

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:) Chapter 7
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.) Hon. Basil H. Lorch III

**TRUSTEE'S OBJECTION TO (1) MOTION TO APPEAR PRO HAC VICE
AND (2) MOTION OF KENTUCKY CATTLEMEN'S ASSOCIATION TO
REMOVE THE TRUSTEE PURSUANT TO 11 U.S.C. § 324 AND TO TERMINATE
EMPLOYMENT OF THE TRUSTEE'S LEAD COUNSEL**

James A. Knauer, as Chapter 11 trustee (the "Trustee") for the debtor, Eastern Livestock Co., LLC (the "Debtor"), objects to (1) Motion to Appear Pro Hac Vice (the "Appearance Motion") and (2) Motion to Remove the Trustee Pursuant to 11 U.S.C. § 324 and to Terminate Employment of the Trustee's Lead Counsel (the "Removal Motion") both filed by Kentucky Cattlemen's Association ("KCA") on August 10, 2012 [Docket Nos. 1323, 1324].

KCA is not a creditor. KCA is not a party in interest. KCA does not have standing to appear in this chapter 11 case. The Trustee objects and requests that the Appearance Motion be denied and the Removal Motion be stricken.

Section 1109 of the Bankruptcy Code (11 U.S.C. 101 *et seq.*) governs the rights of persons to appear and be heard in a chapter 11 case. To claim standing to appear and be heard in a chapter 11 case, the party must have a legally protected interest. *See In re James Wilson Assoc.*, 965 F.2d 160, 169 (7th Cir. 1992). KCA has no legally protected interest in this chapter 11 case. KCA has not filed a claim in this chapter 11 case. KCA may be interested in this chapter 11 case, but being interested does not confer legal standing and to seek to enforce legal rights or positions.

The Bankruptcy Code limits the right to be heard in Chapter 11 cases to parties in interest, "including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee." 11 U.S.C. § 1109. KCA is none of the enumerated parties. *See also* 11 U.S.C. § 101(10) ("The term creditor means (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor; (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h), or 502(i) of this title; or (C) entity that has a community claim."). While the enumerated list was not intended to be exhaustive, the scope of the term 'party in interest' is limited by Article III of the United States Constitution and by the purposes of the Bankruptcy Code.

Standing under 11 U.S.C. § 1109 is co-extensive with Article III standing. *In re Global Indus. Tech., Inc.*, 645 F.3d 201, 211 (3d Cir. 2011). To have Article III standing, a party must demonstrate (i) a concrete injury in fact to it; (ii) the injury can be traced to the challenged action; and (iii) the injury is able to be redressed by a favorable decision. *Id.* KCA has no concrete injury of its own to be redressed within this chapter 11 Case.

The Removal Motion parrots the assertions filed by the Objector Group (see Trustee's Response To Motions To Remove Trustee filed concurrently herewith, identifying the "Objector Group"). KCA did not contact the Trustee prior to filing the Removal Motion, nor is it apparent that KCA did any due diligence of its own prior to filing the Removal Motion. KCA makes copied allegations against the Trustee and his counsel based on assertions in others' pleadings. A chapter 11 case is intended as a means by which debtors and creditors may resolve their claims. Judicial resources and the resources of the Debtor's estate should be conserved for the resolution of claims by and against the estate. A bankruptcy case is a legal proceeding. It is

not open mike night. Adjudication of pleadings filed by parties with no legally cognizable stake in the outcome of the case is a waste of resources.

The Trustee is not unsympathetic to the costs faced by many of the victims of the Debtor's demise and fraud. The Trustee notes that many of the Kentucky victims of ELC's fraud have been represented by counsel, have sued Fifth Third Bank in Kentucky state courts, and have been or will be the recipients of restitution orders and payments. Counsel for KCA's inference that it (and he) "represents" the interests of KCA's members raise concerns related to the legal representation of clients and call the propriety of KCA's appearance into doubt.

For all of the foregoing reasons, the Appearance Motion should be denied and the Removal Motion stricken.

WHEREFORE, the Trustee respectfully requests that the Court enter an order (i) denying KCA's Motion to Appear Pro Hac Vice, (ii) striking the Motion of the Kentucky Cattlemen's Association to Remove the Trustee Pursuant to 11 U.S.C. § 324 and to Terminate Employment of the Lead Counsel, (iii) denying KCA all relief, and (iv) granting the Trustee and the Debtor's estate all other just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 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.

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