UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
RANCO COMPANY,	)	CASE NO. BK82-320
	)	
DEBTOR	)	

MEMORANDUM

The matter now before the Court is whether the amended plan proposed by the debtor, Ranco Company, may be confirmed in light of the nonacceptance of the plan by "Class 8" creditors, those being the unsecured creditors having claims of more than $500. Under the provisions of this amended plan, the debtor proposes that current equity security holders' rights be terminated but that those equity security holders have the option, exercisable until 30 days after the order of confirmation, to purchase reissued shares of stock in the corporation for the sum of 10 cents per share.

A threshold question is whether Iowa Des Moines National Bank (Bank), the objecting creditor, should be allowed to vote, in view of the fact that there is some question about the Bank's solicitation of other rejections of the plan. I conclude that they should be allowed to vote. Whether that solicitation was done appropriately or in bad faith, does not, in my view, affect the Bank's right to vote its claim, which I believe to have been voted in good faith, and I separate the two for the purpose of this decision.

Turning now to the merits, the Bankruptcy Code was amended in its reorganization provisions to prohibit a specific type of reorganization, namely, the type of reorganization permitted under the old Act in which a corporation in Chapter XI, given the exclusive right to file a plan and to have that plan confirmed if the Court concluded that unsecured creditors would receive not less than in a straight liquidation, even though there was objection by certain creditors. The evil that Congress sought to remedy under the 1978 amendments was the equity security holders' retaining their interest in the corporation while, in effect, throwing a bone to the unsecured creditors and buying them off, leaving the equity security holders in place with full value. The design of the new Chapter 11 was that if a class dissented and refused to accept less than full value, that class had the right to stand by the fair and equitable rule and demand full value before any junior class was paid. It had the right, of course, to waive that privilege, but was granted the option of doing so or not.

The effect of the plan now before me is to give to present equity security holders a valuable right if the plan is confirmed. That valuable right is an exclusive right to buy shares of stock in the corporation, to the exclusion of the rest of the world. That right may or may not have significant value. However, it does appear to have value in and of itself, because it prohibits other parties, such as Iowa Des Moines National Bank, from purchasing stock in this corporation. To this, the debtor responds that the provisions of the plan are confirmable because the terms of the plan provide that stockholders must pay fair value for the new stock. The fallacy of that position is evident to me in this example. If a debtor is wholly insolvent and present stock is worth zero, then a plan which proposed to give current stockholders the right to purchase new stock in the corporation for fair value (in this example, zero dollars) would be confirmable, leaving current stockholders in exactly the same position they were prior to confirmation while giving to a prior class less than full value. That, it seems to me, is impermissible and precisely what new Chapter 11 is designed to prohibit where there exists objection of a dissenting class.

I therefor conclude that this plan, because it proposes payment of less than 100 percent or full value to Class 8 cannot be confirmed. It reserves to current equity security holders something of value, that being the exclusive right, exclusive of other creditors, the public, and Iowa Des Moines National Bank, the right to purchase stock in the new corporation. Because of that reservation the plan cannot be confirmed.

Accordingly, confirmation is denied.

DATED: 6-28-83

BY THE COURT:

U.S. Bankruptcy Judge

Copies to:

Richard D. Myers, Attorney, 1800 First Nat'l. Center, Omaha, Ne. 68102
Clay M. Rogers, Attorney, One Merrill Lynch Plaza, Omaha, Ne. 68114
Jon P. Sullivan, Attorney, 1600 Financial Center, Des Moines, Iowa 50309
Phillip J. Lee, Attorney, 7171 Mercy Road, Omaha, Nebraska
David Pavel, Attorney, 7100 W. Center, 530 Univac Building, Omaha, Ne 68106
John Minahan, Attorney, 1900 One First Nat'l. Center, Omaha, Ne. 68102
Wm. R. Hadley, Attorney, 1000 Commercial Federal Tower, Omaha, Ne. 68124