

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

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MICHAEL S. WELLS, CLERK  
U.S. BANKRUPTCY COURT

In re: : Case No. 05-55272  
: : Jointly Administered  
United Producers, Inc. : : Chapter 11  
: :  
Debtor. : :  
: : Judge Caldwell

**ORDER REGARDING CONFIRMATION OF  
AMENDED JOINT PLAN OF REORGANIZATION OF  
UNITED PRODUCERS, INC. AND  
PRODUCERS CREDIT CORPORATION**

On September 29, 2005, the Court conducted a confirmation hearing on the Amended Joint Plan of Reorganization filed on behalf of the jointly administered chapter 11 debtors, United Producers, Inc. (UPI) and Producers Credit Corporation (“PCC”)<sup>1</sup>. UPI is a farmer-owned livestock cooperative. Since its inception in the 1930's and through various mergers, it grew to annually market through collection and auction points approximately 3.9 million head of livestock for approximately 70,000.00 farmers in seven states.

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<sup>1</sup>UPI and PCC shall also be collectively referred to in this Order as “Debtor”.

UPI processes transactions in the amount of approximately \$800 million to \$1 billion per year. PCC is a subsidiary of UPI, and is also an agricultural cooperative; however, its primary function is to provide production lending to farmers and ranchers. PCC's loan portfolio is valued in the approximate amount of \$70,000,000.00. As cooperatives, UPI and PCC are non profit entities, and are structured to facilitate the operations of farmers and ranchers.

Objections to confirmation were filed on behalf of two groups of judgement creditors. Essentially, the claims concern the marketing of livestock and emanate from pre petition judgments related to breach of contract, conversion, fraud, and the violation of the Packers and Stockyards Act.

The first group is comprised of G.E. Cattle Co., Inc., Gerald and Nancy Eggerling, James and Marcella Eggerling, Eggerling Farms, Inc., RL Financial, Inc., Rick and Diane Kuchta, Kuchta Farms, Inc., Randy Oertwich d/b/a/ Oertwich Farms, Inc., Curreys of Nebraska, Inc., Producers Livestock Credit Corp. and Harry Hayes. Combined these creditors, that will be referred to as "Group One", hold unsecured judgment claims against UPI in the approximate amount of \$17,000,000.00. The second group is comprised of Everett W. Rogers and Deborah M. Rogers individually and d/b/a Circle R Ranch. Combined these creditors, that will be

referred to as Group Two, hold unsecured judgment claims against UPI and PCC in the approximate amount of \$6,000,000.00.

The instant jointly administered chapter 11 proceeding was commenced on April 1, 2005, primarily to address the potential domestication of the judgments. According to the Debtor, the fear was that its accounts would be frozen, that its services to farmers would be delayed and that the judgments would constitute a loan default with its primary secured lender, CoBank, ACB ("CoBank"). On the date of the bankruptcy filing CoBank was owed approximately \$70,000,000.00, secured by essentially all of the Debtor's assets.

On August 23, 2005, the Debtor filed the Amended Joint Plan of Reorganization ("Plan"). In summary, the Plan provides that with reference to UPI all membership interests are canceled upon the effective date of confirmation. Post confirmation any farmers or ranchers that do business with UPI can become members, and are eligible to obtain any capital credits authorized by UPI's Board of Directors. Regarding PCC, the Plan provides that its stock will be canceled as part of the confirmation, and that CoBank, by virtue of its senior secured position, has consented that new stock for PCC be issued to UPI.

Given its security position CoBank would have the right to liquidate its interest, including the stock, or designate that it be issued to it or another entity. Rather, according to Counsel for CoBank, it was determined that directing the stock to UPI was the best means to insure going forward that there would be a viable entity able to repay the substantial obligation to CoBank. In addition to this concession, CoBank has also agreed to provide exit financing in the approximate amount of \$70,000,000.00, contingent upon confirmation by October 15, 2005, of the Plan as presently drafted.

The Plan proposes a distribution to UPI's unsecured creditors in the approximate amount of \$500,000.00. Pursuant to the agreement reached with Group Two, PCC's unsecured creditors will receive a distribution in the approximate amount of \$300,000.00. The exit financing will be used to fund these distributions. An additional funding source for the Debtor will be a \$20.00 membership fee and per unit retains for livestock sales at the rate of between \$.25 and \$.75 per head that UPI will charge post confirmation. There is no example of the use of such charges by others in the industry. The Debtor estimates; however, that the membership fee may generate between \$800,000.00 to \$1,000,000.00 per year, and that the per unit retains may generate \$1,000,000.00 per year.

As referenced above, immediately prior to the confirmation hearing the Court was informed that a settlement was reached with Group Two. The settlement; however, is contingent upon the confirmation of the Plan, as presently drafted. The purpose of this Order is to address the remaining objection of Group One as it relates to specific provisions of section 1129 of the United States Bankruptcy Code (“Code”).

Regarding sections 1129(a)(1) and (2) of the Code, the Court finds and concludes that the Plan and the Debtor are in compliance with all applicable provisions of the Code. Specifically, the Court finds that securities that will be issued pursuant to the Plan are not subject to registration pursuant to section 1145 of the Code and applicable provisions of the Securities Act of 1933 and the Ohio Revised Code, and that the Plan does not contain any third party releases in violation of section 524(e) of the Code. With reference to CoBank, the release has already been granted pursuant to a separate and final cash collateral and financing order. Further, the Amended Joint Disclosure Statement has been approved and the Plan solicited in accordance with section 1125 of the Code.

With reference to the requirements of section 1129(a)(3) of the Code, the Court finds that the Plan, “has been proposed in good faith and not by any means forbidden by law.” The Court understands that Group One has obtained judgments

based upon fraudulent livestock sale activities. In addition to the fact that the judgments are on appeal, the record indicates that the perpetrators were principals of entities merged into the Debtor. Upon discovery of the fraud, management of the Debtor acted to commence an involuntary bankruptcy proceeding against the entity involved and cooperated with law enforcement authorities. The perpetrators are currently jailed, and no criminal charges were brought against current management.

The record indicates that prior to the bankruptcy filing settlement discussions were conducted to avoid the domestication of the judgements. To avoid the catastrophic consequences of having accounts frozen and having checks issued to farmers bounced, the Debtor had no choice but to file. Once in chapter 11, the Debtor has streamlined its operations by eliminating unprofitable portions of its business, and has restructured its obligations with CoBank. The Court understands that Group One has substantial claims, and they will only receive a small distribution (approximately 3 percent). The Court can not conclude, however, that this result that is dictated by the order of priorities, is in bad faith.

The Court concludes and finds that the all payments either have been approved or are subject to Court approval as required by section 1129(a)(4) of the Code. The Debtor has fully disclosed the identity of and compensation for post confirmation management, and has established that the retention of that management is consistent

with the interests of all parties as required by section 1129(a)(5) of the Code. Since the filing of the case, management has acted to streamline operations, produced financial results that are in excess of budget projections, and has proposed the Plan approximately four months after filing. The former members of UPI have not expressed any opposition, and its Board of Directors refused to accept the resignation of the CEO.

The requirement for regulatory approval detailed in section 1129(a)(6) of the Code has been satisfied. The Debtor has submitted to the Packers and Stockyards Administration an application for approval of its membership and per unit retain charges. The Debtor recognizes that such charges constitute tariffs. Implementation of these charges is conditioned upon approval.

Regarding the "best interest" test found in section 1129(a)(7) of the Code, the testimony provided by the Debtor credibly establishes that upon liquidation of either UPI or PCC, unsecured creditors would not receive a distribution. For UPI it is estimated that after the secured claims of CoBank and GE Capital and chapter 7 administrative expenses are paid, there will be a shortfall of \$7,747,105.00. For PCC it is estimated that after the secured claim of CoBank and chapter 7 administrative expenses are paid, there will be a shortfall of \$12,455,986.00.

With reference to the treatment of administrative claimants, the Plan provides payment on the later of 30 days after the bar date or the date the claim becomes due. If there is an objection to the claim, payment will be made 20 days after entry of an order or stipulation. A portion of the exit financing is earmarked to pay administrative claims. Such treatment is in compliance with section 1129(a)(9) of the Code. Further, the requirement found in section 1129(a)(10) of the Code that one impaired class accepts the Plan, has been by accomplished by the affirmative vote of CoBank. It is impaired by virtue of the agreement to provide financing beyond the original due date of June 2005, and its agreement to reduce the rate of interest originally charged.

Turning to the feasibility requirement of section 1129(a)(11) of the Code, the evidence indicates that the actual financial results for post petition operations have exceeded projections. The Debtor has obtained a commitment from CoBank for exit financing. Although it will expire in 2006 and 2007, there is no evidence to indicate that the Debtor will be unable to obtain extensions. With reference to the membership charge and per unit retains that UPI plans to implement, it is clear at this point that no one knows what the results will be. The testimony indicates; however, that if the Debtor is unable to obtain approval for such charges or they do not generate the income anticipated, expenses and services will be reduced.

In addition, the Debtor expressed that it would also pursue further modifications in the exit financing. Also, upon confirmation substantial debt will be eliminated. This improvement in the Debtor's financial position, according to the testimony, will hasten its ability to become eligible for patronage payments from CoBank. On this point, the Court is persuaded that given the support of CoBank and the silence of the farm members, who collectively have the most to lose, that the Debtor should be given the benefit of the doubt. In this context there is simply no way to plan for every contingency, and there is no way to guarantee a particular result.

Turning to sections 1129(a)(8) and (b) of the Code that may be collectively referred to as the "cram down" provision, the Court must find that the Plan does not discriminate unfairly and that it is fair and equitable. The Court has determined that the Plan as proposed meets these standards for the following reasons. First, the Court concludes that Group One is comprised of creditors of UPI. On this basis they do not have standing to object to the Plan as it relates to PCC.

Second, the Debtor proposes to provide a distribution to unsecured creditors in UPI in the amount of approximately \$515,000.00 and in PCC in the approximate amount of \$300,000.00. The liquidation analysis provided to the Court credibly indicates that upon liquidation unsecured creditors of both estates would not receive

any distribution. Given this fact, there is no basis for this Court to find that the Plan unfairly discriminates.

Third, the Plan is fair and equitable on the basis that no holder of junior interests (equity) will receive or retain any property on account of such interests. As indicated above, in the case of UPI all membership interests are extinguished on the effective date of confirmation, and post confirmation any one, including Group One parties, can become members by simply conducting business with the UPI. Such memberships are not premised upon or limited to those that were members before.

In the case of PCC, all of the stock is canceled on the effective date of confirmation. CoBank is the senior secured lender. In this capacity it could have liquidated its interest, received the new stock, or directed it to be given to another entity. In the instant case, in the exercise of its business judgment, it has determined that it is more likely to receive payment if the new stock is issued to UPI to continue its operations. The stock interest being received by UPI is premised upon these calculations and not upon its prior interests.

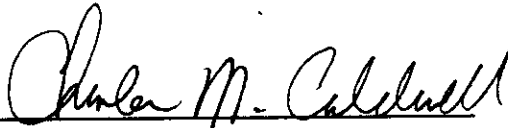
The Court does not find that these provisions for UPI and PCC are “sham” transactions as suggested by Group One, but rather serve as a viable means to restructure the companies while providing some recovery to unsecured creditors that otherwise would receive no distribution.

On the final confirmation requirements contained in sections 1129(a)(12) and (13) of the Code, there is no dispute that the Debtor has provided for the payment of all applicable fees, and there is no disruption in any retirement benefits.

Based upon the findings and conclusion contained in this Order, the Court has determined that the Debtor has met all the confirmation standards of the Code, and is entitled to have the Plan, subject to the settlement reached with Group Two, confirmed. The Debtor is directed to forthwith prepare and submit a separate confirmation order. It shall incorporate by reference the findings and conclusions of this Order, and detail any further provisions contemplated by the Plan and related settlements and stipulations, or as required by the Code and any local or national bankruptcy rules.

**IT IS SO ORDERED.**

Date: Sept. 30, 2005

  
Charles M. Caldwell  
United States Bankruptcy Judge

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