

**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.)	

**RENEWED EMERGENCY MOTION FOR ORDER AUTHORIZING
DEBTORS TO CONTINUE TO HONOR INCENTIVES AND
PROMOTIONS IN THE ORDINARY COURSE OF BUSINESS
AND AUTHORIZING CERTAIN SET-OFFS**

COME NOW Farmland Industries, Inc., et al., Debtors and Debtors in Possession (“Debtors”), and submit their Renewed Emergency Motion for Order Authorizing Debtors to Continue To Honor Incentives and Promotions in the Ordinary Course Of Business (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

1. On May 31, 2002 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 1330, as amended (the “Bankruptcy Code”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Sections 1107(a) and 110 of the Bankruptcy Code.

2. Two official committees have been established in these proceedings.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and the Amended General Order of the United States District Court for the Western District of Missouri as amended. Venue of this case and motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Farmland Industries, Inc. ("Farmland"), is a Kansas corporation headquartered in Kansas City, Missouri. Farmland is organized and operated as a cooperative system of farm and food related businesses.

5. Farmland Foods, Inc. ("Foods"), is a Kansas corporation, 97% owned by Farmland. Farmland Foods is an integrated food processing company which owns and operates pork processing plants and markets the product from those plants.

6. The Debtors previously filed their Emergency Motion for Order Authorizing Debtors to Continue To Honor Incentives and Promotions in the Ordinary Course Of Business ("Previous Motion"), which was heard on June 4, 2002. At the hearing on the Previous Motion the Debtors agreed to the set-offs referenced herein only on an interim basis to try to work with, and explain the Debtors' situation with respect to the Incentives and Promotions, to the Committee of Unsecured Creditors and the Bondholders Committee.

7. This Motion is being filed under exigent and emergency circumstances with respect to the Debtors' vendor and customer relations. It is imperative that the Debtors have the full authority requested in the Previous Motion.

Description of Promotion and Incentive Programs

8. Foods has numerous promotional programs and incentives ("Promotions") it offers to both its retail and food service customers and vendors ("Customers"). These Promotions fall in numerous categories. Several Promotions deal with reimbursement for the cost of in-store product demonstrations and samples or for newspaper or in-store product advertising. Other Promotions deal with payments that are made to warehouse entities to carry new products ("Slotting"), payments made to customers for Farmland issued coupons ("Coupons"), payments made to customers for instances where a product in their possession ages beyond a sell or freeze by date ("Short Code Warehouse"), payments made to customers to set

up or stock new stores (“Store Merchandising”), payments made to customers to sponsor sports teams wherein the Farmland name is acknowledged (“Sponsorships”), or payments made to customers (usually food service) for marketing programs (“Trade Incentives”). Still other Promotions deal with rebates. Some rebates are based on tonnage or cases or reconcile or reimburse between an operator’s contract pricing and distributor pricing (“Billbacks”); other rebates which are similar to Billbacks apply exclusively to schools and other similar institutions (“Flex Bids”). Food Service additionally has a buying group rebate for agreed upon rates (known as “Colabels”). Another area of Promotions are bookkeeping allowances for future promotional expenses of all types (“Promotional Accruals”). Additionally, there are several items of brand advertising that apply to both the retail and food service sides of Foods:

(1) Product informational materials (“Fact Sheets”); (2) payments to customers to participate in food shows (“Food Shows”); (3) credits given for free product to try out product or for sales purposes (“Samples”); (4) sponsorship of sporting events (“Sporting Events”); or, as previously mentioned, consumer discounts used at stores (“Coupons”). Finally, Foods, like its competitors, offers a promotion to its customers which consists of amounts added to invoices in an agreed upon rate, then reimbursed back to the customer on a set schedule, usually monthly (“Shelters”). Nonmonthly shelters are referred to as “Pricing Accruals”.

9. Much of the above described Promotions are historically dealt with between Foods and its customers by deduction from payments owed to Foods by the customer for the promotional amounts owing by Foods to the customer. Other of these promotional items have traditionally been paid by Foods to the other party by check.

Relief Requested

10. Promotions are integral to Foods’ business and its customer and vendor relations. It is critical at this early juncture of its bankruptcy proceedings that Foods not lose

warehouse or store space, promotional abilities or sales because of the failure to honor its obligations and commitments to its customers and vendors.

11. Additionally, Foods believes many of these amounts are subject to setoff by the customers or vendors pursuant to 11 U.S.C. § 553 or via the right of recoupment.

12. Foods requests that this Court authorize Foods' customers and vendors to setoff prepetition amounts owing by Foods to the customers and vendors for promotions against prepetition amounts the customers owe to Foods and/or to recoup the pre-petition promotional amounts owed by Foods against any post-petition amounts that the customers may owe to Foods, if necessary to reach a "zero balance" in the corresponding entities' liabilities to each other. In the event that setoff or recoupment does not completely satisfy Foods' obligations to the vendors and customers, or does not apply to the Foods' liability to certain customers or vendors, Foods requests court authority to pay any outstanding promotion based liability to customers or vendors.

13. Foods operates in a highly competitive and cut-throat industry. Many of its customers and vendors operate on extremely narrow margins and the failure to honor these incentives and promotions will be extremely disruptive to these customer and vendor relationships. Foods believes that it could lose a significant portion of its customer and vendor base if Foods does not pay these promotions and incentives - this could jeopardize the continued viability of Foods as an ongoing entity.

14. Foods' competitors are honoring incentives and promotions in this highly competitive/low margin business and Foods has to remain competitive to remain a player in the industry.

15. Foods has invested significant pre-petition expenses in developing its customer and vendor base and the shelf space/product coverage and other benefits it enjoys as a

result of these expenditures and its existing relationships with customers and vendors. These relationships are not readily replaceable.

16. Additionally, with respect to Foods' smaller customers and vendors, this group is very beneficial to Foods' bottom line and these customers may not be able to absorb and will not tolerate the failure to honor the incentives and promotions they have earned.

17. Logistically, the timing of accrual and claiming of incentives and promotions by Foods' customers and vendors makes setoff versus recoupment or payment largely unworkable and certainly undesirable because customers would have to hold payment in order to finalize the calculations necessary to take the promotions and incentives owing to them from their payment for the product purchase through which the promotion or incentive is earned. This approach would obviously hurt cash flow.

18. Bankruptcy Courts have permitted debtors in possession to pay pre-bankruptcy claims on the grounds that payment of such pre-bankruptcy claims was necessary to effect a successful reorganization, e.g., In re Chateaugay Corp., 80 B.R. 279 (Bankr. S.D.N.Y. 1987); In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989); see also, 11 U.S.C. § 105(a). Although these published decisions do not specifically address promotions, courts have relied on the business necessity rule to allow retail Chapter 11 debtors to honor prepetition coupons or similar obligations. See unpublished orders in Houlihan's Restaurants, Inc., et al. (W.D. Mo. 2002), P.A. Bergner & Co., Holding Co., et al. (Wisc.), R. H. Macy & Co., Inc., et al. (S.D.N.Y.), and Best Products Co., Inc., et al. (S.D.N.Y.). Copies of these four orders are attached and incorporated herein collectively as **Exhibit A**. The Debtors submit that these decisions and orders, together with the authority of this Court under 11 U.S.C. § 105, provide ample authority for the relief requested.

19. This motion is being filed under exigent circumstances. Debtors respectfully request that the hearing of this Motion be set on the next docket, which is scheduled for June 20, 2002.

WHEREFORE, the Debtors respectfully request that this Court enter its Order authorizing Foods to honor its incentives and promotions in the ordinary course of business, and granting such other and further relief as is just and proper.

FARMLAND INDUSTRIES, INC., ET AL.

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SUMMARY OF EXHIBIT

The following exhibit in reference to the Emergency Motion for Order Authorizing Debtors to Honor Pre-petition Coupons is available upon request:

Exhibit A: Unpublished orders in Houlihan's Restaurants, Inc., et al. (W.D. Mo. 2002), P.A. Bergner & Co., Holding Co., et al. (Wisc.), R. H. Macy & Co., Inc., et al. (S.D.N.Y.) and Best Products Co., Inc., et al. (S.D.N.Y.)

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