

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

In re:) Chapter 7
)
ABBY M. LAWTON,) Case No. 04-35769 (ASD)
)
Debtor.) Re: Doc. I.D. Nos. 13, 17, 18, & 20

**MEMORANDUM ORDER ON
SUPPLEMENTAL OBJECTION TO CLAIM OF EXEMPTION**

The Debtor commenced her pending Chapter 7 bankruptcy case through the filing of a voluntary petition on December 16, 2004. In Schedule B accompanying that Petition, the Debtor disclosed a property interest described as follows: "Pending Personal Injury Claim Lawton vs. Progressive Insurance . . ." (hereafter, the "Personal Injury Claim"), and ascribed to it an "unknown" value. On Schedule C she asserted, *inter alia*, an exemption interest in the Personal Injury Claim under Bankruptcy Code Section 522(d)(11)(D) in the amount of \$18,450.00.

On January 3, 2005, the Trustee filed ... Objections To Property Claimed Exempt, Doc. I.D. No. 6 (hereafter, the "Trustee's Objection"), objecting to the Debtor's claim of exemption in the Personal Injury Claim. The Trustee's Objection was premised primarily upon the Trustee's assertion that Section 522(d)(11)(D) provides an exemption only for payments on account of "*permanent*" bodily injuries, of which the Debtor allegedly has none.¹ The Trustee's Objection also alleged non-exempt value in the Personal Injury Claim to be preserved for the benefit of creditors of the bankruptcy estate. Trustee's Objection,

¹In support of her objection, the Trustee filed a *Memorandum in Support of Trustee's Objections to Property Claimed as Exempt*, Doc. I.D. No. 12, limited to the issue of permanency.

¶ 2.² The Debtor filed a memorandum in opposition to the Trustee's Objection, which argued that Section 522(d)(11)(D) was intended to cover more than "permanent" injuries, although she did not then state the nature of the injuries which she asserts to be within the scope of the exemption.³ On March 3, 2005, following a February 9, 2005 hearing, the Court concluded that the "personal bodily injury" embraced by Section 522(d)(11)(D) need not be *permanent* to be exemptible. Memorandum Ruling and Order on Objection to Claim of Exemption (hereafter, the "Memorandum and Order"), Doc. I.D. No. 13. The Memorandum and Order also required the Debtor to file --

(i) a copy of the Complaint, and Amended Complaint(s), if any, through which she has prosecuted the Personal Injury Claim, and (ii) a Statement Supplementing Claim of Exemption Under Bankruptcy Code Section 522(d)(11)(D) (hereafter, the "Supplementing Statement"), subscribed under oath, and *describing with particularity* the "personal bodily injury" claimed as a basis for exemption.

(emphasis in original).

On March 5, 2005, the Debtor timely filed a Debtor(s) Statement Supplementing Claim of Exemption Under Bankruptcy Code Section 522(d)(11)(D), Doc. I.D. No. 17 (hereafter, the "Supplementing Statement"), with a copy of the state court Complaint attached thereto. The Supplementing Statement declared

On or about January 27, 2003 I was physically injured in a vehicular collision; more specifically, I:

- 1) Strained (or sprained) my cervical spine (bilateral radiculitis);
- 2) Strained (or sprained) my thoracic spine;
- 3) Suffered a petechial hemorrhage in the left parietal lobe of my brain.

²The Trustee repeated this assertion in the *Trustee's Supplemental Objection*, ¶ 2.

³*Debtor's Memorandum in Opposition to Trustee's Objections to Property Claimed Exempt*, Doc. I.D. No. 10, filed February 3, 2005.

On April 8, 2005, The Trustee filed a Trustee's Supplemental Objection to Property Claimed Exempt, Doc. I.D. No. 18, asserting, *inter alia*, that the Debtor failed to articulate a sufficient basis for the claimed exemption. On April 14, 2005, the Debtor filed a Response to Supplemental Objection, Doc. I.D. No. 20; and on April 27, 2005, in accordance with the Memorandum and Order, a hearing was held on the Supplemental Objection.

The present issue in this matter is the existence and extent of the Debtor's entitlement to an exemption under Section 522(d)(11)(D), which is necessarily determined by the nature and scope of the Debtor's "personal bodily injuries" and resulting damages.⁴ The Court is convinced that this matter is most fairly and efficiently determined only if, and after, the Personal Injury Claim has been liquidated in a non-bankruptcy forum. Accordingly,

IT IS HEREBY ORDERED that the Court shall defer ruling on the instant matter until after such time as the Personal Injury Claim is (i) resolved by settlement; (ii) resolved by trial verdict;⁵ (iii) otherwise disposed of in the Connecticut State Courts; or (iv) abandoned

⁴Section 522(d) provides in relevant part as follows:

(d) The following property may be exempted under subsection (b)(1) of this section:

(11) The debtor's right to receive, or property that is traceable to—

(D) a payment, not to exceed \$18,450, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent

11 U.S.C. § 522(d) (2004) (emphasis supplied).


⁵ In order to assist this Court in the final resolution of this matter, in the event of the submission of the Personal Injury Claim to a jury, the presiding court shall submit a verdict form which includes, *inter alia*, interrogatories which require said jury to state how much of any monetary verdict is attributable to each of the following aspects of potential damages: (a) pain and suffering, (b) actual pecuniary loss, (c) lost earning capacity, and (d) destruction of life's enjoyment. See 11 U.S.C. § 522(d)(11)(D); *Kiniry v. Danbury Hospital*, 183 Conn. 448, 460 (1981).

from the Debtor's bankruptcy estate; and

IT IS FURTHER ORDERED that in the event of the occurrence of any of events (i), (ii), or (iii) of the immediately-preceding decretal paragraph, the Trustee shall inform this Court of that fact, whereupon the Court shall schedule a further hearing, if necessary, to finally determine the instant exemption objection.

BY THE COURT

DATED: May 20, 2005


Albert S. Dabrowski *5/20/2005*
Chief United States Bankruptcy Judge