



## **FINDINGS OF FACT**

1. On January 19, 1989, Debtor Tina M. Palmerton entered into a Settlement Agreement and Release with the Royal Insurance Company, the insurer of Barry G. Zoob and Zoob's Inc.

2. As evidenced by Exhibit "2," the Settlement Agreement provided for certain cash payments in full satisfaction of a suit presented by Tina Mae Palmerton against Barry G. Zoob and Zoob's Inc. arising out of an accident which occurred on June 25, 1986.

3. The Settlement Agreement provided for cash payments of (a) two hundred fifty thousand dollars upon receipt of the executed agreement, (b) monthly payments of \$500 per month for 20 years certain and life beginning March 1, 1989, (c) deferred lump sum payments of \$15,000 each on January 1, 2005, January 1, 2006, January 1, 2007, January 1, 2008, and (d) a single lump sum payment of \$75,000 on October 3, 2029.

4. The Settlement Agreement provided that the Insurer, for its own convenience, may purchase an annuity to fund its obligations of the monthly and deferred lump sum payments.

5. On January 20, 1989, Royal Insurance Company contracted with Safeco Life Insurance Company for an Annuity Contract, Exhibit "1." Royal Insurance Company is the owner and Debtor Tina Palmerton is the Annuitant. The Annuity Contract provides for the payment of the monthly and deferred lump sum payments as scheduled in the Settlement Agreement.

6. Debtors filed their voluntary Chapter 7 petition on January 22, 1996. Debtor Tina M. Palmerton scheduled an annuity from car accident as her sole source of income on Schedule I. Debtors neither scheduled this annuity contract as an asset nor claimed the annuity contract as exempt.

7. Deborah L. Petersen (“Trustee”) filed her Application for Turn Over of Property. Trustee alleged that Debtor, Tina M. Palmerton, was receiving an annuity as a result of a structured settlement for injuries she sustained in an automobile accident. Trustee also alleged that payments under the annuity contract were property of the estate and were not exempt. Trustee sought turnover of documents relating to the structured settlement and annuity contract and of payments received post-petition. Debtors filed a Resistance to Trustee’s Application, alleging that copies of the Settlement Agreement and the Annuity Contract had been provided to the Trustee and that the Annuity is claimed as exempt under Iowa law.

8. On April 22, 1996, Debtors filed an Amended Schedule B, Personal Property, and Schedule C, Property Claimed Exempt. The Amended Schedules claim the Annuity Contract - Automobile Accident Settlement as joint property and as exempt under Iowa Code § 627.6(8)(e).

9. On April 24, 1996, Trustee filed an Objection to Debtors’ Claim of Exemptions. Trustee alleged that the payments under the annuity contract were property of the bankruptcy estate and were not exempt. Debtors filed a Resistance to the Objection on May 2, 1996.

10. At the hearing on Trustee’s Application for Turnover and Trustee’s Objection to Exemption, Debtors elected to proceed with their evidentiary portion of the hearing by introducing the affidavit of Tina M. Palmerton into evidence. The affidavit, Debtors’ Exhibit # 1, was received without objection. Counsel for Debtors did not offer testimony of the Debtors or any other witnesses.

11. On July 18, 1996, Debtors filed a Motion to Set for Hearing. They requested to present oral testimony from Debtors and their doctors regarding the disability of Tina M. Palmerton. Debtors failed to show good cause in support of their Motion. This Court denied the Motion to Reopen the Case on September 9, 1996.

12. Debtors were granted a discharge on April 24, 1996.

### DISCUSSION

The Safeco Annuity is not ERISA-qualified and is property of Debtors' bankruptcy estate. See 11 U.S.C. § 541. Whether this Annuity is exempt from the bankruptcy estate is determined by Iowa exemptions law. See 11 U.S.C. § 522(b); Iowa Code § 627.10. The Trustee has the burden of proving that the Safeco Annuity is not exempt. See Fed.R.Bankr.P. 4003(c).

Debtors argue that the Safeco Annuity is exempt under Iowa Code § 627.6(8)(e). Trustee argues that the Safeco Annuity fails to meet the "on account of" requirement and is therefore not exempt under Iowa exemptions law. The Iowa Code provides that a debtor may hold exempt from execution:

"8. The debtor's rights in:

...

e. A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service ...."

Iowa Code § 627.6(8)(e) (1995).

Iowa's exemption statutes are to be liberally construed in favor of debtors in light of the purposes of the exemption. See In re Wallerstedt, 930 F.2d 630, 631 (8th Cir. 1991); Allison-Bristow Comm. Sch. Dist. v. Iowa Civil Rights Comm'n, 461 N.W.2d 456, 458 (Iowa 1990). However, the Court should not "depart substantially from the express language of the exemption statute or extend the legislative grant." See Matter of Knight, 75 B.R. 838, 839 (Bankr. S.D.Iowa 1987)(citations omitted). The exemption statute at issue here is intended to protect payments which function as wage substitutes when the debtor's earning capacity is limited. See

In re Wiley, 184 B.R. 759, 765 (N.D.Iowa 1995); In re Caslavka, 179 B.R. 141, 143-144 (Bankr. N.D.Iowa 1995)(citations omitted).

In In re Huebner, 141 B.R. 405 (N.D.Iowa 1992), aff'd, 986 F.2d 1222 (8th Cir. 1993), the Eighth Circuit affirmed the District Court's ruling that the debtor's rights in the annuities at issue were not exempt under § 627.6(8)(e) because there had been no requisite triggering event. In giving support to the District Court's interpretation of the "on account of" language to mean "triggered by" as opposed to "based on," the Eighth Circuit stated:

Huebner's present right to receive annuity payments does not depend upon his having reached age sixty-five, nor upon the occurrence of any of the other triggering events enumerated in § 627.6(8)(e), such as illness, disability, or death. Instead, the contracts give Huebner the unfettered discretion to receive payments at any time ....

Huebner, 986 F.2d at 1225.

Structured settlement agreements have generally been found to be non-exempt because of the lack of a triggering event. See Matter of Kemp, No. 94-1763-CH (Bankr. S.D.Iowa May 1, 1995); Matter of Midkiff, No. 93-01444-WJ (Bankr. S.D.Iowa April 22, 1994). While the debtor's injury gave rise to a personal injury action in each case, it did not trigger a right to payment of an annuity which was not in existence at the time of injury. Id.

Although some type of act or omission precipitated Tina Palmerton's civil lawsuit, that does not prohibit payments under the annuity contract from being exempt. The exemption statute is not an all-or-nothing rule. If a payment *or a portion of a payment* were triggered by disability, it would be exempt to that extent. See In re Wiley, 184 B.R. 759 (N.D.Iowa 1995)(ten percent of debtor's annuity payments exempt); Iowa Code § 627.6(8)(e). After analyzing the different contextual meanings of "disability," the Wiley court stated, "what is exempt under § 627.6(8)(e)

are payments “on account of disability” that compensate for the loss of earnings resulting from the loss or impairment of bodily function.” *Id.* 184 B.R. at 766.

Resolution of the matter at bar turns on whether Tina’s disability triggered any of her rights in payments under the annuity. The terms of the Settlement Agreement that gave rise to the Safeco Annuity clearly show that the payments were intended to compensate Tina Mae Palmerton for more than just the possible loss of earning capacity caused by a loss or impairment of bodily function:

In consideration of the payments called for herein, the plaintiff releases and forever discharges the defendant and its Insurer . . . of and from *any and all* past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation *of any nature whatsoever, whether based on a tort, contract, or other theory of recovery, and whether for compensatory or punitive damages*, which the plaintiff now has, or may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of, or which are the subject of, the complaint and any related pleading including, without limitation, *any and all known or unknown claims for bodily and personal injuries to the plaintiff, and the consequences thereof*, which have resulted or may result from the alleged negligent acts or omissions of the defendant.

Settlement Agreement and Release, paragraph 1 (emphasis added).

Therein lies the difficulty. Nothing in the record indicates what portion, if any, of the Safeco Annuity payments compensates for loss of earning capacity resulting from Tina’s disability. Nothing in the Settlement Agreement or Safeco Annuity indicates that Tina even has a disability or what portion of the payments, if any, compensates for a disability or loss of earning capacity. There is no evidence in the record regarding the nature or extent of Tina’s disability. The only reference to a disability is found in the Affidavit of Tina M. Palmerton. In her Affidavit, Tina asserts that the monthly annuity payments are “compensation for being rendered Disabled from an automobile accident...” Tina states that “[t]he settlement was structured to provide for lost future wages because of my being unable to work and for lump sum payments when the

minor children reach college age to help pay for their education.” She states she has had two surgeries as a result of the accident; there is no evidence of whether those were before or after the Settlement Agreement was executed. Nothing indicates that the Royal Insurance Company or Tina contemplated her not working after having surgery. To the contrary, Tina states the reason she is currently unable to work is “because of the pain in my back, which the doctors say is caused by scar tissue from the previous surgeries,” not because of a disability caused by the accident.

There is no evidence in the record as to Tina’s earning capacity at any time and how it may have been impacted by her disability or by other factors. One such factor may be her growing family size and a choice to not work. Debtors’ bankruptcy petition shows that as of January 22, 1996, they have four minor children, ages 8, 6, 3 and 1. None of these children would have been born at the time of the accident and only one would have been born by the time the Settlement Agreement was entered into.

In their brief, Debtors for the first time assert that Tina’s payments from the Safeco Annuity are exempt under Iowa Code § 627.6(8)(c), which provides that a debtor may hold exempt from execution “[t]he debtor’s rights in . . . A disability or illness benefit.” Iowa Code § 627.6(8)(c) (1995). Assuming arguendo that the Safeco Annuity were a “benefit,” however interpreted or defined, the exemption applies only to disability or illness benefits. Tort recoveries for bodily injury are not exempt under 627.6(8)(c). See In re Buchholz, 144 B.R. 443 (Bankr. N.D.Iowa 1992). The Safeco Annuity was the means that the Royal Insurance Company chose for implementing the terms of the Settlement Agreement; the underlying insurance policy is not in the record. There is no evidence that it was a disability or illness policy or contract. Nothing in the record supports Debtors’ contention that the annuity payments are disability benefits. The

Settlement Agreement and Tina's Affidavit clearly show the Settlement Agreement was intended to compensate for every possible theory of recovery and damages.

This Court finds the Safeco Annuity payments to Debtor Tina M. Palmerton are not exempt under Iowa Code § 627.6(8)(c) or § 627.6(8)(e). Debtors are required to turn over to the Trustee all payments under the annuity contract.

**ORDER**

IT IS THEREFORE ORDERED that Trustee's Objection to Debtors' Claim of Exemptions is SUSTAINED.

IT IS FURTHER ORDERED that Trustee's Application for Turn Over of Property is SUSTAINED.

Dated this \_\_\_\_\_ day of March, 1997.

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RUSSELL J. HILL, CHIEF JUDGE  
U.S. BANKRUPTCY COURT