

In re Hawes        682-07173  
11/21/83        CEL

As a result of a job injury, debtor received \$45,000. pursuant to a compromise and release agreement. Debtor deposited the money in a bank account, then used part of the \$45,000. to buy equipment and materials to build a welding shop. A shop trailer and steel were among the items purchased, and debtors claim the trailer and steel as exempt under ORS 23.160(1)(j)(B).

The trustee objects to the exemption on the ground that the exemption doesn't attach to tangible property purchased with the proceeds of a bodily injury award unless those proceeds are used to purchase property the debtor uses in supporting himself. ~~There is~~ A distinction between luxury items and items used for support need not be made since the debtor in this case bought the items as a means of support.

The trustee also objects on the ground that the ~~the~~ items aren't traceable to payments received on account of bodily injury (i.e., the payment may have been for nonexempt pain and suffering or non-exempt actual pecuniary loss). The compromise agreement doesn't state which part of the award was for personal bodily injury. ORS 23.160(1)(j)(B) provides a \$7500. exemption. The court can reasonably find that at least \$7500. of the ~~the~~ award was for personal bodily injury. Exemption statutes are to be liberally construed.

The trustee's objection is overruled.

11/15/83

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

IN RE	)	
	)	
WALTER M. HAWES and	)	Case No. 682-07173
SHARI B. HAWES, FDBA	)	
The Whittier Four,	)	
	)	MEMORANDUM OPINION
<u>Debtors.</u>	)	AND ORDER

The trustee, Thomas Huntsberger, has objected to the claim of the debtors, Walter and Shari Hawes, that their shop trailer and certain miscellaneous steel constitute exempt property under the provisions of ORS 23.160(1)(j)(B) on the grounds that the debtors have not established that the exemption created by ORS 23.160(1)(j)(B) applies to tangible property as distinguished from the right to receive payment and that the debtors have not established that the shop trailer and miscellaneous steel are traceable to payments received on account of personal bodily injury. A hearing was held on the trustee's objection with counsel for both parties appearing and submitting memoranda in support of their positions.

On or about August 19, 1978, Walter Hawes was injured while working on his job as an ironworker for Lampson Universal Rigging, Inc., near Prudhoe Bay, Alaska. He brought a claim based on that injury before the Alaska Workmens' Compensation Board which was resolved pursuant

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1 to a compromise and release agreement (Agreement) dated  
2 December 17, 1980. Pursuant to the terms of the  
3 Agreement, Mr. Hawes received \$45,000.00 from United  
4 States Fidelity and Guaranty Company, his employer's  
5 workers' compensation insurance carrier, on December 17,  
6 1980. Mr. Hawes deposited the \$45,000.00 in an account or  
7 certificates of deposit with the main branch of the  
8 National Bank of Alaska in Anchorage, Alaska, during  
9 December of 1980. During the Spring of 1981, Mr. Hawes  
10 purchased certain equipment and materials to build a  
11 welding shop with portions of the \$45,000.00. Among the  
12 items purchased were the shop trailer and miscellaneous  
13 steel claimed by Mr. and Mrs. Hawes as exempt property in  
14 their bankruptcy case which they commenced by filing a  
15 joint, voluntary Chapter 7 petition on March 8, 1982.

16 The statute specified as giving rise to the claim of  
17 exemption for the shop trailer and miscellaneous steel is  
18 ORS 23.160(j)(B) [sic] which provides an exemption for:

19 "(j) The debtor's right to receive, or  
20 property that is traceable to:

21 (B) A payment, not to exceed \$7,500, on  
22 account of personal bodily injury, not including  
23 pain and suffering or compensation for actual  
24 pecuniary loss, of the debtor or an individual  
25 of whom the debtor is a dependant;"

26 The trustee's objection is based upon two grounds:

27 1) The debtors have not established that the statute  
28 allows the exemption for the proceeds of a personal injury  
29 award to attach to tangible property purchased with the  
30 proceeds of such an award; and 2) The debtors have not  
31 established that the shop trailer and steel are traceable  
32 to a payment on account of a personal bodily injury, not  
including pain and suffering or compensation for actual  
pecuniary loss.

////

1           The trustee urges that the property traceable to  
2 personal injury awards in ORS 23.160(1)(j)(B) should be  
3 limited to exclude tangible personal property and by his  
4 argument in his memorandum urges the Court to allow the  
5 tracing of the proceeds of exempt injury awards only to  
6 the extent such proceeds are used to purchase property  
7 which the debtor actually uses to support himself.

8           In the case at bar, the evidence shows that the  
9 debtors acquired the shop trailer and miscellaneous steel  
10 claimed as exempt to build a welding shop with the  
11 objective of establishing a business as an independent  
12 welder and the Court is not faced with construction of the  
13 exemption statute under circumstances in which it is  
14 sought to include luxury items traced to injury award  
15 proceeds, a result which the trustee urges would be  
16 possible unless the property is required to be necessary  
17 for support, although this is a condition the statute does  
18 not impose by its terms.

19           The trustee's second basis for objection is that the  
20 exemption provided by ORS 23.160(1)(j)(B) does not extend  
21 to personal injury awards which are for pain and suffering  
22 or for actual pecuniary loss of the debtor or an  
23 individual of whom the debtor is a dependent. The  
24 Agreement is the only evidence in the record concerning  
25 the nature of the award paid to Mr. Hawes. It is in the  
26 nature of a disputed claim settlement and contains a broad  
27 release of liability. The trustee argues that the  
28 document itself provides no information from which the  
29 Court could determine whether a portion of the award was  
30 for "personal injury" and another portion of the award for  
31 non-exemptible items such as pain and suffering or actual  
32 pecuniary loss and that the absence of such information


1 permitting segregation precludes the debtors from claiming  
2 the entire amount of the award.

3 The Agreement does not segregate the basis for the  
4 \$45,000.00 award. It merely states that the award is in  
5 settlement of a disputed claim arising from injuries  
6 suffered by Walter Hawes on August 19, 1978, plus the  
7 recited broad release of liability. Only an insubstantial  
8 portion of the award is claimed exempt. Although the  
9 trustee's position appears to have merit, based upon the  
10 limited record, the circumstance of a \$45,000.00 award  
11 resulting from a job injury serves as a reasonable basis  
12 for the Court to find, and the Court does find, that at  
13 least \$7,500.00 thereof was payment for personal bodily  
14 injury, not including pain and suffering or compensation  
15 for actual pecuniary loss. Absent evidence to the  
16 contrary, characterization of \$7,500.00 of the award as  
17 one for personal bodily injury is appropriate. Exemption  
18 statutes are to be liberally construed to effectuate their  
19 remedial purposes. Childers v. Brown, 81 Or. 1, 158 P.  
20 166 (1916); In re Canutt, 264 F.Supp. 919 (D.Or.1967).

21 The proceeds of the award were to the extent claimed  
22 exempt used for purchases germane to pursuit of the  
23 debtors' pre-injury job related activity.

24 The trustee's objection is overruled and the debtors'  
25 claims of exemption of the shop trailer valued at  
26 \$6,950.00 and miscellaneous steel limited to a value of  
27 \$550.00 are Ordered allowed.

28 DATED at Eugene, Oregon this 21 day of November,  
29 1983.

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31 C. E. LUCKEY  
32 Bankruptcy Judge