

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 98-33517

CONNIE SUE REPASS

Debtor

**MEMORANDUM ON
TRUSTEE'S OBJECTION TO EXEMPTION**

APPEARANCES: GAIL F. WORTLEY, ESQ.
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**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

This matter is before the court on the Objection to Exemption filed May 8, 2002, by John P. Newton, Jr., Chapter 7 Trustee (Trustee). The Trustee objects to the Debtor's April 11, 2002 Amended Schedule C, through which the Debtor claims a \$7,500.00 exemption in the proceeds of a prepetition personal injury lawsuit settled by the Trustee.

Each party has filed a brief in support of its position. Additionally, on June 19, 2002, the parties filed a Joint Statement of Facts and Documents. By agreement of the parties, and pursuant to the court's Order entered June 14, 2002, the Trustee's Objection will be resolved on stipulations and briefs without the need for an evidentiary hearing.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(B) (West 1993).

I

The Debtor filed her Voluntary Chapter 7 Petition on August 5, 1998. Although not listed on her Schedule B, the Debtor disclosed the existence of a prepetition personal injury during her September 9, 1998 meeting of creditors. The Trustee subsequently employed separate counsel to pursue the personal injury claim on behalf of the Chapter 7 estate.

On December 10, 2001, the Trustee filed a Motion to Approve Compromise, whereby he sought to settle the personal injury action for \$40,500.00. Included with the Motion to Approve Compromise was a Certificate of Service certifying that a copy of the motion was served on all creditors. Following a January 3, 2002 hearing, the Motion to Approve Compromise was granted without opposition pursuant to the court's Order entered January 10, 2002.

On April 11, 2002, the Debtor amended her Schedule B to include the personal injury action. The Debtor also amended her Schedule C to claim a \$7,500.00 exemption in the lawsuit proceeds pursuant to TENN. CODE ANN. § 26-2-111(2)(B).¹ The Trustee subsequently filed his Objection to Exemption.

II

A debtor generally may amend her exemptions “as a matter of course at any time before the case is closed.” FED. R. BANKR. P. 1009(a). Courts are without discretion to deny such amendments except in cases of bad faith, concealment of property, or prejudice to creditors. See *Lucius v. McLemore*, 741 F.2d 125, 127 (6th Cir. 1984); *In re Clemmer*, 184 B.R. 935, 942 (Bankr. E.D. Tenn. 1995) (citations omitted). The Trustee, as the objecting party, bears the burden of proof. See *Clemmer*, 184 B.R. at 942; see also *In re Daniels*, 270 B.R. 417, 422 n.2, 425 n.3 (Bankr. E.D. Mich. 2001) (discussing required standard of proof).

In the present case, the Trustee makes no allegation of bad faith or concealment by the

¹

[T]he following shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee:

. . . .

(2) The debtor’s right not to exceed in the aggregate fifteen thousand dollars (\$15,000) to receive [sic] or property that is traceable to:

. . . .

(B) A payment, not to exceed seven thousand five hundred dollars (\$7,500) 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[.]

TENN. CODE ANN. § 26-2-111(2)(B) (Supp. 2001).

Debtor. Instead, he argues only that the exemption should be disallowed as prejudicial to the creditors of the estate. In support of this argument, the Trustee advances two theories. First, he contends that the exemption “would prejudice the amount of the dividend to unsecured creditors.” The court disagrees. Every exemption reduces the funds available for distribution to unsecured creditors. The mere allowance of an exemption does not reach the level of “prejudice” necessary to deny an amended claim of exemption. See *Daniels*, 270 B.R. at 426 (citing *In re Talmo*, 185 B.R. 637, 645 (Bankr. S.D. Fla. 1995)).

Next, the Trustee contends that the amended exemption is prejudicial due to its timing, as the amendment was not filed until after the Motion to Compromise. As explained by the *Daniels* court:

[P]rejudice may be established by showing harm to the litigating posture of parties in interest. If the parties would have taken different actions or asserted different positions had the exemption been claimed earlier, and the interests of those parties are detrimentally affected by the timing of the amendment, then the prejudice is sufficient to deny amendment. Moreover, an amendment is prejudicial if it impairs a trustee in the diligent administration of the estate.

Id. The Trustee cites *Szymanski v. Herzog (In re Szymanski)*, 189 B.R. 5 (N.D. Ill. 1995), for the proposition that “prejudice to creditors” automatically occurs when creditors do not have notice of an exemption prior to the compromise hearing. However, this court will not disallow an amended exemption based merely on speculative harm. The record contains no evidence that any creditor would have actually objected to the Motion to Compromise had they known of the Debtor’s planned amendment. See *Clemmer*, 184 B.R. at 942 (“[C]ourts generally agree that an amendment to exemptions is to be liberally allowed, unless a party in interest timely objects *and provides sufficient proof of . . . prejudice to creditors.*” (emphasis added) (citation and quotation omitted)).

Because the Trustee has failed to meet his burden of proof on the issue of creditor prejudice, the Objection to Exemption must be overruled. An appropriate order will be entered.

FILED: July 9, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons set forth in the Memorandum on Trustee's Objection to Exemptions filed this date, the court directs that the Objection to Exemption filed May 8, 2002, by the Chapter 7 Trustee, John P. Newton, Jr., is OVERRULED.

SO ORDERED.

ENTER: July 9, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE