



1

2

3

4

5

6

7

8

UNITED STATES BANKRUPTCY COURT

9

FOR THE DISTRICT OF OREGON

10

In Re:

) Bankruptcy Case No.

) 396-30581-elp7

11

IAN THOMPSON and CAROLINE F.

)

THOMPSON,

) MEMORANDUM OPINION

12

)

Debtors.

)

13

14

15

The trustee's objection to debtor Ian Thompson's claim of

16

exemption in an annuity issued by First Colony Life Insurance

17

Company (First Colony) came on for hearing on May 21, 1996. Debtor

18

claims that payments he is scheduled to receive from First Colony in

19

the future constitute an annuity that is exempt under ORS 743.049.

20

The trustee argues that the payments are not an annuity or that, if

21

they are, debtor does not own the annuity. The trustee has

22

submitted to the court a copy of the Uniform Qualified Assignment

23

and Release, which governs debtor's right to payment.

24

FACTS

25

The evidence shows that debtor is entitled to receive

26

payments for personal injury under a settlement agreement with the

1 tortfeasor's insurer. American National Fire Insurance Company, the  
2 tortfeasor's insurer, assigned its liability to make the payments to  
3 Jamestown Life Insurance Company (Jamestown Life). To fund the  
4 payments, Jamestown Life in turn purchased an annuity from First  
5 Colony. Jamestown Life retained all ownership rights in the annuity  
6 and gave debtor a security interest in it. The payments pursuant to  
7 the settlement agreement included specified amounts on specified  
8 dates, beginning in 1991 and ending in 2013. The agreement provides  
9 that "all payments are certain," and names debtor's estate as the  
10 primary beneficiary of the payments.

11 ISSUE

12 Is debtor's right to receive payments under the First Colony  
13 annuity exempt under ORS 743.049?

14 DISCUSSION

15 The assignment and release indicates that the payments due to  
16 be made to debtor are the proceeds of a personal injury settlement,  
17 which are funded by an annuity. The question is whether the annuity  
18 is one that is exempt under ORS 743.049, and whether debtor owns or  
19 has an interest in the annuity that fits within the exemption.

20 ORS 743.049 provides:

21 "(1) The benefits, rights, privileges and options which  
22 are due or prospectively due an annuitant under any annuity  
23 policy issued before, on or after June 8, 1967, shall not be  
24 subject to execution, nor shall the annuitant be compelled to  
exercise any such rights, powers or options, nor shall  
creditors be allowed to interfere with or terminate the  
policy, except [for exceptions not pertinent here]."

25 ORS 743.049 is part of the Oregon Insurance Code. ORS 731.004.

26 Definitions provided in the Insurance Code govern its construction.

1 ORS 731.052. An "annuity" is defined in the Insurance Code as

2 "any agreement to make periodic payments, whether fixed or  
3 variable in amount, where the making of all or some of such  
4 payments, or the amount of any such payment, is dependent  
5 upon the continuance of human life, except payments made  
6 pursuant to the settlement provisions of a life insurance  
policy, and includes additional benefits operating to  
safeguard the policy from lapse or to provide a special  
surrender value or special benefit or annuity in the event of  
total or permanent disability of the annuitant."

7 ORS 731.154(1). Thus, by definition, an annuity that is exempt  
8 under ORS 743.049 is one in which the payment is dependent on the  
9 continuation of human life.

10 The payments or amount of payments debtor is entitled to  
11 receive are not in any way dependent on the continuation of human  
12 life. The agreement between debtor and the insurer provides instead  
13 that the payments are certain, and designates a beneficiary for  
14 receipt of the payments in the event of debtor's death. Therefore,  
15 under Oregon law, the payments are not benefits of an annuity as  
16 that term is used in the exemption statute, ORS 743.049, and are not  
17 exempt under it.

18 I recognize that there are a myriad of arrangements involving  
19 the right to receive fixed or certain periodic payments, either for  
20 life or for a fixed amount of time, all of which are commonly  
21 thought of as annuities. In this case, however, I am dealing not  
22 with the commonly understood meaning of annuity, but with the term  
23 as defined by the Oregon legislature.

24 Even if the payments were benefits of an annuity, debtor is  
25 not an annuitant. Under the agreement, Jamestown Life "shall have  
26 all ownership rights in any such annuity and [debtor] shall have no

1 right or interest in the annuity, except as stated herein." The  
2 agreement further gives debtor a security interest in the annuity to  
3 secure the promise of Jamestown Life to make the periodic payments.  
4 This indicates that the payments are merely periodic payments of a  
5 personal injury settlement, funded by an annuity purchased by the  
6 insurer. Debtor has no interest in the annuity that can be exempted  
7 under ORS 743.049.<sup>1</sup>

8 CONCLUSION

9 This Memorandum Opinion shall constitute Findings of Fact and  
10 Conclusions of Law as required by Bankruptcy Rule 7052 and Fed. R.  
11 Civ. P. 52, and they shall not be separately stated. The trustee's  
12 objection to the claim of exemption is sustained.

13  
14  
15 ELIZABETH L. PERRIS  
Bankruptcy Judge

16 cc: David Green  
17 John Mitchell  
U. S. Trustee

18  
19  
20  
21  
22  
23  
24  
25 <sup>1</sup> Debtor has not claimed that the payments are exempt under  
26 any other exemption statute, for example, ORS 23.160(1)(j)(B), and I  
express no opinion about whether any other statute would apply.