For 10/12 Speech
Missouri

GRAIN ELEVATOR BANKRUPTCY BILL (August, 1982 draft incorporated in Omnibus Package)

A. What the Bill does

1. The bill requires the court to expedite procedures for distribution of grain or the proceeds of grain which is stored in a bankruptcy elevator. It places a 120 day time cap on the abandonment and distribution process which cannot be exceeded except where unusual circumstances are present and material injury to owners of grain will not be caused by any extension of the distribution schedule beyond that time.

2. The bill brings state regulatory agencies with experience in grain elevator insolvencies into the court to aid the trustee in assessing grain assets and effecting the distribution of those assets. These agencies' expertise will help ensure smooth, rapid distribution in complex cases.

3. Farmers who have stored grain, as well as other legitimate owners of grain, receive distribution of their share (on a pro-rata basis) off the top. Farmers who have sold grain to the elevator but who did not receive payment before the bankruptcy filing are allowed a right of reclamation over the sold grain where the sale occurred within twenty days of the bankruptcy. If the court decides that returning the grain to the farmers in kind would disrupt the proceedings, then the court must provide the sale contract farmer a lien against property of the elevator to secure his claim. As a secured creditor, the farmer will share in any distribution of grain which is property of the estate (belongs to the elevator) which may be made to other secured creditors of the elevator.

4. The bill requires the court to accept valid warehouse receipts and scale tickets as proof of ownership of grain where they have been issued for that purpose under local custom and state law.

STORAGE CONTRACT FARMERS: GET EXPEDITED ABANDONMENT OF GRAIN OFF THE TOP.
SALE CONTRACT FARMERS WHO WERE NOT PAID FOR GRAIN PRIOR TO THE BANKRUPTCY: THESE FARMERS HAVE A RIGHT OF RECLAMATION, ALLOWING THEM TO RECOVER THE PRODUCE SOLD. IF THE COURT DETERMINES THAT RETURNING THE GRAIN IS UNFEASIBLE, THEN THEY MUST BE GIVEN STATUS AS SECURED CREDITORS IN THE BANKRUPTCY PROCEEDINGS.

B. Cong. Emerson's Contribution

1. Bill Emerson has been the leading proponent in the House of the Grain Elevator legislation. He and his staff have been crucial in lining up broad bi-partisan support for the bill. Emerson has personally lobbied several dozen Congressmen who were neutral on the bill early on and now support it. Emerson's work has ensured that all of the protections of the Dole bill have overwhelming support in the House, and will be a part of any final legislation that comes out of the House.

2. Emerson has gone "one on one" with Peter Rodino in House hearings defending the bill's provisions and fighting to ...

C. Comparison of Dole and House Bills

1. The Rodino bill, introduced in April of this year, does not contain any mandatory timetable for distribution of grain assets. It only instructs courts to expedite the distribution as much as possible.

2. The Rodino bill does not provide protection to farmers who have sold grain to the bankrupt elevator but have not received payment. These farmers usually wind up as general, unsecured creditors in bankruptcy, and receive money only after all secured creditors are taken care of. (Reason: grain that has been transferred to the elevator on a contract of sale becomes part of the bankruptcy estate, available for satisfaction of all creditors' claims.)

3. The Rodino bill contains no provisions ensuring that warehouse receipts and scale tickets will be accepted as evidence of ownership by the courts.

4. Many other protections of the Dole bill -- such as protection of farmers against frivolous appeals of distribution orders which might delay delivery of grain -- are not in the House bill.

S. 2000
MATERIALS

TALKING POINTS: PURPOSES OF THE BILL
IMPETUS FOR THE BILL

1. Purposes of the Bill

(1) To conform the Bankruptcy Code's debt avoidance and debt rescheduling provisions to modern credit practices, by allowing the bankruptcy courts to consider future income in evaluating eligibility for liquidation relief under Chapter 7;

(2) To correct provisions of the 1978 Bankruptcy Reform Act which have altered the balance of equities between debtors and creditors in bankruptcy excessively in favor of debtors, such as to encourage unnecessary filings;

(3) To revise inefficient procedures which have unduly burdened good faith creditors seeking to recover on legitimate claims, and which have diminished the efficiency of the courts.

2. Impetus for the Bill

(1) Personal bankruptcies have increased 103% since new Code went into effect, from 172,423 in 1979 before the new Code to 452,145 in 1981. Figures for 1982, to be released in July, will be much higher.

(2) The increase cannot be blamed entirely on the recession. Four independent studies that were presented to the Committee determined that provisions of the code which excessively liberalized debtor's rights are responsible for a large portion of the increase -- one study concluded as much as 50%. (Two of the studies were financed by credit industry; one was done by the Atlanta Federal Reserve and one by the Saginaw, Michigan Association of Credit Unions.)

(3) These same studies analyzed the financial condition of debtors filing in Chapter 7 as opposed to Chapter 13 and determined that fully 25-30% of the debtors taking straight bankruptcy in Chapter 7 could have paid off 50% or more of their debts out of discretionary income in a deferred payment plan lasting over a period of three years. If those debtors were required to file under Chapter 13 in order to obtain bankruptcy relief, the savings to the credit industry would be in excess of 1.5 billion dollars per year.

TALKING POINTS: SUPPORT FOR THE BILL

1. Testimony

Over forty-five witnesses appeared in three days of hearings held over a period of seven months. Testimony came from bankruptcy judges, legal scholars, bankruptcy practitioners and creditor and consumer groups. The weight of the testimony from those persons knowledgeable about bankruptcy law and procedure was overwhelmingly in favor of the changes provided for in S. 2000.

In addition to those witnesses, many individuals active in bankruptcy practice have privately communicated to members of the Committee their support for the bill, and the future incomes provisions in particular.

2. Major companies supporting the bill:

Banks:

Bank of America
Citibank, N.Y.
Chemical Bank
Chase Manhattan
Marine Midland
Mellon Bank
1st Penn. Bank

Business Ass'n:

Chamber of Commerce, U.S.
Nat'l Federation of Independent Bus.
National Small Business Ass'n

Retailers:

Nat'l Auto Dealers Ass'n
Nat'l Retail Merchants
Allied Stores
J.C. Penney
May Co.
Sears
Montgomery Ward's
Western Auto

Consumer Finance Companies:

Nat'l Consumer Finance Ass'n
Beneficial Finance
CIT
Citicorp
Dial Finance
Household International
General Electric Credit
Transamerica Finance
Security Pacific
General Motors Acceptance

Credit Unions:

Credit Union Ass'n's in 19 states &
National Association of Credit Unions
(representing all 50 states)
National Association of Federal Credit Unions

Petroleum Companies:

Atlantic Richfield
Chevron
Cities Service
Conoco
Exxon
Mobile

More

TALKING POINTS: SUMMARY OF BANKRUPTCY IMPROVEMENTS ACT

1. Content of Bill

The Bankruptcy Improvements Act of 1982 contains over thirty substantive amendments to the Bankruptcy Reform Act of 1978. The key provisions:

- the bill would require the bankruptcy court to look at future income of the debtor in determining whether or not the debtor should qualify for straight bankruptcy;

- reaffirmation agreement procedures are simplified so as to encourage good faith agreements between debtors and creditors to repay debts outside of bankruptcy;

- provisions are added to the law which will discourage "loading up" by debtors going on a buying spree just prior to filing of bankruptcy;

- powers of the trustee to set aside payments made to creditors in the ordinary course of business prior to the bankruptcy -- such as installment debt payments -- are limited. Under S. 2000, trustee would have to show that the recipient of the payment had "reasonable cause to believe" a debtor was insolvent;

- an aggregate dollar limit - $3000 - is placed upon the value of personal property that the debtor can claim as exempt under the federal exemptions. This change prevents debtors from "stacking" dollar value of exempt items without limit, as is possible under the present law (which merely places a limit on the claimable value of any individual item);

- persons filing in joint cases (husband and wife) will be required to elect to use state or federal exemptions together. That is, husband and wife could no longer "split" their exemptions in bankruptcy, with one spouse choosing state exemptions and one spouse choosing federal exemptions;

- debtors in Chapter 13 cases (wage-earner plans) will be required to devote most of their discretionary income to the plan. This is income which is not needed for the support of the debtor and his dependents. Under current law, payments proposed by debtor must only represent "good faith" -- an open-ended standard which has resulted in a large number of plans proposing payment of 10% or less on debts when debtors could pay more.

- The bill conforms the treatment of nondischargeable debts in Chapter 13 to that accorded them in Chapter 7. Under present law, a debtor can obtain a discharge of otherwise nondischargeable debts at the conclusion of a Chapter 13 plan even though he may pay only 1% on those debts in the plan. Only exceptions to this are alimony and child support payments; other debts, such as taxes, debts incurred by fraud, fines, penalties, and similar items, can be discharged.

TALKING POINTS: PROBLEMS THAT NEED TO BE ADDRESSED

-There is no standard of insolvency in the present law-and this permits individuals who can meet their debt obligations out of future income to obtain bankruptcy relief in Chapter 7 (straight bankruptcy) who have no need for such liquidation relief.

DOLE: Court will be permitted to evaluate future income potential.

-Reaffirmation Agreement Procedures-which are intended to allow arrangements between debtor and creditor to repay debt outside of bankruptcy - are so complex that they have all but eliminated reaffirmations.

DOLE: Simplifies procedures drastically.

-Debtors "load up" debts by going on buying sprees prior to filing bankruptcy.

DOLE: Debts incurred within 45 days of bankruptcy are presumed non-dischargeable.

-Trustee has almost unlimited power to set aside payments made by debtors to creditors in the ordinary course of business-such as installment payments on credit cards - by provisions in present law which presume such payments to be "preferential transfers" made in contemplation of bankruptcy. Trustee has this power even though creditor had no knowledge that the debtor was insolvent.

DOLE: Trustee must now show creditor had "reason to believe" debtor insolvent.

-There is no limit on the aggregate dollar value of personal property debtors may exempt under the "federal exemptions" of the Code. Debtors are limited to $200 per item, but there is no limit on the number of items. Debtors undervalue property so as to ensure all possessions are exempt - even valuable furniture, musical instruments, etc.

DOLE: Places an aggregate cap of $3000 on the exemption.

-Husbands and wives in joint cases can presently "split" their choice of exemptions in 18 states between federal and state exemptions. One spouse takes federal exemption, the other takes the state exemption - and the couple frequently gets a windfall, particularly where state exemptions are even more liberal than federal exemptions.

DOLE: Couples in joint cases must both choose state or federal exemptions.

-Debtors in Chapter 13 are only required to propose a debt repayment plan which is in "good faith". Some courts have held this to mean "without malice, or intent to defraud". Thus, many plans are approved where debtor proposes to pay only 10% or less on debts when more could clearly be paid out of discretionary income. In short: no definitive standard for Chapter 13 plan payment requirements.

DOLE: Would require debtors to commit all discretionary income not required for support of debtor and his dependents to the plan.

-Nondischargeable debts are not treated the same in Chapter 13 as in Chapter 7. These are debts incurred through fraud, or stemming from tax obligations, fines, penalties, etc. In Chapter 13, debtor may propose to pay back a very low percentage of these debts, and at the end of the plan, they are discharged. Only exception: alimony and child support. If debtor were in Chapter 7, debts could not be discharged, debtor would be responsible for 100% of those debts.

DOLE: Would bar discharge of nondischargeable debts proposed to be paid off in a Chapter 13 plan, unless debtor shows hardship which prevents fullfillment of plan.