

United States Bankruptcy Court

JUL 31 1990

For the NORTHERN District of IOWA

IN RE:

BARBARA A. EVERLY, CLERK
Chapter 7

FRANK J. TAYLOR,

Case No. L-87-01882C

Debtor.

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Michael J. Melloy, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

The issues of this proceeding having been duly considered by the Honorable Michael J. Melloy, United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED: that the Court finds the Debtor, Frank J. Taylor, to be in civil contempt of this Court.

IT IS FURTHER ORDERED that as a sanction for the Debtor's civil contempt, the Debtor shall pay the Trustee, Dennis W. Currell, the sum of \$2,018.86. Judgment shall enter accordingly in favor of the Trustee and against the Debtor for that sum of money.

IT IS FURTHER ORDERED that the Debtor shall have to and including August 20, 1990 to purge himself of his continuing contempt of this Court. In order to purge himself of contempt, the Debtor shall file a complete set of schedules and statement of affairs conforming to the requirements set out in the order of May 17, 1988.



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BARBARA A. EVERLY

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: July 31, 1990

By:

Don Lillios

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

JUL 31 1990

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

BARBARA A. EVERLY, CLERK

IN RE:

Chapter 7
BANKRUPTCY NO.

FRANK J. TAYLOR,

L-87-01882C

Debtor.

ORDER RE: Civil Contempt

The Trustee's "Application For Order In Re: Civil Contempt" ("the Application") came on for hearing before the Court on June 19, 1990. The Debtor, Frank J. Taylor, appeared pro se; the Trustee, Dennis Currell, appeared with his attorney, David L. Baker. The Court, having heard the statements of the Debtor and counsel and having reviewed the court file, now enters the following order pursuant to Bankruptcy Rule 9020.

Background and Notice

The Court had difficulty obtaining service of the Application upon Mr. Taylor and verifying that service had been made. The court file shows that the original Application was filed on February 1, 1990. A copy of the Application and an order and notice setting a hearing date were sent to Mr. Taylor by certified mail, return receipt requested, on February 5, 1990. The return receipt from the post office shows that delivery was made at the Debtor's residence, in Las Vegas, Nevada, on February 9, 1990.

On the morning of March 5, 1990, the date scheduled for the hearing, the Court received a document from Mr. Taylor captioned "Notice to the Court." Mr. Taylor did not appear at the hearing on

March 5th. The contents of the Debtor's "Notice" and the resulting actions by the Court are outlined in more detail in the Court's order of April 2, 1990. In that order, the Court set a further hearing on the Trustee's Application for April 26, 1990.

Mr. Taylor did not appear for the hearing on April 26th. The order of April 2nd setting the April 26th hearing was also sent to Mr. Taylor by certified mail, return receipt requested. However, the Clerk of the Bankruptcy Court did not receive a return receipt verifying that Mr. Taylor had been served with the order setting the April 26th hearing. Consequently, the Court determined that it could not find that due and timely service of the notice of hearing had been made upon the Debtor and therefore the hearing could not go forward. The Court set a continued hearing on Application for June 7, 1990.

The Court directed that service of notice of the continued hearing be made upon Mr. Taylor by the U.S. Marshal's Office. The Marshal's Office was unable to obtain service upon Mr. Taylor. As a result, an order was entered on May 21st continuing the June 7th hearing to June 19th. The June 19th date was selected because other matters involving the Debtor had previously been scheduled for hearing on that date.

As indicated, Mr. Taylor did appear at the hearing on June 19th. The record in this case shows that Mr. Taylor has received a copy of the Trustee's Application. Based upon the Court's review of the file, and in view of Mr. Taylor's appearance at the hearing on June 19th, the Court finds that due and timely service of the notice of

hearing on the Application for Contempt has been made upon Frank J. Taylor.

Findings of Fact

The Trustee's Application is based primarily on documents contained in the court file. Therefore, the Court believes it is appropriate to set forth a chronology of the events which form the basis of the Court's findings in this matter.

1. The Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on September 4, 1987. The petition was filed pro se. The schedules and statement of affairs were handwritten by the Debtor. The Debtor answered most of the questions on the statement of financial affairs as "unknown" or "not sure." He listed various creditors on schedules A-2 and A-3, but the amount of indebtedness owed to each creditor listed on schedule A-3 was described as "unknown." On schedule B-1 (schedule of real property) the Debtor wrote "unknown". On schedule B-2 (personal property) the Debtor listed some property, including "FRNs" (presumably Federal Reserve Notes), a small account at the Northwest Airlines Credit Union, a house in Florida, and an interest in a life insurance policy. However, as to most items, the Debtor stated "unknown" or "not sure," including his response to the question concerning automobiles, trucks, trailers, and other vehicles owned by the Debtor. On schedule B-3 (property not otherwise scheduled) the Debtor stated "not sure." On schedule B-4 (property claimed as exempt) the Debtor wrote "to be completed

later."

2. On February 4, 1988, the Court entered an order which provided, in part, as follows:

IT IS FURTHER ORDERED that the Schedules and Statement of Affairs shall be amended by the Debtor by FEBRUARY 29, 1988. Each question set forth in the Schedules and Statement of Affairs shall be fully and completely answered. To the extent the Debtor is unable to answer a question due to the unavailability of records or uncertainty of the question, the Debtor shall fully and completely set forth the factors which make it impossible for the Debtor to answer the question, including the unclarity of the question to the Debtor.

3. On February 29, 1988, the Debtor filed a document captioned "Schedule Amendment." That document contains several numbered paragraphs which appear to correlate with the information requested in the statement of affairs. The "Schedule Amendment" contains the following statement in paragraph 5: "I have not received any income from any source in the past two years." The Debtor made that statement in spite of the fact that there is other information in the court file to indicate that he has been and continues to be a pilot with Northwest Airlines, earning in excess of \$150,000 per year.

4. On May 17, 1988, the Court entered a supplemental order advising the Debtor that his schedules and statement of affairs were deficient. That order provides in part that:

This Court also advised Mr. Taylor that the recent amendment to Schedules and Statement of Affairs was insufficient. It is difficult to reconcile the amendment with the original Schedules and Statement of Affairs which were hand written. It was the intention of this Court that the Schedules and Statement of Affairs be totally recast and submitted in typewritten form, with all questions fully and completely answered. In order to address some of the concerns raised by the Trustee in the Motion for Contempt and in order to allow for the efficient administration of this

estate, this Court will enter an order requiring that the schedules and statement of affairs be recast into one document and resubmitted.

IT IS THEREFORE ORDERED that the Debtor shall file a complete set of schedules and statement of affairs by JUNE 15, 1988. In connection with those schedules and statement of affairs, IT IS FURTHER ORDERED as follows:

1. The schedules and statement of affairs shall be submitted on the official forms as contained in the Bankruptcy Rules of Procedure. There shall be a complete set of schedules and statement of affairs submitted.

2. The schedules and statement of affairs shall be typewritten.

3. The Debtor shall fully and completely answer each and every question contained within the statement of affairs and shall fully and completely disclose all assets, liabilities, and other matters required to be disclosed in the schedules. To the extent the Debtor is unsure as to the meaning of a question, it is the responsibility of the Debtor to obtain competent legal advice so that he can fully and completely answer each and every question.

4. The schedules and statement of affairs shall be signed as required by the Bankruptcy Rules. The Debtor shall either swear that the answers are true and correct or shall affirm that all the answers and information is true and correct under penalty of perjury.

5. The Debtor is advised that failure to comply with this Court Order may result in the imposition of sanctions, a finding of contempt, and/or the denial of Debtor's discharge for failure to fully disclose the Debtor's financial condition [§ 727(a)(3) of the Bankruptcy Code], for failure to follow Court Order [§ 727(a)(6) of the Bankruptcy Code] or other applicable subsections of § 727 of the Bankruptcy Code.

5. The Debtor did not file any amendments to his schedules and statement of affairs by the June 15th deadline set forth in the order of May 17, 1988.

6. On July 7, 1989, the Debtor filed a document which states in part as follows: "Comes now Frank J. Taylor and for cause claims a Florida Exemption on the Original Bankruptcy filing because he forgot to check either a Federal Exemption or a State Exemption." The document does not indicate what property the Debtor is claiming as exempt under Florida law.

7. The claim of exemptions was objected to by the Trustee and other parties in interest. That objection came on for hearing before the Court on September 14, 1989. Mr. Taylor did not appear at that hearing. On September 15th the Court entered an order sustaining the objection to exemptions on the grounds that the Debtor had failed to specify the property claimed as exempt. The order went on to provide that the Debtor was to amend his schedule B-4 to specifically itemize the property claimed as exempt. The Court also noted that the Debtor had still failed to complete and file the required schedules B-1, B-2, and B-3. The Court indicated that an amended schedule B-4 was to be filed by October 16, 1989. The order also provided that:

IT IS FURTHER ORDERED that in connection with any amended schedule B-4 filed by **October 16, 1989**, the Debtor shall do the following:

1. The schedule B-4 shall itemize all the property which the Debtor claims exempt. In addition, the Debtor shall indicate applicable sections of the exemption statute which the Debtor relies upon to claim the property exempt.

2. The amended schedule B-4 shall be accompanied by complete and accurate schedules B-1, B-2, and B-3, listing all of Debtor's property, both exempt and non-exempt.

8. On October 16, 1989, the Debtor filed new schedules in this case. On the first page the Debtor stated that "I am advertising for an attorney as I don't know what I'm doing!" On schedule B-1 (real property) the Debtor stated that "I do not understand this Form." On schedule B-2 (personal property) the Debtor stated at the top that "I do not understand these questions." In the body of schedule B-2 the Debtor wrote that "I am advertizing for an attorney in CR Gazette as I don't know what I'm doing." On schedule B-3 (property not otherwise scheduled) the Debtor stated

at the top that "I do not understand this Form." On schedule B-4 (property claimed exempt) the Debtor again stated that "I do not understand this form." The Debtor did indicate, however, that he was claiming exemptions for "Future Wages" and "Future Pension."

9. The Trustee filed a "Motion to Deny Exemptions" on October 20, 1989. The motion was based on the Debtor's failure to comply with a prior court order requiring him to identify the property claimed as exempt and to file complete and accurate schedules B-1, B-2, and B-3. By notice dated October 26, 1989, the Trustee's motion, together with other pending motions, was set for hearing on December 12, 1989.

10. On November 13, 1989, a document was filed with the Clerk of the Bankruptcy Court indicating that one of the creditors in this case, Security State Bank, was attempting to garnish some silver dollars that may or may not belong to Frank Taylor. It is the Court's understanding that those silver dollars were being held in the possession of the Clayton County, Iowa, sheriff. To the Court's knowledge, this is the first time that the Court or the Trustee received any notice that the Debtor was claiming some interest in property being held by the Clayton County sheriff.

11. The Debtor did not appear for the hearing on December 12, 1989. At that hearing, the attorney for Northwest Airlines, Inc., Pilot's Pension Plan, Northwest Airlines, Inc., Administrator, and State Street Bank and Trust Company, Trustee (collectively referred to as "Northwest") requested an opportunity to meet with the Debtor and urge him to properly prepare and file a schedule B-4 of claimed

exemptions.¹ The Court indicated that if the attorney for Northwest was able to contact Mr. Taylor and obtain compliance with the Court's order of September 15, 1989, the Court would then consider allowing the Debtor to claim exemptions in this case. The Court also indicated, however, that the burden was on the Debtor to demonstrate that he was ready, willing, and able to comply with the Court's previous orders and cooperate with the Trustee in the administration of the estate.

12. On January 5, 1990, the Debtor filed another set of amended schedules. On schedule B-1 the Debtor stated that "I need an attorney to tell me what is and what is not mine. I have advertized for an attorney and have not received a reply." At the top of schedule B-2 the Debtor wrote that "I need an attorney to tell me how to fill this out. See previous B-2 forms." In answer to question (f) on schedule B-2 (referring to automobiles, trucks, trailers, or other vehicles) the Debtor wrote "1983 Cadillac that has been transferred to another owner. Car is presently in Minneapolis." None of the other questions in schedule B-2 were answered except question (r) dealing with life insurance. Debtor indicated that he had a \$510 life insurance policy with Catholic Order of Foresters.

¹ The Trustee has an adversary complaint pending against the Debtor and Northwest in Adversary No. L88-0003C. In that complaint, the bankruptcy Trustee is attempting to have the pension plan trustee turn over to the bankruptcy estate any pension plan funds being held by the pension plan trustee for the benefit of the Debtor. As one of the defenses to that cause of action, the pension plan trustee is attempting to have the Debtor claim the property as exempt.

On schedule B-3 the Debtor again indicated that he needed an attorney to help him fill out the form. He also made another reference to the 1983 Cadillac that had been transferred. On schedule B-4 the Debtor stated that he was claiming exemptions under the laws of the State of Iowa. He again stated at the top of the page that he needed an attorney to help him fill out the form. However, the Debtor did itemize twelve items of property that he was claiming as exempt, together with statutory references as to virtually all of the listed exemptions.

13. On January 16, 1990, the Debtor filed another "Notice to the Court" concerning the silver dollars which were being sold by the Security State Bank and Central State Bank through the office of the Clayton County sheriff. It should be noted that the amended schedules filed on January 5, 1990 made no reference to any silver dollars.

14. On January 18, 1990, the Court entered an "Order Re: Debtor's Claim of Exemptions." The Court indicated that it was not inclined at that point to forever bar the Debtor from claiming his exemptions. However, the Court would not allow any exemption claims to go forward until the Debtor had filed complete and accurate schedules B-1, B-2, B-3, and B-4. The order provided at page 3 that "[t]he Debtor will not be allowed the luxury of divulging to the Trustee the property claimed as exempt, while at the same time refusing to identify the existence, location, and description of property which may be non-exempt."

15. On February 1, 1990, the Trustee filed his "Application

For Order In Re Civil Contempt." This is the Application which is presently before the Court. In his Application the Trustee alleges that the Debtor has willfully failed to comply with Court orders directing him to file complete and accurate schedules and statement of affairs, including schedules B-1, B-2, and B-3.

Conclusions of Law

Bankruptcy Rule 9020 governs the procedure to be followed in connection with an application for civil contempt. Pursuant to that Rule, the bankruptcy court may enter an order of civil contempt, subject to the right of the person against whom the contempt action is being taken, to file objections within ten days from the entry of the contempt order.

The Court has carefully reviewed the file in this case and finds that the Debtor has shown a willful and deliberate disregard of the orders entered by this Court. The Debtor has been given many opportunities to provide the Court and the Trustee with the information required for the proper administration of the bankruptcy estate. Not only has the Court entered many written orders which the Debtor has chosen to ignore, but the Court has also personally admonished the Debtor that he must comply with those orders and complete and file accurate schedules and statement of affairs.

The only information the Trustee has been able to develop concerning the Debtor's property is the information that he has gained independently. The Debtor has now divulged information

concerning the 1983 Cadillac, but only after the Trustee raised the transfer of that automobile as an issue in another proceeding in this bankruptcy case. After reviewing the complete file, the Court can only conclude that the Debtor's failure to file complete and accurate schedules and statement of affairs is a willful and deliberate failure of the Debtor to follow orders of this Court.

The Debtor has challenged this Court's jurisdiction on numerous occasions. As a defense to the Trustee's Application, he also refers to his inability to obtain the services of an attorney. The Debtor contends that he is a layman and does not understand the forms.

The Court has previously addressed the jurisdictional issue in other rulings in this case. The Chapter 7 petition was voluntarily filed by the Debtor. The Debtor is the one who invoked the jurisdiction of this Court. He thereby obtained the protection of the Bankruptcy Code, including the automatic stay provisions of 11 U.S.C. § 362. Once the Debtor obtained the protection of the Bankruptcy Code, he also assumed the related burdens. This Court has the jurisdiction and authority to make certain that all of the Bankruptcy Code provisions and Rules are followed by the Debtor.

As to the Debtor's defense that he is unable to hire an attorney, the Court believes that the Debtor's decision to proceed pro se is one that he made for himself. The Debtor certainly has the financial capacity to hire an attorney in this case. The Court is not persuaded that there are no attorneys in the State of Iowa (or for that matter in the United States) who would be willing and

able to handle the Debtor's case. Thus, the Court cannot accept that excuse as a valid ground for the Debtor's failure to cooperate with the Trustee and supply the information which the Court has ordered him to produce.

The second explanation the Debtor has put forward on many occasions is that he does not understand the questions on the schedules and the statement of affairs. The Court cannot accept that explanation. The questions are not so difficult that the Debtor cannot accurately state what automobiles he may own, what income he has earned, where he maintains his bank accounts, etc. The Court also notes that the Debtor has been able to prepare a fairly detailed schedule B-4, listing various items of property and the statutory grounds for his claims of exemption. Yet, the Debtor seems to be totally unable to give the Trustee any information concerning other (possibly non-exempt) assets he may own. Thus, the Court does not believe there is any valid excuse for the Debtor's failure to comply with prior Court orders. Consequently, the Court finds that Frank J. Taylor is in civil contempt of this Court and appropriate sanctions should be imposed pursuant to Rule 9020.

Sanctions

The Court believes that the appropriate sanction to be imposed in this case is to require the Debtor to reimburse the Trustee for the time and effort the Trustee has spent in attempting to obtain

the Debtor's compliance with the Court's prior orders. Sanctions for civil contempt may include the award of attorney fees and costs. See In re Skinner, 90 B.R. 470, 479 (D. Utah 1988). The court may impose such additional sanctions as may be required to insure compliance with the court's orders. In re Stephen W. Grosse, P.C., 84 B.R. 377, 385 (Bankr. E.D. Pa. 1988).

The Trustee has spent considerable time and effort in attempting to identify the assets of this estate. This is time and effort which the Trustee would not have had to expend if the Debtor had complied with the Bankruptcy Code, the Bankruptcy Rules, and the orders entered by this Court. Thus, as a sanction for the Debtor's contempt, the Trustee should be reimbursed for the time he expended in attempting to determine the nature and location of the Debtor's property.

The Court previously ordered the Trustee to file an affidavit specifying the time he has spent in connection with this matter. The Trustee filed that affidavit on March 9, 1990. A copy of the Trustee's time records in this case is attached to the affidavit. The time records appear to cover all of the Trustee's efforts in connection with this bankruptcy case. The Court believes that the only fees which should be reimbursed by the Debtor are those related to the Trustee's efforts to identify the Debtor's assets, obtain compliance with prior Court orders, and pursue this action for civil contempt. In particular, the Court does not believe that the Trustee's efforts to compel a turnover of the Debtor's pension interests should be compensated under this order. Those efforts

were unrelated to the Debtor's failure to comply with the orders to amend his schedules and statement of affairs.

The Court has carefully reviewed the time records attached to the Trustee's affidavit. On the basis of that review, the Court finds that the Trustee reasonably expended 19 hours in connection with the discovery of Debtor's assets. It appears from the Trustee's records that his normal hourly rate is \$95 per hour. The Court finds that rate to be reasonable and awards the Trustee the sum of \$1,805 as reimbursement of attorney fees. The Court will also reimburse the Trustee for his expenses in connection with the deposition transcript of \$209.30, and the long distance phone call to Oklahoma City, Oklahoma on September 18, 1989, for a total of \$213.86 of expenses. The total sanction for fees and expenses is \$2,018.86.

It is the Court's intention to give the Debtor an opportunity to purge himself of contempt and to avoid the imposition of any additional sanctions. However, if the Debtor continues to be in contempt of this Court, additional sanctions will be imposed in order to compel his compliance with Court orders. Accordingly, the Court will enter an order which sets out a schedule the Debtor must meet in order to avoid the imposition of further sanctions.

The Debtor shall have to and including **August 20, 1990** to purge himself of contempt of this Court. In order to purge himself of contempt, the Debtor must comply with the Court's order of May 17, 1988 directing him to file a complete set of schedules and statement of affairs. In connection with those schedules and

statement of affairs, the Debtor must do the following:

(a) The schedules and statement of affairs shall be submitted on the official forms as contained in the Bankruptcy Rules of Procedure. There shall be a complete set of schedules and statement of affairs submitted.

(b) The schedules and statement of affairs shall be typewritten.

(c) The Debtor shall fully and completely answer each and every question contained within the statement of affairs and shall fully and completely disclose all assets, liabilities, and other matters required to be disclosed in the schedules. To the extent the Debtor is unsure as to the meaning of a question, it is the responsibility of the Debtor to obtain competent legal advice so that he can fully and completely answer each and every question.

(d) The schedules and statement of affairs shall be signed as required by the Bankruptcy Rules. The Debtor shall either swear that the answers are true and correct or affirm that all of the answers and information are true and correct under penalty of perjury.

The Debtor is put on notice that even if he purges himself of contempt by August 20, 1990, he will still be responsible for paying the sanction of \$2,018.86 to the Trustee. That sanction is being imposed as a result of the Debtor's previous contempt of this Court.

A further hearing on this matter will be held on:

AUGUST 29, 1990 at 2:00 P.M.

in the Bankruptcy Courtroom, 8th Floor, The Center, 425 Second St. S.E., CEDAR RAPIDS, Iowa.

At that hearing, the Court will determine if the Debtor has complied with this order to purge himself of contempt by August 20, 1990. The Court will review the court file and hear arguments as to whether the Debtor has filed complete schedules and statement of affairs, and if so, whether the filings made by the Debtor comply

with this order. If the Debtor has not purged himself of contempt by the time of the hearing on August 29th, the Court will consider the imposition of additional sanctions. Those sanctions may include the imposition of a fine to be assessed on a per diem basis for each day the Debtor remains in contempt. The Debtor is admonished that he should appear at the hearing on **August 29, 1990 at 2:00 P.M.** to be heard on the issue of whether he has purged himself of contempt and what additional sanctions, if any, should be imposed by this Court.

Debtor's Right to Object

Notice is given to the Debtor that Bankruptcy Rule 9020(c) governs his right to object to the contents of this order.

Bankruptcy Rule 9020(c) reads as follows:

The clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court unless, within the 10 day period, the entity named therein serves and files with the clerk objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033.

ORDER

IT IS THEREFORE ORDERED that the Court finds the Debtor, Frank J. Taylor, to be in civil contempt of this Court.

IT IS FURTHER ORDERED that as a sanction for the Debtor's civil contempt, the Debtor shall pay the Trustee, Dennis W. Currell, the

sum of \$2,018.86. Judgment shall enter accordingly in favor of the Trustee and against the Debtor for that sum of money.

IT IS FURTHER ORDERED that the Debtor shall have to and including **August 20, 1990** to purge himself of his continuing contempt of this Court. In order to purge himself of contempt, the Debtor shall file a complete set of schedules and statement of affairs conforming to the requirements set out in the order of May 17, 1988.

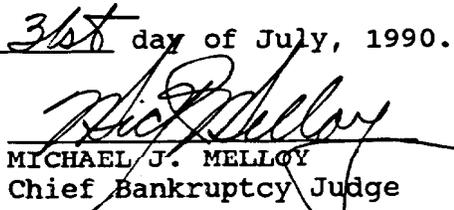
IT IS FURTHER ORDERED that a continued hearing on this matter will be held on:

AUGUST 29, 1990 at 2:00 P.M.

in the Bankruptcy Courtroom, 8th Floor, The Center, 425 Second St. S.E., CEDAR RAPIDS, Iowa.

At that hearing, the Court will take up the issue of whether the Debtor has purged himself of contempt by the deadline of **August 20, 1990**, and if not, what additional sanctions should be imposed against the Debtor for his civil contempt.

DONE AND ORDERED this 31st day of July, 1990.


MICHAEL J. MELLODY
Chief Bankruptcy Judge

Copies to: (w/copy of Judgment):
Frank J. Taylor,
1700 Alta Drive
Apt. 1068,
Las Vegas, NV 89106;
via Certified Mail/
return receipt requested;

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Dennis Currell, Trustee;
Thomas Peffer,
Atty for Northwest Airlines, Inc.
Pilot's Pension Plan, Northwest
Airlines, Inc. Administrator,
and State Street Bank and
Trust Company;
Janet Reasoner for U.S. Trustee;
David Baker,
Atty for Trustee;
this July 31, 1990
Don Lillias
Deputy Clerk
P.O. Box 74890
Cedar Rapids, Iowa 52407