

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 Semo Tank/Baker Equipment Co., a creditor herein (“Semo”), by counsel, and for its Objections to Evermilk Logistics LLC’s Disclosure Statement (“Objections”) respectfully represents that:

I. Semo’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 Debtor’s primary business is transporting milk by truck.

2. Semo is in the business of selling, and leasing, renting and servicing commercial trailers. Prior to the Petition Date, the Debtor had leased and rented numerous trailers from Semo. As used herein, “lease” refers to a formal trailer lease agreement between Semo and the Debtor with a 6 year term.

3. Prior to and as of the Petition Date, the Debtor was in default of its payment obligations to Semo, for unpaid rent under its 10 lease agreements covering 28 trailers that were in effect on the Petition Date, from Semo for use in the Debtor’s business of transporting milk (collectively, the “Leases”). A list of the trailers covered by the Leases (collectively, the “Trailers”) is attached hereto as **Exhibit A**.

4. On September 29, 2017, Semo filed a proof of claim in this case (Claim

No. 9) in the amount of \$39,705.50. Claim No. 9 is an unsecured claim representing the aggregate amount owed by the Debtor to Semo for unpaid rent under the Leases as of the Petition Date.

5. As of the date hereof, the Debtor has indicated that it intends to assume the Leases. As a direct result, the cure payment would be not less than \$39,705.50.

6. Following the Petition Date Debtor has not paid Semo any Lease payments. Semo holds an administrative expense claim for Debtor's post-petition use of the Exhibit A trailers in the amount of \$174,309.00 for all unpaid lease payments for the post-petition period after 60 days following the Petition Date. §365(d)(5).

7. 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).

8. If the Debtor proposes to assume all of the unexpired Leases and the rental agreements, the cure payment would be less than \$39,705.50, consisting of all amounts due as of the Petition Date. Plus, it must provide for payment of all amounts owed but unpaid after the Petition Date, and the Debtor/Investor must demonstrate adequate assurance of future performance under the Leases § 365(b)(1).

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

9. 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, the Disclosure Statement fails to provide any information 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, its ability to fund the

cure payment and administrative expenses, but also to assess whether the reorganized Debtor can provide adequate assurance of its ability to perform the Leases in the future following its proposed assumption of the Leases. Semo requires 3 years of United Dairy Group LLC's audited financial statements to evaluate the Plan's feasibility and the adequate assurance of Debtor's ability to perform under the Leases.

B. The proposed timeline for payments under the Plan is too protracted.

10. 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 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 i.e. a combined 105 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. Semo will insist on timely payment of the revised Leases.

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

11. 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. 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 the amount of administrative claims and cure claims including to Semo that must be paid on the

effective date.

WHEREFORE, Semo Tank/Baker Equipment Co. 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.

DATED: January 16, 2018

Respectfully submitted,

LATHROP GAGE LLP

By: /s/ Stephen B. Sutton

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CERTIFICATE OF SERVICE

The hereby certify that on the 16th day of January, 2018, a copy of the foregoing as 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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/s/ Stephen B. Sutton

An Attorney for Semo Tank/Baker Equipment
Co.

EXHIBIT A

SCHEDULE OF LEASES

Lease Date	Termination Date	Lease Number
April 10, 2013	April 10, 2019	ZZEVE005 VIN #5WSAA4222DN044754
June 11, 2013	June 5, 2019	ZZEVE006 VIN #5WSAA4228DN044757 VIN #5WSAA422XDN044761 VIN #5WSAA4221DN044762 VIN #5WSAA4326BN041786
August 2, 2013	August 5, 2019	ZZEVE007 VIN #5WSAA4223EN045624 VIN #5WSAA4225EN045625
October 18, 2013	October 23, 2019	ZZEVE008 VIN #5WSAA422XEN045636 VIN #5WSAA4221EN045637
November 26, 2013	December 1, 2019	ZZEVE009 VIN #5WSAA4224EN045633 VIN #5WSAA4228EN045635
February 27, 2014	March 5, 2020	ZZEVE010 VIN #5WSAA4224FN046220 VIN #5WSAA4226FN046221
February 13, 2015	January 1, 2021	ZZEVE011 VIN #5WSAA4223FN047097 VIN #5WSAA4225FN047098 VIN #5WSAA4227FN047099 VIN #5WSAA422XFN047100
May 14, 2015	April 18, 2021	ZZEVE012 VIN #5WSAA4220FN047090 VIN #5WSAA4222FN047091
September 17, 2015	August 21, 2021	ZZEVE013 VIN #5WSAA4228FN046222 VIN #5WSAA422XFN046223 VIN #5WSAA4221FN046224 VIN #5WSAA4223FN046225

EXHIBIT A

March 24, 2016	February 23, 2022	ZZEVE015
		VIN #5WSAA4226HN048778
		VIN #5WSAA4228HN048779
		VIN #5WSAA4224HN048780
		VIN #5WSAA4226HN048781
		VIN #5WSAA4228HN048782
	TOTAL	28 Trailers