

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

In re: )  
 ) Chapter 11  
EVERMILK LOGISTICS LLC, )  
 ) Case No. 17-03613-JJG-11  
Debtor. )

**OBJECTIONS TO EVERMILK LOGISTICS LLC’S DISCLOSURE STATEMENT**

Comes now General Truck Leasing, LLC, a creditor herein (“General Truck”), by counsel, and for its Objections to Evermilk Logistics LLC’s Disclosure Statement (“Objections”) respectfully represents that:

**I. Background of General Truck’s Relationship With Debtor**

1. Evermilk Logistics LLC, the debtor herein (“Debtor”) filed its Chapter 11 petition on May 15, 2017 (the “Petition Date”). The sole owner of the Debtor is Teunis Jan Willemsen. The Debtor’s primary business is transporting milk by truck.

2. General Truck is in the business of selling, leasing, renting and servicing commercial trucks. Prior to the Petition Date, the Debtor had leased and rented numerous trucks from General Truck.<sup>1</sup>

3. Prior to and as of the Petition Date, the Debtor was in default of its payment obligations to General Truck, which can be divided into two categories: (a) unpaid rent under certain lease agreements and rental agreements that were terminated prior to the Petition Date, with the trucks returned to General Truck (collectively, the “Terminated Leases”), and (b) unpaid rent under 12 lease agreements that were in effect on the Petition Date, pursuant to which the Debtor leased 12 Volvo trucks from General Truck for use in the Debtor’s business of

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<sup>1</sup> As used herein and in General Truck’s business, a “lease” refers to a formal truck lease agreement with typically a 3 year term, in contrast to a short term week to week rental of a truck.

transporting milk (collectively, the “Leases”). A list of the trucks covered by the Leases (collectively, the “Trucks”) is attached hereto as **Exhibit A**.

4. Subsequent to the Petition Date, certain events occurred that reduced the number of Leases from 12 to 9. The Lease covering Truck M56495 expired by its terms on November 4, 2017, and Debtor’s use of such Truck is now on a verbal week to week rental arrangement. The Lease for Truck M66506 expired by its terms on December 4, 2017, and Debtor’s use of such Truck is now on a verbal week to week rental arrangement. Truck M76567 was totaled by the Debtor on November 21, 2017, and was replaced by another truck under a week to week rental agreement.

5. On September 26, 2017, General Truck filed a proof of claim in this case (Claim No. 8) in the amount of \$106,984.60. Claim No. 8 is an unsecured claim representing the aggregate amount owed by the Debtor to General Truck for unpaid rent under the Terminated Leases. Claim No. 8 does not relate to the Leases.

6. As of the date hereof, the Debtor has not indicated whether it intends to assume or reject any of the Leases. In the event that the Debtor would propose to assume all of the Leases, the cure payment would be not less than \$207,976.56, which amount includes (a) \$94,110.20 of unpaid rent under the Leases accrued as of the Petition Date, plus (b) \$113,866.36 of unpaid rent under the Leases accrued subsequent to the Petition Date.<sup>2</sup>

7. As mentioned, subsequent to the Petition Date, 2 of the Leases expired and a Truck covered by a third Lease was destroyed. However, as an accommodation to the Debtor, General Truck has allowed the Debtor to retain and rent Trucks M56495 and M66506 on a week to week basis and has rented the Debtor a new truck to replace the destroyed Truck M76567.

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<sup>2</sup> General Truck has separately filed a motion for the allowance and payment of its administrative expense claim in the amount of \$113,866.36 (Doc. 110).

This accommodation by General Truck was intended to be temporary while the Debtor focused on its reorganization and made final decisions on its truck fleet going forward. However, the indefinite week to week rental of these trucks is not economically feasible for General Truck, and General Truck reserves the right to end the week to week rentals at any time.

## **II. The Debtor's Disclosure Statement is Inadequate**

8. On December 11, 2017, the Debtor filed its Plan of Reorganization (Doc. 102) and Disclosure Statement (Doc. 103). The purpose of a disclosure statement is to provide "adequate information" sufficient to enable a creditor to make an informed judgment regarding the plan. 11 U.S.C. § 1125(a).

9. General Truck objects to the Disclosure Statement because General Truck cannot tell from the Disclosure Statement exactly what the Debtor's intentions are with respect to the Leases and Trucks. General Truck's specific objections are set forth below.

### **A. The proposed treatment of General Truck is ambiguous.**

10. Section IV E. of the Disclosure Statement provides that General Truck will be classified by itself in Class 6 and will be "[p]aid either (a) \$106,984.60 or (b) agreed purchase price of leased trucks." General Truck cannot discern from this language how the Debtor proposes to deal with the 9 unexpired Leases, the 12 Trucks in Debtor's possession or the claims of General Truck. The proposed Plan is similarly vague and open ended regarding the treatment of General Truck, with Section 3.6 of the Plan merely stating that "at the option of the Debtor" the Debtor will either reject the Leases, assume the Leases and make a cure payment of \$106,984.60 or purchase the Trucks for an "agreed purchase price."

11. The reference to “\$106,984.60” in the Disclosure Statement and Plan appears to be an error, as this amount represents General Truck’s pre-petition Claim No. 8 relating to the Terminated Leases.

12. When will the Debtor exercise the “option” and inform General Truck of the Debtor’s intentions regarding the Leases and the Trucks? General Truck cannot reasonably be expected to evaluate a plan, let alone vote on a plan, until the Debtor reveals its intentions regarding the Leases and Trucks. The Debtor cannot purchase the Trucks absent an agreement with General Truck on the purchase price and, to date, the Debtor has made virtually no effort to negotiate with General Truck. Given that the scheduled purchase price for the Trucks exceeds \$900,000.00, it does not appear that a purchase is feasible.

13. The Disclosure Statement and Plan should be revised to reflect precisely how the Debtor proposes to deal with (a) each of the 9 unexpired Leases, (b) each of the 12 Trucks currently in Debtor’s possession, 9 of which are covered by unexpired Leases and 3 of which are rented week to week, and (c) General Truck’s claims, including its \$113,866.36 administrative claim and any cure claim.

14. If the Debtor proposes to assume all of the unexpired Leases and the rental agreements, the cure payment is not less than \$207,976.56, and the Debtor/Investor must demonstrate adequate assurance of future performance under the Leases and rental agreements. 11 U.S.C. § 365(b)(1). If the Debtor proposes to purchase some or all of the Trucks, it must reach an agreement with General Truck on the purchase price and must still pay General Truck’s administrative claim of \$113,866.36.<sup>3</sup>

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<sup>3</sup> General Truck reserves all of its rights to object to any proposed assumption or assignment of the Leases including, without limitation, the amount of the cure payment and the proposed adequate assurance of future performance. Of course, the expired Leases are no longer assumable.

**B. The Disclosure Statement fails to provide adequate information regarding United Dairy Group, LLC.**

15. The Disclosure Statement identifies United Dairy Group, LLC as the new “investor” that will acquire 100% of the equity in the Debtor for not less than \$100,000.00. However, there is virtually no information in the Disclosure Statement regarding the financial condition or business experience of the Investor. This information is relevant and necessary not only to test the feasibility of the Plan, but also to assess whether the reorganized Debtor can provide adequate assurance of its ability to perform the Leases in the future (assuming it is the Debtor’s intention to assume any of the Leases that have not already expired).

**C. The proposed timeline for payments under the Plan is ambiguous and unreasonably protracted.**

16. Although it is unclear from the Disclosure Statement and Plan, the proposed timeline for payments to creditors (including holders of administrative claims) appears to contemplate that initial payments will not be made until mid-June of 2018. The Plan and the Disclosure Statement provide that the “Effective Date” shall not occur until 45 days after the confirmation order is entered, and that the “Distribution Date” shall not occur until an additional 60 days after the Effective Date. The Effective Date should occur once the confirmation order is final and non-appealable, and the Distribution Date should occur on or within a few business days after the Effective Date. The Disclosure Statement should be revised to clearly state a date certain by which creditors can expect to receive payment.

**D. It is unclear whether the Debtor has sufficient cash on hand to pay all administrative claims on the Effective Date.**

17. Pursuant to 11 U.S.C. § 1129(a)(9), administrative claims must be paid in full on the effective date of the plan (absent consent from the holder of a particular claim). Similarly, any cure payments under leases or executory contracts that are assumed under a plan must be

paid on the effective date. Although §IV F. of the Disclosure Statement states that the Investor will contribute sufficient funds “that when added to the cash of the Debtor are sufficient to pay the administrative claims, professional fee claims and any other amounts due as of the Effective Date under the Plan,” there is no estimate of either (a) the amount of administrative claims and cure claims that must be paid on the effective date, or (b) the estimated amount of cash that the Debtor expects to have on hand as of the effective date.

**E. The description of the reorganized Debtor and its management structure is inadequate.**

18. The Disclosure Statement in Section IV I. indicates that the Investor will own 100% of the Reorganized Debtor and that Mr. Willemsen will be employed under an employment contract to manage the Debtor. All of the proposed officers and managers of the Reorganized Debtor should be identified. The proposed terms of Mr. Willemsen’s employment contract should also be disclosed.

WHEREFORE, General Truck Leasing, LLC respectfully requests that the Court deny approval of the Disclosure Statement until such time as the objections raised herein are cured, and grant such further relief as is just and proper.

Respectfully submitted,

*/s/ James P. Moloy*

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Attorneys for General Truck Sales, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of January, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on the 9<sup>th</sup> day of January, 2018, a copy of the foregoing was mailed by first-class United States mail, postage prepaid, and properly addressed to the following:

None

*/s/ James P. Moley*  
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James P. Moley