

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
 LARRY R. HUDSON, d/b/a)
 SOUTHERN COMFORT, and)
 DIANA D. HUDSON,) CASE NO. BK87-944
)
 DEBTORS) A87-399
)
 LARRY R. HUDSON and)
 DIANA D. HUDSON,)
)
 Plaintiff)
)
 vs.)
)
 DAVID C. NUTTLEMAN,)
)
 Defendant)

MEMORANDUM OPINION

Before a United States Bankruptcy Judge for the District of
Nebraska regarding Complaint.

APPEARANCES

Laurice Margheim, Attorney for plaintiff, P.O. Box 633, Alliance,
NE 69301

Nancy Svoboda, Attorney for Trustee, P.O. Box 1669, North Platte,
NE 69103

IT IS ORDERED:

Debtor Larry Hudson was employed by the railroad. The
employer offered to pay him to quit. He accepted the offer,
signed all paperwork and employment was terminated. The payment
was delivered several weeks later. The issue concerns the timing
of the agreement and whether or not the payment becomes property
of the estate.

The debtors signed the Chapter 7 petition on March 24, 1987.
According to the date/time stamp affixed to the petition when it
was received in the office of the Bankruptcy Clerk, the case
commenced at 8:00 A.M. on March 25, 1987.

The railroad official that executed the "buy out" documents testified that the documents were signed in his office in Alliance, Nebraska, just before or just after lunch on March 25, 1987. The Court infers from such testimony that the agreement was reached after 10:00 A.M. and before 2:00 P.M. Mountain Standard Time. The Court thus concludes that the debtor obtained no right to payment from the railroad until after the bankruptcy petition was filed.

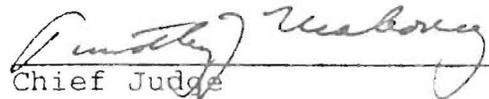
Since commencement of a case by filing a petition creates an estate pursuant to 11 U.S.C. Section 541 which includes only property and interests the debtor has at the time the petition is filed, Larry Hudson's right to receive payment from the railroad is not property of the estate because it came into existence post petition.

The debtor urges the Court to find that the payment is in lieu of future wages and so is excluded from property of the estate by 11 U.S.C. Section 541(a)(6). The Court, based upon the record now before it, cannot make such a finding.

Judgment shall be entered, by separate entry, in favor of plaintiffs and against trustee.

DATED: April 12, 1988.

BY THE COURT:



Chief Judge