

U.S. COURTS

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File No. 30-3333.59

Attorneys for The Amalgamated Sugar Company

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re:

HIPWELL, TERRY,

Debtor.

Case No. 96-02095

**OBJECTION TO MOTION FOR  
TURNOVER AND OPPOSITION  
TO OBJECTION TO CLAIM**

COMES NOW The Amalgamated Sugar Company (TASCO), by and through its attorneys of record, Penland Munther Boardman, Chartered, and hereby objects to the Motion for Turnover and opposes the Objection to Claim filed by Debtor in this matter.

A. TASCO objects to the Motion for Turnover based upon the following:

1. TASCO has made a valid setoff of moneys owed by TASCO to Debtor in the amount of \$25,293.24 against moneys owed by Debtor to TASCO;
2. The setoff was made more than 90 days prior to the filing of the Petition in Bankruptcy; and

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OPPOSITION TO OBJECTION TO CLAIM - 1**

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3. Said setoff does not set off a pre-petition debt against a post-petition obligation. Rather, the Debtor's obligation to TASCOCO arose more than 90 days prior to the filing of the Petition herein, at the time said setoff was made.

B. TASCOCO opposes Debtor's objection to TASCOCO's claim based upon the following:

1. The amount of the secured claim of TASCOCO is not too high;

2. TASCOCO's claim is fully secured. The Amended Bankruptcy Plan filed by the Debtor shows and admits that TASCOCO has priority security interests in collateral which has a fair market value that equals or exceeds the amount of TASCOCO's claim; and

3. For the purpose of a Chapter 12 Plan, the assets of the estate which are to be retained by the Debtor must be valued at their fair market value without any deduction for hypothetical sales costs.

Based upon the foregoing as explained in the accompanying memorandum, the Debtor's objection to the secured claim of TASCOCO should be denied, and the Debtor's Motion for Turnover should not be granted.

DATED this 26th day of February, 1997.

PENLAND MUNTHER BOARDMAN, CHARTERED

  
\_\_\_\_\_  
Richard C. Boardman, Of the Firm  
Attorneys for The Amalgamated Sugar Company

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on the 26th day of February, 1997, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method indicated below, in accordance with the rules of procedure, to the following persons:

Howard R. Foley  
Foley & Freeman, Chartered  
77 East Idaho Street  
P.O. Box 10  
Meridian, ID 83680

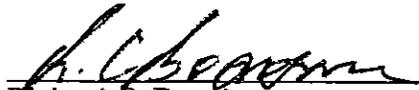
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Office of the U.S. Trustee  
304 North Eighth Street, Ste. 347  
P.O. Box 110  
Boise, ID 83701

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United States Trustee  
Ronald D. Schoen  
P.O. Box 216  
Payette, ID 83661

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Richard C. Boardman