

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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*In re: Robert A. Clarin  
and Donna J. Clarin,*

Chapter 7  
Bky. No. 04-40456

Debtor(s).

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**NOTICE OF HEARING AND MOTION  
OBJECTING TO CLAIM OF CREDITOR  
(CLAIM NO. 5)**

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TO: Entities specified in Local Rule 3007-1.

1. Terri A. Georgen-Running, trustee (the "Trustee") of the bankruptcy estate of the above-named Debtor(s) moves the Court for the relief requested below and gives notice of hearing.

2. A hearing will be held on this motion by the Honorable Nancy C. Dreher, Courtroom No. 7 West, 7<sup>th</sup> Floor - United States Courthouse, 300 S. Fourth Street, Minneapolis, Minnesota on **November 3, 2004 at 10:30 a.m.**, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than October 27, 2004, which is seven (7) days before the hearing date, including intermediate Saturdays, Sundays and legal holidays, or filed and served by mail not later than October 22, 2004, which is ten (10) days before the hearing date, including intermediate Saturdays, Sundays and legal holidays. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005 and Local Rule 1070-1. This is a core proceeding. The petition commencing this Chapter 7 case was filed on February 2, 2004 and is now pending before this court.

5. This motion arises under 11 U.S.C. §§502 and 704, FED. R. BANKR. P. 3002 and 3007 and Local Rule 3007-1. This motion is filed under FED. R. BANKR. P. 9014 and 9014 and Local Rule 9013. The Trustee requests relief with respect to Claim No. 5 filed in the Debtor(s)' case.

6. Tony Nistler Trucking ("Claimant") filed a proof of claim on May 14, 2004, asserting an unsecured non-priority claim in the amount of \$575 (the "Claim"). The Claim reflects that the basis for the obligation is for money loaned/services provided/goods sold to Aitkin County Pallet, Inc. (a corporation owned by the Debtor(s)). There is no documentation to establish that the Debtors personally guaranteed the Claim.

7. As a result, the trustee is unable to determine whether the Claim is properly filed in this case.

WHEREFORE, the Trustee respectfully requests that the Court disallow Claim No. 5 and such other relief as may be just and equitable.

Dated: September 29, 2004

**GEORGEN-RUNNING LAW FIRM**  
***A Professional Corporation***  
By: /e/ Terri A. Georgen-Running  
Terri A. Georgen-Running (No. 238338)  
P.O. Box 16355  
St. Paul, MN 55116  
(651) 699-6980  
(651) 292-1234 *Facsimile*

ATTORNEYS FOR THE TRUSTEE

VERIFICATION. I, Terri A. Georgen-Running, the moving party named in the foregoing notice of hearing and motion declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 29, 2004

/e/ Terri A. Georgen-Running  
Terri A. Georgen-Running, Trustee

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA (MINNEAPOLIS)**

**PROOF OF CLAIM**

Name of Debtor  
ROBERT A CLARIN  
DONNA J CLARIN

Case Number  
04-40456



**NOTE:** This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. §503.

Name of Creditor (The person or other entity to whom the debtor owes money or property):  
TONY NISTLER TRUCKING

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and Address where notices should be sent:

TONY NISTLER TRUCKING  
PO BOX 33  
MCGREGOR MN 55760

Check box if you have never received any notices from the bankruptcy court in this case.  
 Check box if the address differs from the address on the envelope sent to you by the court.



THIS SPACE IS FOR COURT USE ONLY

Telephone Number:

Account or other number by which creditor identifies debtor:

Check here if  replaces this claim  amends a previously filed claim, dated: \_\_\_\_\_

**1. Basis for Claim**

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes
- Other \_\_\_\_\_

- Retiree benefits as defined in 11 U.S.C. §1114(a)
- Wages, salaries, and compensation (fill out below)  
Last four digits of SS #: \_\_\_\_\_
- Unpaid compensation for services performed  
from \_\_\_\_\_ to \_\_\_\_\_  
(date) (date)

**2. Date debt was incurred:**

9/11/03

**3. If court judgment, date obtained:**

**4. Total Amount of Claim at Time Case Filed:** \$ 575.00 (unsecured) (secured) (priority) 575.00 (Total)

If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below.

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

**5. Secured Claim.**

Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:

- Real Estate  Motor Vehicle
- Other \_\_\_\_\_

Value of Collateral: \$ \_\_\_\_\_

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ \_\_\_\_\_

**6. Unsecured Nonpriority Claim \$ \_\_\_\_\_**

Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.

**7. Unsecured Priority Claim.**

Check this box if you have an unsecured priority claim

Amount entitled to priority \$ \_\_\_\_\_  
Specify the priority of the claim:

- Wages, salaries, or commissions (up to \$4,925),\* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- Contributions to an employee benefit plan - 11 U.S.C. §507(a)(4).
- Up to \$ 2,225\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6).
- Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(\_\_\_\_\_).

\*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

**8. Credits:** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

**9. Supporting Documents:** Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

**10. Date-Stamped Copy:** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Send claims to:

U.S. Bankruptcy Court  
301 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Date  
5/11/04

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

*[Signature]* owner

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

For CHAPTER 7, 11 or 12 CASES filed on or after April 1, 2004

# Tony Nistler Trucking

P.O. Box 33  
McGregor, MN 55760

# Invoice

DATE INVOIC...  
9/1/2003 2526

## BILL TO

Aitkin County Pallet  
16809 260th Ave.  
McGrath, MN 56350

P.O. NO. TERMS  
15 days

ITEM	QUANTITY	DESCRIPTION	RATE	AMOUNT
Flat Rate	1	McGrath, MN to StormLake, IA.	575.00	575.00

My cell  
218-821-2328 Thank you  
Tony

Thank You, Tony

**Total** \$575.00

UNITED STATES BANKRUPTCY COURT  
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Chapter 7  
Bky. No. 04-40456

Debtor(s).

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**UNSWORN DECLARATION FOR PROOF OF SERVICE**

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I, Terri A. Georgen, declare that on the date indicated below, I served the following:

(1) Notice of Hearing and Motion Objecting to Claim of Creditor; (2) Unsworn Declaration for Proof of Service; and (3) Proposed Order

upon each of the entities named below, by mail (unless otherwise indicated below) by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid, and depositing same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

UNITED STATES TRUSTEE  
1015 U.S. COURTHOUSE  
300 SOUTH FORTH STREET  
MINNEAPOLIS, MN 55415

TONY NISTLER TRUCKING  
P.O. BOX 33  
MCGREGOR, MN 55760

ROBERT A. CLARIN  
DONNA J. CLARIN  
31095 BAUGH ST. NW  
PRINCETON, MN 55371

ROBERT KALENDA, ESQ.  
919 W. ST. GERMAIN, STE 2000  
ST. CLOUD, MN 56301

And I declare under penalty of perjury that the foregoing is true and correct.

Date: September 29, 2004

*e/ Terri A. Georgen-Running*

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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*In re: Robert A. Clarin  
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Chapter 7  
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Debtor(s).

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**ORDER**

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At Minneapolis, Minnesota, \_\_\_\_\_, 2004

The above-entitled matter came before the Court on the Objection to Claim of Creditor filed by the Trustee. Appearances, if any, were as noted upon the record. Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED:

1. Claim No. 5 is disallowed.

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Judge Nancy C. Dreher  
UNITED STATES BANKRUPTCY JUDGE