

ORS 23.160(1)(j)(B)  
11 USC §522(d)(11)(D)

In re Bowen Case No. 390-36505-S7

7/19/91            DDS            unpublished

The court upheld the debtor's claimed exemption in a personal injury award. The debtor was in an auto accident and the insurance company agreed to pay debtor \$4750 for the injuries he sustained to his muscles.

The trustee argued that ORS 23.160(1)(j)(B) did not apply to the debtor's award because the injury was for pain and suffering. The trustee's interpretation of the statute is too narrow. The exclusion for an award of pain and suffering should be limited to mental anguish rather than applied to a physical injury which is manifested through pain when using a muscle.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re:	)	Bankruptcy Case No.
	)	390-36505-S7
THOMAS DEAN BOWEN and	)	
MARIAN RUTH BOWEN,	)	MEMORANDUM OVERRULING TRUSTEE'S
	)	OBJECTION TO DEBTORS' CLAIMED
Debtors.	)	EXEMPTIONS

After a hearing on April 8, 1991, and a review of the post-hearing memoranda submitted by counsel, I will overrule the trustee's objection to the debtors' claim of exemption in a personal injury award for the following reasons.

Almost one year ago, Thomas Bowen was injured in an automobile accident caused by another driver. While he was not drastically injured, he was in pain, and went to the emergency room of the hospital a few hours after the accident. He continued to have back pain for at least four months after the accident, and was instructed by a neurologist named Dr. Throop not to lift heavy objects. The doctor concluded that Mr. Bowen suffers from an injury to a muscle, but was unable to determine whether the injury will be permanent.

After mediation with the negligent driver's insurance company, Mr. Bowen received \$3,091.67 of the \$4,750.00 award. The remainder was paid to his attorney. According to a letter dated April 9, 1991, from Mr. Bowen's personal injury attorney, the full amount of the award was for personal injuries.

The remaining issue to be resolved is whether Mr. Bowen's personal injury falls within the scope of the exemption found in ORS 23.160(1)(j)(B). That section provides an exemption for "the debtor's right to receive, or property that is traceable to...a payment, not to exceed \$7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor...." An identical exemption is provided under the federal bankruptcy exemptions at 11 U.S.C. §522(d)(11)(D).

The trustee relies on the legislative history of the subsection which states "subparagraph (d)(11) is designed to cover payments in compensation of actual bodily injury, such as the loss of a limb, and is not intended to include the attendant costs that accompany such a loss, such as medical payments, pain and suffering, or loss of earnings. Those items are handled separately by the bill." (H. Rept. No. 95-595 to accompany H.R. 8200, 95th Cong., 1st Sess. (1977) pp. 360-363). By combining the legislative history and Dr. Throop's letters, the trustee concludes that the debtor's injuries are not permanent, so they

must be for pain and suffering, so that the payment for those injuries is excluded from the exemption provision.

The few courts that have dealt with this exemption have not interpreted it in the narrow fashion which the trustee advocates. The three bankruptcy courts which tried to define the boundaries of the personal bodily injury entitling a debtor to the exemption have all upheld the debtor's claim of exemption. In re Lynn, 13 Bankr. 361 (Bankr. W.D.Wi. 1981) (payments for loss of consortium were exempt as a personal bodily injury), In re Territo, 36 Bankr. 667 (Bankr. E.D. N.Y. 1984) (payments for herniated disc injury exempt) and In re Sidebotham, 77 Bankr. 504, 506 (Bankr. E.D. Penn. 1987) (declaratory ruling because there had not yet been an award on the personal injury action).

Judge Duberstein noted that the definition of pain and suffering found in Black's Law Dictionary includes not only physical discomfort and distress, but also mental and emotional trauma. He concluded that the latter form of pain and suffering was the type which Congress intended to exclude from the exemption at issue. Territo, 36 Bankr. at 670. Judge Martin decided that the legislative history could not be taken seriously without rendering the statute meaningless. Lynn, 13 Bankr. at 362.

When the intent of the legislature is unclear, vague or

ambiguous, a liberal interpretation of the exemption laws is favored. In re Wilson, 22 Bankr. 146, 149 (Bankr. D. Or. 1982), In re Hawes, No. 682-07173 (Bankr. D. Or. Nov. 21, 1983) (Luckey, BJ), citing Childers v. Brown, 81 Or. 1, 158 P. 166 (1916).

Mr. Bowen suffered a muscular injury. The fact that the injury is manifested through pain and suffering when he uses his left arm does not make the injury any less of a physical bodily injury. The award is for an actual physical injury and not for mere emotional distress. Mr. Bowen claims an exemption in a net recovery of \$3,091.67. The amount is not out of proportion with the injuries he sustained as they are described in Dr. Throop's letter dated November 26, 1990. The exemption claimed by the debtor shall be upheld and the trustee's objection overruled. A separate order will be entered.

DATED this \_\_\_\_\_ day of July, 1991.

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DONAL D. SULLIVAN  
Bankruptcy Judge

cc: Alice M. Plymell  
Ronald A. Watson  
U. S. Trustee

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case No.  
 ) 390-36505-S7  
THOMAS DEAN BOWEN and )  
MARIAN RUTH BOWEN, ) ORDER OVERRULING TRUSTEE'S  
 ) OBJECTION TO DEBTORS'  
Debtors. ) CLAIM OF EXEMPTION UNDER  
 ) ORS 23.160(1)(j)(B)

Based on a memorandum entered separately,

IT IS ORDERED that the trustee's objection to the debtors' claimed exemption in the proceeds of a claim for personal injuries is overruled, and the debtors' claim of exemption in the \$3,091.67 recovered for injuries sustained in an accident that occurred on July 26, 1990 is sustained.

DATED this \_\_\_\_\_ day of July, 1991.

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DONAL D. SULLIVAN  
Bankruptcy Judge

cc: Alice M. Plymell  
Ronald A. Watson  
U. S. Trustee

ORDER