

# Preparing for Chapter 12 Farm Bankruptcy



*Abram V. Carls*  
(319) 896-4034  
acarls@spmblaw.com



SIMMONS PERRINE MOYER BERGMAN PLC

[www.spmblaw.com](http://www.spmblaw.com)

# Bankruptcy Orientation—The Chapters

- Chapter 7 (liquidation)
- Chapter 9 (municipalities)
- Chapter 11 (general reorganization)
- Chapter 12 (farm & fisherman reorganization)
- Chapter 13 (consumer reorganization)
- Chapter 15 (cross-border/foreign bankruptcy)



# Chapter 12 – Who Qualifies?

## “Family Farmers”

- Individual and spouse engaged in a farming operation
- Total debts below \$10,000,000
  - 50% of non-contingent debt arose from farming operation
- More than 50% of gross income in prior year, or two years before that, came from farming

## Family Farm Corporations? Yes

- Corporation OR partnership OR business trust OR LLC, but not a limited partnership
- 50% plus owned by the family farming
- 80% plus of assets are farm assets
- Total debts below \$10,000,000



# Chapter 12 – Key Features

- **NO VOTING ON PLAN**
  - No ballot lines
  - No recounts
  - Like Chapter 13 consumer plans—  
Judge decides confirmation
- **New Section 1232**
  - Deleted Section 1222(a)(2)(A)
  - Reversed *Hall v. United States*, 566 U.S. 506 (2012)
  - Deprioritize taxes from the sale of farm assets
- **Stretching Secured Debt**
  - Extend beyond 5 year plan “term”

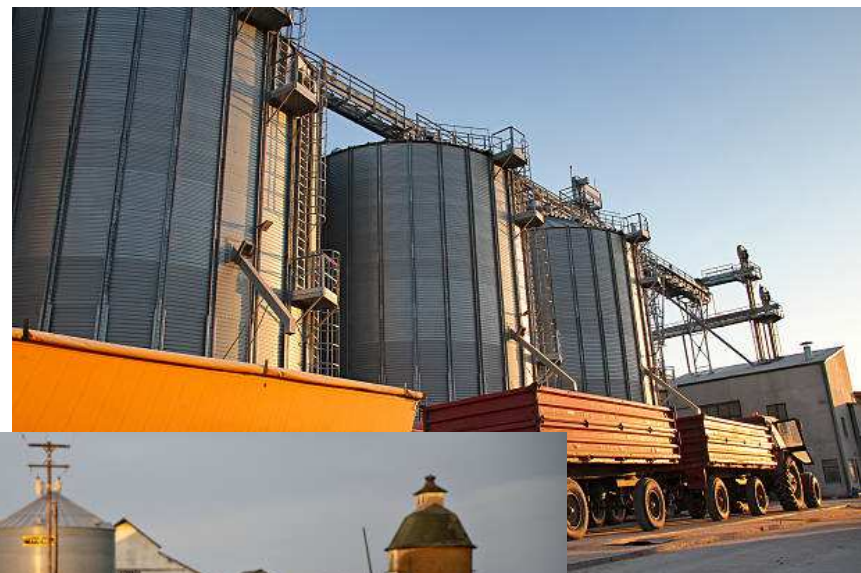


# Chapter 12 – Key Plan Requirements

- 11 U.S.C. section 1225
  - Liquidation Value: (4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;
  - Secured Creditors receive present value of their secured claim or their collateral: (5) with respect to each allowed secured claim provided for by the plan—
    - (A) the holder of such claim has accepted the plan;
    - (B) the plan provides that the holder of such claim retain the lien securing such claim and the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or
    - (C) the debtor surrenders the property securing such claim to such holder;
  - Feasibility: (6) the debtor will be able to make all payments under the plan and to comply with the plan.

# Preparation #1 – Secured Claim

## KNOW YOUR COLLATERAL & VALUE



SIMMONS PERRINE MOYER BERGMAN PLC

[www.spmbllaw.com](http://www.spmbllaw.com)

# Preparation #1 – Secured Claim

- Why collateral value is so important?
  - SECURED CLAIM = COLLATERAL VALUE
  - Over secured claim? Fees and interest added.
- Creditors with Secured Claims receive present value of their secured claim or their collateral.
- Creditors with Unsecured Claims participate in back of the line distributions.

# Preparation #1 – Secured Claim

- Secured claims create cash flow pressure
- Example:
  - Farmer with \$1.1 million in total debt
  - Secured by \$850,000 real estate (including homestead)
  - \$450,000 grain and equipment



# Preparation #1 – Secured Claim

Secured Claim - Real Estate				
Annual Interest Rate	4.25% (Prime + Risk Factor)			
Years	25			
Payments/year	2			
Amount	\$ 850,000.00 (100% Real Estate Value)			
Payment Number	Payment	Principal	Interest	Balance
1	(\$27,765.36)	(\$9,702.86)	(\$18,062.50)	\$ 840,297.14
2	(\$27,765.36)	(\$9,909.05)	(\$17,856.31)	\$ 830,388.09
3	(\$27,765.36)	(\$10,119.62)	(\$17,645.75)	\$ 820,268.47
4	(\$27,765.36)	(\$10,334.66)	(\$17,430.71)	\$ 809,933.82
5	(\$27,765.36)	(\$10,554.27)	(\$17,211.09)	\$ 799,379.55
6	(\$27,765.36)	(\$10,778.55)	(\$16,986.82)	\$ 788,601.00
7	(\$27,765.36)	(\$11,007.59)	(\$16,757.77)	\$ 777,593.41
8	(\$27,765.36)	(\$11,241.50)	(\$16,523.86)	\$ 766,351.91
9	(\$27,765.36)	(\$11,480.38)	(\$16,284.98)	\$ 754,871.52
10	(\$27,765.36)	(\$11,724.34)	(\$16,041.02)	\$ 743,147.18



# Preparation #1 – Secured Claim

Secured Claim - Feed & Equipment				
Annual Interest Rate	4.25% (Prime + Risk Factor)			
Years	7			
Payments/year	2			
Amount	\$ 250,000.00 (Remainder of Claim Loaded to Personal Property)			
Payment Number	Payment	Principal	Interest	Balance
1	(\$20,832.60)	(\$15,520.10)	(\$5,312.50)	\$ 234,479.90
2	(\$20,832.60)	(\$15,849.90)	(\$4,982.70)	\$ 218,630.00
3	(\$20,832.60)	(\$16,186.71)	(\$4,645.89)	\$ 202,443.29
4	(\$20,832.60)	(\$16,530.68)	(\$4,301.92)	\$ 185,912.61
5	(\$20,832.60)	(\$16,881.96)	(\$3,950.64)	\$ 169,030.66
6	(\$20,832.60)	(\$17,240.70)	(\$3,591.90)	\$ 151,789.96
7	(\$20,832.60)	(\$17,607.06)	(\$3,225.54)	\$ 134,182.90
8	(\$20,832.60)	(\$17,981.21)	(\$2,851.39)	\$ 116,201.69
9	(\$20,832.60)	(\$18,363.31)	(\$2,469.29)	\$ 97,838.38
10	(\$20,832.60)	(\$18,753.53)	(\$2,079.07)	\$ 79,084.84



SIMMONS PERRINE MOYER BERGMAN PLC

[www.spmbllaw.com](http://www.spmbllaw.com)

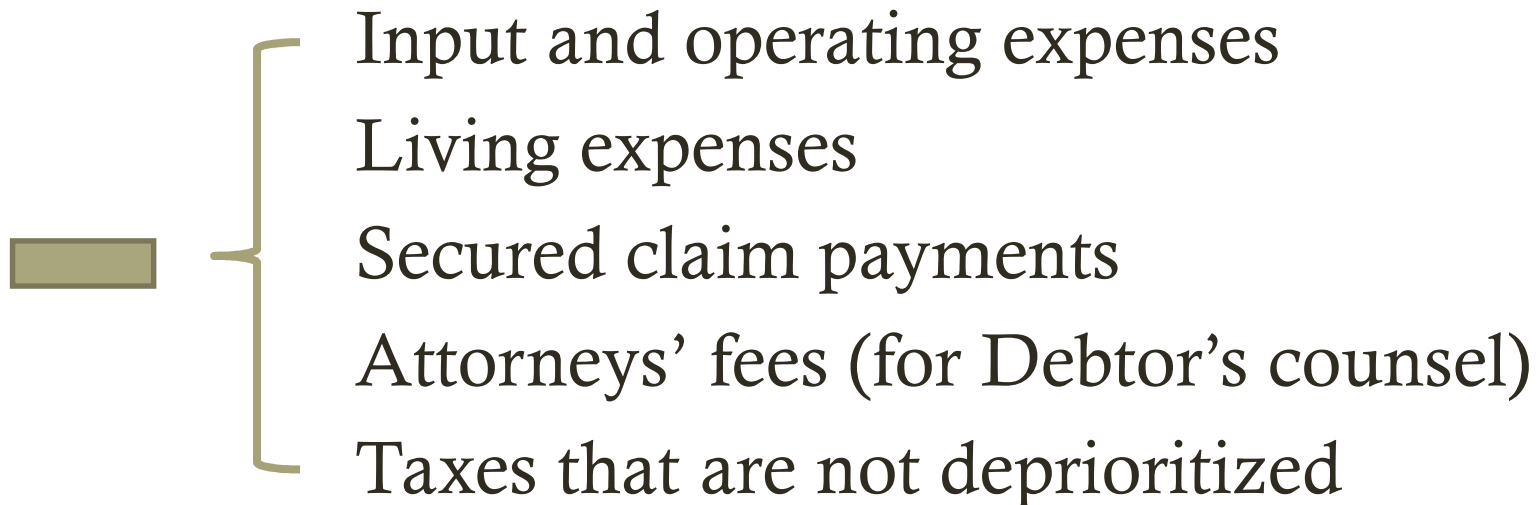
# Preparation #1 – Secured Claim

- What happened if Debtor's cannot cash flow the secured claim?
  - Dispute the collateral value
  - Appraiser for real estate
  - Appraiser for equipment
  - Chose most favorable time to value grain
- Judges pick somewhere in the middle

# Preparation #2 – Feasibility/Cash Flow

- Section 1225(a)(6): the debtor will be able to make all payments under the plan and to comply with the plan. (Can operations cash flow payments?)

Projected Earnings



## Preparation #2 – Feasibility/Cash Flow

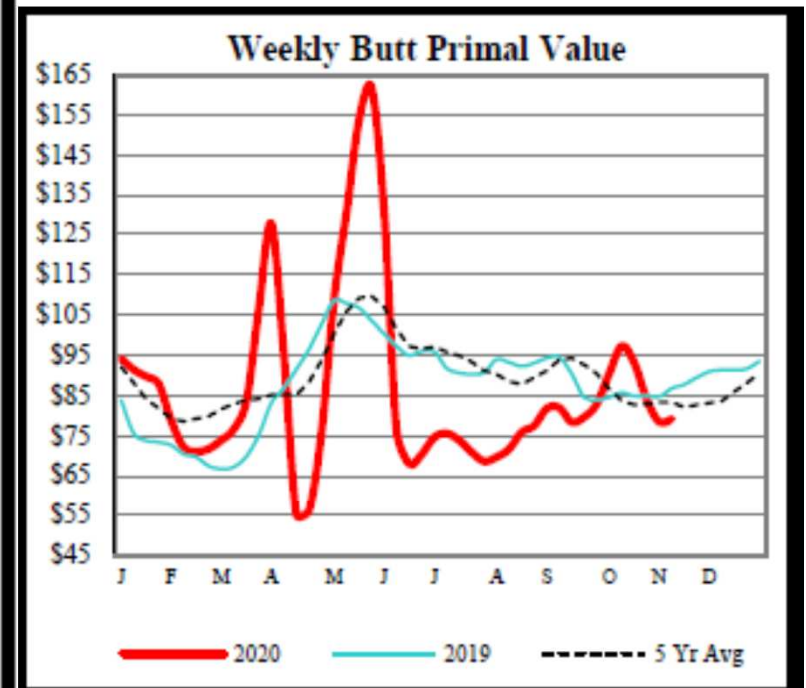
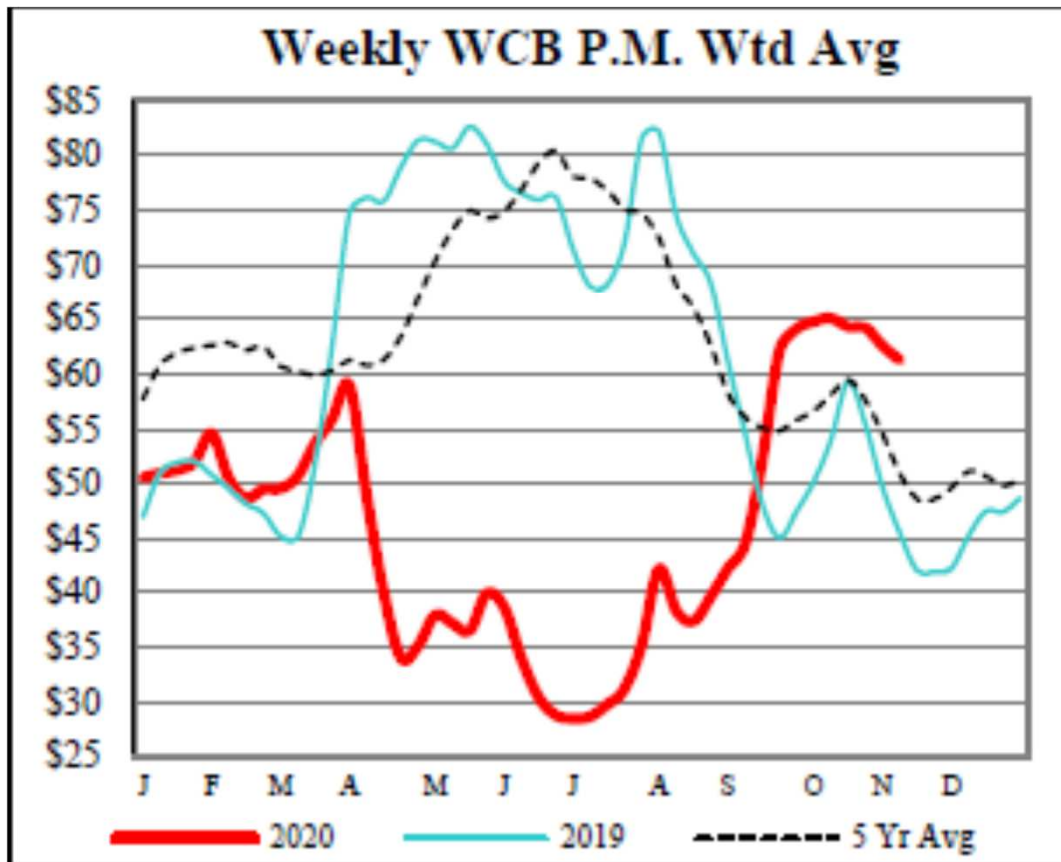
- Result must generate greater return to unsecured claims than Chapter 7 liquidation
- Section 1225(a)(6) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date

## Preparation #2 – Feasibility/Cash Flow

- What happens if the Debtor cannot cash flow with current operations?
  - Challenge secured claim.
  - Present low-ball liquidation value.
  - Supplement with off-farm income.
  - Pitch blue sky & farm turnaround

# Preparation #2 – Feasibility/Cash Flow

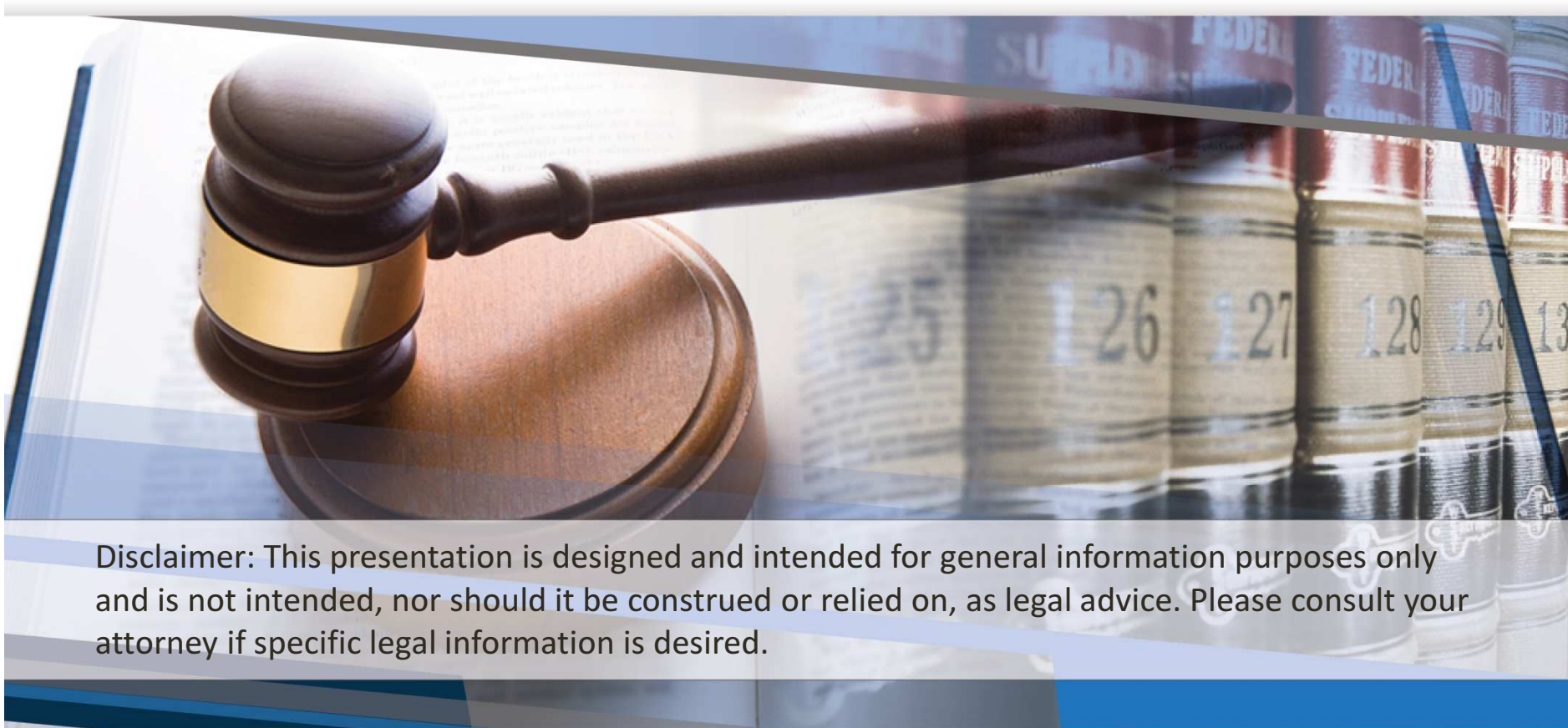
- Sometime markets do turnaround



# Chapter 12 – Big Picture

- Highest secured claim and over-security as possible.
- Give the Debtor a chance (within reason).
  - Judges confirm Chapter 12 plans.
  - Appeals are costly and uncertain.
- Consider trading feasibility objections for liquidation on plan default.
  - Paying secured claim is feasible if collateral liquidated.





Disclaimer: This presentation is designed and intended for general information purposes only and is not intended, nor should it be construed or relied on, as legal advice. Please consult your attorney if specific legal information is desired.



SIMMONS PERRINE MOYER BERGMAN PLC

[www.spmblaw.com](http://www.spmblaw.com)

115 3rd Street SE, Suite 1200 | Cedar Rapids, IA 52401 | 319.366.7641

1150 5th Street, Suite 170 | Coralville, IA 52241 | 319.354.1019