

## AgFeed Creditors Wary Of Latham Hire In Ch. 11 Case

By **Matt Chiappardi**

Law360, Wilmington (September 12, 2013, 4:08 PM ET) -- Both the creditors and equity committees in the [AgFeed Industries Inc.](#) bankruptcy case took issue Thursday with the debtor's retention of [Latham & Watkins LLP](#) as special counsel, wary that legal costs in the case will spiral out of control.

The committees are concerned that the scope of Latham & Watkins' retention is too broad since the firm has represented the hog grower, along with several directors and officers, in two ongoing federal shareholder lawsuits in Tennessee, as well as an [open formal investigation](#) of the company's financial disclosures by the U.S. [Securities and Exchange Commission](#), according to filings in the U.S. Bankruptcy Court for the District of Delaware.

With Wells notices — preliminary determinations to call for enforcement actions — having been issued by the SEC in August, the committees believe there are bound to be conflicts among AgFeed and various directors and officers, according to court records.

They are also worried about the attorneys' bills eating up the estate's resources, since Latham & Watkins is already believed to be AgFeed's largest unsecured creditor so far with a nearly \$6.3 million claim, according to the filing.

"L&W's retention needs to be clarified as to whom they represent and in which matters," the equity committee's motion states. "The equity committee does not want the estate to incur

uncontrolled legal expenses on a postpetition basis. L&W is a sophisticated law firm that has been involved with the legal issues surrounding the debtors for a substantial period of time [and] can estimate and budget their costs with some certainty.”

The committees say they’ve offered a proposal to AgFeed that places a \$125,000 cap on Latham & Watkins’ fees that can be increased with court permission, as well as limits to the firm’s scope to only represent those in the case who haven’t been given Wells notices, transitioning the SEC-related matters to separate counsel.

They also want Latham & Watkins to no longer be retained for the lawsuits in the U.S. District Court for the Middle District of Tennessee — a [class action](#) and a [derivative suit](#), both alleging false statements about financial health — because they’ve both been stayed with AgFeed’s July bankruptcy filing, the motions state.

The committees say they’ve received no response to their proposals, and AgFeed attorney Robert S. Brady of [Young Conaway Stargatt & Taylor LLP](#) declined to comment when contacted Thursday. A representative of Latham & Watkins did not immediately return requests for comment.

AgFeed announced in an SEC filing on Sept. 6 that the agency had issued Wells notices for alleged violations of anti-fraud provisions of securities laws connected to accounting errors and irregularities in the company’s feed mill and legacy farms businesses in China.

The irregularities resulted in errors and misstatements in the company’s financial statements from 2007 through the second quarter of 2011, AgFeed said in the filing.

The company noted that the notices are neither formal allegations nor determinations it violated the law.

The revelation came about a week after U.S. Bankruptcy Judge Brendan L. Shannon [signed off](#) on AgFeed’s \$79.2 million multiparty Chapter 11 asset sale to High Plains Pork LLC, Cohoma Pork LLC and Murphy-Brown LLC, according to court records.

Tennessee-based AgFeed [filed for Chapter 11 protection](#) 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 back full-grown hogs, according to court documents.

The parties have agreed to wind down their arrangement by the end of the year, and AgFeed stopped purchasing young pigs from Hormel on July 1.

The equity committee is represented by Rafael X. Zahralddin-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 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](#).

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 case is In re: AgFeed USA LLC, case No. [1:13-bk-11761](#), in the U.S. Bankruptcy Court for the District of Delaware.

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