

1 Debtor included the Settlement Payment in his amended
2 Schedule B, describing it as:

3 Personal Injury Recovery which does not to [sic]
4 include pain, suffering or pecuniary loss: it's in the
5 form of an annuity from a personal injury settlement
6 which was purchased at the time of settling the claim
7 from the proceeds of the claim by the insurance company
8 which paid the claim directly into the annuity.

9 Debtor valued the Settlement Payment at \$45,000.00. On amended
10 Schedule C Debtor claimed a \$43,779.00 exemption in the
11 Settlement Payment under California Code of Civil Procedure
12 (C.C.P.) §§ 703.140(b)(5) (\$21,704.00) and 703.140(b)(11)(D)
13 & (E) (\$22,075).

14 The Trustee filed an objection to the claim of exemption,
15 arguing that an annuity does not qualify as a claim for
16 personal injury under C.C.P. § 703.140(b)(11)(D) & (E). The
17 Trustee also challenges the Debtor's valuation of the Settlement
18 Payment, arguing that the current value of the \$103,335.49 due
19 on August 21, 2019, is the full \$103,335.49.

20 DISCUSSION

21 The filing of a petition creates an estate comprising all
22 legal or equitable interests of the debtor in property as of the
23 commencement of the case. However, the Bankruptcy Code permits
24 individual debtors to exempt certain assets from the bankruptcy
25 estate. In California a debtor may exempt assets delineated in
26 either C.C.P. § 703.140(b) or § 704.010 et seq.

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1 In this case Debtor opted for the exemptions under
2 § 703.140(b) including, as noted above, § 703.140(b)(11) which
3 provides an exemption for:

4 (11) The debtor's right to receive, or property that is
5 traceable to, any of the following:

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7 (D) A payment, not to exceed seventeen thousand four
8 hundred twenty-five dollars (\$17,425), on account of
9 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.

10 (E) A payment in compensation of loss of future
11 earnings of the debtor or an individual of whom the
12 debtor is or was a dependent, to the extent reasonably
necessary for the support of the debtor and any
dependent of the debtor.

13 Based upon the unchallenged declaration of the Debtor, which
14 is supported by the recitations in the Settlement Agreement,
15 Debtor asserted a claim for "personal bodily injury" against
16 SAFECO and Debtor agreed to settle that claim for three payments,
17 including the Settlement Payment. Based on the evidence before
18 the Court it seems clear that the Settlement Payment is either a
19 claim for "personal bodily injury," or at least a claim against
20 SAFECO which "is traceable" thereto. The Settlement Payment
21 falls squarely within the language of § 703.140(b)(11)(D).

22 The Trustee objects to the claim of exemption, arguing
23 that "the asset in question was an annuity payment and not
24 a personal injury claim subject to the exemption in C.C.P.
25 § 703.140 (a)(11)(D)(E) (sic)." The Trustee cites In re Pikush,
26 157 B.R. 155 (9th Cir.BAP 1993) for the proposition that

1 "[a]nnuity contracts are not exempt." However, nothing in the
2 Pikush decision supports such a broad statement of law. The only
3 legal issue resolved in Pikush is that the specific annuities in
4 that case, purchased prepetition with non-exempt assets, did not
5 qualify as life insurance policies under C.C.P. § 704.100(a).
6 The same is true of In re Payne, 323 B.R. 728 (9th Cir.BAP 2005).

7 The Trustee also cites to In re Friedman, 220 B.R. 670(9th
8 Cir.BAP 1998), arguing that the personal injury claim lost its
9 exempt status when it was "transformed into a non-exempt asset,
10 annuity payments." The Friedman case does not support that
11 conclusion. In Friedman, prior to the bankruptcy case, the
12 debtor had taken cash out of an otherwise exempt private pension
13 plan. In that case, the act of removing the funds from the
14 pension plan changed the nature of the funds by eliminating the
15 restrictions imposed on such a plan. In this case, Debtor still
16 has his claim against SAFECO for a personal bodily injury - all
17 the parties did in the Settlement Agreement was to liquidate the
18 claim and set the terms of its payment.

19 The Trustee provides no authority to support the assertion
20 that a right to receive a payment on, or traceable to, a personal
21 injury claim cannot be in the form of an annuity payment. Quite
22 simply, the Debtor had a claim for personal injury against SAFECO
23 and settled the claim by agreeing to accept three future
24 payments, including the Settlement Payment. No matter how SAFECO
25 chooses to make the payments, it is obvious to this Court that

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1 the payments are "on account of personal bodily injury," or
2 "traceable" thereto.

3 The Settlement Agreement authorizes SAFECO to purchase an
4 annuity and there is an application to acquire an annuity.
5 Assuming SAFECO obtained an annuity, it did so on its own behalf
6 and it remained the owner of the annuity. In his amended
7 schedules, Debtor's counsel did refer to the Settlement Payment
8 as being "in the form of an annuity ...". However, Debtor's
9 counsel's description of the asset cannot change its legal form.
10 The Trustee has provided no evidence that any such annuity was
11 bought by debtor or is owned by debtor, as distinct from being
12 the way SAFECO chose to meet its obligation under the Settlement.

13 The Court concludes that Debtor is entitled to an exemption
14 in the Settlement Payment up to \$43,779.00.

15 The Trustee also objects to Debtor's valuation of the
16 Settlement Payment at \$45,000.00, which is obviously Debtor's
17 attempt to give present value to the payment due 9 years after
18 the petition. Debtor provides no explanation of the method of
19 his present value calculation. However, the Court sees no reason
20 to delve into valuation at this point. The Court has found that
21 Debtor is entitled to exempt the Settlement Payment in an amount
22 up to \$43,779.00. If the Trustee can recognize more than that
23 for the Settlement Payment, she is free to do so, with any amount
24 in excess of \$43,779.00 going to the estate.

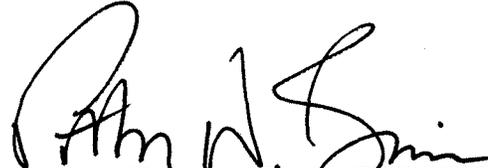
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1 For the reasons set forth above, the Trustee's objection to
2 the Debtor's claim of exemption in the Settlement Payment is
3 overruled.

4 IT IS SO ORDERED.

5 DATED: MAR 30 2011

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8 PETER W. BOWIE, Chief Judge
9 United States Bankruptcy Court
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