

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: MAUS, BRUCE A.,

Chapter 7  
Bky Case No. 04-34280

Debtor.

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

---

TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTOR, HIS ATTORNEY AND OTHER PARTIES IN INTEREST:

1. Patti J. Sullivan, Trustee of the bankruptcy estate of the above-named debtor 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 October 20, 2004 in Courtroom No. 228A, at the United States Court House, 316 N Robert St., St. Paul, Minnesota 55101.

3. Any response to this motion must be filed and delivered not later than 2:00 P.M. on October 15, 2004, which is three days before the time set for the hearing, (excluding intermediate Saturdays, Sundays, and legal holidays), or filed and served by mail not later than October 12, 2004, which is seven business days before the time set for the hearing (excluding intermediate Saturdays, Sundays, and legal 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 Rules 4003, 5005, 9013 and 9014, Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on July 23, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. §522 and Bankruptcy Rule 4003 and Local Rule 1070-1. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to 9006-1 and 9013-1 to 9013-5. Movant requests relief with respect to debtor's claim for exemptions.

The debtor has claimed the following asset as exempt under Minn. Stat. 550.37, subd. 13 and Minn. Stat. 571.922 – Anchor Bank checking account in the amount of \$5,000.00 (the “Bank Account”).

The Trustee objects to the debtor's claimed exemption in the Bank Account on the basis that: (1) Minn. Stat. 550.37, subd. 13 and Minn. Stat. 571.922 do not provide for an exemption for funds in a bank account. Such exemption would be allowed only to the extent that the debtor establishes the funds in the accounts are “earnings”. The Trustee does not have sufficient information to determine the source of deposits.

Minnesota law permits debtors to exempt all earnings not subject to garnishment. Minn. Stat. 571.922 limits the amount that may be garnished to 25% of the debtor's disposable earnings. The Trustee does not have sufficient information to determine the source of deposits in the Bank Accounts. If the source of the deposits is wages, 25% of the funds on deposit are not exempt.

The debtor claimed the following six (6) insurance policies exempt under Minn. Stat. § 550.37 Subd. 23. – two National Travelers Life Company policies #NO1037009 and #NO1037009 each valued at \$0.00; NW Mutual policy #7261659 valued at \$842.00, NW Mutual policy #8-806-244 valued nominal, NW Mutual policy #8-806-578 valued at \$63.00, NW Mutual policy #9510394 valued nominal. This statute provides as follows:

“Subd. 23. **Life Insurance Aggregate Interest.** The Debtor's aggregate interest not to exceed in value \$4,000.00 in any accrued dividend or interest under or loan value of any unmaturing life insurance contract owned by the Debtor under which the Insured is the Debtor or an individual of whom the Debtor is dependent.”

The dollar amount stated in this section is indexed for inflation under Minn. Stat. § 550.37, Subd. 4(a) and has currently increased to \$7,600.00.

This exemption statute refers to insurance “contract,” singular. The section has been interpreted as allowing exemption of the debtor's aggregate interest in only one single insurance policy. In re Guyot, 240 B.R. 326, 327-328 (Bankr. D. MN 1999). See also, In re Struckhoff, 231 B.R. 69, 70 (Bankr. E.D. MO 1999) (statute exempting “any motor vehicle” permitted debtor to exempt only one motor vehicle). This Court should determine as a matter of law the debtor's right to exempt is limited to one insurance contract and the debtor should select the contract claimed exempt.

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

Dated this 24<sup>th</sup> day of September 2004.

/e/ Patti J. Sullivan

Patti J. Sullivan  
Trustee in Bankruptcy  
Attorney ID No. 170124  
P.O. Box 16406  
St. Paul, MN 55116  
(651) 699-4825

VERIFICATION. I, Patti J. Sullivan, Movant, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated this 24<sup>th</sup> day of September, 2004.

/e/ Patti J. Sullivan

Patti J. Sullivan, Trustee

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

---

In the Matter of:

MAUS, BRUCE A.,

Debtor.

Chapter 7  
Bky No. 04-34280

---

**UNSWORN CERTIFICATE OF SERVICE**

I, Joeline Kissinger, declare under penalty of perjury that on the 24<sup>th</sup> day of September, 2004, I mailed a copy of the attached **Notice of Hearing and Motion Objecting to Exempt Property and Proposed Order** by first class mail postage prepaid to each entity named below or on the statement attached at the address stated below or in said attachment for each entity:

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

Patrick W. Stewart  
15025 Garrett Ave. S. #200  
Apple Valley, MN 55124

Bruce A. Maus  
1586 Sherwood Court  
Eagan, MN 55122

Executed on this 24<sup>th</sup> day of September 2004.

  
Joeline Kissinger

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re: MAUS, BRUCE A.,

Chapter 7  
Bky Case No. 04-34280

Debtor.

**ORDER**

---

At St. Paul, Minnesota, October 20, 2004.

Upon the objection to Claimed Exempt Property filed by the Trustee and upon all the files and records of the proceedings herein. Appearances were as noted upon the record.

IT IS HEREBY ORDERED:

That the Trustee's Objection is sustained, and

1. The Debtor's claimed exemption in the Anchor Bank checking account in the amount of \$5,000.00 is disallowed.
2. The Debtor's claimed exemption in two National Travelers Life Company policies #NO1037009 and #NO1037009 each valued at \$0.00; NW Mutual policy #7261659 valued at \$842.00; NW Mutual policy #8-806-244 valued nominal; NW Mutual policy #8-806-578 valued at \$63.00; and, NW Mutual policy #9510394 valued nominal are disallowed.

---

Dennis D. O'Brien  
United States Bankruptcy Judge