

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Case No.: BKY 04-32268

DARLIS D. GUTHA,

Debtor.

Chapter 7 Case

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**NOTICE OF HEARING  
AND  
MOTION OBJECTING TO CLAIMED EXEMPTIONS**

TO: The debtor and other entities specified in Local Rule 9013-3.

Paul W. Bucher, the trustee in bankruptcy in this case (the "trustee"), moves the Court for the relief requested below and gives notice of hearing.

1. The Court will hold a hearing on this Motion at 2:15 p.m. on September 2, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.
2. Because this Motion is being delivered at least 21 days or mailed at least 24 days before the hearing date, any response to this Motion must be filed and delivered not later than August 26, 2004, which is seven days before the time set for the hearing (including Saturdays, Sundays and holidays), or filed and served by mail not later than August 23, 2004, which is ten days before the time set for the hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
3. This Court has jurisdiction over this Motion pursuant to Sections 157 and 1334 of Title 28 of the United States Code, Rule 5005 of the Federal Rules of Bankruptcy Procedure, and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on April 14, 2004. This case is now pending in this court.
4. This Motion arises under Section 522 of the United States Bankruptcy Code (11 U.S.C. §522), Rule 4003 of the Federal Rules of Bankruptcy Procedure, and Local Rule 4003-1(a). This Motion is filed under Rules 9013 and 9014 of the Federal Rules of Bankruptcy Procedure and Local Rules 9013-1, 9013-2, 9013-3 and 9013-5. The trustee requests relief with respect to objections to certain property claimed as exempt by the debtor.
5. The debtor has elected to claim property as exempt under Section 522(b)(1) of the United States Bankruptcy Code. See the attached Schedule C filed in this case.

6. The debtor has claimed the following assets as exempt under the following statute: 2001 Income Tax Refund, 2002 Income Tax Refund, 2003 Income Tax Refund, books, cash, TCF Mankato Checking Account, fishing gear, household and garden tools, and microwave under 11 U.S.C. §522(d)(5). The trustee objects to the claimed exemption on the grounds that the trustee has insufficient information to determine the value of the above listed items and that the total value that may be exempted under §522(d)(5) may be exceeded.

7. The debtor has claimed the following asset as exempt under the following statute: Personal Injury claim-automobile accident under 11 U.S.C. §522(d)(11)(D). This statute only allows an exemption for the right to receive payments on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss. The trustee objects to this exemption on the grounds that the trustee has insufficient information to determine if the rights under this claim are within the definition of §522(d)(11)(D).

8. If oral testimony is necessary at the hearing, the trustee will call the debtor: Darlis D. Gutha, 504 ½ 4<sup>th</sup> St SW, Waseca, MN 56093, who will testify concerning value of the assets listed in #6 above, Personal Injury claim-automobile accident, and any other matters, if necessary.

Wherefore, the trustee moves the Court for an order denying the above exemptions claimed by the debtor, and such other relief as the Court finds just and equitable.

Dated: July 23, 2004

/e/ Paul W. Bucher

Paul W. Bucher, Trustee  
206 South Broadway, Suite 505  
Post Office Box 549  
Rochester, Minnesota 55903-0549  
Telephone: (507) 288-9111

## VERIFICATION

I, Paul W. Bucher, the trustee in bankruptcy in this case and the moving party named in the foregoing Notice of Hearing and Motion Objecting to Claim of Exemption, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on July 23, 2004

/e/ Paul W. Bucher

Paul W. Bucher  
206 South Broadway, Suite 505  
Rochester, Minnesota 55904

In re **Darlis D Gutha**

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
1993 Ford Probe	11 USC § 522(d)(2)	1,800.00	1,800.00
2 recliners	11 USC § 522(d)(3)	250.00	250.00
2001 Income Tax Refund	11 USC § 522(d)(5)	2,003.00	2,003.00
2002 Income Tax Refund	11 USC § 522(d)(5)	1,234.00	1,234.00
2003 Income Tax Refund	11 USC § 522(d)(5)	800.00	800.00
Appliances	11 USC § 522(d)(3)	600.00	600.00
Bathroom furnishings	11 USC § 522(d)(3)	60.00	60.00
Bedroom furniture	11 USC § 522(d)(3)	350.00	350.00
Books - 2 sets of encyclopedias, 25 childrens books	11 USC § 522(d)(5)	75.00	75.00
Cash	11 USC § 522(d)(5)	5.00	5.00
Checking Account - TCF Mankato	11 USC § 522(d)(5)	5.00	5.00
Clothing	11 USC § 522(d)(3)	300.00	300.00
Fishing Gear - 3 poles and tackle	11 USC § 522(d)(5)	75.00	75.00
Household and Garden Tools	11 USC § 522(d)(5)	110.00	110.00
Jewelry - Mother's diamond ring	11 USC § 522(d)(4)	100.00	100.00
Kitchen Table and chairs	11 USC § 522(d)(3)	125.00	125.00
Microwave	11 USC § 522(d)(5)	40.00	40.00
Personal injury claim - automobile accident Attorney Jerry Maschka	11 USC § 522(d)(11)(D)	17,425.00	45,000.00

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

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Bky Case No. 04-32268  
Chapter 7

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**UNSWORN CERTIFICATE OF SERVICE**

I, Jennifer M. Albright, declare under penalty of perjury that on July 23, 2004, I mailed copies of the following:

Notice of Hearing and Motion Objecting to Claimed Exemptions and Proposed Order

by United States Mail, postage pre-paid, to each entity named below at the address stated below:

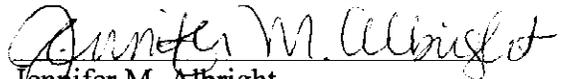
David F. Frundt  
Attorney at Law  
P.O. Box 96  
Winnebago, MN 56098

Darlis D. Gutha  
504 ½ 4<sup>th</sup> St. SW  
Waseca, MN 56093

UNITED STATES TRUSTEE  
1015 U S COURTHOUSE  
300 SOUTH 4<sup>TH</sup> STREET  
MINNEAPOLIS MN 55415

Executed on July 23, 2004.

Signed:



Jennifer M. Albright  
DUNLAP & SEEGER, P.A.  
P O BOX 549  
ROCHESTER MN 55903-0549  
(507) 288-9111

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re:

Case No.: BKY 04-32268

DARLIS D. GUTHA,

Debtor.

Chapter 7 Case

**ORDER DENYING CLAIMED EXEMPTIONS**

This matter came before the Court on the 2 day of September, 2004, on the Motion of the Trustee Objecting to Claimed Exemptions. Appearances, if any, were noted of record. Based on the file, proceedings and record in this matter:

IT IS HEREBY ORDERED that:

The Trustee's Motion Objecting to Claimed Exemptions is sustained, and accordingly:

1. The debtor's claimed exemption of 2001 Income Tax Refund, 2002 Income Tax Refund, 2003 Income Tax Refund, books, cash, TCF Mankato Checking Account, fishing gear, household and garden tools, and microwave is denied.
2. The debtor's claimed exemption of Personal Injury claim-automobile accident is denied.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Dennis D. O'Brien  
United States Bankruptcy Judge