SO ORDERED.

SIGNED this 30th day of April, 2025.

LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

In re:	)	
	)	
Vermelle Jones Bryant,	)	Case No. 21-50654
	)	
Debtor.	)	Chapter 7
	)	

OPINION AND ORDER
OVERRULING TRUSTEE'S OBJECTION TO AMENDED EXEMPTIONS

THIS MATTER comes before the Court on the Objection to Debtor's Claim for Property Exemptions (Docket No. 26, the "Objection") filed by Daniel C. Bruton, the chapter 7 trustee (the "Trustee") for the bankruptcy estate of Vermelle Jones Bryant (the "Debtor"). The Trustee objects to the Debtor's claimed exemption in $204,000 she received postpetition in settlement of a prepetition personal injury claim, which the Debtor asserts is fully exempt under N.C. Gen. Stat. § 1C-1601(a)(8). (Docket No. 25). The Objection, and the responses thereto, address and turn on a single legal question under § 1C-1601(a)(8): whether "compensation for personal injury" under the exemption statute encompasses funds received *postpetition* in satisfaction of a prepetition personal injury claim or whether the compensation must be fixed and received *prepetition*. For the reasons discussed

below, the Court will overrule the Objection, finding that the Debtor may claim the settlement proceeds as exempt.

JURISDICTION

The Court has jurisdiction over this contested matter under 28 U.S.C. § 1334. Under 28 U.S.C. § 157(a) and Local Civil Rule 83.11, the United States District Court for the Middle District of North Carolina has referred this proceeding to this Court. An objection to a debtor's claim of exemption is a core proceeding under 28 U.S.C. § 157(b)(2)(B) in which this Court is statutorily authorized to enter a final judgment. The Court also has constitutional authority to enter a final order in this matter. Although the exemptions at issue in the Objection may derive from state law, a dispute over an exemption in property of the estate "stems from the bankruptcy itself" and therefore may be constitutionally decided by the bankruptcy court. *In re Edelson*, 533 B.R. 651, 653 (Bankr. N.D. Ill. 2015) (quoting *Stern v. Marshall*, 564 U.S. 462, 499 (2011)), *aff'd sub nom*. *Loventhal v. Edelson*, 579 B.R. 456 (N.D. Ill. 2016), *aff'd,* 844 F.3d 662 (7th Cir. 2016); *see also In re Myatt*, No. 23-50239, 2023 WL 5761917, at *1 (Bankr. M.D.N.C. Sept. 6, 2023) (citing *In re Carlew*, 469 B.R. 666, 673 (Bankr. S.D. Tex. 2012)).

BACKGROUND

On October 27, 2021, the Debtor commenced the above-captioned case by filing a petition under chapter 7 of the Bankruptcy Code; Daniel Bruton was appointed as Trustee the next day. The Debtor did not list a pending or potential personal injury claim on her schedules, claim for property exemptions, or statement

of financial affairs. (Docket No. 1). Four weeks later, the Trustee filed a report of no distribution stating there were no assets available for distribution to creditors from the Debtor's estate. The Debtor later received a discharge, and the Court entered a final decree, closing the case on February 7, 2022.

Nearly three years later, upon learning that the Debtor had settled a prepetition product liability claim for $204,000, the United States Bankruptcy Administrator ("the BA") filed a motion to reopen the case. (Docket No. 15). Through counsel, the Debtor represented that she had no objection to reopening the case, the injury occurred shortly before the bankruptcy filing, and she intended to file amended schedules to list the asset as well as an amended claim for property exemptions. The Court entered an order reopening the case on January 28, 2025. (Docket No. 19). The Debtor subsequently filed amended schedules and an amended claim for property exemptions to disclose and claim the full value of the settlement as exempt "compensation for personal injury" under § 1C-1601(a)(8). (Docket Nos. 24, 25).

The material facts regarding the Debtor's personal injury and the settlement are not in dispute. The "Debtor's Product Liability/Medical Device" injury occurred during a medical procedure conducted on October 5, 2021, 22 days before she filed the bankruptcy petition. The Debtor then retained personal injury counsel in July 2022, several months after her bankruptcy case closed, and ultimately settled the claim for $204,000 on September 20, 2024. (Docket Nos. 24, 34, p. 2). The parties agree that the Debtor's personal injury claim arose prepetition and was part of the

bankruptcy estate on the petition date.[1] Because the Debtor's personal injury cause of action and the potential compensation for that injury were not scheduled, those interests remained property of the estate subject to potential administration by the Trustee pending any amended exemptions claimed by the Debtor. *See* 11 U.S.C. § 554.

The Trustee timely filed his Objection under Federal Rule of Bankruptcy Procedure 4003(b)(1), arguing that, on the petition date, the Debtor possessed only a claim or cause of action for personal injury and could not assert an exemption in compensation she had not yet received. (Docket No. 26, ¶6). Based on his reading of the statutory language, the Trustee—who carries the burden as the party objecting to an exemption claim[2]—takes the position that compensation for a prepetition personal injury claim is not encompassed by N.C. Gen. Stat. § 1C-1601(a)(8) unless such claim was liquidated or settled in favor of the claimant prior to the petition date. (Docket No. 26, ¶¶6, 11-14; Docket No. 35, ¶¶11, 45).

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[1] Based on the filings and representations made at the hearing, the parties agree that the Debtor's personal injury claim is an asset of the bankruptcy estate. Consequently, the Court will assume, without deciding, that the claim was estate property. *See Segal v. Rochelle*, 382 U.S. 375, 380 (1966); *Beaman v. Shearin (In re Shearin)*, 224 F.3d 346, 351 (4th Cir. 2000); *Andrews v. Riggs Nat'l Bank (In re Andrews)*, 80 F.3d 906, 910 n.9 (4th Cir. 1996).

[2] Under Rule 4003(c) of the Federal Rules of Bankruptcy Procedure, the objecting party bears the burden of proving the exemption is wrongfully claimed by a preponderance of the evidence. *In re McLain*, No. 19-51262, 2022 WL 880239, at *2 (Bankr. M.D.N.C. Feb. 9, 2022) (citing *In re Jolly*, 567 B.R. 480, 482 (Bankr. M.D.N.C. 2017)). Rule 4003(c) creates a burden-shifting framework, in which the objecting party must make an initial showing that an exemption is not properly claimed, after which the burden shifts to the debtor to establish that the property was properly exempted. *In re Man*, 428 B.R. 644, 653 n.3 (Bankr. M.D.N.C. 2010) (quoting *In re Carter*, 182 F.3d 1027, 1029 n.3 (9th Cir. 1999)). Even with this burden-shifting approach, however, the objecting party retains the burden of persuasion. *Id.*; *see also In re Walker-Lightfoot*, 660 B.R. 118, 123-26, 125 n.17 (Bankr. D. Md. 2024).

In contrast, the Debtor, through an amended response, maintains that North Carolina exempts "the substantive right to compensation itself, not merely funds already in hand." (Docket No. 34, p. 4). She contends the Trustee's reading of § 1C-1601(a)(8) is overly restrictive and runs counter to the debtor-friendly construction afforded North Carolina's exemption scheme, all while creating serious practical problems and arbitrary distinctions between debtors in and out of bankruptcy. (Docket No. 34).

The BA supports the Debtor's reading of § 1C-1601(a)(8), asserting that the Trustee's interpretation clashes with the longstanding application of the exemption to personal injury lawsuits pending on the petition date. (Docket No. 32, p. 4) (citing *Cannon v. Wal-Mart Assocs., Inc.*, No. 5:19-CV-373-D, 2021 WL 4164075, at *2 (E.D.N.C. Sept. 10, 2021) and *In re Simmons*, No. 06-50913-7, 2006 WL 3392943, at *1 (Bankr. M.D.N.C. Nov. 22, 2006)). The Court, he urges, should liberally construe the statute in favor of allowing the exemption, finding that compensation for personal injury includes an unliquidated interest such as a pending cause of action that asserts the right to such compensation. (Docket No. 32, p. 5) (citing *Elmwood v. Elmwood*, 244. S.E.2d 668, 678 (N.C. 1978)).

The Court held a hearing on the Objection on March 19, 2025, at which Daniel C. Bruton appeared in his capacity as Trustee, John Paul H. Cournoyer appeared as the BA, and Koury L. Hicks appeared on behalf of the Debtor, who was also present. At the conclusion of the hearing, the Court took the matter under advisement.

DISCUSSION

Before assessing the parties' competing interpretations of § 1C-1601(a)(8), the Court considers the interplay of the federal Bankruptcy Code and state exemption law. The Bankruptcy Code broadly provides that "all legal or equitable interests of the debtor in property as of the commencement of the case" are part of the bankruptcy estate, *see* 11 U.S.C. § 541(a), including "all kinds of property, tangible and intangible, causes of action, and all other forms of property." 5 COLLIER ON BANKRUPTCY ¶ 541.03 (16th ed. 2025)). The Bankruptcy Code, however, does not define the precise nature or extent of those interests; rather state law determines what particular interest a debtor has in property. *See Barnhill v. Johnson*, 503 U.S. 393, 398 (1992); *Butner v. United States*, 440 U.S. 48, 54-55 (1979); *Wolff v. United States, IRS (In re FirstPay, Inc.)*, 773 F.3d 583, 590 (4th Cir. 2014).

The Bankruptcy Code also allows a debtor to exempt or "withdraw from the estate" certain property interests, thereby preventing a trustee from distributing that property. *Schwab v. Reilly*, 560 U.S. 770, 791 (2010) (quoting *Rousey v. Jacoway*, 544 U.S. 320, 325 (2005)) (emphasis removed). In line with a well-settled "basic principle of bankruptcy law," *In re Cunningham*, 513 F.3d 318, 324 (1st Cir. 2008), "North Carolina bankruptcy courts have routinely determined a debtor's exemptions based on the facts in existence on the date the petition is filed." *In re McCowan*, No. 09-10347-8-SWH, 2018 WL 4078613, at *6 (Bankr. E.D.N.C. Aug. 22, 2018) (collecting cases); *see also In re Morris*, No. 12-31633, 2013 WL 2595936, at *5 (Bankr. W.D.N.C. June 11, 2013) (citing *In re John Taylor Co.*, 935 F.2d 75, 78 (5th

Cir. 1991)) ("The exemptions available to a debtor are those in force at the petition date."). Where an objection is made "as to the debtor's eligibility for an exemption," the court determines the appropriateness of an exemption claim "based on the law and facts that are applicable as of the petition date." 4 COLLIER ON BANKRUPTCY ¶ 522.05 (16th ed. 2025))

The exemption framework reflects the interplay between federal bankruptcy law and state law; the Bankruptcy Code provides a list of exemptions that a debtor may claim, *see* 11 U.S.C. § 541(b)(2) and (d), but also allows states to provide their own exemptions and even opt out of the federal exemption scheme altogether. 11 U.S.C. § 541(b)(1). North Carolina is one such opt-out state, meaning "the exemptions provided in the Bankruptcy Code … are not applicable to [its] residents." N.C. Gen. Stat. § 1C-1601(f). Accordingly, the Court "looks to North Carolina law when determining the Debtor's available exemptions." *In re Parker*, 610 B.R. 535, 537 (Bankr. E.D.N.C. 2019); *see also Law v. Siegel*, 571 U.S. 415, 425 (2014) ("It is of course true that when a debtor claims a state-created exemption, the exemption's scope is determined by state law[.]").

The Trustee presents a novel reading of N.C. Gen. Stat. § 1C-1601(a)(8) that, according to the parties, has never been raised or considered. Although numerous courts at the state and federal level have referenced and analyzed § 1C-1601(a)(8) in other respects, the parties have not cited, and the Court has not found, a single case that addresses the argument raised by the Trustee. As such, and without any controlling caselaw directly on point, this Court must predict how the North

Carolina Supreme Court would decide if presented the issue. *See Colony Ins. Co. v. Peterson*, 582 Fed. App'x 156, 160 (4th Cir. 2014) ("Thus, we first look to see if the Supreme Court of North Carolina has spoken on this issue; if not, we must predict how that court would rule on it."); *City of Gastonia v. Balfour Beatty Constr. Corp.*, 222 F. Supp. 2d 771, 773 (W.D.N.C. 2002) (finding that, "to the extent that North Carolina law is unclear or unsettled, the Court must attempt to predict how the North Carolina Supreme Court would rule, were it faced today with a like issue"). To do so, the Court must employ "language, context, precedent, and history," the "normal tools of statutory interpretation," *State v. Daw*, 904 S.E.2d 765, 791 (N.C. 2024) (Earls, J., dissenting), to predict how North Carolina's highest court would rule on whether "compensation for personal injury" under the exemption statute encompasses funds received postpetition from a prepetition personal injury claim.

The North Carolina Supreme Court has repeatedly provided a specific roadmap for interpreting the meaning of a statute:

> When the language of a statute is clear and without ambiguity, it is the duty of this Court to give effect to the plain meaning of the statute, and a judicial construction of legislative intent is not required. However, when the language of a statute is ambiguous, this Court will determine the purpose of the statute and the intent of the legislature in its enactment.… In cases of any ambiguous statutory language, we examine the language of the statute itself, the context, and what the legislation seeks to accomplish as the best indicators of the legislature's intent.

Philip Morris USA, Inc. v. N.C. Dep't of Revenue, 909 S.E.2d 197, 203 (N.C. 2024) (citations omitted).

North Carolina has also adopted and applied general rules of construction for exemption statutes, which are "to be given a liberal construction favorable to the exemption." *Elmwood*, 244 S.E.2d at 678; *see also In re Crosson*, 649 B.R. 668, 669 (Bankr. M.D.N.C. 2023). As with statutory interpretation generally, when the language of a provision within § 1C-1601(a) "is clear and without ambiguity, 'there is no room for judicial construction,' and the statute must be given effect in accordance with its plain and definite meaning." *AVCO Fin. Servs. v. Isbell*, 312 S.E.2d 707, 708 (N.C. Ct. App. 1984) (quoting *Williams v. Williams*, 261 S.E.2d 849, 854 (N.C. 1980)). In the case of ambiguity, "[i]f 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 Man*, 428 B.R. at 653 (citing *Elmwood*, 244 S.E.2d at 678)). Nevertheless, when a literal interpretation of a statute such as § 1C-1601(a) "yields absurd results … or contravenes clearly expressed legislative intent, 'the reason and purpose of the law shall control and the strict letter thereof shall be disregarded.'" *AVCO*, 312 S.E.2d at 708 (quoting *State v. Barksdale*, 107 S.E. 505, 507 (N.C. 1921)); *see also C. Invs. 2 v. Auger*, 881 S.E.2d 270, 276 (N.C. 2022).

Here, the meaning and scope of the personal injury exemption turn on the interplay of two phrases. The exemption statute provides in pertinent part:

> (a) Exempt property. -- Each individual, resident of this State, who is a debtor is entitled ***to retain*** free of the enforcement of the claims of creditors:
>
> …
>
> (8) ***Compensation for personal injury***, including compensation from private disability policies or annuities, or

> compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

N.C. Gen. Stat. § 1C-1601(a)(8) (2025) (emphases added). Put simply, a North Carolina debtor claiming an exemption under § 1C-1601(a)(8) is entitled "to retain" any "compensation for personal injury." There are no applicable definitions within the statute itself to consult. *See In re Hutsell*, No. 24-01440-5-PWM, 2025 WL 96902, at *5 (Bankr. E.D.N.C. Jan. 14, 2025) (citing *In re Ragan*, 64 B.R. 384, 386-87 (Bankr. E.D.N.C. 1986)) (noting that the term "compensation" was not defined within the state statute); *In re Quevedo*, No. 23-80195, 2024 WL 3754885, at *5 (Bankr. M.D.N.C. Aug. 9, 2024) ("Section 1601 contains only two statutory definitions, Internal Revenue Code and Value, that have no bearing on the reading of subdivision (12)."). In the absence of statutory definitions, the Court must turn to the plain language of the statute.

As evidenced by the consistent dictionary definitions in use when § 1C-1601(a)(8) was drafted and enacted,[3] the first phrase—to retain—is relatively straightforward and provides that a debtor is entitled "to keep" or "continue to hold" compensation for personal injury. Although not specifying any length of time or duration, courts have interpreted the ordinary meaning of terms such as "retain"

[3] *See, e.g.*, *Retain*, THE RANDOM HOUSE COLLEGE DICTIONARY (rev. ed. 1980) (defining "retain" as "to keep possession of; to continue to use, practice, etc.; to continue to hold or have"); *Retain*, BLACK'S LAW DICTIONARY (5th ed. 1979) (defining "retain" as "to continue to hold, have, use, recognize, etc., and to keep"); *Retain*, WEBSTER'S DELUXE UNABRIDGED DICTIONARY (2nd ed. 1979) (defining "retain" as "to hold or keep in possession").

and "keep" as requiring some degree of present possession. *See, e.g.*, *Featherston v. Merrimon*, 61 S.E. 675, 678 (N.C. 1908) ("'To retain' means to hold or keep that which one already owns…It more definitely means to 'keep back' that which one then owns, for he cannot retain that to which he has no right or title."); *State v. Rogers*, 817 S.E.2d 150, 154 (N.C. 2018) ("[T]he word 'keep' refers to possessing something for at least a short period of time, or to possessing something currently and intending to retain possession of it in the future, for some designated purpose or use."); *Bd. of Trs. of the Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 563 U.S. 776, 789 (2011) ("Retain means to hold or continue to hold in possession or use. You cannot retain something unless you already have it.") (cleaned up). Therefore, a North Carolina debtor must show that she possessed, and could thereby retain, "compensation for personal injury" on the petition date in order to claim the exemption under § 1C-1601(a)(8).

The next question, then, is whether the Debtor in fact had a property interest in compensation for personal injury as of the petition date. The Trustee asserts that the plain language of § 1C-1601(a)(8) references compensation, not a right to compensation or a claim. And despite the statute's explicit inclusion of "compensation from private disability policies or annuities," which are frequently paid in installments, the Trustee contends the term "compensation" is limited to funds that have already been paid to a debtor prior to the bankruptcy filing. (Docket No. 26, ¶6). Therefore, he argues the Debtor did not have any compensation for personal injury that she could claim as exempt on the bankruptcy petition date

because she did not have funds in hand on the petition date. Moreover, any personal injury claim she possessed did not constitute a "right to compensation unless or until a judge or jury liquidates the claim" through settlement or judgment. (Docket No. 35, ¶¶ 12, 16). The Debtor counters that the term "compensation" should be read to encompass both funds in hand and funds owed but not yet paid. Using this broad definition of compensation, the Debtor had a property interest—funds owed for the prepetition personal injury but not yet paid—she could exempt under § 1C-1601(a)(8) on the petition date. Similarly, the BA argues that the better reading of § 1C-1601(a)(8) includes "any interest" in compensation for personal injury, including "an unliquidated interest." (Docket No. 32, p. 5).

The dictionaries of that time generally define compensation as something that constitutes an equivalent or recompense for loss or injury,[4] but none of the definitions directly speak to when an interest in compensation arises or whether an individual can possess a present interest in compensation that is not yet fixed through judgment or settlement.[5] The Trustee himself struggles, in both his papers

[4] *See, e.g.*, *Compensation*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1981) (defining "compensation" as "something that constitutes an equivalent or recompense"); *Compensation*, THE RANDOM HOUSE COLLEGE DICTIONARY (rev. ed. 1980) (defining "compensation" as "the act of compensating" or "something given or received as an equivalent for services, debt, loss, injury, suffering, lack, etc."); *Compensation*, BLACK'S LAW DICTIONARY (5th ed. 1979) (defining "compensation" as "indemnification; payment of damages; making amends; making whole; giving an equivalent or substitute of equal value. That which is necessary to restore an injured party to his former position").

[5] This case highlights the limitations of surveying dictionaries to ascertain the plain meaning of a single statutory term. Although "the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing," *United States v. Costello*, 666 F.3d 1040, 1043 (7th Cir. 2012) (quoting *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945) (L. Hand, J.)), "dictionary definitions are acontextual, whereas the meaning of sentences

and in oral argument, to articulate the precise point at which a debtor can claim compensation as exempt, fluctuating between a bright-line cutoff wherein compensation refers only to funds in-hand and a slightly more relaxed standard allowing a debtor to exempt future disability annuity or policy payments on a prepetition injury that are fixed but not yet received as of the petition date.[6] Given the lack of statutory definitions and the inconsistencies in the Trustee's own definition for the exemptible form of personal injury compensation, and finding no clear answer in dictionaries or in prior caselaw, the Court finds the meaning of the term compensation in § 1C-1601(a)(8) to be ambiguous because there is a reasonable basis to read the disputed term broadly or narrowly.

Given this ambiguity, the Court must turn "to other methods of statutory construction such as the broader statutory context, the structure of the statute, … [and] the legislative history of the statute in question to ascertain legislative intent." *Wynn v. Frederick*, 895 S.E.2d 371, 377 (N.C. 2023) (cleaned up). In first considering the contextual meaning of the word as it is used in § 1C-1601(a)(8), the Court observes the section is notably lacking in any temporal restrictions on the

depends critically on context, including all sorts of background understandings." *Id.* at 1044 (citation omitted).

[6] In his Objection, the Trustee stakes out a firm stance where the exemption "only applies to compensation (funds in-hand)" or "received" and "not to claims or causes of action (an entitlement to future compensation) for personal injury" (Docket No. 26, ¶ 6); the Trustee seemingly contradicts that position in his reply, suggesting § 1C-1601(a)(8) could exempt a personal injury annuity or stream of payments to which the debtor become entitled by way of settlement or court order, even if not yet received in-hand. (Docket No. 35, ¶ 44). During the hearing on the Objection, the Trustee again waivered on this point, first implying that disability annuity payments received postpetition would be exempt so long as the annuity itself was "already established" as of the petition date, but later, upon further questioning, asserting that such payments received after the bankruptcy filing would be property of the estate that could not be claimed as exempt. (Docket No. 36).

term compensation. Unlike several other state exemptions for personal injury, subdivision (8) lacks any express temporal qualifiers following the word compensation—such as "recovered," "payable," or "upon receipt"—that could be read as a forward-looking[7] or backward-looking[8] temporal restriction on the types of exemptible compensation for personal injury.

Many states have modeled the relevant portion of their personal injury exemption statutes after 11 U.S.C. § 522(d)(11)(D),[9] which exempts "the debtor's

[7] Though rare, some state exemption statutes contain a forward-looking temporal qualifier, *see* Md. Cts. & Jud. Proc. § 11-504(b)(2) (2024) (exempting "money *payable* in the event of sickness, accident, injury or death") (emphasis added), that could be interpreted as applying only to a future action or present obligation and not a past payment. For instance, Minnesota's personal injury exemption statute, Minn. Stat. § 550.37(22) (effective 1980), previously exempted only "rights of action for injuries," prompting decisions finding the exemption applied only to pending or future claims as of the petition date and not to proceeds from a settlement or judgment already paid and received. *See, e.g.*, *In re Proctor*, 186 B.R. 466, 467-68 (Bankr. D. Minn. 1995); *Midland Credit Mgmt. v. Chatman*, 796 N.W.2d 534, 535-36 (Minn. Ct. App. 2011). Minnesota amended subdivision (22) in 2024 to provide protection for money-in-hand by altering the language to exempt "rights of action *or money received* for injuries." Minn. Stat. § 550.37(22) (effective August 1, 2024) (emphasis added).

[8] There are at least three states with exemption statutes containing backward-looking temporal qualifiers. *See, e.g.*, Alaska Stat. § 09.38.030(e)(3) (2024) (exempting "proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual….*upon receipt by and while it is in the possession* of the individual") (emphasis added); Miss. Code Ann. § 85-3-17 (2024) (exempting "[t]he proceeds of any judgment not exceeding ten thousand dollars *recovered* by any person on account of personal injuries sustained") (emphasis added); Nev. Rev. Stat. § 21.090(u) (2024) (exempting "[p]ayments, in an amount not to exceed $16,150, *received* as compensation for personal injury") (emphasis added). Some courts have interpreted these qualifiers to preclude debtors from exempting personal injury compensation for prepetition injuries where no judgment had been entered or settlement reached, *see Waller v. Bell (In re Waller)*, 145 Fed. App'x 877, 878 (5th Cir. 2005) (affirming bankruptcy court finding that Miss. Code § 85-3-17 required a judgment for the personal injury exemption to take effect), while others have thus far declined, or have yet to consider, whether to read and apply the statute in that manner. *See Powell v. WFM-WO, Inc.*, 129 Nev. 1145, 1145 (Nev. 2013) (noting that debtor's prepetition personal injury claim, in which the complaint was filed 13 months postpetition, was exempt up to the statutory cap); *In re Acosta*, No. 17-15347, 2019 WL 5782158, at *2 (Bankr. D. Nev. Oct. 17, 2019) (stating "[t]here is no dispute" that the debtor's postpetition settlement payment for her prepetition injury claim was exempt under Nev. Rev. Stat. § 21.090(u)).

[9] *See, e.g.*, Me. Stat. tit. 14, § 4422(14)(D) (2024); 735 Ill. Comp. Stat. 5/12-1001(h)(4) (2024); Cal. Code. Civ. Proc. § 703.140(11)(E) (West 2024); Ga. Code Ann. § 44-13-100(11)(D) (2024); Tenn. Code

right to receive, or property that is traceable to … a payment … on account of personal bodily injury." The language "right to receive" and "property that is traceable to" precedes and expressly provides forward-and-backward-looking temporal qualifiers to the word "payment." *See In re Buenviaje*, No. 2:16-BK-15191-VZ, 2016 WL 8467650, at *5 (B.A.P. 9th Cir. Mar. 10, 2017) (comparing "right to receive" and "right to receive, or property that is traceable to" and noting "[t]he difference in the statutory language suggests that [the former] applies *only to present or future income* while [the latter] includes an asset traceable to the proceeds of *prior* distributions") (emphases added); *In re Outen*, 220 B.R. 26, 29 (Bankr. D.S.C. 1998) (observing that the phrase "right to receive" in both § 522(d) and Maine's exemption statute "is forward looking"). This descriptive phrasing can provide a more explicit chronological scope to personal injury exemptions.

By comparison, the wording of § 1C-1601(a)(8) lacks *any* temporal qualifiers preceding the term compensation. Despite the statutory silence, the Trustee invites the Court to insert a temporal requirement so that a debtor may only exempt compensation for personal injury suffered before the petition date if the debtor receives payment prior to the bankruptcy filing. But courts are generally circumspect to read in a temporal restriction where the text does not expressly provide for it. *See, e.g.*, *LeClair v. Tavenner*, 128 F.4th 257, 264 (4th Cir. 2025) (reversing bankruptcy and district courts' decisions that "divined a new temporal

Ann. § 26-2-111(2)(B) (2025); Oreg. Rev. Stat. § 18.345(1)(k) (2025); N.D. Cent. Code § 28-22-03.1(9)(d) (2025).

condition" that was "nowhere in the [operating] agreement") and *Gager v. Dell Fin. Servs., LLC*, 727 F.3d 265, 272 (3d Cir. 2013) (finding Telephone Consumer Protection Act's "silence" and non-inclusion of "any express language as to whether there is a temporal restriction … does not mean that the TCPA should be interpreted as imposing a temporal restriction"). Further, the North Carolina Supreme Court cautions against "read[ing] into a statute language that simply is not there" and "cannot be derived from the text alone." *N.C. Farm Bureau Mut. Ins. Co. v. Lunsford*, 861 S.E.2d 705, 712 (N.C. 2021) (citation omitted); *see also State v. Allen*, 861 S.E.2d 273, 291 (N.C. 2021) (rejecting invitation "to read into the statute an extra-textual requirement the legislature understandably did not see fit to include"), *abrogated on other grounds by State v. Walker*, 898 S.E.2d 661, 662-63 (N.C. 2024). The Court declines to import temporal qualification into § 1C-1601(a)(8) where none exists, especially in light of the generous interpretative rule set forth by the North Carolina Supreme Court "that debtors' claims for exemptions are to be given a liberal construction in favor of the exemption." *In re Crosson*, 649 B.R. at 669 (citing *Elmwood*, 244 S.E.2d at 678). Accordingly, the Court finds "compensation," viewed in the full context of § 1C-1601(a)(8), is not temporally confined to proceeds or funds already received in-hand as of the petition date.

Nevertheless, the Debtor must still show a *prepetition* property interest in compensation for personal injury she seeks to "retain" and claim as exempt. The Trustee maintains the Debtor can make no such showing because she possessed only an unliquidated claim, which "in no way constitutes a property 'interest' in

whatever compensation that might actually later be paid." The Debtor's claim, he continues, would only "become compensation or an entitlement to compensation" when "the claim is settled or otherwise adjudicated." (Docket No. 35, ¶¶ 11-12, 45).

The fatal weakness in the Trustee's argument, however, is that North Carolina law does recognize an interest in compensation for personal injury that arises concurrently with, but is distinct from, the personal injury claim itself. The North Carolina Supreme Court has acknowledged that "[t]here is a distinction between the assignment of a claim for personal injury and the assignment of the proceeds of such claim." *Charlotte-Mecklenburg Hosp. Auth. v. First of Ga. Ins. Co.*, 455 S.E.2d 655, 657 (N.C. 1995). While "the assignment of a claim gives the assignee control of the claim and promotes champerty … [making it] against public policy and void[,]" "[t]he assignment of the proceeds of a claim does not give the assignee control of the case and there is no reason it should not be valid." *Id.* (finding that an assignment of "all right, title and interest in and to any compensation or payment in any form that the undersigned received or shall receive as a result of or arising out of the injuries sustained" was valid); *see also Armour Fertilizer Works v. Newbern*, 185 S.E. 471, 475-76 (N.C. 1936). North Carolina courts have repeatedly reaffirmed this distinction between an assignment of the cause of action itself and an assignment of the proceeds that may be had in such an action, implicitly finding that the interest in any damages or proceeds arises at the same time as the claim itself despite the uncertain status and amount of any recovery. *See, e.g.*, *Haarhuis v. Cheek*, 820 S.E.2d 844, 850 (N.C. Ct. App. 2018)

(finding that placing an ongoing legal claim in receivership "is, at most, analogous to an assignment of the proceeds of the claim, which are assignable"); *Odell v. Legal Bucks, LLC*, 665 S.E.2d 767, 774 (N.C. Ct. App. 2008) (determining whether assignment of proceeds is champertous required assessing whether the assignee had control over the ongoing litigation of the unsettled claim); *Alaimo Family Chiropractic v. Allstate Ins. Co.*, 574 S.E.2d 496, 499-500 (N.C. Ct. App. 2002) (finding no evidence that assignee "received the right to litigate or otherwise control" the claim in general, only the proceeds of that claim); *see also* Anthony J. Sebok, *The Inauthentic Claim*, 64 VAND. L. REV. 61, 82 (2011) ("[W]hile the prohibition on the assignment of personal injury suits remains strong, the assignment of the proceeds of a personal injury suit can be assigned very easily *at any time after the injury has occurred*.") (emphasis added). Because compensation for personal injury is a category of and within proceeds or damages, *In re Butler*, No. 20-50897, 2021 WL 3415032, at *3-5 (Bankr. M.D.N.C. July 20, 2021) (discussing the categories of damages within a personal injury settlement), the Debtor held *at least two* prepetition interests under North Carolina law: a claim or cause of action for personal injury, which could not be assigned, and an enforceable interest in the proceeds, including compensation for personal injury, that she recovers on that claim.[10]

[10] Rather than claiming an exemption in a "personal injury claim" as many debtors continue to do in this district, best practice would be to claim an exemption in "compensation for personal injury" under § 1C-1601(a)(8) in an unknown or estimated amount. Although the exemption right would remain unchanged as "compensation for personal injury," a debtor may, in the event of an objection, need to amend the claim of exemptions after the successful conclusion of the cause of action to

Although North Carolina has no pertinent legislative history for § 1C-1601(a)(8)[11] to help explain the meaning of "compensation," *see In re Butler*, 2021 WL 3415032, at *3 (citing *In re Ragan*, 64 B.R. at 387), the amendment history of its companion statutory provision, N.C. Gen. Stat. § 1C-1603, further supports a broad reading that would include unliquidated prepetition interests in compensation. Section 1603 sets forth the notice and procedural requirements for claiming the exemptions provided under § 1C-1601 after a judgment has been entered. As originally drafted, § 1C-1603 provided a complete form notice to be served upon a judgment debtor, including a pre-written check box for the judgment debtor to indicate "I wish to claim as exempt the following compensation which I *received* for the personal injury of myself …" N.C. Gen. Stat. § 1C-1603(c) (effective Oct. 1, 1981) (emphasis added). In 2005, the North Carolina General Assembly amended the pre-written check box to read "I wish to claim as exempt the following compensation that I received *or to which I am entitled* for the personal injury of myself …" N.C. Gen. Stat. § 1C-1603(c) (effective Jan. 1, 2006) (emphasis added). In 2014, the General Assembly further amended the section to delete the pre-filled form notice from the statutory text, instead requiring the Administrative Office of the Courts to provide a form. N.C. Gen. Stat. § 1C-1603(a)(5) (effective Oct. 1, 2014).

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disclose the fixed amount and the categories of damages within a settlement or judgment. *See In re Butler*, 2021 WL 3415032, at *4 (reasoning that courts must focus "on the individual categories of damages, rather than the settlement as a whole, to determine whether all or some of these categories are linked or attributable to the personal injury").

[11] The Court commends the efforts of several members of North Carolina's bankruptcy bar to gather and publicly disseminate the limited legislative history available for N.C. Gen. Stat. § 1C-1601 and its later amendments.

The current form notice retains the same pre-written check box from the 2005 amendment, allowing the judgment debtor to "claim as exempt the following compensation that I received or to which I am entitled." *See* N.C. Form AOC-CV-415, § 14 (2017).

While the language "compensation for personal injury" in § 1C-1601(a)(8) has never been altered, the General Assembly amended the language on the form notice for claiming that exemption in one critical respect—to explain that judgment debtors can exempt not only compensation already "received" but also compensation to which a judgment debtor "is entitled." "[L]ater statutory amendments provide useful evidence of the legislative intent guiding the prior version of the statute[,]" *Myers v. Myers*, 837 S.E.2d 443, 448 (N.C. Ct. App. 2020) (cleaned up), and "[i]n construing a statute with reference to an amendment, it is presumed that the Legislature intended either (a) to change the substance of the original act, or (b) to clarify the meaning of it." *McAuley v. N.C. A&T State Univ.*, 881 S.E.2d 141, 146 (N.C. 2022) (citation omitted); *see also Childers v. Parker's, Inc.*, 162 S.E.2d 481, 484 (N.C. 1968) ("In some cases, the purpose of the variation may be to improve the diction, or to clarify that which was previously doubtful.") (citation omitted). After considering the relationship between the two companion sections, particularly the intended role of § 1C-1603 in informing judgment debtors of the scope of their available exemptions under § 1C-1601, the Court finds the 2005 amendment was intended as a clarifying amendment to more precisely enunciate the scope of the "compensation for personal injury" exemption under § 1C-1601(a)(8). The language

added to § 1C-1603 through the 2005 amendment, which is still in use through the Administrative Office form, clarified that "compensation for personal injury" is broader than simply proceeds or funds in hand and includes contingent interests in compensation that have not yet been fixed by a judgment or settlement.

One final factor cutting against the Trustee's reading of § 1C-1601(a)(8) is the reliance interest in the longstanding interpretation of "compensation for personal injury" in this state, district, and circuit. The Court has surveyed every reported case considering § 1C-1601(a)(8) to date in which a bankruptcy debtor sought to exempt contingent but-as-yet-unreceived compensation for a prepetition personal injury. Though not directly raised by the litigants, the presiding judge or panel in every case presumed or noted that a contingent interest in compensation for prepetition personal injury would be exempt under § 1C-1601(a)(8).[12]

[12] *See, e.g.*, *In re Brank*, 67 B.R. 1005, 1006 (W.D.N.C. 1986) (assuming without discussion that compensation received after bankruptcy filing in settlement of prepetition injury was exempt under § 1C-1601(a)(8)), *aff'd sub nom. Sigmon v. Brank*, 826 F.2d 1060 (4th Cir. 1987); *Cannon*, 2021 WL 4164075, at *2 (finding plaintiff could exempt compensation received postpetition on prepetition personal injury claim to the extent it was compensatory damages); *Omar v. Metrolina Orthopaedic & Sports Med. Clinic, P.A. (In re Omar)*, No. 3:04CV479, 2008 WL 822492, at *1, 5 (W.D.N.C. Mar. 26, 2008) (noting settlement funds received after filing of bankruptcy case were exempt from the claims of other creditors as compensation for personal injury); *In re Agee*, 456 B.R. 740, 745 (Bankr. M.D.N.C. 2011) (observing that, if debtor had disclosed his prepetition personal injury claim, he could have exempted any funds received); *In re Butler*, 2021 WL 3415032, at *1 (sustaining objection to lost wages portion of settlement funds paid postpetition for a prepetition claim); *In re Burton*, No. 08-07777-8-SWH, 2011 WL 5902611, at *6 (Bankr. E.D.N.C. Nov. 3, 2011) (finding debtor "had nothing to gain" by omitting prepetition personal injury lawsuit from schedules because "assets of that nature are fully exemptible under North Carolina law"); *In re Dunn*, No. 05-09708-8, 2010 WL 2721201, at *2 (Bankr. E.D.N.C. July 7, 2010) (noting that compensation received postpetition for settlement of a prepetition personal injury claim "is fully exempt under North Carolina law"); *In re Simmons*, 2006 WL 3392943, at *2 (finding debtor could claim personal injury settlement received postpetition, including attorney fees, as exempt under § 1C-1601(a)(8)); Order at 1-2, *In re Hamlett*, No. 01-81808 (Bankr. M.D.N.C. Sept. 22, 2003), ECF No. 38 (sustaining trustee's objection to claimed exemption of prepetition personal injury claim, but on the basis that debtor acted in bad faith in failing to disclose the asset). In *Butler*, as in this case, the debtor received the settlement funds on her prepetition claim after the bankruptcy filing. Notably, however, the chapter 7 trustee in *Butler*—

This decades-long judicial reading of "compensation for personal injury" is significant given that "[l]ong acquiescence in the practical interpretation of a statute is entitled to great weight in arriving at its meaning." *Polaroid Corp. v. Offerman*, 507 S.E.2d 284, 294 (N.C. 1998) (citation omitted), *abrogated on other grounds by Lenox, Inc. v. Tolson*, 548 S.E.2d 513, 516-17 (N.C. 2001). The persuasive effect of a longstanding statutory reading is compounded by the General Assembly's failure to reject that interpretation through amendment. The North Carolina Supreme Court has instructed that, "[w]hen the legislature acts, it is always presumed that it acts with full knowledge of prior and existing law; and where it chooses not to amend a statutory provision that has been interpreted in a specific, consistent way by our courts, we may assume that it is satisfied with that interpretation." *Andersen v. Baccus*, 439 S.E.2d 136, 138 (N.C. 1994) (citation omitted); *see also Polaroid*, 507 S.E.2d at 294 (same); *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 200-01 (1974) (declining to upend "longstanding interpretation" of statutory language in light of "almost perfect consistency" among appellate courts and "continued congressional silence"). Though § 1C-1601 has been amended in other respects, the General Assembly has, to date, not chosen to amend the phrase "compensation for personal injury," and the only pertinent amendment—to § 1C-1603—served to clarify and reinforce the existing judicial view of the broad scope of the personal injury

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the same Trustee in this case—did not object to that debtor's exemption of the portion of settlement funds allocated for emotional distress. 2021 WL 3415032, at *1.

exemption.[13] In sum, given the unanimity presuming that bankruptcy debtors may exempt compensation received postpetition in settlement of a prepetition personal injury, combined with the General Assembly's reinforcement of, and unwillingness to alter, this judicial interpretation, the Court must reject the Trustee's novel reading of § 1C-1601(a)(8). *See Gen. Dynamics Land Sys. v. Cline*, 540 U.S. 581, 593-94 (2004) ("The very strength of this consensus [in reading the law the same way] is enough to rule out any serious claim of ambiguity, and congressional silence after years of judicial interpretation supports adherence to the traditional view.").

CONCLUSION

In the absence of controlling caselaw and finding the term "compensation" to be ambiguous, the Court—using the statutory tools of interpretation employed by North Carolina courts—interprets the phrase "compensation for personal injury" in § 1C-1601(a)(8) to encompass compensation for a prepetition personal injury that is received both before and after the bankruptcy filing. This finding is supported by general principles of statutory interpretation in North Carolina, the amendment history of § 1C-1601(a)(8) and its companion statute § 1603, and the background rule providing for liberal construction in favor of

[13] The Trustee posits that "it is difficult, if not impossible," to determine why the North Carolina legislature exempted compensation for personal injury but not claims for personal injuries. (Docket No. 26, ¶15). Although lacking legislative history to definitively confirm it, the formulation likely reflects the General Assembly's attempt to limit the exemption to personal injury damages, rather than other aspects of a settlement, such as property, wages, or punitive damages. *See In re Butler*, 2021 WL 3415032, at *2, 5; *In re Key*, 255 B.R. 217, 220 (Bankr. D. Neb. 2000) (finding Nebraska's personal injury exemption, which exempts only "proceeds or benefits" and not causes of action or claims, "makes sense because a particular cause of action may give rise to compensation for both personal injury and other damages such as for property destruction"). Providing an exemption for "compensation for personal injury" arguably reflects the legislature's attempt to protect the judgment debtor's make-whole relief while making available to creditors damages that are not "linked or attributable" to the personal injury. *Butler*, 2021 WL 3415032, at *2, 5.

exemptions. Longstanding judicial interpretation tacitly endorsing a broader understanding of compensation for personal injury, combined with the General Assembly's unwillingness to amend or alter the statute in response, further support the Court's decision to overrule the Trustee's linguistic arguments.

Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that the Trustee's Objection is OVERRULED.

END OF DOCUMENT

PARTIES TO BE SERVED

Vermelle Jones Bryant
Case No. 21-50654

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via cm/ecf

Edward C. Boltz on behalf of Vermelle Jones Bryant
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