

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In re:

**GOPHER STATE ETHANOL, LLC**

Debtor.

Bky. No. 04-34706 (DDO)  
Chapter 11

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**MEMORANDUM OF LAW OF GRAIN COMMERCE, INC.  
IN OPPOSITION TO APPROVAL OF  
POST-PETITION FINANCING AND FOR AUTHORIZATION  
TO USE CASH COLLATERAL**

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**TO: ENTITIES SPECIFIED IN LOCAL RULE 9013-3(b):**

**INTRODUCTION**

Grain Commerce, Inc. (“Grain Commerce”) hereby objects to the Debtor’s Motion for a Final Order Authorizing Debtor to Obtain Post-Petition Financing and Authorization to Use Cash Collateral (“Motion”).

**BACKGROUND**

Grain Commerce is a creditor of Gopher State Ethanol, LLC (“Gopher State”) and is an interested party.

The U.S. Trustee has not yet appointed a creditors’ committee and the unsecured creditors as a group do not have representation.

Farmers Mill & Elevator, Inc. (“Farmers Mill”) has filed a Memorandum in Opposition to the Debtor’s Motion. Grain Commerce joins in that opposition for the reasons articulated and, as more particularly set forth herein.

## **ARGUMENT**

1. That it appears as though the only purpose of the Debtor's Motion is to preserve and enhance the position of Bruce E. Hendry and GDN Holdings, LLC ("Lender").
2. That in fact the Lender appear to be either principals of the Debtor or owned by the principals of the Debtor such that Grain Commerce is concerned that the only purpose served by the Debtor's Motion is to allow the principals of the Debtor to obtain the economic value of whatever assets may otherwise be available for unsecured creditors.
3. The Debtor's Motion indicates that the Debtor suspended operations on May 11, 2004 and laid off many of its employees and despite the asserted position that the Chapter 11 case was filed to preserve its assets and facilitate the restart of operations or the sale of the facility, Grain Commerce is concerned that the only purpose is to maximize the recover to the Lender who is an insider and the owner of the Debtor.
4. Based upon the projections attached to the Motion, after there is an injection of \$377,000 between now and the end of the year, the Debtor will have a remaining cash balance of only \$750 with presumably an additional \$377,000 of debt and apparently no increase in assets.
5. That according to the Statement of Financial Affairs, Lender received \$469,630.55 on July 14, 2004, less than 30 days prior to the bankruptcy filing and Grain Commerce questions why, if the Debtor was concerned about the need of funds for restarting operations, they would have transferred these funds to an insider.
6. The Debtor has not established that the relief requested is of any benefit to the Debtor.

## CONCLUSION

Grain Commerce requests that Debtor's Motion be denied unless the control of the Debtor be transferred to an independent trustee.

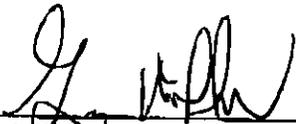
Dated: August 27, 2004.

/e/Charles W. Ries  
Charles W. Ries # 12767X  
Renee C. Rubish # 250946  
MASCHKA, RIEDY & RIES  
Attorneys for Plaintiff  
201 North Broad Street, Suite 200  
P.O. Box 7  
Mankato, MN 56002-0007  
Telephone: 507-625-6600

**VERIFICATION**

I, Gregory Mikkelson, \_\_\_\_\_ of Grain Commerce, Inc., the party named in the foregoing Memorandum of Law in Opposition to Debtor's Motion for Approval of Post Petition Financing and For Authorization to Sue Cash Collateral, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: May 27, 2004.

  
\_\_\_\_\_  
Gregory Mikkelson

**UNITED STATES BANKRUPTCY COURT  
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**DECLARATION RE: SERVICE BY MAIL**

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 27<sup>th</sup> day of August, 2004, she served the **Memorandum of Law of Grain Commerce, Inc. in Opposition to Approval of Post-Petition Financing and for Authorization to Use Cash Collateral** upon the following via facsimile to the fax numbers listed below:

*Via Facsimile*  
**Michael L. Meyer**  
**Gopher State Ethanol, LLC**  
**Ravich Meyer Kirkman**  
**4545 IDS Center**  
**80 South 8<sup>th</sup> Street**  
**Minneapolis, MN 55402**  
**612-332-8302**

*Via Facsimile*  
**Michael R. Fadlovich, Esq.**  
**Office of the U.S. Trustee**  
**1015 U.S. Courthouse**  
**300 South 4<sup>th</sup>**  
**Minneapolis, MN 55415**  
**612-664-5516**

*Via Facsimile*  
**Steven Kluz, Sr.**  
**Farmers Mill & Elevator, Inc.**  
**Rider Bennett, LLP**  
**330 South Seventh St., Suite 2000**  
**Minneapolis, MN 55402**  
**612-340-7900**

/e/Janine Miller  
Janine Miller