

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI
KANSAS CITY DIVISION**

In Re:	§	In Proceedings Under Chapter 11
	§	
Farmland Industries, Inc., et al.,	§	Case No. 02-50557-JWV
	§	Joint Administration
	§	

**EXPEDITED MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO CONTINUE HEARING ON DEBTORS’ MOTION
FOR APPROVAL OF SETTLEMENT WITH UBS WARBURG, LLC RELATED TO THE
RESOLUTION OF OBJECTIONS TO APPLICATION FOR COMPENSATION
AND
REQUEST FOR EXPEDITED HEARING**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The Official Committee of Unsecured Creditors (the “Committee”) of Farmland Industries, Inc., Farmland Foods, Inc., Farmland Industries, Inc., Farmland Pipe Line Company, and SFA, Inc. (collectively, the “Debtors”), files this Motion to Continue (the “Motion”) Hearing on Debtors’ Motion for Approval of Settlement With UBS Warburg, LLC Related to the Resolution of Objections to Application For Compensation (the “Compromise Motion”) and Request for Expedited Hearing. In support of this Motion, the Committee respectfully shows the following:

**I.
BACKGROUND**

1. On May 31, 2002 (the “Petition Date”), the Debtors filed separate voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Missouri, thereby commencing the above-styled cases.

2. The Debtors continue to operate their businesses and manage their assets as debtors-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee or examiner has been appointed.

3. On June 3, 2002, pursuant to Section 1102(a)(1) of the Bankruptcy Code, the United States Trustee (the “U.S. Trustee”) appointed the Committee to represent all non-bondholder unsecured creditors in these cases, including creditors at each of the five debtors that are a part of these bankruptcy proceedings. On that same day, the U.S. Trustee appointed an Official Committee of Bondholders (the “Bondholders Committee”).

4. On November 13, 2003, UBS Warburg, LLC (“UBS”) filed its Application for Allowance of Compensation – M&A Transaction Fees (the “UBS Application”), in which UBS sought approval and payment of additional transaction fees associated with the sales of the Debtors’ fertilizer-related businesses. First, the UBS Application requested approval and payment of an additional \$376,610 relating to the sale of the Debtors’ indirect fifty percent (50%) interest in Farmland MissChem Limited (the “Foreign Fertilizer Assets”). Second, UBS also requested approval and payment of \$952,740 as a transaction fee for the sale of the Debtors’ fifty percent (50%) interest in SF Phosphates LLC (the “SF Assets”).

5. On November 24, 2003, the Committee filed its Objection to the Application of UBS Warburg LLC for Allowance of Compensation – M&A Transaction Fees (the “Committee Objection”). In general, the Committee objected to the payment of any transaction fees on the following grounds:

- No payment of \$376,610 in transaction fees on the remaining debt held by FMCL under the definition of Transaction Value in the October 31, 2002 engagement letter (the “October Engagement Letter”);
- No payment of \$418,000 in transaction fees on the debt held by SF Phosphates under the definition of Transaction Value in the October Engagement Letter; and

- A reduction of the transaction fees for the sale of the SF Assets under the “reasonableness” standard of Section 330 of the Bankruptcy Code due to UBS’ non-involvement in the sale process.

In addition to the foregoing, the Committee Objection also requested the repayment of \$376,610 of transaction fees relating to the debt held by FMCL originally calculated by UBS, as UBS was not entitled to payment of such transaction fees under the definition of Transaction Value in the October Engagement Letter. The Committee further requested that this Court hold an evidentiary hearing to determine these matters relating to UBS. Through the Committee Objection, almost \$1.5 million of alleged transaction fees were placed at issue before the Court.

6. No other party – including the Debtors and the Bondholders Committee – objected to the UBS Application.

7. Because of the intensive factual nature of a “reasonableness” analysis of UBS’ transaction fees pursuant to Section 330 of the Bankruptcy Code, the Committee intended to serve discovery on both the Debtors and UBS regarding the matters raised by the Committee Objection. To that end, the Committee requested that the Debtors not set the UBS Application for hearing until after the hearing on confirmation on December 16, 2003 to allow for the Committee to conduct discovery. The Committee received no response on this request.

8. Then, on December 10, 2003, the Debtors filed the Compromise Motion. The Compromise Motion generally seeks approval of a “Compromise,” which concedes all of the transaction fees requested by UBS in the UBS Application and objected to in the Committee Objection – a total of over \$1.2 million in transaction fees. In addition, the Compromise also allows UBS to keep the estimated \$376,610 in transaction fees previously paid to UBS associated with debt in the sale of the Foreign Fertilizer Assets. As consideration for these “concessions” regarding the transaction fees sought in the UBS Application, UBS agreed to

waive any additional transaction fees to which it allegedly may be entitled – estimated between \$250,000 and \$500,000 and for which no fee application has been filed.

9. The Compromise was reached through negotiations by and between UBS, the Bondholders Committee and the Debtors – *even though the Committee was the only party to file a formal objection with the Court*. The Committee was not aware of the Compromise until it was filed with the Court in the Compromise Motion on December 10, 2003.

10. Moreover, despite the specific request of the Committee to postpone any hearing relating to the UBS Application, the Debtors set the Compromise Motion for hearing on December 16, 2003, less than a week after its filing. As the Court is aware, in addition to the Compromise Motion, confirmation of the Debtors' plan of reorganization is also set for December 16, 2003 at 2:30 p.m.

II. **REQUEST FOR CONTINUANCE**

11. The Committee respectfully requests that the Court continue any hearing on the Compromise Motion so that the Committee can evaluate the proposed Compromise and conduct discovery on the alleged transaction fees of UBS that serve as the basis for the UBS Application and the Compromise.

12. To that end, on December 11, 2003, the Committee, through its counsel, requested that the Debtors be available for a deposition and produce documents on or before December 15, 2003, the day before the scheduled hearing on the Compromise Motion. However, Debtors' counsel stated that he could not accommodate the Committee's request for discovery from the Debtors before the scheduled hearing on December 16, 2003.

13. Because the Debtors – the party setting the Compromise Motion for hearing on an expedited basis – are unable to provide the Committee with a reasonable opportunity for

discovery on the Compromise Motion, the Committee is entitled to a continuance of the hearing on the Compromise Motion from its present setting of December 16, 2003. Such continuance is not requested simply for purposes of delay but to ensure that the Committee has a full opportunity to conduct discovery on this important issue before the Court – especially in light of the Committee’s previous request in the Committee Objection for an evidentiary hearing on the UBS Application. In contrast, no prejudice will result from the granting of the Motion – either to the Debtors or UBS.

III.
REQUEST FOR EXPEDITED TELEPHONIC HEARING

14. The Committee respectfully requests that the Court set this Motion for an expedited telephonic hearing on Friday, December 12, 2003. With the confirmation of the Debtors’ plan of reorganization presently set for December 16, 2003, the Committee and its professionals will need to allocate resources in order to handle both the Compromise Motion and confirmation of the Debtors’ plan if the relief requested in this Motion is not granted. Moreover, regardless of the Court’s decision on the Motion, an expedited telephonic hearing on December 12, 2003 will eliminate one matter from the Court’s already busy docket on December 16, 2003, allowing sufficient time for the Court to address other, more pressing issues such as confirmation of the Debtors’ plan of reorganization.

WHEREFORE, PREMISES CONSIDERED, the Committee respectfully requests that the Court enter an order: (i) setting this Motion for an expedited telephonic hearing on December 12, 2003; (ii) continuing the hearing on the Debtors’ Motion for Approval of Settlement With UBS Warburg, LLC Related to the Resolution of Objections to Application For Compensation; and (iii) granting such other and further relief as is just and proper.

Respectfully submitted this 11th day of December, 2003.

AKIN GUMP STRAUSS HAUER & FELD LLP

By: /s/ Christopher A. Artzer

S. Margie Venus
State Bar No. 20545900
Christopher A. Artzer
State Bar No. 00796141
711 Louisiana, Suite 1900
Houston, TX 77002
(713) 220-5800
(713) 236-0822 (fax)

- and -

Christopher J. Redmond
Gary Barnes
HUSCH & EPPENBERGER, LLC
1200 Main Street, Suite 1700
Kansas City, MO 64105-2100
(816) 421-4800
(816) 421-0596 (fax)

ATTORNEYS FOR THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection has been served by first class mail, postage pre-paid on those parties not receiving electronic notice on this 12th day of December, 2003.

/s/ Christopher A. Artzer
Christopher A. Artzer