

**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 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) extending for a period of 90 days 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 twenty (20) leases (collectively, the “Leases”) of non-residential real property (collectively, the “Premises”). The Leases, Premises and property owners are identified on Exhibit A hereto. Ten (10) of the Premises under lease are used as livestock collection points where customers of UPI bring livestock that UPI has agreed to

market. Eight (8) 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. 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 August 29, 2005--a period of 90 days.

9. The Debtor needs additional time to analyze the benefit to its estate of assuming or rejecting the Leases. As such, it is essential that the Debtor be afforded the flexibility of additional time to determine whether to assume or reject any or all of the Leases outside the 60 day window otherwise provided for under §365(d)(4).

ARGUMENT

10. 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”).

11. 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)).

12. 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 that UPI rejects any of the Leases. 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.

13. Each of the leases relates to premises that UPI uses to conduct livestock auctions and other services essential to its ongoing operations.

14. Finally, an extension is warranted because the Debtor has not had sufficient time to formulate a plan of reorganization. While it is likely that each of the Leased Premises at which UPI currently conducts livestock operations will be a part of UPI's future operations, prior to formulation of a plan of reorganization it would be premature to "lock-in" the Debtor to the Leases on a going forward basis. Accordingly, at this stage, prior to plan formation, UPI should not be forced to make a final (and perhaps premature) decision regarding the assumption or rejection of the Leases. See, e.g., Nostas Associates v. Costich, (In re Klein Sleep Prod., Inc.) 78 F.3d 18, 29-30 (2d Cir. 1996) (noting in dicta that decisions regarding the assumption of long-term leases should be considered upon confirmation). Finally, in the context of this case, the ninety (90) day extension sought by the Debtor constitutes a reasonable period of time.

15. To the extent the Debtor requires additional time to evaluate the propriety of assuming or rejecting the Leases, the Debtor reserves its right to seek additional extensions of time pursuant to §365(d)(4).

NO PRIOR REQUEST

16. The Debtor has not previously sought the relief requested herein.

CONCLUSION

17. For the foregoing reasons, UPI requests that the Court enter an order extending by ninety (90) days to August 29, 2005, the date by which UPI must assume or reject any non-residential real property leases pursuant to which UPI is lessee.

Dated: May 5, 2005

Respectfully submitted,

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

CERTIFICATE OF SERVICE

On this the 5th day of May, 2005, the above and foregoing was served upon Core Service List # 2 and upon each of the lessors listed on Exhibit B hereto by first class mail, postage prepaid.

/s/Reginald W. Jackson
Reginald W. Jackson

UPI LEASED PROPERTY

LOCATION	ADDRESS	CITY	ST	ZIP	USE	LESSOR
BATTLE CREEK	833 EAST EMMETT	BATTLE CREEK	MI	49014	SUB LET	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
CASS CITY	6425 E CASS CITY RD	CASS CITY	MI	48726	LIVESTOCK COLLECTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
CASSOPOLIS	19331 M-60 EAST	CASSOPOLIS	MI	49031	LIVESTOCK AUCTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
COLUMBUS GROVE	9585 STATE RTE 12	COLUMBUS GROVE	OH	45830	LIVESTOCK COLLECTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
FOWLER	1050CS GRANGE RD	FOWLER	MI	48835	LIVESTOCK COLLECTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
FRANKFORT	709 CRAWFORD ST	FRANKFORT	IN	46041	LIVESTOCK COLLECTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
GREENCASTLE	1270 N JACKSON ST	GREENCASTLE	IN	46135	LIVESTOCK COLLECTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
IRVINGTON	OLD US 60	IRVINGTON	KY	40146	LIVESTOCK AUCTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
MANCHESTER	9534 CHELSEA-MANCHESTER RD	MANCHESTER	MI	48158	LIVESTOCK AUCTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
MARION	505 NORTH MILL	MARION	MI	49665	LIVESTOCK AUCTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
OWENTON	86 BRAMBLETT RD	OWENTON	KY	40359	LIVESTOCK AUCTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
PARIS	PO BOX 198	PARIS	KY	40362	LIVESTOCK AUCTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
RUSHHENRY	10838 N ST RT 3	KNIGHTSTOWN	IN	46148	LIVESTOCK COLLECTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
ST LOUIS	7810 N CROSWELL RD	ST LOUIS	MI	48880	LIVESTOCK AUCTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
WABASH	5094 W ST RT 16	ROANN	IN	46974	LIVESTOCK COLLECTION	SOUTHERN STATES COOPERATIVE, INC, PO BOX 26234, RICHMOND, VA 23260, ATTN: LEGAL DEPARTMENT
GALLIPOLIS*	357 JACKSON PIKE	GALLIPOLIS	OH	45631	LIVESTOCK AUCTION	GALIA COUNTY AGRICULTURAL SOCIETY, INC, PO BOX 931, GALLIPOLIS, OHIO 45631
SPRINGFIELD	3041 STOCKYARD RD	SPRINGFIELD	IL	62702	LIVESTOCK COLLECTION	VANMETER/CAGNONI PARTNERSHIP, 3130 CHATHAM RD, SUITE A, SPRINGFIELD, IL 62704
RAYMOND	21163 ILLINOIS ROUTE 127	RAYMOND	IL	62560	LIVESTOCK COLLECTION	BRANDT CONSOLIDATED, INC, PO BOX 350, PLEASANT PLAINS, IL 62677
MILLEDGEVILLE	219 RAILROAD AVE.	MILLEDGEVILLE	IL	61051	LIVESTOCK COLLECTION	EDWARD WHITMER, 6609 ROLLING HEDGE LANE, ROCKFORD, IL 61108
SHELBYVILLE	242 EAST MAIN ST	SHELBYVILLE	IL	62565	OFFICE	EBERSBACHER BROTHERS, PO BOX 647, SHELBYVILLE, IL 6256

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COLUMBUS GROVE	9585 STATE RTE 12	COLUMBUS GROVE	OH	45830	LIVESTOCK COLLECTION
FOWLER	1050CS GRANGE RD	FOWLER	MI	48835	LIVESTOCK COLLECTION
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Chapter 11

Judge: Charles M. Caldwell

Re: Dkt. No. ____

**ORDER EXTENDING TIME WITHIN WHICH DEBTOR, UNITED
PRODUCERS, INC. MUST ASSUME OR REJECT NON-RESIDENTIAL REAL
PROPERTY LEASES BY NINETY (90) DAYS TO AUGUST 27, 2005**

On the 27th day of May, 2005, the Court heard United Producers, Inc.'s ("UPI") debtor and debtor-in-possession ("Debtor") motion for an order extending the time within which Debtor must assume or reject non-residential real property leases (the "Motion").

The Court finds good cause for granting said Motion.

IT IS THEREFORE ORDERED,

1. That the time within which Debtor must assume or reject non-residential leases of real property is extended by ninety (90) days, to and including August, 27, 2005.

2. Pending such assumption or rejection, Debtor shall comply with its obligations and responsibilities under such leases.

3. This Order is without prejudice to Debtor's right to seek such further extension as Debtor deems necessary and appropriate.

SO ORDERED.

Cc: Core Service Group #2

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