

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

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March 23, 1988

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Re: In re Zeman Farms, Inc.  
Chapter 12 Case No. 87-30132  
Supplement to Opinion  
Entered March 18, 1988

Dear Counsel:

This Court issued a letter opinion in this case on March 18, 1988, and entered the same on March 21, 1988 which decided the real property valuation issue. This opinion supplements the March 18 opinion, and constitutes rulings regarding personal property collateral on unstipulated matters.

Grain Bins and Accessories

It has been stipulated between all parties that the grain bins and accessories have a value of \$30,000.00. According to the Debtor, Travelers is the secured party because "Traveler's has a lien on all 'fixtures'." (Debtor's brief filed Feb. 22, 1988 at 13.) The Bank has also claimed a security interest in this equipment as part of its comprehensive personal property security agreement and UCC filings. Because the equipment is either a fixture or equipment or other property within the confines of Bank's security agreement and filings, one of these two creditors holds a security interest in these items. The Court has been informed subsequent to the March 3 hearing that Bank and Travelers have stipulated to evenly divide the \$30,000.00 fixture/equipment issue is therefore rendered moot and this Court expresses no opinion in this regard.

Debtors Post-Petition Corn processing Expenses

The Order entered March 15, 1988 in this case allows the debtor-in-possession to deduct post-petition expenses actually incurred in processing the 1987 corn crop in proportion (68%/32%) to the values attributed to Bank (\$127,472.12) and the unsecured/undersecured creditors (\$59,986.88). The Debtor is required to meet its burden of proof with regard to the amount of necessary and reasonable expenses. Because the Debtor has produced no evidence of the amount of these expenses, no such deduction will be allowed at this time. The representations in Debtor's brief of February 22, 1988 regarding these expenses will not be taken as evidence.

#### Patronage Dividends

Henry Zeman, President of the Debtor, testified at the March 3 hearing that based upon his income tax returns he has accumulated \$49,270.00 ½ patronage refunds due from three entities. The Court holds that Bank's extensive security agreement and OCC filings perfect a security interest in these funds. However, it is not willing to value the patronage refunds at their face amount. It appears the right to the refund is an asset that is far from liquid. For this reason the present value of the refunds at the time of confirmation has not been satisfactorily established.

#### Cash on Hand

Mr. Zeman testified that the Debtor's cash on hand was farm income. Because Bank is perfected as to the proceeds of all sources of farm income, the Court finds that it is perfected as to the cash on hand. Mr. Zeman testified that cash on hand as of the date of filing was \$6,621.65. Because the petition date is not the relevant date of valuation, and because cash, whether collateral or not, is -- the most liquid of assets, the Court is unwilling to hold at this point that the cash on hand at the March hearing was the same as the date of petition.

In re Zeman Farms, Inc.  
March 23, 1988

Page 3

#### Satellite Dish

Bank has conceded that it does not have a lien in the satellite dish because "there is no evidence as to its use as a farm asset." (Bank's brief filed Mar. 11, 1988, at 6.)

#### Office Furniture

The office furniture is either "equipment" or "consumer goods" depending upon whether it is used primarily for personal or business purposes. CornDare SDCL 57A-9-109 sub (1) with sub (2). The Bank has admitted it holds no security interest in consumer goods, by conceding it is unsecured with regard to the satellite dish.

Mr. Zeman testified that the office equipment was used in his business of farming. The Court finds it is primarily used for business purposes and therefore is within the security agreement and filing of Bank. The Court values these goods at \$500.00, the estimate in the Debtor's schedule B-2.

#### Boat

The same issue exists regarding the boat as with the office furniture. Mr. Zeman testified that the boat was used at least four times a year to monitor and clean the intake units of the irrigation equipment. There was no evidence the boat was used for personal purposes. Accordingly, the Court finds that the boat is within the security agreement and filing of Bank. The Court accepts the \$2,500.00 value of the 1953 Lund boat contained on Debtor's schedule B-1, having heard no evidence to the contrary.

The Court anticipates the parties will again attempt to settle the value of the patronage refunds, amount of cash on hand, and amount of post-petition corn processing expenses. En the event they are unable to do so, a hearing shall be set up on these matters in time for incorporation of the Court's findings in the Debtor's plan.

The attorney for the Bank is directed to prepare an Order, and Findings of Fact and Conclusions of Law with regard to the matters discussed in this supplemental opinion.

In re Zeman Farms, Inc.  
March 23, 1988

Page 4

Counsel for Traveler's Insurance Company is directed to submit Findings of Fact and Conclusions of Law with regard to the matters contained in the March 18, 1988 opinion, in addition to the Order that opinion requires him to supply.

Very truly yours,

Irvin N. Hoyt  
Bankruptcy Judge

INH/sh

CC: Bankruptcy Clerk John Lovald, Trustee