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**
	§	

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION TO ASSUME FACILITY LEASE AGREEMENT AND PROVIDE NOTICE OF INTENT TO EXERCISE OPTION UNDER THE LEASE TO PURCHASE THE FACILITY [DOCKET #1023]

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 Pipeline Company, and SFA, Inc. (collectively, the "Debtors"), files this Objection (the "Objection") to the Debtors' Motion to Assume Facility Lease Agreement and Provide Notice of Intent to Exercise Option Under the Lease to Purchase the Facility (the "Second Assumption Motion"). In support of this Objection, the Committee respectfully shows the following:

I.
FACTUAL AND PROCEDURAL 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. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

4. On July 12, 2002, the Debtors filed the a motion (the "First Assumption Motion") by which they sought to assume a certain Facility Lease Agreement (the "Lease"), under which the Debtors lease and operate ammonia facilities located in Enid, Oklahoma (the "Enid Facility"). The Lease is to expire in September 2003. In addition to the assumption of the Lease, the Debtors also requested in the First Assumption Motion that the Court authorize it to exercise a one-time option (the "Purchase Option") to purchase the Enid Facility at the expiration of the Lease for a purchase price of $25,465,300.00. In the First Assumption Motion, the Debtors have represented that they must exercise the Option on or before July 30, 2002.

5. After the filing of objections by the agent for the Debtors' secured post-petition lenders (the "Agent"), the Official Committee of Bondholders and the Committee, the Debtor and the lessor under the Lease (the "Lessor") entered into an agreement by which the Purchase Option was extended until October 31, 2002 in exchange for certain payments to the Lessor. As part of that agreement, the Lease was neither assumed nor rejected. This agreement was memorialized and approved by this Court in a order entered on July 26, 2002.

6. On October 15, 2002, the Debtors filed the Second Assumption Motion. In the Second Assumption Motion, the Debtors have once again requested that they be authorized to assume the Lease and exercise the Purchase Option – requiring the Debtors to purchase the Facility by September 2003 for a purchase price of $25,465,300.00.

III.
OBJECTION*

7. The Committee objects to the Second Assumption Motion because the Debtors have not satisfied their burden of showing that the assumption of the Lease and the exercise of the Purchase Option are valid exercises of the Debtors' business judgment. Based upon the information provided to the Committee – precisely what would be required for the Court to make a final determination on these same issues – the Committee is unable to justify the assumption of the Lease and the exercise of the Purchase Option. Therefore, the Committee must also object to the Second Assumption Motion and request that the Court deny the Second Assumption Motion.

8. Under Section 365 of the Bankruptcy Code, the standard for the Debtors' assumption of the Lease and the exercise of the Purchase Option is a "business judgment" standard. *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997). Indeed, under this standard, the Court must determine that whether the assumption would be beneficial to the estate. *In re Gateway Apparel, Inc.*, 210 B.R. 567, 570 (Bankr. E.D. Mo. 1997). This determination must include a consideration of (i) the effects that assumption would have on the debtor; (ii) the implications for the lessor; (iii) the benefit or detriment to unsecured creditors; (iv) and the significance of the lease to the debtor's reorganization. *Id.*

9. Based upon the information provided to the Committee, there are insufficient facts to satisfy the business judgment standard regarding the assumption of the Lease and the exercise of the Purchase Option. Considering the continuing difficulties in the fertilizer market, assumption of the Lease may only magnify the very problems that precipitated the filing of this bankruptcy case. Moreover, as the Court is aware, the Debtors have publicly announced its

* This Objection is based solely on information received from the Debtors at the time of the filing of this Objection. If the Committee subsequently receives sufficient information to consent to the relief requested in the Motion, the Debtor reserves the right to withdraw this Objection.

intention to sell its fertilizer operations as part of its reorganization efforts. In light of this fact, and without any binding offers from potential purchasers to either take on the Lease or purchase the Facility, it is possible that the Debtors may be stuck with the assumed Lease without any assurances that the Facility can be transferred through a sale of the fertilizer operations. Such a result would unreasonably burden the Debtors with the Lease at a sensitive time in this case.

10. However, more troubling to the Committee is the fact that the Debtor seeks to exercise the Purchase Option, *resulting in a potential administrative claim against the estate in excess of $25 million*, without sufficient justification that the purchase of the Enid Facility will benefit the Debtors or their creditors. With the sale of the Debtors' fertilizer operations in an embryonic stage, there are no assurances that any of the potential purchasers have an interest in acquiring the Facility. Even if such purchasers have an interest in the Facility, no evidence exists to reflect that the Debtors will recover $25 million for the Facility in a sale. Indeed, rather than providing any relevant appraisals or valuations of the Enid Facility, the Debtors simply allege that the value of certain ammonia facilities of the Debtors can be extrapolated to value the Enid Facility greater than the purchase price contemplated by the Purchase Option – with no consideration for the depressed market for such facilities. Essentially, in the absence of such basic information, the Debtors want the Court to believe that the exercise of the Purchase Option is in the best interest of the estate simply because they say so. The business judgment standard was designed to prevent this exact situation.

WHEREFORE, PREMISES CONSIDERED, the Committee respectfully requests that the Court enter an order: (i) denying the Debtors' Motion to Assume Facility Lease Agreement and Provide Notice of Intent to Exercise Option Under the Lease to Purchase the Facility; and (ii) granting such other and further relief as is just and proper.

Respectfully submitted this 24th day of October, 2002.

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.

By: /s/ Christopher A. Artzer

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ATTORNEYS FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection to the Debtors' Motion to Assume Facility Lease Agreement and Provide Notice of Intent to Exercise Option Under the Lease to Purchase the Facility has been served by first class mail, postage pre-paid on the Master Service List on this 24th day of October, 2002.

/s/ Christopher A. Artzer
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