

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
E BAR V ANGUS RANCH CO.,) CASE NO. BK87-801
)
DEBTOR) Chapter 12

MEMORANDUM OPINION

Before a United States Bankruptcy Judge for the District of
Nebraska regarding Confirmation - hearing September 8, 1987.

APPEARANCES

Michael Helms, Attorney for debtor, 1800 First Nat'l. Center,
Omaha, NE 68102

Douglas Quinn, Attorney for FICB, Suite 1100, 222 South 15th
Street, Omaha, NE 68102

Jerrold Strasheim, Attorney for Connecticut Mutual Life Ins. Co.,
1500 Woodmen Tower, Omaha, NE 68102

Ronald Sanchez, Attorney for Connecticut Mutual Life Ins. Co.,
P.O. Box 1005, North Platte, NE 69103

Debtors raise and market cattle. They have proposed a plan
to which FICB objects. The Court makes the following findings of
fact and conclusions of law.

(1) Date of valuation and interest rate calculation for
Section 1225(a)(5)(B)(ii) is the confirmation date. See In re
Zellner, 827 F.2d 1222 (8th Cir. 1987).

(2) The Wichmann formula at 77 B.R. 718 (Bkrtcy. D. Neb.
1987) is the appropriate market rate of interest. Numerous courts
have attempted to determine "market rate of interest." See In re
Hardzog, 77 B.R. 840 (Bkrtcy. W.D. Okla. 1987). Some accept
"creditors cost of money." Some add risk factors. Some add
overhead costs. This court believes that the 2% "risk add on" to
the Treasury bond yield calculated pursuant to the Wichmann
formula is sufficient to cover the overhead cost requested by
FICB. It is a fact that the net overhead expense, or operating
cost of the creditor, per Exhibit C, is 1.16%. To add this cost
to the Wichmann formula would require an individual analysis of
creditor operation in each case. The rate would then fluctuate

depending on the creditor's efficiency, not on the cost of money or on some other easily ascertainable, and in the Court's opinion, valid standard. The Farm Credit System operating costs are extremely relevant to the determination of "market rate", but the 2% add on, which is higher than in other jurisdictions, takes the operating costs into consideration, without requiring a hearing in each case.

3. The Court finds that the operating history of the debtor, including the calf live birth percentage as testified to by Mrs. Votaw, is such that is reasonable to believe the debtor can raise the number of cattle proposed in the plan.

The experts agreed that cattle prices are high now and one cannot foresee price stability very far into the future. However, the debtors have not proposed the plan only on the highest prices paid for cattle during the past ten years. They have estimated a return based upon an analysis of price levels over the years, considering the historical market fluctuation, and their projections seem realistic.

4. American Ag Credit stock is valued at \$12,440 and may be surrendered for full credit.

5. The plan must be amended to reflect values of cattle and land at or near confirmation date, and, if desired, to reflect a five-year plan with no discharge of unsecured debt until completed.

6. Even requiring such revaluation, it appears the plan is feasible. FICB doesn't believe the numbers and dollars projected, but this Court finds them realistic. Debtors have 30 days to amend and serve notice on all parties. Objections will be considered from those who are adversely affected by the amendment, or those who question feasibility as a result of the amendment. If objections are filed within 15 days following amendment, hearing will be set. If no objections are filed, debtors may submit confirmation order, after consultation with FICB counsel, that specifies default procedures.

DATED: November 9, 1987.

BY THE COURT:


U.S. Bankruptcy Judge