

IN THE MATTER OF:

IN BANKRUPTCY NO.:

DAVID C. LARSON
and VALERIE A. LARSON,

Debtors.

FILED
MAR 05 1997
CLERK, U.S.
BANKRUPTCY COURT
CASE NO. _____

96-32800-7

ORDER GRANTING MOTION TO CONSOLIDATE HEARING
ON CONSIGNMENT KNOWLEDGE DEFENSE

A hearing on the Motion to Consolidate Hearing on Consignment Knowledge Defense was held on March 4, 1997. After hearing the arguments of counsel, the motion is denied in part and granted in part, and IT IS HEREBY ORDERED that:

1. The court will hold a consolidated hearing (the "consolidated hearing") on the defense raised by §402.326(3)(b), Wis. Stats., (the "consignment knowledge defense") on the 7th day of May, 1997, at 9:00 o'clock in the forenoon, at the U.S. Bankruptcy Court for the Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin. The hearing is expected to last more than one day, but less than three and has been scheduled accordingly.

2. The consolidated hearing will apply to the adversary proceedings listed on Exhibit A hereto. Consolidation of additional proceedings may be permitted only upon motion.

3. If a trial has been scheduled in any of the adversary proceedings to which the consolidated hearing applies, that trial will continue as scheduled except to the extent the consignment knowledge defense is to be advanced. In the event the party relying on the consignment knowledge defense prevails on other grounds, a final decision may be issued in that adversary proceeding. In all other adversary proceedings subject to this Order, the final decision

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in each of those adversary proceedings will be reserved until a final decision on the consolidated hearing has been issued, and that decision will apply to each of the consolidated proceedings.

4. To assist discovery, notice of a deposition directed to any counsel appearing in any of the consolidated proceedings except the trustee's counsel and the counsel for the witness, will be presumed sufficient if made by telephone or facsimile more than ²⁴~~48~~ hours prior to the time scheduled for the deposition. Notices to the trustee, the witness, and respective counsel are unaffected by this Order.

5. At least 10 days prior to the trial date the parties shall exchange and file with the court the names of all witnesses they intend to present at trial together with a brief summary of the area of testimony each witness will present. All reasonably anticipated objections to testimony and all motions to limit testimony of a witness identified by an opposing party shall be made within 5 days after receipt of the witness list required by this paragraph. Designation of a nonparty witness on an opponents list of witnesses does not relieve a party of assuring the presence of that witness at trial if his or her testimony is desired.

Consolidated claimants under the consignment knowledge defense shall designate one attorney to act on their behalf in complying with this paragraph and give the trustee and any other non-consolidated parties to the hearing notice of that designation 15 days prior to the hearing. Service on that designated attorney under this paragraph only shall be deemed compliance as to service on all consolidated parties for the purposes of this paragraph.

6. In the conduct of the consolidated hearing, one attorney shall be designated by the consolidated claimants under the consignment knowledge defense to examine each witness on behalf of all parties consolidated in the defense. Designation of examining counsel may be

made immediately prior to the examination at trial.

7. Adversary proceedings scheduled to be tried on May 7, 8, and 9 will be heard in the order scheduled as to all issues not subject to the consolidated hearing, commencing immediately following the conclusion of the consolidated hearing. See Exhibit B.

8. All relief sought by the motion to consolidate which is not specifically granted herein is denied.

Dated this 5th day of March, 1997.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert D. Martin". The signature is written in a cursive style with a large initial "R" and "M".

Honorable Robert D. Martin
United States Bankruptcy Judge

EXHIBIT A

Michael E. Kepler, Trustee v. David D. Jones, Adversary Proceeding
No. 96-3202-7

Michael E. Kepler, Trustee v. Thomas H. Schmelzer, Adversary
Proceeding No. 96-3203-7

Michael E. Kepler, Trustee v. Jeffrey Straubel, Adversary
Proceeding No. 96-3295-7

Michael E. Kepler, Trustee v. John Houghton, Adversary Proceeding
No. 96-3248-7

Michael E. Kepler, Trustee v. L. Scott Cooper, Adversary Proceeding
No. 96-3237-7

Rodney L. Bush, et al. v. Michael E. Kepler, Adversary Proceeding
No. 96-3273-7

Heritage Mutual Insurance Company v. Michael Kepler, Adversary
Proceeding No. 96-32800-7-B

Michael E. Kepler, Trustee v. Paul Burkhardt/American Family,
Adversary Proceeding No. 96-3200-7

Michael E. Kepler, Trustee v. Holly and Herschel Porter, Adversary
Proceeding No. 96-3232-7

Michael E. Kepler, Trustee v. Robert Maney, Adversary Proceeding
No. 97-3048-7

Michael E. Kepler, Trustee v. James Tenant, Adversary Proceeding
No. 96-3233-7

David Stanton v. Michael E. Kepler, Trustee, et al., Adversary
Proceeding No. 96-3260-7

Harold G. Sommerfeldt v. Michael E. Kepler, Trustee, et al.,
Adversary Proceeding No. 96-3259-7

Michael E. Kepler, Trustee v. Fred W. and Martha E. Eisele,
Adversary Proceeding No. 96-3243-7

Michael E. Kepler, Trustee v. Dennis L. Conkle, Adversary
Proceeding No. 96-3249-7

Virgil Dawson v. David C. Larson, et al., Adversary Proceeding No.
96-3272-7

Michael J. Kepler, Trustee v. Randall J. Gorski, Adversary
Proceeding No. 97-3032-7

Michael E. Kepler, Trustee v. Michael R. Hewitt, Adversary Proceeding No. 97-3033-7

Michael E. Kepler, Trustee v. William Faivre, Adversary Proceeding No. 97-3036-7

Michael E. Kepler, Trustee v. Bank One-Rockford, N.A., Adversary Proceeding No. 97-3028-7

Michael E. Kepler, Trustee v. Ben Stachowicz, Adversary Proceeding No. 97-3035-7

Michael E. Kepler, Trustee v. Kenneth J. and Joanne M. Endres, Adversary Proceeding No. 97-3027-7

Michael E. Kepler, Trustee v. Jim Wickus, Adversary Proceeding No. 97-3053-7

Michael E. Kepler, Trustee v. Jeffrey Boettcher, Adversary Proceeding No. 96-3246-7

Exhibit B

1. James R. Wright v. Michael E. Kepler, Trustee, et al.; Adv. Pro. 96-3236-7, set for May 7 at 9:00 a.m.
2. Michael E. Kepler, Trustee v. Earl and Bonnie Hein; Adv. Pro. 96-3238-7, set for May 7 at 1:30 p.m.
3. Michael E. Kepler, Trustee v. John Schreiber; Adv. Pro. 96-3239-7, set for May 8 at 9:00 a.m.
4. Michael E. Kepler, Trustee v. Dr. Keith Ruter; Adv. Pro. 96-3240-7, set for May 8 at 1:30 p.m.
5. David Ferry v. David C. Larson; Adv. Pro. 96-3245-7, set for May 9 at 9:00 a.m.
6. Harold G. Sommerfeldt v. Michael E. Kepler, Trustee, et al.; Adv. Pro. 96-3259-7, set for May 9 at 1:00 p.m.