

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION**

IN RE:	)	Chapter 11
	)	
EASTERN LIVESTOCK CO., LLC,	)	CASE NO.: 10-93904-BHL-11
	)	
Debtor.	)	Hon. Basil H. Lorch, III
	)	
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RUSH CREEK RANCH, LLLP,	)	
	)	Adv. Pro. No. 11-59104
Plaintiff,	)	
	)	
v.	)	
	)	
EASTERN LIVESTOCK COMPANY, LLC,	)	
HILLIARD-McKETRICK INVESTMENTS,	)	
INC.d/b/a ARCADIA STOCKYARD;	)	
CATTLEMEN’S LIVESTOCK MARKET, INC.;	)	
COLUMBIA ) LIVESTOCK MARKET, INC.;	)	
HARDEE LIVESTOCK MARKET, INC.;	)	
NORTH FLORIDA LIVESTOCK MARKET,	)	
INC.; OCALA LIVESTOCK MARKET, INC.;	)	
OKEECHOBEE LIVESTOCK MARKET, INC.;	)	
SUMTER COUNTY FARMERS MARKET,	)	
INC.; MADISON COUNTY LIVESTOCK	)	
MARKET, INC. d/b/a TOWNSEND	)	
LIVESTOCK MARKET; RON SIZEMORE	)	
TRUCKING, INC.; OAK LAKE CATTLE CO.;	)	
EAGLE BAY, INC.; DANIEL M. BYRD; D&R	)	
TRUCKING; FIFTH THIRD BANK;	)	
BANKS 1-25, and DOES 25-50	)	
	)	
Defendants.	)	
	)	
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**JOINT STIPULATION OF ALL DEFENDANTS AND UNOPPOSED MOTION FOR  
DISTRIBUTION OF REGISTRY FUNDS**

This stipulation and joint motion seeks an order authorizing the disbursement of interpleaded and escrowed funds in accordance with the terms of the recently approved settlement with the Florida Creditors. The parties are now preparing a stipulated final judgment

and order of dismissal to conclude this adversary proceeding to be presented for the Court's consideration immediately following the distribution of funds as set forth below.

JAMES A. KNAUER ("Trustee"), chapter 11 Trustee for Debtor EASTERN LIVESTOCK CO., LLC, ("Eastern" or "Debtor"); ) FIFTH THIRD BANK, N.A. ("Fifth Third"); and collectively HILLIARD-MCKETTRICK INVESTMENTS, INC. d/b/a ARCADIA STOCKYARD; CATTLEMEN'S LIVESTOCK MARKET, INC.; COLUMBIA LIVESTOCK MARKET, INC.; HARDEE LIVESTOCK MARKET, INC.; NORTH FLORIDA LIVESTOCK MARKET, INC.; Ocala LIVESTOCK MARKET, INC.; OKEECHOBEE LIVESTOCK MARKET, INC.; SUMTER COUNTY FARMERS MARKET, INC.; and MADISON COUNTY LIVESTOCK MARKET, INC. d/b/a TOWNSEND LIVESTOCK MARKET; RON SIZEMORE TRUCKING, INC.; OAK LAKE CATTLE CO.; I.E. "JIM" BYRD; EAGLE BAY, INC.; and DANIEL M. BYRD ("Florida Creditors") (collectively the Trustee, Debtor, Fifth Third and Florida Creditors as "Parties") and pursuant to this Court's July 5, 2012 *Order Canceling July 9, 2012 Hearing And Granting Trustee's Motion To Approve Settlement With Florida Creditors* file this *Joint Stipulation Of All Defendants And Unopposed Motion For Distribution Of Registry Funds* and state as follows:

1. This case arises out of the insolvency of Eastern Livestock Co., LLC and subsequent receivership and involuntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. on December 6, 2010 in the United States Bankruptcy Court, Southern District of Indiana, New Albany Division (the "Court").

2. The Court entered the Order for Relief in an Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010, and on December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc.

No. 102] approving the United States Trustee's Application for an Order Approving the Appointment of James M. Knauer as Chapter 11 Trustee [Doc. No. 98] pursuant to 11 U.S.C. § 1104.

3. Rush Creek Ranch, LLLP ("Rush Creek") had purchased cattle in Florida during late October and early November 2010 in the total amount of \$178,233.39, but in response to Eastern's financial difficulties, withheld payment for the cattle and commenced on November 17, 2010 a civil interpleader action against the Debtor, the Florida Creditors, and Fifth Third and others in the Circuit Court of Vernon County, Wisconsin under Case No. 2010 cv 000317 ("Wisconsin Case"), depositing said amount of \$178,233.39 with that court.

4. Len Miller ("Miller") had also purchased cattle in Florida during late October and early November 2010 in the total amount of \$148,432.14, but likewise upon learning of Eastern's financial difficulties, withheld payment for the cattle and on or about January 30, 2011 made payment in said amount of \$148,432.14 to the Trustee as "Purchase Money" ("Len Miller Purchase Money").

5. On or about February 4, 2011 Fifth Third filed Claim No. 13 in the Chapter 11 Case seeking recovery from a first position lien on all of Eastern's receivables, inventory, and other assets, including the Rush Creek funds interpled in the Wisconsin Case and the funds paid in to the Trustee as Len Miller Purchase Money.

6. On March 24, 2011, the Trustee removed the Wisconsin Case to the United States Bankruptcy Court, Western District of Wisconsin, Eau Claire Division, and on May 4, 2011, the Hon. Thomas S. Utschig granted the *Order Transferring Venue and Interpleaded Funds* [Doc. No. 5] which transferred venue of the Wisconsin Case to this Court as Adversary Proceeding No. 11-59104 ("Rush Creek Adversary Proceeding").

7. On or about April 30, 2011 in response to losses sustained in transactions with Eastern, including Rush Creek and Len Miller transactions, the Florida Creditors filed Claim Nos. 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 225, 226, 227, 228, 229, 230, 232, and 233, as amended, seeking recovery on a series of unpaid invoices for livestock sales, hauling, yardage, commissions, and for dishonored checks.

8. On March 16, 2012, the Court entered the *Order Granting Motion To Consolidate* in the Rush Creek Adversary Proceeding (Doc. 46) consolidating all claims of the Parties to the Rush Creek interpled amounts and to the Len Miller Purchase Money into a single proceeding (i.e. this present action, the "Rush Creek Adversary Proceeding").

9. On or about May 17, 2012, the Parties hereto entered into the *Settlement Agreement And Mutual Release*—resolving globally any and all claims to the Rush Creek interpled amount and the Len Miller Purchase Money amount and also resolving all other claims and potential claims between the Debtor and the Florida Creditors and between Fifth Third and the Florida Creditors for amounts claimed to be due and owing and related matters.

10. In response to this Court's July 5, 2012 approval of the *Settlement Agreement And Mutual Release*, the Parties hereto do hereby stipulate to the settlement distribution of the amounts as outlined below in **Table 1**.

**Table 1 - Settlement Distribution Summary/Reconciliation**

DESCRIPTION	Rush Creek	Len Miller	Oak Lake	Adjustment	NET TOTALS
Due Florida Creditors	\$122,921.63	\$147,781.19	\$0.00	\$7,000.00	\$277,537.19
Due Eastern/Trustee	\$55,311.66	\$650.95	\$51,135.90	(\$7,000.00)	\$100,098.51
<b>TOTAL Distribution</b>	<b>\$178,233.29</b>	<b>\$148,432.14</b>	<b>\$51,135.90</b>	<b>\$0.00</b>	<b>\$377,801.33</b>

11. As noted previously, the Rush Creek interpleader and the Len Miller purchase money claims were consolidated into the Rush Creek Adversary Proceeding along with the other

claims, counterclaims, and cross-claims involving the Florida Creditors. The Oak Lake matter involves the amounts due by and between *Debtor Eastern/Trustee* and collectively *Oak Lake Cattle Co., I.E. "Jim" Byrd, Eagle Bay, Inc., and Daniel M. Byrd* (collectively "Oak Lake Claimants").<sup>1</sup> The Parties, namely the Trustee, Debtor, Fifth Third, and Florida Creditors, stipulate to the resolution of and to the satisfaction of the claims, as set forth in the *Settlement Agreement And Mutual Release*, by distribution of the total amount of \$377,801.33 as outlined above: (i) \$277,537.19 to the Florida Creditors and (ii) \$100,098.51 to the Estate of Debtor Eastern.

12. The Parties do hereby stipulate without objection that distribution on their own and on the other Parties' individual claims shall be in total as outlined in **Table 1**. Counsel for the Parties have confirmed that these funds are currently held as follows: (1) \$178,233.29 held in the Court's registry of interpleaded funds; (2) \$148,432.14 held in the Trustee's escrow account for contested purchase money receipts; and (3) \$51,135.90 held in attorney W. Scott Newbern's law firm trust account. The Parties stipulate and agree that the Court should immediately authorize that all of these interpleaded and escrowed funds should be transferred, in trust, to the trust account for the Trustee's counsel, Faegre Baker Daniels LLP, in order to make the payments described below.

13. The detail comprising the **Table 1** totals is summarized and outlined in **Tables 2-5**, attached hereto as the Appendix. The Florida Creditors stipulate without objections from the Trustee, Eastern, and Fifth Third to the amounts identified in **Tables 2-5**.<sup>2</sup>

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<sup>2</sup> **Table 2** Rush Creek Interpleader share and allocation of total \$178,233.29

**Table 3** Len Miller Purchase Money share and allocation of total \$148,432.14

Footnote Cont'd. . . .

14. As noted above, Rush Creek Ranch, LLLP, as Plaintiff, commenced the Wisconsin Case interpleader and deposited the total amount of \$178,233.39 with the Circuit Court of Vernon County, Wisconsin. This amount has now been transferred to the registry of this Court, and the Wisconsin Case and related claims have been consolidated into the Rush Creek Adversary Proceeding. Accordingly and commensurate with this Court's approval of the *Settlement Agreement And Mutual Release* and the distribution of those funds per **Table 1**, the Parties do hereby stipulate without objection to the release of Rush Creek Ranch, LLLP from any and all claims arising from or related to Rush Creek Adversary Proceeding and to the dismissal with prejudice of Rush Creek Ranch, LLLP from this action.

15. As noted above, Len Miller paid to the Trustee the total amount of \$148,432.14 as "Purchase Money," and claims to this amount by the Parties have been consolidated into the Rush Creek Adversary Proceeding. Accordingly and commensurate with this Court's approval of the *Settlement Agreement And Mutual Release* and the distribution of those funds per **Table 1**, the Parties do hereby stipulate without objection to the release of Len Miller from any and all claims arising from or related to Rush Creek Adversary Proceeding and to the dismissal with prejudice of Len Miller from this action.

16. The Parties do hereby stipulate without objection to the release of Tommy Berend ("Berend") from any and all claims arising from or related the purchase of cattle in Florida during late October and early November 2010 in the total amount of \$45,143.95 and the payment in the same amount to Oak Lake Cattle Co., for benefit of the Florida Creditors, including

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**Table 4** Combined Rush Creek and Len Miller share and allocation of \$326,665.43

**Table 5** Combined Oak Lake Cattle and related claims for net total of \$51,135.90

without limitation amounts identified by the Trustee and Eastern as an "Account Receivable" from Berend.

17. The Parties do hereby stipulate without objection to the release of D.R. Daniels ("Daniels") from any and all claims arising from or related the purchase of cattle in Florida during late October and early November 2010 in the total amount of \$34,373.13 and the payment in the same amount to Oak Lake Cattle Co., for benefit of the Florida Creditors, including without limitation amounts identified by the Trustee and Eastern as an "Account Receivable" from Daniels.

18. The Parties do hereby stipulate without objection to the release of Tom Herrmann ("Herrmann") from any and all claims arising from or related the purchase of cattle in Florida during late October and early November 2010 in the total amount of \$22,884.04 and the payment in the same amount to Oak Lake Cattle Co., for benefit of the Florida Creditors, including without limitation amounts identified by the Trustee and Eastern as an "Account Receivable" from Herrmann.

19. The Parties do hereby stipulate without objection to the release of Jacob Larson ("Larson") from any and all claims arising from or related the purchase of cattle in Florida during late October and early November 2010 in the total amount of \$14,547.27 and the payment in the same amount to Oak Lake Cattle Co., for benefit of the Florida Creditors, including without limitation amounts identified by the Trustee and Eastern as an "Account Receivable" from Herrmann.

20. The Parties stipulate and agree that the Court should order the Clerk to issue a check from the Court's registry account in this matter in the amount of \$178,233.29 payable to "Faegre Baker Daniels LLP, In Trust."

21. The Parties stipulate and agree that the Court should order the Trustee to issue a check in the amount of \$148,432.14 from the estate's escrow account payable to "Faegre Baker Daniels, In Trust."

22. The Parties stipulate and agree that upon receipt of the interpleaded and escrowed funds, Faegre Baker Daniels LLP shall pay the sum of \$226,401.29 to attorney W. Scott Newbern, PL Florida Bar Foundation IOTA for distribution to his clients in accordance with the attached schedules, and that Faegre Baker Daniels LLP shall pay the sum of \$100,098.51 to the Trustee by check from its law firm trust account.

WHEREFORE in consideration of the above, the Parties acknowledge and agree to the stipulations above and request that the Court issue an Order of distribution and payment amounts totaling \$377,801.33: (i) \$277,537.19 to the Florida Creditors and (ii) \$100,098.51 to the Estate of Debtor Eastern. In order to carry out these distribution and settlement payments, the Parties further request that the Court issue an Order directing (1) the Clerk to pay \$178,233.29 by check from the Court's registry account to "Faegre Baker Daniels LLP, In Trust"; (2) the Trustee to pay \$148,233.29 by check from the estate's escrow account to "Faegre Baker Daniels LLP, In Trust"; (3) Faegre Baker Daniels LLP to pay \$226,401.29 by check from its law firm trust account to "W. Scott Newbern, PL Florida Bar Foundation IOTA"; and (4) Faegre Baker Daniels LLP to pay \$100,098.51 by check from its law firm trust account to the Trustee for the benefit of the Debtor's estate.



Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 24, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all 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 July 24, 2012, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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