

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE: LACHER, CONNIE M.

CHAPTER 7  
BKY CASE NO. 04-41057

Debtor(s).

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**NOTICE OF MOTION AND MOTION OBJECTING TO EXEMPT PROPERTY**

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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 No. 7 West, United States Courthouse, 300 S. Fourth Street, Minneapolis, Minnesota on **May 26, 2003 at 10:30 a.m.**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than May 21, 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 May 17, 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 03/02/04 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 claims of exemption.

6. The Debtor(s) have claimed the following asset as exempt under 11 U.S.C. §522(d)(10)(E): 403(B) Retirement Account - \$15,000 (the "Retirement Account").

7. The Trustee requested documentation/information from the Debtors regarding the Retirement Account. The Debtor(s) provided documentation regarding the Retirement Account. That documentation reflects that the account is a variable annuity life insurance product with a cash surrender value. The Trustee has not received information sufficient to determine whether the Retirement Account qualifies as exempt under 11 U.S.C. §522(d)(10)(E).

8. The Trustee objects to the Debtor(s) claimed exemption in the Retirement Account on the basis that the Retirement Account does not qualify as exempt under §522(d)(10)(E).<sup>1</sup>

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<sup>1</sup> The Trustee acknowledges that a certain dollar amount of the Retirement Account might be exempt under 522(d)(5).

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: May 7, 2004

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: May 7, 2004

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

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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IN RE: LACHER, CONNIE M.

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

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**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: (1) a 403(B) Retirement Account - \$15,000 balance (the "Retirement Account").

**FACTS**

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

**LEGAL ANALYSIS**

**I. The IRA is not Exempt under 522(d)(10)(E).**

The Bankruptcy Code provides that a debtor may exempt the following property under (d)(10):

The debtor's right to receive –

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless (i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose; (ii) such payment is on account of age or length of service; and (iii) such plan

or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

11 U.S.C. § 522(d)(10)(E). Pursuant to this section, payment from the debtor's Retirement Account are exempt only if (1) it is a "pension, annuity, or similar plan or contract;" (2) the payments are made "on account of illness, disability, death, age or length of service;" and (3) the payments are reasonably necessary for the debtor's support or the support of their dependents. *Rousey v. Jacoway*, 347 F.3d 689, 691 (8<sup>th</sup> Cir. 2003).

In this case, there is no evidence that the Retirement Account is payable on account of illness, disability, death, age or length of service or that the payments are reasonably necessary for the debtor's support or the support of their dependents. As a result, the Trustee cannot determine whether the Retirement Account qualifies as exempt under §522(d)(10)(E) of the Bankruptcy Code.

### **CONCLUSION**

For the foregoing reasons, the Court should sustain the Trustee's objection to the Debtor's claimed exemption in the 403(B) Retirement Account in its entirety.

Dated: May 7, 2004

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*A Professional Corporation*

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**ORDER**

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At Minneapolis, Minnesota, \_\_\_\_\_, 2004

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

1. The Debtor(s)' claim of exemption in the 403(b) Retirement Account is denied.

\_\_\_\_\_  
JUDGE  
UNITED STATES BANKRUPTCY JUDGE