

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF SOUTH DAKOTA**

**ROOM 211**

**FEDERAL BUILDING AND U.S. POST OFFICE**

**225 SOUTH PIERRE STREET**

**PIERRE, SOUTH DAKOTA 57501-2463**

**IRVIN N. HOYT**  
**BANKRUPTCY JUDGE**

**TELEPHONE (605) 224-0560**  
**FAX (605) 224-9020**

October 19, 1989

Brent Wilbur, Esq.  
Post Office Box 160  
Pierre, South Dakota 57501

James Hurley, Esq.  
Post Office Box 2670  
Rapid City, South Dakota 57709

William Wyman, Esq.  
624 Sixth Street, p212  
Rapid City, South Dakota 57701

Re: Neuhauser Ranch, Inc.  
Chapter 12 87-50123  
Adversary 88-5005

Dear Counsel:

On October 13, 1989, this Court wrote to you concerning Attorney Wilbur's motion for sanctions against the above named debtor and its counsel William A. Wyman. In the letter opinion, the Court found Attorney Wyman's conduct in the adversary sanctionable under Bankruptcy Rule 9011, but did not conclude whether such liability would extend to debtor Neuhauser Ranch.

Bankruptcy Rule 9011 contemplates that the Court shall impose sanctions against a person who signs a pleading, the represented party, or both. Rule 9011 sanctions have typically been imposed on both the lawyer and the client jointly and severally. See, e.g., In re Griesenbuck, 55 B.R. 225 (Bkrtcy. E.D.N.Y. 1985); National Home Equity Corp. v. Villareal, 46 B.R. 284 (Bkrtcy. C.D.Ca. 1984) and In re Bayport Equities, 36 B.R. 575 (Bkrtcy. C.D.Ca. 1983). See also, Byrne, Sanctions for Wrongful Bankruptcy

Re: Neuhauser Ranch, Inc.  
October 19, 1989

Page 2

Litigation, 62 Bankr. L.J. at 128. As Byrne notes, the allocation of sanctions usually is warranted because a lawyer presumably acts on behalf of his client and the client is accountable for the lawyer's acts.

Under the facts and circumstances of this case, it appears that Neuhausers were actively involved in the preparation of their case. As in most cases, the legal theory or theories to be propounded by counsel generally revolve around the facts which are provided by the client, as well as the attorney's reasonable inquiry concerning those facts. This case contained a complex factual situation, the most obvious element of which would be the intricate purchase and leaseback scheme between Neuhauser and Lone Star Cattle Company. It appears from the record that Neuhausers as well as Attorney Wyman attempted to advance the theories of liability alleged against BankWest. Thus, Neuhausers' conduct was at least equally sanctionable as that of Attorney Wyman. While the Court does not believe that Attorney Wyman and Neuhausers were involved in any collusive activity which resulted in the imposition of sanctions, it does believe that both the attorney and client were involved in sanctionable conduct.

The Court holds that debtor Neuhauser Ranch likewise violated Bankruptcy Rule 9011 by its participation in the claim against BankWest and grants Attorney Wilbur's motion that Attorney Wyman and Neuhausers, jointly and severally, be required to pay all costs and attorney fees incurred by BankWest in its defense of the above noted adversary proceeding.

The Court recalls that Attorney Wyman had previously requested that if sanctions were to be granted, that they be directed only against him and not against his client. While the Court appreciates Attorney Wyman's gesture, it does not believe that he alone should be held responsible for the terms requested by Attorney Wilbur's motion. Attorney Wilbur is directed to incorporate this letter memorandum into his proposed findings of fact and conclusions of law.

Very truly yours,

Irvin N. Hoyt  
Chief Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk