

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:)	Chapter 11
)	
EASTERN LIVESTOCK CO., LLC, et al., ¹)	Case No. 10-93904-BHL-11
)	
_____ Debtors.)	JOINTLY ADMINISTERED

APPLICATION TO EMPLOY PHILLIP L. KUNKEL AS MEDIATOR

James A. Knauer, the chapter 11 trustee appointed in this case ("Trustee"), by counsel, respectfully requests that this Court enter an order authorizing the Trustee to employ Phillip L. Kunkel as standing mediator (the "Mediator") in this case to mediate disputes and issues pursuant to the terms and conditions outlined on attached Exhibit A. The Trustee believes that mediation may help resolve some claims and disputes in this case and avoid the cost and delay of continued litigation. In support of this application ("Application"), the Trustee respectfully represents the following:

1. The Trustee was appointed on December 27, 2010 pursuant to the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Dock. No. 102].
2. The Trustee wants to employ the Mediator to serve as a "standing" mediator to mediate matters, issues or disputes that the Trustee and one or more parties may choose to submit to mediation. The Trustee has discussed his interest in creating a mechanism by which the Trustee and parties may voluntarily mediate certain of the disputes and claims in this case.

¹ The Debtor entities are Eastern Livestock Co., LLC and Okie Farms, L.L.C.

3. The National Cattlemen's Beef Association ("NCBA") recommended the Mediator to the Trustee based upon the Mediator's experience with the industry and with the bankruptcy issues.

4. The Mediator is a principal at the law firm of Gray, Plant & Mooty, LLC, and is experienced in agriculture-related bankruptcies, having served as a trustee in bankruptcy cases involving debtors involved in the cattle industry.

5. The Trustee selected the Mediator because the Mediator is experienced and is well-qualified to serve as a mediator with respect to issues that parties are likely to want to mediate.

6. The Trustee seeks authority to hire the Mediator on the Mediator's normal hourly billing rates of \$500 per hour, with half of the Mediator's fees to be paid by the estate and the other half charged to the other party or parties to any mediation, all as more particularly outlined on attached Exhibit A. Costs associated with the mediation would be similarly divided.

7. Pursuant to the Verified Statement of Phillip L. Kunkel attached as Exhibit B, the Mediator is qualified to act as a mediator in this case and does not hold or represent an interest adverse to the estate on the matters on which the Mediator is to be employed. The Mediator has disclosed that he or other members of his firm have advised the NCBA regarding this chapter 11 case and its potential impact on the beef industry and has further disclosed that such representation may continue with respect to unrelated matters. The NCBA has not filed a proof of claim and the Trustee does not believe that the NCBA is a creditor in this case and/or is adverse to the estate. Regardless, the Mediator will not be asked to mediate any disputes to which the NCBA is a party unless the Mediator obtains all necessary consents. The Trustee

believes that the Mediator is therefore "disinterested," as that term is defined by the Bankruptcy Code.

8. To the extent the Mediator becomes aware of any adversity or conflict with proposed parties to a mediation, unless the mediator can obtain all needed consents, the Mediator will not serve as mediator of that conflict and the Trustee will seek authority to hire an alternate mediator should it be desirable and beneficial.

9. The Trustee believes the employment of the Mediator is in the best interests of this estate.

WHEREFORE, the Trustee prays that he be authorized to employ the Mediator to act as a standing mediator for disputes arising in this case as the Trustee may select in his discretion, that he be authorized to pay one half of the Mediator's fees incurred in this case, and that the Court grant the Trustee all other just and proper relief.

Respectfully submitted,

By: /s/ Dustin R. DeNeal

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 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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I further certify that on January 3, 2012, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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