

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:) Chapter 11
)
EASTERN LIVESTOCK CO., LLC, et al.,) Case No. 10-93904-BHL-11
)
Debtor.)

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND
SETTLEMENT WITH GARY SEALS**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee (the "Trustee") for Eastern Livestock Co., LLC ("Debtor" or "Eastern"), by counsel, respectfully moves the Court for approval of a compromise and settlement of claims by and between the Trustee, Gary Seals d/b/a Gary Seals Livestock ("Seals") and Fifth Third Bank ("Fifth Third") (collectively, the "Parties"). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Gary Seals is a Dunlap, Tennessee cattle merchant who served as a branch manager for the Debtor. Seals bought and sold cattle for Eastern's account as well as for his own cattle farm.

2. Since December 2010, the Trustee, with the assistance of Receiver Elizabeth Lynch, other forensic accounting experts at DSI, and counsel, has investigated the merits of possible claims that the Trustee could assert against Seals. During the spring of 2011, the Trustee concluded that sufficient merit existed to pursue claims related to the Debtor's early November 2010 directed transfers to Seals of approximately \$1.3 million in endorsed customer checks. The Trustee also suspected that additional claims could exist related to other pre-petition transfers.

3. Seals cooperated with the Trustee's investigation. Seals, however, disputed the Trustee's claims and maintained that he was unaware of and not directly involved in the check deception and inventory fraud scheme perpetrated by the Debtor's former officers. Seals also provided information to support set off claims related to money and livestock services that he provided to Eastern. Because of Seals' long and close association with Eastern's business, there also exists a real potential for claims between Seals and Fifth Third.

4. The Trustee negotiated with Seals' representatives during the summer and fall of 2011, however, no agreement was reached. With the Court's approval, Phillip L. Kunkel was retained by Seals and the Trustee to mediate their dispute. On April 23, 2012, Mr. Kunkel, the Trustee, Seals, and their counsel traveled to Louisville for a marathon negotiating session. The mediation resulted in a compromise that the Trustee expects will provide a large recovery to the Debtor's estate of at least \$1,375,000.

5. To avoid the significant cost, expense and delays inherent in litigating the disputes and claims described above, the Trustee is authorized to report to the Court that the Parties now desire to settle the disputes with Mr. Seals upon the terms and conditions set forth in the Settlement Agreement attached as Exhibit A ("Settlement Agreement").

The Settlement

6. The Trustee requests that the Court approve the Settlement Agreement, the most significant provisions of which are as follows:

- a) The Settlement Agreement is contingent upon the Court's entry of a final order approving the Settlement Agreement.
- b) Upon the Court's entry of a final order approving the Settlement Agreement, Seals' counsel will deliver the following to the Trustee: (i) the \$250,000 deposit he currently is holding in trust, and (ii) a non-interest bearing

promissory note (the "Note"), which shall be payable in eighteen (18) consecutive monthly principal installments of \$75,000.

c) If Seals makes each of the first fifteen (15) payments on the Note within ten (10) business days of their due date, then the last three (3) installment payments will be waived. In addition, Seals shall be entitled to the same credit if the Note is ever prepaid and if no prior monthly installments required by the Note were late by more than ten (10) business days.

d) The Trustee and Fifth Third shall release their claims against Seals, and Seals shall release his claims against the Trustee and Fifth Third.

7. Pursuant to Federal Rule of Bankruptcy Procedure 9019, this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

8. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

9. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The Settlement Agreement is the result of a mediated and arms-length settlement conference after months of research, investigation, and negotiation. The alternative to the settlement is litigation of complex and fact-intensive claims between the Parties, and the possibility of an outcome that would result in a smaller recovery to the estate.

10. The Trustee therefore believes that the proposed settlement is fair and equitable and in the sound exercise of his business judgment.

11. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely-filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

Respectfully submitted,

FAEGRE BAKER DANIELS, LLP

By: /s/ Kevin M. Toner

Kevin Toner (#11343-49)
Harmony Mappes (# 27237-49)
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204-1782
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
kevin.toner@faegrebd.com
harmony.mappes@faegrebd.com

Counsel for James A. Knauer, Chapter 11 Trustee

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2012, a copy of the foregoing pleading 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.

David L. Abt
davidabt@mwt.net

Mark A. Robinson
mrobinson@vhlaw.com

Randall D. LaTour
rdlatour@vorys.com

Daniel J. Donnellon
ddonnellon@ficlaw.com

John W. Ames
james@bgdlegal.com

Jeremy S Rogers
Jeremy.Rogers@dinslaw.com

Meredith R. Thomas
mthomas@daleeke.com

Charles R. Wharton
Charles.R.Wharton@usdoj.gov

David L. LeBas
dlebas@namanhowell.com

Jessica E. Yates
jyates@swlaw.com

Laura Day Delcotto
ldelcotto@dlgfir.com

Ross A. Plourde
ross.plourde@mcafeetaft.com

Todd J. Johnston
tjohnston@mcjllp.com

Karen L. Lohring
lohrling@msn.com

Elliott D. Levin
edl@rubin-levin.net

Sean T. White
swhite@hooverhull.com

Michael W. McClain
mike@kentuckytrial.com

James Edwin McGhee
mcghee@derbycitylaw.com

Jerald I. Ancel
jancel@taftlaw.com

David Alan Domina
dad@dominalaw.com

C. R. Bowles, Jr
cbowles@bgdlegal.com

Jeffrey R. Erler
jeffe@bellnunnally.com

John R. Carr, III
jrciii@acs-law.com

Stephen A. Weigand
sweigand@ficlaw.com

Robert Hughes Foree
robertforee@bellsouth.net

Ivana B. Shallcross
ishallcross@bgdlegal.com

William Robert Meyer, II
rmeyer@stites.com

James Bryan Johnston
bjtexas59@hotmail.com

Judy Hamilton Morse
judy.morse@crowedunlevy.com

John Huffaker
john.huffaker@sprouselaw.com

Kelly Greene McConnell
lisahughes@givenspursley.com

Walter Scott Newbern
wsnewbern@msn.com

Timothy T. Pridmore
tpridmore@mcjllp.com

Sandra D. Freeburger
sfreeburger@dsf-atty.com

John M. Rogers
johnr@rubin-levin.net

Robert H. Foree
robertforee@bellsouth.net

William E Smith
wsmith@k-glaw.com

Thomas C Scherer
tscherer@binghamchale.com

Jeffrey J. Graham
jgraham@taftlaw.com

Kent A Britt
kabritt@vorys.com

John Hunt Lovell
john@lovell-law.net

Edward M King
tking@fbtlaw.com

Bret S. Clement
bclement@acs-law.com

John Frederick Massouh
john.massouh@sprouselaw.com

Kim Martin Lewis
kim.lewis@dinslaw.com

Deborah Caruso
dcaruso@daleeke.com

Allen Morris
amorris@stites.com

James T. Young
james@rubin-levin.net

John M. Thompson
john.thompson@crowedunlevy.com

Matthew J. Ochs
matt.ochs@moyewwhite.com

T. Kent Barber
kbarber@dlgfir.com

Kirk Crutcher
kcrutcher@mcs-law.com

Theodore A Konstantinopoulos
ndohbky@jbandr.com

Lisa Koch Bryant
courtmail@fbhlaw.net

John David Hoover
jdhoover@hooverhull.com

Sarah Stites Fanzini
sfanzini@hopperblackwell.com

Susan K. Roberts
skr@stuartlaw.com

David A. Laird
david.laird@moyewwhite.com

Trevor L. Earl
tearl@rsvlaw.com

Joshua N. Stine
jnstine@vorys.com

Jill Zengler Julian
Jill.Julian@usdoj.gov

Michael Wayne Oyler
moyler@rwsvlaw.com

James E. Rossow
jim@rubin-levin.net

Steven A. Brehm
sbrehm@bgdlegal.com

James M. Carr
james.carr@faegrebd.com

Shawna M. Eikenberry
shawna.eikenberry@faegrebd.com

James A. Knauer
jak@kgrlaw.com

Christie A. Moore
cmoore@bgdlegal.com

Jeffrey E. Ramsey
jramsey@hopperblackwell.com

Joseph H. Rogers
jrogers@millerdollarhide.com

Andrew D. Stosberg
astosberg@lloydmc.com

Andrea L. Wasson
andreawassonatty@gmail.com

Jeffrey L. Hunter
jeff.hunter@usdoj.gov

Jason W. Cottrell
jwc@stuartlaw.com

James B. Lind
jblind@vorys.com

Anthony G. Raluy
traluy@fbhlaw.net

Jack S. Dawson
jdawson@millerdollarhide.com

Terry E. Hall
terry.hall@faegrebd.com

Erick P. Knoblock
eknoblock@daleeke.com

Shiv Ghuman O'Neill
shiv.oneill@faegrebd.com

Eric C. Redman
ksmith@redmanludwig.com

James E. Smith
jsmith@smithakins.com

Kevin M. Toner
kevin.toner@faegrebd.com

Christopher M. Trapp
ctrapp@rubin-levin.net

Amelia Martin Adams
aadams@dlgfir.com

Robert A. Bell
rabell@vorys.com

Melissa S. Giberson
msgiberson@vorys.com

Christopher E. Baker
cbaker@hklawfirm.com

Dustin R. DeNeal
dustin.deneal@faegrebd.com

Jay Jaffe
jay.jaffe@faegrebd.com

Harmony A. Mappes
harmony.mappes@faegrebd.com

Wendy W. Ponader
wendy.ponader@faegrebd.com

Joe T. Roberts
jratty@windstream.net

Robert K. Stanley
robert.stanley@faegrebd.com

U.S. Trustee
ustpreion10.in.ecf@usdoj.gov

I further certify that on June 20, 2012, a copy of the foregoing pleading was served via electronic mail transmission on the following:

Ashley S. Rusher
asr@blancolaw.com

Darla J. Gabbitas
darla.gabbitas@moyewwhite.com

/s/ Kevin M. Toner