



U.S. Department of Justice

*United States Attorney
District of Minnesota*

600 United States Courthouse

(612)664-5600

300 South Fourth Street
Minneapolis, MN 55415
www.usdoj.gov/usao/mn

September 28, 2004

FILED ELECTRONICALLY

Clerk of Bankruptcy Court
United States Bankruptcy Court
205 U.S.P.O. & Courthouse
118 South Mill Street
Fergus Falls, MN 56537

Re: **DANIEL S. MILLER**
Bankruptcy Case No. 04-60106

Dear Clerk of Court:

Please be advised that I represent the Internal Revenue Service (IRS) with regard to the above-entitled Chapter 11 bankruptcy case. The IRS had filed objections to Plan Confirmation on September 16, 2004. The Chapter 11 Confirmation Hearing is scheduled for September 29, 2004 at 10:00 a.m.

The debtor has agreed to modify his Chapter 11 Plan to cure the IRS objections to confirmation and has indicated that a Plan containing these modifications will be filed on September 29, 2004.

I have attached copies of the modifications to the IRS treatment found in Class 1 and Article IX that the debtor has agreed will be contained in the modified Plan.

Clerk of Bankruptcy Court
Page Two
September 28, 2004

As the IRS objections have been resolved, I do not intend to appear at the September 29, 2004 Confirmation hearing in Fergus Falls, Minnesota.

Sincerely,

THOMAS B. HEFFELFINGER
United States Attorney

/e/ Roylene A. Champeaux
BY: ROYLENE A. CHAMPEAUX
Assistant U.S. Attorney

Enclosure

cc: (w/enclosure)

The Honorable Dennis D. O'Brien,
U.S. Bankruptcy Judge - Fergus Falls (**VIA FACSIMILE**)
David C. McLaughlin, Esq. (**VIA FACSIMILE**)
Jon R. Brakke, Esq. (**VIA FACSIMILE**)
Office of the U. S. Trustee (**VIA HAND DELIVERED**)
Edward F. Klinger, Esq. (**VIA FACSIMILE**)
Ralph F. Carter, Esq. (**VIA FACSIMILE**)
Kevin T. Duffy, Esq. (**VIA FACSIMILE**)
David T. DeMars, Esq. (**VIA FACSIMILE**)
Allen J. Flaten, Esq. (**VIA FACSIMILE**)
Carl E. Malmstrom, Esq. (**VIA FACSIMILE**)
Kip M. Kaler, Esq. (**VIA FACSIMILE**)
Lowell P. Bottrell, Esq. (**VIA FACSIMILE**)
Wayne H. Swanson, Esq. (**VIA FACSIMILE**)
Robert A. Woodke, Esq. (**VIA FACSIMILE**)
James G. Powers, Esq. (**VIA FACSIMILE**)
Michael S. Dove, Esq. (**VIA FACSIMILE**)
Daniel S. Miller
Phillip L. Kunkel, Esq. (**VIA FACSIMILE**)
Craig A. Peterson, Esq. (**VIA FACSIMILE**)
Raymond J. German, Esq. (**VIA FACSIMILE**)
Brian F. Leonard, Esq. (**VIA FACSIMILE**)
Thomas Lallier, Esq. (**VIA FACSIMILE**)
Thomas V. Omdahl, Esq. (**VIA FACSIMILE**)
Brad A. Sinclair, Esq. (**VIA FACSIMILE**)
Harlen Almen, Esq. (**VIA FACSIMILE**)
Catherine Tucker, Esq. (**VIA FACSIMILE**)
Jane Pearson, Bankruptcy Specialist - IRS (**VIA FACSIMILE**)

RAC/ck

ADMINISTRATIVE/PRIORITY CLAIMS

Class 1: Class 1 consists of the allowed priority claims under 11 U.S.C. Section 507(a)(3), (a)(4), (a)(5), (a)(6) and (a)(7) of the Bankruptcy Code, including the claim of the Internal Revenue Service, and said claims shall be paid as allowed on confirmation or as otherwise agreed between the Claimant and the Debtor. The IRS priority claim will be paid in full on the Effective Date. The Debtor shall also file all tax returns due (1999-2003). The IRS claim will be adjusted to reflect the amount due under the Debtor's filed tax returns.

SECURED CLAIMS

Class 2: Class 2 is the secured claim of Community Bank of Red River Valley in the amount of \$102,000.00. This claim is secured by the Debtor's farm real estate. The Bank shall retain its real estate mortgage and shall be paid its secured claim amortized over 20 years with a rate of six percent (6%) with annual amortized payments of \$8,892.00 commencing December 1, 2004, and continuing on the 1st day of December thereafter until paid in full. The interest rate shall be adjusted on July 1, 2007 to the Prime Rate as stated in the Minneapolis Star Tribune plus two percent (2%). Payments will commence on the reamortized obligation on December 1, 2007 and the monthly payments shall be adjusted to reflect the interest rate change. The Debtor may convey this land subject to the claims of the Bank to a third party without incurring a default under the terms of this Plan.

Class 3. Class 3 is the secured claim of Volvo Commercial. This claim shall be divided into three subclasses, which are as follows:

- a. **Class 3(a).** This is Contract #500-5047335-001 and is secured by the following collateral:

1998 Volvo VNL64T420 Vin #4VG7DDGH4WN739994
1998 Volvo VNL64T420 Vin #4VG7DDGHXWN73997
2000 Timpfe Hopper Vin #1TDH422261B099950

Volvo's current secured claim is \$33,331.30 as of the date of filing, 2004 and this debt continues to accrue interest at the rate of \$9.10 per day. The Debtor proposes to sell the collateral for more than Volvo's secured debt within 45 days of Confirmation. This claim will then be paid in full within 45 days of Confirmation.

- b. **Class 3(b).** This is Contract #500-5047335-02 and is secured by the following collateral:

1998 Volvo VNL64T610 Vin #4VG7DBGHXWN751782

Volvo's current secured claim is \$9,546.00 as of the date of filing, 2004 and this debt

- d. R.D. Offutt Co.;
- e. RDO Financial;
- f. Richard Stengel;
- g. Walter Johnson; and
- h. Harlen Almen.

ARTICLE IX DISCHARGE

Except as otherwise provided in the Plan or in any confirmation order, entry of the Confirmation Order acts as a discharge effective as of the Effective Date of any and all Claims of the Debtor and all liens and encumbrances on property of the Debtor that arose at any time before the entry of the Confirmation Order including, but not limited to, all principal and any and all interest accrued thereon, pursuant to 1141(d)(1) of the Bankruptcy Code and of all liens and encumbrances against the property of Debtor. Confirmation of the Debtor's Plan shall constitute a complete waiver, release and satisfaction of all Claims and Interests of all creditors against Debtor except as provided in this Plan. The Discharge of Debtor shall be effective as to each Claim, regardless of whether a Proof of Claim therefore was filed, whether the Claim is an Allowed Claim, Allowed Secured Claim, Allowed Priority Claim, or whether the holder thereof votes to accept the Plan.

Notwithstanding the foregoing, the discharge granted by 11 U.S.C. Section 1141(d) is modified as to the federal tax debt provided for in this plan, and the discharge of any federal tax debt under this plan shall not be effective until all federal tax debt has been paid in full. >

ARTICLE X REVESTING AND MODIFICATION OF PLAN

Except as provided for in the Plan, in the Confirmation Order, on the Effective Date the reorganized Debtor shall be vested with full ownership of and dominion over Debtor's property and assets free and clear of all Claims, liens, charges and other interests of creditors arising prior to the Filing Date. It is intended that the only assets the Debtor will retain are exempt assets, which do not constitute property of the Estate.

Debtor may amend or modify this Plan in a manner provided for under Bankruptcy Code 1127(a) or (b). Debtor shall give notice of any proposed modification to counsel for the Committee and to the United States Trustee and to any other parties designated by the Court. Debtor also reserves the right to make such modifications at any hearings on confirmation as are necessary to permit this Plan to be confirmed under Bankruptcy Code Section 1129(b).

ARTICLE XI RETENTION OF JURISDICTION