

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

In re:

AGFEED USA, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 13-11761 (BLS)

(Jointly Administered)

**Objection Deadline: June 4, 2014 at 4:00 p.m.**

**Hearing Date: June 10, 2014 at 10:00 a.m.**

**Related Docket Nos. 976, 1017 & 1081**

**THIRD INTERIM FEE APPLICATION OF LOWENSTEIN SANDLER LLP  
FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED  
AND REIMBURSEMENT OF EXPENSES INCURRED AS COUNSEL  
TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
FOR THE PERIOD OF JANUARY 1, 2014 THROUGH MARCH 31, 2014**

Name of Applicant:

Lowenstein Sandler LLP  
65 Livingston Avenue  
Roseland, NJ 07068  
Telephone: 973.597.2500

Authorized to Provide  
Professional Services to:

The Official Committee of Unsecured Creditors  
of AgFeed USA, LLC, *et al.*

Date of Retention:

September 9, 2013 effective as of July 23, 2013

Period for which compensation and  
reimbursement is sought:

January 1, 2014 through March 31, 2014

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<sup>1</sup> 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, L.C. (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 Genetics Land, LLC (1921). The location of the corporate headquarters for AgFeed Industries, Inc. is 100 Bluegrass Commons Blvd., Suite 310, Hendersonville, Tennessee 37075. The location of the corporate headquarters for the remaining Debtors is 510 South 17<sup>th</sup> Street, Suite 104, Ames, Iowa 50010.

Amount of compensation sought as actual,  
reasonable and necessary: \$133,107.00<sup>2</sup>

Amount of expense reimbursement sought as  
actual, reasonable and necessary: \$3,322.85

This is a: Monthly \_\_\_\_\_ Interim   x   Final \_\_\_\_\_ Fee Application.

### **ATTACHMENT TO THIRD INTERIM FEE APPLICATION**

#### **PRIOR APPLICATION HISTORY**

Date Filed	Period Covered	Requested		Monthly Statements		Certificate of No Objection / Signed Order
		Fees 100%	Expenses	Fees 80%	Expenses	
10/03/2013 Docket No. 406	7/23/2013 - 7/31/2013	\$101,200.00	\$1,724.25	\$80,960.00	\$1,724.25	11/05/2013 Docket No. 557
10/28/2013 Docket No. 521	8/01/2013 - 8/31/2013	\$284,750.00	\$1,924.69	\$227,800.00	\$1,924.69	12/5/2013 Docket No. 663
11/05/2013 Docket No. 552	9/01/2013 - 9/30/2013	\$129,600.00	\$2,346.49	\$103,680.00	\$2,346.49	12/5/2013 Docket No. 663
11/15/2013 Docket No. 587 First Interim	7/23/2013 – 9/30/2013	\$515,550.00	\$5,995.43			12/19/2013 Docket No. 713
12/06/2013 Docket No. 668	10/01/2013- 10/31/2013	\$51,802.00	\$844.59	\$41,441.60	\$844.59	12/30/2013 Docket No. 740
1/14/2014 Docket No. 777	11/01/2013- 11/30/2013	\$104,250.00	\$1,093.14	\$83,400.00	\$1,093.14	2/12/2014 Docket No. 877
2/14/2014 Docket No. 852	12/01/2013– 12/31/2013	\$85,550.00	\$1,012.79	\$68,440.00	\$1,012.79	03/04/2014 Docket No. 939
02/14/2014 Docket No. 887 Second Interim	10/01/2013 – 12/31/13	\$241,602.00	\$2,950.52			03/05/2014 Docket No. 943
03/25/2014 Docket No. 976	01/01/2014 - 01/31/2014	\$34,457.00	\$1,853.12	\$27,565.60	\$1,720.22	04/16/2014 Docket No. 1024
04/11/2014 Docket No. 1017	02/01/2014- 02/28/2014	\$57,700.00	\$1,081.89	\$46,160.00	\$1,081.89	06/06/2014 Docket No. 1066
05/14/2014 Docket No. 1081	03/01/2014 – 03/31/2014	\$40,950.00	\$387.84	\$32,760.00	\$387.84	Pending

<sup>2</sup> As set forth in the monthly fee applications filed by Lowenstein Sandler, this amount is net of a Blended Rate Limitation discount in the amount of \$7,391.75, and net of a No Charge Time discount for written off time in the amount of \$2,430.00.

**I. SUMMARY OF TIME CHARGES AND HOURLY RATES**

<b>Timekeeper Name</b>	<b>Year Admitted</b>	<b>Hours Worked</b>	<b>Rate</b>	<b>Bill Amount</b>
Nathan, Bruce S.	1980	45.10	\$780.00	\$35,178.00
Prol, Jeffrey D.	1989	38.50	670.00	25,795.00
* Prol, Jeffrey D. - travel time	1989	7.00	335.00	2,345.00
Wheeler, Timothy R.	2003	114.90	535.00	61,471.50
* Wheeler, Timothy R. - travel time	2003	5.50	267.50	1,471.25
DeLeo, Anthony	2013	3.40	300.00	1,020.00
Williams, Beth L.	2010	13.00	390.00	5,070.00
Claussen, Diane	N/A	38.80	210.00	8,148.00

**TOTAL ALL TIMEKEEPERS****266.20****\$140,498.75****DISCOUNT****-7,391.75****TOTAL ADJUSTED FEES****\$133,107.00****Blended Rate (before  
discount applied)****\$527.79**

\* Reflects 50% reduction due to non-working travel time

**COMPENSATION BY PROJECT CATEGORY**

<b>Task Description</b>	<b>Hours</b>	<b>Total</b>
Case Administration	0.60	\$269.50
Meetings of and Communication with Creditors	53.10	26,972.50
Fee/Employment Applications	63.40	24,524.50
Employment and Retention Applications - Others	3.50	2,142.00
Fee/Employment Objections	4.70	2,388.50
Fee Applications and Invoices - Others	13.30	7,221.50
Assumption/Rejection of Leases and Contracts	0.90	555.00
Other Contested Matters (excluding assumption/rejection motions)	3.50	2,191.00
Non-Working Travel	12.50	3,816.25
Business Operations	2.00	1,266.00
Board of Directors	1.50	900.50
Claims Administration and Objections	51.50	32,066.00

Claims Administration and Objections	6.50	3,820.50
Plan and Disclosure Statement (including Business Plan)	45.40	27,695.50
Court Hearings	8.20	4,304.00
Schedules and Statements	0.50	365.50
<b>Total Fees Rendered This Statement</b>		<b>\$140,498.75</b>

**EXPENSE SUMMARY**

**Summary of Disbursement Charges**

<b>Category</b>	<b>Amount</b>
Bulk rate/special postage	\$9.00
Computerized legal research	209.30
Telecommunications	455.78
Travel	2,640.17
Photocopies 86 pages at \$0.10 per page	8.60
<b>Total Disbursements</b>	<b>\$3,322.85</b>

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FOR ALLOWANCE OF COMPENSATION FOR SERVICES RENDERED  
AND REIMBURSEMENT OF EXPENSES INCURRED AS COUNSEL  
TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS  
FOR THE PERIOD OF JANUARY 1, 2014 THROUGH MARCH 31, 2014**

Lowenstein Sandler LLP (“**Applicant**” or “**Lowenstein Sandler**”), as counsel to the Official Committee of Unsecured Creditors (the “**Committee**”), appointed in the chapter 11 cases of AgFeed USA, LLC, *et al.*, the above captioned debtors and debtors in possession (collectively, the “**Debtors**”), submits this third interim application (the “**Interim Fee Application**”) for allowance of compensation and reimbursement of expenses for the period of January 1, 2014 through March 31, 2014 (the “**Compensation Period**”) and respectfully represents and alleges as follows:

<sup>3</sup> 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, L.C. (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 Genetics Land, LLC (1921). The location of the corporate headquarters for AgFeed Industries, Inc. is 100 Bluegrass Commons Blvd., Suite 310, Hendersonville, Tennessee 37075. The location of the corporate headquarters for the remaining Debtors is 510 South 17<sup>th</sup> Street, Suite 104, Ames, Iowa 50010.

### **BACKGROUND**

1. On July 15, 2013 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their businesses and manage their properties as debtors in possession.

2. No trustee or examiner has been appointed in the Chapter 11 Cases.

3. On July 23, 2013, the Office of the United States Trustee (the “**U.S. Trustee**”) appointed the Committee pursuant to section 1102(a) of the Bankruptcy Code. On the same day, the Committee selected Lowenstein Sandler to serve as its counsel and Greenberg Traurig, LLP to serve as its co-counsel.

4. On August 19, 2013, the U.S. Trustee filed the *Notice of Appointment of Creditors’ Committee Amended August 19, 2013* [Docket No. 159].

5. On August 21, 2013, the Court entered the *Order Authorizing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals* (“**Interim Compensation Order**”) [Docket No. 176].

6. On September 9, 2013, the Court entered the *Order Authorizing the Employment and Retention of Lowenstein Sandler LLP as Counsel to the Official Committee of Unsecured Creditors effective as of July 23, 2013* (“**Retention Order**”) [Docket No. 288].

7. On March 25, 2014, Applicant filed the Seventh Monthly Application of Lowenstein Sandler LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Committee for the period of January 1, 2014 through January 31, 2014 (the “**Seventh Monthly Fee Application**”) [Docket No. 976]. By the Seventh Monthly Fee Application, Applicant sought payment of \$27,565.60 (80% of total fees owed of \$34,457.00) as compensation for professional services rendered, plus \$1,853.12, as reimbursement for reasonable costs incurred for and on behalf of the Committee. Lowenstein received informal comments from the Office of the U. S. Trustee regarding certain expenses requested in the Seventh Monthly Fee Application. As a result, Lowenstein agreed to reduce the

expenses requested in the Seventh Monthly Fee Application from \$1,853.12 to \$1,720.22, which resulted in a reduction of \$132.90. Accordingly, on April 16, 2014, Applicant filed a Certification of Counsel Regarding the Seventh Monthly Fee Application [Docket No. 1024] requesting fees in the amount of \$27,565.60 and expenses in the amount of \$1,720.22.

8. On April 11, 2014, Applicant filed the Eighth Monthly Application of Lowenstein Sandler LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Committee for the period of February 1, 2014 through February 28, 2014 (the “**Eighth Monthly Fee Application**”) [Docket No. 1017]. By the Eighth Monthly Fee Application, Applicant sought payment of \$46,160.00 (80% of total fees owed of \$57,700.00) as compensation for professional services rendered, plus \$1,081.89, as reimbursement for reasonable costs incurred for and on behalf of the Committee. On May 6, 2014, Applicant filed a Certification of No Objection Regarding the Eighth Monthly Fee Application [Docket No. 1066] requesting fees in the amount of \$46,160.00 and expenses in the amount of \$1,081.89.

9. On May 14, 2014, Applicant filed the Ninth Monthly Application of Lowenstein Sandler LLP for Compensation for Services Rendered and Reimbursement of Expenses Incurred as Counsel to the Committee for the period of March 1, 2014 through March 31, 2014 (the “**Ninth Monthly Fee Application**”) [Docket No. 1081]. By the Ninth Monthly Fee Application, Applicant sought payment of \$32,760.00 (80% of total fees owed of \$40,950.00) as compensation for professional services rendered, plus \$387.84, as reimbursement for reasonable costs incurred for and on behalf of the Committee. The Ninth Monthly Fee Application is still pending.

10. The hourly rates set forth above are Applicant’s current hourly rates for work of this nature. While these rates are set at a level designed to fairly compensate Applicant for its work and to cover fixed and routine overhead expenses, as set forth in paragraph 14 of the *Application for an Order Pursuant to 11 U.S.C. §§ 328(a) and 1103(a) Authorizing and Approving the Employment and Retention of Lowenstein Sandler LLP as Counsel to the Official*

*Committee of Unsecured Creditors Effective as of July 23, 2013* (the “**Retention Application**”) [Docket No. 164], the Committee requested, and Applicant voluntarily agreed, to cap its blended hourly rate for these Chapter 11 Cases only. Based upon this agreement with the Committee, in the event that Applicant’s monthly blended rate (the “**Blended Rate**”), computed by dividing the total fees for a calendar month by the total number of hours incurred during that month, exceeds \$500 per hour, Applicant agrees to adjust its requested fees for that month to equal the total number of hours incurred that month multiplied by \$500 (the “**Blended Rate Limitation**”). To the extent that the Blended Rate Limitation requires Applicant to reduce its monthly fee request in any month, Applicant may recover any difference between the actual fees incurred during such month and the Blended Rate Limitation for that month, from any prior or subsequent month in which the actual billed fees, at normal hourly billers’ rates, are less than the Blended Rate Limitation for that month, up to the cap of such differential (i.e., the difference between the Blended Rate Limitation and the actual fees billed for such month).

11. During the Compensation Period, Applicant’s Blended Rate was \$527.79 per hour (\$140,498.75 divided by 266.20 hours), which triggered the application of the Blended Rate Limitation. Accordingly, the reasonable value for services rendered by Applicant to the Committee during the Compensation Period of \$140,498.75 less the Blended Rate Limitation discount of \$7,391.75, yields a total fee request of \$133,107.00. Applicant reserves all rights to recover the Blended Rate Limitation discount of \$7,391.75, together with Blended Rate Limitation discount amounts applied in prior fee periods totaling \$54,133.00<sup>4</sup> in a subsequent month in which the total of actual billed fees is less than the Blended Rate Limitation for that month, up to the cap of such differential.

12. This Interim Fee Application is made by Applicant for a third interim allowance in the amount of \$133,107.00 for professional services rendered to and on behalf of the Committee during the Compensation Period. This Interim Fee Application in the amount of

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<sup>4</sup> Lowenstein Sandler has applied the following Blended Rate discount amounts in prior fee periods: July \$1,334.75, August \$22,518.25, September \$8,892.00, November \$8,211.25, December \$5,785.00, January \$530.50, February \$5,121.75, and March \$1,739.50, totaling \$54,133.00.



\$133,107.00 reflects a discount in accordance with the Blended Rate Limitation discount in the amount of \$7,391.75, as well as an additional discount for written off time in the amount of \$2,430.00 (the “**No Charge Time**”). Applicant also seeks reimbursement of its actual, reasonable, and necessary expenses incurred in connection with services rendered during the Compensation Period in the amount of \$3,322.85.

13. In preparing this Interim Fee Application, Lowenstein Sandler employed the following methodology for allocating legal charges between the individual Debtor estates of AgFeed USA and AgFeed Industries (see chart below). First, Lowenstein Sandler reviewed the time narratives from the monthly fee applications that comprise this Compensation Period and categorized each included time entry as (i) AgFeed USA; (ii) AgFeed Industries; or (iii) Both, depending upon which Debtor estate (or both estates) benefited from the services provided. Next, Lowenstein Sandler totaled the corresponding charges for the time entries in each of the three categories. Finally, Lowenstein Sandler assigned 50% of the charges in the “Both” category to AgFeed USA and 50% to AgFeed Industries. The resulting totals revealed an allocation of 39.30% of charges to AgFeed USA and 60.70% of charges to AgFeed Industries, which percentages Lowenstein Sandler also applied to the Blended Rate Limitation discount and requested expense reimbursement. Lowenstein Sandler submits that the described protocol is both accurate and efficient, and provides for a fair and reasonable fee allocation between the individual debtor estates of AgFeed USA and AgFeed Industries.

	<b>AgFeed USA</b>	<b>AgFeed Industries</b>	<b>Both</b>	<b>Total</b>
<b>Category Sub-Totals:</b>	\$2,180.00	\$32,968.00	\$105,350.75	\$140,498.75
<b>Allocated Sub-Totals:<sup>5</sup></b>	\$54,855.37	\$85,643.38		\$140,498.75
<b>Allocated Blended Rate Discount:</b>	\$2,653.35	\$4,738.40		\$(7,391.75)
<b>Allocated Interim Fees Totals:</b>	\$52,228.93	\$80,878.07		\$133,107.00
<b>Allocated Expenses:</b>	\$1,387.34	\$1,935.51		\$3,222.85
<b>Allocated Totals:</b>	<b>\$53,616.27</b>	<b>\$82,813.58</b>		<b>\$136,429.85</b>

<sup>5</sup> As described above, the Allocated Sub-Totals of AgFeed USA and AgFeed Industries each include 50% of the total charges included in the “Both” category – an additional \$52,675.37.

**SUMMARY OF SERVICES**

14. During the Compensation Period, Applicant rendered professional services to the Committee solely in connection with these Chapter 11 Cases and on behalf of the Committee in accordance with Applicant's professional responsibilities. The services performed were necessary to the administration of these Chapter 11 Cases and were beneficial at the time at which the services were rendered. All services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed.

15. Applicant has rendered professional services as counsel to the Committee as requested and necessary and appropriate in furtherance of the Committee's duties and functions in these Chapter 11 Cases.

16. The compensation requested is consistent with the nature and extent of the services rendered during the Compensation Period, the size and complexity of these Chapter 11 Cases, the time, labor and special expertise required, and other related factors. The compensation requested is reasonable based on the customary compensation charged by comparably skilled practitioners in this and other firms in non-bankruptcy cases. As such, the Applicant submits that the compensation requested herein is reasonable within the meaning of sections 330 and 331 of the Bankruptcy Code.

17. During the course of these Chapter 11 Cases, Applicant incurred and paid its actual and necessary disbursements and expenses.

18. This is the Applicant's third interim application pursuant to the Interim Compensation Order. Applicant has received no payment and no promises for payment from any source for services rendered or to be rendered in any capacity whatsoever in connection with these Chapter 11 Cases, and there is no agreement or understanding between Applicant and any other person, other than members of the Applicant, for the sharing of compensation to be received for services rendered in this case.

**WHEREFORE**, Applicant respectfully requests that this Court enter an Order granting Applicant a third interim allowance in the amount of \$133,107.00 for professional

services rendered to and on behalf of the Debtors during the Compensation Period, plus reimbursement of its actual, reasonable, and necessary expenses incurred in connection with services rendered during the Compensation Period in the amount of \$3,322.85, as previously reduced in accordance with the Blended Rate Limitation discount in the amount of \$7,391.75 and net of a No Charge Time Discount in the amount of \$2,430.00, and granting such other and further relief as the Court deems just and proper.

Dated: May 15, 2014

Respectfully Submitted,

**LOWENSTEIN SANDLER LLP**

By: /s/ Jeffrey D. Prol  
Jeffrey D. Prol, Esq.  
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-and-

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*Co-Counsel to the Official Committee of Unsecured  
Creditors*