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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Dublin Division

IN RE:	)	Chapter 7 Case
	)	Number <u>91-30216</u>
RUSSELL ARNOLD BARBER	)	
	)	
Debtor	)	
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	)	
H. GIBBS FLANDERS, JR.	)	
CHAPTER 7 TRUSTEE AND	)	
MACON-BIBB HOSPITAL COUNTY	)	
HOSPITAL AUTHORITY d/b/a	)	
MEDICAL CENTER OF CENTRAL	)	
GEORGIA	)	
	)	
Movant	)	
	)	
vs.	)	
	)	
	)	
RUSSELL ARNOLD BARBER	)	
	)	
Respondent	)	

**ORDER**

Before the court are objections to the debtor's claim of exemptions filed by H. Gibbs Flanders, the Chapter 7 trustee, and Macon-Bibb County Hospital d/b/a Medical Center of Central Georgia ("the hospital"), a creditor. Based on evidence presented at hearing and relevant legal authority, I make the following findings.

**FINDINGS OF FACT**

Debtor was injured in an accident on the job in March 1990, and since has been unable to work. As part of the settlement

of his claim, debtor will receive a One Thousand and No/100 (\$1,000.00) Dollar each month for at least the next 30 years and will receive future lump sum payments as follows: Ten Thousand and No/100 (\$10,000.00) Dollars payable March 1, 1995; Twenty Thousand and No/100 (\$20,000.00) Dollars payable March 1, 2000; Fifty Thousand and No/100 (\$50,000.00) Dollars payable March 1, 2005; and One Hundred Thousand and No/100 (\$100,000.00) Dollars payable March 1, 2010. The approximate present value of these future payments, computed based on a 7% discount factor, is Sixty-Five Thousand and No/100 (\$65,000.00) Dollars. By amendment to his Chapter 7 petition, debtor claimed the entire settlement proceeds as exempt property under Official Code of Georgia Annotated (O.C.G.A.) §43-13100. The trustee and the hospital concede the One Thousand and No/100 (\$1,000.00) Dollars monthly payments are exempt property, but maintain that the lump sum future payments are not.

Debtor testified that he is not now able to work due to his physical injuries from the accident, and his wife does not work. Debtor has three children. Debtor has no source of income other than that from the settlement, and One Hundred Sixty-Three and No/100 (\$163.00) Dollars per month he receives in food stamps. Debtor and his wife own a house in which the family

resides, which requires a monthly mortgage payment of Three Hundred Fifty-Five and No/100 (\$355.00) Dollars each month.

CONCLUSIONS OF LAW

Georgia's property exemption statute, O.C.G.A. §44-13-100(a)<sup>1</sup> provides in pertinent part:

[A]ny debtor who is a natural person may exempt, pursuant to this article, for purposes of bankruptcy, the following property:

(1) The debtor's aggregate interest not to exceed \$5,000.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor;

. . .

(6) The debtor's aggregate interest not to exceed \$400.00 in value plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property;

. . .

(11) The debtor's right to receive, or property that is traceable to:

(D) A payment, not to exceed \$7,500.00, on account of 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;

(E) A payment in compensation of loss of future earnings of the debtor or an individual

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<sup>1</sup>Pursuant to 11 U.S.C. §522(b), Georgia has opted out of the federal scheme of exemptions, O.C.G.A. §44-13-100(b), providing its own list of exemptions in O.C.G.A. §44-13-100(a).

of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

Debtor's schedules indicate that no exemption has been claimed under O.C.G.A. §44-13-100(a)(1) or (a)(6). Therefore, Five Thousand Four Hundred and No/100 (\$5,400.00) Dollars of the Sixty-Five Thousand

and No/100 (\$65,000.00) Dollar present value of the lump sum future settlement payments can be exempted from debtor's bankruptcy estate pursuant to O.C.G.A. §44-13-100(a)(1) and (a)(6). Under O.C.G.A. §44-13-100(11)(d), Seven Thousand Five Hundred and No/100 (\$7,500.00) Dollars of the lump sum payments is exempt as a payment on account of a personal bodily injury. The balance, Fifty-Two Thousand One Hundred and No/100 (\$52,100.00) Dollars of the settlement is exempt under O.C.G.A. §44-13-100(e) as a payment in compensation of lost future earnings, if "reasonably necessary" for the support of debtor's family. Based on the evidence presented at hearing, I find Fifty-Two Thousand One Hundred and No/100 (\$52,100.00) Dollars is reasonably necessary to support debtor's family. Therefore, the future lump sum payments are exempt property under Georgia law.

It is therefore ORDERED that the objections to debtor's claim of exemptions filed by H. Gibbs Flanders, Jr., the Chapter 7 trustee, and Macon-Bibb County Hospital Authority d/b/a Medical

Center of Georgia are overruled.

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 21st day of December, 1992.