

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MISSOURI

In re:)
)
FARMLAND INDUSTRIES, INC.) Case No. 02-50557-JWV
)
Debtor.)

**OBJECTION OF THE UNITED STATES TRUSTEE AND REQUEST FOR
RECONSIDERATION OF THIS COURT'S APPROVAL OF DEBTOR'S
EMERGENCY MOTION FOR ORDER AUTHORIZING PAYMENT OF
PREPETITION WAGES, SALARIES, REIMBURSABLE EMPLOYEE EXPENSES
AND MEDICAL AND OTHER EMPLOYEE BENEFITS**

Pursuant to 28 U.S.C. § 586(a)(3), the United States Trustee respectfully objects to Debtor's Emergency Motion for order authorizing payment of prepetition wages, salaries, reimbursable employee expenses and medical and other employee benefits (hereinafter, the "Motion"). In support hereof, the United States Trustee respectfully alleges as follows:

1. On May 31, 2002, 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").

2. 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. No trustee or examiner has been appointed.

3. An official committee of creditors and an official committee of bondholders were appointed and retained counsel on June 3, 2002.

4. Among Debtor's first day motions was the instant Motion and an Emergency Motion for Expedited Hearings on Certain Motions and Applications.

5. 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.

6. 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.

7. Collectively, Farmland and its operating subsidiaries employ approximately 8,000 salaried and hourly employees.

8. At this Court's hearing of June 4, 2002, the United States Trustee raised oral objections to those portions of Debtor's motion requesting permission to pay \$146,833 in prepetition life insurance claims (para 28, page 8), \$333, 645 in prepetition severance payments (para 47, page 15), prepetition amounts due from the "CEO Discretionary Fund (para 54, pp 17-18), and wage payments to any employee in excess of the \$4,650 amount allowed by 11 U.S.C., section 507 (para 55, p18).

9. This Court's Order approving Debtor's motion provided, in part, "if a party files and serves a timely objection in accordance with the foregoing, the Court shall conduct a hearing on June 20, 2002, at 1:30 p.m. (Kansas City, Missouri, time) to address the objection of that party; provided, however, this order shall be deemed to be final with respect to all other parties that do not file timely objections as provided herein.

10. The United States Trustee discussed the issues set out in Paragraph 8 with Debtor's counsel, who represented the following: contrary to the assertion in Debtor's pleading, there are no current employees who have been, or will be paid in excess of \$4,650.00 in prepetition wages; there are no unpaid prepetition commitments outstanding from the "CEO Discretionary Fund; the Debtor has agreed to withdraw its request for payment of \$146,833 in prepetition life insurance claims.

11. The Debtor and the United States Trustee were unable to agree on one issue and the United States Trustee hereby reasserts its objection and asks this court to reconsider its approval of Debtor's emergency request to pay \$333, 645 in severance payments to employees terminated prepetition to the extent that any payment would exceed the \$4,650 priority set out under 11 U.S.C. section 507(a)(3)(A), and in support thereof states as follows:

- A. The Debtor has made no showing of how much of the \$333,645 in proposed payments fall within or exceed the priority granted under section 507(a)(3)(A).
- B. A number of bankruptcy cases have examined the issue of employees' entitlement to severance pay, *see generally*, Colliers on Bankruptcy, 506.06[7][e] (15th ed.), focusing on the issue of when the severance pay was earned. Such an analysis is not necessary here because the United States Trustee objects not to continuation of the Debtor's severance pay policy for current employees, but only to payment in excess of the section 507 priority for those employees terminated prior to filing.
- C. The Bankruptcy Code is exceedingly clear on what types of claims are entitled to priority.
- D. Debtor relies on § 105(a) and the Doctrine of Necessity for authority to pay these

pre-petition employee claims out of turn. Section 105(a), however, is unavailing
E. To invoke the Doctrine of Necessity, the burden of proof is on the Debtor to demonstrate “that, absent payment of the pre-petition debt in question, the debtor’s rehabilitative effort would be immediately aborted.” In re Structurlite Plastics Corp., 86 B.R. 922 (Bankr. S.D. Ohio 1988); see also In re NVR L.P., 147 B.R. 126, 128 (Bankr. E.D. Va. 1992) (proponent must prove “substantial necessity”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991 (debtor must demonstrate payment is “necessary to avert serious threat”).

F. Furthermore, Debtor must show that such payment “confers a benefit to the estate and not merely to the payee.” In re Ionosphere Clubs, Inc., 101 B.R. 844, 856 (Bankr. S.D.N.Y. 1989).

G. The Debtor has offered no evidence pursuant to the “Doctrine of Necessity” as to how payments to individuals terminated prepetition will aid the Debtor in its reorganization and future operations.

H. It is unlikely that any significant portion of the success of Debtor’s reorganization or future operations depends on maintenance of good morale of among former employees terminated by the Debtor prior to filing its bankruptcy.

WHEREFORE, the United States Trustee prays this Court reject Debtor’s emergency request to pay \$333,645 in prepetition severance claims, and for other such relief as is just and proper.

JOEL PELOFSKY
UNITED STATES TRUSTEE

PAULA C. ACCONCIA
ASSISTANT UNITED STATES TRUSTEE

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