

THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MINNESOTA

Bankruptcy No.: 04-60106

In Re:

Daniel S. Miller,

Debtor.

In Proceeding Under  
Chapter 11

**RESPONSE TO OBJECTION OF CONAGRA FOODS, INC. TO PROPOSED  
PLAN OF REORGANIZATION**

In Response to the Objection to the Debtor's Plan of Reorganization, the Debtor asserts as follows:

1. The Executory Contract between the Debtor and ConAgra is being rejected under the terms of the Plan. The effect of a rejection is that a breach of the contract occurs pre-petition and ConAgra is entitled to damages. Damages are set at \$11,770 based upon ConAgra's Proof of Claim. There is no secured property in which to set off against. ConAgra is an Unsecured Creditor and has grounds to object to its treatment under the Debtor's Plan.

2. ConAgra claim (#132) claims a right to setoff against amounts due to Debtor as a result of a Lease dated October 21, 2002, between Debtor and ConAgra Foods, d/b/a KBC Trading and Processing Company and by any other future sums found due Debtor by Claimant in these proceedings. The Debtor disputes any right of setoff and asserts that the right of setoff must be established in an Adversary Proceeding to compel turnover of property. The Debtor is

not attempting to modify the potential claim for setoff by the Plan. However, the Debtor does not intend to establish any rights in ConAgra.

3. The Objection of ConAgra should be denied. If the Court believes it appropriate, the Debtor will file an Amended Plan which preserves a claim of right of setoff for ConAgra.

Dated this 29<sup>th</sup> day of September, 2004.

FLUEGEL, HELSETH, MCLAUGHLIN,  
ANDERSON & BRUTLAG, CHARTERED

  
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