



ONE POSSIBLE PLAN
For the case of Umorni Company
For the seminar for bankruptcy trustees, *October 2005*

MEANS FOR IMPLEMENTATION:

1. Business enterprise to carry forward in operation
2. Liquidation of unused machinery/equipment by trustee
3. All of debtor's other assets, including R. E. parcel #3, to be transferred to new business entity Zdravko Company, which will carry business operations forward with Umorni Company's present workforce
4. New business entity to assume responsibility for payment of debt under plan
5. Equity in new entity to be acquired consensually by Srec'ko Company, Gundjelo Company, Bank B (to extent of undersecured status) (those three taking total of 51%, pro rata to amount of claims), and new investor Sposko Spasic' (49%)
6. New business entity to enter into contract with Sposko Spasic' for his employment as general manager for term of 5 years

CLASSIFICATION OF CLAIMS AND TREATMENT:

1. *Secured classes:*
 - a. *Bank A:* Paid full amount of its claim with interest, in monthly installments, first lien in R.E. parcel #1 to be retained pending payment, payment period extended to 3 years.
 - b. *Bank B:* Claim divided between secured component (going-concern value remaining in R.E. parcel #1 after attachment of claim of Bank A) and unsecured component (remaining amount of claim). Secured portion to be paid in full with interest, monthly installments, payment period extended to 3 years, second lien against R.E. Parcel #2 to be retained pending payment. Unsecured portion to be exchanged for equity shareholding in Zdravko Company, a pro rata share of controlling 51% bloc with Srec'ko Company and Gundjelo Company.
 - c. *Bank C:* Unimpaired; to be paid in full per pre-bankruptcy contract, within 2 years as that contract provides
 - d. *Bank D:* Because current value of equipment to be retained is greater than amount of claim, proceeds of partial liquidation of equipment will be used to fund a partial distribution to priority wage claims and will not be paid to Bank D. Payment period extended to 3 years, payment in full with interest, monthly installments, lien in equipment to be retained pending payment.
2. *Employees' claims, all of higher payment rank:* all components of wage claims that were reduced to judgment, priority and non-priority, to be placed in one class; claim to be paid in full over 3 years, *in equal annual payments*,

- no interest, after principal amount has been reduced by application of proceeds of sale of excess equipment.
3. *Unsecured claimants who will receive equity in Zdravko Company*: the capital stock in Zdravko Company will be valued at 875,000 KM, with Srec'ko Company, Gundjelo Company, and Bank B (to the extent of the unsecured portion of its claim) to share pro rata in a 51% control bloc. (Sposko Spasic' will receive the remaining 49% of the shares in exchange for his capital infusion of 428,750 KM.)
 4. *Unsecured claims (taxes, Elektroprivreda Utility, and suppliers who will do business with Zdravko Company)*: In accordance with the status of its allowed claim, the state's claim for taxes will be treated as completely unsecured. ***The members of this class will receive 100% of the amount of their claims, without interest, in two sequences of distribution. First, they will share along with the members of Class 5, pro rata in a distribution in the amount of 200,000 KM, the value of the equity in the debtor in liquidation in bankruptcy. This distribution will be funded from the capital infusion by Sposko Spasic' and will be made by the trustee. They will receive the balance of the amounts of their claims, amortized over three years, in equal annual payments.***
 5. *Unsecured claims (suppliers who will not be doing business with Zdravko Company)*: ***The members of this class will share along with the members of Class 4, pro rata, in a distribution in the amount of 200,000 KM, the value of the equity in the debtor in liquidation in bankruptcy. They will receive no other distribution on their claims.***
 6. *Unsecured claims ("administrative convenience" class)*: ***The members of this class will be paid the full amounts of their claims, in cash, in one payment, from the capital infusion by Sposko Spasic', to be made by the trustee at the same time as the pro rata distribution to members of Classes 4 and 5.***
 7. ***Zdravko Company will assume liability to the Social Funds and will pay the claim in full over three years, in equal annual payments, with no interest.***

SUPERVISION WILL BE ORDERED over the implementation of the plan, including the formation of Zdravko Company, the capital infusion from Sposko Spasic' and its first application to unsecured claims, and Zdravko Company's payment of claims over the three years after confirmation of the plan.

After the *initial* payment *on* unsecured claims *as provided in Classes 4, 5, and 6, and payment of the expenses of the bankruptcy case*, the balance of the capital infusion from Sposko Spasic' may be applied to accelerated payment of employees' claims or secured claims, or to the improvement of the plant or the equipment, in the discretion of Mr. Spasic' and Zdravko Company's board.

ZDRAVKO COMPANY will not be liable for any of the pre-bankruptcy debts of Umorni Company, other than those that it is to specifically assume under the terms of the plan (*Classes 1.a., 1.b., 1.c., 1.d., 2, 4, 5, and 6*). Umorni Company will not receive a

forgiveness of debt upon confirmation. However, because it will not have assets or an operating business the value of creditors' continuing rights against it will be zero.

THE EXERCISES:

We as judges will deal with this plan at three different stages of the case, under the applicable provisions of the BiH Law on Bankruptcy Proceedings ("LBP").

First Exercise:

Judge's in camera review upon filing of plan [LBP, art. 156.2]: On the basis of the summary of the plan and the Fact Sheet, evaluate how "obvious" it is that the plan, on its face, is:

- a. feasible [LBP, art. 156.1.3]*
- b. based on classifications and treatments that satisfy the provisions of governing law [LBP, art. 156.1.1]*
- c. going to be acceptable to creditors and the court [LBP, art. 156.1.2]*

Second Exercise:

Assume that the plan has the content shown in our written summary and that the court has set separate hearings for discussion and voting. Thus:

1. Discussion hearing [LBP, art. 160.1]: Assume that the trustee, Spasic', Umorni Company's current managers, and the lawyers are before the court for this hearing. Also assume that the trustee has received an appraisal of the company's assets that includes values under both "market" and "liquidation" methods. Examine:

- a. the basis for classification of secured and unsecured claims*
- b. the rationales for treatments of claims*
- c. feasibility (assume that you, as judge, are still not sure that this plan is feasible, after your first in camera review)*

2. Voting hearing [LBP, art. 166.1]: Assume that all of the following have occurred:

1. Elektroprivreda Utility has voted to reject the plan. Its representative appears at the hearing and insists that Elektroprivreda must have payment in full immediately, plus a security deposit or other guarantee of payment from Zdravko Company, before it will withdraw its rejecting vote.

2. Two days before the voting hearing, Spasic' realized that Supplier Company G is the only stable provider of a type of wire that Zdravko Company must have in order to produce parts for a large new customer in Germany that wants to enter a contract with Zdravko Company after reorganization, and that this contract is essential to the new company's profitability. Supplier Company G will not do business with Zdravko Company unless its account for Umorni Company is resolved by payment in full. Thus, the trustee and Spasic' are proposing to the court that the plan be amended to include Supplier Company G in Class 4 rather than in Class 5.

3. *Spasic' appears at the hearing and says that he has 250,000 KM in cash in the bank but that it will take two more months to close on the bank loan for an additional 200,000 KM.*

With these new developments, examine:

- a. whether "cramdown" will permit confirmation despite Elektroprivreda's vote to reject the plan [LBP, art. 170]*
- b. what more, if anything, the trustee must do to put the proposed modification properly before the court for confirmation [LBP, art. 165]*
- c. what should be done in light of the fact that Spasic' does not have all of the cash right now.*