

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MISSOURI**

<b>In Re:</b>	)	<b>In Proceedings Under Chapter 11</b>
	)	
<b>FARMLAND INDUSTRIES, INC., et al.,</b>	)	<b>Case No. 02-50557</b>
	)	<b>Joint Administration</b>
<b>Debtors.</b>	)	

**MOTION FOR APPROVAL OF PROPOSED SETTLEMENT  
WITH ALMYRA FARMERS ASSOCIATION**

SFA, Inc. (“SFA” or “Debtor”), a debtor and debtor in possession in these jointly administered cases, pursuant to Rule 9019(a), 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 approving the proposed settlement of the Debtor’s claims against Almyra Farmers Association (“Almyra”) and Almyra’s claims against Debtor (the “Settlement”).

**Background**

1. On May 31, 2002, (the “Petition Date”), Farmland (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. Debtors are continuing in possession of their respective properties and are operating and managing their business, as debtors 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. Farmland, 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.

#### **Underlying Basis of the Claims**

5. On or about April 26, 2002, Almyra and Debtor SFA entered into a purchase agreement (“Agreement”) wherein SFA sold Almyra certain assets including real and personal property located in Stuttgart, DeWitt, and Gillett, Arkansas.

6. The Purchase Agreement provided for Almyra’s purchase of certain accounts receivable, as well as SFA’s payment of prorated property taxes and undertaking of certain Schedule D projects.

7. Since the closing, several items have arisen that create some dispute between the parties.

8. Due to funding shortfalls existing on the closing date, Almyra owes SFA a remaining \$119,788.06 under the total \$3.1259 million purchase price under the Agreement.

9. Under the terms of the Purchase Agreement, SFA transferred its accounts receivable to Almyra at a seven percent discount of the face value; however, SFA had the right to buy back up to \$80,000 in uncollected accounts remaining after 120 days or August 27, 2002. The \$80,000 buy-back allowance was deducted from the initial settlement, thus establishing a credit.

10. It was recently discovered that SFA's payments to Almyra at closing for prorated personal property and real estate taxes were short by \$6,111.82. The shortfall is due to inappropriate exclusion of personal property bills for vehicles transferred under the Agreement.

11. Under the Agreement's Schedule D, Environmental Action Completion List for Property Sale, SFA was obligated to perform certain facility upgrades on the transferred real estate. The parties believe that the reasonable cash value of the Section D action items is \$53,000.00.

### **Relief Requested**

12. The parties wish to resolve the various obligations and funding issues under the Agreement as follows:

- a. SFA will buy back \$37,987.00 in uncollected accounts receivable.
- b. Almyra will accept responsibility for three questionable accounts totaling approximately \$30,226.05; however, SFA will discount them by another 20% for a total discount on those three items of \$6,045.21.

13. After consideration of all of the adjustments referenced in this Motion, the net amount of cash Almyra will owe SFA under the Agreement is \$96,730.16.

14. As resolution of all remaining payments required under the Agreement, Almyra will transfer \$37,987.00 in accounts receivable to SFA and will pay SFA \$96,730.16, which represents the balance owed SFA after subtracting the reasonable value of the work owed to Almyra by SFA.

15. Upon approval of this Agreement, SFA's obligations under Schedule D will be deemed completely satisfied.

16. As part of the consideration for the payments described herein, Almyra agrees not to file or assert against SFA or any related debtors, their estates or any other person or entity or any of their respective assets or property, any claim or lien related in any way to any remaining pre-petition amounts allegedly owed to Almyra by the Debtors. Additionally, if Almyra has taken steps to file or assert such a lien prior to entering into the Agreement, Almyra agrees to take all necessary steps to release such lien as soon as possible.

### **Applicable Standards**

17. In deciding whether the proposed Settlement is fair, equitable and in the best interests of the Debtors' estates and creditors, this Court should consider four factors that have been distilled from the United States Supreme Court's decision in 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 (8<sup>th</sup> Cir. 1984); American Can Co. v. Herpel (In re Jackson Brewing Co.), 624 F.2d 605, 607 (5<sup>th</sup> 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 MEC and MGS/MGL, as well as Davis, SFA 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 Debtors' estates.

a. Probability of Success. The probability of SFA proving that Almyra is liable for amounts under the Agreement is high; the probability of Almyra

proving that adjustments to those amounts are appropriate is likewise high. Costly and time consuming litigation to further substantiate Farmland's claims against Almyra and vice versa would undoubtedly arrive at a result similar to this proposed settlement.

b. Risks of Collection. As is demonstrated by the discussion above, pursuit of litigation will increase expenses with little chance of providing SFA a significantly greater recovery than it will receive as a result of the Settlement.

c. Complexity of Litigation. When considering the complexity of litigation in this matter, one must look at the various claims of the parties under the Agreement and the potential Schedule D ongoing liability. But for this Settlement, those claims could drag on for a considerable amount of time and could delay and even reduce any payment to SFA.

d. Paramount Interests of Creditors. The proposed Settlement, SFA believes, will result in the best possible recovery by SFA from Almyra. In addition, the proposed Settlement conserves assets for use in other more truly disputable matters. In light of the favorable settlement terms, the proposed Settlement is consistent with the paramount interests of SFA and its creditors.

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

19. This Motion is being filed under exigent circumstances. Debtors believe that it is in the best interests of the estates and the parties in interest that the Motion be heard as expeditiously as possible. Debtors respectfully request that a hearing regarding this Motion be set on 19 days notice rather than 20 days, as required by Standing Order No. 1 in these

proceedings, such that it will be taken up at the hearing scheduled for November 5, 2002, at 2:30 p.m.

WHEREFORE, SFA respectfully requests that the Court enter an order pursuant to Bankruptcy Rule 9019(a), (i) approving the proposed Settlement and (ii) granting SFA such other and further relief as the Court may deem just or proper under the circumstances.

Respectfully submitted,

FARMLAND INDUSTRIES, INC., ET AL.

By: /s/ Robert M. Thompson

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the above-referenced Motion for Approval of Proposed Settlement with Almyra Farmers Association was served on those parties listed below and on those parties which do not received electronic notice in these proceedings, via U.S. Mail, postage prepaid, on October 17, 2002.

/s/ Cynthia Dillard Parres