

John O'Brien (*Pro Hac Vice*)  
Brian P. Gaffney (*Pro Hac Vice*)  
Snell & Wilmer L.L.P.  
1200 Seventeenth Street  
Suite 1900  
Denver, Colorado 80202  
(303) 634-2000  
(303) 634-2020

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

**In re:** )  
 )  
**Friendship Dairies** ) **Case No. 12-20405-RLJ11**  
 )  
**Debtor.** ) **Chapter 11**  
 )

---

**OBJECTION TO SECOND AMENDED DISCLOSURE STATEMENT**

---

AgStar Financial Services, FLCA, as loan servicer and attorney-in-fact for McFinney Agri-Finance, LLC (“AgStar”), by and through its undersigned counsel Snell & Wilmer L.L.P., hereby respectfully submits its objection to the *Second Amended Disclosure Statement* (Docket No. 448) (the “Disclosure Statement”) filed by Debtor Friendship Dairies (the “Debtor”). In support of this objection, AgStar states as follows:

1. On May 16, 2013 the Debtor filed its First Amended Disclosure Statement (Docket No. 387).
2. On May 28, 2013 AgStar filed its Objection to First Amended Disclosure Statement identifying 37 deficiencies in the Disclosure Statement.
3. At approximately 10:00 p.m., Sunday, June 23, 2013 the Debtor filed a Second Amended Disclosure Statement.

4. The Second Amended Disclosure Statement is identical to the First Amended Disclosure Statement. The Second Amended Disclosure Statement did not address any of AgStar's 37 concerns. All of AgStar's concerns remain the same except as follows:

No. 12. AgStar's objection 12 has now been clarified that the insiders, Jacob Van Der Weg, Patrick and Lidwina Van Adrichem propose to have their insider claims paid before AgStar, but after unsecured creditors. However, no explanation is given for why insiders should be paid before AgStar.

No. 26. It appears that AgStar's objection 26 is somewhat ambiguously addressed by a single sentence on page 28 of the Amended Disclosure Statement which states: "The nonmonetary covenants contemplated by the Plan are those set forth in these documents."

5. As described at the hearing, the Disclosure Statement:

- (a) omits a summary of the claims' register;
- (b) omits statements concerning the purported nature and value of secured creditor collateral;
- (c) omits to explain why Dimmitt and Gavilon are treated as secured when their counsel, Steve Jakubowski, announced to the court that they agreed to be treated as unsecured;
- (d) omits to explain why Frontier's claim is sometimes valued at \$16,000,000 and at other times valued at \$16,800,000;

(e) omits to explain that Exhibits 3 and 6 describe plan payment commencing in June 2013 which is an impossibility;

(f) omits to explain why Exhibit 6 is labeled as a “DRAFT,” why the numbers stated therein do not reconcile, and why lines in the report are incomplete;

(g) omits to state or estimate administrative claims;

(h) omits to give a liquidation analysis except by summary conclusion without backup, itemization or explanation;

(i) omits to explain the Debtor’s historical failure to comply with its budget during its administration period of this case even though that data is readily available pursuant to cash collateral reporting requirements;

(j) omits to explain the enormous losses the Debtor has incurred during the administration period of this case;

(k) omits to include a sensitivity analysis so creditors can determine the likelihood of a plan default if milk production, milk prices, feed prices, or other unhedged expenses vary by 5%, 10%, 15% or 20%;

(l) omits to include any projected costs for replacement heifers now that the Debtor needs to liquidate young stock to buy feed to avoid an animal health crisis;

(m) omits to explain the discrepancy between the \$506,000 of insurance cash collateral in a deposit account and the \$430,000 referenced in the Disclosure Statement;  
and

(n) omits to explain how the Debtor proposes to reinsure the improvements constituting a part of AgStar’s real property collateral.

6. At approximately 10:00 p.m., Sunday, June 23, 2013, and the day before the day before the Disclosure Statement hearing, the Debtor filed its First Amended Plan of Reorganization. This filing is inadequate in two respects.

(a) First, it fails to address any of the 37 deficiencies that concern AgStar.

(b) Second, the filing constituted a material modification of the Disclosure Statement and without notice and opportunity to object.

7. The Debtor represented to the court that the First Amended Plan did not materially change the existing plan. In fact, not only does the Amended Plan propose material changes, but also it contradicts parts of the unamended Disclosure Statement:

(a) The Disclosure Statement provides that the covenants in AgStar's loan and security documents shall remain the same. The newest plan proposes to deliver to AgStar a new Promissory Note and Deed of Trust.

(b) The new plan proposes that the Debtor execute a new promissory note and deed of trust but does not specify the terms.

(c) The new plan proposes to amortized AgStar's debt over 20 years (rather than 15) and to drop the monthly payments from \$133,482.77 to \$112,150.72 (which works out to about \$250,000 per year).

(d) The new plan proposes to strip AgStar of its \$506,000 of Insurance Proceeds Collateral.

(e) The new plan proposes to reduce the cash distribution to unsecured creditors from 35% to 30%, and proposes to fund the payment by a sale of claims to Frontier. Notably, creditors who do not sell to Frontier at substantial discount will be paid over 15 years. Logically, then, there is coercion for unsecured creditors to sell their

claim to Frontier at great discount without disclosure of what their return might be under Chapter 7 if the Debtor supplied a meaningful liquidation analysis.

(f) At the June 20, 2013 hearing the Debtor's counsel stated that the Dimmitt and Gavilon claims are subject to further documentation under "certain" terms that are still un-defined.

8. As to AgStar, the reduction of AgStar's payments by \$250,000 per year and the stripping of AgStar's lien on \$506,000 of cash collateral and the proposed replacement of AgStar's loan and security documents with new documentation containing unknown terms is material. Certainly the Debtor knew that the revised treatment of AgStar's claim would likely impact AgStar's decision with respect to the Disclosure Statement and the plan. The change is material. The Disclosure Statement needs to be completed and noticed again.

9. As a practical matter, the Disclosure Statement is so self-contradictory and incomplete it is difficult to tell what a creditor is voting for, and how to prepare for a confirmation hearing on the Debtor's plan or a competing creditor plan.

10. Agstar reserves the right to object to any future disclosure statement changes made at the last minute and which deprive Agstar of meaningful notice and opportunity to object to matters materially impacting Agstar.

11. Finally, once an adequate Disclosure Statement is proposed AgStar will need time to engage in discovery on the pending contested matters, to include the discovery to determine whether AgStar or the estate has claims against third parties to cover the losses that the Debtor proposes to impose upon AgStar under the plan.

WHEREFORE, AgStar submits its Objection to Second Amended Disclosure Statement.

Dated this 25th day of June, 2013.

/s/ John O'Brien

John O'Brien (*Pro Hac Vice*)

Brian P. Gaffney (*Pro Hac Vice*)

Snell & Wilmer L.L.P.

1200 Seventeenth Street, Suite 1900

Denver, Colorado 80202-5854

Phone: (303) 634-2000

Fax: (303) 634-2020

Email: [jobrien@swlaw.com](mailto:jobrien@swlaw.com);

[bgaffney@swlaw.com](mailto:bgaffney@swlaw.com)

***AgStar Financial Services, FLCA, as loan servicer  
and attorney-in-fact for McFinney Agri-Finance,  
LLC***

**CERTIFICATE OF SERVICE**

I hereby certify that on June 25, 2013 a true and correct copy of the foregoing **OBJECTION TO SECOND AMENDED DISCLOSURE STATEMENT** was electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

Friendship Dairies  
P.O. Box 1556  
Hereford, Texas 79045

Sharon L. Stolte  
Stinson Morrison Hecker LLP  
1201 Walnut, Ste. 2900  
Kansas City, Missouri 64106

J. Bennett White  
J. Bennett White, P.C.  
P.O. Box 6250  
Tyler, Texas 75711

Jason B. Binford  
Kane Russell Coleman & Logan PC  
3700 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201

Office of United States Trustee  
1100 Commerce Street, Room 976  
Dallas, Texas 75242

R. Byrn Bass, Jr.  
Attorney-at-Law  
Compass Bank Building  
4716 4th Street, Suite 100  
Lubbock, Texas 79416

John F. Massouh  
Sprouse Shrader Smith P.C.  
701 S. Taylor, Suite 500  
Amarillo, TX 79101

Jeff P. Prostok  
Clarke V. Rogers  
Forshey Prostok LLP  
777 Main Street, Suite 1290  
Fort Worth, TX 76102

Steven R. Jakubowski  
Levenfeld Perlstein, LLC  
2 North LaSalle Street, Suite 1300  
Chicago, IL 60602

Jonathan P. Firedland  
Levenfeld Perlstein, LLC  
2 North LaSalle Street, Suite 1300  
Chicago, IL 60602

Elizabeth B. Vandesteeg  
Levenfeld Perlstein, LLC  
2 North LaSalle Street, Suite 1300  
Chicago, IL 60602

Conrad D. Hester  
Brown & Fortunato, P.C.  
905 S. Fillmore, Suite 400  
Amarillo, TX 79101

James G. Rea  
McGuire, Craddock & Strother, P.C.  
2501 N. Harwood St.  
Dallas, TX 75201

Benjamin E. Gurstelle  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

Joel R. Hogue  
Irwin Merritt Hogue Price & Carthel, P.C.  
P.O. Box 15090  
Amarillo, TX 79105

Scott W. Sharp  
Timberlake, Weaver & Sharp, P.C.  
1408-A Buddy Holly Ave.  
Lubbock, TX 79401

Megan Adeyemo  
Gordon & Rees LLP  
555 Seventeenth Street  
Suite 3400  
Denver, CO 80202

Holly R. Shilliday  
Snell & Wilmer L.L.P.  
1200 Seventeenth St.  
Suite 1900  
Denver, CO 80202

Scott C. Sandberg  
Snell & Wilmer L.L.P.  
1200 Seventeenth St.  
Suite 1900  
Denver, CO 80202

Mark S. Finkelstein  
Shannon, Martin, Finkelstein & Alvarado, P.C.  
1001 McKinney Street, Suite 1100  
Houston, TX 77002

Elizabeth D. Alvarado (Lisa)  
Shannon, Martin, Finkelstein & Alvarado, P.C.  
1001 McKinney Street, Suite 1100  
Houston, TX 77002

*s/Anita L. Godfrey*  
Anita L. Godfrey