

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

AgFeed USA, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 13-11761 (BLS)

Jointly Administered

Hearing Date: April 30, 2014, at 11:00 a.m. (ET)

Objection Deadline: April 22, 2014, at 4:00 p.m. (ET)

**DEBTORS' THIRD MOTION FOR AN ORDER, PURSUANT TO 28 U.S.C.
§ 1452 AND BANKRUPTCY RULES 9006 AND 9027, FURTHER EXTENDING THE
DEBTORS' TIME TO FILE NOTICES OF REMOVAL OF CLAIMS AND CAUSES
OF ACTION RELATED TO THE DEBTORS' CHAPTER 11 PROCEEDINGS**

AgFeed USA, LLC ("AgFeed USA") and its above-captioned affiliated debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, hereby submit this motion (the "Motion"), pursuant to 28 U.S.C. § 1452 and Rules 9006 and 9027 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the entry of an order extending the period within which the Debtors may remove actions pending in various state and federal courts by an additional ninety (90) days. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C.

§§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States

¹ The Debtors and the last four digits of their federal tax identification numbers are: AgFeed USA, LLC (8748); AgFeed Industries, Inc. (7168); TS Finishing, LLC (8748); New York Finishing, LLC (8748); Pork Technologies, LC (2076); New Colony Farms, LLC (9246); Heritage Farms, LLC (8141); Heritage Land, LLC (8129); Genetics Operating, LLC (1921); M2P2 Facilities, LLC (8748); MGM, LLC (8748); M2P2 General Operations, LLC (8748); New Colony Land Company, LLC (5834); M2P2 AF JV, LLC (8748); Midwest Finishing, LLC (8748); and Genetic Land, LLC (1921). The Debtors' mailing address is 816 Congress Avenue, Suite 1280, Austin, TX 78701.

District Court for the District of Delaware, dated as of February 29, 2012 (the “Amended Standing Order”). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are 28 U.S.C. § 1452 (“Section 1452”) and Bankruptcy Rules 9006(b)(2) and 9027.

BACKGROUND

2. On July 15, 2013 (the “Petition Date”), the Debtors each filed voluntary petitions (collectively, the “Chapter 11 Cases”) for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtors have continued in possession of their properties and have continued to operate and maintain their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On July 23, 2013, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors (the “Creditors’ Committee”). On August 23, 2013, the U.S. Trustee appointed an official committee of equity security holders (the “Equity Holders’ Committee” and, with the Creditors’ Committee, the “Committees”) [Docket No. 195].

4. On August 1, 2013, the Court entered an order [Docket No. 103] (the “AgFeed USA Bidding Procedures Order”), approving, among other things, certain bidding procedures for the sale of substantially all of the assets of AgFeed USA and its Debtor subsidiaries (the “AgFeed USA Sale”). On August 26, 2013, in accordance with the AgFeed USA Bidding Procedures Order, the Debtors held an auction at which the bid submitted by

High Plains Pork, LLC, Cohoma Pork, LLC, and Murphy-Brown, LLC (the “AgFeed USA Purchasers”) was identified as the Prevailing Bid (as defined in the AgFeed USA Bidding Procedures Order) in connection with the AgFeed USA Sale. On August 29, 2013, the Court entered an order [Docket No. 257] approving the AgFeed USA Sale to the AgFeed USA Purchasers. The AgFeed USA Sale closed on September 12 2013.

5. On October 10, 2013, the Court entered an order [Docket No. 436] (the “AgFeed Industries Bidding Procedures Order”), approving, among other things, certain bidding procedures for the sale of all of AgFeed Industries, Inc.’s stock in AgFeed Industries, Inc. (British Virgin Islands) (the “AgFeed Industries Sale”) and Good Charm International Development Ltd. (the “Proposed BVI Purchaser”) as the stalking-horse bidder. No other bids were received. In accordance with the AgFeed Industries Bidding Procedures Order, the bid submitted by the Proposed BVI Purchaser was identified as the Prevailing Bid (as defined in the AgFeed Industries Bidding Procedures Order) in connection with the AgFeed Industries Sale. On November 26, 2013, the Bankruptcy Court entered an order [Docket No. 640] approving the AgFeed Industries Sale to the AgFeed Industries Purchaser. The AgFeed Industries Sale closed on December 6, 2013.

6. On December 18, 2013 the Debtors filed the *Debtors’ Joint Chapter 11 Plan of Liquidation* [Docket No. 699] (the “Plan”) and *Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code with Respect to the Debtors’ Joint Chapter 11 Plan of Liquidation* [Docket No. 705] (the “Disclosure Statement”).

7. Additional information about the Debtors’ business and the events leading up to the Petition Date can be found in the *Declaration of Keith A. Maib in Support*

of *First Day Motions* [Docket No. 4], filed on the Petition Date and incorporated by reference herein.

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an order, pursuant to Bankruptcy Rule 9006(b), further extending the time within which the Debtors may file notices of removal by approximately ninety (90) days, through and including July 9, 2014, with respect to claims and causes of action pending as of the Petition Date (the “Actions”). However, consistent with the Court’s ruling in connection with the previous extension order, any request by the Debtors to have the claim(s) filed by James Regnante in these Chapter 11 Cases adjudicated in any forum other than this Court shall be done so only upon order of this Court after notice to Mr. Regnante.

9. The current deadline to file notices of removal with respect to the Actions is April 10, 2014 (the “Current Deadline”). The Debtors request that the July 9, 2014 deadline to file notices of removal with respect to the Actions apply to all matters specified in Bankruptcy Rule 9027(a)(2) and (a)(3). The Debtors further request that the relief requested herein be granted without prejudice to the Debtors’ right to seek further extensions of time within which to remove the Actions.

BASIS FOR RELIEF REQUESTED

10. Section 1452 and Bankruptcy Rule 9027 govern the removal of claims and causes of action pending as of the Petition Date. Specifically, Section 1452 provides in pertinent part:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a government unit to enforce such government unit’s police or regulatory power, to the district

court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452.

11. Bankruptcy Rule 9027 sets forth the time period within which a debtor may file notices to remove claims or causes of action. Specifically, Bankruptcy Rule 9027 provides in pertinent part:

If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

12. Bankruptcy Rule 9006 permits the court to extend the period in which a debtor may file notices to remove claims or causes of action pursuant to Bankruptcy Rule 9027. Specifically, Bankruptcy Rule 9006 provides in pertinent part:

Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order

Fed. R. Bankr. P. 9006(b)(1).

13. It is well established that the Court has authority to grant the relief requested and extend the removal period under Section 1452 and Bankruptcy Rules 9027 and 9006. *See, e.g., Caperton v. A.T. Massey Coal Co., Inc.*, 251 B.R. 322, 325 (S.D.W. Va. 2000) (Bankruptcy Rule 9006 authorizes the enlargement of time periods for removing

actions under Bankruptcy Rule 9027); *In re Jandous Elec. Constr. Corp.*, 106 B.R. 48 (Bankr. S.D.N.Y. 1989) (a court may extend the time in which to file motions to remove civil actions pursuant to Bankruptcy Rule 9006); *In re World Fin. Servs. Ctr., Inc.*, 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (Bankruptcy Rule 9006 was designed to give bankruptcy judges the authority to enlarge the removal periods under Bankruptcy Rule 9027(a)); *Raff v. Gordon*, 58 B.R. 988, 990 (E.D. Pa. 1986) (Bankruptcy Rule 9006 authorizes the expansion of time to file notice of removal).

14. Cause exists here to extend the Current Deadline. Since the Petition Date, the Debtors have focused on (i) conducting the AgFeed USA Sale and the AgFeed Industries Sale in an effort to maximize the value of the Debtors' estates for the benefit of their stakeholders, (ii) winding down the Debtors' business operations, (iii) working with the Committees in formulating and filing the Plan and Disclosure Statement, and (iv) negotiating with a number of constituencies in an effort to reach resolution of outstanding issues in connection with the Plan. In addition, the Debtors have devoted a substantial amount of time and resources addressing critical case management issues, including, but not limited to (i) securing the use of cash collateral, (ii) stabilizing the business, (iii) preparing schedules of assets and liabilities and statement of financial affairs, (iv) producing monthly operating reports and other reports, (v) retaining professionals, and (vi) analyzing the more than 400 claims filed in the Chapter 11 Cases. Given these significant developments during the first nine months of these Chapter 11 Cases, the transition of the Debtors into chapter 11, the initial administrative requirements of the chapter 11 process, and the efforts to develop and confirm a plan of liquidation, together with the substantial existing effort required to

maximize the value of the Debtors' estates, the Debtors have been unable to evaluate, in a thorough and thoughtful manner, whether outstanding litigation matters should be removed.

15. In light of the significant progress made in these Chapter 11 Cases and the attendant demands on the Debtors' personnel and professionals since the Petition Date, the Debtors submit that there is a legitimate need for additional time to review their outstanding litigation matters and evaluate whether those matters should be removed pursuant to Bankruptcy Rule 9027. In the absence of such relief, the Debtors would lose a potentially key element of their overall ability to manage litigation during these Chapter 11 Cases even before that litigation would reasonably have been evaluated, to the detriment of the Debtors, their estates, and their creditors as a whole.

16. Requests by debtors for extensions of the removal period have been routinely granted by courts in this District. *See, e.g., In re LMI Legacy Holdings Inc.*, Case No. 13-12098 (CSS) (Bankr. D. Del. April 1, 2014) (extending removal deadline by 120 days); *In re Rotech Healthcare Inc.*, Case No. 13-10741 (PJW) (Bankr. D. Del. July 29, 2013) (extending removal deadline by 120 days); *In re Penson Worldwide, Inc.*, Case No. 13-10061 (PJW) (Bankr. D. Del. May 7, 2013) (extending removal deadline by 120 days); *In re Bicent Holdings LLC*, Case No. 12-11304 (KG) (Bankr. D. Del. Aug. 8, 2012) (extending removal deadline by 120 days). The Debtors' request for a 90-day extension to remove claims is thus in accord with the relief granted by courts in this District to other debtors in similar circumstances.

17. The counterparties to any Actions will suffer no discernible prejudice from the relief sought herein. Prepetition causes of action against the Debtors are stayed by operation of the automatic stay set forth in section 362(a) of the Bankruptcy Code.

Furthermore, nothing herein will prejudice any party to a proceeding that the Debtors may ultimately seek to remove from seeking the remand of such action under Section 1452 at the appropriate time. Accordingly, preserving the Debtors' ability to remove Actions imposes no delay or unnecessary burdens on any counterparties to the Actions.

NOTICE

18. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) counsel to the Creditors' Committee; (iii) counsel to the Equity Holders' Committee; (iv) known parties to the Actions; and (v) all parties requesting notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002 as of the date hereof. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as Exhibit A: (i) extending the period in which the Debtors may remove Actions pursuant to Section 1452 by approximately ninety (90) days, through and including July 9, 2014, without prejudice to the Debtors' right to seek further extensions of the time within which to remove the Actions, and (ii) granting such other relief as the Court deems just and proper.

Dated: April 8, 2014
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Ian J. Bambrick

Robert S. Brady (No. 2847)

Donald J. Bowman, Jr. (No. 4383)

Robert F. Poppiti, Jr. (No. 5052)

Ian J. Bambrick (No. 5455)

1000 N. King Street

Rodney Square

Wilmington, Delaware 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

Counsel for the Debtors and Debtors in Possession