

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

Bky. No.: 04-50076 GFK

MICHAEL H. SMOCK and  
JANE J. SMOCK,

Debtors.

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**NOTICE OF MOTION AND VERIFIED MOTION OBJECTING  
TO PROPERTY CLAIMED AS EXEMPT**

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TO: THE COURT, THE DEBTORS, THE DEBTORS' ATTORNEY, JOHN F. HEDTKE, AND  
THE UNITED STATES TRUSTEE

1. Robert R Kanuit, Trustee of the bankruptcy estate of the above-named debtors 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 May 12, 2004, before the Honorable Gregory F. Kishel, in Courtroom 2 at the United States Courthouse, 515 West First Street, in Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than May 5, 2004, which is seven (7) days before the time set for the hearing, or filed and served by mail not later than May 2, 2004, which is ten (10) days before the time set for 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, 11 U.S.C. § 522, 11 U.S.C. § 542, Bankruptcy Rules 4003d, 9013 and 9014, and Local Rules 702 and 1201, et seq. This proceeding is a core proceeding. The petition commencing this Chapter 7

case was filed on January 23, 2004. The case is now pending in this Court. Movant is entitled to object to Debtors' claims of exemption pursuant to Bankruptcy Rule 4003.

5. This motion arises under 11 U.S.C. § 522, 11 U.S.C. § 542, and Bankruptcy Rule 4003 and Local Rule 702. 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 Debtors' nonexempt property.

6. Debtors have claimed an annuity with The Travelers Indemnity Company exempt under 11 U.S.C. § 522(d)(11)(D), which movant objects to.

7. Movant objects to debtors' claim of exemption for the following reasons: debtor, Jane J. Smock, contracted for this annuity in 1990, but failed to disclose it in a previous bankruptcy filing in this District, Case No. 93-50109, in an attempt to fraudulently conceal it from the trustee in that case. Under such circumstances, debtor Jane J. Smock may not now claim the asset exempt. *In re Grogan*, 300 B.R. 804 (Bankr. D. Utah 2003).

WHEREFORE, trustee, Robert R. Kanuit, moves the Court for an order sustaining his objection to debtors' exemptions and such other relief as may be just and equitable.

Dated this 26<sup>th</sup> day of March, 2004.

/s/ Robert R. Kanuit  
Robert R. Kanuit (#0252530)  
Chapter 7 Trustee  
4815 W. Arrowhead Road, #230  
Hermantown, MN 55811  
(218) 722-7722

**VERIFICATION**

I, Robert R. Kanuit, 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 26<sup>th</sup> March, 2004.

/s/ Robert R. Kanuit  
Robert R. Kanuit

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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The undersigned, being an employee of Kanuit & Bray, Ltd., attorneys licensed to practice law in this Court, with office address of 4815 W. Arrowhead Road, Hermantown, MN 55811, declares under penalty of perjury that on the date stated below, she served the annexed **Motion Objecting to Property Claimed as Exempt and (proposed) Order** upon the persons named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Hermantown, Minnesota, addressed as follows:

Michael H. Smock and  
Jane J. Smock  
110 North 5<sup>th</sup> Street  
Keewatin, MN 55753

John F. Hedtke  
Attorney at Law  
1217 E. First Street  
Duluth, MN 55805

U.S. Department of Justice  
Office of the United States Trustee  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415

Dated this 26<sup>th</sup> day of March, 2004.

/e/ Clara J. Keopple  
Clara J. Keopple

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**ORDER**

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At Duluth, Minnesota, \_\_\_\_\_, 2004.

Upon the objection to property claimed as exempt filed by the trustee and upon all the files and records of the proceedings herein,

**IT IS ORDERED:**

The trustee's objections are sustained and debtor Jane J. Smock's annuity with The Travelers Indemnity Company is not exempt.

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Honorable Gregory F. Kishel  
United States Bankruptcy Judge