

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

INDIANA REFRIGERATOR LINES, INC.,

ST. ABBS CORPORATION,

INDIANA LEASING CORPORATION,

DEBTORS

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) CASE NO. BK81-86
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) CASE NO. BK81-87
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) CASE NO. BK81-88
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MEMORANDUM OPINION

Before me is the application for leave to compromise controversies filed herein by the debtors-in-possession in each of the above-captioned proceedings. The application seeks approval of the compromise agreement entered into between each of the debtors and St. Joseph Bank & Trust Company. The Creditors' Committee and other creditors vigorously oppose approval of the compromise agreement.

St. Joseph Bank & Trust Company claims a security interest in assets of Indiana Refrigerator Lines, Inc., and also assets belonging to Ralph Nogg, the president of Indiana Refrigerator Lines, Inc., (herein "IRL"). Among other things, the compromise agreement proposes that the bank reduce its secured claim to \$800,000.00 and that the bank release Mr. Nogg's personal assets from its security interest. In addition, the bank will advance to the debtor a small amount of money which will be used to pay some salaries and related overhead for a brief period of time.

The Creditors' Committee vigorously objects to the portion of the compromise agreement which releases the bank from any claims the debtor or any subsequent trustee in bankruptcy might have against the bank from any cause of action. More specifically, the Creditors' Committee opposes that portion of the compromise agreement which would prohibit the debtor or any other interested party including a trustee in bankruptcy from attacking the bank's claim as a preference or from asserting the possible subordination of the bank's claim in this proceeding.

The Creditors' Committee insists, and the debtor concurs, that the debtor or a trustee in bankruptcy would have a good cause of action based on preference against the bank. The Creditors' Committee also insists that it believes there exists a claim for possible fraudulent conveyance and possible equitable subordination of the bank's claim. The bank insists it has defenses.

The debtors allege that approval of the compromise agreement is in the best interests of creditors because litigation and subsequent appeals will be protracted and, given costs of prosecuting that litigation, ultimately, will result in no significant benefit to creditors. The debtor believes the only hope lies in proceeding

with the business through approval of the compromise agreement with the ultimate goal of payment to creditors. At this point, the Creditors' Committee believes the release given the bank is too high a price to pay.

In this case, the Creditors' Committee and other creditors involved are represented by competent counsel who have devoted attention to their possible causes of action against the bank and third parties and sincerely believe they have good causes of action which should be pursued. Approval of the compromise agreement will prohibit this. The debtor analyzes the best interests of the creditors differently and concludes that continued operation by virtue of the compromise agreement is in the creditors best interest. When put to the choice in this situation, the Court is willing to allow the creditors' judgment of their best interests to prevail over the debtors' analysis. Whether they ultimately prevail must await conclusion of the litigation if pursued. Nevertheless, their analysis is that the compromise agreement gives away rights which they believe is not in their best interest and I conclude that their judgment should prevail over that of the debtors with regard to the creditors' economic interests.

Unfortunately, the debtor believes that this compromise agreement offers the debtors their only hope for survival. This may be true although the Creditors' Committee believes that other alternatives to survival exist.

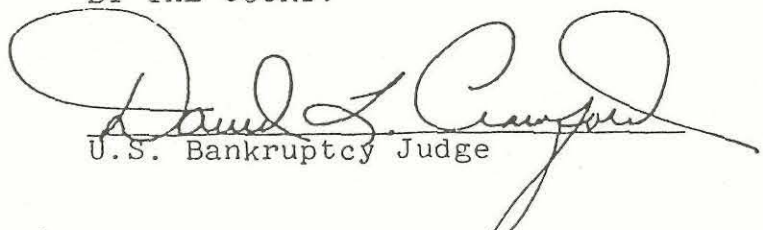
All in all, when I balance the interests of the debtor in possible rehabilitation in the future with the interests of the creditors which they believe is in suing the bank, my conclusion in this case is that the interests of the creditors should prevail.

In making the foregoing conclusion, I emphasize that I have heard no testimony concerning the bank's defenses to possible lawsuits and do not mean to be understood to say that the creditors will prevail in their causes of action. Given the quality of the legal advice available to the creditors and the Creditors' Committee, I let their judgment as to the merits stand and do not attempt to interpose my own.

A separate order is entered in accordance with the foregoing.

DATED: June 11, 1981.

BY THE COURT:


U.S. Bankruptcy Judge