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CHAPTER 12 FARM BANKRUPTCY IN NEW YORK STATE

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ABSTRACT

A study of Chapter 12 farm bankruptcy found 56 cases had been filed in upstate New York by late 1988. Types of farms filing bankruptcy were similar to the state make-up of farms. Debt/asset ratios of the farms ranged from .4 to 3.9 and averaged between 1.5 and 1.6. FmHA was the lender most involved, holding 58% of the secured debt and involved in 82% of the cases. Commercial banks were involved in 60% of the cases but had only 10% of the secured debt.

Chapter 12 reorganization plans are plans for payment of creditors rather than plans for business reorganization. In fact, little information is available concerning changes to be made in the farm business plan. Most Chapter 12 repayment plans were for a 5 year time horizon, though 1, 3 and 4 year plans were also found. Payment of unsecured creditors averaged from \$.14 to \$.66 per \$1.00 of unsecured debt in the four court locations.

Six case studies provided additional in-depth information on when they had started farming, causes of problems, sources of information and help on bankruptcy, and how the bankruptcy plan was progressing. At the time of interview it appeared two of the cases would be successful, two would not be successful and for two it was too early to predict.

Perhaps surprisingly there was a notable lack of standardization and consistency among court locations with respect to schedules, documents and forms used. Also, it was noted that little apparent use was made of qualified farm management advisors by either the court or the farmers filing bankruptcy.

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Background

Not since the great depression of the 1930s has U.S. agriculture faced so severe a financial crisis as in the early 1980s. Increasing debt loads in the late 1970s, coupled with higher and more volatile interest rates, declining asset values, and declining commodity prices, all contributed to the farm financial difficulties in the 1980s. Higher interest and principal payments and decreased cash inflows began to cause farmers trouble in making their scheduled loan payments. In order to protect their positions, especially in light of declining farm asset values, creditors often responded by accelerating loan payments or threatening foreclosure. The result was that an increasing number of farmers began to default on loan payments and were required to sell assets, renegotiate debt payments, or cease to operate the farm business altogether.

By 1984 and 1985, it was generally acknowledged that the problem was reaching "crisis" proportions. The extent and severity of the debt crisis had varied throughout the country with the most widespread problems occurring in the midwest and southern plains where asset values and commodity prices plummeted in the early 1980s. The news media supported the public perception that U.S. farmers were in a crisis situation by reporting cases of suicide and personal hardship due to the failed farm operations. Crisis hotlines for farmers were set up in many states including New York which, generally, had more stable land values and more opportunities for off-farm employment than the midwest.

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In response to this crisis, there were calls from farm interest groups and congressmen for action to alleviate the pressure from creditors and to stave off farm foreclosures. One way to do this was to give farmers more options in dealing with their creditors. When negotiations with lenders failed, many farmers were left with basically three options: (1) liquidating the operation voluntarily or under Chapter 7 bankruptcy, (2) selling off assets to make payments, or (3) attempting to restructure their debt through reorganization bankruptcy. Many farm interests felt that the existing bankruptcy reorganization options (Chapters 11 and 13) were either too complicated or too limited in scope to be effective for most farmers. A more targeted and workable bankruptcy option was needed so that farmers might have a fighting chance to continue their operations. The Family Farmer Bankruptcy Act of 1986, which provided for Chapter 12 bankruptcy, addressed this need. This option is specifically for use by "family farmers" and is designed to be less complicated and more effective in restructuring business debt than the previously existing options.

Objectives

While there have been several studies (Harl and Faiferlick, Janssen and Schmesing, and Koenig) of farm bankruptcy in other parts of the country, little information has been available on farm bankruptcies in the northeast. Along with the unavailability of information on farm bankruptcy statistics in New York and the northeast, there is also an absence of published data on how farm bankruptcies actually work in a given farm situation. Study of Chapter 12 is also relevant because it altered some of the debtor and creditor rights and powers and because it is a temporary law which is scheduled to expire in 1993.

This research was undertaken to provide information on Chapter 12 and its use in New York State for use by policymakers and others interested in effects of Chapter 12 farm bankruptcies in New York State. The research had two specific objectives: 1) to describe Chapter 12 farm bankruptcies filed in New York State after November 1986, and 2) to discover the motivations, goals, and experiences of a small sample of farmers using Chapter 12 through personal interview and case studies.

Options for Financially Distressed Farmers

A. Informal Creditor Negotiation

For most farmer debtors and creditors, an out-of-court settlement is the most desirable alternative when dealing with financial difficulties of a farm business. This option saves time and legal fees as well as the hassles and complications of the courts. Unfortunately, if a farmer is dealing with more than one creditor, which is usually the case, negotiations can bog down with complications. A creditor may also simply refuse to negotiate and demand full repayment under the original agreement.

B. Use of State Debt Collection Laws and Mediation

Most states have laws governing the collection of debts from delinquent borrowers. However, many of these laws are antiquated and not very useful to a farmer trying to reorganize. Mediation is becoming a required option for some creditors like FmHA and Farm Credit ACAs since the passage of The Agricultural Credit Act of 1987. Even so, other creditors may not be affected by the law and are under no obligation to agree to mediation.

C. Bankruptcy

Bankruptcy is known as the "final option" in dealing with a personal or business financial crisis. It can be the most costly, time consuming, complicated, and straining of all options. But when all other options fail and a farmer is determined to remain in operation, reorganization bankruptcy may be the only alternative to the farmer.

In general, bankruptcy involves the use of the Federal Bankruptcy Judicial System to sort out the debts of an individual, business, or organization and protect the positions of both the borrower and the lender following legal statutes.

Creditors under bankruptcy are "classified". They receive priority for repayment based on legal guidelines and collateral as follows:

(i). Priority:

These claims are given special (top) priority above all others under the law. They include court expenses, legal fees, and taxes owed, and are usually paid in the plan by the Trustee.

(ii). Secured:

These creditors have liens, mortgages, security or other interest or collateral in the debtor's assets that are "unavoidable" or not removable. They are secured to the extent of their claim, or in other words, up to the value of their claim but not more than the value of their collateral.

(iii). Unsecured:

These creditors may have a legal claim or interest in the assets of a debtor, but the claim is not satisfied by the value of the collateral, or the claim does not have priority, or there is no specific collateral. For example, a creditor may have security on the assets of

a debtor, but the claim may be for more than the court-determined value of the collateral. The portion of the claim that exceeds the value of the collateral will become unsecured debt; therefore a single creditor could have both a secured and unsecured portion of a single loan.

In addition, two or more creditors may have security in the same asset(s) of a debtor. The creditor who has the priority security or interest (i.e., a first mortgage versus a second mortgage, or a purchase money lien versus a blanket lien) will receive payment first. If the creditor with the priority interest has a claim which is equal to the full amount of the collateral value of the asset(s), all other subordinate claims on the asset(s) would become unsecured claims and paid as such.

Those creditors who have no security agreement on the assets of their debtors, such as veterinarians, repair persons, etc. will automatically become unsecured creditors in a bankruptcy case.

Creditors under bankruptcy are paid in the order of classification. Secured creditors are paid within their class based upon collateral. For example, a creditor with a first mortgage on a debtor's property will receive priority over a debtor with a second mortgage on the same property. Unsecured creditors are paid as a group after priority and secured creditors. Unsecured creditors must receive at least the share they would receive in a total liquidation of the debtor's assets. In some instances, where a debtor's liabilities far outweigh assets, unsecured creditors may receive little or no repayment.

D. Types of Bankruptcy¹

There are two general types of bankruptcy: 1) liquidation, or 2) reorganization bankruptcy.

(i). Liquidation bankruptcy. (Chapter 7)

This type is also called "straight" bankruptcy. It involves selling a debtor's assets under court supervision and repaying creditors with the proceeds as specified by law. Chapter 7 can be used by anyone and is the simplest and cheapest option, since it does not require a reorganization plan. Therefore it is not a useful option for a farmer wishing to remain in operation.

(ii). Reorganization bankruptcy (Chapters 11, 12, or 13)

Chapter 11 bankruptcy can be used by any business or organization. Debts are restructured to allow a business to remain in operation. A plan of reorganization is submitted by the debtor outlining how debt terms and creditor payments will be changed to allow the business to continue. Chapter 11 is the most complicated, costly, and time consuming option.

Chapter 12 bankruptcy is the newest reorganization option, coming into existence in November 1986. It is much like Chapter 11 except that it is generally simpler and less costly, and is restricted for use only by "family farmers" who fit certain debt and income criteria.

Chapter 13 bankruptcy is for use by individuals, employees, or small businesses and proprietorships attempting to reorganize. It is simpler and cheaper than Chapter 11 but has a relatively low total debt ceiling which limits eligibility.

¹ For more information on farm bankruptcy, see Flaccus and Dixon, Harl (1987), and New York State Bar Association (1987).

E. Chapter 12 Bankruptcy

Chapter 12 farm bankruptcy grew out of the farm financial problems of the mid 1980s. These background and justification comments provide the setting:

"Most family farmers have too much debt to qualify as debtors under Chapter 13 and thus are limited to relief under Chapter 11. Unfortunately, many farmers have found Chapter 11 needlessly complicated, unduly time consuming, inordinately expensive and in too many cases, unworkable."

- Joint Conference Report
U.S. Congress, 1986

"While some N.Y.S. farmers may find themselves within the debt ceiling of Chapter 13 (\$100,000 in unsecured and \$350,000 in secured debt) the inability to significantly restructure or write-down secured debt often times made Chapter 13 unworkable for a farmer."

- Judge Stephen Gerling
U.S. Bankruptcy Court
Northern District, Utica, N.Y.²

A brief review of Chapter 12 characteristics follows.

1. Eligibility:

- a. Debtors must have less than \$1.5 million in total debt; 80% of total debt must be from the farm operation.
- b. More than 50% of the previous year's taxable gross income must have been from farming.
- c. For partnerships or corporations, more than 50% of the stock or equity must be held by one family member, and more than 70% of assets must be related to farming.

² -----, "Farm Bankruptcy and the Family Farmer Bankruptcy Act of 1986", New York State Bar Association, 1987.

2. Costs and time horizons:

- a. The filing fee is \$200.
- b. A debtor has 90 days after petitioning to file a plan.
- c. The court must schedule a confirmation of plan hearing within 45 days of plan filing.
- d. The plan will run for three years; in some cases it can be for five years.

3. Major features

- a. Creditors may not veto a plan.

Under Chapter 12 creditors can only file objections to a proposed plan. The court decides if the objections are valid. In contrast, under Chapter 11 a majority of creditors, both in number and amount owed, must agree to the plan before confirmation. Unlike Chapter 11, in Chapter 12 only the debtor may file a plan.

- b. Debtors have 90 days after filing to present a plan; then, the court must set a confirmation hearing within 45 days of plan filing.

In contrast, under Chapter 11 a debtor has 120 days to present a plan after initial filing, and extensions are often granted. Some Chapter 11 cases have gone on for years. Creditors can prevent confirmation of the plan by objecting; and, if debtors are not satisfied, they can file their own proposed plans.

- c. Debtors under Chapter 12 can write-down secured debt to fair market value.

As in any reorganization bankruptcy, under Chapter 12 debtors have the right to formulate repayment plans that lower the principal value of outstanding secured debt to the fair market value of the collateral. The difference between outstanding secured debt and fair market value becomes unsecured debt. In cases where a farmer's asset values have declined sharply, this provision can lower outstanding secured debts greatly.

- d. Chapter 12 is temporary, and is slated for expiration in October, 1993.

The controversy surrounding the passage of Chapter 12 led to the qualification that the law automatically expire in 1993, subject to reevaluation by Congress. Some court officials and lawyers feel that, because of the declining trend in Chapter 12 filings, Chapter 12 will likely pass by the wayside in 1993. Others view Chapter 12 as a useful and long awaited vehicle for farmers to deal with financial stress in times of economic downturn which at some point may occur again.

Chapter 12 Filings in New York State

A. Obtaining the Data

There are six bankruptcy court locations in New York State: Albany, Utica, Rochester, Buffalo, Poughkeepsie, and Westbury. The latter two courts, however, have had few or no Chapter 12 cases filed. Hence, the sampling frame included the four bankruptcy courts of Albany, Utica, Rochester, and Buffalo.

Collection of data involved examination of bankruptcy court files through on-site visits. All Chapter 12 filings were examined, but information was not gathered from any case withdrawn or dismissed at the time of data collection. Hence, complete data were obtained only for case farms identified as "in process" or with "confirmed" plans. Data collection took place from July to November of 1988.

Bankruptcy court records are in the public domain so anyone has the right to view or make copies of the files. Each case file is contained in a folder labeled by name and case number. All legal documents pertaining to the case are included in the file. In general, the information included farm location, farm type, years in operation, filing date, total debts and assets for the farm and home, including creditors, amounts owed and security, pending litigation and past bankruptcy, and lawyers and legal fees. Information was often sketchy and incomplete. Often only total income and expenses would be given, for example, from the previous year's income tax form.

Cases were sometimes consolidated with others after initial filing. This might occur, for example, if one partner filed for bankruptcy and later another partner or the business filed for bankruptcy. For such cases, the filing date referred to the case which was filed first, and the asset and debt data were then combined.

Importantly, examination of the filing document revealed that Chapter 12 reorganization plans give information on creditor repayment and debt restructuring rather than on reorganization of the farm operation. That is to say, there was typically no information on the farm production and finances or how farm production, organization, or management would change under the reorganization plan. Very rarely did

a plan include information on projected income, expenses, yields, or planned changes in the operation to facilitate the plan. When such information was present, it was normally in a summarized form with little detail and no explanation of assumptions. Only a handful of filed plans described the farm operation. Lawyers and court officials pointed out, however, that this type of information was often brought out in court proceedings, but it was not recorded in the files.

The various bankruptcy courts in New York often used different record keeping systems and file organization. The detail available on the farm business varied between courts depending upon the documents each location required debtors to complete. The Rochester court seemed to require the most documentation about the farm. Apparently each court location has discretion over the quantity and detail of farm information required for court records.

The dollar values of farm assets were listed for all cases, even if the specific units of owned assets were not given. These values, however, were subject to modification if a creditor disputed the value listed on the petition schedule of the farm debtor. Valuation, of course, would be crucial if the debtor was attempting to use the write-down provision of Chapter 12 to lower the outstanding secured principal on the loan. Sometimes both the creditor and the debtor would have appraisals, and the court would then decide the fair market value of the disputed assets, often by splitting the difference.

Complete inventories, including amounts and values of items on hand, such as stored crops, feed, seed, fertilizer, etc., were very seldom listed. It appears the courts do not always require a farmer to take inventory at the time of Chapter 12 filing.

Listed indebtedness of farmers was generally assumed to be accurate as shown on the petition schedules since it is the debtor's legal obligation to report debts owed as truthfully as possible. It's also in the interest of creditors to insure that the debtors are complying with this requirement. Occasionally, the outstanding debt would be modified from the original amount listed on the petition.

Total legal costs were not available for most cases. Usually, only the retainer fee was listed on the initial petition. Rarely were final legal fees given in the documents. A court official explained that in reorganization bankruptcy, the judge sets a hearing after the case is completed to decide what total legal fees can be charged. At the time of this study, only a few results of these hearings were recorded or available.

Comparison of specific repayment terms before and after reorganization was nearly impossible from court records. Many farmers had more than one loan with a single creditor. Each loan may have had a different repayment period and interest rate, and some had variable interest rates. Under the reorganization plan, all the loans to a single creditor were usually consolidated into one loan (or two loans, one real estate and one chattel) at one interest rate and for a standard repayment period. The consolidation made it difficult to compare "before" and "after" repayment terms.

B. Descriptive Results

1. General Overview

The six bankruptcy courts in New York State are located in four districts throughout the state (Figure 1). The courts cover specific counties within each district. The coverage of bankruptcy court

NEW YORK STATE

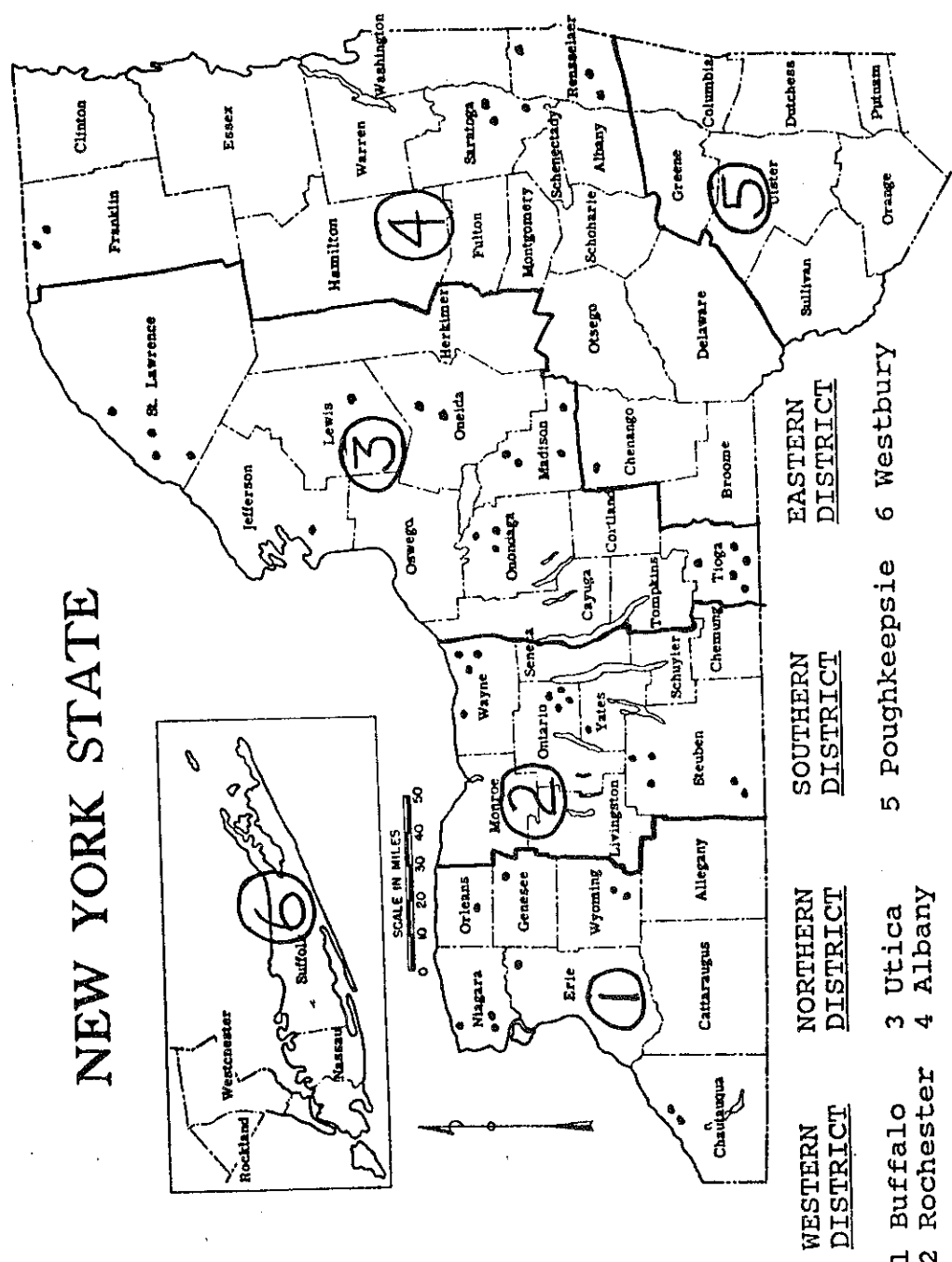


FIGURE 5.1
 LOCATION OF SAMPLE CHAPTER 12 FARMS
 AND NEW YORK U.S. BANKRUPTCY COURT DISTRICTS

districts is wide and does not correspond closely to the district names. For example, the northern district covers much of central, northern, eastern, and southern New York.

The number of Chapter 12 cases filed in New York since November 1986 is presented in Table 1. Utica had the most cases, followed by Rochester. Rochester was the only court in the state, at the time of data collection, to allow cases to be converted to Chapter 12 from Chapters 11 or 13. The Buffalo court disallows conversions; other courts had not yet received requests for conversion. Of the 85 Chapter 12 cases filed, only those cases with a confirmed plan or still in process were included in the study. Twenty-four dismissed or withdrawn cases were not included. An attorney said that many cases are withdrawn voluntarily before submitting a plan. These are often farmers who decide not to go through the legal process or may not have received appropriate advice or motivation from their lawyer.

TABLE 1. New York State Chapter 12 Filings by Year

Location	Number of Cases Filed Each Year			Total
	1986	1987	1988	
Utica	1	20	10	31
Albany	0	10	6	14
Rochester	2	14*	6*	22
Buffalo	1	14	1	16
TOTAL	4	58	23	85

* In Rochester, 4 cases were conversions in 1987, 3 in 1988.

Five cases were identified as having been combined with another case. Examples are farms that are owned jointly by members of a family (parent/child or brothers) where initially each person filed separately for bankruptcy. Either voluntarily or by order of the court the two filings were then consolidated into one case. Consolidation led to simplification of the cases especially where many assets and debts were common to both parties. Remaining were 56 cases in the four courts. For those 56 cases, an attempt was made to collect complete data on farm and financial characteristics as well as the reorganization plans.

The use of Chapter 12 peaked in 1987, when 58 cases were filed. Filings appear to have dropped off sharply in 1988. Some court officials and lawyers suggested this trend would continue due to new legislation requiring creditors such as the FmHA and PCA to negotiate in good faith with financially stressed farmers. Also, the farming economy seemed to have stabilized in 1988. Perhaps the threat of Chapter 12 bankruptcy has "encouraged" lenders to mediate or compromise with financially stressed farm borrowers.

Spring was the most popular time of year to file although many cases were filed in October. Dairy farmers with herds freshening in the fall may have decided to file after a summer of low production and returns and limited feed supplies for the winter.

2. Type and Size Characteristics of Farms Filing Chapter 12

The type of farm for the Chapter 12 cases is summarized in Table 2. Dairy operations prevailed. Crop farmers filing Chapter 12 were primarily in the western part of the state.

Farm size and years of experience on the present farm are given in Table 3. The "Year Commenced" designates the year that the farmer

bought or took control of the present farm. Most of the farmers had started on their operations in the late 1960's and early 1970's. They were not primarily recent entrants into the sector. The range in acres per farm was rather large. Clearly both small and large farms were included in the Chapter 12 filings. With so few observations on herd size it is difficult to generalize on the average number of cows on the Chapter 12 farms.

TABLE 2. Chapter 12 Farm Types,
56 New York Farms, 1968-88

Farm Type	Number of Observations
Dairy	33
Crop	9
Grapes	4
Fruit	2
Poultry	2
Hog	2
Other or not specified	4
TOTAL	56

TABLE 3. Farm Size and Year Started on Present Farm,
New York State Chapter 12 Farms

Item	Location			
	Utica	Albany	Rochester	Buffalo
<u>Year Started</u>				
number of observations	14	7	17	8
average year	1973	1968	1969	1964
range	1950-82	1933-86	1946-82	1950-72
<u>Acres Per Farm</u> (includes only owned acres)				
number of observations	16	6	9	9
average acres	289	500	264	203
range	113-580	240-968	112-432	58-415
<u>Cows Per Farm</u>				
number of observations	7	5	4	na
average number	65	83	60	na
range	10-129	40-130	30-110	na

3. Financial Characteristics of Farms Filing Chapter 12

Total assets listed on the Chapter 12 petition schedules are summarized in Table 4. The Utica Court had the highest total assets value for all locations sampled. Albany had the largest observed asset value for one farm of \$1,251,287. Only 52 of the 56 cases included data on total assets since four cases had just been filed and were awaiting completion of their petitions. Real estate was the largest component of total assets, on average 61% of total asset value (Table 5).

TABLE 4. Total Assets Listed by 56
New York Chapter 12 Petitions, 1986-88

Location	Total Assets	No. Farms	Average Assets	Item	
				Range in assets Low	High
Utica	\$ 4,892,112	16	\$305,757	\$20,917	\$835,590
Albany	\$4,623,592	9	\$513,732	\$110,900	\$1,251,287
Rochester	\$4,576,290	18	\$254,238	\$80,550	\$490,391
Buffalo	\$2,714,246	9	\$301,583	\$140,356	\$876,180
Total	\$16,806,240	52	\$323,197	\$20,917	\$1,251,287

TABLE 5. Components of Total Assets
Listed by 56 New York Chapter 12 Cases, 1986-88

	Total (\$)	% of Total Assets	Number Reporting	Average (\$)
Real Estate	10,303,273	61.3	50	206,065
Livestock	1,749,755	10.4	30	58,325
Machinery & Equipment	2,959,143	17.6	50	59,183
Inventory	540,285	3.2	25	21,611
Personal	509,990	3.0	49	10,408
Cash & Deposits	116,372	0.7	39	2,984
Accounts Receivable	125,967	0.7	14	8,998
Securities	501,459	3.0	31	16,176

Total debts listed on the Chapter 12 initial petition schedules are given in Table 6. Debt of nearly \$25 million was listed for the Chapter 12 farms in the sample. Farms filing in the Rochester district showed the most total debt. The Albany court contained one farm case with \$1,484,478 in total debt, just below the upper limit on debt of \$1.5 million established by the filing requirements under Chapter 12. In terms of priority, 84% of the debt was secured. Another 13% was unsecured, and the remaining 3% was taxes and other costs.

Not surprisingly, FmHA, the lender of last resort, is the major secured creditor as shown in Table 7. FmHA held 58% of outstanding secured debt and was involved as a secured creditor in 82% of all the sample cases. Banks were listed as secured creditors in 60% of all the sample cases, but the debt they held was only 10% of the total.

TABLE 6. Total Debts Listed by 56 New York Chapter 12 Petitions

Location	Total Debts	No. Farms	Average Debt	Range in Debt	
				Low	High
Utica	\$ 7,407,034	18	\$411,502	\$69,708	\$909,855
Albany	\$3,837,934	9	\$426,437	\$179,932	\$1,484,478
Rochester	\$8,918,617	18	\$495,479	\$320,157	\$942,376
Buffalo	\$4,801,083	9	\$533,454	\$188,403	\$855,880
Total	\$24,964,668	54	\$462,309	\$69,708	\$1,484,478

TABLE 7. Total Secured Debt by Creditor
56 Sample Cases, 1986-88

CREDITOR	Total (\$)	Percent of Total Secured Debt (%)	Percentage of Cases in which Creditor Listed (%)	Number of Cases Reporting
FmHA	12,123,333	58	82	45
FLB	3,116,136	15	38	21
PCA	1,039,182	5	10	14
Banks	2,126,266	10	60	33
Person	845,620	4	29	16
Mach. Dealer	701,624	3	44	24
Cattle Dealer	111,191	1	13	7
Insurance Co.	344,235	2	7	4
Ag. Bus.	285,891	1	25	14
Govt (ASC, CCC)	169,667	1	9	5
Other	195,782	1	15	8
TOTAL	21,058,927	100		

The FmHA is the major secured creditor on sample farms in all the court districts both in percentage of total debt and in number of outstanding debtors (Tables 8 and 9). Banks appear to be a more prevalent secured creditor in the northern district (Utica and Albany) than in the western district. Insurance companies are involved only marginally in most districts except Buffalo, where they were listed by three of nine Chapter 12 filers.

Most farmers who filed Chapter 12 were insolvent as shown in Table 10. In each court location, total debts of filers exceeded total

assets. However, debt/asset ratios as low as 0.40 were observed. Hence, insolvency is not required for filing Chapter 12.

Table 8. Secured Credit by Creditor and Location
Percentage of Total Debt, 56 Cases, 1986-88

Creditor	Location			
	Utica	Albany	Rochester	Buffalo
	<u>Percentage of total</u>			
FmHA	41	48	68	73
FLB	16	16	19	3
PCA	5	5	3	5
Banks	19	16	3	4
Person(s)	9	1	2	3
Machinery dealer	4	10	1	1
Cattle dealer	1	1	.5	1
Insurance company	.01	na	na	9
Agri-business	3	1	1	1
Govt. (ASC, CCC)	na	na	2	.5
Other	<u>2</u>	<u>2</u>	<u>.5</u>	<u>na</u>
TOTAL	100	100	100	100

The numbers of secured and unsecured creditors that were listed on petitions in the sample are presented in Table 11. The number of unsecured creditors varied greatly among farms. One farm in the Albany district listed 51 unsecured creditors on the petition schedule. The large number made it difficult to record, classify, organize, and present data on unsecured creditors. Unsecured creditors listed on the initial petition tended to be input suppliers, machinery dealers, non-farm merchants (department stores), landlords, repair and service firms.

TABLE 9. Secured Credit by Creditor and Location
Number of Farms Reporting, 56 Cases, 1986-88

Creditor	Location			
	Utica	Albany	Rochester	Buffalo
	<u>Number of farms reporting</u>			
FmHA	13	7	16	9
FLB	5	4	10	2
PCA	4	2	7	4
Banks	14	5	7	1
Person(s)	9	1	4	2
Machinery dealer	9	4	8	3
Cattle dealers	3	2	1	2
Insurance company	1	na	na	3
Agri-business	7	2	3	2
Govt.(ASC, CCC)	na	na	3	2
Other	3	4	1	na

TABLE 10. Average Debt/Asset Ratios of 56
New York Chapter 12 Farms, 1986-88

Location	Average Debt/Asset Ratio	Number Reporting	Range of Values Observed
Utica	1.33	15	0.4 - 3.51 *
Albany	1.05	9	0.6 - 2.38
Rochester	1.94	18	0.52 - 3.9
Buffalo	2.08	8	1.08 - 3.3 *

* Some observations were deleted, since extremely high D/A ratios were computed due to incomplete asset information found in certain cases.

TABLE 11. Average Number of Secured and Unsecured Creditors per Farm, 56 New York Chapter 12 Farms, 1986-88

Item	Utica	Albany	Rochester	Buffalo
Ave. # Secured	5.3	5.5	4.4	4.1
Ave. # Unsecured	9.6	16	10.7	13.2
Range Secured	2-11	2-10	2-9	1-7
Range Unsecured	1-35	1-51	1-38	5-40

4. Characteristics of Reorganization Plans

A total of 47 of the 56 New York Chapter 12 cases had filed reorganization plans (Table 12). The Rochester court had received the most plans. No plans had been rejected outright as of the data collection period. According to a court official this is not an unexpected result. The courts handled the Chapter 12 cases with "kid gloves" based on apparent Congressional intent. Once reorganization is approved, the courts may get tougher in their dealings with Chapter 12 farmers, particularly those who become delinquent on plan payments. One bankruptcy court judge indicated that as long as all the paperwork was filed appropriately and the farmer and lawyer "jump all the right hoops" a Chapter 12 case could be expected to go through without difficulty.

Most farmers had filed their reorganization plans within the 90 day period as specified by law. The courts did not fare as well in approving plans within the 45 day time period they were allowed. Only about half of the plans were approved within 45 days. In many cases, however, this was the result of creditor objections and plan modifications. Such changes are allowed by the Chapter 12 legislation,

but they do delay confirmation. The courts confirmed half of the cases within 45 days after plan filing.

TABLE 12. Status of Reorganization Plans
47 Cases, 1986-88

Location	Filed	Approved	Dismissed	In Process
	<u>Number of plans</u>			
Albany	8	5	0	3
Rochester	16	16	0	0
Buffalo	9	8	0	1
TOTALS	47	40	0	7

Most Chapter 12 plans filed in New York courts are 5 years in length (Table 13). Five year plans were most common in the Rochester court. The western district courts have also approved 4 year plans, and a one year plan was approved in Rochester. A court official indicated that in many cases the 3 year length of plan suggested by the original Chapter 12 guidelines is insufficient to allow a reorganization to work effectively, especially on farms where it takes time for a crop to become established and begin producing.

TABLE 13. Time Horizons of Chapter 12 Plans, 1986-88

Location	Number of Plans with Lengths of				Total
	5 yrs	4 yrs.	3 yrs.	1 yr.	
Utica	6	0	5	0	11
Albany	4	0	2	0	6
Rochester	10	1	3	1	12
Buffalo	3	3	3	0	9
TOTAL	23	4	13	1	41

The schedules of payment and the average payments made to the trustee under the Chapter 12 plans vary greatly. Most plans have provisions for the debtor to pay secured creditors directly "outside the plan" instead of making payments to the trustee for disbursement. This avoids a fee to the trustee equal to 10% of the total payments made. The trustee always received payments for administrative and priority expenses in the plans, and the trustee usually made disbursements to the unsecured creditors.

Terms of repayments to secured creditors "outside the plan" were not always shown, and of course they varied for each creditor listed. For example, some creditor repayment terms were listed as "paid according to original contract", with no mention of what those original terms were. This made the calculation of the actual total plan payments and schedules difficult.

The majority of Chapter 12 plans had monthly trustee payments. Biannual payment plans occurred in some western district cases. It is likely that payments were linked to harvesting time on crop farms.

The average percentage repayment of unsecured creditors for confirmed plans is presented in Table 14. A wide range in the

percentage repaid is evident between plans filed in the northern and western district courts. For the state as a whole, average unsecured creditor payments were 38 cents per dollar owed, but the amount varied from 14 cents per dollar in Buffalo to 66 cents per dollar in Albany.

TABLE 14. Percentage Repayment of Plans for Unsecured Creditors by Location

Location	Average Percentage Repayment	Number Reporting
Utica	55	8
Albany	66	5
Rochester	20	12
Buffalo	14*	6

* If one outlying observation is deleted (72%), the value for Buffalo is 5.16%.

The data on legal charges were incomplete since many of the final legal charges were not yet approved by the courts. The retainer fee is an "up front" charge paid to the attorney at the time of initial filing. As the case progresses, the attorney typically charges an hourly fee for services in addition to the up front fee. At the close of the case the attorney submits his or her bill for services to the judge who must approve the final charges of the attorney. Some early Chapter 12 cases had the total fee paid in advance, but this occurred rarely. Retainer fees charged by attorneys averaged \$1500 to \$2400 in the four court locations. Total legal charges for the 19 observed cases averaged \$5100 to \$7700 in three of the four court locations.

The caseload distribution of lawyers in New York for the 56 Chapter 12 cases is of interest. Twenty-seven different lawyers were

involved in those cases. Only eight lawyers had handled more than one case, and only five had experience with more than two Chapter 12 cases.

5. Summary

A total of 85 New York farms had filed a Chapter 12 bankruptcy as of the dates of this study. Filers were widely scattered throughout Upstate New York. The number of Chapter 12 filings declined in 1988 after peaking in 1987. Dairy farmers comprise the majority of farm types filing for Chapter 12 in New York.

For perspective, New York Chapter 12 filers had approximately \$17 million in assets (farm and home) and owed debt of \$25 million to creditors. FmHA was the major creditor of Chapter 12 filers.

No Chapter 12 reorganization plans submitted as of the date of data collection had been rejected or dismissed outright by the bankruptcy courts in New York. The majority of plans are 5 years in length and call for monthly payments to the trustee.

Results from Six Case Studies

A. Explanation of Approach

While the information in the public files at the bankruptcy courts is helpful in describing Chapter 12 bankruptcy in New York, many questions of interest concerning why farmers decided to use Chapter 12, how they made their decisions, and how they felt about their Chapter 12 experience are left unanswered. To get information on these questions, a case study format was used. Six farmers were selected from the 56 cases and were asked about their Chapter 12 experiences.

Case studies offer the opportunity of getting a closer look at decisions and processes behind the actions of individuals. One must be

careful, however, in drawing conclusions from just six cases because they may not be representative of the larger group of farmers filing for bankruptcy. Nevertheless, the case studies do suggest the forces and motives behind farmers' decisions to use Chapter 12.

Several considerations were involved in the choice of the six farms. First, only farms with approved plans for at least six months as of January 1989 were considered for inclusion in the study. It was felt that farms just starting the bankruptcy process would not be appropriate for interview. Farmers were considered for inclusion from the farm information sheets used to collect data from court records. They were contacted in the order they were identified from the information sheets.

There was also a concern for the willingness of farmers to participate in this type of study because of the detail that might be asked and the personal nature of questions. All six farms that were asked agreed to cooperate, though four of the six were either unwilling to provide cash flow information or did not have such information.

The case study questionnaires were designed to get at the following information:

1. Background events leading up to the financial difficulty.
2. Information about how farmers decided to use Chapter 12 bankruptcy, who was consulted, how they decided upon their attorney and whether they were satisfied with their attorney.
3. Whether options other than bankruptcy were considered.
4. Experiences in the court proceedings including problems with schedules, court forms, creditor attitudes, or other difficulties.
5. The reorganization plan formulation process, whether they made projections, and if so, how. That is, where did they obtain data

for the plan, and what process was used in planning? Confirmed plans were then compared with the situation before reorganization.

6. How well did case farmers believe their plan was working? Did they reach their initial goals, and had their goals changed?

7. With the farmers help, a tentative assessment was made of whether the Chapter 12 plan seemed to be working.

B. Summary of case study results.

1. Background of financial difficulties.

The six case study farms provide valuable information on the range in Chapter 12 situations. Data are summarized in Table 15. The case study farms ranged in acreage from 300 acres to over 900. All had dairy operations, and were milking as few as 43 cows and as many of 129. These six case farms had obtained credit from most of the major agricultural lenders. Their debt/asset ratios varied from .51 to almost 1.5. Two of the six farms were not insolvent, but four were. One farm had converted to Chapter 12 from a Chapter 11 filing.

The causes they perceived behind their financial difficulties are consistent with perceptions of the financial problems of the 1980s. Five of the six farms had very high debt loads. Yet, one of the six farms with a debt/asset ratio of .51 was not in a serious debt situation.

Table 15. Background of Financial Difficulties
of Six New York Case Study Farms

	Farms					
	A	B	C	D	E	F
<u>Farm Characteristics</u>						
Date started farming	'67	57		'77	'73	'71
Total acres owned	400	968	425	324	310	300
Cows milking/herd size	43	70	50	129	73	60
Major lender	FmHA	PCA	FmHA	FmHA	FLBA	Bank
Converted to Chapter 12 from Chapter 11	no	no	yes	no	no	no
Debt/asset ratio at time of filing	1.27	.81	1.26	1.34	1.48	.51
<u>Characteristics of Difficulties</u>						
Too much debt	yes	yes	yes	yes	yes	
Interest rates (debt payments) increased		yes		yes	yes	
Farm income dropped	yes	yes			yes	
Debt payments became delinquent	yes	yes	yes	yes	yes	
Lender accelerated loans/threatened foreclosure	yes	yes	yes	yes	yes	yes
Lender refused to negotiate debt restructuring	yes	yes		yes	yes	
Lender discontinuing farm loan "service"						yes
Expanded farm in 1980s		yes		yes	yes	
Herd health/operating problems				yes		yes

Three of the six farms mentioned increasing interest rates as a cause of their financial difficulties. Those problems stemmed from variable interest rates utilized by PCAs, Federal Land Bank Associations, and some commercial banks. Three of the six farms specifically mentioned lowered farm income related to milk prices as a cause for their financial difficulties, though three did not. In five of the six cases, debt payments became delinquent, and that led to the lender either accelerating loans or threatening foreclosure. As financial difficulties progressed, at least three of the six case

farmers attempted to negotiate debt restructuring with their lenders and were refused.

Consistent with the perceived reasons for the financial crisis of the 1980s on some farms, three of the six case study farms had attempted some expansion in the early 1980s. The increased debt load, and in some cases, variable interest rates, were listed as a contributing cause for financial difficulties. In two of the six farm situations, the financial difficulties were exacerbated by herd health or other operating problems of the farm.

2. Deciding on Chapter 12 bankruptcy and choice of attorney.

Table 16 indicates the sources of information used by the case study farmers in their decision to file Chapter 12 bankruptcy. All six case study farms used attorneys, of course, because an attorney is required to handle the case. Presumably, the case study farmers talked over the situation with family members, but only one respondent specifically indicated using family members in making the decision. Other farmers and friends were involved in four of the six decisions, and two farmers specifically mentioned farm magazines and newspapers as sources of information on bankruptcy. Three of the six farmers talked to a cooperative extension specialist at some point in the decision process, and two of the six had called NY FarmNet for help or for referral to an attorney.

Table 16.

Consultants Used Prior to Filing
Chapter 12, Six NY Case Study Farms

Consultation/Information Sources	Farms					
	A	B	C	D	E	F
Family members		yes				
Other Farmers "Friend"	yes		yes		yes	yes
Farm magazines	yes	yes			yes	
Newspapers	yes	yes				
Attorney	yes	yes	yes	yes	yes	yes
NY FarmNet	yes	yes				
Cooperative Extension Specialist	yes	yes		yes		

The case study farmers were also asked how they chose their attorney and how satisfied they were with the attorney they chose. Three of the six chose their attorneys based on recommendations from other farmers or friends. In one situation, the extension agent suggested an attorney, and in another, the farmer had heard the attorney speak at an extension function. One of the six had chosen the attorney from an ad in a farm magazine.

Four of the six case study farmers were pleased with the attorney that had represented them in their farm bankruptcy. Their satisfaction was apparently related to the attorney's interest in them and the farm situation. Respondents said their attorney visited the farm, asked about how the farm was doing, and kept them informed on what was happening in the legal proceedings. In short, they were satisfied because their attorney seemed knowledgeable of legal proceedings, was interested in, and kept communication lines open.

Two of the six farmers were displeased with the performance of their attorneys. In one of those cases, the farmer said the attorney didn't return calls, did not seem to be interested in the farm

situation, and did not tell them what was happening. The other farmer who was dissatisfied with the attorney's performance had lost the original attorney due to serious health problems and then had been shifted to another attorney in the firm at midpoint in the legal proceedings. That farmer, too, cited poor communication with the attorney as a major reason for dissatisfaction.

All six case study farmers recognized that there were other options to bankruptcy. Only one, apparently, seriously considered other options. Farmer A felt that Chapter 11 was too complicated, and liquidation was simply not acceptable since it would have meant discontinuance of the farm business. Also, sale of assets to pay off some of the debts was not practical.

The other case study farms apparently did not give serious consideration to options other than Chapter 12 bankruptcy. In several cases, the farmers mentioned that they felt forced to use Chapter 12 when the lender refused to renegotiate a payment schedule to ease the debt repayment burden. Farmer E discussed liquidation but wanted an opportunity to try a new enterprise, and liquidation would not have permitted that. Hence, while other options for solving the financial situation were considered, these six farmers chose Chapter 12 bankruptcy, typically, because they felt there was no other practical alternative.

4. Comments on the Filing of Chapter 12

Case study farmers reported that completing the required court documents presented no problem for them. They obtained the farm information needed from FmHA farm and home plans, the PCA agrifax system, or from their own personal records. In some cases, they

completed the forms themselves and took them to the attorney for review, and in other cases they sat down with the attorney and jointly completed the required court documents. Four case study farmers felt that court officials were helpful to them when they had questions or needed help, though two felt that court officials either were not helpful or were not well informed themselves about required records and procedures.

The case study farmers were also asked to describe creditor attitudes toward them during the bankruptcy process. Two of the six felt that creditors were "hostile" before and during the proceedings. The other four said creditors' attitudes were "understanding" even though the creditors may not have favored the bankruptcy process.

5. Reorganization plan goals and formulation process.

Case study farmers had a number of goals in mind when they put together their reorganization plans. The primary goal was to lower the debt payments to creditors to ease the financial strain. Five of six mentioned this goal. Farmer F did not mention the importance of lowering debt payments, but instead, listed a goal of retaining farm ownership. This different goal related to a unique situation. Farmer F's lender was attempting to reduce their farm loan portfolio by calling Farmer F's loans. Other goals of case farmers included lowering costs of operation, mentioned by three; and improving production facilities or practices, selling off assets to pay down debt, and expanding herd size, mentioned by one each.

Sources of help and information used in projecting results of the reorganization plan are of particular interest. All six case study farmers used their attorney as a major source of help in planning the reorganization and formulating expectations from reorganization. And,

because of the nature of reorganization, all six made a 12-month projection of financial results.

The approaches to a reorganization plan differed in some other important respects. For example, four of the six farms used information from FmHA or PCA records as input into the reorganization plan. Four of the six mentioned use of income tax records as an information source, but only two used DHI records for information. Presumably, the other four were not participating in the DHI program. Two of the six farms also used the help of a friend in planning the business reorganization, but only one used Cooperative Extension in planning the farm reorganization.

The clear impression is that there is much variability in the quality of financial projections by farmers filing bankruptcy. Some used numerous outside advisors in developing a farm plan; others presented only a minimal farm plan based on scanty personal records.

6. Results of Chapter 12 Reorganization.

For each of the case study farms, a comparison was made of the situation before and after the Chapter 12 reorganization was approved. In general, the Chapter 12 reorganization decreased the pressure of debt repayment, allowed for debt consolidation into fewer loans making debt service management easier, and usually resulted in less debt than before reorganization. Another feature was that secured creditors were usually paid outside the reorganization plan reducing trustee fees.

Each farm, of course, also had characteristics that were unique so that confirmed reorganization plans varied a great deal. Farm A, for example, had a write-down of debt amounting to 11 percent of the outstanding debt at the time of filing. The reorganization plan was set

up for a five-year period. Unsecured creditors were paid approximately 25 cents per dollar of unsecured loan. The monthly payments of Farmer A were cut almost in half as a result of reorganization.

Farmer B's experience was somewhat different. The unpaid accrued interest on Farmer B's secured loans was added to the loans so that outstanding debt actually increased nine percent under reorganization as compared to before reorganization. All debt, both secured and unsecured, was due to be paid in full, although a longer repayment schedule did decrease the amount of monthly payment. Debts were consolidated into fewer payments, but the debt was put on a variable interest rate basis; and with increases in interest rates since the reorganization plan, Farmer B was having difficulty in keeping up on payments. Farmer B's repayment plan was also for a five-year period.

Farmer C had a major debt write-down of about \$170,000, about 34 percent of the amount of debt prior to reorganization. Unsecured creditors of Farmer C were scheduled to receive only 10 cents per dollar of loan. With longer terms for repayment, the amount of debt payment per month was reduced substantially. Debts were consolidated to make management easier. One unique aspect of Farmer C's case was that equipment loans of \$40,000 were written down to the \$12,000 estimated fair market value of the equipment. The \$28,000 of write-down were converted to unsecured debt, which, like the other unsecured debt, was paid at 10 cents on the dollar.

Farmer D was put on a three-year reorganization plan. With the largest debt of any of the six case study farms, Farmer D received a debt write-down of \$171,000, 21 percent of the outstanding debt prior to filing Chapter 12. Unsecured creditors were paid 25 cents on the dollar

in Farmer D's case. Even with such a substantial write-down, Farmer D was having trouble keeping current on debt payments.

Farmer E had debts reduced \$90,000, about 25 percent of the outstanding amount prior to filing Chapter 12. The plan called for secured creditors to be paid in full, except for FmHA which had a second mortgage on farmland. Since the first mortgage took all the land collateral, FmHA's second mortgage became an unsecured loan which, like other unsecured loans of Farmer E, were to be paid at 40 cents on the dollar. Farmer E's reorganization plan covered a five-year horizon.

Farmer F's situation was also unique. Since the reason for filing Chapter 12 was to keep the lender from accelerating the loan and Farmer F's debt/asset ratio was only about 50%, there was no write-down of debt. Both secured and unsecured creditors were scheduled for 100% repayment. The bankruptcy law provides that unsecured creditors must get as much under a Chapter 12 as they would get under a liquidation, and Farmer F was not insolvent.

7. Farmer Assessment of Chapter 12 Proceedings.

As might be expected, the six case study farmers had different experiences with their Chapter 12 reorganizations.

Farmer A has probably been one of the more successful of the six case studies. He worked closely with a DHI person and with an extension agent to improve his production efficiency. An added stroke of luck came from a neighbor asking him to raise and milk 13 bred heifers. The calves went back to the owner of the cows, but Farmer A received the milk production. As a result of his efforts and the use of additional animals as mentioned, the total pounds of milk produced more than doubled from 1986 to 1988.

Farmer A was very pleased with the results of his Chapter 12 reorganization. His goals have been met and exceeded. His advice to others considering bankruptcy was to consult a fellow farmer who has been through bankruptcy or similar financial difficulty. He also felt it was critical to find a lawyer who knows the bankruptcy laws and who is willing to become familiar with the farmer's operation. Farmer A also felt that the requirement of preparing and filing documents for the bankruptcy court was useful to force him to keep better records and to get better control over his cash flow. Keys to Farmer A's success were the preplanning and consultation with others and the improved production that resulted from his consultation with experts.

The bankruptcy filing helped Farmer A. Perhaps the seriousness of bankruptcy forced him to obtain some quality advice, improve his production practices, and really search for ways to improve the farm operation. Whatever the motivation, when the bankruptcy eased the payments so that there was some cash available, Farmer A did improve production practices, increase milk production, and now seems to be well on the road to a successful completion of his reorganization plan.

Farmer B's reorganization results were very different than Farmer A. Farmer B was already experiencing a cash flow shortage at the time of study interview and was behind in debt payments. A drought in the summer of 1988 lowered crop production significantly and forced the purchase of more feed than anticipated. Also, a mastitis problem with the herd cut production and decreased expected returns during the first year of the plan. Farmer B's debt payments under the reorganization plan are still too high to allow sufficient operating

funds after payment of debts, and it appears that his delinquency in debt payments will continue.

Farmer B was not pleased with the results of his Chapter 12 case. He felt that secured creditors "got everything they wanted" from the bankruptcy court concerning terms of repayment. As a result of some of the features of his plan, Farmer B is now paying a higher interest rate on his secured debts than he was paying before bankruptcy.

Farmer B is also not satisfied with his lawyer's performance. He feels the lawyer could have accomplished more for him through the use of Chapter 12. Farmer B was planning to meet with his lawyer and go back to court to request a more feasible repayment schedule. If that attempt fails, Farmer B has considered liquidation.

The Chapter 12 bankruptcy filing was not helpful to Farmer B. In fact, because of the conversion of accrued interest into a loan to be repaid, the debt situation was made worse. Farmer B did not appear able to turn the situation around. It was likely Farmer B would go back to court to renegotiate or to admit failure of the bankruptcy plan. Farmer B was especially unhappy and felt that there was a complete lack of communication with his attorney.

Farmer C has been able to make planned payments without difficulty. Milk production and returns have been increasing steadily since the reorganization plan. The feeding program has been improved, and Farmer C is renting less land than in the past. Also, herd size is being increased somewhat to improve production and cash flow.

Farmer C's goals of lowering monthly debt payments and keeping the farm in operation have been accomplished. This was done more quickly and at less expense using Chapter 12 than would have been possible under

Chapter 11 which Farmer C had originally filed. Farmer C said that good communication has been maintained with the lawyer who is staying in contact as the plan progresses.

Farmer C believes that a good record system is paramount to success. Quality records permitted accurate projections of future herd size, production levels and financial results. Farmer C also pointed out the importance of having a lawyer willing to get involved in learning about the farm situation and possible alternatives. Other farmers were also mentioned as an important source of advice to farmers considering bankruptcy, but Farmer C believed that more than one farmer's experience should be considered to get a broader picture.

The bankruptcy benefited Farmer C. Production was increasing, and Farmer C seemed to be confident of success. The debt write-down and lower debt payments were important contributors to this improvement.

Farmer D has had an unsatisfactory outcome from bankruptcy. Because of health problems of his first attorney, Farmer D had to change attorneys in mid proceeding. Since that time, communication with his lawyer has been especially poor. For example, Farmer D said he was not notified of plan approval by the court until nearly two months after actual confirmation. Since that time, he has continued to be confused about who was to be paid through the plan, how much the payments were to be, and the time schedule for making payments. Cash flow from his farm operation has not been sufficient to make all the direct payments to creditors outside the plan as well as to the trustee. The situation has been exacerbated by poor crop yields due to weather problems.

Farmer D is considering contacting a new attorney to go back to court to straighten out plan problems. He is also considering a

decrease in herd size to make the farm easier to handle and to reduce labor. He hopes to be able to pay down some of the debts through sale of land and other assets. Farmer D was negative on his bankruptcy court experience. Part of the problem was the change in lawyers as mentioned. He also felt that the court in his filing district was not as geared toward farm cases as they might be. He felt that court officials did not have much knowledge of farmer situations and businesses and that the Chapter 12 forms had simply been borrowed from Chapter 11 bankruptcy. Even with the major write-down in debt and lowered debt plan payments, Farmer D was not able to stay current on planned payments.

Farmer E was a somewhat unique situation. While the dairy operation had been unprofitable, Farmer E wanted to utilize the bankruptcy proceeding to change direction and move into a different enterprise. Farmer E's plan, then, was to sell the cows and machinery except for that needed in fruit and vegetable production, and with the proceeds finance a roadside farm stand. Income would be supplemented by off-farm work. The court approved the plan, and the transition began.

In the first year, however, cash flow from the roadside stand was not sufficient to meet all of the plan payments. With the pending delinquency in payments, Farmer E is talking of trying to renegotiate the plan. Farmer E and spouse are still optimistic, however, about the potential for the farm market and produce business. If they could make it to the next summer, they felt prospects for increased business at the farm stand would permit them to get back on schedule with payments.

In considering lessons from their bankruptcy experience, Farmer E pointed out the importance of considering other options and alternatives at an earlier time, rather than waiting for the bankruptcy

reorganization plan for making change. The couple also underlined the importance of consulting the right people when thinking about options while under financial stress. Farmer E and spouse felt that trusted friends in the agricultural business were the most helpful. They felt that one should avoid a local attorney because of the possibility that strict confidence could not be guaranteed.

Farmer E and his wife are satisfied with results of the Chapter 12 case and feel their goals have been met. Their major goal was to try an alternative form of farming. Their plan was approved, and they've been able to keep the farm to this point. Their bankruptcy has had mixed results, however. While it eased the repayment pressures, Farmer E has continued to have some difficulty in meeting planned payments and may not succeed with the reorganization. Nevertheless, the bankruptcy still met his goals in that it provided a chance to try another enterprise.

Farmer F and spouse had an unusual bankruptcy purpose. Their filing for bankruptcy with a debt/asset ratio of only about 51% was undertaken to stop their lender from calling their loans and shutting off their credit. Hence, their goal was to ease out of farming, or at least, have an alternative of part-time farming, rather than being forced to discontinue.

At the time of interview, Farmer F was slightly behind on payments under the plan due to the 1988 drought which lowered milk production and cash flow. They were not concerned about their ability to catch up once they were over the drought situation. Farmer F and spouse are now beginning to accept that the operation cannot continue at the present herd size. They are actively considering a part-time operation or farming on a smaller scale while retaining ownership of the homestead.

Hence, Chapter 12 is helping them to ease out of farming rather than being forced out by lender action. By selling off some of the assets and downsizing the operation, they will be able to pay off all creditors and maintain a smaller operation with little or no debt.

In considering their bankruptcy experience, Mrs. F said she was amazed that nothing really goes on in the court itself concerning the discussions on plan confirmation. She felt that everything is discussed and decided outside of court by lawyers or behind the scenes in the judge's chamber. Given that perception, Mrs. F said it was important to obtain the right lawyer to have a successful Chapter 12 case. She felt their best sources of information and advice had been other farmers and friends experienced with bankruptcy.

From the standpoint of Farmer F, bankruptcy was successful. While the bankruptcy did not result in decreased debt, nor a substantial easing of the repayment schedule, they did meet their goals of easing out of farming on their own schedule.

Concluding Comments

From the inception of Chapter 12 bankruptcy in November 1986 to the date of data collection for this study (August-October, 1988), 85 Chapter 12 cases were filed in the four court locations in the western and northern districts of New York. Of those, 24 cases were dismissed or withdrawn, and 5 cases were combined, leaving a total of 56 confirmed or in process. Of those 56, 33 were dairy operations, 9 were crop farms, 6 were grape or fruit farms, and 8 were other types or not known. Farm assets per farm for the Chapter 12 filings ranged from about \$21,000 to about \$1,250,000. Debt per farm ranged from about \$70,000 to

almost \$1.5 million. Debt/asset ratios on Chapter 12 farms were in the range of .4 to 3.9. FmHA was the most involved lender, holding 58% of total secured debts, and was involved in 82% of the Chapter 12 cases. Commercial banks were involved in 60% of the Chapter 12s but held only 10% of the total amount of secured debt.

1. The success of Chapter 12 reorganization on the six case study farms would have to be termed "mixed".

Chapter 12 did appear to be faster and easier than Chapter 11. Farmers filing Chapter 12 nearly always completed their reorganization plans within the 90 days allowed, and the courts completed the confirmation hearing within the 45 days specified at least half the time. Chapter 12 was apparently easier than other types of bankruptcy because all Chapter 12 cases had been approved, and there was no evidence of cases not being approved.

Yet, Chapter 12 is not a cheap option for farmers to utilize. The legal costs per bankruptcy case were in the range of \$5100 to \$7700 in three of four court locations. Attorneys handling the Chapter 12 cases typically charged an up front retainer of \$1500 to \$2400 and then charged for hours worked beyond that at a rate of \$70 to \$90 per hour.

Farmer reactions to the outcomes of their Chapter 12 reorganizations varied substantially. Clearly, six case studies do not accurately describe the range of outcomes of the 56 Chapter 12 filings. Within the six case studies, two farmers were quite pleased with their Chapter 12 experience, two farmers were rather unhappy with their Chapter 12 experience and outcome, and the

remaining two farms met their goals with Chapter 12 even though they were having problems meeting plan commitments.

A common factor in the two apparently successful outcomes was preplanning and preparedness. One of the two farmers with a positive outcome was the only one of the six cases to have used an extension specialist or trained consultant in the preparation of the reorganization plan. The other well satisfied farmer had the same attorney and had also done substantial homework making projections before going into court to present a plan. Also, as a part of that planning and projection process, both successful farm reorganizations had increased herd size and improved efficiency.

**2. Good communication between attorney and farmer
is critical.**

The two farmers who were most dissatisfied with their Chapter 12 outcome were especially critical of the lawyers who represented them. They cited a lack of communication between the lawyer and themselves, and they felt the lawyer had not shown sufficient interest in their farm situation. Yet, lawyers without a farm background or extensive experience with farmers were still effective in handling Chapter 12 if they established a close working relationship with clients, became knowledgeable about the operation, and acquired an understanding of farm businesses. Two of the farmers who were most pleased with the handling of their case by their lawyer were clients of the same attorney. That attorney had had no previous experience with farm cases. In the minds of the two farmers, the lack of experience was overcome through his work with other agricultural professionals who helped

to make production projections and by his interest in getting to know the farm client.

3. Bankruptcy court officials also need better communication with farm clients.

Some case study farmers felt that court officials lacked understanding of farm businesses and did not communicate well. In the eyes of these farmers, the lawyer seemed to be controlling the direction of the case, rather than the bankruptcy court. There was also some evidence that trustees did not establish clear communication with the farmer and his lawyer. In order for reorganization plans to be successfully formulated and carried out, farm clients must know what is expected of them by the court. It's also important, of course, that lawyers, debtors, and creditors each do their part to help keep communication open. It would be helpful, however, if court officials would make it clear whose responsibility it is to insure full communication and what role each party involved should play.

Case study farmers expressed dismay over a perceived tendency for some courts to adapt Chapter 11 bankruptcy forms and schedules to Chapter 12. If true, that makes the Chapter 12 process more complicated than was intended. It would also be useful if the courts would schedule preliminary Chapter 12 hearings in locations closer to farmers. Some Chapter 12 filers live a long distance from the court, and it is a hardship for them to be away from the farm for long periods of time. One farmer, in particular, described difficulty in attending all the hearings on his case because of the distance of his farm from the court.

4. There was a notable lack of standardization and consistency between court locations.

This study had assumed that Chapter 12 petition schedules, documents, forms, and reorganization plans would be fairly standardized and consistent between cases and court locations. That was not so. What was encountered was a great deal of variation in the organization and content of the schedules and documents. The situation suggests a need for bankruptcy court judges and officials to get together, perhaps through seminars and workshops, both to help them understand farm businesses, but also to organize court documentation requirements and to develop consistency from one court to another. There was also not consistency between courts concerning conversions from Chapter 11 to Chapter 12. One court allowed such a conversion, one court refused a conversion, and two had no requests so made no policy.

5. Detail was lacking on the plan for business reorganization.

General interpretation of reorganization bankruptcy is that somehow the business will be reorganized and adjustments made in the debt so that the business can then become viable again. Hence, this research had anticipated that Chapter 12 files would show a business plan for the farm and anticipated changes in production, expenditures, and outcome to turn the business around.

Instead, the Chapter 12 reorganization plan is but a description of future debt repayment requirements. Typically, there were few or no details on how the farm was expecting to raise needed cash to improve repayment capacity. While this

information may be discussed between lawyers or off the record, it is not shown on court records. Since a specific business plan is not required, farmers filing Chapter 12 are not forced to think of the necessary changes they need to make in their businesses to improve performance. Lack of such information suggests that the courts generally did not have sufficient information to determine whether the plan would likely succeed. Hence, while farmers, typically, were forced to get income and expense information from previous tax forms or their own records, they were neither encouraged nor forced to seek outside help that might improve their farm management capability or the likelihood the plan would succeed.

6. Little use was made of qualified farm management advisors.

A surprising result of the case studies was that only two of the six farmers had contacted the Cooperative Extension Service or other consultants when considering how to deal with their financial dilemma or in formulation of a plan. And, only one of those two used an extension person to help formulate a farm plan. One might expect that farmers would seek advice from extension agents or other farm consultants before seeing an attorney and becoming involved in a bankruptcy filing. Perhaps these farmers did not know of the expertise and available services of extension or simply did not think to use extension. Or, perhaps the farmers did not view extension or other consultants as reliable or effective sources of information for their situations. This later view was expressed off the record by two case study farmers. In

one instance, the DHI specialist served as a helpful consultant to the farmer in putting together a farm plan.

7. Improved extension/legal cooperation and coordination are needed.

From the case studies, it was also apparent that the courts and attorneys were either unfamiliar with the help a farm management/extension person could provide or, for one reason or another, chose not to use such extension help. Except for the one farmer who utilized an extension agent, none of the other case study farmers indicated that an extension agent or other consultant visited them on behalf of their lawyer or of the court.

The apparent lack of consultation with extension or any qualified consultant by the legal system suggests that opportunities exist for two way education between court officials and lawyers on the one hand and extension on the other. Extension agents could help court officials and attorneys understand more about farming and the somewhat unusual nature of farm businesses. On the other hand, court officials and attorneys could help cooperative extension personnel understand Chapter 12 and basic elements of legal procedure.

Cooperation between extension specialists on farm business management and court officials in New York could have made each more aware of the services and assistance of the other. More than one case study farmer mentioned that the court officials did not seem to have a firm grasp on the workings of a farm business. Lawyers in New York who anticipate working with farm cases would also benefit from this type of cooperation and interchange. Since

there are few legal and/or extension personnel who are widely experienced with Chapter 12, a closer working and educational relationship between the two groups would still have beneficial results at the present time and for the future.

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