

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

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

Michael R. Russell and Kimberly A. Russell,

Debtors.

Terri A. Georgen, Trustee,

Plaintiff,

vs.

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

Kimberly A. Russell,

Defendant.

TO: Defendant and her attorney, Lorie A. Klein, Moss & Barnett, 4800 Wells Fargo Center,
90 South Seventh Street, Minneapolis, MN 55402-4129.

1. The Plaintiff herein, moves the court for summary judgment against the Defendant and gives notice of hearing herewith.

2. The court will hold a hearing on this motion at 10:30 a.m. on the 28th day of October, 2004 before the Honorable Nancy C. Dreher, Courtroom 7 West, U.S. Bankruptcy Court, 300 South Fourth Street, Minneapolis, MN 55415.

3. Any response to this motion must be filed and delivered not later than October 21, 2004 which is 7 days before the date of the hearing or filed and served by mail not later than October 18, 2004 which is 10 days before the date of the hearing. **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 motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The voluntary petition commencing this Chapter 7 case was filed on March 19, 2002. The case is now pending in this court.

5. The summary judgment motion arises under Bankruptcy Rule 7056 and Fed. R. Civ. Proc. 56. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9006-1 and 9013. Plaintiff seeks summary judgment of the court against the Defendant (a) determining that all rights to payment and all benefits due under the Annuity with Group Annuity Contract No. GA001 is property of the bankruptcy estate, and that Defendant has no interest in the Annuity pursuant to Count 1 of the Complaint; and (b) that rights of the Trustee under 11 U.S.C. §544 and the lien rights of the Trustee thereunder are superior to any claimed interest of the Defendant in the Annuity, and to any rights to payments from the Annuity.

WHEREFORE, the Plaintiff seeks summary judgment against the Defendant holding as follows:

1. Determining that all contract rights, rights to payment and all benefits due under the Annuity with Group Annuity Contract No. GA001 are property of the bankruptcy estate, and that Defendant has no interest in the Annuity pursuant to Count 1 of the Complaint.

2. That rights of the Trustee under 11 U.S.C. §544 and the lien rights of the Trustee thereunder are superior to any claimed interest of the Defendant in the Annuity, and to any rights to payments from the Annuity.

3. Awarding Plaintiff her costs and disbursements herein and for such other and further relief as the court deems just and equitable.

FULLER, SEAVER & RAMETTE, P.A.

Dated: September 30, 2004

By: /e/ Randall L. Seaver

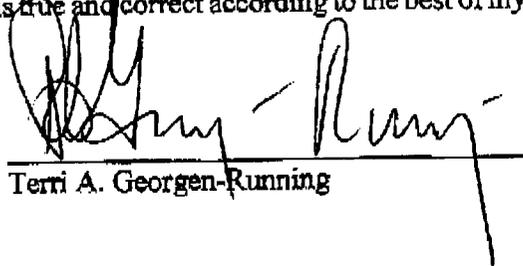
Randall L. Seaver 152882
12400 Portland Avenue South, Suite 132
Burnsville, MN 55337
(952) 890-0888

Attorneys for Plaintiff

VERIFICATION

I, Terri A. Georgen-Running, Trustee for the Bankruptcy Estate of Michael R. Russell and Kimberly A. Russell, the moving party named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on September 29, 2004



Terri A. Georgen-Running

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

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

Michael R. Russell and Kimberly A. Russell,

Debtor(s).

Terri A. Georgen, Trustee,

Plaintiff,

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

vs.

Kimberly A. Russell,

Defendant.

FACTUAL AND PROCEDURAL BACKGROUND

In 1994, a settlement was reached in the case of *Kimberly Sullivan* (n/k/a Kimberly Russell) *v. American Family Insurance Company* whereby American Family Insurance Company, as insurer of Allen H. Sullivan, agreed to pay certain monies to Kimberly Sullivan. The settlement provided that, in addition to a \$65,000 payment made at the time of settlement, that lump sums would be paid to Kimberly Russell as follows:

Age 25 - \$5,000;
Age 30 - \$15,000; and
Age 35 - \$71,738.86.

American Family agreed that it would purchase an annuity contract from American Family Life to pay for the future payments. Seaver Aff .Ex. A.

Pursuant to the terms of the settlement, an annuity was purchased on behalf of the Defendant. The annuity was issued on September 28, 1994, and per the terms of the settlement agreement, provided for lump sum payments as follows:

\$ 5,000 on October 23, 2000;
\$15,000 on October 23, 2005; and
\$71,738.86 on October 23, 2010.

Seaver Aff. Ex. B.

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”). Seaver Aff. Ex. C.

In her Chapter 13 case, the Defendant attempted to claim the Structured Settlement as exempt pursuant to Minn. Stat. §550.37(22). Seaver Aff. Ex. C.

The Chapter 13 Trustee objected to the claim Structured Settlement exemption and a hearing was set on the objection for June 5, 2002. Seaver Aff. Ex. D. 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.

In the Defendant’s Schedule B filed in conjunction with the Chapter 7, the Defendant changed her position now asserting in the converted case that the Structured Settlement was not property of the estate. The Defendant did not seek to claim the Structured Settlement as exempt in the converted case. Seaver Aff. Ex. E.

In 1999, Minn. Stat. §§549.31 and 549.32 were enacted. By the terms of the legislation enacting those provisions, they applied only to structured settlement agreements entered into on or after August 1, 1999 and the transfers of structured settlement payment rights under a transfer agreement entered into on after August 1, 1999.

The Trustee has sought a determination by this Court that the rights to payment under the Annuity are property of the bankruptcy estate. The Trustee has also asserted her rights under 11 U.S.C. §544 which provide the estate with priority over any rights of the Debtor in the Annuity.

The Defendant contends that, because of Minn. Stat. §§549.31 and 549.32, the Annuity is not property of the bankruptcy estate. The Defendant's position is without basis and summary judgment should be granted in favor of the Plaintiff.

LEGAL ARGUMENT

1. Summary judgment standard.

Summary judgment is properly regarded, not as a disfavored procedural shortcut, but an integral part of the Federal Rules, designated to “secure the just, speedy and inexpensive determination of every action.” *Celotex Corp. V. Catrett*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 1). Summary judgment will be granted if there is no issue to any material fact, and the moving party is entitled to judgment as a matter of law. Fed .R. Civ. P. 56(c).¹ Summary judgment must be entered if, after adequate discovery time, the party against whom relief is sought fails to make a sufficient showing to establish the existence of an element

¹Rule 56 applies in this proceeding pursuant to Fed. R. Bankr. P. 7056 and 9014.

essential to its case upon which it will bear the burden of proof in trial. *Celotex Corp. V. Catrett*, 477 U.S. 317, 327 (1986) (quoting Fed. R. Civ. P. 56.01).

The moving party must advise the court of all evidence which it believes demonstrates the absence of a genuine issue of material fact, and that it is entitled to judgment as a matter of law. *Celotex*, supra, *City of Mt. Pleasant, Iowa v. Associated Elec. Co-op, Inc.*, 838 F.2d 268, 273 (8th Cir. 1988).

Once the movant has made its showing, the burden shifts to the non-moving party, who must establish by its own affidavits, or other admissible evidence, that there are specific and genuine issues of material fact warranting a trial. *Celotex*, at 324. The non-moving party must present specific, significant, and probative evidence supporting its case. *Johnson v. Enron Corp.*, 906 F.2d 1234, 1237 (8th Cir. 1990).

Summary judgment in an action under 11 U.S.C. §727(a)(4)(A) is appropriate where there are no genuine issues as to material facts. *In re Unruh*, 728 B.R. 769 (Bankr. D. Minn. 2002).

2. The Annuity is bankruptcy estate property, and Minn. Stat. §§549.31 and 549.32 have no relevance.

When a Debtor files bankruptcy, an estate is created. The debtor's property that becomes property of the estate upon filing is very broadly defined, and includes the following:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of this case.

11 U.S.C. §541(a)(1).

Subsection (b) has no application to this case. Subsection (c)(2) states as follows:

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

11 U.S.C. §541(c)(2) (emphasis added).

There is no trust at issue in this case, so 11 U.S.C. §541(c)(2) has no relevance to this case.

The Defendant apparently contends that the statutory restrictions on transfer by the beneficiary of a structured settlement agreement as provided at Minn. Stat. §§549.31 and 549.32 have some application to this case. That argument is fatally flawed for several reasons.

First, Minn. Stat. §§549.31 and 549.32, by their terms, apply only to structured settlements and transfer agreements entered on or after August 1, 1999. The structured settlement which resulted in the Annuity at issue in this case was entered in 1994 and there is no transfer agreement. Therefore, Minn. Stat. §§549.31 and 549.32 have no application to the Annuity.

Second, even if those statutes had some application to the Annuity in this case, those statutes would not serve to prevent the Annuity from becoming property of this estate. That is so because 11 U.S.C. §541(c)(1) provides, in relevant part, as follows:

(c) (1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law –

(A) that restricts or conditions transfer of such interest by the debtor; or

11 U.S.C. §541(c)(1)(A).

The Annuity, accordingly, would have become property of the estate even if the Annuity had been entered into on or after August 1, 1999, because 11 U.S.C. §541(c)(1)(A) specifically provides that any interest of the Debtor in property becomes estate property notwithstanding any applicable nonbankruptcy law that restricts or conditions the transfer of such interest by the Debtor. A conditioning of the transfer of the interest of the interest by the Debtor is exactly what Minn. Stat. §§549.31 and 32 would purport to effect.

The only exception to 11 U.S.C. §541(c)(1)(A) is that provided at paragraph 2 of subsection c. That paragraph is quoted above in its entirety, and applies only to trusts enforceable under applicable non-bankruptcy law. There is no trust at issue in this case, and so accordingly, 11 U.S.C. §541(c)(2) is not applicable.

Third, the term “Transfer” is specifically defined by Minn. Stat. §549.30 as follows:

Subd. 17. Transfer. “Transfer” means a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration.

Minn. Stat. §549.30, subd. 17 (emphasis added).

As indicated by subd. 17, the definition of “transfer” does not include any transfer made by a payee for which there is no consideration. For instance, if a payee assigns her rights to payment under a post August 1, 1999 Annuity to her daughter for no consideration, or gifts those rights to anyone for no consideration, Minn. Stat. §§549.31 and 32 would not apply. The obvious purpose of Minn. Stat. §549.31 is to place restrictions on the sale by injured persons of their rights to future payments under a structured settlement in exchange for a lump sum payment. *Settlement Capital Corp. v. State Farm Mutual Auto Insurance Co.*, 646 N.W.2d 550

(Minn. App. 2002). Accordingly, the transfer restrictions of those statutes apply only to the transfer for consideration of those interests.

As indicated by the foregoing, it is clear that the Annuity became property of the bankruptcy estate upon the Debtor filing bankruptcy. She admitted as much in her original filing when she scheduled it as property of the estate and attempted to claim an exemption. It was only after objection to the exemption that the case was voluntarily converted to a chapter 7 and the Debtor then asserted that the Annuity was not property of the estate. Clearly the Annuity is property of the bankruptcy estate. The Debtor has not attempted to claim it as exempt, and summary judgment should be entered in favor of the Plaintiff.

3. Summary judgment under 11 U.S.C. §544.

The Amended Complaint also asserts the Trustee's rights under 11 U.S.C. §544. The relevant part of that section provides that the Trustee has all the rights and powers of.

(1) a creditor that extends credit at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

The estate has all the rights of a judgment creditor against the Annuity. The Trustee seeks a determination that those rights are superior to any claimed interest of the Debtor in the Annuity.

There is no statute that provides any applicable exemption for the structured settlement proceeds represented by the Annuity.

It is well settled that under Minnesota law a personal injury exemption is available only for “claims” and not for settlement proceeds. *Christians v. Dulas*, 95 F.3d 703 (8th Cir. 1996). The Annuity represents proceeds from the settlement of a claim, and thus there is no available Minnesota exemption.

Minn. Stat. §§549.31 and 32 provide no exemption for settlement proceeds. Rather, as indicated in the foregoing discussion, those statutes serve only to place restrictions on a transfer by the holder of an Annuity for consideration. In other words, those statutes place restrictions on the sale by annuitant of her structured settlement interests.

As previously indicated, Minn. Stat. §§549.31 and 32 are not applicable to the Annuity because the statute applies only to Annuities and transfer agreements entered after August 1, 1999. However, even if applicable, those statutes would have no effect upon the rights of a creditor to execute upon the Annuity rights of the Debtor. Had the legislature desired to make personal injury structured settlement payments exempt from the claims of creditors, it could easily have done so using the same language that it used to protect workers compensation claims and settlements from creditors. The language enacted regarding workers compensation claims is as follows:

Subd. 2. Non assignability. No claim for compensation or settlement of a claim for compensation owned by an injured employee or dependents is assignable. Except as otherwise provided in this chapter, any claim for compensation owned by an injured employee or dependents is exempt from seizure or sale from the payment of any debt or liability.

Minn. Stat. §176.175 Subd. 2.

Restrictions on the sale of an annuity by a holder do not render the Annuity exempt from the claims of creditors, and thus the Trustee's claims under 11 U.S.C. §544 are superior to any claim of the Debtor to the Annuity. Summary judgment should also be granted in favor of the Trustee on the Count 2 of the Complaint.

FULLER, SEAVER & RAMETTE, P.A.

Dated: September 30, 2004

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

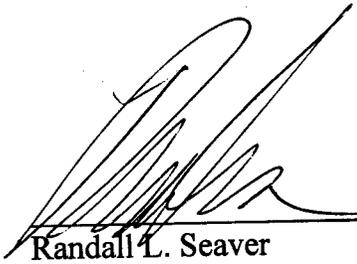
Attorneys for Plaintiff

4. Attached hereto as Exhibit C are true and correct copies of the Debtors' Schedules B and C in their Chapter 13 proceeding.

5. Attached hereto as Exhibit D is a Notice of Hearing and Motion Objecting to Claim of exemption in the Debtor's Chapter 13 proceeding.

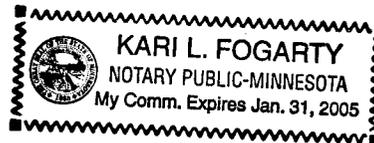
6. Attached hereto as Exhibit E is a true and correct copy of Schedules B and C in this case.

FURTHER YOUR AFFIANT SAYETH NOT.


Randall L. Seaver

Subscribed and sworn to before me this
30 day of September, 2004.


Notary Public



GEORGE W. ROBERTS

ATTORNEY AT LAW
240 SOUTH PLAZA BUILDING
1433 UTICA AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55416

(952) 544-7676 FAX: (952) 542-0605
E-Mail: groberts@winternet.com

August 1, 2003

Terri A. Georgen
Trustee in Bankruptcy
PO Box 16355
St. Paul, MN 55116

Re: Michael and Kimberly A. Russell
Bankruptcy File No. 02-41020

Dear Ms. Georgen:

As requested, I enclose a copy of the Settlement Agreement and Group Annuity Certificate between American Family Insurance Company and Kimberly (Sullivan) Russell.

Please advise if you will require any further documentation.

Very truly yours,



George W. Roberts

GWR:la

Enc.

cc: Michael and Kimberly Russell

Bky:Russell0801

EXHIBIT A

RECEIVED
AUG 04 2003
Asset

ECKMAN STRANDNESS & EGAN, P.A.

Attorneys at Law

501B Butler Square 100 North Sixth Street
Minneapolis, Minnesota 55403-1592

(612) 338-6565 (612) 338-8090
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Mary Mackey, R.N.
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Pam McCartney, R.N.
Kate Buboltz, L.P.N.

Stephen S. Eckman
Paul A. Strandness
J. Michael Egan
David A. Meyer
Logan N. Foreman, III
Kim C. Justesen
Jack L. Vatland
Joel E. Smith

September 22, 1994

SETTLEMENT STATEMENT

Kimberly Sullivan vs. American Family Insurance Co.
File #6616

PRESENT VALUE OF SETTLEMENT	\$100,000.00
Less Attorneys' Fees of One-third:	(\$33,333.33)
Less Payoff of Medical Lien - EBP HealthPlans: •reduced from \$40,826.69	(\$20,000.00)
Less Purchase of Annuity:	(\$35,000.00)
<u>Expenses Paid On Your Behalf:</u>	
Investigation	\$565.70
State Patrol Photographs	24.05
Henn Co Medical Center (medical records)	103.31
Ridgeview Medical Center (medical records)	32.13
University of Minnesota (medical articles)	45.00
Crow River Medical Center (medical records)	26.51
Photocopies of Records/Postage/Facsimiles	<u>59.70</u>
	\$856.40
Less Expenses Paid on Your Behalf:	(\$856.40)
DRAFT TO CLIENT TODAY:	\$10,810.27

FUTURE PAYMENTS:

10-23-00 (age 25)	\$ 5,000.00
10-23-05 (age 30)	15,000.00
10-23-10 (age 35)	<u>71,738.86</u>
	\$91,738.86

GUARANTEED LUMP SUM TOTAL: \$91,738.86

TOTAL FUNDS TO BE RECEIVED BY CLIENT: \$102,549.13

ACKNOWLEDGMENT

I have read and understand the foregoing distribution statement. I acknowledge that this distribution is in accordance with my retainer agreement and is satisfactory to me. I also understand that this completes the work that Eckman, Strandness & Egan, P.A. was retained to do for me and that nothing further will be done on my behalf.

Dated: _____

Kimberly Copy

211-085588 ML

SETTLEMENT AGREEMENT AND RELEASE

This agreement is entered into this ____ day of _____, 19__, between Kimberly A. Sullivan and American Family Mutual Insurance Company, as insurer of Allen H. Sullivan.

By executing this Settlement Agreement and Release, I agree that:

- a. "Claims", includes demands, actions and rights of action and also includes all claims which I/we now or hereafter may have arising out of, in consequence of, or on account of said accident;
- b. "Damages" includes damages for personal injury; bodily injury; sickness; disease; death resulting from such injury, sickness or disease; injury to or destruction of property; damages for care and loss of services arising from such injury, sickness or disease; damages for loss of use of property because of injury or destruction; and all other damages of whatever kind or nature.

I/we expressly intend and agree that this Settlement Agreement and Release applies to all of my claims arising from said accident, including, but not limited to, claims for known, unknown, latent, developed and undeveloped injuries; anticipated and unanticipated consequences, and known and unknown developments of any such injuries; and claims with respect to the nature, extent and permanency of any such injuries.

In executing this Settlement Agreement and Release, I/we am/are relying on my/our judgment, belief and knowledge as to all phases of my/our claims and that I/we am/are not relying on representations or statements made by any of the parties herein released, anyone representing them, or physicians or surgeons employed by them.

I/we acknowledge that said sums are paid in compromise and settlement of disputed claims, that payment thereof shall not be construed as an admission of any liability whatsoever by any of the parties herein released by whom liability is expressly denied.

It is agreed that in consideration of the full discharge of past, present and future claims arising out of the accident of July 6, 1993, at Highway 12 in Wright County Minnesota, as a result of the alleged actions or omissions of Allen H. Sullivan, Greg H. Rehmann, American Family Mutual Insurance Company agrees to arrange for payment of the following sums, amounts, and at the times hereinafter set forth:

A singular payment to Kimberly A. Sullivan and Stephen S. Echman, her attorney of \$65,000.00, to be paid as soon as possible after the execution of this document.

Lump sums payable in the amount and on the dates as follows:

- Age 25: \$5,000.00
- Age 30: \$15,000.00

Age 35: \$71,738.86

In the event of the death of Kimberly A. Sullivan during the term of this Agreement, all remaining guaranteed payments, when due, shall be payable to Shawn Sullivan. Neither American Family Mutual nor Kimberly A. Sullivan Estate nor the heirs thereof shall have the right to accelerate any payment or to increase or decrease the amount of the payments specified herein.

American Family Mutual Insurance Company shall purchase and own an annuity contract from American Family Life to provide for future payments required by this Agreement. Payments made pursuant to this contract shall operate as a pro tanto discharge of the payments set forth in the preceding paragraphs.

If more than one person has executed this Settlement Agreement and Release, the consideration paid shall apply jointly to all such persons. All other provisions shall apply separately to each person. The word "person" as used in this paragraph shall include natural persons, firms, associations, organizations, and corporations.

American Family Mutual Insurance Company specifically guarantees herein that in the event the American Family Life becomes insolvent or otherwise ceases to do business, payments required by this Agreement will be continued by the American Family Mutual Insurance Company from the point that American Family Life ceases to make them.

All parties agree to execute any and all supplementary documents and to take all supplementary steps to give full force and effect to the basic terms and intent of this Agreement. All parties agree to maintain sufficient documentation of this Agreement during its duration to give its intent full force and effect.

Executed at _____, on _____, 19__.

Witness

Witness

Witness

Witness

TERRI A. GEORGEN

TRUSTEE IN BANKRUPTCY

P.O. Box 16355

St. Paul, MN 55116

Telephone (651) 699-6980

Facsimile (651) 292-1234

February 5, 2004

American Family Insurance Group

ATTN: Group Annuity

P.O. Box 7430

Madison, WI 53783

**IN RE: RUSSELL, MICHAEL R. RUSSELL, KIMBERLY A.
 BKY CASE NO. 02-41020
 DATE OF FILING: 03/19/02**

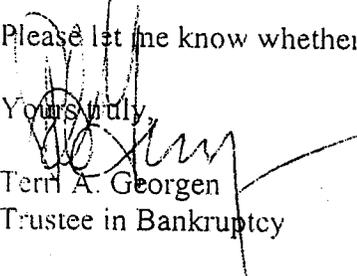
To Whom It May Concern:

I am the court appointed Trustee of the bankruptcy estate of the above captioned Debtor(s) who filed a Voluntary Petition under Chapter 7 of the Bankruptcy Code on the above date. Enclosed is a copy of the notice of my appointment as trustee.

The Debtor(s) list in the statements and schedules a group annuity certificate as of the date of filing - 03/19/02. The Group Annuity Contract Number is GA0001, and the Certificate Number is 5003664-7 (the "Annuity"). Attached for your reference is a copy of the Annuity. The Annuity is property of the bankruptcy estate and any payments there under must be forwarded to me.

Please let me know whether you will consent to a sale of the Annuity. Thanks.

Yours truly,


Terri A. Georgen
Trustee in Bankruptcy

May-23-02 01:50P

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:
American Family Mutual Ins. Co.

Contractholder: _____

Group Annuity Contract #: GAD001

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 B

May-23-02 01:50P

L-13

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

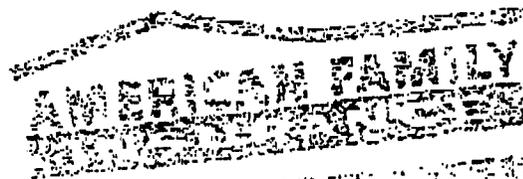
ANNUITANT - KIMBERLY A. SULLIVAN

CO-ANNUITANT - N/A

ISSUE DATE - SEPTEMBER 28, 1994

ISSUE AGE - 19

ISSUE AGE - N/A



In re **Michael R. Russell**

Kimberly A. Russell

Case No. _____

Debtor

(If known)

SCHEDULE B - PERSONAL PROPERTY

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
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives		Checking account, TCF Bank	W	170.00
3. Security deposits with public utilities, telephone companies, landlords, and others	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles	X			
6. Wearing apparel.		Household goods and furnishings	J	4,000.00
		Wearing apparel	J	500.00
7. Furs and jewelry.		Wedding ring	W	500.00
8. Firearms and sports, photographic, and other hobby equipment.		7mm rifle, 12 ga. shotgun, and .40 Baretta pistol	H	500.00
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each		Universal Life Insurance	H	1,000.00
10. Annuities. Itemize and name each issuer.	X			
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		Profit sharing plan	W	1,000.00
		Public Employees Retirement	H	5,400.00
12. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13. Interests in partnerships or joint ventures. Itemize.	X			

EXHIBIT C

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	X			
15 Accounts receivable.	X			
16 Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17 Other liquidated debts owing debtor including tax refunds. Give particulars.		2001 State and Federal Income Tax Refunds	J	unknown
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.		Structured settlement, personal injury action, payable \$15,000.00 in 2007 and \$71,739.00 in 2012	W	86,739.00
19 Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
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.	X			
21 Patents, copyrights, and other intellectual property. Give particulars.	X			
22 Licenses, franchises, and other general intangibles. Give particulars.	X			
23 Automobiles, trucks, trailers, and other vehicles and accessories		1997 Jeep Cherokee	W	14,200.00
		2000 GMC Sonoma	H	17,000.00
		2000 Oldsmobile Alero	W	11,500.00
		2002 Polaris XC 600 Snowmobile	H	5,100.00
24 Boats, motors, and accessories.	X			
25 Aircraft and accessories.	X			
26 Office equipment, furnishings, and supplies		Computer	J	200.00

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
27. Machinery, fixtures, equipment and supplies used in business.	X			
28. Inventory	X			
29. Animals	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed. Itemize		Non-exempt portion of wages due at time of filing	J	unknown
<u>2</u> continuation sheets attached			Total	\$ 147,809.00

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

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: Lot 3, Block 1, Roberts Ridge, Wright County, Minnesota	MSA §§ 510.01, 510.02	1,500.00	140,000.00
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

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

*Michael R. Russell, and
Kimberly A. Russell,*

Debtor(s).

Case No.: 02-41020

Chapter 13 Case

NOTICE OF HEARING AND MOTION OBJECTING TO CLAIM OF EXEMPTION

TO: All parties in interest pursuant to Local Rule 9013-3.

1. Jasmine Z. Keller, Chapter 13 Trustee (the "Trustee"), moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on this motion at 2:00 p.m. on June 5, 2002, in Courtroom No. 7 West, United States Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than May 31, 2002, 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 May 24, 2002, 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 motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 13 case was filed on March 19, 2002. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 522 and Bankruptcy Rule 4003(b). This motion is filed under Bankruptcy Rule 9014 and Local Rules 4003-1, 9006-1, 9013-1 through 9013-5, and such other Local Rules as may pertain. Movant requests relief with respect to denial of the debtors' claim of exemption to an asset described as "Structured settlement [sic], personal injury action, payable \$15,000.00 in 2007 and \$71,739.00 in 2012" (the "Annuity").

6. The meeting of creditors pursuant to 11 U.S.C. § 341(a) was held and concluded on April 17, 2002, which is a date 30 days or less from the filing date for this motion; therefore, this motion is timely according to Bankruptcy Rule 4003(b).

7. The debtors have chosen to claim their exempt property according to 11 U.S.C. §

EXHIBIT D

522(b)(2)(A), which allows the debtor to claim property exempt under federal non-bankruptcy law, or state or local law applicable on the date of filing of the petition at the debtors' domicile.

8. The debtors list the following asset, among others, on their Schedule C - Property Claimed As Exempt, on file herein:

<u>Property</u>	<u>Exemption statute</u>	<u>Value claimed exempt</u>
Structured settlement [sic], personal injury action, payable \$15,000.00 in 2007 and \$71,739.00 in 2012	MSA § 550.37(22)	\$86,739.00

9. The cited statute allows a debtor to claim the following types of property as exempt:

Subd. 22. Rights of action. Rights of action for injuries to the person of the debtor or of a relative whether or not resulting in death.

Minn. Stat. § 550.37, subd. 22.

10. At the Trustee's request, the debtors have produced certain documents relative to the settlement and release of claims relating to a personal injury action brought by Mrs. Russell, which resulted in the purchase of an annuity that will pay her the payments described in ¶ 8, above. Copies of these unsigned documents, including a settlement agreement and release of claims and a settlement statement from Mrs. Russell's personal injury attorneys, are attached hereto and incorporated by reference as though fully set forth herein.

11. The Trustee is informed and believes that Mrs. Russell duly executed the attached documents and that the Annuity claimed as exempt in Schedule C is the annuity referred to in the settlement documents.

12. The Trustee objects to the debtor's claim of exemption to the Annuity under Minn. Stat. § 550.37, subd. 22 on the grounds that the cited statute only allows an exemption for "rights of action" for personal injuries, and not for an annuity purchased as part of a structured settlement of a personal injury action. *Christians v. Dulas*, 95 F.3d 703 (8th Cir. 1996).

13. If necessary, the Trustee may call Kimberly A. Russell and/or the attorney who represented her in her personal injury action to testify in connection with this Motion.

14. Because the Trustee does not anticipate a serious contest to this objection from the debtor, no separate memorandum of law accompanies this motion, as provided in Local Bankruptcy Rule 9013-5.

WHEREFORE, the Trustee moves the court for an order denying the debtor's claim of exemption to "Structured settlement [sic], personal injury action, payable \$15,000.00 in 2007 and \$71,739.00 in 2012", and such other relief as may be just and equitable.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: May 17, 2002

Signed: /e/ Thomas E. Johnson
Thomas E. Johnson, ID # 52000
Eric J. Sherburne, ID # 279389
Counsel for Chapter 13 Trustee
310 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Thomas E. Johnson, employed by the Chapter 13 Trustee, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: May 17, 2002

Signed: /e/ Thomas E. Johnson

211-085588 ML

SETTLEMENT AGREEMENT AND RELEASE

This agreement is entered into this _____ day of _____, 19____, between Kimberly A. Sullivan and American Family Mutual Insurance Company, as insurer of Allen H. Sullivan.

By executing this Settlement Agreement and Release, I agree that:

- a. "Claims", includes demands, actions and rights of action and also includes all claims which I/we now or hereafter may have arising out of, in consequence of, or on account of said accident;
- b. "Damages" includes damages for personal injury; bodily injury; sickness; disease; death resulting from such injury, sickness or disease; injury to or destruction of property; damages for care and loss of services arising from such injury, sickness or disease; damages for loss of use of property because of injury or destruction; and all other damages of whatever kind or nature.

I/we expressly intend and agree that this Settlement Agreement and Release applies to all of my claims arising from said accident, including, but not limited to, claims for known, unknown, latent, developed and undeveloped injuries; anticipated and unanticipated consequences, and known and unknown developments of any such injuries; and claims with respect to the nature, extent and permanency of any such injuries.

In executing this Settlement Agreement and Release, I/we am/are relying on my/our judgment, belief and knowledge as to all phases of my/our claims and that I/we am/are not relying on representations or statements made by any of the parties herein released, anyone representing them, or physicians or surgeons employed by them.

I/we acknowledge that said sums are paid in compromise and settlement of disputed claims, that payment thereof shall not be construed as an admission of any liability whatsoever by any of the parties herein released by whom liability is expressly denied.

It is agreed that in consideration of the full discharge of past, present and future claims arising out of the accident of July 6, 1993, at Highway 12 in Wright County Minnesota, as a result of the alleged actions or omissions of Allen H. Sullivan, Greg H. Rehmann, American Family Mutual Insurance Company agrees to arrange for payment of the following sums, amounts, and at the times hereinafter set forth:

A singular payment to Kimberly A. Sullivan and Stephen S. Echman, her attorney of \$65,000.00, to be paid as soon as possible after the execution of this document.

Lump sums payable in the amount and on the dates as follows:

Age 25: \$5,000.00
Age 30: \$15,000.00

Age 35: \$71,738.86

In the event of the death of Kimberly A. Sullivan during the term of this Agreement, all remaining guaranteed payments, when due, shall be payable to Shawn Sullivan. Neither American Family Mutual nor Kimberly A. Sullivan Estate nor the heirs thereof shall have the right to accelerate any payment or to increase or decrease the amount of the payments specified herein.

American Family Mutual Insurance Company shall purchase and own an annuity contract from American Family Life to provide for future payments required by this Agreement. Payments made pursuant to this contract shall operate as a pro tanto discharge of the payments set forth in the preceding paragraphs.

If more than one person has executed this Settlement Agreement and Release, the consideration paid shall apply jointly to all such persons. All other provisions shall apply separately to each person. The word "person" as used in this paragraph shall include natural persons, firms, associations, organizations, and corporations.

American Family Mutual Insurance Company specifically guarantees herein that in the event the American Family Life becomes insolvent or otherwise ceases to do business, payments required by this Agreement will be continued by the American Family Mutual Insurance Company from the point that American Family Life ceases to make them.

All parties agree to execute any and all supplementary documents and to take all supplementary steps to give full force and effect to the basic terms and intent of this Agreement. All parties agree to maintain sufficient documentation of this Agreement during its duration to give its intent full force and effect.

Executed at _____, on _____, 19 ____

Witness

Witness

Witness

Witness

ECKMAN STRANDNESS & EGAN, P.A.*Attorneys at Law*501B Butler Square  100 North Sixth Street
Minneapolis, Minnesota 55403-1592(612) 338-6565 (612) 338-8090
Minnesota Toll Free (800) 338-8090
Out-of-State Toll Free (800) 328-1096
FAX: (612) 338-9059Stephen S. Eckman
Paul A. Strandness
J. Michael Egan
David A. Meyer
Logan N. Foreman, III
Kim C. Justesen
Jack L. Vatland
Joel E. SmithPractice Limited to Personal
Injury and Wrongful DeathLegal AssistantsBrian Kuczmareki
Mary Mackey, R.N.
Guy Western
Pam McCartney, R.N.
Kate Buboltz, L.P.N.

September 22, 1994

SETTLEMENT STATEMENTKimberly Sullivan vs. American Family Insurance Co.
File #6616

PRESENT VALUE OF SETTLEMENT	\$100,000.00
Less Attorneys' Fees of One-third:	(\$33,333.33)
Less Payoff of Medical Lien - EBP HealthPlans: •reduced from \$40,826.69	(\$20,000.00)
Less Purchase of Annuity:	(\$35,000.00)
<u>Expenses Paid On Your Behalf:</u>	
Investigation	\$565.70
State Patrol Photographs	24.05
Henn Co Medical Center (medical records)	103.31
Ridgeview Medical Center (medical records)	32.13
University of Minnesota (medical articles)	45.00
Crow River Medical Center (medical records)	26.51
Photocopies of Records/Postage/Facsimiles	<u>59.70</u>
	\$856.40
Less Expenses Paid on Your Behalf:	(\$856.40)
DRAFT TO CLIENT TODAY:	\$10,810.27

Settlement Statement - Kimberly Sullivan
Page Two
September 22, 1994

FUTURE PAYMENTS:

10-23-00 (age 25)	\$ 5,000.00
10-23-05 (age 30)	15,000.00
10-23-10 (age 35)	<u>71,738.86</u>
	\$91,738.86

GUARANTEED LUMP SUM TOTAL:

\$91,738.86

TOTAL FUNDS TO BE RECEIVED BY CLIENT:

\$102,549.13

ACKNOWLEDGMENT

I have read and understand the foregoing distribution statement. I acknowledge that this distribution is in accordance with my retainer agreement and is satisfactory to me. I also understand that this completes the work that Eckman, Strandness & Egan, P.A. was retained to do for me and that nothing further will be done on my behalf.

Dated: _____

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

*Michael R. Russell, and
Kimberly A. Russell,*

Debtor(s).

Case No.: 02-41020

Chapter 13 Case

ORDER DENYING EXEMPTION CLAIM

At Minneapolis, MN, _____, 2002.

The above-entitled matter came before the undersigned United States Bankruptcy Judge on the Chapter 13 Trustee's objection to the debtor's claim of exemption to "Structured settlement [sic], personal injury action, payable \$15,000.00 in 2007 and \$71,739.00 in 2012".

Appearances, if any, were noted in the minutes.

Upon the foregoing record,

IT IS ORDERED:

1. The Trustee's objection is **SUSTAINED**.
2. The debtor's claim of exemption to "Structured settlement [sic], personal injury action, payable \$15,000.00 in 2007 and \$71,739.00 in 2012" is **DENIED**.

Nancy C. Dreher
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

In re:

*Michael R. Russell, and
Kimberly A. Russell,*

Debtor(s).

Case No.: 02-41020

Chapter 13 Case

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Thomas E. Johnson, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on May 17, 2002, I served Notice of Hearing and Motion Objecting to Claim of Exemption and proposed Order on the individual(s) listed below, in the manner described:

By personal delivery next business day:

United States Trustee
1015 United States Courthouse
300 South 4th Street
Minneapolis, MN 55415

By first class U.S. mail, postage prepaid:

Michael R. Russell
Kimberly A. Russell
1303 Roberts Road
Buffalo, MN 55313

George W. Roberts, Esq.
Attorney at Law
1433 Utica Ave. S., Suite 250
Minneapolis, MN 55416

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

Executed: May 17, 2002

/e/ Thomas E. Johnson

In re **Michael R. Russell**

Kimberly A. Russell

Case No. **02-41020**

Debtor

(If known)

SCHEDULE B - PERSONAL PROPERTY

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
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Checking account, TCF Bank	W	170.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles	X			
6. Wearing apparel.		Household goods and furnishings	J	4,000.00
		Wearing apparel	J	500.00
7. Furs and jewelry.		Wedding ring	W	500.00
8. Firearms and sports, photographic, and other hobby equipment		7mm rifle, 12 ga. shotgun, and .40 Baretta pistol	H	500.00
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		Universal Life Insurance	H	1,000.00
10. Annuities. Itemize and name each issuer	X			
11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.		Profit sharing plan	W	1,000.00
		Public Employees Retirement	H	5,400.00
12. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
13. Interests in partnerships or joint ventures itemize.	X			

EXHIBIT E

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	X			
15. Accounts receivable	X			
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
17. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
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		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).	W	86,739.00
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust	X			
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.		Worker's Compensation claim against Hennepin County. January, 2002 Injury. Disputed claim.	H	unknown
21. Patents, copyrights, and other intellectual property. Give particulars.	X			
22. Licenses, franchises, and other general intangibles. Give particulars.	X			
23. Automobiles, trucks, trailers, and other vehicles and accessories.		1997 Jeep Cherokee	W	14,200.00
		2000 Oldsmobile Alero	W	11,500.00
		2002 Polaris XC 600 Snowmobile	H	5,100.00
24. Boats, motors, and accessories.	X			
25. Aircraft and accessories.	X			
26. Office equipment, furnishings, and supplies.		Computer	J	200.00

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
27. Machinery, fixtures, equipment and supplies used in business.	X			
28. Inventory.	X			
29. Animals.	X			
30. Crops - growing or harvested. Give particulars.	X			
31. Farming equipment and implements.	X			
32. Farm supplies, chemicals, and feed.	X			
33. Other personal property of any kind not already listed. Itemize		Non-exempt portion of wages due at time of filing	J	unknown
<u>2</u> continuation sheets attached				Total \$ 130,809.00

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

In re **Michael R. Russell**

Kimberly A. Russell

Case No. **02-41020**

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)(5)	1.00	14,200.00
2000 Oldsmobile Alero	11 USC § 522(d)(2)	200.00	11,500.00
2002 Polaris XC 600 Snowmobile	11 USC § 522(d)(5)	291.00	5,100.00
7mm rifle, 12 ga. shotgun, and .40 Baretta pistol	11 USC § 522(d)(5)	500.00	500.00
Checking account, TCF Bank	11 USC § 522(d)(5)	170.00	170.00
Computer	11 USC § 522(d)(5)	200.00	200.00
Homestead of Debtors located at 1303 Roberts Road, Buffalo, MN 55313, legally described as: Lot 3, Block 1, Roberts Ridge, Wright County, Minnesota	11 USC § 522(d)(1)	1,500.00	140,000.00
Household goods and furnishings	11 USC § 522(d)(3)	4,000.00	4,000.00
Non-exempt portion of wages due at time of filing	11 USC § 522(d)(5)	unknown	unknown
Profit sharing plan	11 USC § 522(d)(10)(E)	1,000.00	1,000.00
Public Employees Retirement	11 USC § 522(d)(10)(E)	5,400.00	5,400.00
Universal Life Insurance	11 USC § 522(d)(8)	1,000.00	1,000.00
Wearing apparel	11 USC § 522(d)(3)	500.00	500.00
Wedding ring	11 USC § 522(d)(4)	500.00	500.00
Worker's Compensation claim against Hennepin County. January, 2002 Injury. Disputed claim.	11 USC § 522(d)(11)(D)	unknown	unknown

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

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

Michael R. Russell and Kimberly A. Russell,

Debtors.

Terri A. Georgen, Trustee,

Plaintiff,

vs.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER FOR JUDGMENT**

Kimberly A. Russell,

Defendant.

The above matter came before the court on October 28, 2004 on the motion of the Plaintiff for summary judgment. Based upon the files, records and proceedings here, and the court being fully advised in the premises, the court makes the following:

FINDINGS OF FACT

1. In 1994, a settlement was reached in the case of *Kimberly Sullivan* (n/k/a Kimberly Russell) *v. American Family Insurance Company* whereby American Family Insurance Company, as insurer of Allen H. Sullivan, agreed to pay certain monies to Kimberly Sullivan. The settlement provided that, in addition to a \$65,000 payment made at the time of settlement, that lump sums would be paid to Kimberly Russell as follows:

Age 25 - \$5,000;

Age 30 - \$15,000; and
Age 35 - \$71,738.86.

2. American Family agreed that it would purchase an annuity contract from American Family Life to pay for the future payments.

3. Pursuant to the terms of the settlement, an annuity was purchased on behalf of the Defendant. The annuity was issued on September 28, 1994, and per the terms of the settlement agreement, provided for lump sum payments as follows:

\$ 5,000 on October 23, 2000;
\$15,000 on October 23, 2005; and
\$71,738.86 on October 23, 2010.

4. 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”).

5. In her Chapter 13 case, the Defendant attempted to claim the Structured Settlement as exempt pursuant to Minn. Stat. §550.37(22).

6. 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.

7. In the Defendant’s Schedule B filed in conjunction with the Chapter 7, the Defendant changed her position and asserted that the Structured Settlement was not property of

the estate. The Defendant did not seek to claim the Structured Settlement as exempt in the converted case.

8. In 1999, Minn. Stat. §§549.31 and 549.32 were enacted. By the terms of the legislation enacting those provisions, they applied only to structured settlement agreements entered into on or after August 1, 1999 and the transfers of structured settlement payment rights under a transfer agreement entered into on after August 1, 1999.

CONCLUSIONS OF LAW

1. The Trustee has sought a determination by this Court that the rights to payment under the Annuity are property of the bankruptcy estate. The Trustee has also asserted her rights under 11 U.S.C. §544 she asserts provides the estate with priority over any rights of the Debtor in the Annuity.

2. The Defendant contends that, because of Minn. Stat. §§549.31 and 549.32, the Annuity is not property of the bankruptcy estate. The Defendant's position is without basis and summary judgment should be granted in favor of the Plaintiff.

3. When a Debtor files bankruptcy, an estate is created. The debtor's property that becomes property of the estate upon filing is very broadly defined, and includes the following:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of this case.

11 U.S.C. §541(a)(1).

4. Subsection (b) of 11 U.S.C. §541 has no application to this case. Subsection (c)(2) states as follows:

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

11 U.S.C. §541(c)(2) (emphasis added).

5. There is no trust at issue in this case, so 11 U.S.C. §541(c)(2) has no relevance to this case.

6. The Defendant apparently contends that the statutory restrictions on transfer by the beneficiary of a structured settlement agreement as provided at Minn. Stat. §§549.31 and 549.32 have some application to this case. That argument is fatally flawed for several reasons.

7. Minn. Stat. §§549.31 and 549.32, by their terms, apply only to structured settlements and transfer agreements entered on or after August 1, 1999. The structured settlement which resulted in the Annuity at issue in this case was entered in 1994 and there is no transfer agreement. Therefore, Minn. Stat. §§549.31 and 549.32 have no application to the Annuity.

8. Even if those statutes had some application to the Annuity in this case, those statutes would not serve to prevent the Annuity from becoming property of this estate. That is so because 11 U.S.C. §541(c)(1) provides, in relevant part, as follows:

(c) (1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law –

(A) that restricts or conditions transfer of such interest by the debtor; or

11 U.S.C. §541(c)(1)(A).

9. The Annuity, accordingly, would have become property of the estate even if the Annuity had been entered into on or after August 1, 1999, because 11 U.S.C. §541(c)(1)(A) specifically provides that any interest of the Debtor in property becomes estate property notwithstanding any applicable nonbankruptcy law that restricts or conditions the transfer of such interest by the Debtor. A conditioning of the transfer of the interest of the interest by the Debtor is exactly what Minn. Stat. §§549.31 and 32 would purport to effect.

10. The only exception to 11 U.S.C. §541(c)(1)(A) is that provided at paragraph 2 of subsection c. There is no trust at issue in this case, and so accordingly, 11 U.S.C. §541(c)(2) is not applicable.

11. The term “Transfer” is specifically defined by Minn. Stat. §549.30 as follows:

Subd. 17. Transfer. “Transfer” means a sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration.

Minn. Stat. §549.30, subd. 17 (emphasis added).

12. As indicated by subd. 17, the definition of “transfer” does not include any transfer made by a payee for which there is no consideration. The obvious purpose of Minn. Stat. §549.31 is to place restrictions on the sale by injured persons of their rights to future payments under a structured settlement in exchange for a lump sum payment. *Settlement Capital Corp. v. State Farm Mutual Auto Insurance Co.*, 646 N.W.2d 550 (Minn. App. 2002). Accordingly, the transfer restrictions of those statutes apply only to the transfer for consideration of those interests.

13. As indicated by the foregoing, it is clear that the Annuity became property of the bankruptcy estate upon the Debtor filing bankruptcy. She admitted as much in her original filing when she scheduled it as property of the estate and attempted to claim an exemption. It was only after objection to the exemption that the case was voluntarily converted to a chapter 7 and the Debtor then asserted that the Annuity was not property of the estate. Clearly the Annuity is property of the bankruptcy estate. The Debtor has not attempted to claim it as exempt, and summary judgment holding that it is property of the estate should be entered in favor of the Plaintiff.

14. The Amended Complaint also asserts the Trustee's rights under 11 U.S.C. §544. The relevant part of that section provides that the Trustee has all the rights and powers of.

(1) a creditor that extends credit at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

15. The estate has all the rights of a judgment creditor against the Annuity. The Trustee seeks a determination that those rights are superior to any claimed interest of the Debtor in the Annuity.

16. There is no statute that provides any applicable exemption for the structured settlement proceeds represented by the Annuity.

17. It is well settled that under Minnesota law a personal injury exemption is available only for "claims" and not for settlement proceeds. *Christians v. Dulas*, 95 F.3d 703 (8th Cir.

1996). The Annuity represents proceeds from the settlement of a claim, and thus there is no available Minnesota exemption.

18. Minn. Stat. §§549.31 and 32 provide no exemption for settlement proceeds. Rather, as indicated in the foregoing discussion, those statutes serve only to place restrictions on a transfer by the holder of an Annuity for consideration. In other words, those statutes place restrictions on the sale by annuitant of her structured settlement interests.

19. As previously indicated, Minn. Stat. §§549.31 and 32 are not applicable to the Annuity because the statute applies only to Annuities and transfer agreements entered after August 1, 1999. However, even if applicable, those statutes would have no effect upon the rights of a creditor to execute upon the Annuity rights of the Debtor. Had the legislature desired to make personal injury structured settlement payments exempt from the claims of creditors, it could easily have done so using the same language that it used to protect workers compensation claims and settlements from creditors. The language enacted regarding workers compensation claims is as follows:

Subd. 2. Non assignability. No claim for compensation or settlement of a claim for compensation owned by an injured employee or dependents is assignable. Except as otherwise provided in this chapter, any claim for compensation owned by an injured employee or dependents is exempt from seizure or sale from the payment of any debt or liability.

Minn. Stat. §176.175 Subd. 2.

20. Restrictions on the sale of an annuity by a holder do not render the Annuity exempt from the claims of creditors, and thus the Trustee's claims under 11 U.S.C. §544 are superior to any claim of the Debtor to the Annuity.

21. The Annuity contract rights and all rights to payments and benefits under the Annuity are property of the bankruptcy estate, and the Debtor has no interest in the Annuity and has no interest in any benefits or rights to payment under the Annuity.

22. The Trustee's rights arising under 11 U.S.C. §544 are superior to any claimed interest of the Debtor in the Annuity.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: _____, 2004

Nancy C. Dreher
U.S. Bankruptcy Judge