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UNPUBLISHED OPINION

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

In re:	
GERALD ROY SPANTON,	Bankruptcy Number 91B-00661
Debtor.	[Chapter 7]

MEMORANDUM DECISION AND ORDER

Gerald Roy Spanton (Spanton), the debtor in this chapter 7 case, listed a personal injury claim against Robert L. Turner (Turner) arising from an automobile accident and valued at $25,000, as an asset of this estate. Spanton then claimed the asset as exempt pursuant to Utah Code Ann. § 78-23-5(1)(i). Objections to the exemption were filed by Albertson's Employees' Health and Welfare Plan (Plan), and Stephen W. Rupp, Esq. (Rupp), the Chapter 7 Trustee administering the case.

The objections and arguments raised three issues: 1) whether a subrogation agreement executed by Spanton's mother and included in an ERISA qualified health and welfare plan is binding upon Spanton; 2) whether the claimed exemption constitutes "compensatory damages" as anticipated in the state exemption statute; and 3) whether the claimed exemption

is preempted by the subrogation provisions of the ERISA qualified Plan.[1] After hearing the evidence and reviewing the applicable case law, the court concludes that the subrogation provisions are binding upon Spanton, that the proceeds from the personal injury claim is encompassed within the meaning of compensatory damages, and that the claimed exemption is preempted by the Plan.

The material facts are not in dispute. On October 15, 1987, when Spanton was 18½ years old, he was a passenger in a vehicle driven by his friend, Turner. The vehicle was involved in an accident and both Spanton and Turner suffered substantial head injuries. As a result of his injuries, Spanton was in a coma for several days, and has required significant medical treatment and rehabilitative therapy.

Spanton still suffers from a loss of balance, loss of feeling on his face and scalp, and hearing and memory loss. Spanton is currently engaged in vocational rehabilitation provided by the state of Utah. He is employed in what he classifies as a menial job and will require formal education to increase his job skills. The evidence did not indicate that the formal education needed was as a result of his injuries. No evidence was produced that indicated actual future costs for rehabilitation or therapy. Spanton's uncontradicted testimony was that nothing could compensate him for the injuries he sustained, however, he and his counsel had discussed suing Turner's insurance carrier for the policy limits of $25,000.

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[1] The court has concluded that it has jurisdiction to decide this exemption dispute as a core matter pursuant to 28 U.S.C. § 157(2)(B), because it does not involve the liquidation or estimation of contingent or unliquidated personal injury tort claims against the estate.

At the time Spanton was injured, his mother was an employee of Albertson's and both she and Spanton were entitled to benefits under Albertson's ERISA qualified Plan. The Plan is self-funded by the Albertson's Employees' Health and Welfare Trust. The Plan provides at paragraph 8.10, that

> [t]he Trustees shall be subrogated . . . to the extent and in the amount of any payments made under the Plan to a Covered Person, with respect to any cause of action the Covered Person may have against any third party for injury to the Covered Person which results in payment being made by the Trustees pursuant to the Plan.

In addition to the subrogation terms set forth in the Plan, Spanton's mother executed a subrogation agreement that provided that payments made to Spanton from a third party would be forwarded to the Plan. Spanton's mother executed the document on November 2, 1987, shortly after he came out of a coma, but while he was still gravely injured. Upon execution of the subrogation agreement, the Plan paid $9,274.00 in behalf of Spanton for his medical treatment. Spanton has been aware of the subrogation agreement entered into by his mother, but has not repaid any funds to the Plan or otherwise disaffirmed the contract.

Turner is covered by an insurance policy with a $25,000 limit on third-party claims. The insurance company will pay the full policy limit to Spanton upon full release by Spanton and the Plan.[2]

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[2] Some dispute arose as to whether Spanton had accepted the conditions requiring release of Turner in exchange for tender of the $25,000. While the settlement has not yet occurred, Spanton testified that he did not intend to pursue Turner or Turner's father to obtain damages in excess of the $25,000 policy limits: therefore, the conditions of obtaining the $25,000 will probably be met.

RATIFICATION

Spanton now seeks to disaffirm the subrogation agreement signed by his mother and provided in the Plan, upon the theory that he did not authorize his mother to enter into the subrogation agreement and that he was not a minor at the time. Spanton's argument is unpersuasive. He was incapable of entering into the contract at the time, and therefor his mother acted in his behalf. With full knowledge of the material facts, he has continued to accept the benefits of the payments made by the Plan. He has not tendered the sums paid on his behalf back to the Plan, and has not taken any action in the last four years to disaffirm the actions of his mother. The subrogation agreement has been ratified by Spanton. *Twin Falls Livestock Com'n Co. v. Mid-Century Ins. Co.*, 786 P.2d 567, 573-74 (Idaho Ct. App. 1989); *Anselmo v. Manufacturers Life Ins. Co.*, 771 F.2d 417 (8th Cir. 1985); *Duffy Theaters, Inc. v. Griffith Consolidated Theaters, Inc.*, 208 F.2d 316 (10th Cir. 1954)(waiting thirteen years after execution of contract containing release to commence action for damages was held to be ratification of release).

EXEMPTION

Under the Utah Exemptions Act (Act), a person is entitled to exempt "proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent *to the extent that such proceeds are compensatory*." Utah Code

Ann. § 78-23-5-(1)(i) (Supp. 1991)(emphasis added).[3] The Act exempts such proceeds to the extent they are "compensatory."

There is no legislative history to assist in determining the meaning of the term "compensatory" under the Act. As a general rule of law, "[c]ompensatory damages are damages in satisfaction of, or in recompense for, loss or injury sustained." 22 Am. Jur. 2d *Damages* § 23 (1987)(footnote omitted). The term "compensatory damages" includes "all loss recoverable as a matter of right and includes all damages (beyond nominal damages) other than punitive or exemplary damages." *Id.*; *see also Rasor v. Retail Credit Co.*, 87 Wash. 2d 516, 554 P.2d 1041, 1049-50 (1976)(finding that compensatory damages are not limited to out-of-pocket costs, but include all elements of actual damages including mental anguish and suffering).

Under Utah law, an individual's pain and suffering is included within the definition of "compensatory damages." *Prince v. Peterson,* 538 P.2d 1325 (Utah 1975). In *Prince,* the plaintiff sought damages for pain and suffering inflicted due to the defendant's alleged libelous statements. *Id.* at 1327. The jury rendered a verdict in favor of the plaintiff which included an compensatory award for pain and suffering, as well as punitive damages. *Id.* at 1326. The defendant appealed. Addressing the compensatory damages issue, the Utah Supreme Court concluded:

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[3] This provision of Utah's Exemptions Act is quite similar to the Uniform Exemptions Act. Unif. Exemptions Act § 6, 13 U.L.A. 224 (1991). The Uniform Exemptions Act, however, does not limit the individual's protection to only "compensatory" proceeds. Thus, under the Uniform Exemptions Act, punitive damages, nominal damages, or liquidated penalties would also remain exempt to the "extent reasonably necessary" to support the debtor and his dependents. By contrast, the Utah Exemptions Act exempts all compensatory proceeds without reference to the necessity of the debtor's financial support.

> [W]hen physical injury is involved, courts have no hesitancy in allowing and approving substantial awards as general damages[4] which include pain and suffering. The pain and suffering inflicted upon the mind and the emotions by such wrongful act of another is no less real; and should be no less entitled to be compensated for.

Id. at 1329. The court upheld the jury's verdict on the compensatory damages issue. *Id.*; *see also Crookston v. Fire Ins. Exch.*, 817 P.2d 789, 806 (Utah 1991)(recognizing that "pain and suffering" are included within compensatory damages award); *Cruz v. Montoya,* 660 P.2d 723, 726 (Utah 1983)(including "pain and suffering" in compensatory damages award).

Following Utah law, the term "compensatory damages" includes all damages except punitive damages. The term "compensatory," as applied in the Act, appears to connote the same meaning. Because no legislative history aids the interpretation of this section of the Act, it appears appropriate to follow Utah case law definitions of "compensatory damages" for the meaning of this term.[5] Therefore, damages accruing through an individual's pain and suffering are "compensatory damages" and, if they result from the proceeds of insurance, a judgment or a settlement, are exempt property under Utah Code Ann. section 78-23-5-(1)(i).

The evidence indicates Spanton's substantial physical damages justify his uncontradicted assertion that his pain and suffering exceeds $25,000. It is, therefore, not fatal

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[4] The *Prince* court used the term "general damages" interchangeably with "compensatory damages." *Id.* at 1329.

[5] As a final aside, bankruptcy courts interpreting the federal exemption have construed that provision to include "pain and suffering" as part of the exempt property from a payment due to personal injury. *In re Sidebotham*, 77 B.R. 504, 505 (Bankr. E.D. Pa. 1987)(interpreting 11 U.S.C. § 522(d)(11)(D) (1987)).

to the exemption claimed that no evidence of actual damages or future cost of rehabilitation was introduced.

PREEMPTION

The Plan argues that the claimed exemption cannot defeat the subrogation provisions of the ERISA qualified Plan, and this court agrees. Allowance of the exemption as it relates to $9,274.00 of the contingent asset, would impact upon the assets of the Plan and upon its administration. As such, the exemption statute "relates" to the ERISA qualified Plan. Under the reasoning in *In re Martin*, 115 B.R. 311 (Bankr. D. Utah 1990) *aff'd sub nom. In re Fullmer*, 127 B.R. 55 (D. Utah 1991) the Plan provisions preempt the state exemption statute. The application of the preemption doctrine to this welfare benefit plan is equally applicable. *FMC Corp. v. Holliday*, 111 S. Ct 403 (1990).

This case was argued prior to the 10th Circuit's opinion in *Gladwell v. Harline, (In re Harline)* No. 90-4157 (10th Cir. Dec. 5, 1991). The court has reviewed this case in light of *Harline* and finds that the ruling does not effect the outcome here. In *Harline*, the court determined that the debtor's assets in a supposedly qualified ERISA plan were not property of the bankruptcy estate. That issue is not present here. In this case, the proceeds from Turner's insurance policy are in dispute, not the assets of the plan. None of the parties have asserted that

the contingent claim against Turner is not an asset of the estate. The preemption argument raised by the Plan is, if anything, supported by *Harline*.[6]

Therefore, it is hereby

ORDERED, that the subrogation agreement executed by Spanton's mother is binding upon him as a result of his ratification, and it is further

ORDERED, that the objections filed by Rupp and the Plan to the exemption claimed by Spanton representing compensatory damages are denied, and it is further

ORDERED, that the objection filed by the Plan to the exemption claimed in $9,274.00 of the funds generated by the claim against Turner representing the subrogated claim of the Plan is sustained, and that portion of the exemption is disallowed.

DATED this 17th day of December, 1991.

JUDITH A. BOULDEN
United States Bankruptcy Judge

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[6] "ERISA, of course, overrides state law in the area of employee retirement benefits it covers, and its preemption feature has been broadly construed." *Harline*, No. 90-4157 at page 9, citing *FMC Corp.* 111 S. Ct. at 407.