

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 10 September 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 RELATING TO NOTIFICATION OF BANKRUPTCY
FILING BY WILLIAM J. BETTNER AND ORDER OF POSTPONEMENT

This case is presently scheduled to be called for hearing on September 21, 2004 in Bloomington, Illinois. I was notified on August 24, 2004 that the Complainant has filed a voluntary petition in bankruptcy under Chapter 7 of the Act. I have been provided a copy of a Voluntary Petition filed with the United States Bankruptcy Court for the Northern District of Illinois - Western Division consisting of thirty-nine pages. The Complainant's wife, Nancy L. Bettner, was included as a joint debtor on the Voluntary Petition. Because of the apparent bankruptcy filing, the automatic stay provisions of the Bankruptcy Act may apply. 11 U.S.C. §362(a)(1).

Tanya L. Jachimiak, counsel for Respondent, has recently filed a Motion to Dismiss this claim and to stay the proceedings pending substitution of the bankruptcy trustee as the real party-in-interest. Included as a part of the motion filing were several documents including the bankruptcy petition which are being offered as support for her motion. Ms. Jachimiak argues that the Doctrine of Judicial Estoppel is applicable here and because of the Complainant's conduct in failing to list this

action in his bankruptcy petition, that this case should be dismissed. It is further represented that this action is no longer the Complainant's action but rather belongs to the United States Bankruptcy Trustee who has exclusive jurisdiction over the matter. Ms. Jachimiak, therefore, moves that the case be stayed so as to permit the Trustee time to evaluate it and to pursue the case on behalf of the bankruptcy estate.

On September 7, 2004, Paul O. Taylor, counsel for Complainant filed his own declaration indicating that the Trustee in bankruptcy desires to retain him to pursue this claim against the Respondent, but that his appointment needs to be approved by the United States Bankruptcy Court. He indicates that this approval cannot be obtained for at least thirty days. He also attached to his filing a declaration of the Complainant relating to his disclosures on the bankruptcy petition concerning this complaint filing. Finally, Mr. Taylor also included a Memorandum of Law in opposition to the Respondent's Motion to Dismiss this case.

In view of the above, IT IS ORDERED that this case which is scheduled to be called on September 21, 2004 is hereby postponed indefinitely. If appropriate, the matter will be rescheduled following proper notice to all parties.

IT IS ALSO ORDERED that the parties to this proceeding take the following actions:

1. Provide me with a cover sheet of the Voluntary Petition in bankruptcy which bears a file stamp indicating that the petition was filed and the date of that filing;
2. Forward to me copies of any pertinent documents filed with the United States Bankruptcy Court concerning the Complainant's case; and
3. Forward to me copies of any Orders entered by the United States Bankruptcy Court relating to Mr. Bettner and particularly any Order indicating that Paul O. Taylor has been approved as counsel for the Trustee in pursuing this claim.

In addition, counsel are to provide me a written Memorandum of Law addressing the applicability of the automatic stay provisions to the facts of this case. I note that the statute found at 11 U.S.C. § 362(a)(1) indicates that the stay

provisions are applicable to any “. . . action or proceeding against the debtor” The proceeding involved here was brought by the debtor against the Respondent and thus I question whether the stay provisions actually apply. The Memorandum of Law addressing this question should be submitted within fifteen days from the date of this Order.

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RUDOLF L. JANSEN
Administrative Law Judge