

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

<b>In Re:</b>	)	<b>In Proceeding Under Chapter 11</b>
	)	
<b>FARMLAND INDUSTRIES, INC., et al.</b>	)	<b>Case No.: 02-50557-JWV</b>
	)	<b>Jointly Administered</b>
<b>Debtors.</b>	)	

**SUGGESTIONS IN OPPOSITION TO EMERGENCY  
MOTION TO INTERIM AND FINAL ORDER  
AUTHORIZING DEBTORS TO INCUR POSTPETITION  
SECURED INDEBTEDNESS AND GRANTING SECURITY  
INTERESTS AND PRIORITY PURSUANT TO 11 U.S.C. § 364**

Secured Creditor Alliance Process Partners, L.L.C., d/b/a International Alliance Group (hereinafter “IAG”) objects to the Emergency Motion for Interim and Final Order Authorizing Debtors to Incur Post-Petition Secured Indebtedness and Granting Security Interests and Priority Pursuant to 11 U.S.C. § 364 (“Emergency Motion”) to the extent such Emergency Motion seeks to confer upon Deutsche Bank Trust Company Americas, as agent, and a group of banks, financial institutions and other credit investors, (collectively the “Lender”), certain superpriority status which would subordinate, “prime” or negatively impact the valid and binding Kansas Statutory Artisan’s Liens held by IAG on certain personal property owned by Farmland Industries, Inc.

On May 31, 2002, Farmland Industries, Inc. (“Farmland”), Farmland Foods, Inc. (“Foods”), SFA, Inc. (“SFA”), Farmland Pipeline Company (“Pipeline”), and Farmland Transportation, Inc. (“Transportation”), Debtors and Debtors in Possession (collectively the “Debtors”), filed with the court their Emergency Motion. Pursuant to the Emergency Motion, the Debtors seek for the Court to grant the Lender certain superpriority security interests in favor of the Lender as security for the obligations under the Debtor In Possession “DIP” Credit Facility. See ¶¶ 17, 19 of Emergency Motion. As explained in paragraph 19 of the Emergency Motion, the security interests and liens granted by the Court in response to the Emergency Motion would provide the Lender as security

“valid and perfected first- priority security interests in and liens upon all Collateral, superior to and with priority over all other security interests and liens whether consequential or non-consequential, statutory or otherwise, and whether existing now or in the future, except as to the Carve Out and Permitted Liens . . .” (emphasis added).

Secured creditor IAG hereby objects to any grant of lien with super priority status to the Lender which would interfere with or otherwise usurp, prime, or obtain priority over the validity filed enforceable Kansas statutory Artisan liens which IAG has in the personal property of the Debtor. The Bankruptcy Code permits such a grant of superpriority status to the Lender “only if (a) the Trustee is unable to obtain such credit otherwise; and (b) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364 (d)(1) (emphasis added). As the statute makes clear, the Debtor has the “burden of proof on the issue of adequate protection.” 11 U.S.C. § 364 (d)(2).

**I. IAG Possesses Valid Liens on the Property of the Estate.**

**A. IAG’s Lien Interest is Superior to any other Party.**

On June 5, 2002, and within the time allowed by Kansas statute, IAG filed with the Montgomery County, Kansas, Register of Deeds two separate Artisan’s liens on personal property owned by the Debtor pursuant to K.S.A. § 58-201. The amounts of the liens totaled Five Million One Hundred EightySeven Thousand Nine Hundred Eighty Dollars and 70/100 (\$5,187,980.70) and Twenty-Six Thousand Seven Hundred Two Dollars and 00/100 (\$26,702.00). Fully executed copies of the two liens are attached hereto as Exhibits 1 and 2 and expressly incorporated herein.

Under the express terms of the Kansas statute, such Artisan’s liens grant IAG’s claims “superpriority” status. “Whenever any person, at the owner’s request or consent shall perform work make repairs or improvements or replace, add or install equipment on any goods, personal property,

. . . equipment of all kinds . . . a first and prior lien on such personal property is hereby created in favor of such person performing such work, making such repairs or improvements or replacing, adding or installing such equipment and such lien shall amount to the full amount and reasonable value of the services performed and shall include the reasonable value of all material used in performance of such services and the reasonable value of all equipment replaced, added or installed.” K.S.A. § 58-201 (emphasis added); *Hockaday Auto Supply Co. v. Huff*, 245 P. 1013 (Kan. 1926); *National Bond & Investment Co. v. Midwest Finance Co.*, 134 P.2d 639, 642 (Kan. 1943); *Security Benefit Life Ins. Corp. v. Fleming Co.*, 908 P.2d 1315 (Kan. App. 1995) (“K.S.A. § 58-201 gives a first and prior lien to any person who "shall perform work, make repairs or improvements or replace, add or install equipment on ... equipment").

As the Personal Property Liens attached as Exhibit 1 and 2 demonstrate, and as declared by the Kansas statute and Kansas cases interpreting the statute, IAG is the holder of a lien interest in the equipment and materials installed by IAG superior to that held by the Lender or any other party.

**B. The Perfection of IAG’s Lien Interest after the commencement of the bankruptcy proceeding is permitted and does not violate the automatic stay provisions of the Code.**

Further, the filing of the Notice of the Personal Property Artisan’s Liens with the Montgomery County, Kansas Recorder of Deeds Mechanic Lien after the Debtor’s filing of its Bankruptcy Petition in no way violates the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362. The Bankruptcy Code, 11 U.S.C. § 546 (b) allows “certain interest holders such as statutory lienholders to perfect their interests after the trustees’ rights have intervened through bankruptcy, to the extent applicable law allows such interests to relate back and be superior to intervening creditors.” *In re Birdview Satellite Communications, Inc.*, 90 B.R. 465, 467 (Bankr. D.

Kan. 1988) (citing *In re Houts*, 23 B.R. 706, 706-07 (Bankr. W.D. Mo. 1982)); *In re Premier Hotel Dev. Grp.*, 270 B.R. 234, 241 (Bankr. E.D. Tenn. 2001) (“Sections 362 (b) (3) and 546 (b) construed together indicate that the filing of a bankruptcy does not stay and the bankruptcy trustee may not avoid the perfection of certain interests in property whereby under nonbankruptcy law the perfection relates back and is effective over intervening lien creditors if it occurs prior to the expiration of a grace period.”)

Here, IAG’s Artisan Lien filings were timely and prior to the expiration of the 90 day statutory grace period. *See* K.S.A. § 58-201. As the attached lien statements state, the last work performed or material furnished was on April 4, 2002, and the liens were filed within 90 days of that date.

Further, under applicable non-bankruptcy law (Kansas), the Artisan’s Lien filing relates date to the last date of work performed and provides the lien-holder with “a first and prior lien on such personal property.” K.S.A. 58-201; *see also National Bond & Investment Co.*, 134 P.2d at 643 (“A mechanic has a vested right in the lien upon the completion of his labor. He may enforce it by retaining possession of the chattel until the account is paid or by releasing possession thereof and by filing his lien within thirty days [amended to 90 days] as directed by statute.”) As stated by the Bankruptcy Court for the District of Kansas, concerning the materially similar mechanic’s lien statute, “The lien relates back to the commencement of the furnishing of such labor, equipment, material or supplies and is superior to intervening liens or encumbrances.” *In re Birdview Satellite Communications, Inc.*, 90 B.R. at 467.

Accordingly, IAG’s perfection of its lien interests is consistent with Kansas state law and the Bankruptcy Code, and does not offend the letter or intent behind the Stay provisions of the Bankruptcy Code.

**II. The Debtor's Emergency Motion Fails to Offer Any Suggestion that IAG's Interest Will be "Adequately Protected" should the Lender Bump or Prime IAG From Its First Priority Lien Over the Equipment and Personal Property at Issue.**

Under the terms of the Debtor's Emergency Motion, IAG's Kansas statutory "first and prior" interest in the equipment and personal property it improved or installed would be "primed" or bumped from such favored status and instead the Lender would have "first-priority security interests in and liens upon all Collateral . . ."

The Bankruptcy Code clearly provides that an Order granting the relief requested by the Debtor can occur "only if . . . there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 362 (d) (1) (B) (emphasis added). "The concept of adequate protection was designed to insure that the secured creditor receives the value for which he bargained." *In re Martin*, 761 F.2d 472, 474 (8<sup>th</sup> Cir. 1985). The Code does not expressly define "adequate protection," but section 361 of the Code states that it may be provided by (1) periodic cash payments; (2) additional or replacement liens; or (3) other relief resulting in the "indubitable equivalent" of the secured creditor's interest in such property. 11 U.S.C. § 361. As Bankruptcy Courts and U.S. Courts of Appeal have noted, any proposal by a Debtor of "adequate protection" for a pre-petition secured creditor as part of superpriority post-petition financing arrangement should provide the pre-petition creditor "with the same level of protection it would have had if there had not been post-petition superpriority financing." *In Re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); see also *In re Mosello*, 195 B.R. 277, 288 (Bankr.S.D.N.Y. 1996). Here, IAG has received no such assurance of adequate protection.

In fact, the Debtor has wholly failed in its Emergency Motion to even address or provide any assurance to pre-petition secured creditors, like IAG, that their interests would be adequately protected should the Lender be afforded superpriority status. Pursuant to section 364 (d) (2), the “trustee has the burden of proof on the issue of adequate protection.” The Debtor here has wholly failed to shoulder that burden of proof. Accordingly, the Debtor’s Emergency Motion should be denied, or at the least, IAG must be afforded “adequate protection” under the terms of any Order entered responsive to the Emergency Motion.

WHEREFORE, Secured Creditor Alliance Process Partners, L.L.C., d/b/a International Alliance Group objects to the Emergency Motion for Interim and Final Order Authorizing Debtors to Incur Post-Petition Secured Indebtedness and Granting Security Interests and Priority Pursuant to 11 U.S.C. § 364 and requests that such Emergency Motion be DENIED, or, at a minimum, that IAG obtain under any Court Order responsive to the Debtor’s Emergency Motion the “adequate protection” required by the Bankruptcy Code.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing was mailed, via U.S. Mail, postage prepaid, this 12<sup>th</sup> day of June, 2002 to:

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