Personal Injury Exemptions

Outline

I. Prepetition concerns
   A. Need for disclosure
   B. What is property of estate?
   C. Due diligence/choice of exemption/how to schedule
II. Federal Exemptions
   A. Statutory framework
   B. Personal injury cases
   C. Worker's compensation
   D. Lost wages/other issues
III. MN exemptions
   A. Minn.Stat § 550.37 (subd. 22)
   B. Structured settlements/proceeds not exempt under state law
   C. Worker's compensation
IV. Post-filing/estate administrative concerns

I. Prepetition concerns

A. Importance of disclosure

A debtor who files bankruptcy and fails to disclose a personal injury cause of action as an asset of the estate, and then files suit on his own behalf after having already filed bankruptcy, may be barred from recovering whatsoever on the personal injury suit on the grounds that s/he is judicially estopped from pursuing a cause of action that s/he earlier denied existed by omitting the asset from the bankruptcy schedule of assets. *DeLeon v. Comcar Indus., Inc*., 321 F.3d 1289 (11th Cir. 2003); *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282 (11th Cir. 2002).

The debtor may be able to get around this by reopening the bankruptcy case to amend schedules. *See Johnson v. Trust Company Bank*, 478 S.E.2d 629, 223 Ga. App. 650 (1996), reversing a grant of summary judgment when the debtor successfully amended his bankruptcy petition, stating "he clearly has gained no unfair advantage in bankruptcy court. Any recovery he obtains from defendant will inure to the benefit of plaintiff's bankruptcy estate, and in turn, to the creditors who asserted claims to the estate's assets." *Id* at 652.

NOTE: Even if the debtor loses the cause of action, the trustee can still pursue the claim. A cause of action is a property right which passes to the trustee in bankruptcy "even if such cause of action is not included in the schedules filed with the bankruptcy court." *Carlock v. Pillsbury Co.*, 719 F. Supp. 791 (D. Minn. 1989).

B. What is property of estate?

Several bankruptcy courts have recognized that where an insurer pays on a claim for an accident before a bankruptcy petition is filed, and the insurance contract grants the insurer subrogation rights against any third party tortfeasor, the insurers subrogation rights, to a prepetition interest that is not property of the bankruptcy estate, even where a settlement is reached in the third-party action after the bankruptcy petition is filed; insurer or plan has superior rights to proceeds of settlement or award over creditors. *In re Yakel*, 97 B.R. 580 (D.Ariz 1989); *In re DeLucia*, 261 B.R. 561 (Bkrtcy. D. Conn. 2001); *In re DuBose*, 174 B.R. 260 (Bkrtcy. N.D. Ohio 1994); *In re Squyers*, 172 B.R. 592 (Bkrtcy. C.D. Ill 1994).

See also *In re Bippert*, 311 B.R. 456 (Bankr. W.D. Tex. 2004) ("according to the legislative history, it would not be necessary to allow exemption for reimbursement for medical expenses because Congress presumed that medical providers already had a constructive trust on any personal injury award for their expenses, and the constructive trust would not be property of the estate anyway").

Id. , at 470 n.24

A valid subrogation interest would come out of the settlement directly, and usually after attorneys fees. ERISA plans , however, often have "first dollar" language which can even trump attorneys fees theoretically, but usually do not, by agreement of the involved parties.

Is "letter of protection" same as subrogation?

C. Due diligence/choice of exemption/how to schedule

1. The first step for the consumer practitioner is to get on the same page with the personal injury attorney. This should be part of the standard initial intake process with any client. The debtor should sign an authorization for release of information. Counsel for the debtor should discuss the status and general nature of the claim, and inform the personal injury attorney that the case should not be settled without first discussing the matter with bankruptcy counsel, especially once the case has been filed. The trustee's role, as well as bankruptcy counsel compensation, should be discussed as well. And finally, bankruptcy counsel should get a general feel as to whether the case is likely to result in an award which will require the Minnesota exemptions, or whether the more limited federal exemption is appropriate in order to utilize the wildcard exemption as well. Counsel for the debtor should also ensure that compensation for the additional time incurred representing the debtor throughout this process is discussed with the debtor and disclosed to the court.

2. The value of a personal injury claim is usually not known at the time the case is filed. It should be scheduled in such a matter where it is clear to the trustee what is and what is not being claimed as exempt, so as not to prompt an objection to the exemption. Good practice would include qualifying language such as “pre-petition special damages not included as exempt;” if it is an exemption with a “reasonable” component, then language indicating that the exemption is claimed “to the extent reasonably necessary” can be included as a court will likely have insufficient information at an early stage to even determine reasonableness. There may be circumstances when that decision should get forced, for instance if debtor’s counsel believes 100% of the asset is reasonably necessary.

> Where, as here, it is important to the debtor to exempt the full market value of the asset or the asset itself, our decision will encourage the debtor to declare the value of her claimed exemption in a manner that makes the scope of the exemption clear, for example, by listing the exempt value as "full fair market value (FMV)" or "100% of FMV."

Schwab v. Reilly, 130 S. Ct. 2652 (2010),

> When deciding whether to object to an exemption, trustees should look at “three, and only three, entries” on Schedule C: the description of the property, the Code provisions governing the claimed exemptions, and the amounts listed in the column titled “value of claimed exemption.”

Schwab at 2663

“one might say that the full import of *Schwab* —procedural, evidentiary, and even substantive—is quite unsettled” *In re Wiczek*, 452 B.R. 762, 766 n.10 (Bankr. D. Minn. 2011) (Kishel) (implicitly denying exemption for “100% of FMV” as the issue had been resolved in prior order)

> most, if not all, courts which have specifically addressed exemptions of “100% of FMV” in the wake of Schwab have found such exemptions impermissible. No court has interpreted the Supreme Court’s holding as either unfettered authorization for debtors to exempt assets in-kind, or as a mandate for courts to allow such exemptions

Massey v. Pappalardo 465 B.R. 720, 723 (B.A.P. 1st Cir. 2012) (citing *Schwab*)

II. Federal exemptions

A. Statutory Framework

11 USC 522(d) (10) The debtor's right to receive—
(A) a social security benefit, unemployment compensation, or a local public assistance benefit;
*** * ***
(C) a disability, illness, or unemployment benefit;
* * *

(11) The debtor's right to receive, or property that is traceable to—
(A) an award under a crime victim's reparation law;
(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
(D) a payment, not to exceed $22,975, 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; or
(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

B. Personal injury cases

> the statutory language presupposes a chain of causality between a tortfeasor's actions toward the physical person of the debtor-claimant ("bodily") and a harmful impact on that physical person ("injury") for damages to fall under the protection of § 522(d)(11)(D).
>
> * * *
>
> His allegations of consequential harm focus entirely on the psychological dimension of his person. Such harms can be real, severe, and long-term consequences of sexual exploitation, particularly when the victim is a minor; and their existence can be neither denied nor demeaned. But the cold reality remains, as a matter of abstract logic, that they are not a "bodily injury" as commonly or legally defined.

In re Keenan 443 B.R. 169 (Bankr. D. Minn. 2011) (Kishel, J).

> The court in *In re Ciotta*, 222 B.R. at 633-634, adopted this construction for state statutory language identical to that of § 522(d)(11)(D), and that case involved an underlying tort claim comparable to the one made out by the record at bar. The debtor-wife in Ciotta was the plaintiff in prepetition litigation against her employer, in which she asserted she had been sexually harassed while on the job. The debtor-wife alleged she had been physically touched by a direct supervisor, in an overtly sexual manner, involving a physical restraining but without allegation of physical penetration or other overt invasion of the body. The act of the offensive touching was the only act of physical contact pleaded to make out a claim of "personal bodily injury." Examining other courts' treatment of § 522(d)(11)(D) and state statutes with identical or comparable language, the Ciotta court concluded that the debtor-wife was required to "clearly demonstrate that she ha[d] suffered an appreciable physical injury," and that the allegations of the previously-described acts, without medical corroboration of "a tangible bodily injury" inflicted on her, was "insufficient and unable to satisfy the requirements of the exemption statute

Keenan at fn. 11.

As summarized by the Minnesota Bky Case reporter, "the impact to the debtor's body or the immediate effects of the sexual exploitation were not provided to the bankruptcy court." The other thing to keep in mind about Keenan is that debtor's cause of action sounded in third party respondent superior negligence, not the direct harm caused by the torfeasor.

("The § 522(d)(11)(D) exemption does not cover awards for pain and suffering or reimbursement for actual pecuniary losses such as lost wages or medical expenses.") (*Bippert, supra*, citing 4 COLLIER ON BANKRUPTCY, ¶522.09[11], at 522–67 (15th ed., rev. 2003).

Compensation for medical expenses can not be claimed under section 522(d)(11)(D) because it constitutes an actual pecuniary loss); *Claude v. Claude* (*In re Claude*), 206 B.R. 374, 376 (Bankr. W.D. Pa. 1997)

For a discussion on differing approaches of the scope of the federal personal injury exemption, see Louis J. Papera, Note, Confusion over § 522(d)(11)(D): What Congress Really Meant by Exempting Payments for "Personal Bodily Injury'" and Why They Got It Wrong, 16 EMORY BANKR. DEV. J. 503 (2000) (discussing the conflicting approaches in applying the § 522(d)(1 1)(D) exemption).

C. Worker's compensation

11 U.S.C § 522(d)(10)(C) ; 11 USC § 522(d)(11)(E)

§ 522(d)(10) and § 522(d)(11) are not mutually exclusive, and a workers' compensation settlement *can be* exempted under § 522(d)(11)(E) as well as under § 522(d)(10)(C).) *In re Sanchez* 362 B.R. 342 (Bankr. W.D. Mich. 2007).

A worker's compensation claim is exempt under 11 U.S.C. § 522(d)(10)(C) *See in re Cain* 91 B.R.182 (Bankr. N.D. Ga. 1988); *But see In re Labelle* 18 B.R. 169 (Bankr. D. Me. 1982). (worker's comp exempt under (d)(10)(C), but not (d)(11)(E).

"The majority of the courts hold that the § 522(d)(l 1)(E) and § 522(d)(l1)(D) exemptions can be stacked upon each other for a compensation stemming from a single physical injury." Uriel Rabinovitz, Toward Effective Implementation of 11 U.S.C. § 522(d)(11)(E): Invigorating a Powerful Bankruptcy Exemption, 78 Fordham L. Rev. 1521 (2009). Available at: http://ir.lawnet.fordham.edu/flr/vol78/iss3/15 (noting split amongst cases as to whether a personal injury must precede an exemption for lost future earnings) Id. at 1545

D. Lost wages/other issues

Unpaid portion of personal injury settlement that debtor had not claimed as exempt under "wildcard" provision, in amount of $58,600, was reasonably necessary, in its entirety, for debtor's support, and debtor could claim this entire $58,600 as exempt. *In re Meyer* 433 B.R. 739 (Bankr. D. Minn. 2010) (O'Brien)

If a portion of a personal injury settlement is for loss of future earnings, it would be speculative for a court to allocate a settlement between exemptible and nonexemptible damages, and therefore it is the trustee's burden of proof to do so. *In re Whitson* 319 B.R. 614 (Bankr. E.D. Ark. 2005).

Wrongful death - can adult debtor claim an exemption for a claim arising out of wrongful death of their parent for whom they are no longer a dependent? ((d)(11)(B) merely says <u>was</u> a debtor, whereas (d)(11)(E), which is future earnings, says "is or was".

III. State exemptions

A. Minnesota Law provides that a "right of action" for injuries to the person of the debtor or of a relative, whether or not resulting in death, is not "liable to attachment, garnishment or sale on any final process, issued from any Court". Minn.Stat § 550.37 subd 22

The statute exempts rights of action for bodily injury. The constitutionality of this statute, despite the apparent lack of limitation, has been upheld. *Medill v. State*, 477 N.W.2d 703 (Minn. 1991) (section 550.37, subd. 22 is constitutional as applied to general damages); In re Medill, 119 B.R. 685 (Bankr.Minn., 1990)

Case law makes it clear that to qualify under this section, the claim or right of action must flow from an actual physical, bodily injury. A claim for pain and suffering alone will not suffice. *In re Marshall, 208 B.R. 690 Bkrtcy. D. Minn.1997*. Nor will a defamation claim. *In re Crawford, 208 B.R. 924, Bkrtcy. D. Minn. 1994.*

B. Structured settlements/proceeds not exempt under state law

The exemption is only of the right of action. If the action or claim has been settled, the cash proceeds are not exempt. *In re Procter*, 186 B.R. 466 Bkrtcy. D. Minn. 1995. Judge Kressel's opinion surveyed the precedents at that time, and addressed the issue as follows:

The term "rights of action", is defined as "the right to bring suit; a legal right to maintain an action, growing out of a given transaction or state of facts and based thereon." "Rights of action" within the meaning of Minn. Stat. § 550.37, subd. 22, pertains to remedy and relief through judicial proceedings as opposed to "cause of action: which refers to particular facts which give a person a right to judicial relief. This court has consistently construed "rights of action" as referring only to pending or future claims. And has noted that only disputed or contingent claims would likely fall "within the ambit" of the statute.

See also *In re Carlson*, 40 B.R. 746, 750, holding that settlement proceeds at issue in that case were exempt as "rights of action" only because payment had not been made and releases had not been signed at the time of the filing of the petition.

Thus once again, we learn that timing is everything. A creditor or trustee cannot attach the right of action, but once the case is settled, the cash can be garnished and may become property of the bankruptcy estate.

This also applies to structured settlements. In *Christians v. Dulas*, 95 F.3d 703, C.A. 8 1996, the Eighth Circuit Court of Appeals, overruling both the Bankruptcy Court and the U.S. District Court, District of Minnesota found that a structured settlement annuity was not exempt under M.S. 550.37(22). The Court said that the exemption could not be allowed where the defendant in the action had been released, and had no continuing obligation to the Minnesota Court of Appeals addressed this exemption issue in *Midland Credit Management v. Chatman*, 796 N.W. 2d 534 (Minn. App. 2011). In its decision, the Court first noted that the Federal Bankruptcy Court holdings, while not binding on them, did "inform" the decision which went on to

affirm a District Court denial of Chatman's claimed-exemption in personal injury proceeds. The bankruptcy Court cases *In re Proctor*, and *Christians v Dulas* were cited approvingly.

See also In re Tveten, 402 N.W.2d 551 (Minn. 1987) (section 550.37, subd. 11 is unconstitutional as applied to annuities or similar plans or contracts purchased for cash from fraternal benefit associations);

C. Worker's compensation

Minn.Stat 176.175 subd 2.
Proceeds are exempt *Johnson v. Iannacone* 314 B.R. 779 (D.Minn. 2004) (Rosenbaum, C.J.); *Gagne v. Christians*, 172 B.R. 50 (D. Minn. 1994) (Davis, J.).

IV. Post filing issues/Estate Administration

A. The trustee will almost always just hire the same attorney, make sure everyone knows they are bifurcating out the claims, file an application for compensation on their behalf. See attached application for compensation. It is important to do this early, as compensation that is sought after the services are rendered may be denied. An inherent conflict of interest issues can arise out of this situation.

B. Can a debtor file on their personal injury attorney?

The likelihood of a personal injury plaintiff being able to file a bankruptcy case just before settlement – thereby defeating or attempting to defeat the fee claim of his PI lawyer is probably remote. The lawyer has a lien which attaches to the claim at the commencement of the action, or the date of the retainer. (Minn. Stat. § 481.13)

The Retainer Agreement obviously should be in writing, but it is not absolutely necessary, *Antrim v. Sabri et al* Minn App. September 29, 2014 A13-2174. The lien can be summarily enforced under Minn. Stat. § 481.13 but, as a practical matter, any insurance defense firm or company having knowledge of the attorney's representation e.g. through representation letters, demand letters, phone calls—will issue the settlement check with the attorney's name on it and the plaintiff's. As the *Antrim* case (and predecessor cases) provide, the defendant with notice of the lien cannot avoid the lien by paying directly to plaintiff and in fact, the defendant or his insurer may have to pay plaintiff's attorney the lien amount in addition to what was paid out over the lien. *Dorsey & Whitney LLP v. Grossman* 749 NW 2d 409, 420 (Minn App 2008). Antrim, supra; See also, *Kubu v. Kabes* 142 Minn. Stat. § 433, 437, 172 N.W. 496, 497 (1919).

C. When the debtor is the tortfeasor.

A final note concerning the situation where the debtor is the defendant in personal injury litigation, and the plaintiff is not objecting to discharge, but needs to depose the debtor for the personal injury case, and keep the debtor as a named defendant, in order to pursue the debtor's insurance. The attached pleadings show a sample Motion to Lift the Stay in such a situation.

Tim Theisen	Jim Ryan	Patti Sullivan
Consumer Bankruptcy Attorney	Consumer Bankruptcy and Personal Injury attorney	Chapter 7 trustee
Anoka MN	Rochester MN	St. Paul MN

MN-252

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: [redacted]

Debtor.

Chapter 7
Bky Case No. [redacted]

APPLICATION FOR APPROVAL OF EMPLOYMENT OF ATTORNEY

TO: THE COURT:

1. Applicant is the trustee in this case.
2. Applicant believes that the employment of an attorney is necessary to represent or assist trustee in carrying out the trustee's duties as follows: Perform legal services related to a pending personal injury lawsuit. Therefore, trustee believes it is necessary to hire an attorney to represent her in the personal injury lawsuit.
3. [redacted], is qualified by reason of practice and experience to render such representation or assistance.
4. Proposed compensation and reimbursement of expenses will be as follows: one-third (1/3) of the amount recovered plus reasonable expenses and out of pocket costs.
5. Said professional has disclosed to the undersigned that they have the following connections with the debtor, creditors any other party-in-interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee: None, except the attorney is representing the debtor, [redacted] in the personal injury cause of action, pursuant to a pre-petition retainer agreement.
6. The trustee has made the following efforts to recover the asset prior to submitting this application: Not applicable inasmuch as the damages could not be easily quantified by the trustee.

WHEREFORE, applicant prays that the court approve such employment by the trustee.

Dated: December 12, 2013.

/e/ Patti J. Sullivan
Patti J. Sullivan, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: [redacted]

Debtor.

Chapter 7
Bky Case No. [redacted]

VERIFIED STATEMENT PURSUANT TO RULE 2014(a)

I, [redacted], the professional named in the application for employment on behalf of the above named bankruptcy estate, declare under penalty of perjury the following:

1. I do not hold or represent any interest adverse to the estate and am disinterested as required by 11 U.S.C. §327.
2. I do not have any connections to the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee or any person employed in the office of the United States Trustee: None, except for the following: the attorney who is representing the debtor, [redacted] in the personal injury cause of action, pursuant to a pre-petition retainer agreement.

Dated: December 12, 2013.

[redacted]

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re: [redacted]

Debtor.

Chapter 7

Bky Case No. [redacted]

ORDER

The Application dated December 12, 2013 to Employ [redacted], as attorney of the estate came before the undersigned. Based on the Application, the Recommendation of the United States Trustee and pursuant to the provisions of Title 11, United States Code, Section 327,

IT IS HEREBY ORDERED the professional employment applied for is hereby approved subject to the limitations on compensation provided by Title 11, United States, Code, §328.

Dated:

Katherine A Constantine
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Chapter 7 Case

[redacted] Case Number 08-30643 - DDO

Debtor(s).

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

To: The debtor(s) and other entitles specified in local Rule 9013-3(a).

1. [redacted] by their undersigned attorney, moves the Court for relief requested below and gives Notice of Hearing within.

2. The Court will hold a Hearing on this motion at 1:30 p.m. on May 21, 2008, in Courtroom No. 8 West, at 301 US Courthouse, 300 South Fourth Street, Minneapolis, MN.

3. Any response to this motion must be filed and delivered no later than May 15, 2008, which is three days before the time set for the hearing (excluding Saturdays, Sundays, or holidays), or filed and served by mail no later than May 9, 2008, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, or holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTIONWITHOUT A HEARING.

4. Pursuant to Local Rule 4001-1, unless a response to this motion is filed, the Court may, in its discretion, enter an order granting relief from the stay without a hearing.

5. The Petition commencing this Chapter 7 Case was filed on February 18, 2008. This Court has jurisdiction over this motion pursuant to 28 USC Sec. 1334 and 157(A), Local Rule 1070-1, 11 USC Sec. 362(D) and applicable rules.

6. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1- 9019-1. The movant requests relief from the automatic stay with respect to a personal injury action. The movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

7. Creditor [redacted] seeks relief from the automatic stay and discharge injunction, for the purpose of pursuing liquidation of her claim solely as against any of the Debtor's insurance or other third party indemnifiers.

WHEREFORE, [redacted] respectively move the Court for an order modifying the automatic stay of Sec. 362 Subd. (A) so as to permit [redacted] to proceed with for such other and further relief as the Court finds just and equitable.

Dated: 4-29-2008

Mark W. Malzahn
Attorney for Movant(s)
229 Jackson Street, Suite 105
Anoka, MN 55303
Atty. Reg. No 151841

VERIFICATION

I, Mark W. Malzahn, attorney for the Plaintiffs, the movant(s) named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: 4-29-2008

Mark W. Malzahn
Attorney for Movant(s)
229 Jackson Street, Suite 105
Anoka, MN 55303
Atty. Reg. No. 151841

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: [redacted] Debtor(s).

Chapter 7 Case

Case Number 08-30643 - DDO

MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY

To: The debtor(s) and other entitles specified in local Rule 9013-3(a).

Pursuant to 11 U.S.C. Sec. 362(d)(1), the Court shall grant relief from the automatic stay "for cause." Numerous courts have determined that where the Debtor is a nominal party in litigation involving others, this constitutes cause for relief from the stay.[1]

In this case, the Debtor is the Defendant in a personal injury action, of which the Creditor, [redacted] is the Plaintiff, which is ongoing in Sherburne County, Minnesota [redacted] vs [redacted], Sherburne County Court File No. 71-CV-07-1213). Based upon Movant's current understanding of the underlying facts, said Creditor/Plaintiff does not intend to object to discharge, or otherwise make any claims that the Debtor's personal liability would be exempted from discharge. Nevertheless, the Debtor will remain a key witness with respect to the Plaintiff/Creditor's claim, for which the Debtor does have insurance. Debtor is an indispensible party in that ongoing litigation. The Debtor should not simply be dropped as a named party to this lawsuit, thus forcing the insurance

[1] *See In re* Fernstrom Storage & Van Co., 938 F.2d 731 (7th Cir. 1991) (relief from stay allowed for creditor to proceed against debtor's insurers); *In re* Holtkamp, 669 F.2d 505 (7th Cir. 1982) (personal injury action allowed to go forward when insurer assumed full financial responsibility); *In re* Traylor, 94 B.R. 292 (Bankr. E.D.N.Y. 1989) (relief from stay granted to allow accident victims to proceed against debtor's insurer even though their claim against the debtor had been discharged); *In re* Honosky, 6 B.R. 667 (Bankr. S.D. W. Va. 1980) (stay lifted to extent necessary to proceed with suit against debtor which would be defended by insurance company that would be liable for a judgment).

company to be the main party, because naming an indemnifying insurance company as a party to a lawsuit would likely violate Minn.R.Evid 411, which prohibits evidence regarding a party' insurance coverage.

Undersigned counsel has spoken with Debtor/Defendant's counsel in the underlying Sherburne County case, and it is not expected that this motion for relief from stay will be contested. However, relief from the stay will be necessary in order for the state court litigation to proceed, as it has currently been suspended by that Court. (See Exhibit A).

Dated: 4-29-2008

Mark W. Malzahn
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Chapter 7 Case

[redacted] Case Number 08-30643 - DDO

Debtor(s).

ORDER

The above-entitled matter came before the undersigned United States Bankruptcy Judge on the Creditor's lift stay motion.

Appearances, if any, were noted in the minutes.

Upon the foregoing record,

IT IS ORDERED:

The automatic stay is hereby lifted against the Debtor with respect to the cause of action in currently pending litigation, entitled [redacted] vs [redacted], Sherburne County District Court File No. 71-CV-07-1213.

Dated: May 21, 2008 /e/ Dennis D. O'Brien

Dennis D. O'Brien
United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND
FILING ORDER OR JUDGMENT
Filed and Docket Entry made on 05/21/2008
Lori Vosejpka, Clerk, By DLR, Deputy Clerk