

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:

CAGLE'S, INC.,
CAGLE'S FARMS, INC.,

Debtors.

Chapter 11

Case No. 11-80202-JB

Jointly Administered

Hearing Date: April 4, 2012 at 11:00 a.m.

Objection Deadline: March 30, 2012¹

LIMITED OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DEBTORS' MOTION FOR ENTRY OF ORDERS PURSUANT TO 11 U.S.C. §§ 105, 363, AND 365 (A) AUTHORIZING AND SCHEDULING AN AUCTION AT WHICH THE DEBTORS WILL SOLICIT THE HIGHEST OR BEST BID FOR THE SALE OF SUBSTANTIALLY ALL OF THEIR ASSETS; (B) APPROVING BIDDING PROCEDURES RELATED TO CONDUCT OF AUCTION; (C) APPROVING BREAKUP FEE; (D) APPROVING THE FORM AND MANNER OF NOTICES OF (I) PROPOSED SALE OF THE DEBTORS' ASSETS, THE AUCTION AND THE APPROVAL HEARING, AND (II) PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND LEASES; (E) APPROVING THE SALE OF THE ASSETS TO THE PARTY SUBMITTING THE HIGHEST OR BEST BID; AND (E) GRANTING RELATED RELIEF

The Official Committee of Unsecured Creditors (the "Committee") of Cagle's, Inc. and Cagle's Farms, Inc. (together, the "Debtors"), by and through its undersigned counsel, submits this Limited Objection to the Debtors' motion (the "Bidding Procedures Motion"), pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.*, the "Bankruptcy Code") and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for entry of (i) following an initial, emergency hearing (the "Bidding Procedures Hearing"), an order (the "Bidding Procedures Order") (a) authorizing and scheduling an auction at which the Debtors will solicit the highest or best bid for the sale of substantially all of the Debtors' assets; (b) approving the bidding procedures related to the

¹ The Objection Deadline was extended for the Committee to April 3, 2012 at 6:00 p.m. with the consent of the Debtors.



conduct of the auction; (c) approving the Breakup Fee² payable to the Stalking Horse Purchaser; and (d) approving the form and manner of the notices of (1) the proposed sale of the Debtors' assets, the Auction and the Approval Hearing, and (2) the proposed assumption and assignment of the Debtors' executory contracts and unexpired leases and proposed cure costs related thereto; and (ii) following a final hearing (the "Approval Hearing"), an order (the "Sale Order") approving the sale by the Debtors of the Purchased Assets to JCG Foods LLC (the "Stalking Horse Purchaser") or to the bidder submitting the highest or best bid for the Purchased Assets in connection with the sale and bidding process. In support of this Limited Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT³

1. The Committee acknowledges and appreciates the efforts of the Debtors and their professionals that have brought these cases to the verge of a going concern sale of substantially all of the Debtors' assets and have set the stage for what the Committee hopes will be a robust auction that will result in the realization of significant value for the Debtors' estates and creditors. In fact, the Committee has no objection to almost all of the relief sought by the Bidding Procedures Motion and is pleased with the Stalking Horse Bid.

2. However, the Committee is concerned that there is a high degree of uncertainty as to the true economic value and collectability of the Purchase Note, which is unsecured and comprises a very substantial portion (anticipated to be approximately \$17.5 million) of the Purchase Price to be paid under the Stalking Horse Bid. Moreover, distributions to unsecured creditors in these cases will be dependent upon the Purchase Note being paid in full. The

² Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Bidding Procedures Motion or Bidding Procedures Order, as applicable.

³ Capitalized terms used in this Preliminary Statement shall have the meanings ascribed to them below or in the Bidding Procedures Motion or Bidding Procedures Order, as applicable.

Committee has requested but has not been provided with sufficient information to demonstrate a reasonable likelihood that the Stalking Horse Purchaser will be able to fully and timely satisfy its obligations under the Purchase Note in accordance with its terms. While the Purchase Note is to be personally guaranteed by Joseph C. Grendys, the Committee similarly has requested but has not been provided with any evidence to support the economic value of the Guaranty or its collectability in the event the Stalking Horse Purchaser defaults on its obligations.

3. It is thus far from clear to the Committee that the Purchase Note should be ascribed 100% of its face value for purposes of determining Qualified Bidders eligible to participate in the Auction and for bidding at the Auction because that value does not take into account the risk of nonpayment or the fact that the obligations to pay the Purchase Note and the Guaranty are not secured by assets of the Stalking Horse Purchaser, Koch Foods, and/or Joseph C. Grendys. The Committee's concerns are further exacerbated by the volatility of the Debtors' industry of integrated poultry producers in which there have been a significant number of Chapter 11 bankruptcy filings in the past few years. Ascertaining the true value of the Purchase Note before the bidding process begins is critical because the Stalking Horse Bid will not only serve as the basis for evaluating competing bids at the Auction, it will also be used to determine whether a competing bidder is a Qualified Bidder eligible to participate in the Auction in the first place.

4. Because the value of the Purchase Note is unknown, the Committee respectfully submits that, all other terms being equal, a competing bid of some lesser dollar to be paid entirely in cash at the closing, may be far "better" and of more value to the Debtors' estates than the Stalking Horse Bid, although not technically "higher" in amount. However, under the proposed Bidding Procedures, it appears that a party submitting such a bid would not be deemed

a Qualified Bidder and would not be permitted to participate in the Auction (even if its bid otherwise meets all requirements of a Qualified Bid).

5. Potentially locking out prospective bidders from the Auction process in the event they are not interested in, or cannot agree to, the exact deal structure of the Stalking Horse Bid, or would prefer to make an all cash bid, would be detrimental to all parties in interest in these cases. Accordingly, absent sufficient evidence that the Purchase Note should be valued at par, it must be valued at an appropriate discounted amount in order to set a floor for Qualified Bids that does not bar alternative deal structures that may provide for better value. In any event, the Bidding Procedures must be modified to allow for more flexibility in the requirements for Qualified Bids, such as permitting Qualified Bids whose value exceeds the value of the Stalking Horse Bid.

6. In addition, if the Stalking Horse Bid as currently structured is the Prevailing Bid at the Auction (whether bid up or not), any recovery by general unsecured creditors on their prepetition claims (other than administrative expense claims pursuant to section 503(b)(9) of the Bankruptcy Code) will be wholly dependent upon payment of the Purchase Note. An all cash bid, even if lower overall, might provide a less risky prospect of recovery for general unsecured creditors. Accordingly, the Bidding Procedures must be designed in a manner that does not lock the Debtors to one structure but allows consideration of all reasonable bid structures.

BACKGROUND

7. On October 19, 2011 (the "Petition Date"), each of the Debtors filed a voluntary petition with this Court under chapter 11 of the Bankruptcy Code.

8. On October 20, 2011, this Court entered an order authorizing the joint administration of the Debtors' bankruptcy cases for procedural purposes only [Docket No. 22].

9. On October 27, 2011, the Office of the United States Trustee appointed the

Committee pursuant to section 1102(a)(1) of the Bankruptcy Code [Docket No. 72].

10. On March 23, 2012, the Debtors filed the Bidding Procedures Motion [Docket No. 308].

11. By the Bidding Procedures Motion, among other things, the Debtors seek approval of the bid (the “Stalking Horse Bid”) of the Stalking Horse Purchaser, an entity affiliated with Koch Foods, Inc. (“Koch Foods”),⁴ as the basis upon which any third party (other than the Stalking Horse Purchaser) interested in acquiring the Purchased Assets must submit a competing bid to the Debtors on or before May 4, 2012 at 5:00 p.m. (the “Bid Deadline”).

12. As set forth in the asset purchase agreement (the “APA”) with the Stalking Horse Purchaser attached to the Bidding Procedures Motion as Exhibit A, the “Purchase Price” under the Stalking Horse Bid consists of the following consideration: (i) \$37 million, plus (ii) the value of the Debtors’ inventory and accounts receivable that are not more than 60 days past due as of the closing (such value being determined as described in the APA and subject to an adjustment for uncollected accounts receivable),⁵ minus (iii) certain post-petition payables and accrued expenses that will be assumed by the Stalking Horse Purchaser.⁶ *See* APA §§ 2.6(a), 2.7.

13. The Purchase Price is payable at closing as follows: (a) the lesser of \$55 million or the Purchase Price in cash, plus (b) a promissory note payable to Cagle’s, Inc. for the balance (the “Purchase Note”). *See* APA § 2.6(b) and Exhibit E thereto. The Committee understands that the cash component of the Purchase Price is expected to be \$55 million and the Purchase Note is expected to be in the amount of approximately \$17.5 million.

⁴ Koch Foods is not related to Koch Industries, Inc., the Wichita based company that owns Georgia Pacific LLC and many other businesses.

⁵ The value of the Debtors’ inventory and accounts receivable as of January 28, 2012 was approximately \$43 million. *See* Bidding Procedures Motion at ¶ 12 n.2.

⁶ As of January 28, 2012, the amount of the post-petition payables and accrued expenses to be assumed by the Stalking Horse Purchaser was approximately \$7.7 million. *See* Bidding Procedures Motion at ¶ 12 n.3.

14. The Purchase Note is to be personally guaranteed (the “Guaranty”) by Joseph C. Grendys (the principal of Koch Foods) (“Mr. Grendys”), will mature on the second anniversary of the closing, will accrue interest at a rate of eight percent (8%) and will be fully amortized (eight equal payments of principal plus interest payable on a quarterly basis). *See* Motion at ¶ 12; APA § 2.6(b).

15. The Purchase Note will be unsecured and subordinated to the loans made by the Stalking Horse Purchaser’s acquisition lender pursuant to an Intercreditor Agreement, and the Debtors will not receive any payments on the Purchase Note until February 1, 2013 (at which time they will receive the first two deferred quarterly payments plus accrued interest). *See id.*

16. Under the proposed Bidding Procedures, to be considered a Qualified Bidder eligible to participate in the Auction, any prospective purchaser (other than the Stalking Horse Purchaser) must submit to the Debtors an “Initial Overbid” meeting certain requirements (hereinafter, a “Qualified Bid”) prior to the Bid Deadline. Chief among these requirements, any Qualified Bid must be submitted in the form of a signed definitive asset purchase agreement that has (A) “substantially identical terms and conditions as [the] Agreement except with higher and better consideration” and (B) “a purchase price in an amount equal to or greater than the sum of (1) the Purchase Price, (2) the Break-Up Fee, and (3) \$500,000. *See* proposed Bidding Procedures Order at ¶ 3.a.(i); Bidding Procedures Motion at ¶ 13(i)(a); APA § 7.4(b)(i)(A).

LIMITED OBJECTION

17. As noted above, the Purchase Note component of the Stalking Horse Bid is expected to be in the amount of approximately \$17.5 million, which is a very significant portion of the Purchase Price. Accordingly, the Committee has requested from the Debtors, but has not received, sufficient information to demonstrate a reasonable likelihood that the Stalking Horse Purchaser will be able to fully and timely satisfy its obligations under the Purchase Note in

accordance with its terms.

18. While the Purchase Note is to be personally guaranteed by Mr. Grendys, (i) the Purchase Note and Guaranty are unsecured, (ii) the Purchase Note will be subordinated pursuant to the Intercreditor Agreement to any loans made to the Stalking Horse Purchaser by its acquisition lender, and (iii) the form of the Guaranty and Intercreditor Agreement have not yet been disclosed. In addition, the Committee has requested but has not yet been provided with a personal financial statement certified by Mr. Grendys or any other evidence to support the economic value of the Guaranty or collectability from Mr. Grendys in the event the Stalking Horse Purchaser were to default on its obligations under the Purchase Note.

19. In the absence of this critical information, the Committee is concerned that there is a high degree of uncertainty as to the true economic value and collectability of the Purchase Note. As matters currently stand, it is far from clear to the Committee that the Purchase Note should be ascribed 100% of its face value for bidding purposes because that value does not take into account the risk of nonpayment or the fact that the obligations to pay the Purchase Note and the Guaranty are not secured by assets of the Stalking Horse Purchaser, Koch Foods, and/or Mr. Grendys.⁷ The Committee's concerns about the collectability of the Purchase Note are further exacerbated by the volatility of the Debtors' industry of integrated poultry producers where there have been a significant number of Chapter 11 filings in the past few years, including Allen Family Foods, Inc. (Bankr. D. Del. June 9, 2011) (Case No. 11-11764), Townsends, Inc. (Bankr. D. Del. Dec. 19, 2010) (Case No. 10-14092), and Pilgrim's Pride Corporation (Bankr. N.D.

⁷ In addition, ascribing 100% value to the Purchase Note fails to take into consideration the additional layer of administrative expenses and delay in distributions to creditors that payment of a large portion of the Purchase Price over an extended period of time would undoubtedly entail.

Texas. Dec. 1, 2008) (Case No. 08-45664).⁸

20. Ascertaining the true value of the Purchase Note before the bidding process begins is critical because, if the Bidding Procedures Motion is approved, the Stalking Horse Bid will not only serve as the basis for evaluating competing bids at the Auction, it will also be used to determine whether a competing bidder is a Qualified Bidder eligible to participate in the Auction in the first place.

21. Because the value of the Purchase Note is unknown, the Committee respectfully submits that, all other terms being equal, a competing bid of some lesser dollar amount to be paid entirely in cash at the closing, may be far “better” and of more value to the Debtors’ estates than the Stalking Horse Bid, although not technically “higher” in amount (if the Purchase Note is ascribed 100% of its face value). However, under the proposed Bidding Procedures, it appears that a party submitting such a bid would not be deemed a Qualified Bidder and would not be permitted to participate in the Auction (even if its bid otherwise meets all requirements of a Qualified Bid).⁹

22. The Committee is cognizant of the possibility that a competing bidder will adopt the Stalking Horse Purchaser’s deal structure and top the Stalking Horse Bid with more cash. However, potentially locking out prospective bidders from the Auction process in the event they are not interested in, or cannot agree to, the exact deal structure of the Stalking Horse Bid, or would prefer to make an all cash bid (or propose some other reasonable structure) would be

⁸ In the event an additional guaranty or guarantees of payment of the Purchase Note are offered as part of the Stalking Horse Bid, the Committee will still need to have access to sufficient information to confirm their collectability.

⁹ For example, all other terms being equal, an all cash bid that is less than the amount of the cash and Purchase Note offered by the Stalking Horse Purchaser may be far more favorable to the estates than the Stalking Horse Bid, but it would not qualify as a Qualified Bid under the proposed Bidding Procedures because it does not exceed the sum of the Purchase Price, the Breakup Fee and \$500,000. The Committee submits that such a bid should be considered a Qualified Bid. It should be noted that the Committee is not arguing that the Stalking Horse Purchaser should not be eligible to receive the Breakup Fee if an all cash bid with a lower nominal price is the Prevailing Bid at the Auction.

detrimental to all parties in interest in these cases. Accordingly, absent sufficient evidence that the Purchase Note should be valued at par, it must be valued at an appropriate discounted amount in order to set a floor for Qualified Bids that does not bar alternative deal structures that may provide for better value. In any event, the Bidding Procedures must be modified to allow for more flexibility in the requirements for Qualified Bids, such as permitting Qualified Bids whose value exceeds the value of the Stalking Horse Bid.

23. In addition, the Committee understands that the cash portion of the Purchase Price will be insufficient to provide for any recovery to the Debtors' general unsecured creditors on their prepetition claims in these cases (other than administrative expense claims pursuant to section 503(b)(9) of the Bankruptcy Code). Thus, if the Stalking Horse Bid as currently structured is the Prevailing Bid at the Auction (whether bid up or not), any recovery by general unsecured creditors on their prepetition claims will be wholly dependent upon payment of the Purchase Note. Under these circumstances, an all cash bid, even if lower overall, might provide a less risky prospect of recovery for general unsecured creditors. Accordingly, the Bidding Procedures must be designed in a manner that does not lock the Debtors to one structure but allows consideration of all reasonable bid structures.

RESERVATION OF RIGHTS

24. The Committee reserves the right to revise, amend or supplement this Limited Objection at any time prior to or at the Bidding Procedures Hearing.

25. The Committee also reserves the right to object to any success fee sought in these cases based on a value of 100% ascribed to the Purchase Note and intends to object to the payment of any such success fee until the Purchase Note is paid in full.

CONCLUSION

26. The Committee respectfully requests that the Court (i) deny the Bidding Procedures Motion unless the concerns of the Committee set forth herein are resolved; and (ii) grant the Committee such other and further relief as the Court deems just and proper.

Dated: April 3, 2012

Respectfully submitted,

LOWENSTEIN SANDLER PC

Jeffrey D. Prol, Esq.
Michael Savetsky, Esq.
65 Livingston Avenue
Roseland, New Jersey 07068
Telephone: (973) 597-2500
Facsimile: (973) 597-2400

-- and --

Bruce S. Nathan, Esq.
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 262-6700
Facsimile: (973) 422-6851

-- and --

/s/ Henry F. Sewell, Jr.
Gary W. Marsh
Georgia Bar No. 471290
Henry F. Sewell, Jr.
Georgia Bar No. 636265
Alison Elko Franklin
Georgia Bar No. 243353
McKenna Long & Aldridge LLP
303 Peachtree Street, Suite 5300
Atlanta, Georgia 30308
Telephone: (404) 527-4000
Facsimile: (404) 527-4198

*Counsel for the Official Committee
of Unsecured Creditors*