IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI

In re	)	
	)	**Case No.: 02-50557-JWV**
Farmland Industries, Inc., et al.,	)	**Joint Administration**
	)	
Debtors,	)	
	)	
	)	**Chapter 11**
	)	
	)	**MOTION FOR RELIEF FROM THE**
v.	)	**AUTOMATIC STAY**
	)	
	)	
Debtor,	)	
	)	
Paula C. Acconcia	)	**Paula C. Acconcia**
	)	**Office of the U.S. Trustee, Room 3440**
Trustee.	)	**400 East 9th Street**
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SAINT-GOBAIN NORPRO CORPORATION'S
MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM OR MODIFICATION OF AUTOMATIC STAY

COMES NOW Movant, Saint-Gobain Norpro Corporation ("Saint Gobain"), and for its Memorandum in Support of its Motion for Relief from or Modification of Automatic Stay to Bankruptcy states:

1. Farmland Industries, Inc. ("Farmland"), filed its Chapter 11 Bankruptcy petition on May 31, 2002 and it is currently pending before this Court.

2. This Court has jurisdiction to hear and determine this motion pursuant to 28 U.S.C. §§ 157 and 1334, Bankruptcy Rule 9014 and Bankruptcy Rule 4001. This motion is a core proceeding under 28 U.S.C. § 157(b)(2)(G).

3. On May 31, 2002, this Court entered an Order granting relief under Chapter 11 to Farmland Industries, Inc. ("Farmland"). In conjunction therewith, the Court entered its Order staying certain acts and proceedings against Debtor and its property as provided by 11 U.S.C. § 362(a). Saint Gobain files this Motion for Relief From or Modification or the Automatic Stay pursuant to provisions of 11 U.S.C. §§ 362 (d) and 11 U.S.C. § 1301.

4. On August 6, 2002, Saint Gobain filed a mechanic's lien against certain real property located in Montgomery County, Kansas and more commonly known as the Coffeyville, plant refinery. (hereinafter referred to as "Subject Real Estate").

5. On August 6, 2002, Saint Gobain filed its Mechanic's Lien Statement with the District Court of Montgomery County, Kansas at Independence, and has been given the mechanic's lien number of 02 ML 100I.

6. Farmland has a fee simple interest in the Subject Real Estate.

7. Saint Gobain Mechanic's Lien arises out of a contract with Farmland in which Saint Gobain agreed to provide certain labor, equipment, materials and supplies to Farmland for the installation of certain tunnel cap trays on the Farmland Coffeyville, Kansas refinery located at Coffeyville, Kansas. A description of all unpaid labor, materials, supplies and subcontract work incorporated into said project and the quantity and price thereof are set forth in St. Gobain's Mechanic's Lien Statement.

8. Saint Gobain is owed Sixty-Two Thousand Eight Hundred Twenty-Five and no/100 Dollars ($62,825.00) plus interest under its contract with Farmland as of the date of the

bankruptcy petition which amount is the subject of the Montgomery County, Mechanic's Lien.

9. As no amount has been paid to Saint Gobain, the full contract balance of $62,825.00 plus interest is due and owing to Saint Gobain.

10. K.S.A. §60-1105(a) requires that an action commence within one year of lien statement filing to perfect the lien. *In re Birdview Satellite Communications, Inc.*, 90 B.R. 465,470 (1988). K.S.A §60-1105.

11. Where a statute defines duration of lien and suit is not brought within such time, a lien expires irrespective of alleged agreements or waivers to contrary. K.S.A. 60-1101 *et. seq.*, *Boyce v. Knudson*, 548 P.2d 712 (Kan. Sup. Ct. 1976).

12. In Kansas, the commencement of a timely foreclosure action, in addition to the filing of a verified lien statement, is necessary to perfect a mechanic's lien. *In re Birdview Satellite Communications, Inc.*, 90 B.R. 465 (1988).

13. A Chapter 11 Trustee can avoid a lien as unperfected when the claimant does not commence a foreclosure action within one year. *Birdview Satellite Communications, Inc.*, citing Bank R. Code, 11 U.S.C.A. §546 (b); K.S.A. §60-1105(a).

14. The provision in Kansas mechanic's lien law requiring foreclosure action to be brought within one year is a statute of duration, rather than a statute of limitation. Therefore, the one year period in K.S.A. §60-1105(a) is not tolled upon the filing of a bankruptcy petition. *In re Birdview Satellite Communications, Inc.*, 90 B.R. 465,470 (1988).

15. In relevant part, §362(d) of the Bankruptcy Code provides that:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay:
(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
(2) with respect to stay of an act against property under subsection (a) of this section, if:
(A) the debtor does not have equity in such property; and
(B) such property is not necessary to an effective reorganization.

16. Cause for the Lift of Stay is Apparent - Saint Gobain's Motion for the lift of stay is supported by "good cause" as:

(a) Farmland has failed to pay $62,825.00 due to Saint Gobain for certain labor, equipment, materials and supplies pursuant to said contract.

(b) Farmland has expressed no current intention of curing this significant deficiency;

(c) Farmland has not provided Saint Gobain with any assurance that Saint Gobain would obtain an interest on the significant principal amounts due and for which the lien exists;

(d) The Subject Real Estate upon which Saint Gobain worked is currently in use by Farmland and Farmland has not provided any assurance or adequate protection which would insulate Saint Gobain from damage as the Subject Real Estate may depreciate in value.

(e) Saint Gobain has no ability to protect the Subject Real Estate or to prevent diminution in value during the time it awaits foreclosure and sale; and

(f) Farmland has not provided evidence that the Subject Real Estate is insulated from loss due to appropriate levels of insurance coverage.

17. The Subject Real Estate in which Saint Gobain has a lien is not necessary to Farmland for a successful reorganization. In that, on July 31, 2002, at the First Meeting of Creditors, Farmland's President Robert Terry testified that the petroleum processing business and the refinery at Coffeyville were not core assets of Farmland, that the Coffeyville refinery was for sale, and that Farmland was endeavoring to move out of the petroleum processing industry and focus on other areas of economic development, including meat processing and fertilizer. *See* §341 Meeting Transcript at pp. 38, 58, 66-68. Farmland cannot carry its burden that the Subject Real Estate liened by Saint Gobain is essential for an effective reorganization. In order to satisfy this burden, Farmland must prove "that the property is essential for an effective reorganization that is in prospect." *United Sav. Ass'n. of Texas v. Timbers of Inwood v. Forest Assoc., Ltd.*, 484 U.S. 365, 376 (1988) (emphasis in original). Not only can Farmland not establish that the Subject Real Estate is essential for Farmland's reorganization, Farmland cannot establish that an effective reorganization is "in prospect;", to the contrary, Farmland and its counsel continue to ask for more time to formulate a proposed plan of reorganization.

18. No cause for delay exists in lifting the stay. Saint Gobain anticipates that Farmland will argue that it has not been afforded adequate time to (a) assess the value of the Subject Real Estate, (b) determine the validity of the lien, and (c) determine the priority of the liens and encumbrances on the property. These arguments do not apply to Saint Gobain's mechanic's lien. Upon information and belief, there are existing competing lien claims against Subject Real Estate, including mortgage liens, mechanic's liens, and artisan's liens

which are required to be resolved under the laws of the State of Kansas and would best be resolved utilizing a Kansas state District Court with primary jurisdiction of liens and priorities under Kansas law. If the foreclosure of the liened Subject Real Estate results in funds or monies which exceed the value of the amounts liened plus interest, Farmland benefits by recovering the excess cash from the sale of Subject Real Estate. Determining the validity of the lien can be readily and efficiently accomplished through the state foreclosure action. The mechanic's lien and the suit to foreclose are created by the Kansas statute and this matter would be more efficiently resolved in the state court of the county where the property is located, and where the Court docket is likely less crowded and able to solve this lien promptly.

19. Saint Gobain moves the Court to lift the stay for cause as it has not been provided adequate protection of its interest in the Subject Real Estate and, for the further reason that Farmland has no equity in the Subject Real Estate and the Subject Real Estate is not necessary for an effective reorganization.

20. For all of these reasons, grounds exist for granting relief from the automatic stay, effective immediately upon entry of such an Order. *See* *In re Houts*, 23 B.R. 705 (Bkrtcy. W.D.Mo., 1982).

21. Saint Gobain requests the Court lift its Stay Order thereby allowing Saint Gobain to proceed to file suit and obtain a judgment in the District Court of Montgomery, Kansas and allowing Saint Gobain to file an action to foreclose said lien on the Subject Real Estate

to satisfy Farmland's obligations within the one year time limit provided by K.S.A. §60-1105.

WHEREFORE, Saint Gobain Norpro Corporation requests this Court grant its Motion for Relief From or Modification of Automatic Stay by:

(a) entering its Order vacating or modifying the automatic stay of 11 U.S.C. 362 (a) to permit Movant to file suit to enforce its rights in the Subject Real Estate in which Saint Gobain has filed its mechanic's lien, and allowing Saint Gobain to prosecute the suit in the District Court of Montgomery County, Kansas to enforce its mechanic's lien, to proceed with enforcing its lien to satisfy the debt of Farmland to Saint Gobain, or

(b) in the alternative entering its Order vacating or modifying the automatic stay of 11 U.S.C. 362(a) to permit Saint Gobain to file suit to enforce its rights in the Subject Real Estate in which Movant has a duly perfected mechanic's lien, and allowing Saint Gobain to prosecute the suit in the District Court of Montgomery County, Kansas to enforce its mechanic's lien, and to obtain a judgment in such action, with a stay of execution pending approval of this Court, and

(c) for such further relief as the Court deems just, equitable and proper in the premise.

Respectfully Submitted,

MOORE HENNESSY & FREEMAN, P.C.

By: /s/ James F. Freeman III

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ATTORNEYS FOR SAINT-GOBAIN NORPRO CORPORATION

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of September, 2002 a true and correct copy of the foregoing was served via ECF notification. and copies were mailed via First Class U.S. Mail, postage pre-paid to those persons set forth in the separate Certificate of Service filed herewith.

/s/ James F. Freeman III
ATTORNEYS FOR SAINT-GOBAIN