Dornoch Holdings International.
v.
ConAgra Foods Lamb Weston, Inc., et al

Case No. 1:10-cv-00135-EJL
In the United States District Court
For the District of Idaho

Expert Report of
Mr. Daniel J. Mackell
HeadwatersMB
February 27, 2012

Re: Case No. 1:10-cv-00135-EJL in the United States District Court for the District of Idaho, ("Plaintiff", or "Dornoch") v. ConAgra Foods Lamb Weston, Inc., et al ("Lamb Weston" or "Defendant")

I. Scope of Engagement

I have been asked to provide expert business and financial evaluations (and valuations), investment banker analysis and expert witness testimony with regard to the financial projections, actual performance and the decisions with regard to the exercise of an option to invest in a potato processing plant in Chile ("Unisur") and ultimately the decision not to exercise the options. In exchange for advancing Unisur funds for capital expansion and working capital, Lamb Weston received options to acquire a portion or all of Unisur and Lamb Weston obtained the right to conduct detailed due diligence of the Unisur business and operations for a two year period (which period was later shortened to one year). Unisur never achieved any level of profitability for numerous reasons, primarily a high cost production, lower cost import markets, volatile and unpredictable raw material supply, very challenging operating environment, currency fluctuations, poor local management, under-maintained equipment, environmental matters, lost sales relationships and credibility in the market, and other issues. In the end, Lamb Weston attempted to exercise its options, but the parties could not agree on the final terms. By February 2010, Lamb Weston declined to accept the terms required by Unisur for exercising the options. Specifically, I have performed a detailed review and analysis of numerous documents and financials related to Unisur and based on my 25 year financial industry experience in evaluating and valuing companies, I have rendered my opinion below.

II. Credentials

I am a Managing Director and Head of the Restructuring Group of HeadwatersMB, a middle-market investment bank. Prior to that, I was the CEO of Cottage Capital, LLC which is also an investment banking advisory firm based in CT and NY. Prior to Cottage, I was a Managing Director responsible for Direct Principal Finance & Origination of transactions at Marathon Asset Management. I worked directly with Chief Executive Officers, Chief Financial Officers and Treasurers of corporations to propose and consummate capital market transactions. I joined

Marathon Asset Management in 2004, having spent most of my career at Donaldson, Lufkin & Jenrette as an Investment Banker in their Corporate Finance Department and was Head of the Building Products Group advising companies on M&A transactions, capital market financing transactions, and numerous restructurings. I earned a Bachelor of Arts degree in Economics and Portuguese from Georgetown University, a Masters Degree in Economics from New York University, and a M.B.A. in Finance from the Wharton School at the University of Pennsylvania (1987). I lived in Brazil for a number of years and graduated HS from the American School of Rio de Janeiro. I speak fluent Portuguese and Spanish and am functionally conversant in Italian and French. I have two undergraduate degrees and a MA in Economics and a MBA and have conducted business in Latin America, US, Europe and Asia. I restructured components of the sovereign debt of Brazil, Argentina and the Philippines and during my 25-year finance career have completed over $1 billion of cross-border related financings and advisory assignments as well.

III. Documents Considered

I have reviewed and/or considered numerous documents with respect to my analysis. Documents reviewed and/or considered include: communications between Lamb Weston and Unisur, but most importantly the parties' contracts, including the option agreement itself, historical and projected financials; the case filings (Pleadings in the case); certain public filings by ConAgra and related equity research and certain related depositions.

IV. Summary of Facts & Claims

On October 29, 2008 Lamb Weston and the controlling shareholder of Unisur, Hungelmann Holdings (subsequently renamed Dornoch Holdings "Dornoch") executed a Memorandum of Understanding ("MOU") whereby Lamb Weston loaned $1.5 million to Unisur in exchange for an option to purchase up to 100% of Unisur. Lamb Weston had also agreed to provide certain technical expertise and assistance in exchange for this option. This MOU was amended in early 2009 when it became apparent that the plant was seriously underperforming and was in need of additional emergency working capital and funding. In an amended and restated MOU dated April

30, 2009, Lamb Weston agreed to advance and additional $2.2 million loan to Unisur. Lamb Weston had also provided a $750,000 line of credit for import purchases from Lamb Weston.

In October 2009, Unisur and Lamb Weston entered into a letter of intent whereby Lamb Weston would acquire 100% of Unisur on the condition that Lamb Weston's due diligence, in Lamb Weston's sole discretion, was satisfactory to Lamb Weston. After Lamb Weston conducted its due diligence and investigated options for partnership, Lamb Weston made an offer to acquire Unisur for $500,000, plus assumption of liabilities and potential earn out provisions based on Unisur's performance after Lamb Weston's acquisition. At the time of this offer, the liabilities on Unisur's balance statements were in excess of $7.75 million most of which would have been assumed by Lamb Weston. After negotiations between the parties broke down and after Lamb Weston discovered additional risks and concerns during the due diligence, Lamb Weston notified Unisur that it would not acquire the options. Dornoch filed a lawsuit against Lamb Weston claiming damages for the non-exercise of the option.

V. Analysis

I performed an analysis of documents, financials and other materials in this case and how such disclosures reflect on the reasonableness of the positions taken by Dornoch in this litigation with regard to the arguments presented by the Plaintiffs in their claims for relief.

Dornoch Contention 1: That the Defendant engaged in behavior to purposefully and willfully depress the value of Unisur so that Lamb Weston could either exercise the purchase option for a very low price or incur such operating damage to Unisur that Unisur would cease to exist.

This is a very weak and baseless claim given that the facts and logic argue for the exact opposite based on Lamb Weston's substantial investment into Unisur and the actions taken by Lamb Weston during 2009. The financial condition of Unisur reveals that it was consistently unable to make a profit, (as Plaintiffs' own CFO's financial summary supports) in the Chilean market and with or without Lamb Weston, Unisur was already a failed company.

First- Lamb Weston held an "option" to purchase, which means that Lamb Weston was not under any obligation to acquire Unisur, but rather held the sole discretion to decide whether it would exercise its options. Likewise, if Lamb Weston made an offer below the option price, Unisur held the sole discretion to decline the offer. Lamb Weston could only force a sale of Unisur if Lamb Weston paid the full price of the option. If Lamb Weston offered any price below that of the option granted to Lamb Weston, Unisur retained the full discretion to accept or decline the offer. In my professional experience, Lamb Weston's actions and efforts are not consistent with actions that could or would depress the value of a company similarly situated as Unisur. Certainly, the parties may have made mistakes along the way, but the actions are indicative of a business effort to recover a failed company. Lamb Weston is in the business of growing and expanding its business and operations and thereby delivering value in the form of dividends and share price appreciation to their shareholders. Lamb Weston has multiple JV's and investments (control and non-control) in different potato processors around the world including its European potato segment ConAgra Meijer, Lamb Weston BSW, a potato processing Joint Venture with Ochoa Ag Unlimited Foods Inc.

In this particular case with Unisur, Lamb Weston lent $1.5 million to Unisur at the end of 2008 in exchange for an option to purchase a portion or all of Unisur, the opportunity to conduct due diligence and investigate the upside potential in the South American market, basing its operations out of Unisur's plant in Chile. Lamb Weston had not performed due diligence on the Unisur operations (in fact there is evidence that Lamb Weston was materially misled as to the financial stability or lack thereof) of the Unisur operations before Lamb Weston granted its first $1.5 million loan to Unisur. Nonetheless, based on Lamb Weston's desire to research the viability of obtaining an international presence in South America, Lamb Weston loaned the funds to Unisur. It is not inconsistent for Lamb Weston to be a lender to Unisur, while simultaneously holding an option to acquire Unisur and granting to Unisur technical support. In fact, Lamb Weston granted to Unisur a below market loan, which Unisur would not have been able to obtain such favorable loan conditions from a commercial lender due to their credit risk and financial instability. In my professional business experience and after review of the financial records, Unisur was already essentially a failed company by October 2008 given that it could never produce profits and Lamb Weston's loan gave Unisur additional time by which to recover.

Unisur appears to contend that Lamb Weston sabotaged the sales of Unisur and did not provide sufficient plant modification or technical support to raise the quality of products processed at the Unisur plant. Unisur's business was already detrimentally harmed by years of underperformance and the two immediately preceding years in which Unisur shorted customers on products for various reasons. Unisur's two major customers decided, prior to Lamb Weston's arrival, to take product from producers other than Unisur. Unisur had destroyed key relationships with raw supply producers, environmental agencies, customers and others in the local market. These factors support why Unisur performed poorly in 2009 and there was little to no chance that Lamb Weston could repair Unisur, let alone help it recover from the deficit position Unisur was in when Lamb Weston contracted with Unisur in 2008. In my professional business experience with failing companies, Lamb Weston did act well within the normal standards of business and certainly its actions do not suggest that it sabotaged Unisur's operations. The opposite is revealed from the facts – Lamb Weston invested considerable time, financial contributions, personnel, expertise and other resources in an effort to salvage Unisur from its failed position.

As soon as the original $1.5 million in funds were advanced, Unisur started to reveal the true desperate nature of Unisur's financials. The original 2008 loan required half to be invested in capital expenditures - but it appears that Unisur was in such a working capital shortfall that Unisur had to make substantial revisions to the 2008 year end projections previously set by Unisur. Unisur also requested an immediate infusion of additional working capital. In April 2009, the parties executed a Revised Memorandum of Understanding and Transition Agreement, whereby Lamb Weston loaned Unisur an additional $2.2 million to keep Unisur afloat and increased Unisur's working line of credit from $500,000 to $750,000 so Unisur could import additional product. In return, Unisur executed a deed of trust and promissory notes, collateralizing all of Unisur's assets as security for the loans from Lamb Weston. Lamb Weston agreed to shorten the time by which it could conduct its due diligence and in exchange Lamb Weston received various options to acquire Unisur at a price level set by the parties. Lamb Weston was not under an obligation to acquire Unisur at that price and Unisur was not under any obligation to sell at a price below the option price. But the contract does not prevent Lamb Weston from declining to offer a price lower than the option price and the contract does not prevent Unisur from declining a lower offer. Based on Unisur's lack of profitability, Lamb Weston's offer to purchase Unisur was more than reasonable.

The following chart, taken from Unisur's audited financials, reveals Unisur has never been profitable.

(US $ in 000's)

	Historical Financial Data					
	2005	2006	2007	2008	2009	2010
Total Sales	$11,440	$12,790	$15,376	$13,661	$8,058	$5,686
Growth		11.8%	20.2%	(11.2%)	(41.0%)	(29.4%)
Gross Profit	1,321	1,655	2,768	1,237	(86)	(74)
% of Sales	11.5%	12.9%	18.0%	9.1%	(1.1%)	(1.3%)
EBITDA	(362)	67	413	(859)	(2,150)	(1,232)
% of Sales	(3.2%)	0.5%	2.7%	(6.3%)	(26.7%)	(21.7%)
Net Income	(1,331)	(783)	(1,075)	(2,235)	(2,718)	(1,867)
% of Sales	(11.6%)	(6.1%)	(7.0%)	(16.4%)	(33.7%)	(32.8%)
Cumulative EBITDA '09-'10					(2,150)	(3,382)
Cumulative Net Income '09-'10					(2,718)	(4,585)

Both prior to the original 2008 loan and during the period of Lamb Weston providing technical expertise and assistance, Unisur never achieved any level of profitability. From my many years of experience dealing with distressed companies, I know that companies that do not generate consistent levels of positive EBITDA/cash flow will eventually run out of money to pay their suppliers, employees and other parties and will fail to properly service the needs of their customers. Without the money Lamb Weston loaned to Unisur both in 2008 and in 2009, it is highly probable that Unisur would have ceased operations on a stand-alone basis. Unisur survived the extremely poor financial performance only because of the financial support of Lamb Weston. Indeed, given low operating margins over the period 2005-08 (pre-Lamb Weston), net losses (net income- per the company financials UNI 006693 Ex No. 158) exceeded ($5 million), or an average loss of over ($1.3 million) annually over a 4-year period 2005-08. Post-Lamb Weston involvement, the losses accelerated to over ($3.1 million) in 2011. Performance during the year that Lamb Weston was there was an exceptional year in light of the parties agreeing to take the plant out of operation for three months so the plant could have critical and mandatory modifications made, not the least of which were required in order for the plant to operate within the country's new environmental guidelines. The point is, even before Lamb Weston's involvement, the situation was very dire, and perhaps unsalvageable, and the losses accelerated after their involvement.

Second- Unisur is a very small operation approx 9,000 tons of production (or only 5% vs. 170,000+ ton/year operations relative to the size of Lamb Weston US potato operations). Yet, Lamb Weston suspended its normal ROI requirements (of approximately 20+%) to pursue a strategy in South America that was intended to work in conjunction with Lamb Weston's strategic plan to grow its business into various international markets. The parties' agreement was structured for Lamb Weston to receive an option to acquire Unisur. An option to purchase a business interest is not a binding obligation to acquire a company, but rather conditioned upon the option holder's sole discretion to make a decision at some later date as to whether the option holder wants to commit to the purchase (i.e., exercise the option). Taking an option in this case was a reasonable business decision, given that Lamb Weston had not yet conducted its due diligence, and given that on an EBITDA basis, Unisur had a cumulative negative EBITDA of ($0.7 million) over the prior four years and could not be valued on a multiple of EBITDA basis. Unisur admits that it has not made a pre-tax or net after –tax profit in its history of operations. Lamb Weston's loan payments and time invested were well in excess of the any reasonable valuation of Unisur (one being a multiple of revenue basis), given that Unisur's debt to Lamb Weston exceeds $5 million (original $1.5 million in 2008, $2.2 million in 2009, $750,000 in working capital in 2009 plus accrued interest of over $809,000 through 2012) plus employee time and travel and expenses of another $1.5-$2.5 million results in roughly $6.5-$7.5 million total.

If Unisur's plant is not operational, a proper valuation would be the liquidation value or scrap price of approximately $2.5 million. If Unisur were operational, a traditional valuation methodology of M&A comparables suggests a valuation of Unisur of roughly $3.5-$4.0 million (or 30% of the average of the prior 3 years Revenue), based on a M&A comp presented below.

However, to calculate a purchase price, one must factor in the liabilities assumed by the acquiring company less any cash on the target balance sheet.

Closed Date	Target	Buyer	Business Description	Implied EV	EV/Revenue	EV/EBITDA	Target Revenue
12/30/2011	National Beef Packing Co. LLC	Leucadia National Corp.	National Beef Packing Company, LLC engages in processing, packaging, and delivering fresh and frozen beef and beef by-products in the United States and internationally.	$1,483	0.2x	4.6x	$6,849
10/18/2010	SK Food Group, Inc.	Premium Brands Holdings Corporation	SK Food Group, Inc. engages in the manufacture and wholesale of food products in the United States and internationally. Its products include sandwiches and burgers; breakfast items, including breakfast entrees, dippers, and sandwiches; and baguetta.	$42	0.5x	5.3x	$89
09/16/2011	Vaughan Foods Inc.	Reser's Fine Foods, Inc.	Vaughan Foods, Inc. operates as an integrated processor and distributor of refrigerated foods in the United States. The company's products include fresh-cut vegetables, fresh-cut fruits, salad kits, prepared salads, dips, spreads, soups, sauces, and side dishes.	$27	0.3x	84.3x	$98
				High:	**0.5x**	**84.3x**	**6,849**
				Mean:	**0.3x**	**31.4x**	**2,345**
				Median:	**0.3x**	**5.3x**	**98**
				Low:	**0.2x**	**4.6x**	**89**

The other valuation methodology utilizes a discounted cash flow analysis is not relevant here in this scenario because Unisur never had been able to produce a profit over the life of its existence. In fact, discounting back projected negative cash flows and applying a standard M&A multiple to those negative cash flows implies the perverse result of negative valuation. Lastly, using public company comparable trading multiples is equally irrelevant as multiples on negative earnings imply negative valuation and further Unisur never was large enough to be even close to a publicly traded stand-alone entity.

Another reason why Dornoch's argument is implausible is that if the party is really interested in depressing the value of an investment or security- then they purchase a put option-meaning as the value declines they make the difference between the purchase price and the lower value – vs. a call option where the profit is made in appreciation. Lamb Weston stood to make money by increasing the value of Unisur beyond the amount it loaned plus the option purchase price because the price of Unisur was capped by the parties' agreement. Lamb Weston did not benefit from depressing the price because even if Lamb Weston offered a lower price to acquire Unisur, Unisur was not contractually obligated to accept the offer.

Further, there is no reasonable basis to conclude that Lamb Weston purchased a stock or option with the intention that the value will decline. In order for someone to accomplish what Dornoch and Unisur has proffered in their expert report, one would have had to buy a stock or a call option expecting/ **hoping** that it declines in value- however, this would be called shorting a stock or purchasing a put option- the EXACT reverse of what Lamb Weston did in this case.

In the pricing of an option, such as a Black-Scholes pricing formula it is important to note the features of a call option:

A **call option**, often simply labeled a "call", is a financial contract between two parties, the buyer and the seller of this type of option. The buyer of the call option has the *right, but not the obligation* to buy an agreed quantity of a particular commodity or financial instrument (the underlying) from the seller of the option at a certain time (the expiration date) for a certain price (the strike price). The seller (or "writer") is obligated to sell the commodity or financial instrument should the buyer so decide. The buyer pays a fee (called a premium) for this right.

The buyer of a call option purchases it in the hope that the price of the underlying instrument will rise in the future. The seller of the option either expects that it will not, or is willing to give up some of the upside (profit) from a price rise in return for the premium (paid immediately) and retaining the opportunity to make a gain up to the strike price.

In sum, the maximum valuation range is $3.5-$4.0 million (ignoring the liabilities and other valuation factors and the implied negative valuation conclusions from a DCF or public company comparable analysis), the Lamb Weston investment of $6.5-$7.5 million in Unisur exceeds the reasonable valuation range of by more than 100% premium. It is illogical to conclude that Lamb Weston would invest more than $7 million, at least $5 million of which was liability it would have to assume back when if it acquired Unisur, and turn around and simultaneously try to depress the value of Unisur. Additionally, the $3.5-$4.0 million is not a purchase price value. One would also have to consider many other factors, such as the liability on the books of Unisur, the cash on hand at Unisur, the viability of Unisur in the Chile market, knowing that there were significant credibility issues with Unisur's suppliers, customers and others in the market.

Dornoch Contention 2: That as a result of the tortious interference from Lamb Weston, Unisur has not been able to meet it debt obligations and is essentially out of business.

This is pure fiction- the evidence reveals that in 2008, the Unisur business was already in a death spiral as it had recorded a history of years of never making a profit. The Unisur operation was an unprofitable plant even before Lamb Weston became involved in helping stabilize the operation. Unisur needed an immediate infusion of working capital in order to meet its debt obligations from the very first agreement in October 2008. Before the parties even began selling any product under their agreements, Unisur's working capital had been depleted so significantly as a result of years of accumulated losses and was thereby unable to satisfy its debt obligations to its growers, customers, and Lamb Weston. Based on the evidence that I have reviewed, it is clear that Unisur was already running out of options to survive. After having operated for nearly four years without ever having made a profit, Unisur was already unable to satisfy its debt obligations and had overdrawn lines of credit, failed to make payments owed to its customers, and other payables owing as well. Within three months of receiving the first loan from Lamb Weston, Unisur sought another $2.2 million in working capital to cover its debts and to keep its business operating. There was not anything that Lamb Weston did to cause this dire cash flow situation. This could only be the result of Unisur's historical poor financial performance. Many factors likely contributed to the poor operating results, including:

1) Poor global crop yields in 2008- contributing to rising global prices, but then turning against Unisur in 2009 to make it cheaper to import products into Chile compared to the cost of local production in Chile

2) The global financial crisis causing economies around the world to shrink 5-7% and causing untold disruption to international trade and financing availability
3) The strengthening of the Chilean peso against the US dollar by 7% in 2008 and then devaluing by over 10% in 2009 which made it cheaper to import processed potatoes compared to what it would cost Unisur to produce the same product
4) The strained and almost dysfunctional relationship Unisur had with growers due to late payments and a lawsuit against one of Unisur's primary growers; a history of strained grower relationships over several years before Lamb Weston became involved
5) Unisur was designed with many high cost features built into it by the Swiss (Nestle) and to convert a small plant into a larger/ higher margin operating facility would have required an investment far exceeding the local South American market opportunity
6) Unisur's plant could not process a large enough volume to bring the costs of production to a price point that would be competitive with the import market
7) Chilean market did not afford any premium pricing or increased loyalty to local production as the market was entirely price driven and due to this price competition Unisur could not lock in distributors or a customer base at a price that would be profitable based on the production costs of the plant
8) The local Chilean market did not support a price point for a premium potato product and the Unisur local potato variety had processing characteristics that challenged processing, production and ultimately the fry quality
9) Unisur faced several environmental problems as identified in the environmental due diligence report that significantly increased the risks of the Unisur operations and certainly increased the costs of production in Chile, further making it difficult for Unisur to compete against the import market
10) The Unisur plant was unprofitable when Nestle and Simplot ran it (hence they disposed of it) and it was in negative working capital position when Lamb Weston became involved and with low margins and lower volumes due to the crop yields and global recession there was never any funds to service interest or reinvest in a larger/ more productive plant enterprise. See below:

(US $ in 000's)

	Historical Financial Data					
	2005	2006	2007	2008	2009	2010
Total Sales	$11,440	$12,790	$15,376	$13,661	$8,058	$5,686
Cost of Sales	10,119	11,135	12,608	12,424	8,144	5,760
Gross Profit	1,321	1,655	2,768	1,237	(86)	(74)
SG&A	1,683	1,587	2,355	2,096	2,064	1,158
EBITDA	(362)	67	413	(859)	(2,150)	(1,232)
Current Assets	4,732	4,460	4,068	3,468	3,275	1,664
Current Liabilities	2,198	3,251	3,992	3,454	5,989	5,977
Working Capital	2,534	1,209	77	15	(2,714)	(4,313)

Based on the issues Unisur faced in operating in Chile, chronic losses and lack of available working capital to support the operations, the due diligence concerns raised by Lamb Weston, it was reasonable for Lamb Weston to make an offer to acquire Unisur for $500,000, plus earn out opportunities, with the conditions outlined in Lamb Weston's proposed purchase and sale agreement. At this price, and with the assumption of Lamb Weston's loans and other liabilities, Lamb Weston would have paid well in excess ($6.5-$7.5 million in total) of the fair market value for Unisur ($3.5-$4.0 million) considering Unisur's historical performance, the required additional investment to allow Unisur to remain operational, and the risks associated with an ongoing operation in Chile.

<u>Additional Considerations</u>

The plaintiffs provided an expert report prepared by a Dr. Alan W. Frankle, who is a Professor Emeritus in Finance and International Business for Boise State University. Dr. Frankle is an academic by training and trade and thus takes a more theoretical approach to the valuation exercise of Unisur.

His points are interesting and well presented, but in the end all his points do not support the valuation opinions he proffers. In my professional opinion, before Lamb Weston arrived, Unisur was already on a significant and accelerating downward spiral and Unisur was essentially going out of business which was an unavoidable and direct consequence of: its dismal historical financial performance, demise of key relationships on both the production and sales side of its business, environmental risk factors, local operating environment and the overall condition of its plant and equipment and general health of the business.

1) In 2003, Hungelmann took control of the Unisur facility and a four-year business plan was conceived to **"improve operations and regain profitability"** as outlined on page 2-3 of Dr. Frankle's report. While Mr. Hungelmann clearly held a vision for where he hoped to take his company, he lacked a realistic execution plan in light of Unisur's historical performance and other factors that influenced the viability of operating a potato processing plant in Chile. The plan proposed by Unisur could not be supported by its performance between 2003 and 2008. In fact, Unisur's viability grew increasingly more bleak in light of Mr. Hungelmann's operations of the facility between 2003 and 2008, as each year Unisur faced significant problems that included raw supply, market conditions, environmental conditions, a distributor sales model that sold products below the cost of production, and several other issues, such as management. A change in the environmental laws also required Unisur to make modifications to the plant that it could neither afford nor reasonable expect to recover the costs for when the company was not able to make a profit. Unisur's history of engaging key relationships in litigation matters harmed Unisur's reputation in the market, and this significantly impacted Unisur's credibility and ability to achieve its business plan.

2) The various valuations of the plant range from $2.3-$5.0 million on a liquidation basis, recognizing that any new operations would need significant upgrades and/or overhaul-which is exactly the process that Lamb Weston embarked on. The amount of investment necessary to bring Unisur's plant to a volume production level that would allow the plant to process at a cost point that could compete in the Chilean market was substantial. Additionally, Unisur's ongoing operations were risky in light of all of the environmental issues identified. Coupling these issues with the historical performance and local operating environment as well as Unisur's inability to compete with the import markets made this option to acquire the company valued at no more than $500,000, which I view as over market value, given Unisur's dismal historical financial performance.

3) According to Dr. Frankle, the plant was unprofitable in 2003, unprofitable in 2008 (at the time of the Lamb Weston's investment) and per Dr. Frankle's Opinion No. 4 the plant

was worth zero FYE December 2011. Further, Plaintiff's CFO admits that Unisur has not been profitable over its history. Lamb Weston's offer to purchase Unisur for $500,000 and the conditions upon which the offer was made was a highly reasonable and generous offer in light of the historical performance of Unisur, the environmental risks associated with operating in Chile, the manpower investment required by Lamb Weston, the condition of the plant, the operational environment in Chile, the low costs of imports from other countries, and other business factors considered by Lamb Weston.

Dr. Frankle Opinion No.1: Unisur's Value as of October 31, 2008 was $8.0 million

Summary: Dr. Frankle uses two methods of estimating the value of Unisur, the adjusted book value approach and the EBITDA multiple approach. The adjusted book value approach starts with the book value of equity, defined as book value of assets minus book value of liabilities, then makes adjustments to different asset accounts for the purpose of discerning the economic value of those assets. Dr. Frankle argues that no substantial difference can be found between appraisal values of the fixed assets as offered by Greg Lambier in August 2009 (LW009092) and the book value net of depreciation and allowances for bad debt as of October 2008. Dr. Frankle also cites a valuation by Colliers International but the report indicates that Colliers never went inside the facilities and the report does not note the value of the equipment.

Dr. Frankle cites the terms of the October 29, 2008 MOU as a justification for using the same EBITDA multiple to value Unisur. The original exercise price for the options was $2 million for the first portion and 7 times 49% of the average of the two most recent yearly results with a MAXIMUM payout of $6 million. Dr. Frankle argues that since ConAgra's projections predicted EBITDA levels that would have triggered a maximum payout, the value of the firm was $8.0 million.

Rebuttal: First, the adjusted book value approach is just that – the book value of the assets taken on a depreciated basis based on the estimated remaining life of the plant assets. It does not take into consideration any other operational or market factors for valuation. Dr. Frankle simply took an engineer's estimate of the plant remaining life value, if it was operational, and accepted that number as a true valuation of the plant. The book value approach is not an accurate valuation of Unisur's assets and certainly not the value placed on an entity to be acquired. Lamb Weston hired MCM Consulting to verify those assumptions among others. Based on the report by MCM Consulting dated February 23, 2009 (Exhibit 16) specifically article D, the equipment was in severe disrepair, sanitation was substandard and the facility was a significant and serious fire hazard. Lamb Weston had every reason to doubt that the book value of fixed assets was a good approximation of economic value and given the operations were losing money- per Dr. Frankle's own report, the Unisur plant would be valued from $2.3-$5.0 million on a liquidation basis.

Second, the book valuation estimated by Lamb Weston's engineer was taken in August 2009, well before Lamb Weston conducted its due diligence under the October 2009 letter of intent to purchase and acquire Unisur. As stated above, the valuation of the option for Unisur on a operating basis is worth no more than $500,000 once factoring in the poor conditions of the plant and equipment and further risks of operating in a smaller market with significant environmental and cost risks.

Dr. Frankle Opinion No.2: Including Real Options, Unisur was worth more than $8.0 million to Lamb Weston

Summary: Dr. Frankle asserts that firms have a portfolio of opportunities that add value to a firm called real options and he lists seven of these 'options.' He calculates the value of these options as the difference between the $8 million figure from Opinion No.1 and the product of the 7x multiple figure, also from Opinion No.1, and $3 million EBITDA projected for 2010-2013 by various Lamb Weston estimations to derive a real options value of $13 million.

Rebuttal: Dr. Frankle's methodology is not a proper valuation of Unisur. Zero EBITDA companies might have zero value and negative EBITDA companies sometimes have negative value, as outlined above. Further, projections are just that- projections and sometimes they are overly-optimistic projections at that. The audited financial statements reveal that Unisur has had either a negative EBITDA or a near break-even EBITDA for its entire history. Unisur has never had a positive EBT or net income profit during its entire operational history. Unisur's financial performance alone does not justify the valuation proposed by Dr. Frankle. Additionally, Dr. Frankle omits critical elements for valuation of Unisur, which includes the risk factors and operational hurdles that Unisur must overcome in order to continue operating.

Dr. Frankle Opinion No.3: Unisur's Foreclosure Value is $4.3 million plus a potential $13 million in real assets

Summary: Lamb Weston is the only secured lender to Unisur so it stands to acquire all of Unisur's mortgaged assets for the value of Unisur's outstanding debt, $3.7 million. Given an $8 million value plus real options of $13 from the previous opinions, Lamb Weston is unjustly benefitting by at least $4.7 million from the foreclosure proceedings.

Rebuttal: Lamb Weston has invested approximately $6.5-$7.5 million in loaning money to Unisur and dedicating Lamb Weston resources to Unisur. In my opinion, Lamb Weston's investment has resulted in a 250% premium for an asset that, if operated, will still require significant repair and upgrades to salvage any value whatsoever. However, Lamb Weston has no interest in operating the Unisur plant and a non-operational plant brings the valuation of Unisur down to liquidation or scrap value or, at most the low end of the real estate valuation, or $2.5 million. It is a common practice in the business industry to structure an option to purchase a business or asset. It is also a common practice for lenders to take security such as collateralizing Unisur's assets to secure the loans to Unisur. Without the loans given by Lamb Weston to Unisur, it is clear that Unisur would likely have gone out of business in 2009. Lamb Weston breathed new life into Unisur and allowed it to continue operating until at least 2012, as it is my understanding Unisur has not yet gone out of business as I draft this opinion. But as with any business loan, if the debtor does not pay its debt, the lender is permitted under the rights of the loan agreement to collect on the collateral that secures the loan. Unisur made two minor interest payments, but missed all other quarterly interest payments since it received its loans beginning in October 2008, despite its contractual obligations to make such payments. Unisur did not make any principle payments on any of the loans, despite the loans going past due. Unisur did not make any payments on the line of credit that it used to acquire imports from Lamb Weston totaling approximately $750,000. Further, Unisur did not make any payments to Lamb Weston for the profits it obtained by selling the imported product, as it was contractually obligated to make. Unisur did not pay for any of the expenses of Lamb Weston employees assigned to work at Unisur's operations, as it was contractually obligated to do. Unisur's complete failure to comply with its contractual obligations to Lamb Weston justified executing on Unisur's collateral securing the loans and line of credit issued by Lamb Weston. In sum, Lamb Weston invested approximately $6.5-$7.5 million in attempting to make Unisur a success and Unisur's complete failure to honor its obligations justifies Lamb Weston's enforcement and collection of collateral that secures Lamb Weston's investment. See chart below:

		($'s in 000's)		
	2009	**2010**	**2011**	**2012**
Libor base	**3.79%**	**1.23%**	**1.00%**	0.91%
Total Interest rate	**6.54%**	**3.98%**	**3.75%**	**3.66%**
Term Loan A				
$1,500	$98	$64	$62	$63
	$1,598	$1,662	$1,724	$1,787
Loan B	**4.28%**	**4.08%**	**4.25%**	**4.08%**
$2,200	$94	$94	$101	$102
	$2,294	$2,388	$2,489	$2,591
Working cap line	**4.28%**	**4.08%**	**4.08%**	**4.08%**
$750	$32	$32	$33	$35
	$782	$814	$847	$882
Loans Principal & Int	$4,674	$4,864	$5,061	$5,260
External resources	$400	$500	$600	$700
Internal resources	$1,100	$1,200	$1,300	$1,400
Total	$6,174	$6,564	$6,961	$7,360

Dr. Frankle Opinion No.4: Unisur's Value as of December 31, 2011 is Approaching $0.0

Summary: Dr. Frankle opines that the book value of equity has declined dramatically since the partnership between Unisur and Lamb Weston and management predicts imminent negative equity, which means that the debt holders now own the company and have usurped value from the equity holders.

Rebuttal: Dr. Frankle's analysis ignores critical elements for valuation. Unisur was in a desperate survival mode before it contracted with Lamb Weston in October 2008. It had two operating years in which it shorted its key customers on product, resulting in those customers transferring their business to competing potato processing companies. Additionally, Unisur had destroyed key relationships in a very small market, putting at risk the ability of Unisur to increase its market share to any viable or profitable business level. Unisur's historical price structure reveals that it sold product at a loss – a price point below what it cost Unisur to produce the product. Even if Unisur had product to sell, selling at a loss was not a viable ongoing business plan. As soon as the original $1.5 million in loans were advanced, Unisur started to reveal the true desperate nature of the financials that they were in. They admitted that their actual 2008 performance fell significantly below what they had projected to Lamb Weston in 2008. And as a direct result of their lower than "expected" performance, Unisur requested an additional $2.2 million working capital loan from Lamb Weston. While the original 2008 loan only provided Unisur with $750,000 in working capital, the requested additional $2.2 million represents a substantial increase and reveals that Unisur was in a much more dire situation than previously represented to Lamb Weston. The above situation all occurred before the parties began processing any product. In fact, one critical fact missing from Dr. Frankle's evaluation is also that the parties had planned a Unisur plant shut down while plant renovations were occurring. This shut the plant down for a three month period. When the parties first contracted in October 2008, Unisur had already run out of product for the year and shorted their customers for the remainder of the year. Unisur's lack of product, and necessary plant renovations, made 2009 a unique year from Unisur's other operational years. And because Unisur had shorted its customers on product for the two previous years, Unisur's customer base was no longer there. Lamb Weston entered the scene when Unisur was not starting at zero, but instead starting from a significant negative, both in terms of financial health and relationship with customers. 2009's performance was already written into the results of Unisur before Lamb Weston arrived.

Dr. Frankle Opinion No. 5: Measure of Loss to Unisur's Owners is $8 million plus loss of opportunity

Summary: Given a pre-partnership value of $8 million, from opinion 1, and the current equity value of zero, if Dornoch can prove Lamb Weston's liability, the total loss to Unisur owners is $8 million.

Rebuttal: Dr. Frankle ignores the parties' mutually negotiated valuation calculations to reach for a valuation that is not supported by Unisur's performance or its scrap price valuation. The proper measure of Unisur's valuation has been described above. Based on Lamb Weston's investment of at least $6.5-$7.5 million in Unisur, even if Unisur could prove liability, Unisur has not incurred any damages. Unisur received significant benefits and opportunities from the investment made by Lamb Weston; none of which has been paid for by Unisur. Unisur was able to continue operating from 2009 until at least this year 2012 when it would not otherwise have been able to continue operations without the loan and additional investment made by Lamb Weston. Lamb Weston also provided employees at no cost to Unisur. Lamb Weston covered expenses and flew four key Unisur employees to Lamb Weston in the US for detailed and intensive training on processing potatoes. Lamb Weston provided Unisur with many business advantages that Unisur would not otherwise have had and as a direct result, Unisur had a longer life span than it would have had Lamb Weston not been involved. Therefore, Unisur has not incurred any damages even if they prove liability.

Dr. Frankle Opinion No.6: Value of Unjust Enrichment that Lamb Weston will Receive is in the Range of $4.1 to $21.7 million

Summary: The low estimate, $4.1 million, is derived by subtracting Lamb Weston loans from the pre-partnership value of $8 million. The higher estimate, $21.7 million is the product of 7, the EBITDA multiple from Opinion No.2, and two different EBITDA projections from February 2009 and August 2009 for year 2010 EBITDA and then subtracting $3.9 million in Lamb Weston loans.

Rebuttal: Lamb Weston has not been enriched by its dealings with Unisur. On the contrary, Lamb Weston has been substantially harmed. Before Lamb Weston contracted with Unisur, it had sales into Chile in excess of $2 million and relationships with a key distributor and customers. Since the relationship with Unisur, Lamb Weston's reputation in Chile has diminished and Lamb Weston has virtually no fry sales in Chile. In addition to loss of its own sales in Chile, Lamb Weston invested more than $6.5-$7.5 million in Unisur and received no benefit. Lamb Weston dedicated substantial people resources to Unisur in 2009 and the dedication to Unisur took those key employees from being able to focus their efforts on other Lamb Weston business matters, impacting other business strategies within Lamb Weston. Lamb Weston has been harmed by its relationship with Unisur and there is no evidence that Lamb Weston has been enriched.

As already stated, projections can vary widely from actual results. In this case, the actual results vastly underperformed the projections. Unisur is not a plant with $3 million EBITDA, it is an enterprise that produced almost $5 million of NEGATIVE EBITDA from 2009-2010. Valuing Unisur based on an overly optimistic projections from 3-4 years ago is not an acceptable business valuation method; especially considering that Unisur was on a downward financial trajectory. Overly-optimistic 3-4 year old EBITDA projections are not relevant to the actual value of the firm today.

<u>Due Diligence Process for the Lamb Weston Transaction</u>

I have reviewed and/or considered numerous documents with respect to my analysis. Documents reviewed and/or considered include: communications between Lamb Weston and Unisur- but most importantly the parties' contracts including the option agreement, historical and projected financials; the case filings (Pleadings in the case); certain public filings by ConAgra and related equity research and certain related depositions. A listing of documents considered and/or reviewed is attached in <u>Appendix B</u>. Based on my review of all of the materials identified, it is my professional opinion that Lamb Weston's offer to acquire Unisur was more than reasonable and the conditions requested were within the normal business acquisitions I have seen in valuing and advising on the acquisition and sales of companies in cross border transactions.

<u>VI. Conclusion</u>

The conclusion is: it is my belief, based on the review of all the material that Unisur was destined to fail well before Lamb Weston contracted with Unisur in October 2008. The purchase price of $500,000 offered by Lamb Weston in the late 2009 negotiations was more than reasonable, particularly given there were significant environmental, legal, supplier and working capital risks surrounding any possible transaction. Foreclosing on a secured loan because Unisur failed to make any payments on the loan or honor payment obligations to Lamb Weston is within the normal business standards expected from a collateralized loan. The entering into an option to purchase is not an obligation, but solely affords the option holder the ability to accept or decline. Lamb Weston's due diligence was reasonable and the conclusion not to accept the additional terms from Mr. Hungelmann in January and February 2010 was a reasonable business decision. Lamb Weston was not enriched by its relationship with Unisur and in fact suffered as a result of this relationship. Lamb Weston conducted a proper business due diligence and came to a reasonable valuation conclusion and ultimate decision not to exercise its options to acquire Unisur.

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