

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

In re:	:	
	:	In Proceedings Under Chapter 11
	:	
FARMLAND INDUSTRIES,	:	Case No. 02-50557-JWV
INC., <i>et al.</i> ,	:	Joint Administration
	:	
	:	
_____ Debtors.	:	

**OBJECTION TO DEBTORS’ MOTION TO ASSUME FACILITY LEASE  
AGREEMENT AND PROVIDE NOTICE OF INTENT TO EXERCISE  
OPTION UNDER THE LEASE TO PURCHASE THE FACILITY**

Deutsche Bank Trust Company Americas, as Agent for the Prepetition and DIP Lenders (“Agent”), hereby objects to the motion (the “Motion”) of Farmland Industries, Inc., et al., debtors and debtors in possession (“Debtors”), to assume the facility lease agreement under which the Debtors lease two ammonia plants in Enid, Oklahoma (the “Lease”) and to provide notice of its intent to exercise its purchase option under the Lease. The Debtors still have not provided the necessary information to evaluate the propriety of assuming the Lease and make the necessary determinations that the Debtors have exercised their reasonable business judgment and that the assumption is in the best interests of the estate. Because the Debtors cannot show they have exercised reasonable business judgment in seeking to assume the Lease, the Court should deny the Motion.

**ARGUMENT**

The Agent acknowledges that the standard courts use to authorize the assumption of an executory contract or unexpired lease is the best business judgment test. In re Food Barn Stores, Inc., 107 F.3d 558, 567 n.16 (8<sup>th</sup> Cir. 1997); In re GP Express Airlines, Inc., 200 B.R. 222, 230 (Bankr. D. Neb. 1996). However, the best business judgment test requires that the court make a determination that the debtor has exercised its reasonable business judgment and

the assumption is in the best interests of the estate. In re Food Barn, 107 F.3d at 567 n.16 (“Although the court uses a business judgment test in deciding whether to approve a trustee’s motion to assume, reject, or assign an unexpired lease or executory contract, this entails a determination that the transaction is in the best interests of the estate.”) (emphasis added); In re Gateway Apparel, Inc., 210 B.R. 567, 570 (Bankr. E.D. Mo. 1997) (the determination of whether assumption of an unexpired lease meets the business judgment test and is beneficial to the estate requires “consideration of the effects that assumption would have on the debtor; the implications for the lessor; the benefit or detriment to unsecured creditors; and the significance of the lease to the debtor’s reorganization”).

It is fundamental to the proper exercise of business judgment that the Debtors consider adequate information to reach a decision. It is correspondingly imperative in examining Debtors' exercise of business judgment that the Court is apprised of the information upon which the Debtors relied. See Resolution Trust Corp. v. Dean, 854 F.Supp. 626, 634 (D. Ariz. 1994) (holding that under Arizona and Delaware business judgment rule principles, “to invoke the rule’s protection directors have a duty to inform themselves, prior to making a business decision, of all material information reasonably available to them”). The Debtors have not provided adequate information for the Court, the Agent or any other party in interest to determine whether assumption of the Lease is within the sound business judgment of the Debtors or is beneficial to the estate. The Debtors have provided no information as to whether the ammonia plants subject to the Lease are currently profitable, or whether they will be profitable in the future. The Debtors have provided no information on the impact of immediately paying significant cure amounts under the Lease (over \$1.6 million), or what the impact of operating or not operating the two ammonia plants will have on the Debtors’ immediate cash flow.

As the Court is aware, the Debtors have repeatedly stated that industry wide and continuing declines in fertilizer prices precipitated these cases. The Debtors have also indicated that they will not continue in the fertilizer business long-term and have retained UBS Warburg LLC to sell all of their fertilizer assets. It is wholly unclear why the Debtors wish to guarantee their position in a depressed industry and commit to purchase an asset that the Debtors are trying to sell, without a commitment by a third party to purchase the asset for more than the option price. The Debtors claim that the purchase price for the purchase option in the Lease is significantly less than the fair market value of the facility and the Lease needs to be assumed and the option exercised to preserve this equity. However, the Debtors have provided insufficient evidence as to the fair market value of the facility and have not identified any potential buyers who would be willing to buy the facility for more than the option price. Given the apparently pervasive decline in the fertilizer business, the Debtors' unsupported assertions of large amounts of equity in the facility are unfounded at best. Without disclosure and corresponding review of the essential information relevant to the foregoing issues, the Court cannot make the determination that assuming the Lease is within the reasonable business judgment of the Debtors or is beneficial to the estate, both of which are prerequisites to approval of the Motion.

**WHEREFORE**, the Agent respectfully requests that the Court deny the Motion and grant such other relief as is just and equitable under the circumstances.

Dated: October 24, 2002

Respectfully submitted,

/s/ Jonathan A. Margolies  
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