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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

HUMBOLDT CREAMERY, LLC,

No. 09-11078

Debtor(s).

Memorandum on Request to Immediately Pay Certain Priority Claims

Debtor Humboldt Creamery, LLC, filed its Chapter 11 petition on April 21, 2009. One day later, it sought permission to pay approximately \$1.7 million in prepetition debt to Humboldt Creamery Association, a non-profit agricultural cooperative composed of 40 farmer-members who have an average herd size of 300 milking cows.¹ Humboldt Creamery Association also owns 75% of the debtor. The U.S. Trustee objected, arguing that the court should defer a decision until a creditors committee has been formed.

The request is governed by Rule 6003(b) of the Federal Rules of Bankruptcy Procedure. This rule does not permit the payment of a claim which arose prepetition for the first 20 days of a bankruptcy unless it is necessary to avoid immediate and irreparable harm.

The decision to allow the payments now is not an easy one for the court. The U.S. Trustee is entirely correct in arguing that there is a significant risk of injustice if the court allows payment on

¹Leave is also sought to pay a small portion to non-Association farmers.

1 prepetition debt immediately upon the commencement of a bankruptcy case, when all parties except
2 the unsecured creditors have had a chance to organize, plan their strategies and prepare their arguments
3 to the court. This concern is especially compounded in this case since the payee is an insider of the
4 debtor.

5 However, in this case the court is convinced that immediate and irreparable harm will be
6 suffered by the debtor if the payments are not allowed. The payments are for milk clearly delivered
7 during the 20 days before bankruptcy, and are therefore entitled to priority under § 503(b)(9) of the
8 Bankruptcy Code.² While the Association is an insider, it is composed by small dairy farmers who
9 cannot be expected to finance the debtor's operations and cannot afford to wait for payment. The court
10 fears that any disruption of payment to the farmers would seriously prejudice the debtor's ability to
11 continue normal operations while in Chapter 11.³

12 Lastly, the court believes that it can mitigate any possible damage to the bankruptcy estate by
13 providing that the payments shall be subject to recovery by the estate to the extent they prove to be
14 improvident or result in a higher dividend than the recipient is entitled to receive at the conclusion of
15 the case. Since the Association and its members will continue to do business with the debtor as a
16 result of payment, recovery should not prove overly difficult if future events show that the payments
17 should not have been authorized.

18 For the above reasons, the debtor will be granted leave to make the payments as prayed and
19 may submit a form of order to that effect.

21
22 ²Nothing in the Bankruptcy Code forbids payment on a prepetition debt before confirmation of
23 a plan, and Rule 6003(b) specifically contemplates such payments. The court concludes that
24 prepetition debt, and especially a priority debt, may be paid before confirmation if in the best interests
25 of the estate.

26 ³The court notes that Rule 6003 allows the court to authorize payments on prepetition debt if
27 necessary to avoid immediate and irreparable harm, but does not require that such harm be to the
28 bankruptcy estate. The court finds that a delay in payment would result in immediate and irreparable
29 harm to both the dairy farmers and the debtor, and for this reason authorizes payment now.

1 Dated: April 23, 2009

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Alan Jaroslovsky
U.S. Bankruptcy Judge