

PARSONS, SMITH & STONE, LLP
LAWYERS
BURLEY, IDAHO

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U.S. COURTS

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CLERK U.S. DISTRICT COURT
CLERK, IDAHO

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Idaho State Bar #5787
Attorneys for D.L. Evans Bank

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In Re:)	Case No. 03-41318
)	
)	
LYNN E. KETTERLING and)	
REBECCA J. KETTERLING)	<u>OBJECTION TO DEBTORS' CHAPTER</u>
d/b/a KETTERLING FARMS,)	<u>12 PLAN</u>
)	
Debtor.)	

COMES NOW, D.L. Evans Bank, secured creditor, hereinafter (D.L. Evans), by and through its counsel of record, and pursuant to 11 U.S.C. §1225 objects to the Confirmation of the Debtors' Chapter 12 Plan dated September 30, 2003 with an errata sheet to Chapter 12 Plan dated and filed October 1, 2003.

In support of this objection, D.L. Evans represents the following:

1. D.L. Evans has not accepted the Debtors' plan and is a holder of a fully secured claim. A Proof of Claim was filed on July 16, 2003, in the amount of \$81,079.74. Debtors' plan

1 proposes to pay D.L. Evans the \$81,079.49 however, it fails to
2 include interest which continues to accrue as well as attorney
3 fees and costs incurred on behalf of D.L. Evans Bank and thus
4 violates 11 U.S.C. §1225(a)(4) and 11 U.S.C. §1225(a)(5)(B)(ii).

5 2. The plan further fails to incorporate the final Order
6 Authorizing Use of Cash Collateral. The plan does not recognize
7 that D.L. Evans Bank shall receive a replacement lien on Debtors'
8 farm land, to the extent necessary to secure the amount of cash
9 collateral used by Debtor. Said order being entered verbally on
10 the 27th day of August, 2003, and D.L. Evans Bank having signed
11 off on the order.

12 3. Debtors' plan also violates 11 U.S.C. §1225(a)(3) in
13 that the monies received from the sale of calves is being held in
14 a cash collateral account by the Trustee and the Debtors' plan
15 does not establish the role of the Trustee with regards to how
16 the account is to be distributed. The plan only states all
17 payments of the plan will be made from the sale of the calves.

18 4. D.L. Evans Bank believes that as the first place secured
19 creditor with regards to the cash collateral account, the plan
20 should require the Trustee to immediately turn over and
21 distribute to D.L. Evans Bank all excess funds currently held by
22 the Trustee, once monthly payments have been made including past
23 monies held. Under the Debtors' plan, they will no longer be in
24 the calving business once the calves are sold. As such, the plan
25 is effectively a liquidation plan and unless D.L. Evans is paid
26 the excess proceeds the plan violates §1225(a)(B).

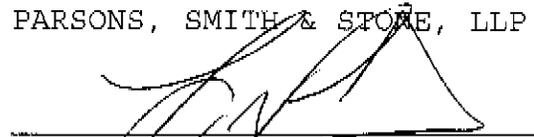
Finally, D.L. Evans is unsure as to whether or not cash

1 collateral will be used to pay items such as preferred claims and
2 Debtors' attorney fees.

3 WHEREFORE, having timely objected to the Confirmation of the
4 Debtors' Chapter 12 Plan, D.L. Evans Bank requests the Court to
5 deny confirmation of the Debtors' Chapter 12 Plan dated September
6 30, 2003, and an errata sheet to Chapter 12 Plan filed on October
7 1, 2003..

8 DATED this 16 day of October, 2003.

11 PARSONS, SMITH & STONE, LLP

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13 _____
14 Lance A. Loveland
15 Attorney for D.L. Evans Bank
16 P.O. Box 910
17 Burley ID 83318

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of October, 2003, I caused a true and correct copy of the foregoing OBJECTION TO DEBTORS' CHAPTER 12 PLAN to be served upon the following person(s) in the following manner:

US Trustee
304 N 8th Street #347
Boise ID 83702

X

United States Mail
Fax
Hand Delivery
Other

Warren Derbidge
PO Box 32
Boise ID 83707

X

United States Mail
Fax
Hand Delivery
Other

Jeffrey M. Wilson
PO Box 1544
Boise ID 83701

X

United States Mail
Fax
Hand Delivery
Other

Forrest Hymas
PO Box 89
Jerome ID 83338

P

United States Mail
Fax
Hand Delivery
Other

D. Blair Clark
PO Box 2773
Boise ID 83701

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United States Mail
Fax (208)342-4657
Hand Delivery
Other

Ron Kerl
151 N 3rd Avenue Suite 210
PO Box 4229
Pocatello ID

P

United States Mail
Fax
Hand Delivery
Other

Jerry Jensen
PO Box 535
Buhl ID 83316

P

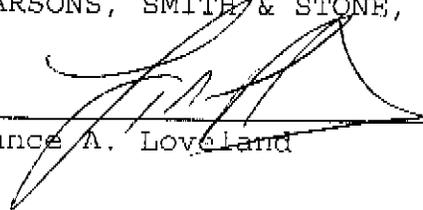
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