

# In the United States Bankruptcy Court

## for the Northern District of Iowa

RICHARD A GEHRKE  
Debtor.

Bankruptcy No. 93-10189LC  
Chapter 11

### ORDER

On November 9, 1993, the above-captioned matter came on for hearing pursuant to assignment. Debtor appeared with Attorney Joseph Peiffer. Creditor and Objector Farm Credit Bank appeared by Attorney Richard Hansen. Also appearing was Assistant U.S. Attorney Ana Maria Martel representing the Internal Revenue Service. Evidence was presented and the Court took the matter under advisement.

The matter before the Court is a hearing on Confirmation of Debtor's proposed Chapter 11 Plan of Reorganization.

The Internal Revenue Service had filed an objection to the Plan. However, Debtor filed an amendment to the Plan of Reorganization which recomputed the amount of the claim owed to the Internal Revenue Service as well as its priority status. Upon the filing of the Amendment to the Plan of Reorganization, the Internal Revenue Service withdrew its objection.

The remaining objection was filed by Creditor Farm Credit Bank. It contained multiple objections to the Plan. However, at the time of hearing, Farm Credit Bank withdrew all Objections except the Objection contained in Paragraph 4(A) of the Objection to Debtor's Plan filed October 25, 1993. This Objection states:

Paragraph 3.15 provides for a 12 month deferral of payments without respect to whether disaster affected Debtor's farm operation, whether Debtor may utilize such deferral on multiple occasions, whether the deferred payment is to be recapitalized and amortized over the remaining term of the loan, or whether Debtor would be able to make any restructured loan payments.

Debtor filed an Amendment to the Plan. The Amended Plan limits use of a 12 month moratorium under this disaster clause to once every five years, thus eliminating Creditor's Objection that Debtor may utilize this deferral on multiple occasions. The remaining issues raised by Creditor remain even with the Amendment proposed by Debtor.

The provisions complained of by Creditor Farm Credit Bank are set forth in paragraph 3.15 (Page 10) of Debtor's Amended and Substituted Plan of Reorganization filed November 9, 1993. In summary, it states that if the President of the United States designates Debtor's County as a disaster relief area, the Debtor shall be relieved from the obligation to make all payments under this Plan for a period of 12 months following such declaration. It provides that the Plan would be extended for 12 months to compensate claimants for this deferment. It provides that interest would accrue on the unpaid principle balance during the moratorium period. It provides that Creditors would be given 20 days to object to the suspension of payments. If objections were filed, hearing would be held to consider the objections and whether the Debtor could utilize the provisions of this proposed paragraph. It further provides that the Debtor could only use the provision outlined here once every five years. It allows the Creditors to retain the right to object to the use of this provision on the grounds that the revised payment schedule would not be feasible. The burden would be on the Debtor to prove feasibility of a revised Plan.

The Court has examined the language contained in this proposed paragraph. The Court has also considered the evidence presented, as well as the statements of counsel. This provision is similar in philosophy to other paragraphs contained in confirmed plans of which the Court is aware. In fact, most provisions relating to disaster relief under 42 U.S.C. § 5170

and 42 U.S.C. § 5121 et seq. are more succinct than that set out in this Plan. The provisions in confirmed plans to which the Court refers have all been the result of Court approval without objection.

The issue is whether such a provision may be approved over the objection of a party. The Court found one which discusses these issues. In the Matter of Alexander, 48 B.R. 110 (Bankr. W.D. Mo. 1985). In Alexander, Judge Stewart discussed the validity of moratorium provisions and whether the Court had the authority to deny a proposed moratorium in an approved Plan. Ultimately, Judge Stewart determined that significant constitutional issues may be raised involving a deprivation of a Debtor's property rights if an appropriate moratorium provision were not allowed to be incorporated into a Confirmed Plan. Judge Stewart concluded that it is lawful for a Debtor to have a Chapter 11 Plan of Reorganization confirmed which provides for a moratorium and payments to both secured and unsecured creditors. Alexander at 119.

In the present proposed provision, Debtors provide safeguards for Creditors. Creditors have the opportunity to object and present evidence prior to the suspension of payments under the disaster declaration provision. Additionally, the provision may only be used once every five years. Creditors retain the right to object to the feasibility of a revised Plan. Because of these safeguards, the Court feels that the proposed provision balances the rights of the Debtor as well as Creditors and is, therefore, fair and equitable to all parties.

In summary, it is the conclusion of this Court that it is appropriate for a Debtor to propose a Plan of Reorganization which provides for a moratorium in payments when a disaster relief area has been declared by the President of the United States. As it is appropriate to incorporate such a provision, the only additional consideration is whether the implementation of that provision balances the rights of all parties. Based upon the safeguards contained in this provision, it is the feeling of this Court that the rights and obligations of all parties have been adequately considered and the provision is fair and equitable, and the proposed provision relating to a suspension of payments is appropriate. The Plan, if otherwise confirmable, should be confirmed.

Debtor has filed an Affidavit with the Court regarding compliance with 11 U.S.C. § 1129(a). No party has raised an objection to any of the matters contained in § 1129(a) other than already discussed. The Court has examined the file and has considered the Affidavit as well as the Plan and other matters contained in this file. The Court finds that the requirements of 11 U.S.C. § 1129(a) have been met. It is the finding of this Court that the Plan is fair and equitable and is confirmable in all respects and should, therefore, be confirmed.

**WHEREFORE**, Creditor Farm Credit Bank's Objection to Debtor's Plan of Reorganization is DENIED for the reasons set forth herein.

**FURTHER**, the Objection filed by the IRS has been withdrawn.

**FURTHER**, the Court finds that a provision for the suspension of Plan payments premised upon a disaster clause is appropriate in a Plan of Reorganization.

**FURTHER**, the Court finds that the proposed provision relating to a suspension of payments based upon a disaster declaration in this case is confirmable.

**FURTHER**, the Court finds that the Debtor has complied with the provisions of 11 U.S.C. § 1129(a).

**FURTHER**, the Court finds that the Plan should be confirmed.

**FURTHER**, Attorney Peiffer is requested to prepare an appropriate Order setting forth all necessary matters for implementation of this Order.

**SO ORDERED** this 12th day of November, 1993.

Paul J. Kilburg, Judge  
U.S. Bankruptcy Court