

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re

UNITED PRODUCERS, INC.

Debtor and Debtor-in-Possession

Case No. 05-55272

Joint Administration

Chapter 11

Judge: Charles M. Caldwell

**MOTION OF UNITED PRODUCERS, INC. FOR AN ORDER FURTHER EXTENDING  
THE TIME WITHIN WHICH THE DEBTOR MAY ASSUME OR REJECT  
UNEXPIRED LEASES OF NON-RESIDENTIAL REAL PROPERTY**

United Producers, Inc., debtor and debtor-in-possession in the above-captioned case (hereinafter, the “Debtor” or “UPI”), hereby moves this Court for an order pursuant to 11 U.S.C. § 365(d)(4) further extending for a period through the confirmation hearing currently scheduled for September 28, 2005, the date by which the Debtor is required to assume or reject any non-residential real property leases pursuant to which the Debtor is a lessee. In support of this Motion, the Debtor respectfully submits as follows:

**JURISDICTION**

1. On April 1, 2005 (the “Petition Date”), the Debtor filed with the United States Bankruptcy Court for the Southern District of Ohio (the “Court”) its voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”). The Debtor continues to operate and manage its businesses as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. Pursuant to a Court Order entered of April 4, 2005, the Debtor, and the case of its wholly owned subsidiary Producers Credit Corporation, are being jointly administered under Case No. 05-55272 (the “Case”) (collectively, UPI and Producers Credit Corporation shall be referred to as the “Debtors”).

2. No creditors' committee has been appointed, nor has a trustee or examiner been sought or appointed, in this Case.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory basis for the relief requested herein is Section 365(d)(4) of the Bankruptcy Code.

## **BACKGROUND**

### **A. In General**

5. UPI is an agricultural cooperative organization owned by farmers and ranchers located primarily in the Midwest. UPI offers a full range of services including livestock marketing, risk management, and production management services. An extension of loans and related products are offered through its wholly owned subsidiary, Producers Credit Corporation ("PCC"). UPI is governed by a 16 member board of directors, with each member representing a region of the cooperative.

6. The Debtors operate on a massive scale. UPI processes transactions of between \$800 million and \$1 billion per year, which involves processing 25,000 to 30,000 checks per month. Between 40,000 and 70,000 farmers do business with UPI at least once a year in transactions ranging from sales of partial herds to an entire herd representing an entire year of work. PCC has a loan portfolio of approximately \$70 million.

### **B. The Lease Agreements**

7. UPI is lessee with respect to nineteen (19) leases (collectively, the "Leases") of non-residential real property (collectively, the "Premises").<sup>1</sup> The Leases, Premises and property

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<sup>1</sup> On the petition date, UPI was lessee to 21 nonresidential real property leases. Pursuant to the prior order of the Court, UPI exercised its rights as lessee to purchase the leased properties located at Owenton and Paris, Kentucky.

owners are identified on Exhibit A hereto. Eleven (11) of the Premises under lease are used as livestock collection points where customers of UPI bring livestock that UPI has agreed to market. Six (6) of the Premises are auction sites where UPI conducts periodic auctions of livestock. Of the remaining 2 sites, one (Battle Creek) is sublet by UPI to a sub-lessee and the other (Shelbyville) is used as an office.

8. On May 5, 2005, Debtor filed a motion seeking to extend the time within which Debtor would be required to assume or reject the Leases (Dkt. No. 97). By order entered on May 27, 2005 (Dkt. No. 115), the Court extended the deadline for Debtor to assume or reject the Leases to August 27, 2005.

9. By this Motion, Debtor seeks entry of an order, pursuant to §365(d)(4) of the Bankruptcy Code, extending the time to assume or reject the Leases until October 7, 2005--a period of 41 days from the current deadline of August 27, 2005.<sup>2</sup>

10. On July 5, 2005, Debtor along with PCC, filed its Joint Plan of Reorganization (the "Plan") [Dkt. No. 146]. The Joint Disclosure Statement (Dkt. No. 152) with respect to the Plan was filed on July 13, 2005. The hearing on the Disclosure Statement is scheduled for August 25, 2005.

11. Article V A of the Plan provides that no later than the hearing on the approval of the Disclosure Statement, Debtors will provide a list of executory contracts and unexpired leases the Debtors will reject as of the Effective Date (as defined in the Plan).<sup>3</sup> Further, Article V B of the Plan provides that except for executory contracts and unexpired leases rejected by the Effective Date as provided by the Plan, all other executory contracts and unexpired leases not previously assumed by Debtors will be deemed to have been assumed by Debtors as of the

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<sup>2</sup> As noted below, the Plan provides that assumptions of unexpired leases shall be deemed effective as of the date the Confirmation Order is entered. Since the confirmation hearing is scheduled for September 28, the October 7 deadline provides sufficient time for the Confirmation Order to be drafted, submitted and entered by the Court.

<sup>3</sup> UPI intends to assume each of the Leases.

Effective Date. Moreover, the Plan constitutes a motion to assume such executory contracts and unexpired leases. Finally, entry of the Confirmation Order (as defined in the Plan) will constitute the approval of such assumptions.

12. Although the Plan constitutes a motion to assume the Leases to the extent not identified for rejection prior to the hearing on the Disclosure Statement, §365(d)(4) requires that such assumption be accomplished within sixty (60) days or such additional time as approved by the Court. Since the confirmation hearing on the Plan is not scheduled until September 28 and the Confirmation Order will not be entered until after that date, Debtor requires additional time to insure that its interests in the Leases are protected.

#### **ARGUMENT**

13. Courts have routinely recognized the benefits to extensions of time under §365(d)(4) of the Bankruptcy Code. See, e.g., Legacy, Ltd. v. Channel Home Ctrs., Inc. (In re Channel Home Ctrs., Inc.), 989 F.2d 682, 689 (3d Cir. 1993), cert. denied, 510 U.S. 865 (1993) (granting an extension of the 60-day period and noting “nothing prevents a bankruptcy court from granting an extension [under §365(d)(4)] because a particular debtor needs additional time to determine whether assumption or rejection of particular leases is called for by the plan of reorganization that it is attempting to develop”).

14. Courts consider several factors in determining whether an extension under §365(d)(4) should be granted, namely: (i) whether the debtor was paying for the use of the property; (ii) whether the debtor’s continued occupation could damage the lessor beyond the compensation available under the Bankruptcy Code; (iii) whether the lease is the debtor’s primary asset; and (iv) whether the debtor has had sufficient time to formulate a plan of reorganization. See South Street Seaport Ltd. P’ship v. Burger Boys, Inc. (In re Burger Boys, Inc.), 94 F.3d 755, 761 (2d Cir. 1996) (quoting Theatre Holding Corp. v. Mauro, 681 F.2d 102,

105-06 (2d Cir. 1982)).

15. Regarding the first two factors, UPI is current on all of its pre and post-petition obligations under the Leases. UPI will continue to pay rent for the post-petition use of the properties in question pursuant to §365(d)(3) at the rates set forth under the Leases, until such time as the Plan is confirmed. Further, UPI will comply with all non-monetary obligations under the Leases. UPI's continued occupation of the properties will not likely damage the lessors beyond the compensation available under the Bankruptcy Code.

16. Each of the leases relates to premises that UPI uses to conduct livestock auctions and other services essential to its ongoing operations. The Plan contemplates the continued use of the facilities occupied pursuant to the Leases as part of Debtors' reorganization.

17. Finally, an extension is warranted since the Plan has been filed and the continued access to the Premises pursuant to the Leases is essential to the successful reorganization of Debtors. In the context of this case, with a plan having been filed within the initial exclusivity period, the extension sought by the Debtor constitutes a reasonable period of time.

18. To the extent there are unanticipated delays in the holding of the hearing to confirm the Plan or the entry of the Confirmation Order, the Debtor reserves its right to seek additional extensions of time pursuant to §365(d)(4).

### **CONCLUSION**

19. For the foregoing reasons, UPI requests that the Court enter an order extending to October 7, 2005, the date by which UPI must assume or reject any non-residential real property leases pursuant to which UPI is lessee.

Dated: August 16, 2005

Respectfully submitted,

/s/Reginald W. Jackson  
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Attorneys for the Debtors-in-Possession

**CERTIFICATE OF SERVICE**

On this the 16th day of August, 2005, the above and foregoing was served upon Core Service List # 4 by first class mail, postage prepaid and upon each of the lessors listed on Exhibit B hereto by overnight mail.

/s/Reginald W. Jackson  
Reginald W. Jackson