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M|J|B BANKING LAW TODAY

AG BANKING 2020: WHERE THE FUTURE AND PAST COLLIDE

A Discussion of How the Current Ag Crisis Compares to that of the 80s from a Workout Perspective

In a mere three months it will be 2020 – a year that sounds very futuristic and almost straight out of science fiction. However, rather than flying tractors and hydroponic farms on the moon, the Minnesota Ag community faces a return to the past in the form of an ag crisis the likes of which has not been seen since the 1980s.

The coming ag crisis of the 20s (if I may be so bold as to use that terms to describe the 2020s) will be superficially similar to the crisis of the 80s, but very different from a causal perspective. At a basic level, I believe it is fair to characterize the 80s crisis as being driven by high interest rates and the 20s crisis as being driven by low prices. This difference in causuation will have a significant impact on how Ag banks manage the crisis from a workout perspective.

This article discusses how the difference in causuation is likely to result in different workout practices/realities in the 20s as compared to the 80s.

Difference 1: A Partial Liquidation of Assets to Reduce Total Debt will do Less to Alleviate the Problem.

In the 80s if farmers could reduce their overall debt load they would be able to mitigate the source of the harm, namely crushing interest payments. The easiest way to accomplish this was through a partial liquidation of assets and the use of the proceeds to pay down total debt levels. With less debt, there was less interest expense, and the financial picture would improve. As such, workout options that involved a partial liquidation of assets were effective.

In contrast, in a low interest rate/low price, environment, a partial liquidation does little to improve financial situations because interest expenses are already so low that the reduction in interest expenses that accompanies a reduction in debt has a limited effect on the overall expense picture. While every reduction in expenses does help – to a degree – the positive effect of such a reduction will likely be offset by the dimunition in economies of scale that will result from a smaller operation. As such, a partial liquidation could actually make the operation less cost effective and result in a worse bottom line.

Consequently, simply conducting a partial liquidation of assets will be a far less viable workout option in the 20s than it was in the 80s.

Difference 2: It will be Far More Difficult to Utilize Forbearance Agreements to "Wait this One Out."

In the high interest rate environment of the 80s, a forbeance agreement could be a useful tool because the source of financial difficulty was (to a degree) government induced and could be alleviated through the passage of time as rates would inevitably come back down at some point.

In contrast, in the 20s, the forbearance strategy appears far less viable because the economic impediment – the low prices -- appears to be the result of a global reallignment of the supply and demand picture that is likely to be the "new normal" rather than simply the prolonged trough of a cyclical market. When the economic impediment is unlikely to be alleviated through the mere passage of time, the forbearance strategy falls apart.

Difference 3: Chapter 12 Bankruptcies are Less Likely to Actually Result in a Productive Debt Restructure.

Chapter 12 bankruptcy found its genesis in the farm crisis of the 80s. It was created to give farmers an efficient, streamlined mechanism of restructuring their debts so that they could avoid foreclosure, continue farming and, ideally, return back to profitability over a 3-5 year period. In a high interest rate environment like the 80s, such a restructure is a viable option because it buys the farmers time and can result in the high interest rates being "crammed down" into something more workable.

In the 20s, in contrast, the mere passage of time is unlikely to resolve the issue (for reasons discussed above). Additionally, given that high interest rates are not the problem and interst rates are already very low, the bankruptcy court's ability to cram down interest rates will have little affect on the economic viability of the operation. As such there is reason to believe that Chapter 12 Bankruptcies will be a largely ineffectual resctructing tool in the 20s and will result in little more than costly delay for banks.

Additionally, apart from the general ineffectiveness of Chapter 12 as a restructuring option in the 20s, it is notable that these types of bankruptcies are likely to last far longer in the 20s than they would in a better economic climate. This is the case because when the numbers "just won't work," proposed Chapter 12 reorganization plans are more likely to face objections from creditors, and debtors are forced to resubmit new plans, sometimes in a serial fashion. This process increases the total length of the bankruptcy and the total cost.

As such, expect Chapter 12 Bankruptcies in the 20s to be lengthier and less productive than they were in the past.

Conclusion

While it is fairly debateable whether the the 20s will "be as bad as the 80s," one thing is fairly clear – if the crisis is fully realized then things will be more challenging from a workout perspective in the 20s than they were in the 80s. Boiled down, the reason why is that problems caused by high interest rates are easier to address than problems caused by low prices.

With such a challenging likely path ahead, banks are well advised to focus on tight fundamentals such as proper documentation, indentifying/avoiding collateral perfection mistakes, engaging in decisive and productive early workout activities and educating themselves on statutory lien issues so that they are able to productively deal with ancillary creditors and service providers. None of these actions are a silver bullet that can avoid all fallout from the crisis, but they can mitigate the harm and maximize the chances that the bank will be successful in the 20s and beyond.

-Matthew J. Bialick, Esq.

M|J|B Banking Law Today Turns One Year Old!

In October of 2018 we released the first issue of M|J|B Banking Law Today (then called J|B Banking Law Today). One year later we are excited to release this 13th issue of the newsletter! We have been extremely pleased with how well this newsletter has been received by ag bankers throughout the region. It has been our privilege to provide practical, timely, and useful content that is able to assist your bank, even in a small way. We intend to continue being a trailblazer in ag banking education into 2020 and beyond! If you want to review any of the past issues, simply go to https://www.mjblawmn.com/newsletters

Statutory Lien Cheat Sheet

Harvest time always creates a unique set of challenges for farmers and their banks. One of the biggest legal challenges for banks arises from super priority statutory liens granted to agricultural service providers who assist with harvest time activities. Today, a bank may have a first priority lien on agricultural commodities, but tomorrow it could be in second, third or even fourth position due to these statutory liens. To assist banks in assessing statutorily liens, M|J|B Law has compiled the below statutory lien cheat sheet.

1. Name: Harvester's Lien.
   Applicability: Lien held by a party providing combining, picking, harvesting, hauling, baling, drying, or storing services in the ordinary course of business.
   Perfection: Perfected by filing a UCC Financing Statement.
   Timelines: Financing statement must be filed within 15 days after the last date that services were provided.

2. Name: Crop Production Input Lien.
   Applicability: Lien held by a party who supplies crop production inputs to a farmer (e.g. seed, fertilizer, etc.).
   Perfection: Perfected by filing a UCC Financing Statement and by sending a lien notification statement in an envelope marked "Important – Legal Notice."

	Timelines:	Financing statement must be filed within 6 months after the last date that inputs are furnished and the lien notification statement must be responded to within 10 days of receipt.
3.	Name:	Landlord's Lien.
	Applicability:	Lien held by an agricultural landlord on crops grown on the land.
	Perfection:	Perfected by filing a UCC Financing Statement.
	Timelines:	Financing statement must be filed within 30 days of the crops becoming growing crops.
4.	Name:	Livestock Production Input Lien.
	Applicability:	Lien held by a party who supplies livestock inputs to a farmer (e.g. feed).
	Perfection:	Perfected by filing a UCC Financing Statement and by sending a lien notification statement in an envelope marked "Important – Legal Notice."
	Timelines:	Financing statement must be filed within 6 months after the last date that inputs are furnished and the lien notification statement must be responded to within 10 days of receipt.
5.	Name:	Temporary Livestock Production Input Lien.
	Applicability:	Lien held by a party who supplies livestock inputs to a farmer within 45 days after a Farmer Lender Mediation request is made.
	Perfection:	Perfected by filing a UCC Financing Statement and by sending a lien notification statement in an envelope marked "Important – Legal Notice."
	Timelines:	Financing statement must be filed within 60 days of the last date that the inputs were furnished.
6.	Name:	Rental Value Lien During Farmer Lender Mediation.
	Applicability:	Lien held by a party who has a perfected or unperfected security interest in seasonal use machinery that is subject to Farmer-Lender Mediation (including banks). Lien is limited to the lesser of: (1) the total amount required to bring debt current at the end of mediation; or (2) the reasonable rental value of the machinery during the period of the mediation.
	Perfection:	Perfected by filing a UCC Financing Statement.
	Timelines:	Financing statement must be filed during mediation or 30 days thereafter.
7.	Name:	Feeder's Lien.
	Applicability:	Lien held by a party who stores, cares for, or contributes to the keeping, feeding, pasturing, or other care of livestock.
	Perfection:	Perfected by filing a UCC Financing Statement.
	Timelines:	Financing statement must be filed within 60 days of the last date that services were provided.
8.	Name:	Breeder's Lien.
	Applicability:	Lien held by a party who provides services pertaining to animal breeding.
	Perfection:	Perfected by filing a UCC Financing Statement.
	Timelines:	Financing statement must be filed within 6 months of the last date that goods/services were provided.
9.	Name:	Veterinarian's Lien.
	Applicability:	Lien held by a party who provides medical care to livestock.
	Perfection:	Perfected by filing a UCC Financing Statement.
	Timelines:	Financing statement must be filed within 180 days of the last date that services were provided.

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