificate. In case of any conflict between the provisions of this certificate and the Group Contract, the provisions of the Group Contract prevail. This certificate is not a part of the Group Contract.

This Certificate creates a legal agreement between the Company and the Contractholder for the benefit of the Annuitant, and requires the Company to pay all annuity benefits to the Annuitant. The rights of the Annuitant to receive benefits under this Certificate will not terminate until all annuity benefits have been paid. Upon the death of the Annuitant, such rights will pass to the Co-Annuitant, if any.

*Henry A. Ricci*  
President

*James F. Eldridge*  
Secretary

# EXHIBIT D

May-23-02 01:50P

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### ADMINISTRATION

The Annuitant and/or Contractholder will supply all information which the Company may reasonably require for the administration of this certificate, including but not limited to: 1) a certified copy of the Annuitant's birth certificate; 2) periodic proof that the Annuitant is living; and 3) proof of the Annuitant's death. Payments may be discontinued until required information is received. The Company will give the Annuitant and Contractholder 30 days written notice of its intention to stop payments. Payments will resume when the required information is received. Any past due payments will be paid in one sum.

### ANNUITY BENEFITS

The amount, frequency and duration of payments are shown on the Schedule of Annuity Benefits. Unless agreed to by the Company, annuity benefits cannot be assigned or commuted and paid in one sum to the Annuitant. To the extent allowed by law, annuity benefits will be free from the claims of all creditors.

### BENEFICIARY

The beneficiary designation listed on the enrollment application remains in effect until changed. If no beneficiary survives the Annuitant, or no beneficiary designation is effective at the Annuitant's death, the remaining annuity benefits will be paid to the Annuitant's estate.

The beneficiary may be changed at any time. Written notice changing the beneficiary must be filed with the Company, on a form satisfactory to it. The change must be submitted by the Contractholder to the Company. The change will take effect: 1) on the date the form was signed; and 2) without prejudice to any action taken by the Company before receiving such form. A change of beneficiary will terminate all rights under previous designations.

### MISSTATEMENT OF FACTS

If any misstatement of facts alters the amount or schedule of annuity benefits payable to an Annuitant, the Company will adjust future payments. At the option of the Contractholder, an adjustment in premium may be approved as an alternative to any adjustment in the amount or schedule of annuity benefits.

### MODIFICATIONS

The Group Annuity Contract may be modified by written agreement between the Contractholder and the Company. Modifications to the contract will not affect this certificate, unless the change is required to comply with any state or federal law.



May-23-02 01:50P

### SCHEDULE OF ANNUITY BENEFITS

TYPE OF SETTLEMENT	PAYMENT AMOUNTS	INITIAL PAYMENT DATE	GUARANTEED PAYMENTS	PAYMENT FREQUENCY
LUMP SUM	\$ 5,000.00	October 23, 2000	1	N/A
LUMP SUM	\$ 15,000.00	October 23, 2005	1	N/A
LUMP SUM	\$ 71,738.86	October 23, 2010	1	N/A

CERTIFICATE NUMBER - S003664-7  
 ANNUITANT - KIMBERLY A. SULLIVAN  
 CO-ANNUITANT - N/A

ISSUE DATE - SEPTEMBER 28, 1994  
 ISSUE AGE - 19  
 ISSUE AGE - N/A

