



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 04-60106- DDO

Daniel S. Miller,

Chapter 11

Debtor.

**NOTICE OF HEARING AND MOTION
TO EXTEND THE PERIOD FOR FINAL DETERMINATION
OF INTEREST IN AND DISPOSITION OF GRAIN ASSETS**

1. Daniel Miller, d/b/a, Danielson Grain (the "Debtor"), the Debtor in this Chapter 11 proceeding, by and through its special counsel, Michael S. Dove, hereby moves the Court for the relief requested below and gives notice of hearing herewith.
2. This Court will hold a hearing on this motion on October 7, 2004, at 10:30 a.m., or as soon thereafter as counsel may be heard, before the Honorable Dennis D. O'Brien, Judge of the United States Bankruptcy Court, Courtroom 228A, 200 Warren E. Berger Federal Building, 316 North Robert Street, St. Paul, Minnesota, for an order extending the time period for determination of interest in and disposition of grain assets beyond 120 days, as provided for in 11 U.S.C. § 557(f).
3. Any response to this motion must be filed and delivered not later than October 4, 2004, which is three (3) business days before the date set for the hearing or filed and served by mail not later than September 30, 2004, which is seven (7) business days before the date set for the hearing. **PURSUANT TO LOCAL RULE 9013-2(f), UNLESS A WRITTEN RESPONSE IS TIMELY SERVED AND FILED, THE BANKRUPTCY COURT MAY ENTER AN ORDER GRANTING THE REQUESTED RELIEF WITHOUT A HEARING.**
4. This Motion is filed pursuant to 11 U.S.C. § 557, Bankruptcy Rule 3001 and Local Rules 9013-1 through 9013-3. Debtor seeks to extend the time period for determination of interest in and disposition of grain assets, as more fully set forth herein.
5. The involuntary petition commencing this case was filed on February 3, 2004. On February 18, 2004, Debtor converted the involuntary petition to a case under Chapter 11. This case is now pending in this Court.
6. This Court has jurisdiction over this motion pursuant to 28 U.S.C. § § 1334 and 157(a), Bankruptcy Rule 2001 and Local Rule 1070-1 and 11 U.S.C. § 557. This is a core proceeding.

7. On March 18, 2004, Debtor brought a Motion for Expedited Determination of Interest and Disposition of Grain Assets.
8. On March 29, 2004, the Court issued an Order granting Debtor's request for an expedited determination of interest in and disposition of grain assets.
9. The Debtor has delivered all of its grain assets to the elevators in accordance with the Order.
10. On June 18, 2004, Debtor initiated an adversary action, Adversary # 04-6043 ("Adversary") against sixty-four (64) defendants in order to determine the ownership interests in the grain on-hand at the time of filing.
11. Thus far, nine (9) defendants have stipulated for default judgment in the Adversary. In addition, there is currently a motion for default judgment pending in the Adversary regarding thirty-five (35) defendants who have defaulted.
12. The remaining twenty (20) defendants in the Adversary have answered the Amended Complaint and the parties are in the process of litigating the ownership interests of the grain.
13. On August 24, 2004, a hearing took place in Fergus Falls in the Adversary regarding Debtor's Motion to Establish Discovery Procedures. The motion was denied without prejudice as the Court found it was premature. (See Affidavit of Michael S. Dove attached hereto and incorporated herein as Exhibit A).
14. Many of the remaining defendants that have answered the Amended Complaint in the Adversary have sizable interests at stake and discovery into the claims and defenses will, upon information and belief, take months to complete.
15. Accordingly, in order to accommodate significant discovery, development of claims and defenses, a reasonable amount of time for dispositive and non-dispositive motions and a determination in the Adversary, Debtor respectfully moves the Court to extend the period for disposition and determination of grain proceeds for an additional nine (9) months.
16. 11 U.S.C. § 557 provides that the Court may extend the period for disposition and determination of proceeds of grain beyond the 120 days if the Court finds the interest of justice so require; in light of the complexity of the case, claimants entitled to distribution of grain proceeds will not be materially injured by additional delay.
17. The Court should extend the time period for beyond the 120 days because of the complexity of this case and the progress of the Adversary. Debtor had numerous locations where he held grain assets. The number of documents relating to the Adversary and other evidence relating to these multiple storage sites will take significant time to sort through, organize and present in a meaningful manner.

18. Debtor requests the Court extend the period for final determination and disposition of the grain assets for an additional nine (9) months until July 15, 2005. The Debtor believes this is necessary so as to maximize the value of the grain assets and ensure that the Adversary is fully developed and determined.
19. The Debtor believes it is in the best interests of the estate and all parties to extend the 120 day time frame for the disposition and determination of ownership interest in the Debtor's grain for the reasons set forth above.
20. If testimony is necessary, Debtor reserves the right to call Debtor, Daniel Miller.

WHEREFORE, the Debtor-in-Possession respectfully requests that this Court issue an Order:

Granting the Debtor's Motion to Extend the time period for a determination and final disposition of grain proceeds for an additional nine (9) months, through Friday, July 15, 2005.

Dated: September 8, 2004

/e/ Ryan R. Dreyer

Michael S. Dove #214310

Ryan R. Dreyer #0332252

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Attorneys for Debtor

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 04-60106-DDO

Daniel S. Miller,

Chapter 11

Debtor.

**MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO EXTEND THE PERIOD FOR FINAL DETERMINATION
OF INTEREST IN AND DISPOSITION OF GRAIN ASSETS**

11 U.S.C. § 557(f) provides that the Court may extend the period for final determination and disposition of grain or proceeds of grain under 11 U.S.C. § 557 beyond 120 days if:

- (i) the interests of justice so require in light of the complexity of the case; and
- (ii) the interest of any claimants would not be materially injured by the additional delay.

Here, the Debtor requests an additional nine (9) month period for a determination of the ownership interest and disposition of grain assets. Only twenty (20) of the original sixty-four (64) defendants remain in this action. These twenty (20) defendants have sizeable interests at stake and development of Debtor's claims and defendants' defenses will require significant discovery. The grain has been liquidated and the proceeds are safely earning interest in an insured bank account.

Accordingly, there will be no material injury or prejudice to any potential claimant if the Court extends the deadline. As a result of the complexity of this case and the fact that additional time is beneficial to and does not materially injure any potential claimant, the Court should extend the time frame for an additional nine (9) months, until July 15, 2005.

Based on the foregoing, the Debtor requests that the Court grant Debtor's motion.

Dated: September 15, 2004

/e/ Ryan R. Dreyer
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Ryan R. Dreyer #0332252
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NULIB:186369.1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 04-60106- DDO
Chapter 11

Daniel S. Miller,
Debtor.

AFFIDAVIT OF MICHAEL S. DOVE

STATE OF MINNESOTA)
) ss.
COUNTY OF BROWN)

Michael S. Dove, being first duly sworn, states on oath:

1. I am an attorney at law, duly admitted to practice in the State of Minnesota, in the Federal Courts of the District of Minnesota, in the Eighth Circuit. I am a partner in the law firm of Gislason & Hunter LLP, 2700 South Broadway, New Ulm, Minnesota 56073. I have been appointed to represent Daniel Miller, Debtor, as special counsel in this matter.

2. I make this Affidavit in support of Debtor's motion to extend the period for final determination of interest in and disposition of grain assets in Adversary Proceeding No. 04-6043. Debtor initiated this action to determine ownership interests of grain and grain proceeds in his possession at the time of filing.

3. On August 24, 2004, I appeared on behalf of Debtor at a hearing on Debtor's motion to establish discovery procedures in the adversary proceeding.

4. The Court denied Debtor's motion without prejudice because the Court found it to be premature since the adversary proceeding is in its initial stages and there has not been sufficient time to conduct a Scheduling Conference to establish discovery deadlines.

5. Upon information and belief, the balance of this action will take considerable time and effort on behalf of Debtor's counsel and opposing counsels. Accordingly, cause exists to

extend the period for final determination of interest in and disposition of grain assets until July 15, 2005. Since all of the grain has been liquidated and the proceeds deposited into a trust account at Gislason & Hunter, the extension of time will not prejudice any parties to the adversary proceeding.

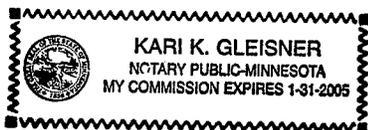


Michael S. Dove

Subscribed and sworn to before me
this 14th day of September, 2004.



NULIB:186379.1



(FORM DD)

U. S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re: Daniel S. Miller

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Debtor(s): Case Number BKY 04-60106-DDO

Kari Gleisner, employed by Gislason & Hunter LLP, attorney(s) licensed to practice law in this court, with office address of 2700 South Broadway, P.O. Box 458, New Ulm, Minnesota 56073, declares that on September 16, 2004, I served the annexed **Notice of Hearing and Motion to Extend the Period for Final Determination of Interest in and Disposition of Grain Assets; Memorandum of Law in Support of Motion to Extend the Period for Final Determination of Interest in and Disposition of Grain Assets; Affidavit of Michael S. Dove; and Proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing same in the post office at New Ulm, Minnesota, addressed to each of them as follows:

See attached Service List

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

Executed: September 16, 2004

Signed: /e/ Kari Gleisner

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

BKY No. 04-60106- DDO

Daniel S. Miller,

Chapter 11

Debtor.

ORDER

This matter came before the Court on Debtor's Motion to Extend the Period for Final Determination of Interest In and Disposition of Grain Assets. Appearances were noted in the record. Based upon the Debtor's motion, and upon all the files and proceedings in this case,

IT IS HEREBY ORDERED:

1. Debtor's Motion to Extend Debtor's Motion to Extend the Period for Final Determination of Interest In and Disposition of Grain Assets is granted; and
2. The time period for a determination of and final disposition of grain is extended for an additional nine (9) months, through Friday, July 15, 2005.

Dated: September _____, 2004

Honorable Dennis D. O'Brien
U.S. Bankruptcy Judge