

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In the Matter of	:	Case No. 97 – 5085 - CH
	:	
DENNIS L. RENFREW	:	Chapter 7
and	:	
DARCY J. RENFREW,	:	
	:	
Debtors.	:	
	:	

ORDER – OBJECTION TO CLAIM OF EXEMPTION

On November 7, 1997, Debtors, Dennis Lee and Darcy Jo Renfrew, filed a Voluntary Petition for Chapter 7 relief under the U.S. Bankruptcy Code. On March 31, 1998, an evidentiary hearing was held on the Trustee's Objection to Claim of Exemption and Debtors' Objection thereto. Debtors were represented by attorney Paul Gandy; Trustee was represented by attorney Paul Drey. At the conclusion of the hearing, the Court took the matter under advisement upon a briefing schedule. Trustee's previously filed brief was accepted; Debtors have not submitted a response brief. The Court now considers the matter fully submitted.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(B). The Court, upon review of the briefs, pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. Debtors' exhibit 5 establishes that Debtor Darcy Renfrew has been treated by Dr. Marc E. Hines of Southeast Iowa Neurological Associates, P.C., since October 1987 and through January 6, 1998 for muscle contraction headaches and migraines.
2. Darcy was involved in a motor vehicle accident on May 10, 1990. She was treated by Dr. Michael L. Pogel for a cervical whiplash injury.
3. Exhibit 8 shows that Darcy has also been treated for a number of years at the Ottumwa Chiropractic Clinic by Bruce Lindberg, D.C., for chronic neck and back pain.
4. Darcy Jo and Dennis L. Renfrew entered into a Release and Settlement Agreement with Allied Mutual Insurance Company, the insurer of Freddie Lee Fisher II. The Settlement Agreement provided for certain cash payments in "full discharge of past, present, and future claims arising out of" the May 10, 1990 accident.
5. The Settlement Agreement provides that the release applies "to all claims, whether known or unknown, contingent or fixed" and "including all damages, interest, costs and attorney's fees."
6. The Settlement Agreement provided for cash payments of (a) sixty-two thousand, five hundred dollars upon receipt of the executed agreement, and (b) monthly payments of \$215 per month for 20 years certain, beginning on May 15, 1993 and ending on April 15, 2013.
7. The Settlement Agreement expressly provides that "Payments Not Income: The Future Payments required to be paid hereunder are not, nor are they intended by the parties to be, compensation for lost income, and the provisions of this instrument shall be construed to give affect to such intent."

8. The Settlement Agreement provided that the Insurer could assign its liability to SAFECO Assigned Benefits Service Company and that it could purchase an annuity policy from SAFECO Life Insurance Company to fund its obligation of monthly payments.

9. On April 23, 1993, SAFECO Assigned Benefits Service Company entered into a contract, number AA660336, for a single premium immediate annuity in which Darcy Jo Renfrew, as the annuitant, receives \$215.00 monthly for 20 years, starting May 15, 1993 and ending on April 15, 2013. SAFECO is the owner of the annuity and Dennis L. Renfrew is listed as the Beneficiary.

10. On November 7, 1997, Dennis Lee and Darcy Jo Renfrew filed a Chapter 7 bankruptcy petition. Listed on Schedule C is a "Safeco Insurance monthly pay out annuity as personal injury settlement. \$215 per month for 21 years remaining." The annuity is scheduled as exempt under Iowa Code § 627. 6 (8)(e) and having a value of \$36,000.00.

11. The § 341 meeting was held on December 12, 1997.

12. Trustee filed an Objection to Claim of Exemptions on December 23, 1997.

13. Debtors filed a Resistance to Trustee's Objection on January 8, 1998.

14. On January 29, 1998, Debtors filed an Amended Schedule C, listing "Safeco Insurance monthly pay out annuity as a personal injury settlement. \$215 per month for approximately 15 years remaining. See attached." The annuity is still scheduled as exempt under Iowa Code § 627.6 (8)(3), but the value is listed as \$0.

DISCUSSION

Debtor Darcy Jo Renfrew is the annuitant on a single premium annuity contract entered into on April 23, 1993. Debtors argue that the annuity is exempt and that the correct current

value of the annuity is zero (\$0) because it is not transferable, assignable, and it cannot be "advanced, accelerated, commuted, or encumbered by the annuitant or beneficiary." Trustee asserts that the current value is understated and that the annuity is not exempt because it fails to meet the "pension, annuity, or similar plan or contract" and "on account of" requirements under the Iowa statute.

The SAFECO Annuity is not ERISA-qualified and is property of Debtors' bankruptcy estate. See 11 U.S.C. § 541. Whether the 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 Annuity is not exempt. See Fed.R.Bankr.P. 4003 (c).

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) (1997).

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." 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).

The Eighth Circuit has determined that the "on account of" language requires a triggering event. See In re Huebner, 986 F.2d 1222 (8th Cir. 1993). Structured settlement agreements have generally been found to be non-exempt in this District because of the lack of a statutory triggering event. See Matter of Palmerton, No. 96-222-WH, J.Hill Dec. Bk. #288 (Bankr. S.D.Iowa March 25, 1997); Matter of Kemp, No. 94-1763-CH, J.Hill Dec. Bk. #279 (Bankr. S.D.Iowa May 1, 1995); See also Matter of Midkiff, No. 93-01444-WJ (Bankr. S.D.Iowa April 22, 1994)(structured settlement agreement is not 'a similar plan or contract').

At least one court has construed the Iowa statute to exempt payments, or portions of payments, to the extent the *payments* are triggered by debtor's disability. 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.

The SAFECO Annuity payments in this case are not exempt whether the Iowa statute is construed as requiring the *debtor's rights* be on account of a disability or as requiring the *payments* be on account of a disability. In giving full effect to all words in the Iowa statute, this Court construes the statute to require that debtor's *rights* in those payments or portions of payments be triggered by illness, disability, death, age, or length of service. Thus, if debtor's rights in the annuity payments are not triggered by a disability, the payments themselves cannot be exempt.

The evidence in this case does not establish that Darcy has a disability. It does establish that she has been under the care of physicians for a number of years, pre-dating the 1990 accident.

Any injury or disability she may have incurred as a result of the 1990 accident did not trigger her rights in the annuity, which was not in existence at the time of the injury.

Even if Darcy has some type of disability, her rights in the annuity payments are on account of the terms of the Settlement Agreement and are not triggered by a disability. It is apparent that the 1990 accident gave rise to a civil cause of action, which led to a settlement agreement, which is the basis for the annuity. Nothing in the Settlement Agreement or SAFECO Annuity indicates that Darcy has a disability or that the Annuity was entered into on account of a disability or to compensate for a disability or loss of earning capacity. To the contrary, the Settlement Agreement expressly states that the future payments, those funded by the annuity, are not intended to be compensation for lost income.

This Court finds the Debtors' rights in the SAFECO Annuity payments are not exempt under Iowa Code § 627.6 (8)(e).

ORDER

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

Dated this _____ day of July, 1998.

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