

News from Senator

BOB DOLE



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TODAY, THE SUBCOMMITTEE ON COURTS CONVENES TO RECEIVE FURTHER TESTIMONY CONCERNING THE PROBLEMS CREATED FOR FARMERS BY GRAIN ELEVATOR BANKRUPTCIES. THIS IS THE THIRD IN A SERIES OF HEARINGS THAT THIS SUBCOMMITTEE HAS CONDUCTED ON THIS ISSUE AND, WE HOPE, IT WILL BE THE LAST. IN APRIL AND MAY OF 1981, THE SUBCOMMITTEE HEARD TESTIMONY FROM INDIVIDUAL FARMERS AND FARM ORGANIZATIONS, BANKERS, AND OFFICIALS OF STATE AND FEDERAL AGRICULTURAL AGENCIES WHO WERE UNANIMOUS IN THEIR SUPPORT FOR LEGISLATION WHICH WOULD REMEDY THE PROCEDURAL DEFECTS IN BANKRUPTCY LAW WHICH HAVE PREVENTED FARMERS FROM RECOVERING THEIR CROPS FROM INSOLVENT ELEVATORS FOR MONTHS AND EVEN YEARS AFTER THE FILING OF BANKRUPTCY PETITIONS.

IN RESPONSE TO THAT TESTIMONY, I INTRODUCED IN APRIL OF 1981 S. 1365, A BILL WHICH ADDRESSES THE PROBLEMS IDENTIFIED BEFORE OUR SUBCOMMITTEE. THAT BILL PASSED THE SENATE BY UNANIMOUS VOTE ON THREE SEPARATE OCCASIONS - ONCE AS INDEPENDENT LEGISLATION IN SEPTEMBER, 1981, AND TWICE AS AMENDMENTS TO OTHER, RELATED MEASURES, IN NOVEMBER AND DECEMBER OF THE SAME YEAR.

S. 1365 WAS INTRODUCED IN THE HOUSE OF REPRESENTATIVES LAST YEAR BY CONGRESSMAN BILL EMERSON OF MISSOURI, AND IS NOW PENDING IN THE HOUSE JUDICIARY COMMITTEE. REGRETTABLY, THAT COMMITTEE HAS NOT YET ACTED ON THE LEGISLATION - IN SPITE OF MOUNTING PRESSURES FACING FARMERS ACROSS THIS NATION AS A RESULT OF A STEADILY INCREASING RATE OF ELEVATOR FAILURES.

NATIONAL ATTENTION WAS ORIGINALLY FOCUSED UPON THIS PROBLEM BY MR. WAYNE CRYTS, A FARMER FROM PUXICO, MISSOURI. IN AUGUST OF 1980, THE ELEVATOR WHERE MR. CRYTS HAD HIS SOYBEANS IN STORAGE WENT BANKRUPT. AFTER SEVEN MONTHS OF FRUITLESS EFFORTS IN THE BANKRUPTCY COURT IN LITTLE ROCK, ARKANSAS, MR. CRYTS ACTED ON HIS OWN - IN VIOLATION OF COURT ORDERS - TO RECOVER HIS BEANS FROM

THE ELEVATOR AT RISTINE, MISSOURI. THE BANKRUPTCY COURT ORDERED MR. CRYTS TO REVEAL THE NAMES OF THE FARMERS WHO HELPED HIM REMOVE THOSE BEANS AND HE REFUSED TO COMPLY WITH THAT ORDER. AS A RESULT, WAYNE CRYTS IS NOW INCARCERATED IN THE POPE COUNTY DETENTION CENTER IN RUSSELLVILLE, ARKANSAS ON A CONTEMPT CITATION.

WHILE WE DO NOT - AND CANNOT - CONDONE THE ACTIONS OF ANY INDIVIDUAL WHO TAKES THE LAW INTO HIS OWN HANDS, IT IS CLEAR THAT THE FEDERAL BANKRUPTCY LAWS CREATED THE CIRCUMSTANCES WHICH HAVE BROUGHT MR. CRYTS AND THOUSANDS OF FARMERS LIKE HIM WHO HOLD CROPS IN BANKRUPT ELEVATORS TO A POINT OF UTTER DESPERATION. UNLESS THOSE LAWS ARE CHANGED, THESE FARMERS FACE TOTAL FINANCIAL RUIN.

WAYNE CRYTS HAS A STORY TO TELL THAT THE MEMBERS OF THIS CONGRESS - PARTICULARLY OUR COLLEAGUES IN THE HOUSE - NEED TO HEAR. THAT IS THE PURPOSE OF OUR HEARING TODAY. I WANT TO WELCOME MR. CRYTS AND CONGRESSMAN BILL EMERSON, WHO HAS SPONSORED MY LEGISLATION IN THE HOUSE. CONGRESSMAN EMERSON HAS A FEW BRIEF REMARKS HE WOULD LIKE TO MAKE.

FINALLY, BEFORE WE PROCEED, I WANT TO EXPRESS MY APPRECIATION TO BANKRUPTCY JUDGE CHARLES BAKER OF LITTLE ROCK, WHO HAS BEEN MOST COOPERATIVE WITH OUR EFFORTS TO BRING MR. CRYTS BEFORE THE SUBCOMMITTEE. JUDGE BAKER GENEROUSLY ALLOWED MR. CRYTS TO POST A SIGNATURE BOND FOR THE PURPOSE OF TRAVELING TO WASHINGTON TO PRESENT HIS TESTIMONY.

WITH THAT, WE'LL HEAR FROM CONGRESSMAN BILL EMERSON.

HOW THE DOLE BILL HELPS FARMERS

1. Mandatory distribution of proceeds of grain in the elevator within four months of the filing in bankruptcy. Two tier distribution system allows storage contract owners of grain to recover their grain off the top. These are farmers and other parties who have kept title to the grain, have not sold to the elevator.
2. Brings state regulatory agencies with experience in grain elevator insolvencies into the distribution process. These agencies' expertise will help ensure smooth, rapid distribution in complex cases.
3. Grants farmers who have sold grain to the elevator but have not received payment before the bankruptcy status as secured creditors if the bankruptcy is filed within 60 days of the sale. This allows farmers time to obtain third party guarantees of their contracts, and protects them if there is a bankruptcy before they can obtain such guarantees. If there is a bankruptcy, sale contract farmers who have not received payment can claim a portion of grain assets under the Dole bill. Under present law, they are general unsecured creditors.
4. Limits trustee expenses that may be paid out of proceeds of grain assets to those charges related directly to the handling of the grain. Trustee's expenses limited to no more than 1% of total proceeds in most cases.
5. Would require the bankruptcy court to accept the elevator receipt as evidence of ownership of grain where it was issued for that purpose by the elevator operator. (Both scale tickets and warehouse receipts).

COMPARISON OF HOUSE BILL

1. House bill does not contain any mandatory timetable for distribution of grain assets. Only instructs court to expedite, as much as possible, the distribution. (Court would be required to set its own timetable).
2. House bill does not provide protection to farmers who have sold grain to elevator but have not received payment. No secured creditor status for these farmers - they recover only after all secured creditors have been paid.
3. No provisions regarding elevator receipts as evidence of ownership.