

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 01 October 2004

Case No. 2004-STA-18

In the Matter of

WILLIAM J. BETTNER

Complainant

v.

CRETE CARRIER CORPORATION

Respondent

BEFORE: RUDOLF L. JANSEN
Administrative Law Judge

ORDER AFFIRMING NONAPPLICABILITY OF
THE BANKRUPTCY AUTOMATIC STAY PROVISION

William J. Bettner filed a voluntary petition in bankruptcy under Chapter 7 on June 30, 2004. Earlier on March 9, 2004, he had filed his objection to the Secretary's Findings and Order denying his request for relief under the Surface Transportation Assistance Act, 49 U.S.C. § 31105. The Secretary had concluded following an investigation that there existed no reasonable cause to believe that the provisions of the Act had been violated.

The Bankruptcy Act provides an automatic stay provision which reads as follows:

- (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities, of -

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

11 U.S.C. § 362(a) Since the Claimant is a resident of the State of Illinois, the law of the Seventh Federal Circuit applies. That Circuit has determined that the automatic stay provision does not apply to suits by the debtor. *Aiello v. Providian Financial Corp.*, 239 F.3d 876 (7th Cir. 2001); *Alpern v. Lieb*, 11 F.3d 689, 690 (7th Cir. 1993); *Martin-Trigona v. Champion Federal Savings & Loan Ass'n*, 892 F.2d at 577 (7th Cir. 1989). Since the automatic stay provisions are not applicable, this matter must move forward to hearing.

In his responsive statement to an Employer Motion to Dismiss, Complainant's counsel, Paul O. Taylor, advises that it is the intention of the Trustee in Bankruptcy to pursue the claim of William J. Bettner in this proceeding. In a separate statement, Mr. Taylor indicates that he will need approval by the Bankruptcy Judge to represent the Bankruptcy Trustee in this matter. Since this case should be set for hearing as soon as that authorization is received, Mr. Taylor is directed to advise me immediately after proper approval is obtained from the Bankruptcy Judge. The case will then be rescheduled for hearing.

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RUDOLF L. JANSEN
Administrative Law Judge