

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re

Bky. No. 03-33611
Chapter 11 case

Virgil Moeller,
Debtor.

**NOTICE OF HEARING AND MOTION FOR ALLOWANCE OF ADMINISTRATIVE
CLAIM OR ALTERNATIVELY FOR ALLOWANCE OF GENERAL UNSECURED
CLAIM**

1. Kurt M. Anderson, on behalf of Lloyd D. Johnson, CPA, moves the Court for allowance of an administrative claim or alternatively for allowance of a general unsecured claim, as follows:

Lloyd Johnson, Certified Public Accountant, \$3,747.51.

2. The Court will hold a hearing on this motion on October 26, 2004, at 11:00 a.m. or as soon thereafter as counsel may be heard at the United States Bankruptcy Court, Hon. Gregory F. Kishel, Bankruptcy Courtroom No. 228B, United States Bankruptcy Court, 316 North Robert Street, St. Paul, Minnesota 55101. If necessary, Lloyd D. Johnson will testify as a witness at this matter.

3. Any response to this motion must be filed and delivered not later than October 19, 2004, which is seven days (including weekends and holidays) before the time set for the hearing, or filed and served by mail not later than October 16, 2004, which is ten days (including weekends and holidays) before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction under 28 U.S.C. Sections 157 and 1334. This motion is filed under 11 U.S.C. §§ 501-03 (and specifically 503(b)(1)(a) as to the requested administrative claim¹), the Fifth Amendment to the United States Constitution, and Bankruptcy Rule 9014.

5. This case was commenced by the filing of a voluntary Chapter 11 Petition on May 19, 2003.

6. The operating trustee's plan of reorganization was confirmed on August 20, 2004.

Orders Approving Employment; Subsequent Developments

7. On August 18, 2003, the Court approved the debtor's employment of Lloyd D. Johnson as CPA for the debtor as Debtor in Possession (DIP). The Debtor was no longer DIP following an order dated March 24, 2004, appointing an operating trustee. Thereafter, however, the Debtor continued to require the movant's professional services in order to comply with his obligations in this case and to participate in the case. To the best of the movant's knowledge, the Debtor had no liquid assets from which to pay for such services. Although the movant rendered services, the claim for payment for the same appears to have been discharged upon confirmation of the plan.

Payments Promised or Received to Date

8. The movant received a \$470.25 payment on September 12, 2003, and was thereafter advised to take no further payments, pending a fee application. Thereafter, as further recited in the declaration of Lloyd D. Johnson accompanying this application, he applied for and received payment of \$3,132.25 for services to the DIP.

¹ Although this application follows the format of a fee and expense application under 11 U.S.C. § 330 and FRBP 2016, it is not based on those provisions.

Previous Applications

9. The debtor's DIP professionals filed fee and expense applications that were approved on July 20, 2004. The operating trustee also has filed administrative expense applications, which will be heard on September 27, 2004.

Unpaid Administrative Expenses

10. To Counsel's knowledge, there are no approved but unpaid administrative expenses in this case.

Details of Claim

11. Further details as to this motion are provided in the accompanying declaration of Lloyd D. Johnson.

12. Lloyd Johnson, CPA, requests allowance of an administrative claim or alternatively a general unsecured claim for post-DIP and pre-confirmation fees and expenses, of \$3,747.51 through August 20, 2004.

WHEREFORE, the movant requests allowance of an administrative claim and/or general unsecured claim, as indicated above.

Dated: September 20, 2004

/e/ Kurt M. Anderson
Kurt M. Anderson, #2148
On behalf of Lloyd D. Johnson, CPA
P.O. Box 2434
Minneapolis, MN 55402-0434
(612) 333-3185

Verification

(see attached Declaration of Lloyd D. Johnson)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re

Bky. No. 03-33611
Chapter 11 case

Virgil Moeller,
Debtor.

**DECLARATION OF
LLOYD JOHNSON, CERTIFIED PUBLIC ACCOUNTANT**

1. Lloyd Johnson, Certified Public Accountant, respectfully declares to the Court as follows:

Payments Promised or Received to Date

2. I have received no payments to date for the services indicated below. I did receive full payment of \$3,132.25 pursuant to the Court's order dated July 20, 2004, for the services I provided to the debtor while he was Debtor in Possession, and related post-DIP transitional matters.

Current Administrative Claim Detail

3. Attached hereto is a billing summary and general ledgers May 27, 2004 through August 20, 2004. The attached billings reflect an hourly rate of \$45 .00 per hour for general accounting, \$85 per hour for tax related work plus actual expense costs.

WHEREFORE, Lloyd Johnson, Certified Public Accountant, requests an allowed administrative payment of \$3,747.51 for services through August 20, 2004.

VERIFICATION

I hereby declare under penalty of perjury that I have read the foregoing declaration; and that the facts stated therein are true and correct.

Executed on: 9/20/2004



LLOYD D. JOHNSON

Certified Public Accountant



The CPA. Never Underestimate The Value.®

(507) 346-2815

(507) 346-7415

120 North Broadway
P. O. Box 193
Spring Valley, MN 55975

MEMBERS

American Institute of C.P.A.'S
Minnesota Society of C.P.A.'S
Iowa Society of C.P.A.'S

September 19, 2004

Virgil Moeller
Bankruptcy Case No. 03-33611

FOR THE FOLLOWING PROFESSIONAL SERVICES RENDERED:

For the Period - May 27, 2004 to August 20, 2004 - (Billing Detail Attached)
Consulting and assistance to Virgil Moeller, (Debtor) regarding preparation of Debtor's Disclosure Statement and review of Trustee's separate Disclosure Statement. Also, various discussions and review with Debtor's Attorney - Kurt Anderson regarding accuracy and feasibility of both Disclosure Statements.

Computation of actual income tax affect of Trustee's Plan and correspondence to Wells Fargo and Trustee with questions raised.

Attendance at Court Hearings on June 24, 2004 and August 16, 2004 at the request of Debtor.

Total Per Attached \$3,569.00

Postage on Mailings 9.76

Preparation of Fee Application

Billing summary and review of detailed time records for appropriate billing rates - tax vs. accounting hours. Accumulation of time, drafting and word processing of fee application, review and signing of declaration, etc.

9/19/04 - 9/20/04
(3.75 hours total X 45) 168.75

TOTAL AMOUNT DUE \$3,747.51

1.5% MONTHLY SERV. CHG. ON ITEMS 30 DAYS OR MORE PAST DUE (MIN. \$1.00/MO).

9/19/04
19:20

LDJCPA - TIME & BILLING
Cumulative General Ledger
From: 5/27/04 To: 8/16/04

Company: 900
Page: 1

Date	Mt	Ref #	Account	Description	Current	Year-To-Date
Beginning		Balance	9416	Moeller Farms/Virgil Moeller		37.15*
5/27/04	5	51500	9416	FAX F:ATTY	0.10	
5/28/04	5	51500	9416	MTG ON T/R W/VIRGIL	1.15	T
5/28/04	5	51500	9416	RUN RPTS F:TRUSTEE	0.45	T
5/28/04	5	51500	9416	DRAFT LTR T:TRUSTEE	0.90	T
5/27/04	5	51570	9416	C/F VM	0.05	
5/28/04	5	51570	9416	VM F:APPT	0.05	T
5/28/04	5	51570	9416	I/P LTR T:N.MONTY	0.50	T
5/28/04	5	51570	9416	MONTY LTR/INFO \$4.32	0.25	T
6/2/04	6	60100	9416	TRY RTN C:TRUSTEE	0.10	
6/2/04	6	60100	9416	RTN C:NANCY J.	0.10	
6/8/04	6	60100	9416	VIRGIL	0.10	T
6/8/04	6	60100	9416	W:VIRGIL-TAX PROJECT	0.80	T
6/11/04	6	60100	9416	MTG W/VIRGIL R:T/R	0.65	T
6/11/04	6	60100	9416	TAX EST-EXCEL SPREAD	1.00	T
6/11/04	6	60100	9416	MTG VIRGIL R:EXCEL T	1.20	T
6/7/04	6	60140	9416	C.F VM	0.05	
6/1/04	6	60170	9416	C/F N.JACKELS	0.05	
6/2/04	6	60170	9416	C/F N.JACKELS	0.05	
6/4/04	6	60170	9416	C/F A.ANDERSON	0.05	
6/8/04	6	60170	9416	VM STOP-MESSAGE F:LJ	0.05	
6/8/04	6	60170	9416	VM F:APPT	0.05	
6/8/04	6	60170	9416	C/F VM	0.05	
6/11/04	6	60170	9416	VM T:SEE LDJ	0.05	
6/14/04	6	60170	9416	C/F VM	0.05	
6/14/04	6	60170	9416	VM STOP	0.05	
6/16/04	6	61500	9416	DRAFT LTR ON TAXES	0.50	T
6/17/04	6	61500	9416	FAX F:KURT-C:-FAX BA	0.50	T
6/17/04	6	61500	9416	LTR R:DEPR T:TRUSTEE	0.50	T
6/17/04	6	61500	9416	VIRGIL P/U LTR	0.25	T
6/21/04	6	61500	9416	RTN C:VIRGIL	0.25	
6/22/04	6	61500	9416	-	2.20	
6/22/04	6	61500	9416	MTG W/VIRGIL	0.95	
6/22/04	6	61500	9416	-	2.50	
6/24/04	6	61500	9416	T:COURT W:VIRGIL	8.00	
6/25/04	6	61500	9416	VIRGIL D/O INFO	0.20	
6/25/04	6	61500	9416	DRAFT LTR-WELLS FARG	0.70	
6/25/04	6	61500	9416	DRAFT LTR-TRUSTEE	0.75	
6/25/04	6	61500	9416	REV FILES/SIGN LTRS	0.65	
6/16/04	6	61570	9416	VM STOP	0.05	
6/16/04	6	61570	9416	I/P LTR F:VM	0.30	
6/16/04	6	61570	9416	CHGS T:LTR-ASSM	0.30	
6/17/04	6	61570	9416	FAX LDJ DECLARATION PG T:KURT A.	0.10	
6/17/04	6	61570	9416	I/P LTR T:N.JACKELS	0.05	
6/17/04	6	61570	9416	I/P LTR T:N.JACKELS	0.25	
6/17/04	6	61570	9416	\$1.66 LTR T:N. JACKELS	0.30	

9/19/04
19:20

LDJCPA - TIME & BILLING
Cumulative General Ledger
From: 5/27/04 To: 8/16/04

Company: 900
Page: 2

Date	Mt	Ref #	Account	Description	Current	Year-To-Date
6/21/04	6	61570	9416	FM STOP	0.05	
6/21/04	6	61570	9416	C/F K.ANDERSON	0.05	
6/22/04	6	61570	9416	C/F KURT A	0.05	
6/22/04	6	61570	9416	C.F VM	0.05	
6/22/04	6	61570	9416	C/F VM	0.05	
6/22/04	6	61570	9416	VM STOP	0.05	
6/22/04	6	61570	9416	FAX KURT INFO F:LDJ	0.10	
6/23/04	6	61570	9416	C.F VM	0.05	
6/25/04	6	61570	9416	VM STOP	0.05	
6/25/04	6	61570	9416	LTRS T:WELLS FARGO & TRUSTEE	0.70	
6/25/04	6	61570	9416	\$3.78-LTRS T:WELLS FARGO & TRUSTEE	0.70	
6/25/04	6	61570	9416	T:PO D/O LTRS	0.15	
6/30/04	6	61570	9416	C/F WELLS FARGO-DAN	0.05	
6/30/04	6	61570	9416	C/F CHRIS ABELL	0.10	
7/6/04	7	70100	9416	VIRGIL STOP R:DEPOSI	0.25	
7/7/04	7	70100	9416	TIE OUT LOANS/MTHRPT	0.70	
7/7/04	7	70100	9416	TIE OUT LOANS/MTHRPT	1.00	
7/7/04	7	70100	9416	-	1.65	
7/8/04	7	70100	9416	INCOME RECAP-C:CPA- C:ATTY	1.35	
7/8/04	7	70110	9416	I/P LTR T:BANK PER ATTY	1.00	
7/9/04	7	70150	9416	C:LDJ F:MOELLER APPT	0.15	
7/2/04	7	70170	9416	VM STOP R:FAX F:WELL	0.10	
7/13/04	7	70170	9416	C.F VM	0.05	
7/15/04	7	70170	9416	C/F VM	0.05	
7/19/04	7	71570	9416	C/F VM	0.05	
7/28/04	7	71570	9416	VM STOP F:LDJ	0.05	
7/28/04	7	71570	9416	VM STOP-MESSAGE	0.05	
7/28/04	7	71570	9416	C/F KURT A	0.05	
7/30/04	7	71570	9416	C/F VM	0.05	
8/2/04	8	80100	9416	REV TAX ESTIMATES	0.80	T
8/6/04	8	80100	9416	MTG W/VIRGIL-TRY C:KURT A.	0.60	T
8/10/04	8	80100	9416	REV ALL INFO	1.40	T
8/11/04	8	80100	9416	C/F BRIAN	0.15	T
8/12/04	8	80100	9416	C/F K.ANDERSON	0.30	T
8/11/04	8	80130	9416	FAX T:K.ANDERSON	0.10	T
8/5/04	8	80170	9416	VM LEFT MESSAGE F:LJ	0.05	
8/6/04	8	80170	9416	C/F K.ANDERSON OFF.	0.10	
8/10/04	8	80170	9416	VM T:SEE LDJ	0.05	
8/11/04	8	80170	9416	FAX INFO T:KURT A.	0.25	
Ending Balances =					39.75*	76.90**

7/9 - 8/31 Time out in Time Billing yet 17.25
(see attachments)

Total Time 57.00

Postage \$9.76

Tax Retained → 25.10 × 85 = 213.50

Accounting → 31.90 × 85 = 2711.50

5/27/04 to 8/20/04
**Additional billing time from
time sheets not yet entered in Computer**

<u>Date</u>	<u>Time</u>	<u>Description</u>
9-Jul	0.75	Draft letter to Chuck Reis
	0.40	finish letter
	1.25	Draft letter to trustee
	0.90	meeting with Virgil
13-Jul	0.35	call Chris Abel, call Kurt Anderson, call Virgil
16-Jul	0.25	Review Discloser Statement
19-Jul	0.10	rtn call Virgil re status
19-Jul	0.35 T	try call trustee's accountant, call Kurt Anderson's office
22-Jul	0.10 T	call from Virgil re status
28-Jul	0.15 T	Virgil stopped re taxes
	0.15 T	try call Chris Abel, Kurt Anderson
29-Jul	0.15	print info from internet
30-Jul	0.15	call from Virgil
15-Aug	1.90 T	ready for hearing on 8/16
	0.60 T	ready for hearing on 8/16
16-Aug	8.00 T	Court Hearing in St. Paul - includes travel round trip - Spring Valley, MN
19-Aug	0.40 T	call Kurt Anderson's office & discuss
20-Aug	1.30 T	review emails, call Kurt Anderson's office
	<u>17.25</u>	TOTAL

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re Bky. No. 03-33611
Chapter 11 case

Virgil Moeller,

Debtor.

**NOTICE TO CREDITORS OF MOTIONS FOR ALLOWANCE OF ADMINISTRATIVE
CLAIMS OR ALTERNATIVELY FOR ALLOWANCE OF GENERAL UNSECURED
CLAIMS**

To: Matrix

PLEASE TAKE NOTICE, that based upon the file and all proceedings herein to date, and upon the Motions filed with the Court, the undersigned will move the Court on October 26, 2004, at 11:00 a.m. or as soon thereafter as counsel may be heard at the United States Bankruptcy Court, Hon. Gregory F. Kishel, Bankruptcy Courtroom No. 228B, United States Bankruptcy Court, 316 North Robert Street, St. Paul, Minnesota 55101, for allowance administrative and/or general unsecured claims as follows:

Kurt M. Anderson, Attorney at Law (including Brian L. Boysen, of counsel)
\$27,450.46.

Lloyd Johnson, Certified Public Accountant, \$3,747.51.

The full motions including supporting time records and ledgers are filed with the Court and are viewable via the Court's website, www.mnb.uscourts.gov¹. Any response to these

¹ From the Court's home page at the above address:

a) Select "Case Search"

b) Opt to search by name (moeller,virgil – no spaces), or the present case number (03-33611)

c) The next screen will give general information on the case. Click the button "Docket Entries" for links to actual document images.

Please note that the Court's website is closed for maintenance from 9:00-10:30 PM on weekdays. Please review the website's instructions on obtaining the necessary document viewing software, free of charge.

motions must be filed and delivered not later than October 19, 2004, which is seven days (including weekends and holidays) before the time set for the hearing, or filed and served by mail not later than October 16, 2004, which is ten days (including weekends and holidays) before the time set for the hearing. UNLESS A RESPONSE OPPOSING THE MOTIONS IS TIMELY FILED, THE COURT MAY GRANT THE MOTIONS WITHOUT A HEARING.

Dated: September 20, 2004

/e/ Kurt M. Anderson
Kurt M. Anderson, #2148
On behalf of himself and Lloyd D. Johnson
P.O. Box 2434
Minneapolis, MN 55402-0434
(612) 333-3185

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky. No.: 03-33611
Chapter 11 Case

Virgil Moeller,

Debtor.

**NOTICE TO U.S. ATTORNEY GENERAL ET AL.
(CONSTITUTIONALITY OF STATUTE)**

To John Ashcroft, Attorney General, and Thomas Heffelfinger, United States Attorney for the District of Minnesota:

Please take notice that the motions, summarized in the enclosed notices and as further described in the enclosed memorandum of law, raise issues as to whether certain federal statutes, specifically 11 U.S.C. § 501, 502, and 1141, may be unconstitutional under the equal protection and due process requirements of the Fifth Amendment to the United States Constitution.

Dated: September 20, 2004.

/e/ Kurt M. Anderson

Kurt M. Anderson # 2148

On behalf of himself and Lloyd D. Johnson

P.O. Box 2434

Minneapolis, Minnesota 55402-0434

(612) 333-3185

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky. No.: 03-33611
Chapter 11 Case

Virgil Moeller,

Debtor.

**MEMORANDUM OF LAW IN SUPPORT OF MOTIONS OF KURT ANDERSON AND
LLOYD JOHNSON FOR APPROVAL OF ADMINISTRATIVE CLAIMS, OR
ALTERNATIVELY FOR ALLOWANCE OF GENERAL UNSECURED CLAIMS**

A gap in the Bankruptcy Code appears to have left the debtor's post-Debtor in Possession (post-DIP) professionals in a legal limbo. Because their claims for payment did not arise prepetition, they are not "creditor" claims and therefore, on the face of the statute, are not allowable claims. 11 U.S.C. §§ 101(10)(a) and 501(a). However, the claims fit within the broad language of claims discharged by confirmation of the plan. 11 U.S.C. 1141(d)(1)(a).

This gap appears to be inadvertent:

[I]n enacting § 1141(d)(1)(A), Congress gave no indication in the legislative history that it was aware that the statute's plain language would apply not only to prepetition and administrative claims against the estate, but also to those postpetition-preconfirmation claims against the debtor that are non-estate liabilities. Indeed, at first glance, § 1141(d)(1)(A)(i) through (iii) might lead one to think that in order for a claim to be discharged by § 1141(d)(1)(A), the claim must be one that (i) could be asserted via a proof of claim, (ii) could be allowed under § 502 (unless § 502 requires disallowance of the claim), and (iii) gives rise to a right to vote on the plan. Read that way, § 1141(d)(1)(A)(i) through (iii) would make § 1141(d)(1)(A) inapplicable to a postpetition non-administrative claim, for such a claim (i) is not one for which a proof of claim can be filed; (ii) would not be an allowed claim under § 502 in any event; and (iii) does not give the holder of the claim a right to vote on a plan. However, administrative claims share the same three characteristics: they (i) are not asserted via a proof of claim (but via a § 503(a) request); (ii) are not allowed under § 502 (but under § 503(b)); and (iii) do not give rise to a right to vote on the plan (*see* § 1126(a)). As already noted, § 1141(d)(1)(A) was intended to discharge administrative expense claims allowed under 11 U.S.C. § 503(b). It logically follows that § 1141(d)(1)(A)(i) through (iii) do not through implication except either administrative claims or the debtor's postpetition non-administrative debts from the reach of a discharge under § 1141(d)(1)(A). * * *

The applicability of § 1141(d)(1)(A) to postpetition non-administrative debts is disturbing, as Congress appears to have overlooked such debts in enacting chapter 11, making no provision for their treatment under a plan, and leaving them in a wilderness of neglect . . .

In re Shin, 306 B.R. 397, 401-02 (Bankr. D.D.C. 2004) (footnotes omitted). In *Shin*, the problem came to the court's and parties' attention before plan confirmation, and the court required the plan to except these types of debts from discharge. In the present case, in the course of vigorous representation of the debtor, it did not occur to counsel that it might be necessary to assert a position directly adverse to the debtor personally in the course of the plan confirmation contest.

There are two ways to resolve this issue:

1. The Court should recognize that when an operating trustee is appointed and the debtor is deprived of access to his liquid assets, the estate has an obligation to provide reasonable funds for the debtor's tax and legal advice and representation; therefore, the post-DIP services of counsel and his tax adviser are necessary services rendered in the preservation of the estate. 11 U.S.C. § 503(b)(1)(a). The estate's obligation arises both from due process considerations, and also from the practical need to be sure the debtor (a) has proper legal (and other professional) advice as to his obligations and (b) is able to contribute to the adversarial process that leads to the optimum result. This would result in allowance of the fees and expenses as an administrative claim.

2. To the extent that the Court does not fully allow the requested administrative claims, it should hold that the inclusion of prepetition claims and of almost all postpetition claims (*see* 11 U.S.C. 501(d)), while omitting postpetition nonadministrative Chapter 11 claims, is a statutory classification without a rational basis, which therefore violates the equal protection requirement of the Fifth Amendment. This would place the movants' claims in the class of general unsecured claims.

Allowance of administrative claims

The administrative claim requests confront the general rule that once a debtor is ousted as DIP, the debtor's counsel and professionals do not have a claim against the estate for subsequent services rendered. *E.g., In re Pine Valley Mach., Inc.*, 172 B.R. 481 (Bankr. D. Mass. 1994). The typical scenario, however, involves either a corporate debtor, which has no separate existence or interest except as a bankruptcy estate, or an individual whose case has been converted from Chapter 11 to Chapter 7. In those cases, the estate may compensate the prior DIP professionals for transitional services (and this has happened in the present case), but there either is no further need for the services of debtor's professionals; or debtor's professionals will have claims, against an individual debtor, that survive a Chapter 7 discharge. Appointment of an operating trustee in a Chapter 11 individual case provides neither of these alternatives to the ex-DIP's professionals, although inevitably the debtor personally has further need of their services.

In the present case, the trustee took control of all liquid assets of the estate and aggressively asserted control of exempt as well as nonexempt assets, proceeding to sell or rent them. Except for minimal compensation to the debtor for specific personal services, none of those funds have been paid to the debtor. The debtor was deprived of the means to retain professionals without being relieved of the need for their services. In analogous albeit more extreme situations, such as imprisonment, this has given rise to a due process requirement that the deprived person be provided the services. *See, e.g., Smith v. Robbins*, 528 U.S. 259, 268 (2000) (prison law libraries); *Youngberg v. Romeo*, 457 U.S. 307 (1982) (medical treatment and generally safe living conditions). The present movants remained involved and filled the gap, and they are entitled to compensation from the estate, as administrative claimants, for performing services that the estate had a duty to make available.

Without raising the issue to constitutional grounds, the Court must also recognize that the duties, obligations, and rights of an ousted individual DIP remain factually and legally complex, and that depriving the debtor of access to counsel (and in this case, a tax professional) would result in a morass of frustration, misunderstanding, and unnecessary conflict. Simply stated, the individual debtor needs competent and independent advice as to when it is necessary to accede to a position asserted by the operating trustee, and when there are grounds for disputing it.

In addition, the debtor's ability to propose a plan not only brought to fruition a great deal of pre-trustee work by himself and his professionals, but it gave the creditors an opportunity to choose between two different approaches to paying their claims. It also supplied the core of the operating trustee's disclosure statement text. Lloyd Johnson's tax analysis was echoed, with some different numbers and assumptions, by the trustee's tax expert. The advocacy of the debtor's legal and tax professionals also kept the trustee's feet to the fire in her own plan drafting process and, in the end, resulted in substantial changes to her confirmed plan. These are the types of refinements one expects to result from informed and well-counseled participation in a contested legal process – they reflect a fundamental tenet of our adversarial system of justice.

Whether based on due process grounds or lower level practical considerations, the Court should recognize that the movants have provided value to the estate, and allow their applications for administrative claims.

Allowance of general unsecured claims

As recognized in *Shin, supra*, the statutory problem giving rise to the present issue apparently resulted from legislative inadvertence rather than a considered decision to pursue a policy goal. On its face, the Bankruptcy Code arbitrarily excludes the movants' claims from consideration or relief, while allowing virtually all prepetition claims and a virtually every other

conceivable type of postpetition claim. As derived from the Fifth Amendment, equal protection requires that there be a rational basis for such a classification. “The rational basis standard . . . instructs that a classification must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Tuan Anh Nguyen v. I.N.S.*, 533 U.S. 53, 76-77 (2001) (internal quotation marks omitted). It is difficult to imagine why Congress would choose to leave a class of bankruptcy interests completely in the “wilderness of neglect,” *Shin, supra* at 306 B.R. 402, and where the classification resulted from inadvertence it obviously has no rational basis.

Therefore, the Court should hold that the exclusion of the movants’ claims violates equal protection, and should allow them as general unsecured claims.

CONCLUSION

For these reasons, the Court should allow the movants’ administrative claims, or alternatively allow them general unsecured claims.

Respectfully submitted,

/e/ Kurt M. Anderson

Kurt M. Anderson # 2148

On behalf of himself and Lloyd D. Johnson

P.O. Box 2434

Minneapolis, Minnesota 55402-0434

(612) 333-3185

DECLARATION OF SERVICE BY MAIL

Kurt M. Anderson respectfully declares to the Court that on September 20, 2004, he served the following:

Notice of Hearing and Motion for Allowance of Administrative Claim or General Unsecured Claim
Declaration of Lloyd D. Johnson
Notice to Creditors of Motion for for Allowance of Administrative Claim or General Unsecured Claim
Notice to Attorney General et al.
Memorandum of Law
Proposed Order
This Proof of Service

Upon Service List (see below)

Directed at the addresses indicated thereon by mailing copies thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the Post Office in Minneapolis, Minnesota, directed at each entity at the addresses indicated thereon.

VERIFICATION

I hereby declare under penalty of perjury that I have read the foregoing Declaration of Service and that the facts stated therein are true and correct.

Executed on: September 20, 2004

/e/ Kurt M. Anderson

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MANKATO MN 56002-4249

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ATTN PAUL BUCHER
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PRESTON MN 55965

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STE 3000
MINNEAPOLIS MN
55402 3340

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C/O CHARLES W RIES
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MANKATO MN 56002-0007

WELLS FARGO
21 FIRST ST SW
ROCHESTER MN 55902

DECLARATION OF SERVICE BY MAIL

Kurt M. Anderson respectfully declares to the Court that on September 20, 2004, he served the following:

Notice to Creditors of Interim Motions for Approval and Payment of Fees and Expenses
Memorandum of Law
Proposed Orders
This Proof of Service

Upon Matrix (see below and on next page)

Directed at the addresses indicated thereon by mailing copies thereof, enclosed in an envelope, postage prepaid, and by depositing the same in the Post Office in Minneapolis, Minnesota, directed at each entity at the addresses indicated thereon.

VERIFICATION

I hereby declare under penalty of perjury that I have read the foregoing Declaration of Service and that the facts stated therein are true and correct.

Executed on: September 20, 2004 /e/ Kurt M. Anderson

ADVANTAGE
3434 MARILON RD
ROCHESTER MN 55904

AGCO FINANCE LLC
P.O. BOX 3794
URBANDALE IA 50322-9714

AGCO FINANCE LLC
PO BOX 7902
URBANDALE IA 50323-9402

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AMERPRIDE LINEN
1290 S VICTORY DR
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ARNOLDS OF GLENCOE INC
655 LINDBERGH Trl
GLENCOE MN 55336-3403

AT AND T WIRELESS
PO BOX 8220
AURORA IL 60572-8220

ATLANTIC CARRIERS
PO BOX 457
ATLANTIC IA 50022-0457

ATTN JAMES ROHLFING
AGSTAR FINANCIAL SERVICES
1921 PREMIER DRIVE
P.O. BOX 4249
MANKATO MN 56002-4249

AYERS OIL
PO BOX 229
CANTON MO 63435-0229

BAARTS TRUCKING INC
PO BOX 85
NORTHROP MN 56075-0085

BAJA ENTERPRISES
9930 W CEDAR WAPSIE RD
CEDAR FALLS IA 50613-9495

BAUER BUILT INC
PO BOX 248
DURAND WI 54736-0248

BEN WINNERS
1630 430TH STREET
LITTLE CEDAR IA 50454

BRENDA ADKINS
CENTURYTEL
100 CENTURY PARK DRIVE
MONROE LA 71203

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RACINE WI 53401-0292

CASE CREDIT CORPORATION
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LANCASTER PA 17604-3600

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CENTURYTEL OF MINNESOTA
INC
C/O REX RAINACH
3622 GOVERNMENT ST
BATON ROUGE LA 70806

CHARLES W. RIES
MASCHKA RIEDY AND RIES
200 UNION SQUARE BUSINESS
CENTER
201 NORTH BROAD STREET
PO BOX 7
MANKATO MINNESOTA 56002-
0007

CITI CAPITAL
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DALLAS TX 75267-2032

CO BROWN
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ROCHESTER MN 55904-6505

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PRESTON MN 55965

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FAIRMONT MN 56031

CUNA MUTUAL LIFE
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DODGE CENTER MN 55927-9013

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MEMPHIS TN 38133-8119

EFS NTL BANK INC
EULER/AM CREDIT INDEMNITY
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BALTIMORE MD 21202

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ST PAUL MN 55101

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FILLMORE COUNTY
COURTHOUSE
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OMAHA NE 68197-0003

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AINSWORTH IA 52201-9261

FRED BUSS
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SPRING VALLEY MN 55975-9774

GAALSWYK BROS TRUCKING
INC
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TRIMONT MN 56176-0265

GENE WILDER
RR 1 BOX 282
LE ROY MN 55951-9793

GORDON PUGH
415 2ND ST NW
STEWARTVILLE MN 55976-1135

GREG LANE
2697 HAWTHORNE LN
STILLWATER MN 55082-5265

H AND I GRAIN OF HETLAND
INC
205 MAIN AVE
HETLAND SD 57212-7711

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LA CROSSE WI 54602-1597

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RUSHMORE MN 56168

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SPRING VALLEY MN 55975

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MARSHALL MN 56258-4005

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COMPANY
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OMAHA NE 68144-3617

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DRIVER AND VEHICLE
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38749 PARK Trl
CENTER CITY MN 55012-7518

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CLIVE IA 50325-8258

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PRAXMR DIST
DEPT CH 10660
PALATINE IL 60055-0001

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LAUREL NE 68745-1901

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DEPT OF MANPOWER SERVICES
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ST PAUL MN 55101

SUNDRUP TRANSFER INC
PO BOX 105
ARCADIA IA 51430-0105

SUNRICH
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HOPE MN 56046-0068

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WENATCHEE WA 98801-9677

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re

Bky. No. 03-33611
Chapter 11 case

Virgil Moeller,

Debtor.

ORDER

On the motion of Lloyd D. Johnson, the Court hereby allows movant an administrative expense claim through August 20, 2004, of \$3,747.51.

So Ordered this _____ day of _____, 20__.

Hon. Gregory F. Kishel
Chief United States Bankruptcy Judge