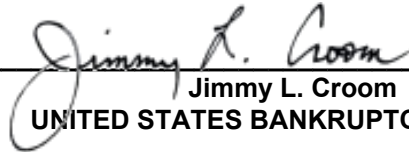




Dated: January 07, 2019
The following is SO ORDERED:


Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

In re

**JOE M. SMITH and
ANGELA J. SMITH,
Debtors.**

**Case No. 14-12505
Chapter 7**

**MEMORANDUM OPINION RE: CHAPTER 7 TRUSTEE'S OBJECTION TO DEBTORS'
CLAIMED EXEMPTIONS**

This case presents an interesting question: may a debtor claim portions of a post-petition personal injury settlement as exempt under more than one Tennessee exemption statute. The debtors in this case claimed \$7,500.00 of the settlement as exempt under Tennessee Code Annotated § 26-2-111(2)(B) and \$10,000.00 of the settlement as exempt under Tennessee Code Annotated § 26-2-103(a). The Chapter 7 Trustee objected and asserted that the debtors cannot claim two exemptions in one personal injury settlement. The Court conducted a hearing in this matter on December 6, 2018.

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). This Court has subject matter jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This Court also has constitutional authority to hear and finally resolve this matter. *In re Kooi*, 547 B.R. 244, 246 (Bankr. W.D. Mich. 2016). Thus, the Court may enter a final order in this matter. This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

I. FACTS

Joe and Angela Smith ("Debtors") filed a chapter 7 petition for bankruptcy relief on September 24, 2014. The bankruptcy case progressed normally and the Debtors received a discharge on December 25, 2014. On June 8, 2017, the Debtors filed a motion to reopen their case in order to disclose a pre-petition personal injury cause of action based on injuries Joe Smith suffered after using the diabetes drug Actos ("Actos Action"). The Debtors did not inform their bankruptcy attorney of the existence of this cause of action until October 27, 2016. The Debtors stated that the possible value of the pre-petition claim was between \$30,000.00 and \$50,000.00. The Court granted the Debtors' motion to reopen their case on July 21, 2017.

On January 10, 2018, the Debtors filed a motion to approve settlement of the Actos Action. According to the motion, Joe Smith had been awarded a gross settlement of \$54,266.19 and his son, who was a minor at the time of Mr. Smith's injury, had been awarded \$20,000.00. That portion of the settlement awarded to the Debtors' son did not come into the bankruptcy estate. Of the \$54,266.19 awarded to Joe Smith, \$12,634.20 had been designated as attorney's fees. After deduction of expenses, fees and liens, the net settlement due Joe Smith was \$ 28,420.34. The Debtors filed an amended Schedule C on January 10, 2018, in which they claimed the entire settlement as exempt pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") § 26-2-111(2)(B).

The Court initially set the motion to approve the settlement for a hearing on February 15, 2018; however, because the Chapter 7 Trustee ("Trustee") was not reappointed until February 26, 2018, the Court continued the matter to April 12, 2018.

After the Trustee was reappointed, he entered into a consent order with the Debtors which allowed the Trustee 30 days from entry of the order to object to the Debtors' motion to approve the Actos Action settlement and to evaluate Debtors' claimed exemption therein. The parties also agreed that the Debtors would have the right to amend their exemptions. The Court entered this order on February 26, 2018.

On March 5, 2018, the Trustee filed an objection to the Debtors' claimed exemption in the settlement proceeds. The Trustee asserted that the Debtors' exemption was limited to \$7,500.00 under Tennessee law. The Trustee also filed an objection to the Debtors' motion to approve the settlement. He asserted that the Actos Action was property of the estate and that the law firm had not been employed by the estate to pursue the claim.

On March 16, 2018, the Trustee filed an application to employ the attorneys representing Joe Smith in the Actos Action on behalf of the estate. The Court granted the requested relief on March 21, 2018.

On June 6, 2018, the Trustee filed a motion to approve the settlement of the Actos Action pursuant to the same terms and amounts as set forth in the Debtors' prior motion. After deduction of expenses, fees, liens and attorney's fees, \$28,420.34 from the settlement proceeds was due the estate. The Court granted the Trustee's motion on July 9, 2018.

On July 18, 2018, the Debtors amended Schedule C for a second time. They claimed \$19,420.34 of the Actos settlement as exempt under Tenn. Code Ann. § 26-2-111(2)(B) and another \$9,000.00 as exempt under Tenn. Code Ann. § 26-2-103. That same day, the Trustee filed an objection to the Debtors' amended exemption. The Trustee again asserted that the Debtors' exemption in the Actos Action settlement proceeds was limited to \$7,500.00 pursuant to Tenn. Code Ann. § 26-2-111(2)(B).

On October 8, 2018, the Debtors amended Schedule C for a third time. In so doing, they clarified which debtor was claiming which exemption and amended the

amounts of the exemptions. The amended schedule indicates that Joe Smith was claiming \$7,500.00 of the settlement as exempt under Tenn. Code Ann. § 26-2-111(2)(B) and \$10,000.00 of the settlement as exempt under Tenn. Code Ann. § 26-2-103. Angela Smith was not claiming an exemption in any of the settlement proceeds.

The Debtors filed an objection and response to the Trustee's July 18, 2018 objection to the claimed exemptions. The Debtors filed a legal brief in support thereof on October 9, 2018. The Debtors argued that Joe Smith's exemption in the Actos Action settlement proceeds was not limited to the \$7,500.00 personal injury exemption set forth in Tenn. Code Ann. § 26-2-111(2)(B). They asserted that Tennessee state law also allowed Joe Smith to claim a portion of the proceeds as exempt under the \$10,000.00 personal property exemption set forth in Tenn. Code Ann. § 26-2-103.

The Trustee filed an objection to the Debtors' amended exemption on October 9, 2018, in which he again asserted that the Joe Smith was limited to the \$7,500.00 personal injury exemption found in Tenn. Code Ann. § 26-2-111(2)(B). The Trustee filed a memorandum in support thereof on October 26, 2018, in which he asserted that "[a] personal injury claim is not in the same classification as a personal property exemption." (Memo. in support of Trustee's Obj. at 6, ECF No. 66.) The Trustee continued, stating,

Whereas personal property is property other than real property consisting of things temporary or moveable...[p]ersonal property has also been defined as a class of property that can be moved from one location to another. Personal injury is defined as an injury to one's body, mind or emotions. Personal Injury is not personal property.

(*Id.* (internal citations omitted).)

At the hearing on December 6, 2018, the Trustee argued that if the Tennessee legislature had intended for debtors to be able to use the exemption statutes in this way, it could have explicitly so provided. The Trustee also took issue with the fact that the Actos Action was unliquidated at the time the Debtors filed their bankruptcy petition. The Trustee argued that an unliquidated claim is different from cash. The Trustee agreed that had the Actos Action been settled prior to the filing of the bankruptcy petition, the proceeds would be exempt as personal property under Tenn. Code Ann. § 26-2-103; however, because the action had not been settled pre-petition, the settlement proceeds

could not be so claimed. Thus, the Trustee argued that the Debtors were limited to claiming \$7,500.00 of the proceeds as exempt under the personal injury exemption found in Tenn. Code Ann. § 26-2-111(2)(B). Finally, the Trustee stated that he was waiving his right to address the possible *res judicata* effect of the Debtors' failure to disclose the Actos Action in their chapter 7 petition. Accordingly, the Court will not address this issue.

The Trustee filed a motion for relief from the order approving the Actos Action settlement pursuant to Federal Rule of Civil Procedure 60 on December 20, 2018. According to his motion, the Trustee had recently learned that the entire settlement of \$74,266.19 had been awarded to Joe Smith. Although the settlement documents indicated that \$20,000.00 of this had been awarded to the Debtors' minor son, this was incorrect. Joe Smith's settlement of \$54,266.19 had been increased by \$20,000.00 because he had a minor child at the time of the injury. The Court has set this motion for a hearing on January 17, 2019; however, even if the Court sets the order approving the settlement aside, the Debtors' claimed exemptions in the settlement will not change. As such, the Trustee's motion for relief does not impede the Court's decision as to the exemptions.

II. Conclusions of Law

By virtue of § 541 of the Bankruptcy Code, the filing of a bankruptcy petition creates a bankruptcy estate. Section 541(a) of the Code defines "property of the estate" as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "This definition is unquestionably broad, its main purpose being to bring anything of value that the debtors have into the [bankruptcy] estate." *Lyon v. Eiseman (In re Forbes)*, 372 B.R. 321 (B.A.P. 6th Cir. 2007) (internal quotation marks and citation omitted). "Property of the estate includes pre-petition causes of action for personal injuries even if a judgment or settlement is not reached until after the commencement of the bankruptcy case." *In re Calderon*, 363 B.R. 537, 541 (Bankr. M.D. Tenn. 2003) (citations omitted); *In re Cupp*, 383 B.R. 84, 88 (Bankr. E.D. Tenn. 2008). Once such an action is settled or resolved in the debtor's favor, the proceeds from that action become property of the estate. *In re Fritzsich Custom Builders, LLC*, 474 B.R. 515, 521 (Bankr. S.D. Ohio 2010).

In order to ensure that debtors “retain sufficient property to obtain a fresh start,” the Bankruptcy Code allows debtors to exempt certain property from the claims of creditors. *In re Chapman*, 424 B.R. 823, 826 (Bankr. E.D. Tenn. 2010) (internal quotation marks and citation omitted). The exemption provision is found in 11 U.S.C. § 522. It provides that debtors may utilize the exemptions listed in § 522(d) or those set forth by applicable state law, unless state law prohibits the use of the § 522(d) exemptions. 11 U.S.C. § 522(b). Tennessee has enacted such a prohibition and, as a result, its citizens in bankruptcy are limited to the exemptions provided by Tennessee law. T.C.A. § 26-2-112. Exemptions are to be construed liberally in favor of debtors. *Burns v. Kinzer*, 161 F.2d 806, 808 (6th Cir. 1947); *In re Nipper*, 243 B.R. 33, 35 (Bankr. E.D. Tenn. 1999). “[W]hen it is possible to construe an exemption statute in ways that are both favorable and unfavorable to a debtor, then the favorable method should be chosen.” *In re Garbett*, 410 B.R. 280, 284 (Bankr. E.D. Tenn. 2009) (internal quotation marks and citation omitted). “A party objecting to claimed exemptions must prove that the exemption is not properly claimed by a preponderance of the evidence.” *In re Guikema*, 329 B.R. 607, 611 (Bankr. S.D. Ohio 2005) (citation omitted); Fed. R. Bankr. P. 4003(c). Once a debtor claims a statutory exemption, “the court may not refuse to honor the exemption absent a valid statutory basis for doing so.” *Law v. Siegel*, 571 U.S. 415, 424 (2014).

The issue in this case is whether a debtor can “stack” a personal injury exemption and a personal property exemption under state law in order to augment the amount of the award that can be exempted. In answering this question, the Court must first analyze and address each state exemption statute, giving “it its plain meaning in its normal and accepted use, without a forced interpretation that would limit or expand the statute’s application.” *Lanier v. Rains*, 229 S.W.3d 656, 661 (Tenn. 2007).

Tennessee’s personal property exemption is set forth at Tenn. Code Ann. § 26-2-103(a) and provides as follows:

(a) Personal property to the aggregate value of ten thousand dollars (\$10,000) debtor’s equity interest shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee, and such person shall be entitled to this exemption without regard to the debtor’s vocation or pursuit or to the ownership of the debtor’s abode. *Such person may select for*

exemption the items of the owned and possessed personal property, *including money* and funds on deposit with a bank or other financial institution, up to the aggregate value of ten thousand dollars (\$10,000) debtor's equity interest.

Tenn. Code Ann. § 26-2-103(a) (emphasis added). This statute clearly provides for an exemption in “personal property, including money...up to the aggregate value of...\$10,000.00.” *Id.* This type of exemption is often referred to as a “wild card” exemption. Section 26-2-103 contains one limitation on the availability of the personal property exemption:

(b) An item shall not be eligible, in whole or in part, for the personal property exemption provided by this part, if the item has been purchased with or maintained by fraudulently obtained funds or if ownership of the item has been maintained using fraudulently obtained funds.

Tenn. Code Ann. § 26-2-103(b).

The Tennessee exemption statutes do not define “personal property” as that term is used in § 26-2-103(a); however, debtors have used this statute to exempt all types of property including annuity payments, bank accounts, tax refunds and motor vehicles. *In re Kennedy*, 552 B.R. 183 (Bankr. E.D. Tenn. 2016); *In re Adams*, 551 B.R. 828 (Bankr. E.D. Tenn. 2016); *In re Garbett*, 410 B.R. 280 (Bankr. E.D. Tenn. 2009); *In re Hensley*, 393 B.R. 186 (Bankr. E.D. Tenn. 2008). Tennessee appellate courts tasked with reviewing divisions of marital property have recognized that personal injury settlements are personal property. *See, e.g. Hunley v. Hunley*, No. 88-206-II, 1998 WL 123956, at *4 (Tenn. Ct. App. Nov. 23, 1988) (emphasis added) (“[S]ince the definition of ‘marital property’ is expansive and embraces ‘all ... personal property ... acquired by either or both spouses during the course of the marriage,’ we agree with the trial court’s conclusion that the personal injury settlement proceeds were marital property.”)

Tennessee’s personal injury exemption is set forth at Tenn. Code Ann. § 26-2-111(2)(B) and provides as follows:

In addition to the property exempt under § 26-2-103, the following shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in this state:

...

(B) A payment, not to exceed seven thousand five hundred dollars (\$7,500) 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.

Tenn. Code Ann. § 26-2-111(2)(B) (emphasis added). “Courts have consistently held that this exemption includes personal bodily injury but does not include compensation for pain and suffering, actual pecuniary loss, or loss of consortium.” *In re Kennedy*, 552 B.R. 183, 191 (Bankr. E.D. Tenn. 2016) (citation omitted). The clear language of § 26-2-111 provides that the exemptions listed therein are “[i]n addition to the property exempt under § 26-2-103(a).”

In the case of *In re Reeves*, 521 B.R. 827 (Bankr. E.D. Tenn. 2014), the Bankruptcy Court for the Eastern District of Tennessee was asked to determine the precise issue in this case: whether a debtor can claim multiple exemptions in the post-petition settlement proceeds of a non-disclosed personal injury action. Prior to filing for bankruptcy relief, Joshua Reeves was injured in an automobile accident. Although Mr. Reeves and his wife had informed their bankruptcy attorney of the accident, it was not disclosed on the petition or the accompanying schedules. *Id.* at 829-30. The debtors’ chapter 7 case progressed and they received a discharge. Approximately five months later, the Debtors filed amended schedules to disclose the accident and to assert a \$7,500.00 exemption for each debtor under Tenn. Code Ann. § 26-2-111(2)(B). The chapter 7 trustee did not object to the claimed exemptions. Thereafter, the trustee filed an application to employ an attorney to represent the estate in a state court personal injury action. The bankruptcy court granted that relief and the state court action proceeded to settlement. *Id.*

The parties settled the personal injury action for \$95,000.00. In the trustee’s motion to approve the settlement, he also requested permission to make certain disbursements from the proceeds. One of these disbursements was payment of the debtors’ \$7,500.00 exemptions under Tenn. Code Ann. § 26-2-111(2)(B). *Id.* at 830. The court granted the trustee’s motion. The order did not include any provision for the remaining settlement proceeds after payment of the exemptions and various attorney’s fees and expenses. The trustee made the disbursements set forth in his motion.

Two months after the bankruptcy court approved the settlement, the debtors retained new bankruptcy counsel. Shortly thereafter, they amended their schedules yet again to claim \$8,529.46 of the settlement proceeds as exempt under Tenn. Code Ann. § 26-2-103(a) and \$26,454.28 of the settlement proceeds as exempt under Tenn. Code Ann. § 26-2-110. *Id.* These exemptions were in addition to the ones already claimed, and paid, under Tenn. Code Ann. § 26-2-111(2)(B). The Trustee objected to the amended exemptions. With respect to the exemption under Tenn. Code Ann. § 26-2-103(a), the trustee argued “that a chose in action is not personal property that may be exempted under the statute.” *Id.* The trustee also argued that the doctrines of res judicata and collateral estoppel barred the debtors from claiming additional exemptions in the settlement proceeds over and above what they had already asserted. *Id.* at 831.

The *Reeves* court thoroughly examined the trustee’s argument and determined that neither res judicata nor collateral estoppel barred the debtors from claiming additional exemptions in the remaining proceeds.

The order [approving the settlement] did not address distribution of the remaining proceeds, much less did it direct that the remaining proceeds be paid to creditors. Rather, the only statement in the order regarding the excess was that “[t]he Trustee anticipates the residual proceeds to the Estate to be approximately \$32,000.00.” This anticipation by the Trustee falls far short of a directive by the court that the residual proceeds remain in the estate solely for distribution to creditors. Similarly, the May 27, 2014 order did not address whether the Debtors were entitled to other exemptions.

Id. at 833. Accordingly, the court determined that the debtors could also claim an exemption in the personal injury proceeds under Tenn. Code Ann. § 26-2-103(a). *Id.* The *Reeves* court did not engage in a discussion of whether the settlement proceeds were “personal property;” however, in allowing the debtors to claim the exemption, the court implicitly determined that the settlement proceeds were personal property within the meaning of Tenn. Code Ann. § 26-2-103(a).

In making its decision, the *Reeves* court recognized an important holding from Supreme Court precedent:

In *Schwab v. Reilly*, the Supreme Court held that when a statute defines an exemption as an interest in property up to a specified dollar amount,

that dollar amount interest, rather than the item of property itself, is what is exempted from the bankruptcy estate, regardless of whether the amount claimed exempt by the debtor is equal to the full value of the property.

In re Reeves, 521 B.R. at 840 (citing *See Schwab v. Reilly*, 560 U.S. 770, 783–84 (2010)). Thus, “ ‘property claimed as exempt’ is limited to the interest stated in the exemption statute.” *Id.* A debtor does not actually exempt the property itself from his bankruptcy estate. Only his monetary interest therein. *Id.*

The decision in *Reeves* makes two things clear. First, Tenn. Code Ann. §§ 26-2-103 and 26-2-111 exempt a debtor’s interest in personal injury awards and personal property, not the award or the property itself. *In re Reeves*, 521 B.R. at 840-41. Both statutes allow a debtor to exempt a certain dollar amount of a type of property from the claims of creditors. Consequently, it is the debtor’s interest in the property that is exemptible. Tenn. Code Ann. § 26-2-103 allows a debtor to exempt a \$10,000.00 *interest* in personal property, not the property itself. Likewise, § 26-2-111(2)(B) allows a debtor to exempt a \$7,500.00 *interest* in a personal injury award, not the personal injury action or the award itself. *In re Reeves*, 521 B.R. at 841 (“Consequently, the property exempted by the Debtors under the [Tenn. Code Ann. § 26-2-111(2)(B)] was \$15,000 of the asset ‘Damages arising from Personal Injury Claim,’ and not the asset itself.”).

The more important issue settled by *Reeves* is that a debtor may use the Tennessee wild card exemption on top of the Tennessee personal injury exemption when dealing with a personal injury award or settlement. This is true even if the personal injury action is not commenced until after the bankruptcy petition is filed. This is also true if the action was not disclosed at the time the bankruptcy petition was filed. A debtor may claim \$7,500.00 of the award as exempt under Tenn. Code Ann. § 26-2-111(2)(B) and an additional portion of the award as exempt personal property under Tenn. Code Ann. § 26-2-103(a). *Id.* at 842. The amount of a personal injury award that may be claimed as exempt under § 26-2-103(a) is limited to the \$10,000.00 total allowed exemption. Thus, if a debtor is claiming \$2,000.00 worth of other assets as exempt under § 26-2-103(a), then his exemption in the personal injury settlement would be limited to \$8,000.00. Additionally, if a debtor receives a personal injury settlement of \$10,000.00, he may claim \$7,500.00 of his interest in the settlement as exempt under Tenn. Code Ann. § 26-2-

111(2)(B) and \$2,500.00 of his interest as exempt under Tenn. Code Ann. § 26-2-103(a). His exemptions, when added together, cannot exceed the total dollar amount of the underlying judgment.

The court in *In re Thompkins*, 263 B.R. 223, 226 (Bankr. W.D. Tenn. 2001) reached the same conclusion as the one in *In re Reeves*. In *Thompkins*, the debtors were involved in a car accident prior to filing for bankruptcy relief. The debtors received an insurance settlement post-petition and claimed a portion as exempt under Tenn. Code Ann. § 26-2-111(2)(B) and another portion as exempt under Tenn. Code Ann. § 26-2-110. The trustee in *Thompkins* argued that Tenn. Code Ann. § 26-2-111(2)(B) serves as an absolute cap on the amount of a personal injury settlement that may be exempted by a debtor. *In re Thompkins*, 263 B.R. at 225. The *Thompkins* court rejected the trustee's argument and held that the debtors were permitted to stack the personal bodily injury exemption under Tenn. Code Ann. § 26-2-111 and the insurance payment exemption under Tenn. Code Ann. § 26-2-110, in order to exceed the individual exemption caps. *Id.* at 227.

Other courts that have addressed the issue of whether debtors may claim multiple exemptions for a single asset have determined that they may. *In re Barker*, 768 F.2d 191 (7th Cir. 1985) (allowing a debtor to claim two separate personal property exemptions in one automobile). States with exemptions similar to Tennessee's have also concluded that wild card exemptions may be stacked with other applicable exemptions. *In re Villancourt*, 260 B.R. 66, 72 (D.N.H. 2001) (allowed debtor to claim an exemption in his home under New Hampshire's homestead exemption and wild card exemption which provided for an exemption in "any property"); *In re Highsmith*, No. 97-81535, 1997 WL 33474943 (Bankr. C.D. Ill. Aug. 14, 1997) (allowing debtors to stack a wild card exemption on top of an exemption for tools of the trade); *In re Johnson*, 57 B.R. 635, 638 (Bankr. N.D. Ill. 1986) (concluding "The only reasonable interpretation of the phrase 'any other property' is that it means just that, any other property, i.e., that a debtor may claim the wild card exemption in any other property without limitation.").

In the case of *In re Hafner*, 383 B.R. 350 (Bankr. N.D. Fla. 2008), the bankruptcy court was asked to consider whether a debtor could claim a portion of his automobile as exempt under Florida's motor vehicle exemption and another portion as exempt under

Florida's wild card personal property exemption. The court began with the unambiguous language of both exemption statutes. Florida's motor vehicle exemption provides "that a debtor may claim an exemption *not exceeding* \$1,000 toward a single motor vehicle." *Id.* at 351-52 (citing Fla. Stat. § 222.25(1)). Florida's wild card exemption "provides the debtor with a 'wildcard' exemption in personal property if the debtor does not claim or receive the benefit of the homestead exemption." *Id.* at 352 (citing Fla. Stat. § 222.25(4)). The Trustee argued that the statutes, when read together, limited the aggregate exemption of one motor vehicle to \$1,000.00. The court disagreed and held that there was "nothing in the plain language of [Florida's wild card exemption] that" prevented a debtor from stacking the two exemptions. *Id.* at 352. The court reasoned:

[t]he Florida legislature is presumed to pass subsequent enactments with full awareness of all prior enactments. Therefore, the legislature is presumed to have had "full awareness" of subsection (1) when it amended § 222.25 to add subsection (4) in 2007. While Section 222.25(4) clearly and unambiguously excludes debtors who elect to "receive the benefits of a homestead exemption" from receiving the benefits of the statutory personal property exemption, the language does not exclude debtors who receive the benefits of the motor vehicle exemption. Moreover, Section 222.25(4) allows a debtor to exempt any "personal property" and does not specifically exclude motor vehicles from the exemption. If the legislature intended to prohibit debtors from stacking subsection (1) with (4), the legislature knew how to include such exclusionary language in the statute.

Id. (internal citations and quotation marks omitted).

In the case of *In re Pees*, No. 09-32472, 2013 WL 3808153 (Bankr. N.D. Ohio July 22, 2013), the court reviewed Ohio's wild card exemption and determined that stacking was permissible. Like Tenn. Code Ann. § 26-2-103(a), Ohio's wild card exemption uses the word "aggregate" in setting forth the exemption: "the person's aggregate interest in any property, not to exceed one thousand seventy-five dollars[.]" Ohio Rev. Code Ann. § 2329.66(A)(18). The *Pees* court reasoned that "[i]t is ... logical to conclude that, by the placement of the word 'aggregate' in [Ohio's wild card exemption], a debtor can combine, and even stack, Ohio's wildcard exemption in any manner he or she chooses." *Id.* at *5.

In the case at bar, the Trustee argues that the personal bodily injury exemption is meant to be used as an absolute cap on the amount of personal injury awards a debtor may exempt, especially when they are unliquidated at the time of filing. Had the

Tennessee legislature intended to place an absolute cap of \$7,500.00 on personal injury awards, with no exceptions, they had ample opportunity to do so. The legislature could have either included such language in Tenn. Code Ann. § 26-2-111(2)(B) or made clear that Tenn. Code Ann. § 26-2-103(a) could not be used by debtors who claim a personal bodily injury exemption under Tenn. Code Ann. § 26-2-111(2)(B). The legislature did neither of these. In fact, as evidenced by the inclusion of subsection (b) in § 26-2-103, and the limits set forth in § 26-2-111(2)(B), the Tennessee legislature was not hesitant to place limitations on the relevant exemptions. Therefore, had the legislature intended to limit a debtor's ability to claim exemptions in personal injury actions, it certainly could have so provided in either statute. In addition, Tennessee's personal injury exemption states that it is "[i]n addition to the property exempt under § 26-2-103[.]" The Court concludes that this language, along with the absence of any limitations elsewhere, expresses an legislative intent to allow a debtor to stack a personal injury exemption on top of a personal property exemption. No state or federal court that has addressed the Tennessee exemption statutes has concluded that they cannot be so combined or are limited in the way in which the Trustee asserts.

The Trustee in this case does not dispute that if the Actos Action had been settled prior to the Debtors filing for bankruptcy relief the proceeds would be considered "personal property." Instead, he argues that because the personal injury action was not settled at the time the case was filed, the proceeds are not personal property. The Trustee offered no support for this argument and the Court can find none. As stated *supra*, when an exemption statute defines an exemption in terms of a dollar amount, it is the debtor's interest in the property, not the property itself, that is exempted from the bankruptcy estate. The Court could find no authority for the proposition that personal injury settlement proceeds awarded post-petition are somehow different than those awarded pre-petition. Because both are rooted sufficiently in the pre-petition past, both types of awards or settlements are property of the estate. Until a cause of action results in a judgment or settlement, the cause of action belongs to the estate. Once the state court action results in a verdict or settlement, the estate's property interest transfers to the proceeds of the action.

A 1947 decision from the Sixth Circuit Court of Appeals supports the conclusion that the estate's interest and the debtor's exemption in the cause of action transfers to the proceeds once that action is resolved. In *Burns v. Kinzer*, 161 F.2d 806 (6th Cir. 1947), a debtor had a pending state court action against his employer at the time he filed for bankruptcy relief. The debtor did not disclose this action in his bankruptcy schedules. After his case was closed, he moved to reopen his bankruptcy proceeding to list the claim. He asserted that if he were to recover against his employer, he would have sufficient money to repay all of his creditors. The case was reopened and the debtor amended his schedules to claim a portion of any proceeds from the state court action as exempt personal property under Tennessee law. The bankruptcy trustee subsequently settled the state court action for \$250.00. Both the bankruptcy court and the district court disallowed the debtor's exemption in any portion of the \$250.00 because the Tennessee exemption statute only provided for an exemption in personal property and not cash.

On appeal, the Sixth Circuit reversed both lower courts. Although the personal property exemption itself did not list "cash" as exempt thereunder, the Sixth Circuit recognized that another section of the exemption statutes defined "personal property" to include "money, goods, chattels, things in action, and evidences of debt." *Id.* at 807. Consequently, the Sixth Circuit concluded that "the language of the statute seems plainly to support the position of the bankrupt that his exemption extended to the inclusion of the value of his chose in action up to" the monetary limits of the personal property exemption. *Id.* Once the trustee settled the matter, the Sixth Circuit recognized that the action was converted into money and held that the debtor was entitled to exempt a portion of the cash as exempt personal property. *Id.*

Construing the Tennessee exemption statutes together in the most favorable way for Debtors in the case at bar, it is clear that Joe Smith is entitled to exempt \$7,500.00 of the Actos Action settlement pursuant to Tenn. Code Ann. § 26-2-111(b)(2) and to exempt another \$10,000.00 of the settlement pursuant to Tenn. Code Ann. § 26-2-103(a). The personal injury exemption set forth in Tenn. Code Ann. § 26-2-111(b)(2) is a guideline for what can be claimed as a personal injury award, not a cap on all possible exemptions arising out of the same asset. As personal injury awards are inherently personal property,

they can, under the plain language of Tenn. Code Ann. § 26-2-103(a), also be exempted under the wild-card exemption. Additionally, the Court could find no statutory basis for denying Joe Smith's claimed exemptions in the settlement proceeds. Therefore, pursuant to the Supreme Court's mandate in *Law v. Siegel*, 571 U.S. 415, 424 (2014), the Court finds that the exemptions in this case are permissible.

III. CONCLUSION

The Court concludes that the Tennessee exemption statutes allow debtors to claim both a personal property exemption under Tenn. Code Ann. § 26-2-103(a) and a bodily injury exemption under Tenn. Code Ann. § 26-2-111(b)(2) in a personal injury settlement. For this reason, the Court will issue an order denying the Trustee's objection to the Debtors' amended claimed exemptions.

An order will be entered in accordance herewith.

IT IS SO ORDERED.

Mailing List

Debtors

Michael T. Tabor, Chapter 7 Trustee

Cayce Dempsey Maddox, attorney for Debtors