

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

NOTICE OF MOTION AND MOTION
FOR DISMISSAL OR CONVERSION

Howard A. Bjerke
Joyce W. Bjerke,

BKY Case No. 99-34907
Chapter 13

Debtor(s)

TO: Debtor(s), Debtor(s) Attorney, the other parties entitled to notice, if any, under Local Rule 9013-3, and the United States Trustee.

1. Jasmine Z. Keller, Chapter 13 Trustee, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 a.m. on **August 26, 2004**, in U.S. Bankruptcy Court, Courtroom 228B, Second Floor, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than August 23, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than August 17, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays and holidays). ***UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.***

4. The Court has jurisdiction pursuant to 28 U.S.C. §157 and §1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This motion arises under 11 U.S.C. §1307 and Bankruptcy Rule 1017. This motion is filed under Bankruptcy Rule 9013 and Local Rule 9013-1 *et seq.* The petition commencing this Chapter 13 case was filed on November 22, 1999. The case is now pending in this Court.

5. If testimony is necessary as to any facts relevant to this motion, an employee of the Chapter 13 Trustee, 310 Plymouth Building, Minneapolis, Minnesota, will testify on behalf of the movant.

6. Movant requests that this case be dismissed because certain claims have been filed in an amount that exceeds the amount estimated by the Debtor(s) in the plan to such an extent that the plan is now underfunded.

7. The following claim(s) have been filed:

<u>Claimant</u>	<u>Claim Amount</u>	<u>Claim Type</u>
Barbara J. May	\$850.00	Attorney Fees
Barbara J. May	\$225.00	Attorney Fees (Post-petition)
IRS	\$10,147.65	Priority
MN Dept. of Revenue	\$16,809.76	Priority
TOTAL	\$28,032.41	

These claim(s) will be collectively referred to hereafter as the "Claim(s)".

8. The Debtor(s)' confirmed plan contains the following specific provisions for the Claim(s):

<u>Claimant</u>	<u>Plan's Estimated Claim Amount</u>	<u>Claim Type</u>
Barbara J. May	\$850.00	Attorney Fees
IRS	\$500.00	Priority
MN Dept. of Revenue	\$18,000.00	Priority
TOTAL	\$19,350.00	

9. The Claim(s) either have not been objected to and therefore are deemed allowed under Section 502(a), or have been allowed after objection and hearing.

10. The general language of the plan provides that Claim(s) shall be paid in the amount of the allowed proof of claim.

11. There is a substantial discrepancy between the funds to be paid into the plan by the Debtor(s) (**\$22,800.00**) and the funds needed to pay both the allowed priority claims in full and the allowed secured claims the amount provided for in the plan (**\$29,714.35**) (the Trustee's fee is calculated at 6.0%).

12. There is no indication that the Debtor(s) will be able to increase payments to the Trustee to pay all allowed claims in the amount required to obtain a discharge under Section 1328 of the Bankruptcy Code.

13. As a result of the foregoing, the plan is no longer feasible.

14. The creditors, if any, of a class lower in priority than the class of the Claim(s) may never receive the distribution contemplated under the plan.

15. As a further result of the present circumstances, the lower priority creditors, if any, will be delayed from the collection of their claims during the pendency of this Chapter 13 case.

16. The effect of these circumstances is that the lower priority creditors, if any, will have detrimentally relied upon the confirmed plan with the expectation of future payment, only to discover at the end of the plan term that they will receive no payment.

17. All of these circumstances constitute cause for dismissal under Section 1307(c).

WHEREFORE, the Movant requests entry of an order dismissing this case, or converting this case to a case under Chapter 7, and for such other relief as the Court deems just and proper.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: August 6, 2004

/e/ Margaret H. Culp
Thomas E. Johnson, #52000
Margaret H. Culp, #180609
Chapter 13 General Counsel
310 Plymouth Building
Minneapolis, MN 55402
(612) 338-7591

VERIFICATION

I, Lora Meier, for Movant, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: August 6, 2004

/e/ Lora Meier
Lora Meier

**UNITED STATES BANKRUPTCY COURT
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Joyce W. Bjerke,

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UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Lora Meier, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on August 6, 2004, I served Notice of Hearing and Motion for Dismissal or Conversion on the individual(s) listed below, in the manner described:

By e-mail:

United States Trustee
1015 United States Courthouse
300 South 4th Street
Minneapolis, MN 55415

By first class U.S. mail, postage prepaid:

Howard A. Bjerke
Joyce W. Bjerke
1365 16th Avenue N.W.
New Brighton, MN 55112

Barbara J. May, Esq.
4105 North Lexington Ave., Suite 310
Arden Hills, MN 55126

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

Executed: August 6, 2004

/e/ Lora Meier
Lora Meier