

Ronald D. Schoen, Trustee  
Box 216  
Payette, ID 83661  
Tel No. (208) 642-9820  
Fax No. (208) 642-1009

U.S. BANKRUPTCY COURT  
DISTRICT OF IDAHO

FEB 5 1997

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO

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<p>In re:</p> <p><b>TERRY HIPWELL</b></p> <p>Debtor.</p>	}	<p>Chapter 12</p> <p>Case No. 96-02095</p> <p><b>TRUSTEE'S REPORT</b></p>
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Scheduled to be heard at 1:30 p.m. on February 5, 1997 is the Chapter 12 Plan for the above named Debtor that was filed December 27, 1996. On January 31, 1997, the trustee received an Amended Notice of Hearing that stated the confirmation hearing on the Amended Chapter 12 Plan, filed February 3, 1997 and received February 4, 1997 by the trustee, has been scheduled for 1:30 p.m. on April 15, 1997. The trustee construed this amended notice to imply the February 5, 1997 hearing was cancelled. A telephone call was received today from Berta Stogadill, case administrator, that the hearing scheduled for February 5, 1997 is to proceed.

After the Chapter 12 Plan was filed, the trustee was aware an amended plan would be filed. On January 28, 1997, the trustee faxed to Howard Foley his 3-page memo that contained suggested plan language and plan treatment for certain creditors. Even though an amended plan has been filed, this report will have to focus on the plan that was filed December 27, 1996. The trustee hereby submits his report which, due to an unexpected hearing date, is probably not as thorough as it should be due to lack of time.

**I. OBJECTIONS**

Objections to the plan have been filed by:

Case Credit Corporation  
 Land View Fertilizer, Inc.  
 The Travelers Insurance Company  
 The Amalgamated Sugar Company

**II. EXHIBIT "A"**

Attached to this report is Exhibit "A" which represents comments submitted to Howard Foley on the plan filed December 27, 1996. The majority of these comments have been incorporated into the plan filed February 3, 1997.

**III. FUNDS IN POSSESSION OF THE TRUSTEE**

Wheat sold to Reed Grain: 25,795.29 bu @ \$3.08 net	\$79,599.43
Payments by trustee: Reed Grain (seed lien)	-11,962.18
Cash collateral to Debtor	<u>-31,650.00</u>
	35,987.25
1995 Sugar Beet Checks: Trustee's motion heard 1/22/97. Order submitted 1/30/97	11,155.91
Grain sold to Evans Grain: 1,423.48 bu @ \$3.12 net	<u>4,438.07</u>
<b>TOTAL FUNDS HELD BY TRUSTEE</b>	<b><u>\$51,581.23</u></b>

On December 24, 1996, the trustee sent two checks totaling \$21,305.07 to Land View Fertilizer and requested they be signed off and returned to the trustee to be deposited into his Trust Account pending further order of the Court. These checks were issued during the month of November 1996 by Simplot Livestock Co for the purchase of wheat. These checks have not been turned over to the trustee. The trustee will file with the Court his Motion for Reissuance of Checks

#### IV. CONCLUSION

Unfortunately, this case has a lot of issues not resolved. The Amalgamated Sugar Co state court action is not resolved. In addition, the issue of Land View's claim is not resolved although a hearing on that matter is scheduled for March 3, 1997.

Probably the largest issue to be resolved is the treatment of the allowed secured claim of Travelers of which they have objected to. None of the payments provided for in the plan pay interest in full let alone any amount on principal. If Travelers does not accept the plan treatment, and if this Court disallows the treatment in the plan, then feasibility becomes a major issue as the budget filed with the plan does not contain much of a margin to significantly increase payments to Travelers.

It is the recommendation of the trustee that confirmation be denied with the hope that certain matters will be resolved by the April 15, 1997 hearing date on the amended plan.

DATED This 4th day of February, 1997.

  
Ronald D. Schoen, Trustee

Ronald D. Schoen, Trustee  
Box 216  
Payette, ID 83661  
Tel No. (208) 642-9820  
Fax No. (208) 642-1009  
January 28, 1997

re: Terry Hipwell  
Case No. 96-02095

**COMMENTS ON CH 12 PLAN FILED DECEMBER 27, 1996**

1. **INTRODUCTION**

The plan does not comply with 11 USC §1222(a)(1) nor does the plan state the term of the plan. Assuming this is a five-year plan, the plan should provide:

"The future income and earnings of the Debtor is committed to the supervision and control of the Chapter 12 trustee during the term of the five-year plan."

2. **PAYMENT DATES**

Payment date should be more specific. For instance, the plan provides for payments to be made February 1998. Is this February 1, February 10, February 20 or when? The trustee assumes the first payment date is February 1, 1998.

3. **PRIORITY DEBT**

(a) I recommend the plan provide that priority debt be paid without interest over the life of the plan in five equal annual payments with the first payment to commence on February 1, 1998 and on the same day and month of each year thereafter until paid in full. You may want to pay the labor priority debt in one payment rather than over the life of the plan.

(b) The amount owing the Idaho State Tax Commission for \$1,345.22 is not for 1995 income taxes but is for 1991 individual income tax, 1995 withholding tax and 1995 fuel tax. The plan should provide this amount be paid without interest in five annual payments of \$269.04 each with the first payment commencing February 1, 1998 and on the same day and month of each year thereafter until paid in full.

(c) The IRS has not filed a claim for 1995 income taxes for \$14,752.64. In addition, your wording is wrong because you show this amount will be paid in full on or before February 1998 in five annual installments. The IRS filed claim #11 as priority for \$12,082.40 for 1995 Agri-FICA taxes. If this is the claim you want to pay, then the plan should provide this amount will be paid without interest in five annual payments of \$2,416.48 with the first payment commencing February 1, 1998 and on the same day and month of each year thereafter until paid in full.

**3. PRIORITY DEBT (cont'd)**

(d) The plan shows \$1,350.00 is owed to Alejandro Ponce. This person filed claim #35 for \$1,712.75.

(e) The plan shows \$1,715.00 is owed to Armondo Rivera. This person filed claim #36 for \$2,176.00.

(f) The plan provision for Felipe Zavala and Fivel Perez is the same as the claim filed by each of these individuals.

**4. LIENS ON REAL PROPERTY**

(a) Payette County filed an amended claim on November 25, 1996 for 1995 and 1996 taxes owing for \$6,680.96. I suggest the below language:

"The allowed secured claim of Payette County for \$6,680.96 will be paid at 12% interest in five annual payments. The first payment for \$1,850.00 is to commence February 1, 1998 and a payment for the same amount is due on the same day and month for the years 1999, 2000 and 2001. The balance of taxes, penalty and interest is due February 1, 2002."

(b) Canyon County filed a claim for \$12,468.50 for taxes owing for 1995, 1996 and 1997. Based upon documents filed with the claim, it is my opinion the claim is for taxes owing for 1994, 1995 and 1996. I suggest the below language:

"The allowed secured claim of Canyon County for \$12,468.50 will be paid at 12% interest in five annual payments. The first payment for \$3,450.00 is to commence February 1, 1998 and a payment for the same amount is due on the same day and month for the years 1999, 2000 and 2001. The balance of taxes, penalty and interest is due February 1, 2002."

It is imperative Terry Hipwell meet with the assessor in order to remove from the personal property listing those items returned to John Deere. I have a copy of this listing if Terry wants a copy.

(c) Travelers has filed an amended claim for \$480,030.45 - not \$480,030.41. Are you aware the payments provided for in the plan do not pay interest?

(d) The Idaho State Tax Commission filed a secured claim for \$984.79 for 1993 and 1994 withholding taxes. I suggest the below language:

"The allowed secured claim of the Idaho State Tax Commission for \$984.79 will be paid at 12% interest in five annual payments. The first payment for \$273.00 is to commence February 1, 1998 and a payment for the same amount is due on the same day and month for the years 1999, 2000 and 2001. The balance of taxes and interest is due February 1, 2002."

**5. LIENS ON EQUIPMENT**

(a) Case Credit has filed an objection to the plan. You should contact Jeff to determine what it will take to satisfy his client.

(b) The plan should provide for John Deers's allowed secured claim pursuant to the Stipulation filed by the Court on January 23, 1997.

(c) West One Bank has not filed a claim on a 1994 Chevrolet pickup.

**6. PAGE 19**

The first paragraph on this page refers to clover seed in bushels. Shouldn't this be in pounds?

**7. ARTICLE XIV**

I do not believe it is necessary to place title to the real property in the name of the trustee. The plan should provide:

"Upon confirmation, the real property of the Debtor is vested in the trustee for the duration of the plan. In the event of default by the Debtor, and upon notice by the trustee to the Court and all interested parties, the trustee will sell the real property for the satisfaction of debt owing those creditors who have a perfected security interest in the property. The real property will revert with the Debtor upon the proper completion by the Debtor of the confirmed plan."

**8. OTHER**

If no plan payments are to be made to creditors before February 1, 1998, then the plan should provide for the trustee to refund to the Debtor all funds held by the trustee in his Trust Account for the benefit of the Debtor as of the date of confirmation.

**END**

