



distribution contained in the motion, and as addressed here, the distribution to the attorney for the Debtor, Howard R. Foley, of \$20,000.00 in attorney fees. Debtor's attorney has made application for fee approval and the Court approved the total fee application of \$30,267.07. To date the attorney for the Debtor has received \$500.00, paid by the Debtor at the commencement of the case, which has been applied to advanced costs and fees. Debtor's attorney's fees, as are the fees if the Trustee and the real estate broker, are or will be allowed as administrative expenses as provided by 11 U.S.C. § 503, the distinction between the attorney's fees and those proposed to be paid to the Trustee and Broker, is that the attorneys fees have already been approved, without objection by any party including Land View, on May 5, 1998.

#### ARGUMENT

1. The objection of Land View to the sale is not timely filed. 11 U.S.C. § 363 (b)(1) provides "the Trustee, after notice and a hearing, may ... sell...property of the estate".

Pursuant to this provision, the Trustee gave such notice on July 16, 1998, and certified that this notice was mailed to Land View Fertilizer. Land View has not claimed it did not receive notice and thereby acknowledges that it did.

The Trustee's notice provides in pertinent part "...any objections to this motion should be filed no later than seven (7) days prior to the *hearing* with interested parties, the Court and the Trustee".

The local Rules for the United States Bankruptcy Court for the District of Idaho requires that any objection to a motion for entry of an order must be filed within the time

specified in the notice.

If the notice provides for the filing of an objection, a party objecting to an act or the entry of an order shall file with the clerk and serve on the moving party, a written objection within the time set forth in the notice. LBR 2002.2 (c objection).

In this case the notice requires an objection to be filed no later than seven (7) days prior to August 5, 1998.

Bankruptcy rule 9006 governs the computation of those seven days and provides,

"In computing any period of time ... the day of the act, event, or default from which the designated period of time begins to run shall not be included. \*\*\* When the period of time prescribed or allowed is less than 8 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation."

Thus applying the rules of computation to the objection, the objection must have been filed no later than July 27, 1998, thus allowing seven (7) intervening, non-weekend days prior to the hearing date to pass. Land View simply did not comply with the rules and the objection should be rejected as untimely.

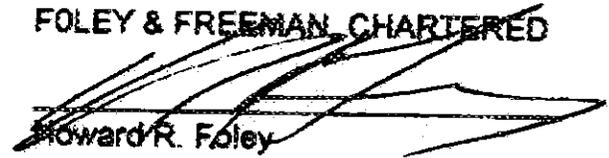
2. Land View lacks standing to object to the administrative or other expense distributions proposed by the Trustee.

Simply stated, the funds proposed to be paid to the attorney for the Debtor, on a discounted basis, are funds that result from Traveler's willingness to take less. The funds proposed to make payment do not diminish or reduce in anyway the funds that would otherwise be payable to Land View and because they do not Land View has no standing to complain about the distribution.

Dated this 31<sup>st</sup> day of July, 1998.

FOLEY & FREEMAN, CHARTERED

By:

  
Howard R. Foley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31<sup>st</sup> day of July, 1998, I caused to be served a true and correct copy of the foregoing **RESPONSE TO OBJECTION OF LAND VIEW** by the method indicated below, and addressed to the following:

Office of the U.S. Trustee  
P.O. Box 110  
Boise, ID 83707

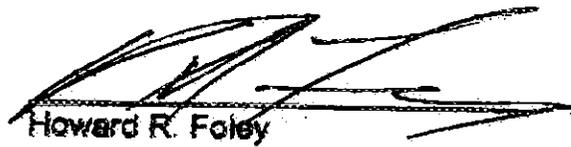
X Mailed  
\_\_\_\_ FAXED  
\_\_\_\_ Hand-delivered

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

X Mailed  
\_\_\_\_ FAXED  
\_\_\_\_ Hand-Delivered

Richard C. Boardman  
P.O. Box 199  
Boise, ID 83701

X Mailed  
\_\_\_\_ FAXED  
\_\_\_\_ Hand-delivered

  
Howard R. Foley