

LEGAL ISSUES ARISING FROM LIVESTOCK BUYER BANKRUPTCY

Roger A. McEowen

Kansas Farm Bureau Professor of Agricultural Law and Taxation

Washburn University School of Law

roger.mceowen@washburn.edu

www.washburnlaw.edu/waltr

@WashburnWaltr



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- Environmental Regulation of Agriculture
- Environmental Regulation of the Oil and Gas Industry
- Estate and Business Planning for Farmers and Ranchers
- Estate Planning and Taxation
- Farm Bankruptcy
- Farm and Ranch Taxation
- Farm Income Tax Planning and Management
- Federal Indian Law
- Independent Readings in Natural Resources Law
- Independent Study in Oil and Gas Law
- International Petroleum Arbitration
- International Petroleum Transactions
- Kansas Legal Research
- Mineral Title Examination
- Mining Law
- Oil and Gas Conservation Law and Practice
- Oil and Gas Joint Operations
- Oil and Gas Law
- Oil and Gas Taxation
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- Public Land Law
- Real Estate Transactions
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- Rural Practice Externship
- Secured Transactions
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- Water, Environmental, and Regulatory Law Impacting Agriculture
- Water Rights



PSA - Basic Provisions

- **History of the PSA**
 - Enforced by USDA's Packers and Stockyards Administration
 - Stated purpose – ensure free flow of livestock from farms/ranches to marketplace.
 - Regulates both packers and stockyards
 - Genesis dates to 1888 Senate investigation into anticompetitive practices of buying livestock
 - Led to Sherman Act of 1890



PSA History

- **1903 injunction against meatpackers for antitrust violations**
- **1917 FTC investigation of anti-competitive practices of packers**
 - Report showed widespread anticompetitive practices of stockyards, commission buyers, weighing facilities, packing plants, etc.
- **1920 – major packers enter into consent decree**
 - Comprehensive prohibition on numerous practices



PSA History

- **PSA signed into law on April 15, 1921**
 - “Most far-reaching measure and extend[ed] further than any previous law into the regulation of private business with few exceptions” *61 Cong. Rec. 1872 (1921)*
 - Powers granted to Ag Secretary more wide-ranging than the powers granted to the FTC
 - Act upheld as constitutional in several cases from 1922-1934



PSA – Selected Provisions

- **Registration requirement**
 - All marketing agencies that handle livestock must register with USDA
- **Bonding**
 - Packer bonding required unless average annual purchases are \$500,000 or less
- **False weighing**
- **Gratuities**
- **Coordinated buying**
- **Bribery**
- **Recordkeeping**
- **Other**
- **Enforcement**
 - Either by civil action or by action taken by U.S. Attorney upon request of U.S. Ag Sec.
 - Jurisdiction is in fed. district court



PSA Rules Governing Payment for Livestock

- **Prompt payment rule**
 - PSA requires prompt and full payment for livestock. Otherwise, it's an "unfair practice."
 - Full payment of purchase price "before the close of the next business day following the purchase of livestock and transfer of possession..."
 - Applies to packers, "market agencies" and "dealers"
 - Can be waived by written agreement entered into before the purchase or sale of livestock
 - Format provided in regs.
 - Must be disclosed in business records of buyer and seller and on accounts or other documents that buyer issues relating to transaction
 - If prompt payment is waived, seller loses any interest in statutory trust



Prompt Payment Rule

- **Applies to market agencies**
 - "any person engaged in the business of (1) buying or selling livestock on a commission basis or (2) furnishing stockyard services."
 - Simply denoting "commission" on invoice does not, by itself, indicate sale was on commission basis.
 - Key is nature of business relationship of the parties and surrounding facts and circumstances



Prompt Payment Rule

- **Applies to “dealers”**
 - “any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.”
 - Can be a “dealer” even if the buying and selling of livestock is not the person’s only business



Prompt Payment Rule

- **Violation of the rule is a PSA “unfair practice”**
- **Issuance of an insufficient funds check and failure to pay when due is a PSA “unfair practice”**
 - This is often tied to the financial condition of the buyer
 - All market agencies are prohibited from operating while insolvent (current liabilities exceed current assets)



Statutory Trust

- **Applies to packers with average annual purchases of livestock exceeding \$500,000**
 - For the benefit of unpaid cash sellers
 - A “cash sale” is any sale where the seller does not expressly extend credit to the packer
 - Extends to “all inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived therefrom...”
 - The funds must be held in the trust for the benefit of all unpaid cash sellers of livestock until full payment has been received by the unpaid seller.



Statutory Trust

- **If packer files bankruptcy, assets in the trust are not part of the bankruptcy estate**
 - Thus, unpaid cash sellers of livestock do not have to compete with the debtor’s secured creditors for the assets contained in the trust
 - Claims for payment from the trust will defeat a perfected UCC lien
 - Bank (as creditor of debtor) cannot setoff funds held in the trust.
 - Payment from the trust to livestock sellers are not recoverable as a preference item in bankruptcy
 - Although there may be issues concerning what cash collateral is



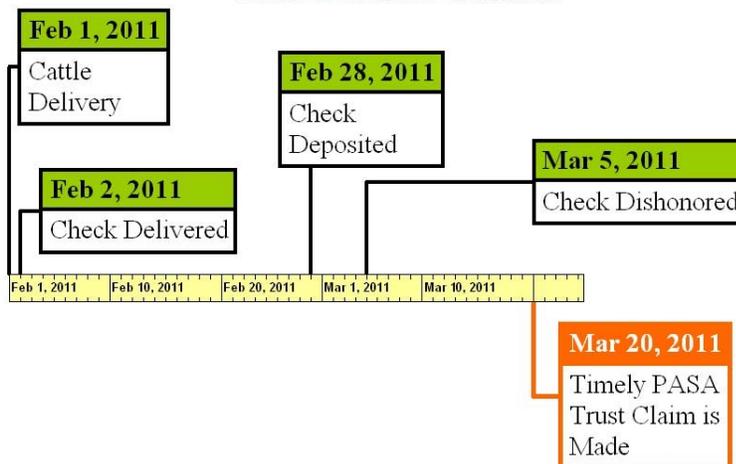
Statutory Trust

- Unpaid cash seller can make a claim against trust assets by providing notice to Ag Sec. within 30 days of final date for making prompt payment or within 15 business days of being notified that seller's check has been dishonored, whichever is later.



PSA Timeline

Check Dishonored 15 days to File PASA Claim





PSA Timeline

- **If the borrower has pledged a security interest in inventory, receivables, proceeds, and products that are subject to the PSA, the Bank's collateral will not include the inventory, receivables, proceeds and products of the Borrower if the producers have not been paid and the claims fall under the PSA trust.**



Statutory Trust

- **Inapplicable to livestock purchases by market agencies and dealers**
- **But, payments that a livestock buyer makes to a market agency for sales on commission are considered to be trust funds that must be deposited into a custodial account**
 - A custodial account must be maintained for trust funds
 - By close of next business day after auction, market agencies must deposit into the custodial account...
 - All proceeds collected from the auction; and an amount equal to the proceeds receivable from the livestock sale that are due from the market agency; any owner, employee, or officer of the market agency; and any buyer to whom the market agency has extended credit



Custodial Account

- **Market agency must also deposit an amount equal to all of the remaining proceeds receivable into the custodial account within 7 days of the auction, even if some of the proceeds remain uncollected.**
- **Funds in the custodial account can only be withdrawn to remit the net proceeds due a seller, to pay lawful charges which the market agency is required to pay, and to obtain sums due the market agency as compensation for its services**



Custodial Account

- **Market agency must also transmit or deliver the net proceeds received from the sale to the seller by the close of business on the day after the sale**



Determining a Violation

- **Process**
 - Meeting of creditors
 - Strongly suggested to have a court reporter present
 - Locks in statements and avoids the “selective recall” syndrome
 - Who owns what?
 - Where are funds?
 - Assemble a “cattlemen’s committee”
 - Must be recognized by the court



Determining a Violation

- **Conduct a F.R.B.P. Rule 2004 examination**
 - Allows a “fishing expedition” to be conducted
 - Pre-lawsuit discovery
 - Can learn who to sue and for how much
 - Can issue subpoenas to get information from a ways back
 - Preferential transfers?
 - Was a particular creditor or group of creditors paid off which will cause other creditors to get less in bankruptcy?
 - Was debtor’s lender undersecured?



Rule 2004 Exam

- **Can ask for production of documents**
 - Tax returns
 - Transfer documents
 - All books and records
 - Owner/new owner/bank officers, etc.



F.R.B.P. Rule 2019

- **Separate out the disaffected sellers**
 - Cattlemen who sold cattle through market agency and haven't gotten paid
 - Cattlemen who sold to an individual person and haven't gotten paid
 - May not be entitled to custodial account protection
 - Cattlemen
 - Those who are reported as sellers of livestock who are really not



Making a Statutory Trust Claim

- **Written notice must be given to the buyer and Grain Inspection Packers and Stockyards Administration (GIPSA)**
 - Livestock that haven't been paid for must be identified along with the delivery date.
 - Applicable look back period is 30 days before receipt by buyer and Ag Secretary
 - Note: GIPSA is now contained within the USDA's Agricultura Marketing Service (AMS)



Remedies

- **For a livestock seller that has sustained a PSA “injury” at the hands of a market agency or dealer, one remedy is to sue in federal district court “for the full amount of damages sustained in consequence of such violation”**
- **Another option is to bring a reparation proceeding for money damages**
 - Must be filed within 90 days after the cause of action accrues
 - Filing is with Ag Secretary at GIPSA/AMS regional office
 - State cause of action; date of transaction; amount of damages; method of computation; place where transaction occurred
 - Use P&SP Form 5000



Reparation Proceeding

- **Complaint will be processed and investigated**
- **Served on defendant**
- **Defendant has 20 days to file answer**
- **Time to respond**
- **Complaint filed with hearing clerk**
- **Hearing scheduled**
 - Will be in writing unless oral hearing requested (damages must exceed \$10,000)
 - Oral hearing may be necessary to establish facts
 - For written hearings, each party has 20 days to file objections
 - Additional evidence can be given and additional procedures may apply



Reparation Proceeding

- **If livestock seller determined to be entitled to damages, Secretary will order defendant to “pay to the complainant the sum to which he is entitled on or before a day named”**
- **GIPSA/AMS has no enforcement authority**
 - Order enforceable by fed. district court or any state court with general jurisdiction
 - Enforcement action must be filed within 1 year of date of order



Remedies

- **Injunction**
 - For violation of PSA
 - Basically shuts down the seller
 - Ordered by court



Practical Things

- **Each disaffected cattleman must evaluate where they are at personally**
- **This will take time to shake out**
- **Have conversations with lenders**
- **Work together**



Thank You!

- roger.mceowen@washburn.edu
- www.washburnlaw.edu/waltr
- [@WashburnWaltr](#)