

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)
)
EVELETH MINES, LLC) Bankruptcy No. 03-50569 (GFK)
d/b/a EVTAC MINING, and)
THUNDERBIRD MINING CO.) Bankruptcy No 03-50641 (GFK)
)
) Jointly Administered
) Chapter 11 Cases
Debtors.)

NOTICE OF HEARING ON
MOTION TO DISMISS OR CONVERT

TO: The debtors, all creditors and other parties in interest:

A motion has been filed by the United States Trustee to dismiss or convert the above-captioned Tuesday, November 16, 2004, at 1:30 p.m. before the Honorable Gregory F. Kishel, Chief U.S. Bankruptcy Judge, in Courtroom No. 228B, U.S. Bankruptcy Court, 200 U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, the Court will hold a hearing to determine whether this case should be dismissed or converted.

Any response to this motion must be filed and delivered not later than November 11, 2004, which is three days before the time of the hearing, (not including Saturdays, Sundays or Holidays), or filed and served by mail not later than November 5, 2004, which is seven days before the time set for the hearing. (not including Saturdays, Sundays and Holidays). See Local Bankruptcy Rule 9006-1(b).

Dated: _____

CLERK OF BANKRUPTCY COURT

By: _____

Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)
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EVELETH MINES, LLC) Bankruptcy No. 03-50569 (GFK)
d/b/a EVTAC MINING, and)
THUNDERBIRD MINING CO.) Bankruptcy No 03-50641 (GFK)
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) Jointly Administered
) Chapter 11 Cases
Debtors.)

NOTICE OF HEARING AND
MOTION TO DISMISS OR CONVERT CASE

TO: The debtors and other entities specified in Local Rule 9013-3.

1. Habbo G. Fokkena, the United States Trustee, by his undersigned attorney, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion on Tuesday, November 16, 2004, at 1:30 p.m. before the Honorable Gregory F. Kishel, Chief U.S. Bankruptcy Judge, in Courtroom No. 228B, U.S. Bankruptcy Court, 200 U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than November 11, 2004, which is three days before the time of the hearing, (not including Saturdays, Sundays or Holidays), or filed and served by mail not later than November 5, 2004, which is seven days before the time set for the hearing. (not including Saturdays, Sundays and Holidays). See Local Bankruptcy Rule 9006-1(b).

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005 and Local Rule 1070-1. The United States Trustee has standing to file this motion pursuant to 28 U.S.C. § 586(a) and 11 U.S.C. § 307. This matter constitutes a core proceeding.

5. The petition commencing the Eveleth Mines chapter 11 case was filed on May 1, 2003. The petition commencing the Thunderbird Mining Company case was filed on May 15, 2003. On May 15, 2004, the court entered an order for the joint administration of the two cases. Currently, the cases are currently pending before this Court.

6. This motion arises under 11 U. S. C. § 1112(b) and FED. R. BANKR. P. 1017 and 2002. This motion is filed under FED. R. BANKR. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests that this case be dismissed or converted to a case under chapter 7.

7. Pursuant to 11 U.S.C. § 1112(b), the Court may dismiss or convert a chapter 11 case for cause after notice and a hearing. Section 1112(b) states that cause for dismissal or conversion to chapter 7 includes, among other things:

- a. continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
- b. inability to effectuate a plan; or
- c. unreasonable delay by the debtors that is prejudicial to creditors.

FACTS

8. The debtors were engaged in the operation of a taconite plant in northern Minnesota. The operation of the two debtors' businesses were mutually dependent. On November 26, 2003, the court entered orders which authorized the sale of the taconite plant to United Taconite, LLC and provided additional relief related to the sale and transfer of the plant. (See Docket #148). Subsequently the sale

closed and as a result, the debtors are no longer engaged in the operation of the plant or any other business.

9. Since the sale and transfer of the plant to United Taconite, the debtors have had a number of related issues resolved by this court, including issues dealing with the debtors' labor union, the asset purchaser, and the Minnesota taxing authorities. Although most issues have been resolved, there remains on appeal an issue regarding United Taconite's successor liability to the State of Minnesota for taconite taxes. On information and belief, that appeal is completely unaffected if the debtors are converted to chapter 7 as opposed to remaining under chapter 11.

10. On information and belief, the debtors have approximately \$3 million which is available for distribution to creditors. The distribution of those funds to creditors is unresolved to the extent some creditors may claim to have priority over others. Such creditors include the State of Minnesota with a priority tax claim and former employees with claims for benefits.

11. On further information and belief, the debtors' officers have all now resigned. There is no real activity in the cases being conducted by the debtors, rather all recent activity has been by the Creditors' Committee and other creditors.

MOTION TO CONVERT OR DISMISS

12. Cause to convert or dismiss exists under 11 U.S.C. §1112(b)(3) due to the unreasonable delay which is prejudicial to creditors. Since closing on the sale of the debtors' assets, no progress has been made towards the filing of a plan and disclosure statement. Without corporate officers, the debtors are unable to do so. Although a number of inter creditor issues have been or are now being resolved by the Committee of Unsecured Creditors, all of those issues can be resolved while the case is under

chapter 7.^{1/} Remaining in chapter 11 will provide no further benefit to the estate or its creditors and, as a result, cause exists to convert or dismiss under §1112(b)(3).

13. Additional cause exists to convert this case to chapter 7 because there is an ongoing loss to and diminution of the estate and an absence of reasonable likelihood of rehabilitation. See 11 U.S.C. §1112(b)(1). Since their sale of assets, the debtors are not generating cash but do continue to incur administrative expenses, including professional fees and U.S. Trustee fees. The incurrence of those fees, without any offsetting income establishes that there is an ongoing loss to and diminution of the estate. The debtors' failure to file a plan and disclosure statement evidences an absence of reasonable likelihood of rehabilitation. As a result, additional cause exists to convert or dismiss under §1112(b)(1).

14. If necessary, the United States Trustee intends to call as a witness the following individuals:

Thomas Kleiner
Bankruptcy Analyst
Office of the U.S. Trustee
1015 U.S. Courthouse
300 South Fourth Street,
Minneapolis, MN 55415

Mr. Kleiner will testify to the prospects of the debtors filing and obtaining confirmation of a chapter 11 plan. The U.S. Trustee may also call other witnesses such as a representative of the Debtor to testify regarding the financial status of the debtor's business operations.

15. The debtor is not a person described in 11 U.S.C. § 1112(c). The debtor is qualified to be a debtor under chapter 7.

16. The United States Trustee believes that the foregoing constitutes cause for conversion or dismissal of the case. The United States Trustee believes that conversion of the case is in the best interest

^{1/} To the extent unsecured creditors feel the need for representation in such matters, the appointment of an unsecured creditors committee is an option available in chapter 7. See §705.

of the estate and its creditors.

WHEREFORE, the United States Trustee moves the Court for an order converting these cases to chapter 7 and for such other relief as may be just and equitable. The United States Trustee submits that the cases should be converted to chapter 7 to provide a mechanism for the distribution of remaining funds to creditors.

Dated: October 19, 2004

HABBO G. FOKKENA
United States Trustee
Region 12

By: s/ Michael R. Fadlovich
MICHAEL R. FADLOVICH
Trial Attorney
MN Attorney I.D. No. 158410
United States Trustee's Office
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5500

VERIFICATION

I, Michael R. Fadlovich, attorney for the United States Trustee, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: October 19, 2004

Signed: s/Michael R. Fadlovich
MICHAEL R. FADLOVICH
Trial Attorney

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)
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EVELETH MINES, LLC) Bankruptcy No. 03-50569 (GFK)
d/b/a EVTAC MINING, and)
THUNDERBIRD MINING CO.) Bankruptcy No 03-50641 (GFK)
)
) Jointly Administered
) Chapter 11 Cases
Debtors.)

MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO CONVERT OR DISMISS

The United States Trustee, by the undersigned attorney, submits this memorandum in support of the motion to dismiss this case or convert it to a Chapter 7 case.

A proceeding to dismiss a case or convert a case to another chapter is governed by 11 U.S.C. § 1112 and FED R. BANKR. P. 9014. A request for dismissal or conversion of a case shall be made by motion. A motion to dismiss or a motion to convert a case shall be deemed a motion either to dismiss or to convert, whichever is in the best interest of creditors and the estate. Local. R. Bankr. P. 1017-2. A case may be converted to a Chapter 7 case if the debtor may be a debtor under Chapter 7. 11 U.S.C. § 1112(f).

Cause for dismissal or conversion includes the following:

1. There is a continuing loss to or diminution of the debtor's estate and absence of a reasonable likelihood of rehabilitation. 11 U.S.C. §1112(b)(1); In re Minn. Alpha Foundation, 122 B.R. 89 (Bkrcty.D.Minn 1990);

2. The debtor is unable to effectuate a plan. 11 U.S.C. §1112(b)(2); Hall v. Diminution, 887 F.2d 1041 (10th Cir. 1989); In re Fossum, 764 F.2d 520 (8th Cir. 1985); Moody v. Security Pacific Business Credit, Inc., 85 B.R. 319 (W.D. Pa.1988); In re Economy

Cab & Tool Co., Inc., 44 B.R. 721, 725 (Bkrcty. D. Minn. 1984);

3. There has been an unreasonable delay by the debtor which is prejudicial to the interest of creditors. 11 U.S.C. §1112(b)(3); Moody v. Security Pacific Business Credit, Inc., 85 B.R. 319 (W.D. Pa. 1988);

Cause for conversion or dismissal is not limited to the reasons expressed in 11 U.S.C. §§ 1112(b), (e). 11 U.S.C. 102(3); Moody v. Security Pac. Business Credit, Inc., 85 B.R. 319, 352-53 (W.D. Pa. 1988).

Respectfully submitted,
HABBO G. FOKKENA
United States Trustee

Dated October 19, 2004

By s/Michael R. Fadlovich
MICHAEL R. FADLOVICH
Trial Attorney
MN Attorney I.D. No. 158410
U.S. Trustee's Office
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5500

CERTIFICATE OF SERVICE

In Re:)	
)	
Eveleth Mines, LLC)	Bankruptcy No. 03-50569
d/b/a EVTAC Mining)	
Debtor(s).)	Chapter 11 Case

I, Terri Frazer, declare under penalty of perjury that on October 19, 2004, I served a copy of the foregoing U.S. Trustee's proposed Notice of Hearing on Motion to Dismiss or Convert, Notice of Hearing and Motion to Dismiss or Convert, Memorandum of Law and proposed Order by U.S. mail, postage prepaid, to each person named below:

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Ravich, Meyer, Kirkman, McGrath &
Nauman
80 S. 8th St., Suite 4545
Minneapolis, MN 55402

Eveleth Mines, LLC
P.O. Box 180
Eveleth, MN 55734

Richard D. Anderson
Briggs and Morgan
2400 IDS Center
80 South Eighth Street
Minneapolis, Mn 55402

Michael R. Stewart
Lora Lewicki Whitehouse
Faegre & Benson
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

Michael S. Tucker, Esq.
Ulmer & Berne LLP
Penton Media Building
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Cleveland, OH 44114-1583

Dennis Hendricks
United States Steel Corporation
Northern Lands & Minerals
P.O. Box 417
Mt. Iron, MN 55768

R.F. Walk
On Marine Services Co.
1001 Lakeside Avenue, 15th Floor
Cleveland, OH 44114

Donald V. Larson
Lerch Bros., Inc.
P.O. Box 8
Hibbing, MN 55746

Ken Graeber
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Omaha, NE 68137

Connie Hauswirth
North Star Steel Company
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David Foster
United Steelworkers of America
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Minneapolis, MN 55414

Steven A. Betzler
Minnesota Power
30 W. Superior Street
Duluth, MN 55802

Beverly H. Shideler
IBM Corporation
Two Lincoln Centre
Oakbrook Terrace, IL 60181

David R. Jury
Assistant General Counsel
United Steelworkers of America
Five Gateway Center, Room 807
Pittsburgh, PA 15222

Nathaniel Rayle
Pension Benefit Guaranty Corp
Office of General Counsel
1200 K. Street, N.W.
Washington, D.C. 20005-4026

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Leonard, O'Brien, Wilford, Spencer & Gale
55 East Fifth St., Suite 800
St. Paul, MN 55101-1718

Andrew Gofffried
Morgan, Lewis, & Bockius LLP
101 Park Avenue
New York, NY 10178

Fryberger Buchanan Smith
700 Lonsdale Building
Duluth MN 55802

Langer Equipment Co Inc
c/o David Stall
330 S 3rd St
Virginia MN 555792

Timothy D. Moratzka
1400 AT&T Center
901 Marquette Avenue
Minneapolis, MN 55402

IRS District Director
Stop 5700
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St. Paul, MN 55101

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Mark W. Bay
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200 South Sixth Street
Minneapolis, MN 55402

Michael B. Fisco
Laurie K. Jones
Faegre & Benson LLP
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Minneapolis, MN 55402-3901

Paul M. Singer, Esq.
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435 Sixth Avenue
Pittsburgh, PA 15219

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Stephenson & Sanford PLL
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Minneapolis MN 55402

Neil Herskowitz
Riverside Contracting LLC
Po Box 626
Planetarium Station
New York NY 10024-0540

Wells Fargo Business Credit Inc
733 Marquette Ave
Minneapolis MN 55402

William I Kampf
Henson & Efron
220 South Sixth Street #1800
Minneapolis, MN 55402

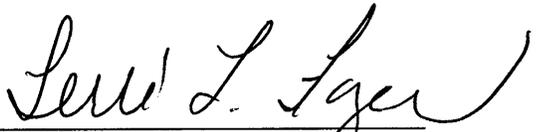
IRS Office of Chief Counsel
650 Galtier Plaza
380 Jackson Street
St. Paul, MN 55101

Minnesota Dept. of Revenue
Collections Enforcement Unit
Bankruptcy Section
P.O. Box 64447
St. Paul, MN 55164

Securities & Exchange Commission
175 West Jackson Blvd, Suite 900
Chicago, IL 60604

Roylene A. Chapeaux
US Attorneys Office
600 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Dated: 10-19-04

By: 
Office of the United States Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)
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EVELETH MINES, LLC) Bankruptcy No. 03-50569 (GFK)
d/b/a EVTAC MINING, and)
THUNDERBIRD MINING CO.) Bankruptcy No 03-50641 (GFK)
)
) Jointly Administered
) Chapter 11 Cases
Debtors.)

ORDER

At St. Paul, Minnesota, this ____ day of _____, 2004.

The above-entitled matter came before the undersigned on the motion of the United States Trustee seeking an order dismissing this chapter 11 case or converting it to a case under chapter 7. Appearances were as noted in the record.

Based upon the motion, the arguments of counsel if any, all of the files, records and proceedings herein, it is hereby ORDERED:

That these two chapter 11 cases are is hereby converted to cases under chapter 7.

HONORABLE GREGORY F. KISHEL
Chief United States Bankruptcy Judge