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signed 7-23-02

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In re:**

**LLOYD STANLEY NARAMORE,**

**DEBTOR.**

**CASE NO. 98-42936-7**

**CHAPTER 7**

**ORDER DETERMINING MOST OF THE STATE'S POSTPETITION PAYMENTS  
TO THE DEBTOR ARE PROPERTY OF THE BANKRUPTCY ESTATE,  
AND SCHEDULING STATUS CONFERENCE**

This matter is before the Court on the chapter 7 trustee's motion for turnover. The trustee, Joe Wittman ("the Trustee"), represents himself in this matter. The debtor is represented by W. Thomas Gilman of Redmond and Nazar, L.L.P., Wichita, Kansas. Ronald R. Hein, a former attorney for the debtor and an interested party, is represented by Dale L. Somers and Anne L. Baker of Wright, Henson, Somers, Sebelius, Clark & Baker, LLP, Topeka, Kansas. The parties have filed a stipulation of facts and submitted briefs, and the matter is ready for decision.

**FACTS**

Debtor Lloyd Stanley Naramore ("the Debtor") is a physician. In August 1992, he provided palliative care to a terminally-ill cancer patient. The patient was later removed to another physician's care. That same month, the Debtor was called to a hospital to treat an 81-year-old man with various medical conditions who had been found unconscious. Resuscitation efforts failed and the man died.

Two years later, the Office of the Kansas Attorney General charged the Debtor with the attempted murder of the first patient, and with the premeditated first-degree murder of the second. In January 1996, a jury found the Debtor guilty on the first charge, and guilty of the lesser-included offense of intentional and malicious second-degree murder on the second charge. In July 1998, in a two to one decision, the Kansas Court of Appeals reversed both convictions, holding that no rational jury could have found the Debtor guilty based on the record presented; the dissenting judge felt the jury had not been properly instructed and would have remanded the case for a new trial.<sup>1</sup>

The Debtor then contacted an attorney about the possibility of suing the State of Kansas or its employees for the damages he suffered because of the wrongful convictions. The attorney correctly advised the Debtor that he had no legal basis for such a suit because of the State's sovereign immunity. On October 20, 1998, the debtor filed a chapter 7 bankruptcy proceeding. Relying on the advice that he had no legal claim against the State, the Debtor did not list in his bankruptcy schedules any claim against the State of Kansas arising from the convictions. The Trustee filed a no-asset report, the Debtor received a discharge, and his bankruptcy estate was closed.

The Debtor alleges that after he received his bankruptcy discharge, the president of the Kansas Osteopathic Association advised him that he might be able to file a "special claim" with the Kansas Legislature. The Trustee disputes this allegation. In any event, about two months after receiving his bankruptcy discharge, the Debtor contacted Mr. Hein, who was familiar with the Kansas process for submitting claims to the Legislature that cannot otherwise be lawfully paid by the State or any of its

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<sup>1</sup>*State v. Naramore*, 25 Kan. App. 2d 302, *rev. denied* 266 Kan. 1114 (1998).

agencies.<sup>2</sup> Such claims must be submitted to the “Joint Committee on Special Claims Against the State” (“the Committee”) before the Legislature will act on them.<sup>3</sup>

In the claim the Debtor filed with the Committee, he listed just over \$14,000,000 as the actual damages he had sustained because of the wrongful convictions, and asked the Legislature to pay him \$1,400,000. He asserted lost income of about \$900,000 through the first month of 1999, and lost future income of about \$640,000 through 2009. The other damages he alleged he had suffered were: (1) damage to reputation—\$5,000,000; (2) personal injuries—\$350,000; (3) mental anguish—\$5,000,000; (4) loss of consortium with his wife and companionship with his daughter—\$2,000,000; (5) cost of treatment for post traumatic stress disorder—\$150,000; and (6) property confiscated by the Kansas Bureau of Investigation and never returned—\$500.

The Committee recommended that the State pay the Debtor \$250,000. The Legislature ultimately authorized, and the Governor approved, \$200,000, to be paid in three installments. This amount has been paid to the Debtor, minus Mr. Hein’s fees and expenses as provided by his contract with the Debtor. After all the installments were paid, the Trustee asked the Court to reopen the Debtor’s bankruptcy case so the Trustee could try to recover the payments for the bankruptcy estate. The motion was granted, and the Court must now determine whether the payments are property the Debtor’s bankruptcy estate.

#### DISCUSSION AND CONCLUSIONS

As relevant here, §541(a) of the Bankruptcy Code provides:

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<sup>2</sup>See K.S.A. 46-903 to -925.

<sup>3</sup>K.S.A. 46-907.

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C.A. §541(a)(1). The referenced exceptions are not involved in this dispute. The scope of this provision is broad, and Congress intended that it should be.<sup>4</sup> The estate includes any “claim”—defined for present purposes to be a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured”<sup>5</sup>—that the debtor has against third parties.<sup>6</sup> When such a claim has become property of a bankruptcy estate, proceeds of the claim are also property of the estate, except those which are an individual debtor’s earnings from personal services performed postpetition.<sup>7</sup>

In the Kansas statutes, Chapter 46 deals with the Legislature. Article 9 of that chapter is called “Claims Against the State.”<sup>8</sup> As indicated above, these statutes establish the legislative committee called the “Joint Committee on Special Claims Against the State” and establish procedures for

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<sup>4</sup>See *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204-05 (1983); see also H.R. Rep. No. 95-595, at 367-68 (1977), reprinted in 1978 U.S.C.C.A.N 5963, 6323-24; S. Rep. No. 95-989, 82-83 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5868-69.

<sup>5</sup>11 U.S.C.A. §101(5)(A).

<sup>6</sup>See H.R. Rep. No. 95-595, at 367-68 (1977), reprinted in 1978 U.S.C.C.A.N 5963, 6323; S. Rep. No. 95-989, at 82 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5868.

<sup>7</sup>11 U.S.C.A. §541(a)(6); see also H.R. Rep. No. 95-595, at 368 (1977), reprinted in 1978 U.S.C.C.A.N. at 6324; S. Rep. No. 95-989, at 83 (1978), reprinted in 1978 U.S.C.C.A.N. at 5869.

<sup>8</sup>See K.S.A. 46-903 to -925.

submitting claims for the Committee’s consideration.<sup>9</sup> The Debtor’s claim for damages caused by his wrongful convictions could not be brought in a court of law because of the State’s sovereign immunity.<sup>10</sup> Instead, he had to bring it before the Committee.<sup>11</sup> When the Committee determines that the State should pay any amount to a claimant, its recommendation is included in a bill for the Legislature’s consideration.<sup>12</sup> The recommendation does not waive the State’s immunity and does not impose liability on the State.<sup>13</sup> The Legislature simply treats the bill like any other piece of legislation. Here, for example, the Committee recommended paying the Debtor \$250,000, but the Legislature approved only \$200,000, and the Governor signed the bill into law.

In this case, all the events that ultimately led the Legislature to appropriate compensation for the Debtor had occurred before he filed for bankruptcy. The question before the Court boils down to whether a debtor’s claim against a State that exists on the day the debtor files for bankruptcy but is not legally enforceable because of the State’s sovereign immunity and that will be paid only through a

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<sup>9</sup>K.S.A. 46-912 to -918.

<sup>10</sup>The parties stipulated that the Debtor had no enforceable claim against the State, and a quick review of the exceptions to the State’s liability under the Kansas Tort Claims Act indicates the State’s sovereign immunity would not be waived for the Debtor’s claim because his convictions involved the “enforcement of . . . a law,” K.S.A. 2001 Supp. 75-6104(c), or the exercise of a discretionary function or duty, 75-6104(e). But for the State’s immunity, the Debtor could probably have asserted a claim for malicious prosecution against it. *See Hall v. Martin*, 191 F.R.D. 617, 623 (D. Kan. 2000) (stating elements of claim for malicious prosecution under Kansas law); *Lindenman v. Umscheid*, 255 Kan. 610, 624 (1994) (same).

<sup>11</sup>K.S.A. 46-907.

<sup>12</sup>K.S.A. 46-915.

<sup>13</sup>K.S.A. 46-919.

discretionary appropriation by the state legislature becomes property of the debtor's bankruptcy estate. In the Court's view, the question seems to answer itself. The Kansas statutes establishing the procedure that the Debtor used to collect from the State apply to "those claims against the state which cannot be lawfully paid by the state or any agency thereof except by appropriation act of the legislature."<sup>14</sup> Thus, the statutes recognize that legitimate claims against the State can exist that the claimholders cannot enforce through the courts, but instead must submit to the Legislature's collective conscience.

The Debtor and Mr. Hein emphasize the fact that the claim here was premised on a mere moral or equitable obligation enforceable only through the sovereign's good graces. The Court is not convinced by this characterization that the Debtor's claim against the State constituted something less than a "right to payment" that was simply unliquidated and contingent on the Legislature's decision to pay it. They further contend that the Legislature would not have been favorably inclined to award compensation if the Trustee had sought it as the bankruptcy estate's representative. This argument assumes that the claim is property of the estate, suggesting only that the Trustee would not have recovered on the claim, not that he was not entitled to bring it. But if the claim had been disclosed when the Debtor filed for bankruptcy, the Trustee could have obtained authorization for the Debtor to bring the claim before the Legislature in his own name for the estate's benefit, and possibly his own as well. It is too late to find out now what effect this might have had.

The Debtor and Mr. Hein cite two federal circuit court decisions to support their argument that

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<sup>14</sup>K.S.A. 46-919.

the money paid to the Debtor did not constitute property of his bankruptcy estate. *Drewes v. Vote (In re Vote)*<sup>15</sup> and *Sliney v. Battley (In re Schmitz)*.<sup>16</sup> In *Vote*, the farmer debtor did not plant a crop one year due to soil conditions and filed a chapter 7 bankruptcy petition; a short time later, Congress passed a bill establishing and funding programs under which the debtor qualified for compensation as a result of his crop disaster.<sup>17</sup> The Eighth Circuit rejected the trustee's claim that the compensation was property of the estate.<sup>18</sup> In *Schmitz*, the debtor had fished for certain species before he filed a chapter 7 bankruptcy petition; a federal agency later adopted regulations under which the debtor ultimately obtained valuable rights to fish for those species in the future based on his prepetition fishing activities.<sup>19</sup> The Ninth Circuit rejected the trustee's claim that the fishing rights were property of the estate.<sup>20</sup> Although those cases involved somewhat similar circumstances to this one, the Court believes they are distinguishable and do not mandate a similar result here. In both cases, when the debtors filed for bankruptcy, no program or procedure existed under which they could seek the money or rights that they ultimately received. For the Debtor before this Court, however, the statutes that established the procedure under which claims against the State could be filed for the Committee to consider already existed when the Debtor filed for bankruptcy. All the events that created his claim had occurred before

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<sup>15</sup>276 F.3d 1024 (8th Cir. 2002).

<sup>16</sup>270 F.3d 1254 (9th Cir. 2001).

<sup>17</sup>276 F.3d at 1026.

<sup>18</sup>*Id.* at 1026-27.

<sup>19</sup>270 F.3d at 1255-56.

<sup>20</sup>*Id.* at 1256-58.

he filed for bankruptcy, and he could have sued to recover on the claim had any private party caused his damages. He could not sue only because the State had caused his injuries, and it was protected from suit by sovereign immunity. His claim was contingent only on the lawmaking body's decision whether to honor it, not on a lawmaking body's decision whether to establish a program or procedure under which parties could apply for relief.

The Court is convinced that when the Debtor filed his chapter 7 bankruptcy petition, he had some kind of existing right—probably amounting to a “claim” but at the very least “an equitable interest”—to file a claim with the Committee, seeking the Legislature’s approval of payment. This right to file a claim was an asset of undetermined or unliquidated value that the Debtor possessed at the time he filed bankruptcy, and as such, it became property of his bankruptcy estate. The claim or interest was contingent, that is, dependent on the occurrence of a future event (the enactment of legislation) that might never happen.<sup>21</sup>

Although to a large extent the Debtor sought compensation from the Legislature for past damages he had suffered, he also sought damages for loss of future income or wages from his medical practice. An individual debtor’s earnings from personal services performed after filing for bankruptcy are not property of the estate.<sup>22</sup> To the extent the money awarded to the Debtor was attributable to this portion of his claim, it is not property of the estate. The balance of his claim was for injuries that had already occurred when he filed for bankruptcy, and did become property of the estate. The parties’ stipulation does not provide a basis for the Court to determine what portion of the Legislature’s

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<sup>21</sup> See *Black’s Law Dictionary* 315 (7th ed. 1999) (defining “contingent”).

<sup>22</sup> 11 U.S.C.A. §541(a)(6).

award should be attributed to future wages. A status conference is hereby scheduled for Thursday, August 29, 2002, at 11:40 a.m. to discuss how this attribution question might be resolved.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this \_\_\_\_\_ day of July, 2002.

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JAMES A. PUSATERI  
CHIEF BANKRUPTCY JUDGE