

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

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

**MOTION FOR ENTRY OF AN ORDER, PURSUANT TO 11 U.S.C. § 365,
AUTHORIZING DEBTORS TO ASSUME SERVICE AGREEMENT
WITH BERNSTEIN-REIN ADVERTISING, INC.**

COME NOW Farmland Industries, Inc., et al., debtors and debtors in possession (“Debtors”), and submit their Motion for Entry of an Order, Pursuant to 11 U.S.C. § 365, Authorizing Debtors to Assume Service Agreement with Bernstein-Rein Advertising, Inc. (the “Motion”). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. On May 31, 2002 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for reorganization relief under Chapter 11 of the United States Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

2. No trustee or examiner has been appointed. Two official committees of creditors have been established.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 1334 and 157. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

4. Farmland Foods, Inc. (“Foods”) and Bernstein-Rein Advertising, Inc. (“BR”) are parties to an Agreement (as amended and supplemented, the “Agreement”), dated July 1, 1999, with respect to advertising and other promotional services (“Services”). The

Agreement is referenced on the attached summary of exhibits as Exhibit A and a true and correct copy of the Agreement is available upon request.

5. Under the Agreement, BR is to provide creative and promotional services to Foods. Such services include:

- Media Buying;
- Marketing research;
- Web site creation and maintenance;
- Brand development;
- Promotion Development and execution.

6. Foods and BR have maintained a relationship for the past ten (10) years. BR has been intimately involved in Foods' planning process for 2003 and provides an in-house senior representative at Foods' headquarters as well as a dedicated team focused entirely on the Foods business. By virtue of the parties' long-term relationship, BR has proprietary knowledge about Foods and the industry that is not easily transferable or generally available in the advertising agency market.

7. BR's unique capabilities developed over the historical term of the parties' relationship allow Foods to maintain a leaner marketing and support services staff than Foods would need if it were to utilize another agency or agencies.

8. BR is the largest agency in Kansas City, the 48th largest nationally, and one of the ten largest independent agencies in the country. Because of its size and prominence, BR offers a full line of creative and promotional services to Foods.

9. Additionally, BR purchases over \$300 million worth of media per year for such clients as WalMart, Blockbuster and McDonald's. BR is one of the few agencies that purchases media directly from local media sources. This relationship with local markets allows

Foods to buy local spot media below the prevailing national rates. This relationship benefit saved Foods \$1.6 million in local media costs during fiscal year 2002.

10. If Foods' relationship with BR was to terminate, the cost of promoting the Foods brand would increase ten to twenty percent, which would add approximately \$2 million per year to Foods' cost structure.

11. As of the Petition Date, BR is owed the sum of \$889,520.60 for pre-petition services rendered to Farmland under the Agreement (the "Pre-Petition Debt").

12. Since the Petition Date, the Debtors have engaged in discussions and negotiations with BR regarding the amounts owed to BR under the Agreement and Farmland's need for BR's services going forward.

13. Based on its negotiations with BR, the Debtors have determined, in the exercise of their business judgment, that it would be in the best interest of their creditors and bankruptcy estates to immediately amend and assume the Agreement. The letter setting forth the amendments to the Agreement is referenced on the attached summary of exhibits as Exhibit B and a true and correct copy of the letter is available upon request.

14. In order to facilitate such assumption, Farmland has obtained the consent of BR to such amendment and assumption and to the payment of fifty percent (50%) of the Pre-Petition Debt, or \$444,760.30 (the "Cure Amount"), in full satisfaction of the Pre-Petition Debt. BR will waive the balance of the Pre-Petition Debt.

15. BR will be compensated for future services to be provided to Foods in accordance with the terms of the amended Agreement (the "Amended Agreement").

16. The Amended Agreement provides that BR will provide Services to Foods for a minimum term of one year.

RELIEF REQUESTED

17. Pursuant to this Motion, the Debtors request that the Court authorize Foods to assume the Amended Agreement in accordance with Bankruptcy Code § 365 and Bankruptcy Rule 6006 .

18. Section 365(a) of the Bankruptcy Code, which has been interpreted as incorporating the business judgment standard, authorizes Farmland's assumption of the Amended Agreement. See Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific RR Co., 318 U.S. 523, 550 (1943) (“the question whether a lease should be assumed is one of business judgment”). The business judgment rule shields a debtor's management from judicial over scrutiny. See In re Johns-Manville Corp., 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.”). Once a debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

19. Indeed, when applying the “business judgment” standard, courts show great deference to a debtor's decision to assume an executory contract. See e.g., In re Summit Land Co., 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor's decision to assume an executory contract “should be granted as a matter of course”).

20. This Court should, therefore, approve the assumption of the Amended Agreement if the Debtors demonstrate a sound business justification for such an assumption. See In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983); In re Delaware Hudson Ry. Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991).

21. As set forth above, the Debtors have requested and BR has agreed to accept payment of fifty percent (50%) of the Pre-Petition Debt as the total Cure Amount for the assumption. BR has further agreed to amend the Amended Agreement to provide a one-year service guarantee to Foods.

22. Foods requires BR's services to market its business and products

23. The costs associated with switching to another advertising agency exceed the costs associated with curing the Pre-Petition Debt under the Amended Agreement.

24. Furthermore, not only would retention of another advertising agency be cost-prohibitive, but also, Foods would lack the benefit of BR's unique knowledge and experience regarding Foods' business and media needs.

25. The Debtors submit that there exists a sound business justification for the proposed assumption of the Amended Agreement.

26. Section 365(b)(1) of the Bankruptcy Code codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee:

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor

to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

27. The Debtors believe that they have satisfied the requirements of Bankruptcy Code § 365(b)(1) in connection with the assumption of the Amended Agreement. The Debtors are not aware of any defaults in connection with the Amended Agreement except for the Debtors' obligation with respect to the Cure Amount. As set forth above, the Debtors have reached an agreement with BR regarding the payment of the Cure Amount.

28. 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, the Debtors respectfully request that the Court enter an Order authorizing Farmland to assume the Amended Agreement in accordance with Bankruptcy Code § 365 and Bankruptcy Rule 6006, and for such other and further relief just and proper.

Respectfully submitted,

FARMLAND INDUSTRIES, INC., ET AL.

By: /s/ Cynthia Dillard Parres

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Attorneys for Debtors and Debtors in Possession

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above referenced Motion for Entry of an Order, Pursuant to 11 U.S.C. § 365, Authorizing Debtors to Assume Service Agreement with Bernstein-Rein Advertising, Inc. was served on those parties listed below and those parties which do not receive electronic notice in these proceedings, via U.S. Mail, postage prepaid, on October 18, 2002.

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 /s/ Cynthia Dillard Parres

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SUMMARY OF EXHIBIT

The following exhibit in reference to the Motion for Entry of an Order, Pursuant to 11 U.S.C. § 365, Authorizing Debtors to Assume Service Agreement with Bernstein-Rein Advertising, Inc. is available upon request:

Exhibit A: Services Agreement between Debtors and Bernstein-Rein Advertising, Inc.

Exhibit B: Letter Amendment between Debtors and Bernstein-Rein Advertising, Inc.

Respectfully submitted,

FARMLAND INDUSTRIES, INC., ET AL.

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