UNITED STATES BANKRUPTCY COURT
DISTRICT OF NORTH DAKOTA

THOMAS M. GRABANSKI;
MARI K. GRABANSKI,

No. 10-30902

DEBTORS.

RULING ON OBJECTIONS TO THE DISCLOSURE STATEMENT

This matter is before the Court on objections to Debtors' Disclosure Statement. The Court held a telephonic hearing on February 8, 2012. The following parties appeared through counsel: Debtors, Thomas and Mari Grabanski; Marshall & Ilsley Bank; the Hanson-Tallackson Parties; Choice Financial Group; John and Dawn Kelley; the United States Trustee; Horse Creek Farm; PHI Financial; and Plaque River Insurance. The Court took the matter under advisement. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A)&(L).

STATEMENT OF THE CASE

M&I Marshall & Ilsley Bank ("M&I"), the Hanson-Tallackson Parties ("Hanson-Tallackson"), Choice Financial Group ("Choice"), John and Dawn Keeley (the "Keeleys"), the United States Trustee ("Trustee"), and Horse Creek Farm ("Horse Creek") filed objections to Debtors' Disclosure Statement. The parties present numerous arguments concerning inadequacies of the Disclosure Statement generally and the Statements' effect on creditors and parties individually.

The Court finds that many of the objections raise feasibility issues better addressed at confirmation. The parties do, however, raise a number of inadequacies in the Disclosure Statement unrelated to Plan feasibility. The Court sustains the parties' objections regarding the Statement's failure to: provide a description of the available assets and their values; provide the source of information stated in the disclosure statement; describe the present condition of Debtor; list scheduled claims; indicate the accounting method utilized to produce the financial information; provide the estimated value from recovery of preferential or otherwise voidable transfers; and provide a liquidation analysis setting forth the estimated return that creditors would receive under Chapter 7. As discussed during the hearing, the Court will set final hearing on the Amended Disclosure Statement with the hearing on Plan Confirmation under 11 U.S.C. § 157(d)(2)(B)(iv).

PROCEDURAL BACKGROUND

Debtors filed their Disclosure Statement on January 13, 2012. The Disclosure Statement includes one exhibit—Exhibit A-Income Projection. There is no additional supporting documentation. As noted, the following four creditors filed objections to the Statement: M&I; Hanson-Tallackson; Choice; and Horse Creek. Additionally, the United States Trustee and parties-in-interest—John and Dawn Keeley—filed objections. After hearing the arguments of counsel, the Court took the matter under advisement.

CONCLUSIONS OF LAW

The requirements for, and adequacy of, disclosure statements are governed by § 1125(b) of the Bankruptcy Code which states:

> An acceptance or rejection of a plan may not be solicited after the commencement of the case under this title from a holder of a claim or interest with respect to such claim or interest, unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information. The court may approve a disclosure statement without a valuation of the debtor or an appraisal of the debtor's assets.

11 U.S.C. § 1125(b). "Adequate information" is defined to mean:

> Information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable a hypothetical reasonable investor typical of holders of claims or interest of the relevant class to make an informed judgment about the plan.

11 U.S.C. § 1125(a)(1) (emphasis added). A hypothetical reasonable investor is defined as:

> "investor typical of holders of claims or interests of the relevant class" means investors having-
> (A) A claim or interest of the relevant class;
> (B) Such a relationship with the debtor as the holders of other claims or interest of such class generally have; and
> (C) Such ability to obtain such information from sources other than the disclosure required by this section as holders of claims or interests in such class generally have.

11 U.S.C. § 1125(a)(2). It is thus specifically presumed that such an investor will have the "ability to obtain such information from sources other than the disclosure required by this section as holders of claims or interests in such class generally have." In re The New Power Co., 438 F.3d 1113, 1118 (11th Cir. 2006) (quoting 11 U.S.C. § 1125(a)(2)(C)).

"Numerous courts have prescribed a list of disclosures which typically should be included in a disclosure statement." In re Cardinal Congregate I, 121 B.R. 760, 765 (Bankr. S.D. Ohio 1990) (citing In re Dakota Rail, Inc., 104 B.R. 138 (Bankr. D. Minn. 1989); In re Scioto Valley Mortg. Co., 88 B.R. 168 (Bankr. S.D. Ohio 1988); In re S.E.T. Income Props., III, 83 B.R. 791 (Bankr. N.D. Okla. 1988); In re Jeppson, 66 B.R. 269 (Bankr. D. Utah 1986); In re Metrocraft Publ'g Servs., Inc., 39 B.R. 567 (Bankr. N.D. Ga. 1984); In re Malek, 35 B.R. 443 (Bankr. E.D. Mich. 1983)). These cases and others have developed a list of factors courts should consider when determining whether the disclosure statement meets the statutory requirement of adequate information. These factors are:

> (1) The events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with the affiliates.

Cardinal Congregate I, 121 B.R. at 765; see also In re United States Brass Corp., 194 B.R. 420, 424-25 (Bankr. E.D. Tex. 1996) (citing In re Metrocraft, 39 B.R. at 568). Disclosure of all factors, however, is not necessary in every case. Id. Cases have specified that these factors are only a general "yardstick" and need to be modified as the circumstances and size of each case warrant. Cardinal Congregate I, 121 B.R. at 765; see also In re Keisler, No. 08-34321, 2009 WL 1851413, *4 (Bankr. E.D. Tenn. June 29, 2009). It is "well understood that certain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case." In re Phoenix Petroleum, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001).

The legislative history of 11 U.S.C. § 1125(a)(1), provides for this case-specific approach:

> Both the kind and form of information are left essentially to the judicial discretion of the court, guided by the specification in subparagraph (a)(1) that it be of a kind and in sufficient detail that a reasonable and typical investor can make an informed judgment about the plan. The information required will necessarily be governed by the circumstances of the case.

In re River Villages Assoc., 181 B.R. 795, 804 (Bankr. E.D. Pa. 1995) (citing S. Rep. No. 95-989, at 121 (1978), reprinted in 1978

U.S.C.A.N. 5787, 5907). "The determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court." Phoenix Petroleum, 278 B.R. at 393 (quoting Matter of Texas Extrusion Corp., 844 F.2d 1142, 1157 (5th Cir. 1988)); see Kirk v. Texaco, Inc., 82 B.R. 678, 682 (Bankr. S.D.N.Y. 1988). The legislative history continues:

> Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case, such as the cost of preparation of the statements, the need for relative speed in solicitation and confirmation, and, of course, the need for investor protection.

Phoenix Petroleum, 278 B.R. at 393 (quoting H.R. Rep. No. 595 at 408-09 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6365).

In general terms, "the adequacy of disclosure is dependent upon various factors including: the size and complexity of the chapter 11 case, the type of plan proposed, the type of creditors and claims impaired by the proposed plan, and the access by impaired creditors to relevant information from other sources." Id. (quoting In re Monroe Well Serv., Inc., 80 B.R. at 324, 330 (Bankr. E.D. Pa. 1987)). See also 5 Lawrence P. King, Collier on Bankruptcy § 1125.03[1], 1125-22 (courts should 'consider the needs of the claims or interest of the class as a whole and not the needs of the most sophisticated or least sophisticated members of a particular class"). Thus, "[t]here will be a balancing of interest in each case. In reorganization cases, there is frequently great uncertainty. Therefore the need for flexibility is greatest." In re Bermuda Bay, LLC & ABKDH, LLC, No 09-32133, 2009 WL 5218071, *4 (Bankr. E.D. Va. Dec. 31, 2009) (quoting H.R. Rep. No. 95-595 at 409).

The standard for disclosure is, thus, flexible, and what constitutes "adequate information" in any particular situation is determined on a case-by-case basis. In re PC Liquidation Corp., 383 B.R. 856, 866 (Bankr. E.D.N.Y. 2008) (citing In re Aspen Limousine Serv. Inc., 193 B.R. 325, 334 (Bankr. D. Colo. 1996); In re Copy Crafters Quickprint, Inc., 92 B.R. 973, 979 (Bankr. N.D.N.Y. 1988)). The determination of what constitutes adequate information is largely within the discreation of the bankruptcy court. PC Liquidation Corp., 383 B.R. at 866 (citing In re A.H. Robins Co., Inc., 880 F.2d 694, 697 (4th Cir. 1989); In re El Comandante Mgmt. Co., LLC, 359 B.R. 410, 414 (Bankr. D.P.R. 2006); Matter of Texas Extrusion Corp., 844 F.2d at 1157); see, e.g., Kirk v. Texaco, 82 B.R. at 682. "[A] disclosure statement is not required 'to speculate as to future uncertainties, such as the consequences of possible outcomes of pending litigation.'" PC Liquidation Corp., 383 B.R. at 866 (citing In re Stanley Hotel, Inc., 13 B.R. 926, 935 (Bankr. D. Colo. 1981); In re CDECO Maritime Const. Inc., 101 B.R. 499, 501 (Bankr. N.D. Ohio 1989)).

"Courts generally have agreed that it may, on occasion, be appropriate to consider issues at the disclosure hearing stage which could otherwise be raised at confirmation, if the described plan is fatally flawed so that confirmation would not be possible." Phoenix Petroleum Co., 278 B.R. at 394 (citing Cardinal Congregate I, 121 B.R. at 765; Monroe Well Serv., Inc., 80 B.R. at 324; In re Pecht, 57 B.R. 137 (Bankr. E.D. Va. 1986)). "Such an exercise of discretion is appropriate because undertaking the burden and expense of plan distribution and vote solicitation is unwise and inappropriate if the proposed plan could never legally be confirmed." Id. (citing In re Pecht, 57 B.R. at 138). However, "[s]uch action is discretionary and must be used carefully so as not to convert the disclosure statement hearing into a confirmation hearing, and to insure that due process concerns are protected." Cardinal Congregate I, 121 B.R. at 762 (quoting Monroe Well Serv., 80 B.R. at 333 (footnote omitted)).

In analyzing disclosure statements, courts should not lose sight of the fact that:

> [t]he purpose of the disclosure statement is not to assure acceptance or rejection of a plan, but to provide enough information to interested persons so they may make an informed choice between two alternatives. It has been held that a disclosure statement's internal inconsistencies should not necessarily bar its approval and may simply illustrate to readers of the disclosure statements why they should not vote for the plan as proposed.

In re U.S. Brass Corp., 194 B.R. 420, 423 (Bankr. E.D. Tex. 1996) (quoting Stanley Hotel, Inc., 13 B.R. at 930). Generally, even where a "disclosure statement could have included more information . . . [it] need not be perfect and may be approved if the information is reasonable in the circumstances." In re Price Funeral Home, No. 08-4816, 2008 WL 5225845, *2 (Bankr. E.D.N.C. Dec. 12, 2008).

ANALYSIS AND CONCLUSIONS

A. Objections

Four creditors, one party-in-interest, and the United States Trustee each object to Debtors' Disclosure Statement. M&I, a creditor, argues that the Disclosure Statement's interest rate over the term of the Plan is significantly less than that due under the contract. (ECF Doc. No. 397.) M&I also objects to the treatment of its lien because "[t]he proposed 7 year payments and continual devaluation of vehicles . . . will leave the lien severely undersecured." (Id.)

The Hanson-Tallackson parties, creditors, argue that the Disclosure Statement "fails to provide adequate information as required by 11 U.S.C. § 1125," and the Statement has not been prepared in good faith. They provide seven specific points in support of these arguments.

A third creditor, Choice, objects arguing that Debtor failed to provide any resolution for its claims totaling $9.6 million dollars. (ECF Doc. No. 405.) Choice lists four different forms of debts it is owed, indicating that none of the claims are discussed in the Statement.

The fourth and final creditor to object, Horse Creek, argues the Disclosure Statement "fails to provide adequate information as required by 11 U.S.C. § 1125(b)" and fails "to adequately identify avoidable pre-petition transfers despite the bankruptcy having been pending for almost two years." (ECF Doc. No. 408.)

The Keeleys, parties-in-interest, echo Horse Creek's objections. The Keeleys argue the disclosure statement should not be approved because it fails to provide adequate information as to the execution of the Plan and how Debtors will be able to farm land owned by the Keeley and Grabanski Land Partnership. Further, the Keeleys argue the statement fails to identify avoidable pre-petition transfers.

Finally, the United States Trustee objects. It suggests that the Statement does not include adequate information under 11 U.S.C. § 1125, and is deficient because it does not include the "plan requirements for individual debtors as enacted by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005," including § 1115, § 1123(a)(8); § 1127(e); § 1129(a)(15); § 1141(d)(5). The U.S. Trustee specifically identifies a number of factors believed to evidence that the Disclosure Statement is inadequate. The U.S. Trustee further argues that as the Disclosure Statement does not contain sufficient information, and the schedules filed are inaccurate, the Court should dismiss the case.

The Court finds that a number of the objecting parties' arguments go to the feasibility of the Plan itself, and not the adequacy of the Disclosure Statement. The parties do, however, present numerous Disclosure Statement inadequacies that Debtors will be required to cure. The Court will first discuss the feasibility arguments, before reviewing issues as to the adequacy of the Disclosure Statement.

B. Feasibility

Some issues, like feasibility, that are more properly raised at confirmation may be considered at the disclosure hearing stage

when a plan is so "fatally flawed" that confirmation is impossible. See Phoenix Petroleum Co., 278 B.R. at 394. While the Court believes there are many serious concerns about the proposed plan, it does not believe Debtor should be denied a chance to proceed to confirmation hear.

Each party presents at least one argument that attacks the feasibility of the Plan, not the adequacy of the Disclosure Statement currently at issue. The following objections go to feasibility of the Plan and said objections should be made at the time of the Plan Confirmation hearing. See Cardinal Congregate I, 121 B.R. at 762.

M&I's objections about interest and its liens are issues regarding the treatment of specific claims. They go to feasibility of the Plan, and will be specifically at issue at the confirmation stage. See id. As noted above, a Disclosure Statement need not describe every possible variation or legal or factual contingency and their possible effects. M&I's interest and lien arguments would be included in the "factual contingency," and thus not necessarily included in the Disclosure Statement. Because the interest and lien argument make up the whole of M&I's objection, M&I's objection will be overruled in its entirety.

Choice objects arguing that the Disclosure Statement fails to provide any resolution of its claims. Choice specifically lists the claims and argues its debt is non-dischargeable, but that is not reflected in the Disclosure Statement. This objection, like M&I's, involves the treatment of specific claims and goes to the feasibility of the Plan. See id. As previously discussed, feasibility will be specifically addressed at confirmation. As Choice presents no non-feasibility objection, its objection will be overruled in its entirety.

Horse Creek objects to the Disclosure Statement in part arguing that while it states the Debtors will rely upon income from farming operations, it lacks precise information on how Debtors will fund the Plan. This broad objection, however, again encompasses the feasibility of the Plan. This objection will be overruled now and taken up at confirmation.

Horse Creek and the Keeleys further argue the Disclosure Statement does not indicate how Debtors, who are allegedly currently employees of Louis Slominski, Jr., will become operators of the acreage after the Plan is approved. The Keeleys also argue the Disclosure Statement fails to provide adequate information on the land proposed to farm:

> With regard to Debtors' present activities the Disclosure Statement itself does not know which reality to present to the Court. Under Section II(c), the statement provides: 'Debtor Tom Grabanski is currently an employee of Louis Slominski, Jr. and conduct[s] farming operations for him on land in Texas.' However, under Section III(D)(2), the Disclosure Statement provides: 'The Debtors will remain in control of their farming operations.' Regardless of whether the Debtors intend to admit that they have used Louis Slominski as a puppet while personally farming the Texas land owned by the Kelley and Grabanski Land Partnership, the Disclosure Statement fails to provide adequate information about how the Debtors could plausibly farm the property in light of (1) the three-year lease to Slominski; or (2) the Keeley and Grabanski Land Partnership's current Chapter 7 bankruptcy and impending sale (Case 10-31482).

(Keeleys Obj., Doc. No. 402, at 3.) Similarly, Horse Creek argues that farming led to the current bankruptcy and there is no information about how the farming operation will change to guard against further mismanagement. The Court believes these are feasibility issues best left for confirmation.

The Hanson-Tallackson parties argue that the current Disclosure Statement and Plan are deficient, "because the projections that have been presented are not based upon any data or supporting documentation, but rather are pure conjecture and speculation . . . ." (Hanson-Tallackson Obj., ECF Doc. No. 400, at 4.) Arguments concerning cash-on-hand, and income generated and used to pay claims and expenses, go to the feasibility of the Plan. See In re Toso, No. EC-05-1290, 2007 WL 7540985, *7 (B.A.P. 9th Cir. Jan. 10, 2007); In re Wentworth Hills, LLC, No. 11-11448, 2011 WL 6301143, *2 (Bankr. D. Mass. Dec. 16, 2011); Scarborough v. Chase Manhattan Mortg., Corp., No. 05-4548, 2006 WL 1050287, *2 (E.D.P.A. Apr. 20, 2006).

The Hanson-Tallackson parties further argue that the bankruptcy schedules show debt in excess of $28,000,000, but that other

than payment to AgCountry, there is no information as to how these debts will be paid. They further object to Debtors intending to "service less than $5,000,000 of debt obligations, or less than 25% of what they have declared to be due and owing." (Hanson-Tallackson Obj., ECF Doc. No. 400, at 5.) In sum, they argue that the Plan is not feasible because it fails to adequately address how debt will be paid. (Id.) As noted, all of the feasibility arguments will be addressed at confirmation instead of this stage of the proceedings.

Accordingly, each of the above-stated feasibility objections will be overruled. These objections may be presented at the Plan confirmation hearing. There are, however, other objections made by the U.S. Trustee, the Hanson-Tallackson parties, the Keeleys, and Horse Creek that involve the inadequacies of the current Disclosure Statement that must be determined in this proceeding.

C. Adequacy of the Disclosure Statement

Disclosure statements must be reviewed individually on a case-by-case basis. See Phoenix Petroleum, 278 B.R. at 393. Courts should also consider the size, complexity, and lack of access impaired creditors have to relevant information from sources other than the Disclosure Statement. Considering these factors, the Court finds the Disclosure Statement to currently be inadequate in numerous respects. These inadequacies prevent creditors from making an informed judgment about the Plan, and must, accordingly, be rectified. See 11 U.S.C. § 1125(a)(1).

While the objecting creditors are the specific, sophisticated type of creditors that are "presumed to have the ability to obtain such information from sources other than the disclosure required by this section", New Power Co., 438 F.3d at 1118 (quoting 11 U.S.C. § 1125(a)(2)(C)), there remain serious deficiencies in the Disclosure Statement that are not cured by review of additional sources.

The Court finds that the following subsections of Debtors' Disclosure Statement are inadequate and/or missing in their entirety: (a) "a description of the available assets and their value"; (b) "the source of information stated in the disclosure statement"; (c) "the present condition of the debtor while in Chapter 11"; (d) "the scheduled claims"; (e) "the accounting method utilized to produce financial information and the name of the accountants responsible for such information"; (f) "the actual or projected realizable value from recovery of preferential or otherwise voidable transfers"; and (g) "a liquidation analysis setting forth the estimated return that creditors would receive under Chapter 7." See Cardinal Congregate I, 121 B.R. at 765. While the Court recognizes that disclosure of each of these factors is not required in every case, the Court believes that information is necessary here for creditors and other interested parties to make an informed decision on acceptance or rejection of the Plan. See id.

First, Debtors' Disclosure Statement does not include any information on the estates' assets, or those assets' value. There is substantial evidence that while Debtors have completed schedules, those schedules are inaccurate. Horse Creek, Hanson-Tallackson, and the U.S. Trustee, each specifically argue that the Debtor's schedules are "admittedly inaccurate." In support of this statement they provide the Court with deposition transcripts from Thomas Grabanski's Rule 2004 Examination.

Debtors filed their original schedules and statements on September 9, 2010. During the meeting of creditors, Debtors admitted the schedules were not correct and filed amended schedules on October 20, 2010. During his 2004 examination one month later, however, Grabanski could not attest to the amended schedule's accuracy. Despite this testimony, no amended schedules have been filed. The parties argue that without accurate schedules, or a very detailed Disclosure Statement with accurate information, the parties have no idea what assets exist or those assets' values. The Court agrees. Debtors shall file amended schedules that accurately list the assets available and those assets' value.

Second, the Disclosure Statement fails to provide the source of information used in the Disclosure Statement. Exhibit A to the Disclosure Statement indicates the projected 2012 cash flow for Texas Family Farms, with a projected net income per acre for each of the projected crops. There is, however, no documentation to support the projected income, expenses, or available acreage for the proposed crops. There is no evidence in the record that the figures used are historic yields or profits. The Keeleys object to Exhibit A arguing:

> These figures are essentially the entire basis of the Debtors' Plan. The figures are supposed to represent the Debtor's anticipated net income, through which the Debtors will then repay millions of dollars in debt. But the document does not indicate where the Debtors' obtained these figures, whether from historical averages or their own rosy imagination. Based upon the lack of information in the Disclosure Statement, creditors have no ability to gauge the potential accuracy of these figures. The failure to include supporting documentation is particularly important where the Debtors' proposed reorganization is based upon a farming operation, which is subject to practically innumerable variables outside of the Debtors' control, including weather, input costs, and commodity prices.

(Keeleys Obj., ECF Doc. No. 402, at 2.) The Court agrees. Debtors also have not provided the accounting method they utilized to produce this information or even the name of the accountant who prepared the Exhibit. Debtors shall provide documentation to support the figures found in Exhibit A, and shall amend the Disclosure Statement to include accounting information that supports the document's conclusions.

Third, there are objections to other statements in the Disclosure Statement that lack source information. The Hanson-Tallackson parties argue they are unable to determine the potential feasibility of a Plan, or make an informed judgment about it, because:

> Although the legitimacy of this sale and lease-back transaction is questionable, at best, if one assumes for argument purposes only that such transaction has any validity, the total acreage involved in the purported sale and lease-back transaction consists of 3,881 acres, of which 3,380 are tillable acres. Yet, the Debtor's proposed cash flow statement, attached to their Disclosure Statement, indicates they will be farming in excess of 9,500 acres of land. When considering the alleged sale and lease-back transaction involves, at most, 3,881 acres, and the Debtors have asserted there are no executory contractors or leases, their Disclosure Statement is devoid of any information, let alone 'adequate information' as defined in 11 U.S.C. § 1125(a), as to how 5,700 additional acres were or will be acquired, the names of the sellers of such land, if purchased, the names of landlords for such additional acreage, and/or the terms of any purchase or lease agreements, including without limitation the purchase price, the source of funds to purchase and/or the rental rates.

(Id. (footnote omitted).) The Court agrees. Debtors have failed to offer evidence of where these additional acres will come from, whether the acreage will be purchased or leased, and any of the terms of said purchase or lease. Debtors shall provide additional details on their proposed farming operation, including how (and from where) they propose to obtain the listed acreage.

In addition to where the additional acreage will come from there is also a discrepancy between the rental rate listed for the land in the cash-flow statement and the sale and lease-back transaction rental rate. The average per-acre rental rate under the sale and lease-back transaction is approximately $150.00/acre, while a price of $30-$60 per acre is listed on the cash flow statement. While courts have noted that a Disclosure Statement's "internal inconsistencies should not necessarily bar its approval," in this situation the Court finds that Debtors should provide creditors with information explaining this inconsistency. See In re U.S. Brass Corp., 194 B.R. at 423. Without an explanation of the discrepancy, creditors are unable to make an informed judgment. Despite the sophisticated nature of the parties, the Court agrees the Statement should be amended with additional information to explain the discrepancy in per-acre pricing.

Fourth, the parties have argued the Disclosure Statement fails to present the current condition of Debtors during the bankruptcy. The United States Trustee, for example, argues: "The Disclosure Statement states Debtors are wage earners working for Louis Slominski. It does not reveal any performance of the Debtors' other wholly owned enterprises such as Texas Family Farms."

(Trustee Obj., ECF Doc. 407, at 2.) Considering the inconsistencies in the Disclosure Statement regarding Debtors' employment with Mr. Slominski, the Court finds that additional information is needed. Debtors indicate the "entirety of the household income," comes from employment with Mr. Slominski, but they make no identification regarding Texas Family Farms, the entity listed on Exhibit A, in the Disclosure Statement. Debtors shall provide additional information as to Texas Family Farms' performance.

Fifth, the Disclosure Statement does not provide adequate information regarding claims against the estate. The objecting parties present evidence that the schedules currently on file are inaccurate. There is no information in the Disclosure Statement about claims against the estate. Debtors' amended Disclosure Statement shall list the claims against the estate, and/or Debtors shall file amended schedules.

Sixth, the Disclosure Statement fails to include the actual or projected realizable value from recovery of preferential or otherwise voidable transfers. Horse Creek argues that Debtors' schedules, although inaccurate, are replete with insider transactions, and thus the statement that Debtors have "not yet completed their investigation with regard to pre-petition transactions, but do not anticipate any avoidable transfers," is inadequate. Horse Creek argues that the following transactions may evidence avoidable transfers: 1) transfers to Merlyn Grabanski, Thomas Grabanski's father, in the amount of $2,934,039.35; 2) transfers to Texas Family Farms, of which Thomas Grabanski has an ownership interest, in the amount of $232,434.63; 3) transfers to Jennifer Tibert, Thomas Grabanski's accountant, in the amount of $14,760.24; 4) transfers to Colorado Farms, an entity Thomas Grabanski has an ownership interest in, in the amount of $26,787.24; and 5) transfers to Border to Border Land Partnership, another entity Thomas Grabanski indicates he has an ownership interest, in the amount of $171,634.94. (Creek Obj., ECF Doc. No. 408, at 3.) The Keeleys echo Horse Creek's objection, arguing Debtors failed to identify avoidable pre-petition transfers despite having more than nineteen (19) months to investigate. Debtors shall rectify this inadequacy by completing its investigation of the above-listed claims and providing an explanation of what claims will be pursued. It shall also explain why any of the above-identified claims will not be pursued.

Finally, Debtors fail to provide a liquidation analysis setting forth the estimated return that creditors would receive under Chapter 7. Such analysis shall be included in Debtors' amended disclosure statement.

The Court finds that any remaining objections not specifically discussed above, involve the type of information creditors have the ability to obtain from sources other than the disclosure statement. [1] See New Power Co., 438 F.3d at 1118.

D. Conclusion

Debtors have seven (7) days to amend their Disclosure Statement on the specific items referenced in this order—and only those specific items. When those amendments are made, Debtors shall move into the process of solicitation for confirmation as provided under the Bankruptcy Code. Under the authority provided in § 105(d)(2)(B)(vi), the Court will hear any further objections limited to those seven specific areas of deficient disclosure discussed above—and no other—at the hearing on confirmation. This will not, however, prevent inquiry into feasibility of the Plan—an issue specifically dealing with confirmation.

WHEREFORE, Debtor's Disclosure Statement is approved in all regards except for the seven categories noted above.

FURTHER, Debtor has seven (7) days from the date of this Ruling within which to amend its Disclosure Statement to address the areas of deficient disclosure discussed above.

FURTHER, the Court will hear objections limited to those matters at the same time as the confirmation hearing.

Dated: February 27, 2012

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THAD J. COLLINS
CHIEF BANKRUPTCY JUDGE

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[1] Specifically, the Keeleys argue the Statement fails to provide adequate information about the Keeley and Grabanski Land Partnership's chapter 7 bankruptcy and considering the Plan is based on farming income the Keeleys believe that characterizing the bankruptcy as potentially "negatively affecting" is an understatement. The Keeleys argue:

> The Disclosure Statement fails to specify how, if the Keeley and Grabanski Land Partnership is a Chapter 7 bankruptcy, the Debtors can realistically believe they will have the opportunity to farm the land in the future. . . . [T]he Disclosure Statement provides no further information from which the Debtors' creditors can determine the likelihood of the lease actually coming into existence. The Disclosure Statement does not even indicate the potential purchaser or why the Keeley and Grabanski Land Partnership's trustee would enter such transaction.

(Keeleys Obj., ECF Doc. 402, at 4-5.) As the creditors and parties-in-interest in this matter are sophisticated, the Court believes the parties have the ability to obtain information from other sources. See New Power Co., 438 F.3d at 1118.