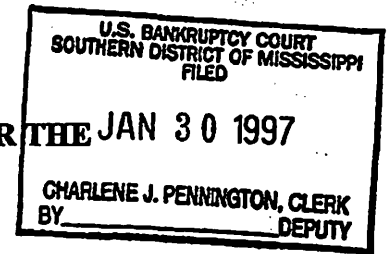


**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**



**IN RE:**

**CHAPTER 7**

**JOE R. BREWER**

**CASE NO. 9504001JEE**

**Hon. Derek A. Henderson  
111 E. Capitol St. Suite 455  
Jackson, MS 39201**

**Attorney for Debtor**

**Hon. C. Ashley Atkinson  
P. O. Box 1266  
McComb, MS 39648**

**Attorney for Pike County  
National Bank**

**Hon. Frank M. Youngblood  
P. O. Box 22686  
Jackson, MS 39205**

**Chapter 7 Trustee**

**Edward Ellington, Judge**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter came before the Court on the *Objection To Exemption* filed by Pike County National Bank. After considering the objection and the briefs filed by the parties, the Court finds that the objection is not well taken and should be overruled.

## FINDINGS OF FACT

The facts are not in dispute. On November 24, 1995, the Debtor, Joe R. Brewer, filed a petition for relief under Chapter 7 of the United States Bankruptcy Code.<sup>1</sup> In his original schedules filed on December 7, 1995, the Debtor does not list any interest in insurance policies on his *Schedule B--Interest In Property*. On June 21, 1996, the Debtor amended his *Schedule B--Interest In Property* as follows to list his interest in three insurance policies:

Philadelphia Life	cv--\$8,900.00
Farm Bureau	cv--\$1,483.00
Woodmen of the World	cv--\$3,737.00.

On June 21, 1996, the Debtor also amended his *Schedule C--Property Claimed As Exempt* to include the following cash value in insurance policies:

Life insurance policy w/Farm Bureau	§85-3-11	\$1,483.00
Life insurance policy w/Woodman of the World	§85-3-11	\$3,737.00

On July 18, 1996, Pike County National Bank (Bank) filed an *Objection To Exemptions* stating that "the Debtor is claiming as exempt three (3)<sup>2</sup> life insurance policies. That the cash value of the life insurance policies are not exempt under Section 85-3-11." *Objection To Exemption*, July 18, 1996, p. 1, ¶ I and II.

The parties entered into an *Agreed Order* on October 16, 1996, in which the parties agreed upon deadlines for the submission of briefs. On October 30, 1996, the Bank filed its *Brief In*

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<sup>1</sup>Hereafter, all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code unless otherwise stated.

<sup>2</sup>Although the objection states that the Debtor is claiming three life insurance policies as exempt, upon examination of schedule C, the Debtor is in fact only claiming two policies as exempt.

*Opposition To Claim For Exemption.* On November 19, 1996, the Debtor filed his *Memorandum In Support Of Debtor's Exemption.* The Bank filed its *Rebuttal Brief In Opposition To Claim For Exemption* on December 5, 1996. In the *Agreed Order*, the parties also set a trial date for the Bank's complaint objecting to the Debtor's discharge (Adversary number 960080) and stated that "(a)ny testimony on this objection shall be taken by this Court on the same day as the trial on the complaint objecting to the Dischargeability (*sic*) of Joe R. Brewer." *Agreed Order*, October 16, 1996, p. 2. However, on January 14, 1997, the parties submitted an *Agreed Order To Submit Objection To Exemption To The Court On Briefs.*

## CONCLUSIONS OF LAW

### I.

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(B).

### II.

Section 541(a)(1) of the Bankruptcy Code provides that "all legal or equitable interests of the debtor in property as of the commencement of the case" become property of the bankruptcy estate. Section 522(b)(2)(A) provides that a debtor may exempt from property of his estate "any property that is exempt under...State or local law that is applicable on the date of the filing of the petition...." The Debtor claims the cash value in the two life insurance policies as exempt pursuant to Miss. Code Ann. § 85-3-11 (1996). Miss. Code Ann. § 85-3-11 provides in pertinent part:

**§ 85-3-11. Proceeds of life insurance policy; named beneficiaries; certain proceeds of policies exempt from liability for debts of person insured.**

(1) Except as provided in subsection (2), all proceeds of a life insurance policy including cash surrender and loan values, shall inure to the party or parties named as the beneficiaries thereof, free from all liability for the debts of the person whose life was insured, even though such person paid the premium thereon. In addition, all proceeds, including cash surrender and loan values, of a policy of life insurance owned by or assigned to another, shall inure to the beneficiary or beneficiaries named therein, subject to terms of any assignment, free from all liability for debts of the person whose life was insured.

(2)(a) The exemption authorized in Subsection (1) shall not apply to that portion of the cash surrender value or loan value of any life insurance policy which exceeds the sum of Fifty Thousand Dollars (\$50,000.00) as a result of premiums paid or premium deposits or other payments made within twelve (12) months of issuance of a writ of seizure, attachment, garnishment or other process or the filing of a voluntary or involuntary bankruptcy proceeding under the United States Code.

In its briefs, the Bank does not cite any cases to support its position that the Debtor cannot exempt the cash value of the insurance policies. The Bank simply recites Miss. Code Ann. § 85-3-11 and states: "(t)he simple fact is that this statute is not operative under the facts of his case. Mr. Brewer is not dead therefore, there are no proceeds of a life insurance policy, the proceeds which would inure to Mrs. Brewer, free from all liability for the debts of the person whose life was insured." *Brief In Opposition To Claim For Exemption*, October 30, 1996, p. 3.

In support of his claim that the cash value in the life insurance policies are exempt, the Debtor cites in his brief In re Henderson, 167 B.R. 67 (Bankr. N.D. Miss. 1993) which was written by United States Bankruptcy Judge David W. Houston, III, of the Northern District of Mississippi. In Henderson, Judge Houston ruled on the same issue before this Court. Judge Houston found that the issue of the application of Miss. Code Ann. § 85-3-11 to the cash value of a life insurance policy had not been addressed "head on" by the Mississippi Supreme Court. However, Judge Houston found

the case of Bonds v. Bonds, 409 So.2d 704 (Miss. 1982) to be reasonably analogous. Even though the Bonds opinion was based on a debt for alimony and child support, Judge Houston found that “(t)he opinion seems to be fairly clear that had the obligation been one other than for alimony and support that the cash surrender values of the three policies could have been claimed as exempt by the owner.” Bonds, 167 B.R. at 72.

Applying the reasoning used by the Mississippi Supreme Court in Bonds, Judge Houston held:

The court must consider the literal language set forth in § 85-3-11. The words “including cash surrender and loan values” have no meaning to a beneficiary following the death of the insured. At that point, the entire face amount of the policy has become due and payable. The cash surrender value can only benefit the owner during his or her lifetime should the policy be surrendered. In such an event, the owner would then, indeed, be the “beneficiary” of the cash surrender value. Therefore, this court concludes that unless the creditor’s claim is in the nature of alimony, support, or something akin thereto, that the cash surrender value can be claimed as an exemption by the owner of the policy pursuant to § 85-3-11. Were this not the case, the Mississippi Supreme Court would have simply stated that the owner of the insurance policies could not claim the cash surrender values as exempt under any circumstances. It did not do so. It clearly held the cash surrender values could not be claimed as exempt against a claim for alimony and support.

Bonds, 167 B.R. at 73.

Applying Judge Houston’s ruling in Bonds to the case at bar, the Court finds that the Debtor may exempt the cash value in his life insurance policies pursuant to Miss. Code Ann. § 85-3-11 to the extent that such exemption claims do not exceed \$50,000.

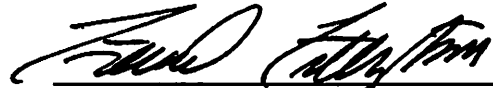
### CONCLUSION

Pursuant to § 541, all property owned by the Debtor at the time he filed his petition for relief under Chapter 7 became property of his bankruptcy estate. Section 522(b)(2)(A) permits the Debtor to exempt property from his bankruptcy estate as permitted by state law. Pursuant to Miss. Code

Ann. § 85-3-11 (1996), the Debtor may exempt the cash value in his life insurance policies to the extent the claimed exemption does not exceed \$50,000.

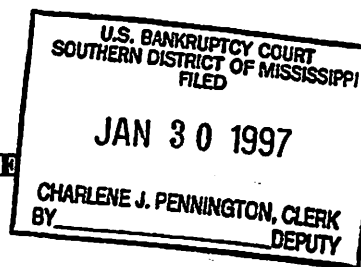
A separate judgment consistent with this opinion will be entered in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

SO ORDERED this the 30<sup>th</sup> day of January, 1997.



UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE:

CHAPTER 7

JOE R. BREWER

CASE NO. 9504001JEE

**FINAL JUDGMENT**

Consistent with the opinion dated contemporaneously herewith:

**IT IS HEREBY ORDERED** that the Debtor may exempt the cash value in his life insurance policies to the extent the claimed exemption does not exceed \$50,000.

**IT IS FURTHER ORDERED** that the *Objection To Exemption* filed by Pike County National Bank is not well taken and is hereby overruled.

**SO ORDERED** this the 30<sup>th</sup> day of January, 1997.



UNITED STATES BANKRUPTCY JUDGE