UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

DAKOTA RAIL, INC.,

Debtor.BKY 4-88-639

DALE WRIGHT,

Plaintiff,ADV 4-91-240-v.-

DAKOTA RAIL, INC.,

Defendant.MEMORANDUM ORDER AND ORDER FOR JUDGMENT

At Minneapolis, Minnesota, February 18, 1992.

The above-entitled matter came on for trial before the undersigned on the 3rd day of February, 1992. Appearances were as follows: David Orenstein on behalf of the plaintiff, and Shannon O'Toole on behalf of the Defendant.

PROCEDURAL HISTORY

The plaintiff, Dale Wright ("Wright"), filed a complaint dated June 12, 1991 against the defendant, Dakota Rail, Inc. ("Dakota Rail") in the United States District Court for the District of Minnesota asserting a cause of action under the Federal Employers' Liability Act ("FELA"). 45 U.S.C. Sections 51-60 (1982). That complaint was removed to this court by application of Dakota Rail dated July 3, 1991.

Dakota Rail is a debtor in a Chapter 11 case pending before this court. The petition was filed on February 18, 1988, and a plan of reorganization was confirmed by order of this court on February 26, 1991. The plan called for payment in full, plus interest, to unsecured creditors. Wright was not scheduled as a creditor and did not file a claim in the case. The single issue here is whether, under the facts attendant in this case, Wright's claim is barred because he knew of the bankruptcy case yet failed to file a claim.

FINDINGS OF FACT

Dakota Rail is a small short-line railroad which, like most short-line railroads, is a modest organization serving a small customer base in a few rural communities. When the case was commenced, Jerry Ross owned Dakota Rail and served as its president, and his son Michael Ross served as Vice President. The company had no more than ten employees including Wright, who was the roadmaster, and Robin Ripley, who ran the office in Hutchinson, Minnesota. Wright supervised Dakota Rail's few other workers and answered directly to Jerry and Michael Ross. As roadmaster he generally worked outside of the office on the rail line, but he

usually stopped in the Hutchinson office once or twice a day to check in.

Pursuant to Section 1163 of the Bankruptcy Code, the filing of the petition for railroad reorganization triggered the automatic appointment of an operating trustee, Thomas Lovett, on March 11, 1988. As trustee, Lovett spent time attempting to formulate a plan of reorganization for Dakota Rail and otherwise acted as its Chief Executive Officer. He also oversaw the payment of bills -- sometimes prior to payment and sometimes after payment -- generally reviewing monthly lists of disbursements given to him by Dakota Rail personnel. Management of the day to day operations of the company was left in hands of the owners and its employees. This arrangement continued until sometime in early 1989 when, because of difficulties between Ross and Lovett over the railroad operations, Lovett relieved Jerry Ross of his duties with the company. Thereafter, Michael Ross took over his father's former tasks.

Jerry Ross made several attempts to formulate a plan of reorganization, but these reorganization efforts were troubled. The litany of failed efforts towards a plan of reorganization are chronicled in my order of February 26, 1990. Ultimately, the company was reorganized when it was purchased by Kimberly Hughes and Eli Mills. The Plan of Reorganization resolved the company's heavy secured debt load and fully paid unsecured creditors.

On June 23, 1988, shortly into the reorganization and while Lovett was operating trustee and Jerry Ross was still in charge of day to day operations, Wright strained or otherwise injured his back while performing job related duties. He told Robin Ripley and Michael Ross that he had hurt his back that same day. He did not, however, miss any work days as a result of the injury and there is no evidence that Wright ever complained of the injury thereafter to anyone.

It was Robin Ripley's habit to sometimes schedule chiropractic appointments for Wright and others at Dakota Rail, which she did because the workmen were often out on the railroad line and it was not convenient for them to do so. In 1988 she scheduled appointments for Wright with his chiropractor. She also scheduled a few such appointments in 1989. She recalled scheduling perhaps 12 such appointments for Wright during 1988, 1989 and through March of 1990, but stated that most of her activities for Wright in this regard occurred in 1988.

Wright states, however, that after his injury he was seeing the chiropractor 2-3 times per week. He scheduled almost all of these sessions himself. He testified that he received no bills for these services and he thought that the company was paying for them. However, business records introduced at trial reflected that Dakota Rail paid for Wright's chiropractic sessions on only four occasions. In September 1988, Dakota Rail paid a $60.00 invoice and in February, 1989 a $40.00 invoice from Wright's chiropractor. Lovett's post-disbursement review did not indicate that such payments were for services rendered to Wright. Lovett testified that it was his understanding that occasionally the company would pay such bills for its employees in recognition of the fact that its insurance coverage was inadequate. Eli Mills, one of the purchasers of Dakota Rail, authorized the payment of two such bills, one dated November 13, 1990 for $138 for services in

October, and one dated April 22, 1991 for $431 for services in February, March and April, 1991. He testified that he did so because he decided that until the company procured insurance for its employees (which it did not do until the summer of 1991) the company should pay minor medical bills for them.

Wright knew of the bankruptcy filing immediately after it occurred. He learned of it as a result of an employee meeting called by Jerry and Michael Ross contemporaneous with the filing. He also saw the press release issued in connection with the filing. The filing of the petition was major news in Hutchinson and an article on the commencement of the case appeared prominently in the local newspaper. Thereafter, as the case progressed, there were several additional articles chronicling the progress of the case. That paper was delivered to the Dakota Rail offices and Wright testified that he occasionally read the papers and that it was possible that he saw the articles, although he does not specifically remember whether or not he saw them. Wright testified that he knew little of the financial affairs of the company, but that he was perfectly well aware that the company had filed for relief in bankruptcy and that he was kept apprised periodically of the progress during formal and informal meetings of employees with and without management concerning the proceedings. These meetings became more regular when Mills and Hughes entered the picture as potential buyers. Wright testified that he wondered and feared whether he would be retained as an employee if they became the owners. Since he was not listed as a creditor he did not receive any notices typically sent to creditors in the case. Specifically, he was not sent the Order of the Court which included notice of the claims filing bar date and he did not file such a claim.

Other than complaining once in June, 1988 to Robin Ripley and Michael Ross that he had hurt his back, Wright took no further action to make known to any of the persons at Dakota Rail that he had been injured or that he believed -- if in fact he did -- that he had a claim against the company arising out of the incident. He did not tell Lovett that he believed he had a claim for personal injury, even though he met with Lovett at least once during the reorganization on railroad business. Before purchasing the company, Mills and Hughes performed due diligence with respect to the liabilities of the company, speaking specifically with Jerry Ross and his lawyer and were never told of any claim for personal injury by Wright. Wright did not tell Eli Mills or Kimberly Hughes of his claim, although he met with Hughes at least once before they purchased the business. He did not assert such a claim to the General Manager that Mills and Hughes hired to operate Dakota Rial when they took over the company in February, 1990. The first Mills learned that Wright had been injured was when he paid the bill in November 1990; the first Hughes learned of any claim by Wright was when the company was sued in July 1991. Lovett never knew of any such claim until Wright commenced action. He testified that knowledge of such a potential claim would have been important to him in his activities as trustee as well as his dealings with Mills and Hughes in connection with the possible sale of the business.

Wright asserts that he took no such action because he didn't understand the process, didn't receive any notices regarding filing a claim, didn't even understand what a proof of claim was, and believed that the company would take care of the injury. He was lulled into inaction, he asserts, because from time to time the

company would make appointments for him and it did at times pay his chiropractic bills.

DISCUSSION

Section 1141 of the Bankruptcy Code provides for discharge of pre-confirmation debts upon confirmation of a chapter 11 plan, regardless of whether a proof of claim was filed:

> Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan --
>
> (A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502(g), 502(h) or 502(i) of this title, whether or not --
>
> (i) a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;
>
> (ii) such claim is allowed under section 502 of this title; or
>
> (iii) the holder of such claim has accepted the plan;

11 U.S.C. Section 1141(d)(1) (1982) (emphasis added). Bankruptcy Rule 3003 further provides that an unlisted creditor must file a proof of claim in order to participate in the plan. Fed. R. Bankr. P. 3003.

However, the Supreme Court has held that due process requires that a creditor be given reasonable notice of the claims bar date before its debt is discharged. City of New York v. New York, New Haven & Hartford R.R., 344 U.S. 293, 297, 73 S. Ct. 299, 301 (1953). To be meaningful, such notice must be reasonably calculated to afford interested parties an opportunity to timely present their claims, given the particular factual circumstances of the case. In re GAC Corp. (Novak v. Callahan), 681 F.2d 1295, 1300 (11th Cir. 1982); In re Charter Co. (Charter Crude Oil Co. v. Petroleos Mexicanos), 125 B.R. 650, 654 (M.D. Fla. 1991); see also Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950). Whether notice is reasonably calculated to afford all interested parties an opportunity to present their claims is thus a factual inquiry.

The litany of seemingly contrary authorities on the question of whether a creditor is entitled to receive personal notice of the claims bar date is sufficiently chronicled in my Memorandum Order Denying Motions for Summary Judgment, dated October 11, 1991, and there is no need to reiterate that discussion here. Suffice it to say that there are three underlying principles that can be extracted from those cases. First, while a creditor is generally entitled to rely on receiving reasonable notice before its claim is barred, such creditor will be on inquiry notice of the claims bar date in certain fact situations. Second, where a creditor knows of the pendency of the bankruptcy case, and such creditor's claim is unknown to the debtor, the creditor is most likely put on inquiry

notice that his claim may be barred. Third, even where a creditor's claim is known to the debtor, the creditor may be on inquiry notice of the claims bar date, given the nature of his claim and the extent of his knowledge of the bankruptcy proceeding. City of New York v. New York, New Haven and Hartford R.R., 344 U.S. 293, 297, 73 S. Ct. 299, 301 (1953); Siouxland Beef Processing Co. v. Knight (In re Siouxland Beef Processing Co.), 55 B.R. 95, 100 (Bankr. N.D. Iowa 1985); In re Larsen, 80 B.R. 784, 787 (Bankr. E.D. Va. 1987); Lawrence Tractor Co. v. Gregory (In re Gregory), 705 F.2d 1118, 1123 (9th Cir. 1983); Zidell v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1431 (9th Cir. 1990).

Applying the above principles to the particular facts of this case as determined at trial leads to the conclusion that the creditor, Dale Wright, was on inquiry notice of the claims bar date. Thus, discharge of any debt owed to Wright by Dakota Rail under section 1141(d)(1) of the Bankruptcy Code does not run afoul of the principles of due process. The reasons for this conclusion are as follows.

First and foremost, it is clear from the evidence that Dakota Rail had no knowledge of Wright's claim whatsoever. The facts as presented on summary judgment suggested that Dakota Rail may have known about Wright's claim, but the facts developed at trial rebutted any such suggestion entirely. Although Wright did tell Robin Ripley and Michael Ross that he had hurt his back, he never indicated that he felt the injury was at all serious, he never missed a day of work, and he never mentioned the injury again to anyone even though he attended meetings with both Thomas Lovett and Kimberly Hughes. While Robin Ripley did schedule chiropractic appointments for Wright, she only did so on a few occasions as she apparently did for most other Dakota Rail employees; the remainder of the appointments were scheduled by Wright himself. And finally, while Dakota Rail did pay for four of Wright's chiropractic sessions, it did the same for all of its employees as a matter of policy because it felt that its insurance coverage was inadequate. There is no evidence that Dakota Rail paid for these sessions because it felt a responsibility to compensate Wright for any injury, or because it had any sort of agreement with Wright regarding his injury. There is simply no evidence to suggest that Dakota Rail had any knowledge of Wright's claim against it.

Under the principles enunciated in Siouxland Beef Processing Co. v. Knight (In re Siouxland Beef Processing Co.), 55 B.R. 95 (Bankr. N.D. Iowa 1985), this lack of knowledge is sufficient in and of itself to find that Wright was on inquiry notice of the claims bar date since it is conceded that he had general knowledge of the bankruptcy case. See Siouxland, 55 B.R. at 100; Larsen, 80 B.R. at 787; Gregory, 705 F.2d 1123. Although the Ninth Circuit revisited its Gregory decision in the case of Zidell v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428 (9th Cir. 1990), it did not expressly disagree with Siouxland and Larsen. In Coastal Alaska, the Ninth Circuit held that the inquiry notice doctrine should not be limited to cases where the debtor had no knowledge of the creditor's claim, and the court looked instead to the nature of the creditor's claim and its familiarity with the bankruptcy case. Coastal Alaska, 920 F.2d at 1431. Thus, in cases such as the present one where the debtor has no knowledge of the creditor's claim and the creditor knows of the pendency of the bankruptcy proceedings, the creditor is on inquiry notice of the claims bar

date.

Furthermore, even under the analysis employed by the Ninth Circuit in Coastal Alaska, Wright's familiarity with the bankruptcy case and the nature of his claim are sufficient to put him on inquiry notice of the claims bar date. While Wright's knowledge of the case was not absolute, he did have far more familiarity with the case than a mere general knowledge of its pendency. The testimony at trial revealed that Wright saw the press release issued in connection with the filing. Furthermore, Dakota Rail is a small shop with only a few employees, and Wright attended several informal meetings held by Dakota Rail regarding the bankruptcy. He met once with Thomas Lovett to discuss the business, and he also met with Kimberly Hughes for the same reason. The local newspaper ran several articles regarding the status of the bankruptcy and while Wright does not specifically remember reading any of these articles, he admitted that it is possible that he may have seen some of them. Given all these considerations, Wright had sufficient knowledge to put him on inquiry notice of the claims bar date.

There are also substantial policy reasons for finding that Wright's claim is barred. First, a debtor cannot be expected to provide notice of the claims bar date to unknown creditors. The requirement of notice is not absolute, but rather it must be reasonably calculated to afford interested parties an opportunity to timely present their claims. Novak v. Callahan (In re GAC Corp., 681 F.2d 1295, 1300 (11th Cir. 1982); Charter Crude Oil Co. v. Petroleos Mexicanos (In re Charter Co.), 125 B.R. 650, 654 (M.D. Fla. 1991). Since the debtor here had no knowledge of Wright's claim it would be unreasonable to require that notice of the claims bar date be provided. Second, the goal of chapter 11 is to allow the debtor an opportunity to reorganize its business and satisfy its debts. The process is structured to allow the proponent to make certain assumptions when drafting its plan, and one of those assumptions is that the amount of its prepetition debt will be fixed as of a date certain so that a payment plan can be developed based on that level of debt. If post-confirmation claims were liberally allowed the chapter 11 process would be derailed, especially in situations such as the present one where the plan calls for payment in full to unsecured creditors.

Finally, I note that the equities in this case do not necessarily weigh in Wright's favor. Although he did not receive notice of the claims bar date, he was the only person with any knowledge of his injury and he had several opportunities to express his concern regarding the injury to Dakota Rail, but he never did.

ACCORDINGLY IT IS HEREBY ORDERED:

Plaintiff, Dale Wright, shall recover nothing by his complaint, and judgment shall be entered in favor of defendant Dakota Rail, each party to bear its own costs.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Nancy C. Dreher
United States Bankruptcy Judge