

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

IN RE: )  
 )  
EASTERN LIVESTOCK CO., LLC, ) CASE NO. 10-93904-BHL-11  
 )  
Debtor. )

**OBJECTION TO MOTION OF DINSMORE & SHOHL  
AND RECEIVER FOR PERMISSION TO  
SEEK ALLOWANCE OF PRE-PETITION ATTORNEY  
AND RECEIVER FEES AND REIMBURSEMENT OF  
PRE-PETITION EXPENSES IN THE RECEIVERSHIP COURT**

The First Bank and Trust Company (“First Bank”), by counsel, for its Objection to Motion of Dinsmore & Shohl and Receiver for Permission to Seek Allowance of Pre-Petition Attorney and Receiver Fees and Reimbursement of Pre-Petition Expenses in the Receivership Court (the “Motion”), alleges and states as follows:

1. First Bank is a secured creditor of Thomas and Patsy Gibsons (the “Gibsons”). Its collateral includes, *inter alia*, cattle owned by the Gibsons. The Gibsons have failed to account for the whereabouts of approximately 8,000 head of cattle that collateralized the Gibson’s indebtedness to First Bank. Upon information and belief, some of the unaccounted for cattle may have been sold to the Debtor and First Bank may assert that it has a priority security interest in proceeds of such sale in the possession of the Debtor or with respect to amounts purported to be owing to the Debtor by third parties. To the extent that First Bank does not have a security interest in proceeds of its cattle, the Debtor owes the Gibsons for cattle it sold on behalf the Gibsons and such payable owed by the Debtor to the Gibsons is subject to First Bank’s security interest.

2. The Motion seeks an order permitting Dinsmore & Shohl, LLP (“D & S”) and Elizabeth Lynch, the state court Receiver for Eastern Livestock, to seek allowance from the state court in which the receivership action was brought of pre-petition receiver fees and expenses incurred by the Receiver and D & S.

3. The Receiver and D & S originally filed an application in the state court receivership for the payment of their pre-petition fees and expenses. First Bank objected thereto on the basis that the automatic stay prevented the state court from making a determination and on the basis that “The determination of an administrative expense to be paid by a bankruptcy estate constitutes a core matter...” *In re: Statepark Bldg. Group, Ltd.* (N.D. Tex. June 29, 2005), No. 04-33916, 2005 Bankr. LEXIS 1248, at \*2 (citing 28 U.S.C. §§ 157(b)(2)(B) and 1334) and that the Bankruptcy Code expressly provides for the power of the Bankruptcy Court to determine “the actual, necessary expenses . . . incurred by (E) a custodian superseded under section 543 of this title.” 11 U.S.C. § 503(b)(3)(E). The Code defines a “custodian” to include a receiver appointed in a case or proceeding not under the Code. 11 U.S.C. § 101(11). *Statepark Bldg. Group, Ltd.*, 2005 Bankr. LEXIS 1248, at \*5.

4. Accordingly, the Bankruptcy Code expressly contemplates that fees or pre-petition receivers and their counsel should be reviewed and determined by the Bankruptcy Court applying applicable principles of bankruptcy law relating to the allowance of fees, as opposed to the state court which previously had jurisdiction over the receivership proceeding.

5. The Receiver has not filed an accounting of her activities as receiver. No fees allowed by this Court should be paid until such time as an accounting has been filed and approved.

6. First Bank has no objection to the payment of any fees and expenses that are allowed by the Bankruptcy Court following approval of the Receiver's accounting out of IOLTA account as requested.

WHEREFORE, The First Bank and Trust Company, by counsel, respectfully requests that the Motion be denied to the extent set forth herein and for all other appropriate relief.

Respectfully submitted,

/s/ Bret S. Clement

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on March 8, 2011, a true and correct copy of the foregoing Objection to Motion of Dinsmore & Shohl and Receiver for Permission to Seek Allowance of Pre-Petition Attorney and Receiver Fees and Reimbursement of Pre-Petition Expenses in the Receivership Court was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on March 8, 2011, a copy of the foregoing Objection to Motion of Dinsmore & Shohl and Receiver for Permission to Seek Allowance of Pre-Petition Attorney and Receiver Fees and Reimbursement of Pre-Petition Expenses in the Receivership Court was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

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/s/ Bret S. Clement  
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Bret S. Clement