UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

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

OBJECTION OF NOBLE AMERICAS CORP. TO DEBTOR'S EMERGENCY MOTION TO APPROVE STIPULATED ORDER (I) AUTHORIZING DEBTOR (A) TO OBTAIN SECURED POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 363, AND 364(c) AND (d); AND (B) TO GRANT SECURITY INTERESTS, SUPERPRIORITY CLAIMS AND ADEQUATE PROTECTION; AND (II) SCHEDULING A FINAL HEARING PURUSANT TO BANKRUPTCY RULE 4001(c)

Noble Americas Corp., a creditor that holds both secured and unsecured claims in the above-captioned bankruptcy case ("Noble"), by and through its undersigned legal counsel, hereby respectfully submits this Objection to the Debtor's Emergency Motion to Approve Stipulated Oder (I) Authorizing Debtor (A) to Obtain Secured Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 363, and 364(c) and (d); and (B) to Grant Security Interests, Superpriority Claims and Adequate Protection; and (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(c) filed with the Court on an expedited basis to be heard on October 8, 2008 (the "DIP Financing Motion") and, in connection therewith, represents as follows:

BACKGROUND

A. General

1. The Chapter 11 debtor, Gateway Ethanol, L.L.C. (the "Debtor"), was formed to construct and operate a facility located in Pratt, Kansas to produce denatured, anhydrous ethanol alcohol and other products (the "Ethanol Plant").

2. The construction of the Ethanol Plant has not been fully completed to date due to, among other things, substantial and persisting disputes that the Debtor has had with Lurgi, PSI,

Inc. ("Lurgi"). Lurgi, which holds a membership interest in the Debtor and, at all material times, occupied a position on the Debtor's board of directors, was responsible for the design and construction of the Ethanol Plant. The Ethanol Plant was expected to be fully operational by August of 2007, well over one year ago. Construction was delayed, however, due to Lurgi's failure to achieve completion of the Ethanol Plant. The Debtor's efforts to commence commercial operations were thwarted by Lurgi's failure to deliver a functional plant, as further explained in the Affidavit of Fredrick S. Loomis, Chairman of the Board of Directors, that was submitted by the Debtor in connection with the DIP Motion. See Affidavit. of Frederick Loomis, dated Oct. 3, 2008, at 2-3. Further, the Debtor became embroiled in disputes with its prepetition plant lender and proposed DIP lender, Dougherty Funding LLC ("Dougherty"). Id.

3. The Debtor was unable to obtain access to necessary funds from Dougherty, including access to the proceeds of one or more letters of credit that were posted by Lurgi for the benefit of the Debtor in the original amount of $6,170,000 to secure its performance obligations under the construction contract (the "Lurgi Letters of Credit"). The Lurgi Letters of Credit were inexplicably changed shortly after the closing of financing arrangements (including those with Noble) consummated in connection with the commencement of the project, such that they are now directly controlled by Dougherty. Dougherty has, upon information and belief, steadfastly refused to draw upon the Lurgi Letters of Credit to date for purposes of allowing the Debtor access to the contemplated funds (i.e. to pay property taxes and other items set forth in the budget established in connection with the DIP Financing Motion) or paying down the Dougherty debt.

4. In light of the protracted disputes that the Debtor has had with Lurgi and Dougherty and the inability, in light of those disputes, to obtain necessary capital, the Debtor

ceased essentially all operational activities on or about March of 2008. Indeed, the Ethanol Plant "is currently not operating, but remains lightly staffed pending a contemplated sale of the plant" in connection with the Debtor's Chapter 11 bankruptcy filing. See Affidavit of Frederick Loomis, dated Oct. 3, 2008, at 3. In other words, the Ethanol Plant has been moth-balled for about 7 months but, yet, maintains 7 employees on staff.

5. Prior to the instant bankruptcy filing, but subsequent to the Debtor's prepetition financing arrangements with Dougherty, the Debtor commenced litigation against Lurgi in state court in two separate proceedings (collectively, the "Lurgi Litigation") seeking to recover substantial damages arising out of claims against Lurgi for, among other things, "Breach of Fiduciary Duty," "Tortious Interference with Contract and Business Expectancy," "Slander of Title" and other related relief—some or all of which are commercial tort claims not covered by Dougherty's prepetition liens. Attached hereto as Exhibit A and incorporated herein is a true and correct copy of a First Amended Petition for Injunctive and Other Relief filed in the District Court of Pratt County, Kansas relating to some of the claims advanced by the Debtor in the Lurgi Litigation. The Lurgi Litigation remains currently pending and the damages arising out of the Lurgi Claims represent substantial claims and assets of the bankruptcy estate.

B. The Chapter 11 Bankruptcy Case

6. The Debtor commenced the above-referenced Chapter 11 bankruptcy proceeding on October 5, 2008 (the "Petition Date"). Upon information and belief, no official committee of creditors has been appointed at this point—and certainly no carve-out or funds have been set aside in the DIP Financing Motion or related credit facility for the payment of the expenses of any such committee, including the costs and expenses of committee counsel.

7. The DIP Financing Motion was brought on an expedited basis and Noble interposed a number of objections and voiced significant concerns about the contemplated financing arrangement and the direction of the bankruptcy case, despite having the opportunity to review the pleadings relating to the DIP Financing Motion for the first time only hours before the interim hearing. As set forth more fully below, one of the more predominant objections and concerns of Noble to the DIP Financing Motion is that the sale process/requirements laid out in the DIP Financing documents inure almost exclusively to the benefit of Dougherty because, among other things, it imposes abbreviated deadlines for consummating a sale, sets up Dougherty as a stalking horse poised to credit bid its debt and acquire the assets cleansed by bankruptcy court orders, and provides new secured financing for taxes and other items the vast majority of which would otherwise necessarily be borne by Dougherty in any event.

8. The Debtor has not filed its bankruptcy schedules yet with the Court and, based upon an order entered earlier in the case, has until October 31, 2008 to make the filing. The first meeting of creditors is currently scheduled for November 10, 2008.

C. <u>The Noble Indebtedness</u>

9. Noble holds both secured and unsecured claims in the above-captioned bankruptcy case.

10. With respect to its secured claims, the Debtor, as of the Petition Date and as acknowledged in its DIP Financing Motion, is a borrower under that certain Revolving Credit and Security Agreement dated as of November 3, 2006 (the "Noble Prepetition LOC Agreement") pursuant to which Noble made a $7,500,000 revolving credit loan facility available to, among other things, finance the Debtor's working capital requirements. The obligations of the Debtor under the Noble Prepetition LOC Agreement are secured by a security interest in

"Collateral" (as defined in the Noble Prepetition LOC Agreement) which includes, without limitation, all Accounts and related rights; Inventory; Commodity Accounts and Commodity Contracts; the Debtor's Deposit Account and all cash, credits and assets therein; and all cash and non-cash proceeds of any of the foregoing, including proceeds of and unearned premiums with respect to insurance policies; and all books and records pertaining to any of the foregoing. Noble duly perfected its security interest in the Collateral by, among other things, filing a Financing Statement with the Kansas Secretary of State on November 15, 2006 as Document No. 94932225.

11. Notwithstanding the Debtor's incorrect statements in the DIP Financing Motion to the contrary, the Debtor owed Noble an amount that is in excess of $282,946.29 as of the Petition Date under its secured financing arrangements. These obligations are secured by the Collateral, including cash collateral proceeds that has arisen prior to the Petition Date as well as any and all rights to payment and proceeds arising under a prepetition contract with Cargill, Inc., a true and correct copy of which is attached hereto as Exhibit B (the "Cargill Contract").

12. At the interim hearing on the DIP Financing Motion, Noble objected to the Debtor's use of any items of Collateral constituting "cash collateral" and has renewed that objection in communications with counsel for the Debtor after that hearing and, hereby, again renews that objection. Noble has demanded an accounting and segregation of any collateral constituting cash collateral absent satisfactory arrangements for adequate protection which, as of the date hereof, have not been made. Based upon the representations of Debtor's counsel and pleadings filed with the Court the Debtor has approximately $18,700 of proceeds still in its possession that have been segregated and constitute Noble's cash collateral.

13. In furtherance of the Noble Prepetition LOC Agreement, Dougherty and Lurgi executed and delivered in favor of Noble an Intercreditor and Collateral Priority Agreements (the "Subordination Agreements") pursuant to which, among other things, Dougherty and Lurgi subordinated all security interests granted by the Debtor in the Collateral to the liens, interests and rights of Noble in the Collateral. See DIP Financing Motion, ¶ 24, at 14-15. The Subordination Agreements delivered by Dougherty and Lurgi in favor of Noble are in full force and effect. Indeed, the Subordination Agreements expressly provide that they in all respects "shall be applicable both before and after the commencement of any Insolvency Proceeding by or against" the Debtor.

14. The Debtor's schedule of top 20 creditors identifies Noble as the holder of the second largest unsecured claim in this bankruptcy with a claim in excess of $3.981 million. Noble in fact appears to be *the* largest unsecured creditor in this bankruptcy case. Indeed, Noble's unsecured claim in this bankruptcy case, which arises from various financing, credit and lease arrangements with the Debtor, is likely to exceed $11.7 million.

OBJECTIONS

15. The debtor bears the burden of proof in any financing hearing under 11 U.S.C. § 364 of clearly demonstrating that the requested financing and funds are necessary to preserve the assets of the estate and that the terms of the proposed financing are fair and would not "tilt the conduct of the bankruptcy case; prejudice, at an early stage, the powers and rights that the Bankruptcy Code confers for the benefit of all creditors" or provide a single creditor with unfair leverage over the Chapter 11 process. See In re Ames Dep't Stores, Inc., 115 B.R. 34, 37 (Bankr. S.D.N.Y. 1990). Extraordinary provisions should not ordinarily be approved without a demonstration by the Debtor of substantial cause and compelling circumstances. When, as in

this case, the Debtor is not operating an ongoing business, additional scrutiny should be given in order to ensure fundamental fairness and that the collective process envisioned by Congress for Chapter 11 is not utilized for the exclusive benefit of a single creditor.

16. In addition the foregoing, Noble's specific objections to the DIP Financing Motion and Proposed Stipulated Order are as follows:

A. Adequate Protection of Noble's Interests in Collateral. As outlined above, Noble as a priority security interest in the Collateral, including all cash collateral, to secure existing indebtedness outstanding as of the Petition Date that is not adequately protected. 11 U.S.C. §§ 361, 363. Noble objects to provisions in the Proposed Order that constitute a finding that the Debtor was not indebted to Noble pursuant to the Prepetition LOC Loan Documents. See Interim Order, at ¶ 26. Further, Noble objects to any aspect of the financing that attempts to prime or obtain senior, first priority over Noble's interest in any such Collateral or otherwise usurp, invalidate or circumvent in any way the Subordination Agreements that have been delivered by Dougherty, the proposed DIP lender, in favor Noble and remain legally binding upon the parties thereto. See 11 U.S.C. § 510(a) (rendering subordination agreements fully enforceable in bankruptcy). The terms of any contemplated financing and Order should (1) make adequate provision for Noble's indebtedness and interest in cash collateral; (2) make clear that the nothing in the Order shall be construed to alter the rights, priorities, interests and obligations of any party subject to the Subordination Agreements; and (3) make clear or clearer that any interest Dougherty acquires under the DIP financing in the Collateral previously pledged to Noble is and remains subject to Noble's first priority interest free from any priming or superpriority status.

B. Provisions Relating to Findings, Admissions, Discharges and Releases Are Overreaching. Pursuant to the DIP Financing Motion and the Proposed Order the Debtor, subject only to the provisions of paragraphs W and Y of the Proposed Order purports to "admit" that, among other things, Dougherty's liens are not subject to avoidance or subject to subordination under the Bankruptcy Code or other applicable non-bankruptcy law and that its prepetition indebtedness is not subject to any defenses, claims or offsets and that these provisions constitute "findings" by the Court subject, again, only to the provisions of paragraphs W and Y. In an attempt to obtain final and complete absolution from all claims from any conceivable source, the Proposed Order unfairly contains broad releases for Dougherty and subjects all of the Debtor's "members," "creditors" and "parties in interest" to a period of "*45 days from the Petition Date*" to assert claims on behalf of the Debtor's estate. The Debtor has not even filed its bankruptcy schedules yet and, pursuant to an order that has been previously entered in this case, is not required to do so until the end of October. Moreover, the first meeting of creditors is not scheduled to be conducted until November 10, 2008. As such, there has not been sufficient time to conduct a sufficient investigation of the facts. The Proposed Order should be modified to (1) make clear or clearer that creditors will have the requisite standing to assert any and all such claims and commence such actions on behalf of the bankruptcy estate even if a committee is not formed or active in the case and notwithstanding the purported admissions, waivers, releases and agreements of the Debtor; and (2) extend the time frame within which such claims can be brought and challenges and objections asserted to no less than 45 days from the date that the bankruptcy schedules are filed with the Court.

C. Termination Events for DIP Should Be Curtailed. The Proposed Order and DIP Financing documents permit termination of the credit facility in the event that the Court

has not entered an order establishing procedures relating to an auction for the business assets that is in all respects acceptable to Dougherty in a transaction in which Dougherty is permitted to credit bid its debt by October 28, 2008. Further, the Debtor is obligated to enter an agreement for the sale of its assets that is in form and substance acceptable to Dougherty by October 14, 2008 (i.e. within about two weeks of the commencement of the bankruptcy case) and is required to obtain the entry of an order approving the sale no later than December 19, 2008. As of the date hereof, no procedures motion has been filed and the Debtor may already be in default as a consequence which, of course, creates obvious concerns. Of additional concern, is the timing relating to the contemplated auction/credit bid transaction. No evidence has been presented to date setting forth the anticipated value of the assets and whether it is at all reasonable to conclude a process that results in a real auction within the time parameters set forth in the DIP Financing Motion and related documents will be productive or produce a benefit to any other constituent in this Chapter 11 proceeding other than Dougherty.

D. Liens to Secure Financing Should Not Extend to Commercial Tort Claims.

As noted above, the Debtor is not operating and has effectively not been operating for 7 months. No business operations are planned to be conducted other than, perhaps, due diligence and activities related to the process laid out and under the control of Dougherty for the disposition of the collateral in a transaction where Dougherty is poised to credit bid its debt for the assets within the next forty-five days or so. Even a cursory review of the Debtor's Budget for which the DIP financing is being requested reveals that the vast majority of the Budget is for professional fees, prepayment of insurance beyond that which is a current need, other items that are necessary for the preservation of Dougherty's collateral and for Dougherty to obtain the benefit of funds/rebates associated with the TIF financing. Particularly noteworthy is the $3.27

million that is purportedly being borrowed and secured with liens on "all" assets of the estate (even those not subject to Dougherty's prepetition liens). Upon information and belief, that tax is not even required to be paid until December 31, 2008—i.e. *after* the date and the time tables contemplated by the DIP financing agreements and the contemplated closing on the sale/credit bid transaction. In other words, financing of this extent and for this item (and the concomitant origination fees) does not appear necessary at this point as it will be an obligation of the buyer in the sale transaction.

In light of the current state of operations (or lack thereof), the real present-day financing needs of the Debtor, the short-leashed process being apparently compelled by Dougherty for a credit bid auction/sale in this case, and the substantial benefits conferred upon Dougherty by the Proposed Order and the auction/sale as contemplated, it is not appropriate to now also grant to Dougherty a lien in *any* postpetition claims and causes of action (or any proceeds therefrom), such as commercial tort claims for example.

It is well-settled law that "commercial tort claims" and "proceeds" of commercial tort claims are not subject to same set of rules as other forms of collateral under revised Article 9 of the Uniform Commercial Code. In re Zych, 379 B.R. 857 (Bankr. D. Minn. 2007). Special rules apply. See U.C.C. § 9-108(e) & cmt. 5 (providing that a description only by 'type' of collateral or by mere reference only to 'commercial tort claims' is an insufficient description of collateral for purposes of attachment of a security interest); U.C.C. § 9-204(b)(2) ("A security interest does not attach under a term constituting an after-acquired property clause to . . . a commercial tort claim."). Accord Shirley Medical Clinic, P.C. v. U.S., Shirley Medical, 446 F. Supp. 2d 1028 (S.D. Iowa 2006). A commercial tort claim is not subject to an after-acquired property clause and if not in existence and described sufficiently at the time of the original secured financing, it

is not subject to the lender's liens. See In re Zych, 379 B.R. at 857 (providing detailed analysis). As outlined above, the Debtor, prior to the Petition Date, has asserted substantial claims against Lurgi in connection with the Lurgi Litigation, which remains currently pending. In the DIP Financing Motion and Proposed Order, Dougherty seeks, among other things, relief from the automatic stay to "enforce the Debtor's claims against Lurgi" and to settle such claims." See Proposed Order, ¶ N, at 30.

The damages arising out of the Lurgi Claims, to the extent such claims are commercial tort claims, and other causes of action arising under the Bankruptcy Code appear to be unencumbered as of the Petition Date. These claims and other commercial tort claims that may be in existence currently represent substantial claims and assets of the bankruptcy estate and would otherwise be available for distribution to unsecured creditors and should not be encumbered under the DIP Financing arrangements. Noble therefore objects and requests that the Proposed Order and financing documents (which notably now describe the Lurgi Claims with the specificity required by the Uniform Commercial Code while also bootstrapping unknown commercial tort claims) be modified to exclude such claims from the contemplated financing/liens. Similarly, the relief from stay provisions should be modified to reflect the objection and allow the Debtor and the bankruptcy estate to retain its rights to the extent such claim is a commercial tort claim not previously subject to Dougherty's liens.

For the foregoing reasons, and subject to satisfactorily addressing Noble's objections, the Debtor's DIP Financing Motion should be in all things DENIED.

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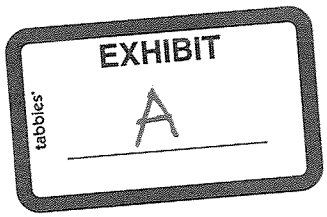

IN THE DISTRICT COURT OF PRATT COUNTY, KANSAS

GATEWAY ETHANOL, LLC,	)	
	)	
Plaintiff,	)	
v.	)	**Case No. 2008CV47**
	)	
	)	
LURGI PSI, INC., et al	)	
	)	
Defendants.	)	

FIRST AMENDED PETITION FOR INJUNCTIVE AND OTHER RELIEF

I. PARTIES

1. Plaintiff, Gateway Ethanol, LLC ("Gateway") is a Kansas limited liability corporation with its principle place of business at 10333 NE 30th Street, Pratt, KS 67124.

2. On information and belief, Lurgi, PSI, Inc. ("Lurgi"), a corporation, and Sherman J. Shwartz ("Shwartz"), an individual, (jointly "Defendants") may be served at 1790 Kirby Parkway, Suite 300, Memphis, Tennessee, 38138.

II. JURISDICTION AND VENUE

3. Jurisdiction, pursuant to K.S.A. §60-308, is proper as Lurgi is a signatory to the Operating Agreement of Gateway ("GOA"), under which the parties consented to jurisdiction in the Kansas District Court in Pratt County, Kansas.

4. Jurisdiction, pursuant to §60-308(b)(1)(F), is proper as this petition arises out of Defendants' role as a director of Gateway, a Kansas limited liability company having a principal place of business in Kansas.

5. Jurisdiction, pursuant to K.S.A. §60-308, is proper as Defendants committed tortious acts in Kansas and slandered the title of real estate located in Kansas.

6. Venue, pursuant to K.S.A. §60-608, is proper because under the GOA the parties consented to venue in Kansas District Court in Pratt County, Kansas. Venue, pursuant to K.S.A. §60-601, is also proper as this case concerns real property located in Pratt County, Kansas. Venue, pursuant to K.S.A. §60-605, is proper in the location of Gateway's principal place of business and where actions arising out of the claim occurred.

III. GENERAL ALLEGATIONS

A. Defendants Breach of Their Fiduciary Duties

7. On or about March 30, 2006, the GOA was executed by Gateway's members, including Lurgi. *See Exhibit 1, attached to Initial Petition.*

8. On or about March 30, 2006, Lurgi and Gateway also entered into a loan agreement ("Loan Agreement"). *See Exhibit 2, attached to Initial Petition.*

9. Pursuant to the Loan Agreement, Lurgi was furnished a seat on Gateway's board of directors.

10. At all times pertinent to this Petition, Shwartz (president and CEO of Lurgi) was on Gateway's board of directors on behalf of Lurgi.

11. As a director on Gateway's board of directors, Defendants have fiduciary duties of loyalty, good faith, and due care with respect to Gateway.

12. On June 6, 2008, Gateway reminded all directors of their fiduciary duties. Despite this notice, Defendants breached their fiduciary duties with respect to Gateway.

13. As a director on Gateway's board of directors, Defendants knew that Gateway entered into a Loan Agreement ("Dougherty Loan"), with its senior lender, Dougherty.

14. As a director on Gateway's board of directors, Defendants knew Dougherty Funding LLC ("Dougherty"), instituted a foreclosure action and a tax increment financing note action against Gateway in U.S. District Court of Kansas, Case Nos. 2:08-cv-02214-JAR-DJW and 2:08-cv-02213-JWL-KGS ("Dougherty Actions").

15. As a director on Gateway's board of directors, Defendants knew of Gateway's financial condition, strategies with respect to the Dougherty Loan and Dougherty Actions and Gateway's relationship with Dougherty.

16. As a director on Gateway's board of directors, Defendants knew Dougherty and Gateway entered into a standstill agreement ("Standstill Agreement") in connection with the possible settlement of the Dougherty Actions.

17. As a director on Gateway's board of directors, Defendants knew the Standstill Agreement required Gateway remove all mechanics liens. On information and belief, Defendants knew Gateway settled all mechanics liens.

18. Defendants used information and opportunities obtained while on Gateway's board of directors for Defendants' own self interest and self dealing. Specifically, Defendants:

a. made direct contact with Dougherty to protect and secure Defendants' interests;

b. filed a fraudulent mechanics lien ("Lien") after Gateway settled all other mechanics liens; *See Exhibit 3, attached to Initial Petition*

c. on information and belief, shared confidential information from Gateway with Dougherty to advance Defendants' interests; and

d. Thwarted Gateway's interests in the Standstill Agreement and Loan Agreement.

19. Defendants' contacts with Dougherty and filing of the Lien harmed Gateway and benefited Defendants.

20. Defendants' actions breached their fiduciary duties of loyalty, good faith, and due care.

B. Defendants' Tortious Interference with Gateway's Contract and Business Relationships

21. As a director on Gateway's board of directors, Defendants knew that Gateway entered into the Dougherty Loan and the Standstill Agreement with Dougherty. Upon information and belief, Defendants encouraged and convinced Dougherty to act contrary to Gateway's best interests under the same.

22. As a director on Gateway's board of directors, Defendants knew of Gateway's business relationship and expectancy with Dougherty.

23. Defendants tortiously interfered with Gateway's rights pursuant to the Dougherty Loan and the Standstill Agreement by preventing Gateway from fully availing itself to its rights and remedies under the same. Defendants also tortiously interfered with Gateway's business relationship and expectancy with Dougherty.

24. Defendants' intentional interference with Gateway's valid contracts and business relationship was malicious, harmful and without reasonable justification.

25. Defendants' actions continue to cause damage to Gateway. This damage results from the draining of operating capital from Gateway in the form of feedstock, chemicals, electricity, and operating expenses.

26. Defendants' actions also resulted in Gateway being unable to take advantage of ethanol market conditions and in turn was exposed to liability for its inability to fulfill its upstream feed contracts as well as its downstream supply contracts.

27. Defendants' tortious interference caused irreparable harm to Gateway by threatening its viability as a business, causing it to lose good will and uniqueness in marketplace.

C. Slander of Title

28. Defendants filed the Lien against property (the "Property") owned by Gateway located in Pratt County, Kansas. *Exhibit 4, attached to Initial Petition.*

29. The Lien is fraudulent and its purpose is to place a cloud on Gateway's title to the Property.

30. On information and belief, the Lien was filed with the malicious intent to thwart the Standstill Agreement and to gain priority over Dougherty, Gateway's senior lender.

31. Gateway is in the process of negotiating a settlement agreement with Dougherty and the Lien frustrates that process.

32. Gateway suffered damage and irreparable harm and continues to suffer the same as a result of the Defendants' actions.

D. Gateway Will Be Irreparably Harmed If An Injunction is Not Issued

33. Defendants' actions resulted in the draining of operating capital from Gateway in the form of feedstock, chemicals, electricity, and operating expenses, thereby threatening Gateway's viability as a business.

34. Defendants' conduct also caused Gateway to lose good will, customers, and market opportunity because of the ongoing delay. These loses cannot be measured and redressed by damages.

35. Furthermore, Gateway's rights pursuant to the Dougherty Loan and Standstill Agreement are uniquely valuable to Gateway because:

a. Gateway's business and its ability to compete in the market place is dependent on obtaining, opening and operating its ethanol plant in a timely manner;

b. The market for ethanol in the United States is very small and concentrated. If Defendants continue to harm Gateway, larger competitors would be able to substantially reduce competition in the industry; and

c. Defendants' use of information and opportunities obtained while on Gateway's board of directors for Defendants' own self interest and self dealing severely impacts the viability of Gateway's business.

36. Further interference by Defendants with Dougherty will jeopardize the settlement agreement, which may force Gateway into a bankruptcy filing.

37. A bankruptcy filing by Gateway will cause irreparable harm and jeopardize the interests and investments of many secured and unsecured creditors of Gateway.

COUNT I
(Breach of Fiduciary Duty)

1. Gateway incorporates herein by this reference each of the allegations of this First Amended Verified Petition as if set forth in full herein.

2. A fiduciary relationship exists between Defendants and Gateway.

3. As a director on Gateway's board of directors, Defendants have fiduciary duties of loyalty, good faith, and due care with respect to Gateway.

4. Defendants' actions breached their fiduciary duties of loyalty, good faith, and due care.

5. Defendants breached their fiduciary duties with respect to Gateway by using information and opportunities obtained while on Gateway's board of directors to:

a. Promote Defendants' own self interest and self dealing;

b. Threaten Gateway's lender Dougherty, thereby protecting Defendants' interests;

c. On information and belief, share Gateway's confidential information with Dougherty to safeguard Defendants' interests;

d. Thwart Gateway's interests in the Standstill Agreement and Loan Agreement; and

e. Gain a strategic advantage against Gateway.

6. Defendants' breach of fiduciary duties damaged Gateway by threatening its viability as a business, causing it to lose good will and uniqueness in the marketplace.

7. Defendants' conduct, unless enjoined, will cause Gateway substantial irreparable harm and damage in an amount that cannot be presently determined and/or cannot be fully quantified.

WHEREFORE, Gateway prays for judgment in its favor and against Defendants on Count I of its First Amended Verified Petition, and further prays this Court to enter an order:

a. enjoining Defendants, preliminarily and permanently, from violating their fiduciary duties with respect to Gateway;

b. enjoining Defendants, preliminarily and permanently, from directly contacting Dougherty;

c. awarding Gateway compensatory damages, costs, and attorneys' fees; and

d. awarding such other and further relief as this Court deems just and proper.

COUNT II
(Tortious Interference with Contract and Business Expectancy)

8. Gateway incorporates herein by this reference each of the allegations of the First Amended Verified Petition as if set forth in full herein.

9. As a director on Gateway's board of directors, Defendants knew that Gateway entered into the Dougherty Loan and Standstill Agreement with Dougherty.

10. As a director on Gateway's board of directors, Defendants knew of Gateway's business relationship and expectancy with Dougherty.

11. Upon information and belief, Defendants encouraged and convinced Dougherty to act contrary to Gateway's best interests under the Loan Agreement, Standstill Agreement and the business relationship

12. Defendants tortiously interfered with Gateway's rights pursuant to the Dougherty Loan and the Standstill Agreement by preventing Gateway from fully availing itself to its rights and remedies under the same. Defendants also tortiously interfered with Gateway's business relationship and expectancy with Dougherty.

13. Defendants' intentional interference with Gateway's valid contracts and business relationship was malicious, harmful and without reasonable justification.

14. Defendants' actions continue to cause damage to Gateway. This damage results from the draining of operating capital from Gateway in the form of feedstock, chemicals, electricity, and operating expenses.

15. Defendants' actions also resulted in Gateway being unable to take advantage of ethanol market conditions and in turn was exposed to liability for its inability to fulfill its upstream feed contracts as well as its downstream supply contracts.

16. Defendants' tortious interference caused irreparable harm to Gateway by threatening its viability as a business, causing it to lose good will and uniqueness in marketplace.

WHEREFORE, Gateway prays for judgment in its favor and against Defendants on Count II of its First Amended Verified Petition, and further prays this Court to enter an order:

a. enjoining Defendants, preliminarily and permanently, from directly contacting Dougherty;

b. awarding Gateway compensatory damages, costs, and attorneys' fees; and

c. awarding such other and further relief as this Court deems just and proper.

COUNT III
(Slander of Title)

17. Gateway incorporates herein by this reference each of the allegations of the First Amended Verified Petition as if set forth in full herein.

18. Defendants filed a fraudulent Lien against Gateway, thereby clouding its title to real estate located in Pratt County, Kansas.

19. On information and belief, the Lien was filed with the malicious intent to thwart the Standstill Agreement and gain priority over Dougherty, Gateway's senior lender.

20. Gateway is in the process of negotiating a settlement agreement with Dougherty and Defendants' fraudulent Lien frustrates that process.

21. As a direct and proximate result of the actions of Defendants outlined above, Gateway suffered damages and irreparable harm and continues to suffer the same.

22. Defendants' conduct, unless enjoined, will cause Gateway substantial irreparable harm and damage in an amount that cannot be presently determined and/or cannot be fully quantified.

WHEREFORE, Gateway prays for judgment in its favor and against Defendants on Count III of its First Amended Verified Petition, and further prays this Court to enter an order:

a. enjoining Defendants, preliminarily and permanently, from clouding title to Gateway's property;

b. awarding Gateway compensatory damages, costs, and attorneys' fees; and

c. awarding such other and further relief as this Court deems just and proper.

COUNT IV
(Declaratory Judgment)

23. Gateway incorporates herein by this reference each of the allegations of the First Amended Verified Petition as if set forth in full herein

24. A declaratory judgment is necessary and proper as a controversy exists regarding whether these claims are subject to arbitration.

25. A controversy exists as:

a. Gateway and Lurgi are presently in arbitration on a wholly separate contract.

b. Lurgi is contending this case is also subject to arbitration.

c. Gateway disputes Lurgi's position.

WHEREFORE, Gateway requests the Court enter and order declaring this lawsuit is not subject to arbitration and for such other relief this Court deems just and proper.

JURY DEMAND

COMES NOW Plaintiff Gateway Ethanol, LLC pursuant to Kansas Rules of Civil Procedure § 60-238 demanding that the above-styled case be tried before a jury on all issues of fact.

Respectfully submitted,

BRYAN CAVE LLP

By: _____

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ATTORNEYS FOR PLAINTIFF,
GATEWAY ETHANOL, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via U.S. Certified Mail, Return Receipt Requested, on this 18th day of July, 2008, upon the following:

Lurgi, PSI
1790 Kirby Parkway, Suite 300
Memphis, Tennessee 38138

AND

Sherman Shwartz
1790 Kirby Parkway, Suite 300
Memphis, Tennessee 38138

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

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: _____

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: _____

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