UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI

In re:	)	**In Proceedings Under Chapter 11**
FARMLAND INDUSTRIES, INC., et al.,	)	**Case No. 02-50557-JWV**
	)	**Joint Administration**
Debtors.	)	

MOTION FOR (I) EXPEDITED APPROVAL OF CURRENT SETTLEMENTS WITH VITAMIN ANTITRUST CLAIM DEFENDANTS BASF CORPORATION AND BASF A.G. PURSUANT TO BANKRUPTCY RULE 9019(a), AND (II) AUTHORITY TO FIX A CLASS OF CONTROVERSIES AND TO SETTLE AND COMPROMISE REMAINING VITAMIN ANTITRUST CLAIMS UPON SUPERMAJORITY APPROVAL WITHOUT ADDITIONAL HEARING OR NOTICE PURSUANT TO BANKRUPTCY RULE 9019(b)

Farmland Industries, Inc. ("Farmland" or "Debtor"), a debtor and debtor in possession in these jointly administered cases, pursuant to Rules 9019(a) and 9019(b), Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Section 105(a) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"), hereby moves for entry of an Order (i) pursuant to Bankruptcy Rule 9019(a), approving the proposed settlement of the Debtor's antitrust claims against BASF Corporation and BASF A.G. (the "BASF Settlement"); and (ii) pursuant to Bankruptcy Rule 9019(b), fixing a class of controversies arising from all remaining pre-petition vitamin antitrust claims held by the Debtor, and authorizing the Debtor to compromise or settle all controversies and claims within such class upon Supermajority Approval (defined below) without further notice or hearing.

Background

1. On May 31, 2002 (the "Petition Date"), the Debtor (along with certain affiliates) commenced its reorganization case by filing a Voluntary Petition for relief under

Chapter 11 of the Bankruptcy Code. Pursuant to this Court's Order entered May 31, 2002, these Chapter 11 cases are being jointly administered for procedural purposes only.

2. The Debtor is continuing in possession of its respective properties and is operating and managing its business, as a debtor in possession, pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. Debtor Farmland Industries, Inc., a Kansas corporation headquartered in Kansas City, Missouri, is organized and operated as a cooperative system of agricultural and food-related businesses. Farmland, in conjunction with the debtor subsidiaries and others, as well as through joint venture relationships, (a) manufactures and markets fertilizer, (b) operates a petroleum refinery, (c) operates an integrated food and food processing business, (d) engages in the wholesale and retail farm supply business, and (e) engages in the transportation brokerage business.

The Vitamin Products Litigation

5. Prior to the Petition Date, the Debtor and certain predecessors in interest purchased various vitamin products and amino acids (collectively, "Vitamin Products") from certain manufacturers and distributors. As a result of these purchases, the Debtor and other purchasers of Vitamin Products possess certain claims and causes of action against approximately thirty-seven manufacturers and distributors of Vitamin Products (collectively, the "Vitamin Defendants"). Based on current calculations, the Debtor purchased approximately $123.5 million of Vitamin Products from the Vitamin Defendants, and the Debtor has an estimated single damages claim of approximately $42 million.

6. In May/June 1999, Farmland retained and employed Schmiedeskamp, Robertson, Neu & Mitchell ("Schmiedeskamp") and Dickstein Shapiro Morin & Oshinsky LLP ("Dickstein") to represent Farmland's interests in the Vitamin Litigation.

7. Farmland and numerous other purchasers of Vitamin Products commenced actions against the Vitamin Defendants alleging that they fixed prices of Vitamin Products in violation of the federal antitrust laws. Prior to the Petition Date, Farmland and others commenced individual actions against certain of the Vitamin Defendants. All of the federal litigation pending against the Vitamin Defendants has been transferred and consolidated for pretrial litigation before The Honorable Thomas Hogan in the United States District Court for the District of Columbia in the case styled "In re Vitamin Antitrust Litigation" (the "Federal Vitamin Litigation"). Farmland also commenced, just prior to the Petition Date, an individual action against certain of the Vitamin Defendants in Minnesota state court, asserting claims related to indirect vitamin purchases (the "State Vitamin Litigation"). The Federal Vitamin Litigation and the State Vitamin Litigation are collectively referred to herein as the "Vitamin Litigation."

8. Farmland also recently retained and employed, prior to the Petition Date, Lindquist & Vennum P.L.L.P. ("Lindquist") to serve as co-counsel with Dickstein and Schmiedeskamp in connection with the commencement and prosecution of the State Vitamin Litigation.

9. Farmland has filed a joint application seeking authority to continue to employ Dickstein, Schmiedeskamp and Lindquist as its special litigation counsel in the Vitamin Litigation in connection with this Chapter 11 case, and that application is currently pending before the Court.

10. Farmland is among approximately 154 plaintiff clients represented by Dickstein in the Vitamin Litigation (the "Dickstein Client Group"). The Dickstein Client Group includes major U.S. companies such as General Nutrition Companies, Inc., Tyson Foods, Inc., Kraft Foods North America, Inc., and The Quaker Oats Company. A complete list of the members of the Dickstein Client Group was attached to the special litigation counsel application as Exhibit "A.1."

11. Schmiedeskamp represents approximately 43 of the plaintiff clients included in the Dickstein Client Group in connection with the Vitamin Litigation. Lindquist represents approximately 50 of the plaintiff clients included in the Dickstein Client Group in connection with the Vitamin Litigation (the "State Vitamin Litigation Client Group").

12. The Dickstein Client Group is the largest of the plaintiff groups seeking recovery for overcharges on Vitamin Products. Dickstein's clients have total purchases of Vitamin Products in excess of $3 billion.

13. Dickstein is particularly well suited for the type of representation required by the Debtor and the other members of the Dickstein Client Group. More than half of Dickstein's 325 lawyers are engaged in litigation practice. The firm enjoys a national reputation for its litigation expertise, including the representation of numerous companies in treble damage antitrust cases.

14. In addition to serving as lead counsel to the members of the Dickstein Client Group, Dickstein also serves as court-appointed Liaison Counsel for all the direct action plaintiff cases in the consolidated Federal Vitamin Litigation. Moreover, Dickstein and Schmiedeskamp have obtained valuable knowledge of the particular facts and issues raised in the Vitamin Litigation as a result of their prepetition representation of the Debtor and the other vitamin purchasers during the past three years.

15. Since the inception of the Vitamin Litigation and prior to the Petition Date, the Dickstein Client Group has entered into a number of settlement agreements resolving claims against certain Vitamin Defendants. As a result of these settlements Farmland recovered, during the year immediately preceding the Petition Date, gross settlement payments in the aggregate amount of $2,597,519.54.

16. As in most complex multidistrict litigation cases of this type, it is probable that some or all of the remaining claims held by the members of the Dickstein Client Group will be resolved through a series of separate settlements with individual or small subgroups of Vitamin Defendants. Settlement recoveries can be maximized by making strategic decisions about which of the jointly and severally liable defendants should be permitted to avoid trial through settlement. Defendants that settle later in the case are traditionally required to pay escalating settlement amounts. Because of the large size of the Dickstein Client Group, the Dickstein lawyers, with the assistance of Schmiedeskamp and Lindquist, should be able to employ considerable settlement leverage in discussions with Vitamin Defendants. Consequently, Dickstein should be able to achieve the best possible settlements for the members of the Dickstein Client Group.

Request for Relief Under Rule 9019(a)

17. Pursuant to Bankruptcy Rule 9019(a), the Debtor requests the entry of an order approving the BASF Settlement. Under the BASF Settlement, the Debtor's share of the gross settlement recovery (i.e., before fees and expenses are deducted) under the confidential recovery sharing formula used by the Dickstein Client Group, which is based on each member's pro rata share of overcharges by the Vitamin Defendants on price-fixed purchases, is projected to exceed $17 million. Pursuant to the terms of their Retention Agreement with the Debtor, Dickstein, Schmiedeskamp and Lindquist are entitled to receive an aggregate contingent fee of fifteen

percent (15%) of any and all recoveries, whether by settlement or judgment, on behalf of the Debtor, net of the pro rata share of disbursements paid by the Debtor.

18. The BASF Settlement will release claims against Vitamin Defendants BASF Corporation and BASF A.G. (collectively, "BASF"), which sold price-fixed vitamins including primarily vitamins A, E, and vitamin premix for use in animal feed. The world-wide conspiracy lasted for at least ten years. The vitamins cartel was one of the most complex and successful antitrust conspiracies in history. BASF previously settled a class action with certain vitamin purchasers. The current settlement negotiated by Dickstein for Farmland and the other clients in the Dickstein Client Group will result in a payment 400% greater than the settlement payment offered to the members of the Dickstein Client Group by BASF in the class settlement. Accordingly, the proposed settlement is extremely favorable to the Debtor and other members of the Dickstein Client Group.

19. In deciding whether the proposed settlement with BASF is fair, equitable and in the best interests of the Debtor's estate and creditors, and should therefore be approved, this Court should consider four factors that have been distilled from the United States Supreme Court's decision Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25, 88 S. Ct. 1157, 1163 (1968). These factors are (1) the probability of success in the litigation, (2) the difficulties likely to be involved in collection, (3) the complexity of the litigation, and (4) the paramount interests of creditors. Id.; see also Drexel Burnham Lambert Inc. v. Flight Transp. Corp. (In re Flight Transp. Corp. Securities Litig.), 730 F.2d 1128, 1135-36 (8th Cir. 1984); American Can Co. v. Herpel (In re Jackson Brewing Co.), 624 F.2d 605, 607 (5th Cir. 1980); In re Revelle, 256 B.R. 905, 911-12 (Bankr. W.D. Mo. 2001); In re Apex Oil Co., 92 B.R. 847, 865-67 (Bankr. E.D. Mo. 1998). In deciding to settle and

compromise the claims against BASF, the Debtor has considered the TMT Trailer Ferry factors and has determined, in the exercise of its sound business judgment, that the proposed settlement is fair, equitable, and in the best interests of the Debtor and its estate.

a. Probability of Success. The probability of proving that BASF is liable for fixing prices is high because BASF has pled guilty to fixing the prices of certain Vitamin Products in the United States. Determining the damages to be assessed against BASF is, however, a more complex factual issue. Resolution of the damages issue will involve extensive testimony by economics experts for both the plaintiffs and the defendants regarding what the prices would have been "but for" the antitrust conspiracy. The plaintiffs' and the defendants' experts have very different views on this issue. The resolution of this factual question is ultimately an issue for the jury. Under these circumstances, the ultimate recoveries that the Debtor can expect to recover if the case proceeds to trial is uncertain.

b. Risks of Collection. The claims against the Vitamin Defendants asserted by the Dickstein Client Group alone are based on vitamin purchases in excess of $3 billion. However, many of the Vitamin Defendants are successful, major companies with substantial financial resources, and therefore the risk of collection should not be a substantial risk. Nonetheless, issues would arise regarding the collection of U.S. antitrust damages from foreign defendants in countries such as Germany and Japan.

c. Complexity of Litigation. The Vitamin Litigation is a complex antitrust action, and involves difficult issues concerning the economic effects of the antitrust violations committed by the Vitamin Defendants over a long time period. By settling their claims against BASF, the Debtor and the other members of the Dickstein Client Group will avoid the significant expenses involved in litigating these complicated issues.

d. Paramount Interests of Creditors. The proposed current settlement with BASF is part of an ongoing overall strategy to improve the Debtor's and the Dickstein Client Group's litigation and settlement positions with respect to their claims against the remaining Vitamin Defendants, and thereby maximize the potential damage recoveries of all the members of the Dickstein Client Group. The settlement with BASF leaves intact certain claims against other Vitamin Defendants. In light of the favorable settlement terms and the opportunity to maximize the overall recoveries in the Vitamin Litigation on behalf of the Debtor and the other members of the Dickstein Client Group, the proposed current settlement with BASF is consistent with the paramount interests of the Debtor and its creditors.

20. In addition to the foregoing, the BASF Settlement has been approved by each and every one of the other 153 members of the 154 member Dickstein Client Group, a group that includes very sophisticated companies. This unanimous approval by all members of the Dickstein Client Group provides further assurance that the BASF Settlement is a fair and reasonable compromise of the Debtor's claims.

21. Accordingly, the Debtor requests that the Court approve the BASF Settlement pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 9019(a).

Request for Relief Under Rule 9019(b)

22. Pursuant to Bankruptcy Rule 9019(a), the Debtor is required to seek bankruptcy court approval of any and all compromises or settlements that are entered into with respect to its claims against the Vitamin Defendants. The Debtor would also be required to provide notice of all motions for approval of such compromises or settlements to all creditors and the other parties specified in Bankruptcy Rule 2002. This Motion constitutes Debtor's request, in accordance with Bankruptcy Rules 2002 and 9019(a), to obtain Bankruptcy Court approval of certain anticipated

settlements in accordance with Bankruptcy Rule 9019(b) based upon the condition of Supermajority Approval described hereinbelow.

23. The delays and expense related to filing the expected series of motions under Bankruptcy Rule 9019(a) to approve each individual settlement that is contemplated in the Vitamin Litigation would impose an undue burden on the Debtor's estate and could be detrimental to the Debtor's ability to participate in binding settlements with the rest of the Dickstein Client Group. Any significant delay in Debtor's ability to negotiate and enter into binding settlements along with the other members of the Dickstein Client Group may exclude the Debtor from certain future settlements.

24. Accordingly, the Debtor hereby requests authority, without additional notice or hearing, to enter into binding and final settlement agreements with respect to its remaining claims against the Vitamin Defendants, provided that any such settlement agreements are otherwise approved (i) with respect to settlements of claims in the Federal Vitamin Litigation, by at least eighty percent (80%) of the individual members of the Dickstein Client Group at the time of each such settlement, or (ii) with respect to settlements of claims in the State Vitamin Litigation, by at least eighty percent (80%) of the State Vitamin Litigation Client Group at the time of each such settlement (each a "Supermajority Approval"). For example, under this approach, if at least 123 of the current 154 members of the Dickstein Client Group were to agree to a particular settlement or compromise with a certain Vitamin Defendant or subcategory of Vitamin Defendants, the Debtor would be authorized by this Court to exercise its business judgment and elect to participate in such settlement and enter into a binding and final settlement agreement with respect thereto, without the need to obtain further Bankruptcy Court approval of the settlement. In the event a proposed settlement with one or more Vitamin Defendants is not approved by at least

eighty percent (80%) of the members of the Dickstein Client Group or, as applicable, eighty percent (80%) of the State Vitamin Litigation Client Group, but is nonetheless supported by the Debtor, the Debtor will file an appropriate motion seeking approval of any such settlement in accordance with Bankruptcy Rules 2002 and 9019(a). The business judgment exercised by Debtor and at least 80% of the members of the Dickstein Client Group or the State Vitamin Litigation Client Group, as applicable, which groups include very sophisticated companies, to enter into particular settlements assures that the settlements are fair and reasonable compromises of the Debtor's claims. Thus, the Supermajority Approval procedure will ensure that any such settlement is fair and reasonable, while enabling the Debtor to enter into favorable time-sensitive settlements along with the other members of the Dickstein Client Group.

25. Bankruptcy Rule 9019(b) specifically authorizes this Court to permit Debtor to compromise or settle any or all of their claims against the Vitamin Producers in the Vitamin Litigation without additional notice or hearing. Bankruptcy Rule 9019(b) provides as follows:

> After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such classes without further notice or hearing.

Fed. R. Bankr. P. 9019(b). Pursuant to Section 1107(a) of the of the Bankruptcy Code, the Debtor has all the rights and powers of a trustee serving under Chapter 11 of the Bankruptcy Code.

26. B.C. Rogers Poultry, Inc. and Global Health Sciences, two other members of the Dickstein Client Group, are also operating as Chapter 11 debtors. The Bankruptcy Courts in both of those Chapter 11 cases have already entered orders authorizing those Chapter 11 debtor members of the Dickstein Client Group to compromise and settle their remaining claims against the Vitamin Producers in connection with the Vitamin Litigation under a substantially identical Supermajority Approval procedure. In fact, B.C. Rogers Poultry, Inc. and Global Health Sciences elected to join the other members of the Dickstein Client Group in the BASF Settlement based on

the authority granted pursuant to the Supermajority Approval procedure approved in their respective bankruptcy cases.

27. Under these circumstances, good cause is shown for the entry of an order under Bankruptcy Rule 9019(b) authorizing the Debtor to settle and compromise claims against Vitamin Producers that are subject to Supermajority Approval without additional notice or hearing because it will reduce administrative costs to the estate, significantly enhance the Debtor's ability to maximize their recovery on their Vitamin Litigation claims, and confer a significant benefit upon the Debtor, its creditors, and all other parties in interest in these bankruptcy cases.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) pursuant to Bankruptcy Rule 9019(a), approving the Debtor's settlement with BASF; (ii) pursuant to Bankruptcy Rule 9019(b), fixing the Vitamin Litigation as a class of controversies arising from pre-petition antitrust claims held by the Debtor and authorizing the Debtor to compromise or settle all remaining controversies and claims related to the Vitamin Litigation on a Supermajority Approval basis as described hereinabove without further notice or hearing; and (iii) granting the Debtor such other and further relief as the Court may deem just or proper under the circumstances.

Respectfully Submitted,

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