

AgFeed Says Ch. 11 Examiner Could Derail \$50M China Deal

By Matt Chiappardi

Law360, Wilmington (September 25, 2013, 8:40 PM ET) -- Bankrupt hog grower AgFeed Industries Inc., along with its creditors and equity holders committees, balked Wednesday at a request from the U.S. Trustee's Office to appoint an examiner to investigate its operations in China, arguing the move would risk unraveling the planned \$50 million sale of its Chinese assets.

AgFeed also asserted in Delaware bankruptcy court that an examiner would waste millions of dollars in estate funds investigating issues the company already spent at least \$8 million looking into two years ago. The U.S. Securities and Exchange Commission is also conducting a formal civil probe into possible violations arising from the company's Chinese operations, according to its motion.

"The appointment of an examiner would risk the [sale], threaten to disrupt the debtor's sale process and chill bidding, waste millions of dollars on an investigation that has already been conducted, and distract the parties in interest from maximizing value and confirming a consensual plan," the objection states.

Both the official committees of equity holders and unsecured creditors joined with AgFeed in its objection to the examiner motion, reiterating the argument that it could sink the prospect of a stalking horse sale of the Chinese assets to Hong Kong firm Good Charm International Development Ltd., and thus risk their recoveries, according to court records.

"Most telling, perhaps, is that both official committees appointed in these cases, fiduciaries for the very parties the U.S. Trustee seeks to protect, have joined the debtor in opposing the examiner motion."

U.S. Trustee Roberta A. DeAngelis requested an examiner be appointed in the case on Sept. 13, arguing there was a need to figure out what happened to \$70 million that was invested in China after AgFeed went public in 2007 and raised \$95 million through the sale of stocks and warrants, according to court records.

The bankruptcy watchdog contends that AgFeed's management received information that the company's Chinese management conducted "massive fraud" from 2008 through 2011 that included creating two sets of

books, fabricating nonexistent businesses and selling off \$22 million in accounts receivable at a 40 percent discount, according to the U.S. Trustee's motion.

The need for outside review was especially great because over the past month AgFeed sold off its U.S. assets for \$79.2 million to three different firms and saw the SEC announce a preliminary decision to recommend bringing an enforcement action over alleged irregularities at its Chinese businesses, the U.S. Trustee argued.

AgFeed has noted that the SEC neither lodged formal allegations nor determined it violated the law.

The company said Wednesday it formed a special committee to look into the matter in 2011, and nowhere does the U.S. Trustee contend that investigation was too narrow, incomplete or deficient, according to AgFeed's motion.

Moreover, the stock purchase agreement for the Chinese assets allows the potential buyer to scuttle the deal if an examiner with expanded powers is appointed, and counsel for the stalking horse bidder has said it would not waive its termination right, according to AgFeed's motion.

AgFeed also argues the examiner would be a major distraction and unnecessary drain on the company's time and effort when it is focused on the auction process.

Tennessee-based AgFeed filed for Chapter 11 protection in July after defaulting on a \$68.5 million credit facility from the Farm Credit Services of America loan in the wake of a falling out with primary business partner Hormel Foods Corp., which provided about half the young pigs the company raised and later bought full-grown hogs to, according to court records.

The company was founded in 1995 as an agricultural feed producer in China, and incorporated in Nevada in 2005, acquiring a U.S. presence in September 2010 when it purchased prominent hog grower M2P2 LLC, court records state.

AgFeed is represented by Robert S. Brady, Donald J. Bowman Jr., Robert F. Poppiti Jr. and Ian J. Bambrick of Young Conaway Stargatt & Taylor LLP.

The creditors committee is represented by Sandra G. M. Selzer, Nancy A. Peterman, Matthew T. Gensburg and Paul T. Fox of Greenberg Traurig LLP, as well as Jeffrey D. Prol and Timothy R. Wheeler of Lowenstein Sandler LLP.

The equity committee is represented by Rafael X. Zahraiddin-Aravena and Eric M. Suttly of Elliott Greenleaf, as well as Aaron L. Hammer and Mark S. Melickian of Sugar Felsenthal Grais & Hammer LLP.

The case is In re: AgFeed USA LLC, case number 1:13-bk-11761, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by David McAfee, Jamie Santo, Drew Singer and Jeff Sistrunk. Editing by John Quinn.