

OCT 07 2008

U.S. COURT OF BANKRUPTCY
BY DEPUTY

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

In re:)
) In Proceedings Under Chapter 11
GATEWAY ETHANOL, LLC)
) Case No. 08-22579-DLS
) Debtor,)

AGREED MOTION FOR HEARING ON AN EXPEDITED BASIS AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)

Cargill, Incorporated ("Cargill") and Gateway Ethanol, LLC ("Gateway"), by and through their undersigned attorneys, for their Agreed Motion for Hearing on an Expedited Basis and Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d) (the "Joint Motion"), respectfully state as follows:

BACKGROUND

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and Fed. R. Bankr. P. 5005. This motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On October 5, 2008, Gateway filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code. Gateway continues to operate its business and manage its properties as a debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. No trustee or examiner has been appointed, and no official committee of creditors or equity interest holders has yet been established.

3. As of October 5, 2008, approximately 115,000 bushels of Cargill's grain was located at Gateway's grain storage facility. The parties do not dispute that Cargill is the absolute owner of the grain, and that, but for the automatic stay, Cargill has the right to remove the grain from Gateway's facility. Cargill and Gateway have entered into a letter contract under which

Cargill pays Gateway seven cents per bushel for assisting Cargill with grain removal from Gateway's grain storage facilities. A copy of the letter agreement is attached to the Joint Motion as Exhibit A.

4. Cargill has sold most of the grain located at Gateway's grain storage facilities to end-users through forward contracts. Cargill desires to remove any unsold grain to a different storage facility. Until Gateway filed its bankruptcy petition, Cargill was in the process of removing the grain from Gateway's premises and delivering it to the forward contract purchasers. If Cargill cannot continue to remove its grain from Gateway's premises without interruption, it will have to buy grain on the open market at a loss in order to cover its positions on its forward contracts or pay damages for breach of contract.

5. In addition, if Cargill does not promptly remove the grain from Gateway's storage facilities, the grain will decline in quality and value rapidly due to exposure to excess moisture. If the grain quality deteriorates too much, Cargill will have to offer a reduction in price to its grain purchasers or the grain may be unacceptable to the purchasers. The result may be an increased damage claim against the Gateway bankruptcy estate. The condition of grain in storage does not improve over time, and any delay in the grain removal process will result in the deterioration of the grain's quality and value.

6. If the Court grants relief from the automatic stay and Gateway continues to assist Cargill with the removal of the grain, Cargill will continue to pay Gateway seven cents per bushel removed pursuant to the letter agreement. This is money that Gateway may use to fund its operations or a successful reorganization.

7. Nothing in this motion is intended or should be construed as an attempt to assume the letter agreement.

RELIEF REQUESTED

8. The Bankruptcy Code creates an automatic stay upon the filing of a petition. 11 U.S.C. § 362(a). The automatic stay prevents “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3).

9. The Bankruptcy Code permits granting relief from the automatic stay (i) for cause, including lack of adequate protection, or (ii) when the debtor lacks equity in property and the property is not necessary to an effective reorganization. 11 U.S.C. §§ 362(d)(1) and (2). The statute provides:

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 a stay of an act against property under subsection (a) of this section. if - (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization;

11 U.S.C. §§ 362(d)(1) and (2).

10. Courts are authorized to grant relief from the automatic stay for “cause.” 11 U.S.C. § 362(d)(1). The Bankruptcy Code does not define “cause,” which leaves courts to decide what constitutes cause based on the totality of the circumstances in each particular case. *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *Carbaugh v. Carbaugh (In re Carbaugh)*, 278 B.R. 512, 525 (10th Cir. B.A.P. 2002).

11. Under 11 U.S.C. § 362(d)(2) a court may grant relief “if (A) the debtor does not have any equity in the property; and (B) such property is not necessary to an effective reorganization.” 11 U.S.C. § 362(d)(2). The party seeking relief from the automatic stay has the burden to prove the debtor’s equity in the property, but the party objecting to the relief has the burden on all other issues. 11 U.S.C. § 362(g)(1)(2).

12. The court may grant relief from the automatic stay without a hearing if it is necessary to prevent irreparable damage to the interest of an entity (Cargill) in property (Cargill's grain), if such interest will suffer irreparable damage before there is an opportunity for notice and a hearing. 11 U.S.C. § 362(f).

13. Gateway has no equity in Cargill's grain. Gateway and Cargill agree that Cargill is the owner of the grain and that Gateway has only a possessory interest in the grain due to the grain's location in its grain storage facility. Cargill requires relief from the automatic stay only to enter Gateway's property and remove Cargill's grain. The removal of Cargill's grain will not harm Gateway's estate or creditors because the grain is not an asset that is available to fund Gateway's reorganization efforts or to pay creditors.

14. Cargill's grain is not necessary for an effective reorganization of Gateway. Gateway cannot use the grain to operate its business without purchasing the grain from Cargill, and Gateway has no intention of doing so. Therefore, because Gateway does not own the grain and has no plans to purchase the grain, Gateway agrees that the grain is not necessary for an effective reorganization.

15. Furthermore, cause exists to grant relief from the automatic stay because Gateway will benefit from Cargill's removal of its grain. Gateway's assistance in the removal of the grain from its facilities brings money into the estate which Gateway may use to fund its operations and an effective reorganization.

16. This Court has cause under Section 362(d)(1) to grant relief from the automatic stay and cause to grant the motion without a hearing under Section 362(f) or to grant an expedited hearing on the motion. Cargill's forward contracts require it to deliver the grain to the grain purchasers. If the Court does not grant Cargill relief from the automatic stay to allow Cargill to remove Cargill's grain on an expedited basis, Cargill may wind up in breach of its

forward contracts and will have to purchase replacement grain to cover the contracts or pay damages to the end-users. This will result in irreparable injury to Cargill and potentially an increased claim for damages against Gateway's bankruptcy estate. In addition, if the Court delays in granting relief from stay, the grain's condition may deteriorate to the point where Cargill must offer discounts to the grain purchasers, or the grain may become unusable. Cargill cannot know how quickly the grain will deteriorate, but the grain's condition can and does change on a daily basis. The grain which is a valuable asset today may become much less valuable, or even worthless, over a very short period. This will result in irreparable injury to Cargill and possibly an increased claim for damages against Gateway's bankruptcy estate. Therefore, the Court should grant relief from the automatic stay for cause and grant an expedited hearing for relief from the automatic stay or grant the motion on an expedited basis without a hearing.

WHEREFORE, Cargill and Gateway respectfully request that the Court enter an order, a proposed form of which has been filed herewith, (i) granting expedited relief, (ii) granting Cargill's request for relief from the automatic stay, including termination of the automatic stay, (iii) granting such relief without a hearing and (iv) granting Cargill such other and further relief as the Court deems equitable and just.

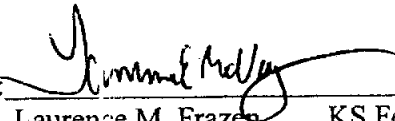
Date: October 7, 2003

LATHROP & GAGE L.C.

By: 

Brian T. Fenimore KS # 15211
2345 Grand Boulevard, Suite 2800
Kansas City, Missouri, 64108
816-292-2000
Fax: 816-292-2001
bfenimore@lathropgage.com
Attorney for Cargill, Incorporated

BRYAN CAVE LLP

By: 

Laurence M. Frazier KS Fed. #70114

Tammee E. McVey KS #14972

One Kansas City Place

1200 Main Street, Suite 3500

Kansas City, Missouri, 64105

816-374-3200

Fax 816-374-3300

Attorney for Gateway Ethanol, LLC

September 12, 2008

Gateway Ethanol, L.L.C.
1320 East First Street
Pratt, Kansas 67124

Ladies and Gentlemen:

Gateway Ethanol, L.L.C. ("Gateway") presently has in storage, at its facilities near Pratt, Kansas ("the Facility"), approximately 1,184,000 bushels of grain belonging to Cargill, Incorporated ("Cargill"). Gateway has furnished to Cargill the negotiable warehouse receipts identified in Exhibit A, which warehouse receipts evidence Cargill's right, title and interest in and to such grain. The parties desire that Gateway provide services for the removal of the grain from the Facility. However, Gateway has represented to Cargill that it does not have the resources to be able to provide services to remove the grain absent this agreement. Therefore, this will confirm our understanding concerning the removal of grain from the Facility.

1. The Services. Beginning on September 15, 2008, Gateway agrees to provide and maintain all equipment, material, utilities, labor, and supervision necessary to load the grain from the Facility to trucks at Cargill's request; maintain proper and adequate records relating to shipments and inventory; prepare bills of lading and other necessary documents for outbound shipments of grain; and provide services ancillary to the foregoing (collectively, the "Services"). Gateway agrees that it will exercise reasonable care and diligence in the performance of the Services.
2. Personnel and Hours. Gateway will provide not less than three (3) employees to furnish the Services to Cargill five days per calendar week, Monday through Friday, for not less than 12 hours each day. Gateway and Cargill anticipate that Gateway's hours of operation will be 7 am to 7 pm each day. Cargill may request that Gateway provide Services on weekends or for time periods in excess of 12 hours per day.
3. Fee. For Services rendered, Cargill shall pay Gateway a fee of seven (7) cents per bushel of grain loaded from Gateway's storage facilities to Cargill's trucks.
 - a. Payment Terms. Cargill will pay the fee to Gateway on a daily basis in advance, based on a good faith estimate of the amount of grain to be loaded out on the next day (estimated to be 45,000 bushels per day).
 - b. True-Up. Once each day, Cargill and Gateway will calculate the actual amount of grain loaded out the preceding day (and with respect to Monday, the grain loaded out the preceding Friday), and an appropriate payment adjustment will be made. If the calculation indicates that an additional amount is owed to Gateway for Services rendered, then Cargill shall pay that amount to Gateway on that day. If the calculation indicates that Cargill has overpaid for Services, then Cargill shall

EXHIBIT A

apply the amount of the overpayment to the amount owed to Gateway for the next day.

- c. Wire Transfer. All payments shall be made by wire transfer, unless otherwise agreed.
4. Warehouse License. Gateway has represented to Cargill that its warehouse license for the storage of grain will lapse on September 29, 2008.
 5. Miscellaneous.
 - a. Gateway is an independent contractor engaged by Cargill to provide the Services.
 - b. Gateway shall not assign this agreement without the prior consent of Cargill.
 - c. This agreement shall be construed fairly as to all parties; and shall not be construed for or against any party on the basis or to the extent to which that party participated in the drafting of the agreement.
 - d. The parties hereto warrant and represent that they have the full authority and competency to execute this document in the capacity in which they have signed. Gateway has been authorized to execute this document by its Board of Directors.
 - e. The parties agree to keep the terms of the agreement confidential and to not disclose the terms of this agreement to any person other than their respective attorneys, accountants, and tax advisers, or as may be required by lawful subpoena or court order; provided, that (i) Cargill may disclose the existence of this agreement, but not the terms of this agreement, to Dougherty Funding LLC; and (ii) if a receiver is appointed with respect to Gateway, Cargill may share the terms of this agreement with such receiver.
 - f. This agreement and the warehouse receipts constitute the entire understanding and agreement of the parties hereto and shall not be modified in any manner except by an instrument in writing executed by both parties.
 - g. This agreement shall be interpreted in accordance with the laws of the State of Kansas.

[The next page is the signature page.]

CARGILL, INCORPORATED

By: _____

Its: _____

Acknowledged and accepted this 12th day of September, 2008:

GATEWAY ETHANOL, L.L.C.

By: *Richard A. Thomas*

Its: CHAIRMAN OF THE BOARD

[Signature page to September 12, 2008 letter agreement between
Gateway Ethanol, L.L.C. and Cargill, Incorporated]

(2078233)

CARGILL, INCORPORATED

By: J. Hunscheidt

Its: FARM SERVICE GROUP LEADER - CENTRAL KANSAS

Acknowledged and accepted this 12th day of September, 2008:

GATEWAY ETHANOL, L.L.C.

By: _____

Its: _____

[Signature page to September 12, 2008 letter agreement between
Gateway Ethanol, L.L.C. and Cargill, Incorporated]

(2078233)

Exhibit A

Warehouse Receipts