AND WHEN SHE GOT THERE, THE CUPBOARD WAS BARE: 
SOME GRAIN ELEVATOR INSOLVENCY PROBLEMS.

I. Introduction.

A. Some statistics.

1. There are approximately 10,000 commercial grain 
elevators in the United States.

2. Between 1975 and early 1981, 177 grain elevators 
in 22 states were adjudicated bankrupt.

3. 35 of the elevator bankruptcies in that period 
were in Iowa, including the spectacular debacle 
of Prairie Grain in Stockport, Iowa.

4. 4 of the elevator bankruptcies were in Nebraska, and 
those figures do not include the recent elevator 
failure in York. 

5. Some grain elevators are liquidated by state law 
insolvency proceedings and never result in a 
bankruptcy filing that would show up in the above 
USDA statistics. Thus, the figures considerably 
understate the rate of elevator insolvency. An 
example of state law insolvency liquidation is 
the Coole-Reese elevator in Ashland, Nebraska which 
lost its license in 1980 and has turned its assets 
over to a committee of creditors.

II. The Grain Warehousing Business

A. Major Activities

1. Grain storage for compensation.

a. Storage contracts. Grain elevators will store a 
producer's grain and issue the depositor some form 
of receipt. Usually, a scale ticket or weight 
ticket is issued immediately on delivery. A more 
formal document such as a negotiable warehouse 
receipt may be issued later, but often no 
warehouse receipt is issued unless the depositor 
wants to use his stored grain as collateral 
for a loan and the lender wants such a receipt. A 
depositor who contracts just for storage of his 
grain retains title to the grain, or more 
exactly, to an equivalent amount from the 
commingled mass of similar grain held by the 
warehouseman. See UCC § 7-207(2).

Depositors for storage of grain in commercial grain 
elevators seldom intend to take physical redelivery
of the grain. It will normally be sold at some later
date, usually to the elevator in which it is initially
stored.

b. The storage business is not very risky. The main
responsibilities of the warehouse are to handle the
grain properly so that it does not spoil or
deteriorate due to moisture or insect infestation.
Since the elevator does not have title to this grain
or any financial interest in it except a lien for
storage and handling charges, see UCC § 7-209,
market risks on storage grain are retained by
the owner-bailor.

2. Grain Merchandising.

a. Grain elevators commonly are traders of grain for
their own account in addition to storers for hire.
They purchase large quantities of grain from producers
or other warehouses, and resell in terminal markets
to larger grain merchants such as Continental Grain,
Cargill, Bunge, Scoular, Dreyfus, etc.

These grain trading activities are very speculative
ventures or can be, in today's volatile grain
markets. Therefore, warehouse commonly use the
commodities futures markets to hedge their positions.
Sometimes, they go beyond hedging to general speculation
in futures.
See Thorson, Commodity Futures Contracts,

It has been suggested by state and federal regulatory
authorities that improper use of the futures trading,
and consequent margin calls, often serve as a catalyst to
induce a warehouse manager to sell stored grain, that
is, grain which the elevator does not own and has
no actual authority to sell.

Grain trading activities are generally greater in
volume than storage contracts, and involve
more of the warehouse's dollars. Since purchased grain
can be immediately resold and shipped out, grain
trading earns the elevator money much faster than
storage grain. Also, of course, grain trading volume
is not limited by the physical storage capacity of
the elevator, as is storage volume. Thus,
most elevators would prefer to purchase on delivery
as much grain as possible, rather than accept it for
storage.
b. Purchase contract patterns. Grain purchases are done on many bases, but the following are believed to be the main variants in this area:

i. Cash Forward Contract--The farmer contracts well in advance of harvest to sell his crop to the elevator at a set price or at some price which will be certain by the time for delivery. Payment would be due on delivery, but as a matter of practice, the elevator would probably mail a check to the farmer a day or more after he completed delivery or wait until the farmer demanded payment. Thus, the check might not be cleared (or bounced as the case may be) before the grain delivered had either been resold and shipped out to a buyer, or commingled with other grain. See Malm, Contracts for Future Delivery of Grain: An Overview of Common Legal Problems, 1980-81 Ag. L.J. 483.

ii. Deferred Payment Contracts. Elevators frequently buy grain from producers on credit, with payment due several months after delivery. Usually, no down payment at all is made. The elevator can resell the grain immediately, and have the use of the proceeds for some time before it must pay the farmer for his grain. While this deferral of income has tax advantages for the cash basis farmer, it also gives him a credit risk. See Estes, Congress Rescues Farmer Deferred Crop Payment Contracts From IRS Attack, 3 Ag. L.J. (1981); How Cash Basis Farmer May Avoid the Constructive Receipt of Crop Proceeds, 179-80 Ag. L.J. 552.

iii. Deferred Pricing Contracts. If a farmer wants to retain the chance to speculate on grain prices but avoid storage charges, he can sell his grain on delivery to the elevator on a deferred pricing contract. These contracts allow the farmer to pick any day within 6 months or so after delivery as the pricing day. The elevator will then owe the farmer the market price as of that day at the specified market, less an agreed discount, for the grain. Such contracts have an eventual settlement date, so if the farmer does not pick an earlier pricing date and so notify the elevator, the price will be the discounted market price as of the settlement date. On deferred pricing contracts, as with deferred payment contracts, no down payment is commonly made.

In all of these common patterns of grain sales, farmers are extending large credits to the elevators with which they deal in selling their grain. The annual volume of grain purchased, resold and shipped to buyers by a grain elevator would normally exceed
the amounts stored for farmers in the same period, so these grain merchandising activities of grain warehouses may have greater impact on producers than the storage function.

c. Legal Status of Unpaid Seller of Grain. Under Article 2 of the UCC, and usually under the explicit provisions of grain purchase contracts if reduced to writing, title to the grain would transfer to the warehouse upon delivery for grain not already in the warehouse when the sale contract is made. See UCC § 2-401(2). If the grain is already stored with the warehouse when the farmer agrees to sell it to the same warehouse, title would transfer when the contract was made, UCC § 2-401(3)(6), unless the seller is to surrender a document of title; in which case the warehouse would not get title to the goods until the document was delivered. UCC § 2-401(3)(a).

Once title has passed, the unpaid seller is an unsecured creditor under the UCC. He may have reclamation rights under UCC § 2-507(2) for cash sellers,

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. UCC § 2-507(2).

See Burk v. Emmick, 637 F.2d 1172 (8th Cir. 1980); or § 2-702 for credit sellers.

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt....

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (Section 2-403). Successful reclamation of goods excludes all other remedies with respect to them. UCC § 2-702(2), (3).

However, these rights of reclamation are good only against the warehouse-buyer. The seller's UCC reclamation rights are cut off if before reclamation is effectively demanded, the buyer has resold the grain to a buyer in ordinary cause of business or the buyer's financing bank has acquired a security interest in the grain due to an after-acquired property clause in a security agreement on inventory. See UCC § 2-702(3), above, and UCC 2-403(1).
(l) A purchaser of good acquires all
title which his transferor had or had
power to transfer.... A person with
voidable title has power to transfer
good title to a good faith purchaser
for value. When goods have been deliv-
ered under a transaction of purchase
the purchaser has such power even though

(a) the transferor was deceived as to
the identity of the purchaser, or

(b) the delivery was in exchange for a
check which is later dishonored, or

(c) it was agreed that the transaction
was to be a "cash sale", or

(d) the delivery was procured through
fraud punishable as larcenous under the
criminal law.  UCC § 2-403(1).

Since a good faith buyer is assured of good title to
the grain he purchases from an elevator, the sales are
not difficult to conclude.

d.  Good Faith Purchase Risks for Storage Grain.  Even for
stored grain, to which the elevator has no title claim,
sales or other transfers to third parties can give
those buyers good title.  This can occur either by
sale and delivery to a buyer in ordinary course of
§ 7-205:

A buyer in the ordinary course of
business of fungible goods sold and
delivered by a warehouseman who is also
in the business of buying and selling
goods takes free of any claim under a
warehouse receipt even though it has
been duly negotiated.  UCC § 7-205.

See also United States v. United Marketing Assn.,

Overissue

 Stored grain is subject to an additional risk.  A
warehousemen may issue documents of title for more
grain than he in fact has in storage.  Since the document
holders share pro rata in the fungible mass, overissue
reduces each prior party's share in that mass of grain.

Warehousemen are allowed to issue warehouse receipts to
themselves purporting to cover goods to the warehouseman
owns and has stored in the warehouse.  If he issues
such a document covering fungible goods like grain, at
a time when in fact he does not own any grain, and if he negotiates that to a bank as collateral for a loan, arguably the UCC gives the bank a pro rata share of the grain on deposit for other owners. See UCC 7-207(2).

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. UCC § 7-207(2).

This result does not obtain, of course, if the bank takes with knowledge that the warehouseman owns no grain. See Avoca State Bank v. Mutual Bonding Co., 251 N.W.2d 533 (Iowa 1977);

III. Grain Elevator Regulation.

A. In General.

Grain elevators are subject in many states to regulatory statutes for the protection of persons with whom they deal. Such statutes usually require an annual license application, submission of financial statements, though often a CPA audit is not required, and good record-keeping. A bond for the protection of bailors of grain, as well as casualty insurance, are usually required.

Some states exercise jurisdiction over the warehouse's grain trading activities as well, and require a separate bond to protect unpaid sellers of grain. We might call this a dealer's bond to distinguish it from the warehouseman's storage bond.

B. Federal Regulation.

Elevators in any state may apply for federal licensing of their storage function. A federally-licensed elevator is then exempt from state licensing and regulation of its storage functions. The federal program is authorized by the U.S. Warehouse Act, 7 USC § 241 et. seq.. Federally-licensed elevators must meet minimum net worth requirements and be bonded for the protection of bailors of grain. The Department of Agriculture administers and inspects federally-licensed grain warehouses through the USDA Warehouse Service.

The federal government, under its warehouse program, does not currently regulate the grain trading activities
of its licensees. Therefore, even federally-licensed warehouses are subject to state regulation, if any, of their trading business.

C. State Regulation.


State licensed warehouses must carry casualty insurance on all grain and file a bond for the protection of those from whom they buy grain and those to whom they sell. Neb. Rev. Stat. § 88-518.

2. Iowa licensing. Grain warehouses without a federal license may be licensed by the Iowa Commerce Commission. Iowa Code Ann. § 543.6 (1981). State-licensed elevators in Iowa must be bonded for the protection of depositors of grain, must carry casualty insurance on all stored grain, and must meet minimum net worth requirements. Iowa Code Ann. Chapter 543.

Grain warehouses and others in Iowa who purchase grain for resale must also obtain a grain dealer's license from the Iowa Commerce Commission, meet net worth requirements, and file a bond for the protection of unpaid sellers of grain. Iowa Code Ann. Chapter 542.

D. Amount of Bonds.

1. Nebraska. Under the Public Service Commission's proposed 1982 regulations, the warehouseman's bond is based on his total capacity. It is 20¢ a bushel for initial capacity and eventually slips to 5¢ a bushel. See Nebraska Administrative Regulations, Title 291, Chapter 8, § 004.03 (1982) (proposed).


2. Iowa. The amount of the Iowa warehouseman's bond, like Nebraska's, is based on total storage capacity, and in the aftermath of Prairie Grain at Stockport, the amount has been raised. Currently it is 50¢ a bushel on initial capacity, sliding down to 20¢ a bushel. See Iowa Code Ann. § 543.4 (1981).

3. Federal. The United States Warehouse Act requires its warehousemen to post a bond for protection of storers of grain based on total capacity, starting at 20¢ a bushel, sliding down to 10¢ a bushel, with a maximum of $500,000. 7 C.F.R. § 102.13.
In Iowa, even a federally-licensed warehouse must get a state grain dealer's license and post a bond for protection of unpaid sellers. Iowa Code Ann. § 542.4 (1981).

4. Adequacy of Required Bonds. Even with current low grain prices, the bonded coverage available to claimants is often inadequate to cover shortages. However, if bond requirements were raised, many elevators could not obtain a greater bond and would either have to go out of business or sell out to a larger grain company. This could reduce competition and increase the distance and transportation expense to farmers seeking to store or sell their grain.

Bonding companies generally will only bond an elevator to the extent of its net worth, and will usually require personal guarantees from the officers of the warehouse if it is a corporation.

5. Override Bond or Fund. Because individual elevators cannot always obtain increased bond protection, it has been suggested that a state government could purchase an override bond or collect a fund to be used only when a grain elevator has become insolvent, and the sum of the grain proceeds and the individual elevator's bond or bonds were insufficient to meet claims of storers and unpaid sellers of grain. Such a fund was part of LB 529, introduced in the 1981 Nebraska Unicameral.

While the bill passed, the indemnity or override fund for the protection of grain producers did not. Something of this nature might be a useful alternative to the difficult question of inadequate bonds. The fund was to be collected by assessing a 1/10¢ per bushel fee on all grain purchased for procedures, until the sum of $10 million was collected.
6. **Bond stacking.** Meanwhile, until bond amounts are raised it is predictable that claims of grain storers and sellers will sometimes exceed the amount of an insolvent elevator's bond in force.

Some plaintiffs have succeeded in convincing courts that the bond for each year is a separate contract, and thus that the bonding company is separately liable to the face amount of the bond for each year in which shortages of grain or other covered warehouse offenses existed.


*General Ins. Co. v. Commodity Credit Corp.*, 430 F.2d 916 (10th Cir. 1970) (Under Kansas law, stacks warehouse bonds for 2 years.)


a. **Iowa.** Stacking of the bonds to increase the fund available is precluded by statute in Iowa. See Iowa Code Ann. § 542.13, which provides:

In no event shall the liability of the surety on any bond required by section 542.12 accumulate for each successive license period during which the bond is in force. The liability of the surety shall be limited in the aggregate to the face amount of the bond.

See also Iowa Code Ann. §§ 542.2 and 542.18 (similar provisions for bonds of grain dealers and producer-sellers).

b. **Nebraska.** Nebraska's grain warehouse bond statutes used to preclude bond stacking. Former §§ 88-503(3) provided:

In no such event shall the liability of the surety accumulate for each successive license period during which the bond is in force, but shall be limited in the aggregate to the amount stated in the bond or changed by appropriate rider or endorsement.

This language was repealed by LB 529 in 1981. It is not clear from the legislative history whether a change in law was intended. The new Public Service Commission
regulations intended to implement LB 529 retain anti-stacking language. Title 291, Chap. 8 § 004.03C. Also, the statutory section regulating bonds for grain purchasers other than licensed grain warehouses retains its pre-LB 529 anti-stacking provision. Neb. Rev. Stat. § 88-518 (1981).

IV. Causes of Grain Elevator Insolvency.
Some factors contributing to the rapid increase in grain warehouse insolvency in the 1970's and 80's are:

A. Volatility of grain prices in the cash markets.
For many years, the United States government's price support programs made prices relatively stable and predictable. However, increasing export sales, especially the Russian wheat sales of 1973, and reduction in government price support programs made rapid wide price wings more common.

B. Sustained high interest rates.
Grain elevators purchase much of the grain they buy at harvest time, and so need large amounts of cash then. Even though they are able to finance some of their purchases by using deferral of payment to the farmer sellers, they still frequently need lender financing for extended periods.

C. Deferred pricing contracts.
With deferred pricing contracts, the elevator gets title to grain on delivery and can immediately resell but the warehouse does not know how much it will eventually have to pay the farmer for that grain. Also, it is easy to spend the money from resale unwisely, so not enough is left to pay later.

D. Unwise Use of Futures Trading.
The volatile markets required sophistication to hedge properly and one can lose money very fast by commodities speculation.


V. Sources of Recovery for Producers in Grain Warehouse Insolvency Case.
When a grain warehouse becomes insolvent, some sources of repayment for farmers who stored grain in or unpaid sellers of grain to the insolvent warehouse are the following:
A. The remaining grain in the warehouse's possession, or the proceeds of its sale.

If the farmer was a storer of grain under the relevant statute, he is entitled to a pro rata share of the grain or its proceeds. This can include some unpaid sellers, depending on the statute. See e.g. Neb Rev. Stat. § 88-501; Mintken v. Nebraska Surety Co., 187 Neb. 215, 188 N.W.2d 819 (1971).

B. The bond or bonds carried by the warehouse for the protection of storers and/or sellers of grain. A successful claimant under the bond may recover attorney fees from the surety if the claimant must file suit on the bond or if the bonding company names the claimant a defendant in an interpleading action, under Neb. Rev. Stat. § 44-359. See e.g. Kort v. Western Surety Co., No. 77-L-208 (D. Neb. filed Aug. 4, 1980).

C. If a claimant is ineligible to share in the grain bond proceeds, or if those funds are exhausted before his claim is paid in full, the claimant has an unsecured claim against the assets of the insolvent corporation.

If the claimant was a storer of grain, his claim can be based on an intentional tort theory of conversion, as well as in breach of contract. Basing the cause of action on the theory of conversion has two advantages over breach of contract in this type of litigation:

Conversion is an intentional tort for which an award of punitive damages may be added to compensatory damages, at least in jurisdictions other than Nebraska. See e.g. NYTCo Services, Inc. v. Wilson, 351 So.2d 875, 883 (Ala. 1977) (affirming award of punitive damages for conversion of grain by field warehouse company).

Also, liability for conversion may be non-dischargeable in bankruptcy, if the defendant - converter is an individual rather than a corporation, and the circumstances are blatant enough to be termed "willful and malicious" under § 523 (a)(6) of the Bankruptcy Reform Act, which provides:

§ 523 (a) A discharge . . . does not discharge an individual debtor from any debt --

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity.

held non-dischargeable under prior bankruptcy act, similar statutory language).

D. Extending liability beyond the warehouse corporation. Officers and stockholders of incorporated warehouse.

a) Employees who directly participate in conversion of stored grain are personally liable for their torts, without any need to pierce the corporate veil.


b) In appropriate cases, the corporate veil may be pierced and stockholders be held personally liable for the debts of the insolvent corporation. In Victoria Elevator v. Meriden Grain Co., 238 N.W.2d 509 (Minn. 1979), the Minnesota Supreme Court affirmed the trial court finding that the grain warehouse stockholders had not properly observed the corporate form, but instead had co-mingled and misrepresented personal assets as corporate and vice versa. The court held the stockholders personally liable for warehouse debts.

E. Where the warehouse was negligently inspected by state or federal regulatory authorities, attempts have been made under tort claims acts to impose liability on the state or federal government.

See Preston v. United States, 597 F.2d 232 (7th Cir. 1979), dismissing suit under the Federal Tort Claims Act brought by farmers against the Commodity Credit Corporation for negligent failure to discover defalcations by a grain warehouse CCC inspected. The court said the failure to properly inspect claim was barred by the exception in the FTCA for misrepresentation.

I am not aware of any Nebraska grain warehouse cases in this part, but the Nebraska Tort Claims Act also contains an exception for misrepresentation claims Neb. Rev. Stat. § 81-8219(1)(d).

In Iowa, part of the aftermath of the Prairie Grain case at Stockport was the filing of claims against the state alleging damages due to negligent inspection by the Iowa Commerce Commission. I do not know the status of these claims at present, but Iowa warehouse statutes now provide:

Nothing in this chapter shall be construed to imply any guarantee or obligation on the part of the state of Iowa or any of its agencies, employees or
officials, in respect of any agreement or undertaking to which the provisions of this chapter relate. Iowa Code Ann. § 543.38 (1981).

VI. Problems after shortage is discovered.

A. Need to Secure Remaining Grain After Discovery of Shortages. After a regulatory agency or depositor of grain discovers a warehouse does not have enough grain on hand to meet its obligations, there is a need for some responsible third-party to take possession of the remaining grain quickly. Some of the hazards to be guarded against are:

1) Further conversion of grain and resale to good-faith (or at least not probably bad-faith) purchasers by the elevator operators.

2) Run on the "bank". If word of shortage gets out, some depositors who can get trucks or train cars may present receipts at the warehouse and take delivery of the face quantity of their documents rather than their pro rata share. See e.g. Preston v. United States, 596 F.2d 232 (7th Cir. 1979) (CCC allegedly converted other depositors' grain by taking full delivery during shortage). While such overage or its money value should be recoverable, prevention is easier.

3) Quality loss. Grain, while storeable almost indefinitely under proper conditions, needs moisture removal and fumigation to maintain grade. Insolvent elevators may not be spending money to keep the grain in good condition.

B. Jurisdiction After Discovery of Shortage.

a) Federally-licensed grain warehouses. The USDA's Warehouse Service does not have statutory authority to padlock its licensees if they are caught short. Instead, the USDA can only suspend or revoke a license, see 7 USC §§ 246-47, and in its discretion, notify and relevant state authorities, see 7 USC § 269.

The elevator may continue to operate in such a case without a license and without a bond, as happened in Nebraska with an Ashland elevator which lost its federal license in 1980 when it failed to renew its bond, but the elevator continued operations for about 6 months before the creditors closed in.

The Nebraska Public Service Commission allegedly was notified at the time the federal license was
initially suspended and again when it was finally terminated. However, the PSC did not act because it believed it had no jurisdiction over federally-licensed elevators, according to a phone conversation with John Fecht, Acting Warehouse Director of the PSC.

The PSC's jurisdiction might be questionable while the federal license was only suspended and not yet revoked or terminated. However, as soon as the federal license was terminated, the PSC would have jurisdiction to act under Neb Rev. Stat. § 88-502.

b) Nebraska-licensed warehouses. The Public Service Commission has broad powers under the statutes to take possession of the grain, sell it, and distribute the proceeds under Neb. Rev. Stat § 8-515(3) (1981), which provides:

In the event that the commission determines that a shortage of grain exists at a duly licensed warehouse, necessitating the closing of the warehouse, the commission may:

(a) Take title to all grain stored in the public grain warehouse at that time in trust, for distribution on a pro rata basis to all valid owners, depositors, or storers of grain who shall be holders of evidence of ownership of grain. Such distribution can be made in grain or in proceeds from the sale of grain; or

(b) Commence a suit in district court for the benefit of owners, depositors, or storers of grain.

The commission may deposit the proceeds from the sale of grain under subdivision (a) of this subsection in an interest-bearing trust account for the benefit of the valid owners, depositors, or storers of grain.

(c) Iowa-licensed warehouses. The Iowa Commerce Commission is empowered to supervise all operations at a warehouse until a shortage is corrected, Iowa Code Ann. § 543.2, or it may petition the district court to appoint it as receiver of stored grain in trust for depositors. The court is directed to issue ex parte orders as needed to protect the grain or its proceeds when a receivership is requested. Iowa Code Ann. § 543.3.
action preempts state insolvency proceedings. Therefore, the bankruptcy court could issue specific stays as needed to protect its jurisdiction. 674 F.2d at 776-77.

The court denied the trustee's request that the appellate court authorize him to sell all the grain pursuant to 11 U.S.C. § 367(1), which permits the bankruptcy court to allow the trustee to sell property other than in the ordinary course of business free and clear of any interest in such property of an entity other than the estate, only if -

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of such interest;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

The Eighth Circuit said that the bankruptcy court should decide whether to allow the sale, but that in any event it had a duty to protect

... the property interests of third parties. The Bankruptcy Code provisions make it clear that when persons other than the debtor have an interest in the property, adequate protection must be taken "as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361. The bankruptcy court should particularly examine its authority to order the sale if title documents indicate that the estate possesses no substantial ownership rights to the grain and that any bona fide dispute over the property exists only between third parties. We leave the resolution of these issues, including the sale of the grain stored at Bernie, Missouri, to the bankruptcy court.

647 F.2d at 778.

Thus in this circuit, it is clear that once the bankruptcy petition is filed, state receivership proceedings must halt.
C. Jurisdictional Conflicts Between State Regulatory Agencies and the Bankruptcy Court.

1. The Problems.

If an insolvent elevator becomes a voluntary or involuntary bankrupt, there is considerable potential for confusion and conflict between the bankruptcy court and state warehouse agencies which may have already taken control of the remaining grain. This happened in the James Brothers case in 1980. The bankrupt operated several elevators in Arkansas and Missouri, and allegedly had moved most of its remaining grain into the Missouri elevators to hide shortages from Missouri inspectors. When the debtor eventually gave up the fight and admitted it had a shortage, Missouri's warehouse department asserted its power to liquidate or distribute the grain. This would have satisfied Missouri farmers, because if one counted only Missouri storage obligations against the grain that ended up in Missouri, the shortage was amply covered by the bond. However, the Arkansas elevators, which also had large storage obligations, had very little grain left. Not surprisingly, the Arkansas claimants who believed "their" grain had been trucked to Missouri, argued that the bankruptcy court, rather than a Missouri state agency, was the proper forum for liquidating the grain assets.

_In Re State of Missouri, 647 F.2d 768 (8th Cir. 1981)_ , the Eighth Circuit Court of Appeals held that the Bankruptcy court could assert jurisdiction over the grain. The court determined that under § 541 of the Bankruptcy Act, the grain in the debtor's warehouse became 'property of the estate' at least for the purpose of giving the bankruptcy court jurisdiction to decide whether the debtor in fact had any substantial ownership interest in the property. 647 F.2d at 774.

The court also held that the automatic stay under § 362 of the Bankruptcy Act applies to the Missouri Department of Agriculture's attempts to enforce its state law provisions for distribution of the grain and bond proceeds from insolvent elevators. The court held that the § 362(b)(4) exception for proceedings to enforce a state's "police or regulatory" powers applied only to matters "affecting the public health and safety and not to a state's effort to protect the financial interests of some of its citizens. 647 F.2d at 775-76.

Further, the court indicated that even if the state proceedings were within the § 362(b)(4) exception and thus not automatically stayed, the federal bankruptcy
2. **Federal-State Cooperation.** While the bankruptcy court must have overall control, it might often be helpful to name the relevant state warehouse agency as receiver of the grain assets. That agency would normally have expertise in unravelling the meaning of the warehouse records, dealing with the various documents, and selling the grain. This might speed up returning some funds to persons who are entitled to share in the grain proceeds, see e.g. *In re Missouri*, 647 F.2d. 779 (8th Cir. 1981); see also Senate Bill 1365, passed Sept. 25, 1981, pp. 14-15, (directing the court to appoint the director of the state warehouse agency co-trustee until grain proceeds are distributed).
Pending Federal Legislation

In the aftermath of the bankruptcies of the James Brothers in Missouri and Arkansas, and Prairie Grain in Stockport, Iowa, numerous bills were introduced in both houses of Congress. The only bill on which much action has been taken is Senator Dole's S. 1365 (see Appendix A), which was passed by the Senate on September 25, 1981, and was then referred to the House Judiciary Committee. Senator Dole's bill was introduced after Senate Judiciary Committee hearings in April and May of 1981 on a similar earlier bill, S. 839 (97th Cong. 1st Sess.). Among the specific problems the bill seeks to remedy are:

(1) delay in abandonment of crop assets owned by parties who have delivered such assets to the debtor upon a contract of bailment, with delays in excess of two years not uncommon;

(2) conflicts in jurisdiction between the bankruptcy courts and state agencies charged with the responsibility of supervising the liquidation of insolvent storage facilities;

(3) the requirements of present law which mandate that owners of crop assets held by the debtor solely on the basis of his status as a bailee must share grain assets held by the trustee in bankruptcy on a pro rata basis with any creditor holding a security interest in assets of a similar type which are owned by the debtor, such that the bailors of such storage contract crop assets have the value of their property diminished for the benefit of such creditors when there is a shortage of produce on hand;

(4) the unprotected status, as unsecured creditors in bankruptcy, of farmers who have sold crops to a farm produce storage facility but have not received payment for that crop;

(5) the reluctance of some courts to accept warehouse receipts and scale tickets, the principal documents used in warehouse business to establish record of ownership of crop assets stored in warehouse facilities on bailment contracts, as evidence of ownership in bankruptcy abandonment proceedings; and

(6) the tendency of certain bankruptcy courts to attach bailed property for the payment of trustees fees and expenses incurred in performing services unrelated to that bailed property.

Most of S. 1365 would amend the Bankruptcy Reform Act of 1978; one part would amend the United States Warehouse Act, 7 U.S.C. § 241 et seq.

Section 554 of the Bankruptcy Reform Act provides a procedure for releasing property from the jurisdiction of the bankruptcy court.

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value to the estate.

S. 1365 would use this mechanism to handle grain in the possession of the debtor elevator, both grain as to which the debtor did not even have title and grain owned by the debtor but in which the debtor had little or no equity. The procedure, which may be varied only in particularly complex cases, would go as follows:

1. The court shall appoint as co-trustee the director of a state regulatory agency if there is one with state law liquidation powers (or the Administrator of the USDA Agricultural Marketing Service if the debtor was federally licensed). The co-trustee is to perform the abandonment duties of the trustee under the bill, and may be paid for expenses, but will not otherwise be compensated out of the estate. S. 1365 at 14-15.

2. Abandonment shall proceed according to the following schedule:

10-30 days after filing - The co-trustee examines the debtor and his records to learn which third parties have either title or security interest claims to the grain. The co-trustee also audits, if necessary, the grain inventory and then sells the grain and deposits the proceeds at interest. S. 1365, at 4-5.

Within 60 days after filing - The court, after notice, shall hold hearings on all requests for abandonment of grain proceeds. Requests must be filed at least 5 days before the hearing. S. 1365, at 5-6.

Within 90 days after filing - The court shall order the trustee to abandon grain proceeds to claimants who satisfy the court that they had title to goods which the debtor held only as bailee, or that they had a security interest in grain owned by the debtor and in which the debtor had inconsequential equity.
The court is directed to accept, as sufficient evidence of title and bailment, a claimant's production of a "valid" storage facility receipt. Storage receipts are defined as:

... any document of the type routinely issued by a debtor operating a farm produce storage facility for the purpose of establishing a record of ownership of a quantity of farm produce which is stored with such facility by any person upon a contract of bailment. Such term shall include a warehouse receipt or a scale ticket, provided identification of the owner of the produce represented thereby is clearly noted upon the face of such document. S. 1365 at 2, 6-7.

The distribution is to be made first to those who have established title and bailment. Only if parties with title are satisfied in full will secured creditors of the debtor whose claims are not based on documents of title share. S. 1365 at 8-9.

All distributions are subject to deduction of load-out charges, baiiments are subject to storage charges as well. S. 1365 at 8-9.

Within 110 days after filing - actual distribution of the grain proceeds will be begun.

The distribution order may be appealed, but distribution will not be stayed unless a bond equal to the amount stayed is posted.

Obviously, these time limits will be too short in complex cases where the debtor's records are in disarray, but the bill has some good points which perhaps could be adopted under the current act, whether or not the bill is ever enacted.

1. Use of state or federal warehouse regulators as co-trustees will tap expertise in dealing with warehouse records, and save expenses. In In re Missouri, the Eighth Circuit suggested that the bankruptcy court allow the Missouri Director of Agriculture to participate "either as a party or a proxy or as amicus curiae." 647 F.2d at 779.

2. Recognition of documents of title as in fact indicating that the holder, rather than the debtor, has title and that the grain or its proceeds should be abandoned expeditiously.

3. Recognition that scale tickets, as well as negotiable warehouse receipts, are commonly treated as documents of title under state law, to which the Bankruptcy Act defers in determining ownership and other rights in personal property. See Appendix B on status of scale tickets.
AN ACT

To amend the Bankruptcy Act regarding farm produce storage facilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That section 101 of title 11, United States Code, is amended—

(1) by adding after paragraph (18), the following:

"(19) 'farm produce' means the product of a person engaged in a farming operation, including crops, poultry, livestock, or dairy products in an unmanufactured state;
“(20) ‘farm produce storage facility’ means any business enterprise operated by any person for the purpose of (A) providing facilities for the temporary storage of farm produce; or (B) purchasing farm produce from persons engaged in farming operations in bulk quantities; however, such term shall not be construed to include any retail grocery business operation;”.

(2) by renumbering paragraphs (19) through (40) as paragraphs (21) through (42), respectively; and

(3) by adding after paragraph (42) as renumbered by this section, the following new paragraph:

“(43) ‘storage facility receipt’ means any document of the type routinely issued by a debtor operating a farm produce storage facility for the purpose of establishing a record of ownership of a quantity of farm produce which is stored with such facility by any person upon a contract of bailment. Such term shall include a warehouse receipt or a scale ticket, provided identification of the owner of the produce represented thereby is clearly noted upon the face of such document.”.

Sec. 2. Section 109 of title 11, United States Code, is amended in subsection (e) by inserting after “commodity broker,” the following: “or a person engaged in the business
of operating a farm produce storage facility (with respect to
the debts of that business),”.

Sec. 3. Section 502(i) of title 11, United States Code, is
amended by striking out “507(a)(6)” and inserting in lieu
thereof “507(a)(7)”.

Sec. 4. Section 503(B)(1)(B) of title 11, United States
Code, is amended by striking out “507(a)(6)” and inserting
in lieu thereof “507(a)(7)”.

Sec. 5. Section 507(a) of title 11, United States Code,
is amended—

(1) by adding after paragraph (4) the following:

“(5) Fifth, allowed unsecured claims of farmers or
other persons engaged in farming operations arising
from the sale or conversion of farm produce to or by a
debtor engaged in the business of operating a farm
produce storage facility—

(A) where such sale or conversion occurred
within one hundred and eighty days before the
date of the filing of the petition or before the ces-
sation of the debtor’s business, whichever occurs
first; but only

(B) to the extent of $2,000 for each such in-
dividual.”;

(2) by striking out “(5) Fifth” and inserting in lieu
thereof “(6) Sixth”; and
(3) by striking out "(6) Sixth" and inserting in lieu thereof "(7) Seventh".

SEC. 6. Title 11, United States Code, is amended by adding after section 554 the following:

"§ 555. Expedited abandonment of farm produce

"(a) Notwithstanding any other provision of this title, in a case filed under such title by, or with respect to, a person engaged in the business of operating a farm produce storage facility, the court shall follow the procedures herein stated, unless otherwise indicated.

"(1) Within ten days after the filing of the petition, the court shall direct the trustee who has been appointed to supervise liquidation and management of the estate to conduct an examination of the debtor, and of the debtor's books, records, and accounts to determine the identity of persons—

"(A) who either have or may claim to have an ownership interest in farm produce delivered over to the trustee by the debtor by virtue of having—

"(i) retained title to farm produce stored with the debtor upon a contract of bailment;

"(ii) purchased produce from the debtor which was then, in turn, bailed to the debtor for storage purposes;
“(iii) taken assignment of, or title by
judgment to, the debtor’s ownership interests
in produce owned by the debtor; or
“(iv) taken assignment of the ownership
interest of any such parties; and
“(B) who claim status as secured creditors of
the debtor arising out of a security interest in any
farm produce which is delivered over to the
trustee by the debtor, which farm produce is prop-
erty of the debtor’s estate.
“(2) Within thirty days after the filing of the peti-
tion, the trustee shall conduct an examination of the
debtor and his records and, if necessary, shall conduct
an audit of the physical assets of all farm produce stor-
age facilities operated by the debtor for the purpose of
determining the quantity, quality, and type of farm
produce, if any, which has been delivered over to the
trustee by the debtor. The trustee shall then sell such
farm produce for its then current fair market value,
and place the proceeds of such sale on deposit in an
interest-bearing account of a type which will obtain the
maximum return on such proceeds as may be practical.
“(S)(A) Within sixty days after the filing of the
petition, the court shall, after notice to interested par-
ties (including those persons identified by the trustee as
having or claiming a direct ownership interest in farm produce delivered to the trustee, or a secured interest therein) conduct a hearing, at which all requests for abandonment of the proceeds of farm produce held by the trustee brought pursuant to the provisions of section 554 of this title shall be heard and determined. No request for abandonment of farm produce proceeds shall be considered which is not filed by a claimant with the court at least five days before the commencement of the hearing: Provided, That the court may grant leave for the filing of a request after such time period upon a finding by the court of excusable neglect justifying delay. No such request may be considered by the court after the distribution of farm produce proceeds by the trustee which is provided for herein commences, except in cases where notice or actual knowledge of the pendency of the proceedings was not provided to a claimant due to fraud, negligence of the trustee, or other cause beyond the control of the claimant. The court shall order abandonment of the proceeds of farm produce held by the trustee, in the manner specified below, with respect to each claim of an affected creditor or other party in interest who establishes, to the court’s satisfaction, that—
“(i) A quantity of farm produce sold by the trustee was held by the debtor as bailee only, without benefit of legal or equitable title, and that title to such produce was vested in the claimant; or

“(ii) A quantity of farm produce sold by the trustee which was determined to be part of the debtor's estate is (at the time of the hearing) of inconsequential value or burdensome to the estate in consideration of a valid security interest existing therein in favor of the claimant.

“(B) Any claimant's production to the court of a valid storage facility receipt held by that claimant as evidence of ownership of a quantity of farm produce sold by the trustee shall be sufficient to establish a right to possession in such claimant of a share of the proceeds equal in value to the quantity, quality, and type of farm produce specified in such document. In any case where a claimant has placed the original of such document on deposit with any party as collateral for a loan, without assigning ownership interests in the farm produce over to such party, an affidavit from such party verifying ownership of such receipt by the claimant shall be sufficient to establish a prima facie claim of right to possession of proceeds in such claimant.
"(4) Within ninety days after the filing of the petition, the court shall direct the trustee to effect abandonment of the farm produce proceeds found to be subject thereto in accordance with subsection (a)(3) of this section, in the following manner:

"(A) With respect to claimants who have established to the court's satisfaction that the trustee sold farm produce as to which title lies in the claimant, the trustee shall apportion to each claimant out of the whole sum of farm produce proceeds held by the trustee that claimant's pro rata share (in comparison to the shares of like claimants) of the proceeds held by the trustee which are equivalent in value to the quantity, quality, and type of commodities which were originally delivered by such claimant, or the claimant's predecessor in title, to the debtor upon the contract of bailment. The value of such produce shall be calculated by reference to the price obtained for it at the time of sale. Distribution shall take place with respect to each of such claimants only after the deduction from such claimant's share of the proceeds of any commercially reasonable storage charge then due the debtor's estate from the particular claimant, plus
any commercially reasonable charge for the expense of removing the particular claimant's farm produce from the storage facility.

"(B) With respect to claimants who have established to the court's satisfaction that the estate's interest in quantities of farm produce which (i) are part of the debtor's estate, and (ii) are subject to a security interest existing in favor of such claimants, is of inconsequential value or burdensome to the estate by virtue of such security interest, the trustee shall next distribute from the remaining proceeds of the liquidation of farm produce required by subsection (a)(2) of this section, a share of such proceeds to each of such claimants according to the value of their secured interests in the farm produce sold, as the same may be entitled to under law. Distribution shall take place with respect to each of such claimants only after the deduction from such claimant's share of any commercially reasonable charge for the expense of removing the farm produce represented by the proceeds distributed to that claimant.

"(C) Distribution of farm produce proceeds which are ordered abandoned by the court, shall
commence within twenty days of the entry of the orders of abandonment.

“(D) Expenses and compensation of the court or trustee incurred pursuant to the liquidation and abandonment of farm produce and proceeds thereof shall be paid, in conformity to the provisions of section 330 of this title, in the following manner:

“(i) first, out of the funds retained by the trustee for storage charges and produce delivery charges, to the extent feasible;

“(ii) second, out of accrued interest on farm produce proceeds, to the extent feasible; and

“(iii) third, out of the whole quantity of farm produce proceeds held by the trustee prior to distribution of such proceeds.

No other expenses of the court or trustees shall be deducted from farm produce proceeds.

“(E)(i) If, after satisfaction of the claims of those persons entitled to abandonment of the proceeds of farm produce held by the trustee, there be any remaining proceeds of farm produce held by the trustee, such unclaimed proceeds shall be retained by the court in an interest bearing ac-
count, for the benefit of any persons who may present an untimely claim of right to abandonment in accordance with subsection (a)(3)(A) of this section, for a period of one year from the date of the entry of the orders of abandonment. At the expiration of such period, such funds shall be distributed in accordance with section 726 of this title.

"(ii) The trustee may conduct such examination of the debtor or other persons as may be necessary for the purpose of determining the identity of any persons to whom have been assigned the rights of ownership to farm produce, legal or equitable title to which does not exist in the debtor, as reflected by the books and records of such debtor and for which no claim has been made; and shall provide notice of the pendency of the action to any person who is so identified.

"(b) This section shall be applied by the court solely for the purpose of effectuating abandonment of farm produce which is not property of the estate, or is of inconsequential value to the estate, and shall not be construed to limit the right of any party to seek abandonment of any other property delivered over to the trustee in accordance with section 554 of this title.
"(c) Distribution of farm produce ordered abandoned by
the court pursuant to this section shall not be delayed due to
the pendency of any appeal from the orders of abandonment,
except that a stay of orders entered pursuant to this section
may be entered by the bankruptcy court under the following
circumstances:

"(1) the party filing the request for stay, except
for the United States, shall post a bond or other secu-
ri ty in an amount equal to the amount of farm produce
proceeds, distribution of which is affected by the re-
quested stay; and

"(2) the parties entitled to distribution of farm
produce proceeds under the terms of the abandonment
orders affected by the stay shall, if successful in de-
fending the appeal, be awarded their pro rata share of
the proceeds of the liquidation; plus a sum equal to the
difference in value between the awarded share and the
highest intermediate value (between the date of the
entry of the order of stay and the date of final distribu-
tion) of the produce sold which was owned by, or se-
cured to, such parties; plus interest on the amount of
the original award at the prevailing rate allowed by
law upon judgments, with interest to accrue from the
date of the entry of the order of stay. The interest pay-
ment, and differential payment, provided for herein
shall both be satisfied out of the bond posted by the party requesting the stay, to the extent feasible. In the case of an appeal by the United States, it shall be satisfied out of accrued interest on the proceeds on deposit, to the extent feasible. The party or parties requesting such stay and prosecuting such appeal shall, if successful on appeal, be entitled to interest at the prevailing rate allowed by law upon judgments upon any sum which the court may ultimately award, such interest to be calculated from the date of the entry of the original order of abandonment appealed from.

“(d) Any order of stay entered by the bankruptcy court pursuant to subsection (c) of this section shall be immediately appealable as of right by any aggrieved party, to the district court for the division and district wherein the bankruptcy court exercises its jurisdiction; or, to a panel of bankruptcy judges as provided by section 405(c)(1) of title 28, United States Code, if the same has been ordered by the circuit council pursuant to such section. The appeal shall be perfected in accordance with the rules applicable to the prosecution of appeals under this title. The district court (or bankruptcy panel) shall rule upon this issue of whether or not the order of stay so entered is appropriate, in consideration of the provisions of rule 62 of the Federal Rules of Civil Procedure and
1 the law applicable thereunder, within thirty days after the
docketing of the appeal.
2 "(e) In any action brought pursuant to chapter 11 of
this title, the provisions of this section shall govern the aban-
donment of farm produce held by the trustee or debtor in
possession of a farm produce storage facility business for
which reorganization is sought, which farm produce is not
property of the debtor's estate but is held by the debtor upon
a contract of bailment only. The abandonment of any quanti-
ty of such produce shall take place only upon the request of
the owner thereof, and shall be done regardless of its effect
upon any existing or proposed plan of reorganization.
3 "(f) The time limits set forth in this section may be ex-
tended by the court for good cause shown; however, the dis-
tribution of farm produce ordered abandoned by the court
shall not be deferred beyond one hundred and forty days after
the date of the filing of the petition, unless the court finds
that—
4 "(1) the interests of justice so require in light of
the complexity of the case; and
5 "(2) the interests of those claimants entitled to
distribution upon their claims will not be materially in-
jured by such additional delay.
6 "(g) In actions filed under this title in any State wherein
an agency exists which operates under the supervision of that
State's government, and which is charged with the responsibility for presiding over the liquidation of an insolvent farm produce storage facility licensed under the laws of such State, the bankruptcy court shall appoint the director of such State agency to act as cotrustee together with the private trustee, if any, appointed under this title; and such party shall perform the duties required of the trustee under this section until the completion of the distribution of the proceeds of farm produce required by this section: Provided, That such cotrustee shall not be relieved of its responsibilities before the orders of abandonment required to be entered under this section are made. Said cotrustee shall perform all duties required of the trustee under this section, but shall not be required to perform any duties of the trustee mandated by any other provisions of this title. Said cotrustee shall not recover any compensation out of the assets of the estate for the services performed under this section.

"(h) In actions filed under this title by a debtor in the business of operating a farm produce storage facility licensed under the United States Warehouse Act, the bankruptcy court shall appoint the Administrator of the Agricultural Marketing Service of the United States Department of Agriculture to act as cotrustee together with the private trustee, if any, appointed under this title; and such party shall perform the duties required of the trustee under this section until
the completion of the distribution of the proceeds of farm produce required by this section: Provided, That such cotrustee shall not be relieved of its responsibilities before the orders of abandonment required to be entered under this section are made. Said cotrustee shall perform all duties required of the trustee under this section, but shall not be required to perform any duties of the trustee mandated by any other provisions of this title. Such cotrustee shall not recover any compensation out of the assets of the estate for the services performed under this section.”.

Sec. 7. (a) Chapter 10 of title 7, section 255, of the United States Code, is amended by inserting a comma after the word “storage”, and by inserting the following language between the words “storage” and “in” thereof: “marketing, handling, shipping, or other disposition”; such that the section, as amended, shall read as follows: “Any person who deposits agricultural products for storage, marketing, handling, shipping, or other disposition in a warehouse licensed under this chapter shall be deemed to have deposited the same subject to the terms of this chapter and the rules and regulations prescribed thereunder.”.

(b) Chapter 10 of title 7, United States Code, is amended by adding after section 262 thereof the following:
"§ 262a. Statutory lien, pending payment for agricultural products sold to a warehouseman

"Any farmer (as defined in title 11, U.S.C. 101) who, having delivered agricultural products to a warehouseman licensed under this chapter upon a contract for sale, or having sold to such warehouseman products previously delivered upon a contract for storage, and who has not received the consideration agreed upon for the sale of said products from the warehouseman, shall have a lien against like products in the licensed facility in excess of that required to satisfy receipted or other storage obligations; against like products in transit for which payment has not been made to the warehouseman; and against unencumbered products held in other locations for the account of the warehouseman, or the proceeds from any of the foregoing, to the extent of the consideration agreed upon for the purchase of the product sold. Such lien shall attach at the time of the formation of the contract for sale and shall continue until the obligations of the warehouseman to the seller of the products are satisfied, or the expiration of sixty days, whichever is earlier."

SEC. 8. Section 1123(a)(1) of title 11, United States Code, is amended by striking out "or 507(a)(6)" and inserting in lieu thereof "507(a)(5) or 507(a)(7)".

SEC. 9. Section 1129(a)(9)(B) of title 11, United States Code, is amended by striking out "or 507(a)(5)" and inserting in lieu thereof "507(a)(5), or 507(a)(6)".

SEC. 10. Section 1129(a)(9)(C) of title 11, United States Code, is amended by striking out "507(a)(6)" and inserting in lieu thereof "507(a)(7)".

SEC. 11. Section 545(2) of title 11, United States Code, is amended by striking the semicolon following the word "exists", and adding the following: "except that this section shall not apply to a lien interest arising by virtue of the provisions of section 262a of title 7, United States Code;".

Passed the Senate September 22 (legislative day, September 9), 1981.

Attest: WILLIAM F. HILDENBRAND,
Secretary.
Herein of Scale Tickets. The relevant statutes entitle a depositor for storage to a warehouse receipt, see Neb. Rev. Stat. § 88-506 (on demand of depositor), Iowa Code Ann. 543.18 and Iowa Admin. Code 250-12.11 (543) (issue warehouse receipts at earlier of demand or six months unless waived in writing). However, when grain is initially deposited, a different document, a scale or weight ticket, is normally issued, and frequently depositors never ask for a warehouse receipt. Then when an elevator fails, the rights of these scale ticket claimants have often been challenged. Numerous reported cases, however, allow scale ticket holders to share in the distribution on the same basis as warehouse receipt holders, both for grain and warehouseman's bond proceeds.

Thomas v. Reliance Ins. Co., 617 F.2d 122 (5th Cir. 1980) (Texas Law)

See Farmers Elevator Mut. Ins. Co. v. Jewett, 394 F.2d 896, 900 (10th Cir. 1968). (Scale ticket holders share pro rata under bond, but court reserves question whether warehouse receipt holders should take first, if as was not the case here, total claims exceeded both grain proceeds and bond.)

Hartford Acc: & Indem Co. v. Kansas, 247 F.2d 315 (10th Cir. 1957). (Kansas law. Scale tickets holders share with warehouse receipt holders.)


Kramer v. Northwestern Elevator Co., 197 N.W. 96 (Minn. 1904) (Minn. Law)


Scale Tickets in Nebraska. LB 529, which extensively amended Nebraska's grain warehouse statutes, included as Section 1 of the bill the following provision:

Scale tickets issued by a public grain warehouse shall be prima facie evidence of the holder's claim of title to the goods described therein. LB 529, Sec. 1 (1981).

The persons entitled to share in distribution of grain under Neb. Rev. Stat. § 88-515(3) (1981) are:

...all valid owners, depositors, or storers of grain who shall be holders of evidence of ownership of grain.

Therefore, depositors claiming under scale tickets are clearly protected in Nebraska.

Scale Tickets in Iowa. Under Iowa Code Ann. § 543.4(4), persons entitled to share in distribution of grain, its proceeds, and the warehouse bond are "depositors on a pro rata basis." Depositor is defined in § 543.1(13) to include persons who deposit for storage but who do not have a warehouse receipt. § 543.17.3 provides "Grain received on a scale ticket which fails to have the price fixed and properly documented on the records of the warehouseman shall be construed to be in open storage."

Thus, scale ticket holders would be included among the depositors entitled to share's grain proceeds, and are expressly protected under the bond by Iowa Code Ann. § 543.13, which provides:

...the bond provided in this section shall cover all bulk grain deposited with a licensed warehouseman, whether under open storage or a warehouse receipt.

Treating scale tickets as prima facie evidence of ownership of grain and hence, for these purposes, as equivalent to a non-negotiable warehouse receipt, accords with the practice of the parties involved and should not unfairly surprise anyone. The only reason for scrutinizing scale tickets more closely than negotiable warehouse receipts is that if the grain represented by a scale ticket were later sold to the elevator and payment made, the scale ticket would not necessarily be surrendered. However, other means of cross-checking any alleged scale would normally be available.