

Approved: 2.20.98  
Date

## MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Gary K. Hayzlett at 1:30 p.m. on February 18, 1998 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department  
Reed Holwegner, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
J. Patterson, Committee Secretary

Conferees appearing before the committee: Tom Tunnell, President, Kansas Grain & Feed, Kansas Fertilizer & Feed Association  
Doug Wareham, VP Government Affairs, Kansas Grain & Feed Association, Kansas Fertilizer & Chemical Association  
Stan Sexton, KGFA Legal Counsel, Hampton & Royce, L.C.  
Tony Dyer, President, Kansas Farmers Service Association  
Jerry Boettcher, Owner, Boettcher Enterprises  
Dean Sparks, General Manager, Farmers Co-op Association at Talmage  
Craig Walker, Owner/Manager Walker Products, Inc.  
Junior Strecker, General Manager, Scott Co-op Association  
Chris Wilson, Executive Director, Kansas Seed Industry Association  
Marty Vanier, Executive Director, Kansas Agricultural Alliance  
Ray Crumbaker, President, Kansas Association of Wheat Growers  
Joe Lieber, Executive Vice-President, Kansas Cooperative Council

Others attending: See attached list

### **HB 2715 - Enacting railroad leasing act.**

Tom Tunnell of the Kansas Grain and Feed Association was the first to testify as a proponent of **HB 2715**. He provided the committee with the history of the KGFA. He detailed the relationship of the grain elevators and the railroads. (Attachment 1) Doug Wareham, KGFA, testified second. He outlined specific problems addressed by the bill. Over 500 agribusiness firms are located on railroad owned property in Kansas. (Attachment 2) Stan Sexton of Hampton & Royce, L.C. in Salina testified for W. Dean Owens who was unable to attend. Their law firm was hired to draft legislation to address two critical problems: imposition of oppressive lease terms and rents by railroads on their tenants and uncertainties as to the rights and title of tenants when the land is abandoned or otherwise transferred by the railroads. (Attachment 3) The president of Kansas Farmers Service Association, Tony Dyer, was the fourth proponent to testify. They feel the hold harmless language in railroad leases should be against public policy. An individual or company should be willing to hold someone else harmless for their wrongful acts, but there is something inherently unfair about being forced to sign a contract that holds you liable for someone else's negligence. (Attachment 4) Jarold Boettcher, president of Boettcher Enterprises, Inc. owns 35 retail fertilizer plants located in twelve counties in Kansas and two in Nebraska, serving over 4000 farmer customers. He testified that the leases are one sided. The lessees have no rights, have no protection against unreasonable seizure and cancellation, are exposed to unilateral changes in the leases to suit the interests of the railroads, and have significant economic exposure to rising lease rates. (Attachment 5) Dean Sparks appeared on behalf of the Farmers Cooperative Association. He testified about the increase of the annual lease rates. In 1996 the lease rate was 2,574.00 to \$4,990.00 in 1997 and will be \$7,100 effective July 1, 1998. They feel their options are to pay the increase or vacate the property. (Attachment 6) Craig Walker of Walker Products was the seventh proponent to testify on **HB 2715**.

They own two elevators. Their primary problem with the railroad has been skyrocketing lease rates. In 1998 the percentage increase for the two year period from 1996 to 1998 309%.(Attachment 7) Junior Strecker of Scott Cooperative Association testified about the problems they have had as owners of seven elevators. In 1993 their total lease was \$600.00 per year with Santa Fe. Central Kansas Railway purchased the railroad and lease has since risen to \$5,200.00. They have had continuing problems with CKR.(Attachment 8) Chris Wilson, Director of Member Services of Kansas Seed Industry Association, testified that some of their members have facilities sites on railroad leased property and have had the same problems as others testifying.(Attachment 9) Marty Vanier of the Kansas Agricultural Alliance testified on behalf of 23 agribusiness organizations. The current trend of consolidating and merging railroads, and abandonment of short lines has created a situation in which county elevators are cut off from rail lines, leaving producers with few if any, local options for transporting grain.(Attachment 10) Ray Crumbaker of the Kansas Association owns a local grain elevator. He emphasized transportation costs and how they affect the producers bottom line. He will pay over \$50,000 to transport wheat to a demand market.(Attachment 11) The last to testify was Joe Lieber of the Kansas Cooperative Council. He asked the committee to remember three words: portable, barrel and fairness. The elevators are not portable, the railroads have them over a barrel and the elevators are not asking for a free ride, they are asking for fairness.(Attachment 12)

There was extensive discussion. Representative Howell questioned if leases had stayed at one amount for 20 years and are just now catching up. Mr. Tunnell answered that there had been a survey and they could provide the committee with it. Representative Long questioned if tariffs exist and if both parties have copies of the tariffs. Mr. Sexton said yes they do. Representative Ray asked if this problem exists throughout the country. Mr. Tunnell answered that Kansas is more landlocked because there aren't as many alternatives for shipping. Representative McClure questioned if anything was going on at the federal level. Mr. Tunnell said yes.

The hearing was closed.

The meeting was adjourned at 3:22

# HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2-18-98

NAME	REPRESENTING
R Gary Lortscher	KGFA
K. Terhune	KGFA
Julie Jimison	Ks Grain + Feed Assn.
Duane Strumer	Kansas Co-op Council
Marty Vanier	Kansas Ag Alliance
Jol Lieber	Ks Co-op Council
Mo Stephan	Mid-Ks Coop Moundridge, Ks
J. STAN SEXTON	KGFA/KECA Atty
Tom Tunnell	KGFA/KECA
TOM REDMAN	KGFA TRAVIS CORP, WRIGHT, Ks.
Gary Brachner	Brachner Grain Inc
Don Saworwein	KGFA - Farmers Grain Walkers, Ks
Ted Schultz	Mid-Ks Coop, Moundridge, Ks
Willie Schmidt	Farmers Grain & Supply, Greensburg, Ks
Steve O'Brien	SEK Grain Co Piquette, Ks
Duane Kelley	Lorraine Grain Fuel & Stk. Co., Lorraine
DOUG TRUMBLE	FARMERS POOP, GREENLEAF, Ks
Tom Stewart	Farmers Co-op Lucas, Ks
DAN WICK	WICK GRAIN DIGHTON, Ks

# HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2-18-98

NAME	REPRESENTING
Terry Boothker	Boothker Enterprises, Beloit
Lowell Downey	Collingwood Grain Inc
Randy W. Lloyd	American Cyanamid
THOMAS RYAN	JOHNSON COOP GRAIN CO. INC
Jerry Schweitzer	" " "
Dennis Neeland	Great Bend Coop Assn
MELVIN J. STEINLAGE	NEMAHA CO. PROD ASSN
FRANK J. RIEDI	GREAT BEND Coop ASSN
Scott Woodbury	SELF
Dennis Ford	Wathena Grains Co.
Bob Hecht	Midwest Lab
Joe Schauf	Andale Farmers Coop
Kevin Brady	Ag-Chem Equipment
MARY GILLESPIE	Collingwood Grain Inc.
CHRIS DROGE	Collingwood Grain Inc
Dan Cashier	Anthony Farmers Coop
DACE MOCH	FLA LAMBEAC
Roy KOFFEY	KANS FARMERS SERVICE
TOM WHITAKER	Ks Motor Carriers Assn

# HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2-18-98

NAME	REPRESENTING
Don Lindsey	UTU
Martin Haaver	Haaver's Capital Repov
Pat Hubbell	Kans. RR
JOHN C. BOTTENBERG	KANS. R. R.
Charlie Swartz	KFCA-NGFA FARMERS COOP <span style="float: right;">Isabel</span>
David Selman	KFCA
Warran Beavers	White Cloud Grain Co.
Mike Von Campen	Turon Mills & Elevator
MIKE FRASER	CENEX/LAND LAKES Hutchinson, Ks.
Mike Erhart	Collingwood Grain Inc, Big Bow Ks
Larry Shivers	Van Diest Supply Co, Salina, Ks
MAX Sudbeck	Brown Co. COOP Assn. Hiawatha, Ks.
James C Haggerty	ADM Milling Co Butler + Inman Ks
Jerald S. Kemmerer	Harvest States Cooperative
Johnny Schaben	Farm Service Center, Inc.
Steve Knuse	Knuse Fertilizer - Little River
Debi Knuse	Knuse Fertilizer - L.R.
Tony Dyer	Kansas Farmers Service Ass'n
Craig Walker	Walker Products Co, Lincoln, Ks



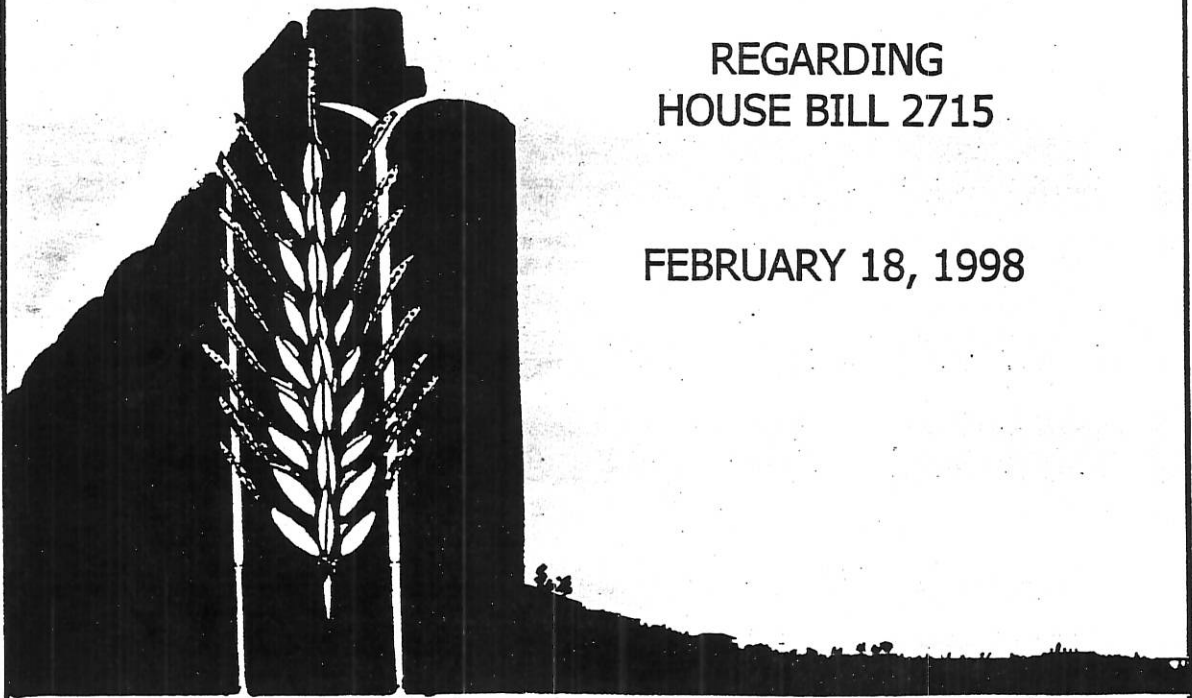


STATEMENT OF  
TOM R. TUNNELL

BEFORE THE  
HOUSE TRANSPORTATION COMMITTEE  
REPRESENTATIVE GARY HAYZLETT, CHAIRMAN

REGARDING  
HOUSE BILL 2715

FEBRUARY 18, 1998



*KANSAS COUNTRY ELEVATORS stand tall on Kansas prairies – proud symbols of quality and service to agriculture. They are landmarks and have often been referred to as "sentinels of the prairies." These proud symbols of Kansas have served agriculture for over one hundred and twenty-five years.*

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Chairman Hayzlett and Members of the House Transportation Committee, my name is Tom R. Tunnell and I am President of the Kansas Grain and Feed Association (KGFA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of grain receiving, storage, processing and shipping industry in the state of Kansas. Our membership includes over 1,250 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. I also serve as President of the Kansas Fertilizer and Chemical Association (KFCA). KFCA's over 500 agribusiness firms provide service and crop inputs to Kansas farmers.

Two years ago, KGFA celebrated its 100 year anniversary and as a part of that celebration published a Centennial history book which was distributed free to our members as well as other interested parties. In my brief time today, I will relate information to you gained from researching that book, which I believe will give you a better perspective of the special relationship grain elevators have with railroads and how that relationship has evolved over the past 100+ years. Additionally, I will highlight a few important points which a number of the conferees who follow me will better illuminate in their testimony.



Beginning in the second half of the last century, when railroads were just being built across our great state, one important factor which was easily identified as being necessary to their success was the immediate need for commerce, or something to ship. Grain of course was the obvious answer. To establish grain loading points along their lines, railroads identified early-day entrepreneurs who were willing to invest and construct facilities on railroad property to receive farmer-delivered grain and load it on railcars. These facilities were built on the various railroad lines from five to twelve miles apart which was about the distance grain could be hauled by horse and wagon from a farmer's field. At that time, long-term rail leases between elevators and railroads were signed which were acceptable to both parties. A business partnership between railroads and grain elevators was thus established and quite frankly was mutually beneficial for the most part of the next 100 years.

In 1980 the Federal Rail Deregulation Act was passed by Congress, and railroads were allowed to function more like conventional businesses outside the influence of federal control. The short story of the effect of rail deregulation in Kansas however, may be hard to term as "progress". Twenty years ago there were over 800 rail, grain-shipping elevators in our state and today there are less than 200 viable grain shipping elevators. Unfortunately, along with the drastic reduction of rail service to the grain industry as a result of federal deregulation and mergers (which was certainly demonstrated last harvest when over 32 million bushels of grain had to be stored on the ground), railroads decided that annual lease charges to elevators should become a

valuable source of increased annual cash flow income. Additionally, passing all leasehold legal liabilities on to the lessee became common practice. You will hear actual examples of these abuses in subsequent testimony.

The grain handling industry, as I know you are aware, is a vitally important segment of the Kansas agriculture economy. Never in my 18 years of working for this Association have I seen an issue that has so polarized our membership as the one addressed in House Bill 2715. You will no doubt hear from opponents to this legislation that the state of Kansas has no authority to pass legislation which would impact a railroad's ability to negotiate leases. And further, that this authority lies exclusively with the United States Department of Transportation's Surface Transportation Board. Our attorney, Stan Sexton, will testify that we totally disagree with this premise, and will offer an amendment to further clarify our position. Andrew P. Goldstein an attorney with McCarthy, Sweeney and Harkaway, P.C, in Washington, D.C., who is a specialist in federal rail transportation law and also serves as staff attorney of the National Grain and Feed Association, has reviewed H.B. 2715 and agrees the Kansas Legislature has authority to act.

Mr. Chairman and Members of the Committee, we believe the Kansas Legislature not only has the authority to pass and enforce the legislation embodied in H.B. 2715, but has the responsibility to do so. As I stated earlier, Mr. Sexton's testimony will explore legal precedence, but let me make one central position clear—all we are asking for is

FAIRNESS in rail lease negotiations. As it stands now, we must either take or leave what railroads offer in terms of price and lease provisions, and it is the LEAVE part that greatly disturbs us. Our industry has hundreds of millions of dollars invested in facilities located on railroad owned property and to expect us to walk away from these assets is ludicrous. Currently, our negotiation posture is one of having a "gun to our head". We are willing to pay fair--in fact perhaps more than fair--charges. We ask only for just treatment.

I now serve on a national task force which is studying needed changes to federal law which need to be made by Congress to ameliorate the impact of rail mergers on the nation's grain shipping and handling industry. The task force has met three times already—once with railroad representatives—and plans to have its recommendations finalized in March.

Senator Brownback and Congressman Moran are monitoring our progress and have offered to help shepherd these needed changes through Congress. Both Kansans serve on their respective transportation committees in the Senate and U.S. House. I understand Senator Brownback has scheduled a field hearing of the Senate Commerce, Science and Transportation Committee on April 9 in Kansas to further review the situation.

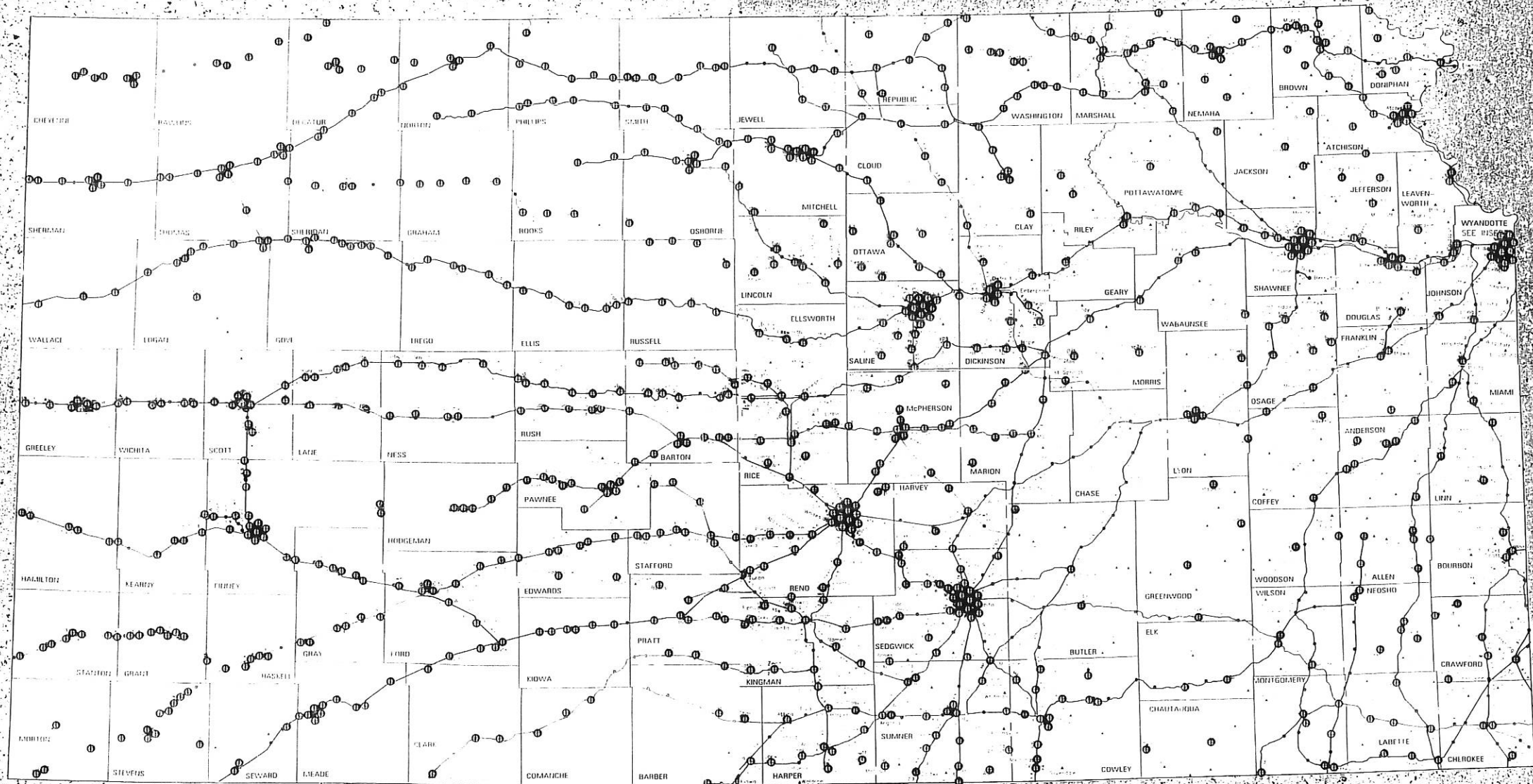
We met with Governor Graves last month and discussed the impact of the rail merger situation on Kansas agriculture. He voiced his

support during that meeting to do whatever necessary at the state level to help. Passing H.B. 2715 by the Kansas Legislature will go along way to help our industry in this regard.

In closing let me say government oversight of railroads may be distasteful to some of you, but I believe a fair lease negotiation process as outlined in H.B. 2715 can be adopted without having a negative impact on either party. Certainly, government oversight is already a way of life for those of us in agribusiness. All Kansas elevators must be licensed and bonded by either the state or federal government. We must submit to unannounced audits, maintain a prescribed financial net worth, and our storage and "in and out" charges to farmers must be annually authorized by the respective government agency that licenses our facilities. We accept this regulatory oversight as government's effort to protect our farmer customers. Certainly, allowing our elevator owners and farm cooperatives some protection from unjustified lease costs and terms is also consistent with the role of state government.

Doug Wareham, also of our staff, will now outline specific problems addressed by H.B. 2175 and what this legislation will accomplish.

# KANSAS GRAIN AND FEED ASSOCIATION MEMBERSHIP ESTABLISHED IN 1896



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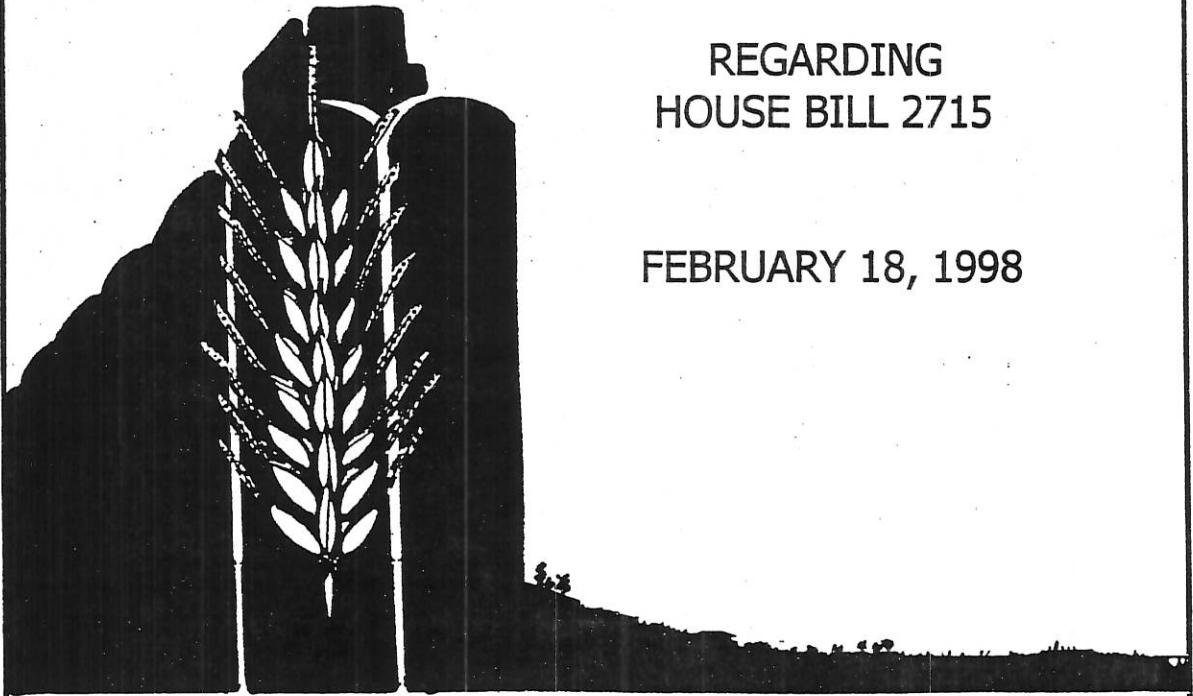


STATEMENT OF  
DOUGLAS E. WAREHAM

BEFORE THE  
HOUSE TRANSPORTATION COMMITTEE  
REPRESENTATIVE GARY HAYZLETT, CHAIRMAN

REGARDING  
HOUSE BILL 2715

FEBRUARY 18, 1998



*KANSAS COUNTRY ELEVATORS stand tall on Kansas prairies – proud symbols of quality and service to agriculture. They are landmarks and have often been referred to as "sentinels of the prairies." These proud symbols of Kansas have served agriculture for over one hundred and twenty-five years.*

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Thank you Mr. Chairman and Members of the Committee, as Tom indicated, I am Doug Wareham, and I serve as Vice President of Government Affairs for both the Kansas Grain and Feed Association and Kansas Fertilizer and Chemical Association. At this time, I would like to review the reasons why this legislation has been requested and specifically what this legislation will accomplish. I do want to point out that following my testimony and that of our legal counsel, Mr. Stan Sexton, you will hear actual accounts from managers and owners of businesses located on railroad owned property. I firmly believe the testimonials you will hear today, which are just a sample from the over 500 agribusiness firms located on railroad owned property in Kansas, will clearly identify the problems this legislation addresses and need for your positive consideration and support.

Two comprehensive surveys distributed to grain elevator firms across Kansas in early 1997 identified the following concerns:

- Many railroad property lease contracts contain unreasonable "hold harmless" provisions which essentially require businesses located on railroad owned property to assume all liability on the part of the railroad, even if damages or an accident are caused by the negligence of the railroad.
- Numerous agribusinesses have been faced with skyrocketing railroad property lease rate increases. In many cases railroad property lease rates are being dramatically increased at locations where railroad service has become economically unfeasible to utilize or is no longer provided at all.
- Agribusinesses (grain elevators and fertilizer and chemical facilities) have no recourse when faced with eviction from railroad-leased property and no assurance of compensation for improvements which can not be readily removed from leased property.

- Agribusinesses located on railroad leased property have no rights in cases of rail line abandonment and are potentially subject to facing the same plethora of problems when faced with a new landlord or landlords when ownership of the property their business is located on reverts to adjacent landowners.

The aforesaid problems are further clarified in the written comments you've received from agribusinesses across Kansas and will be highlighted by the owners and managers testifying here today. Now I would like to focus on what H.B. 2715 will accomplish. H.B. 2715 will address the concerns I have just outlined by:

- H.B. 2715 establishes guidelines for clauses that can not be included in a railroad property lease contract. Two critical components of H.B. 2715 are providing tenants of railroad leased property six months to remove improvements when leases are terminated and restricting the inclusion of "hold harmless" clauses which force businesses to assume liability of railroads.
- H.B. 2715 enables person/tenants of railroad leased property to make a written application to the Kansas Corporation Commission (KCC) to resolve disagreements regarding fair lease rental for the railroad leased property. The act establishes a three-party appraisal process to be used by KCC for determination of fair lease rental for railroad property when parties can not reach agreement otherwise.
- H.B. 2715 provides business/tenants located on railroad leased property the first opportunity to purchase their leased lot when a railroad seeks to sell its interest in that property. It again establishes the Kansas Corporation Commission as the administrator of a three-party appraisal process for resolving disagreements in fair market value (sales price), when railroads choose to sell their interest in railroad land.
- H.B. 2715 places enforcement of its provisions in the hands of the local county court and deems any legal action arising out of a railroad property lease as an action concerning real property.



Thank you Mr. Chairman and Members of the Committee, as Tom indicated, I am Doug Wareham, and I serve as Vice President of Government Affairs for both the Kansas Grain and Feed Association and Kansas Fertilizer and Chemical Association. At this time, I would like to review the reasons why this legislation has been requested and specifically what this legislation will accomplish. I do want to point out that following my testimony and that of our legal counsel, Mr. Stan Sexton, you will hear actual accounts from managers and owners of businesses located on railroad owned property. I firmly believe the testimonials you will hear today, which are just a sample from the over 500 agribusiness firms located on railroad owned property in Kansas, will clearly identify the problems this legislation addresses and need for your positive consideration and support.

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- Numerous agribusinesses have been faced with skyrocketing railroad property lease rate increases. In many cases railroad property lease rates are being dramatically increased at locations where railroad service has become economically unfeasible to utilize or is no longer provided at all.
- Agribusinesses (grain elevators and fertilizer and chemical facilities) have no recourse when faced with eviction from railroad-leased property and no assurance of compensation for improvements which can not be readily removed from leased property.

- H.B. 2715 will ensure that when businesses/tenants located on railroad leased property are evicted, they are fully compensated for good faith improvements made to the leased property. H.B. 2715 enables the local county court to determine, in cases of eviction, the compensation due when immovable improvements such as concrete grain elevators have been constructed on railroad leased property.
- H.B. 2715 will enable public grain warehouses (elevators) located on railroad leased property to acquire by condemnation any interest in the railroad land, including fee simple title when leases are terminated or subject to termination by reason of rail line abandonment. This legislation will enable public grain warehouse (elevators) to once and for all obtain ownership of the property their facility is located on by paying just compensation to adjacent landowners in accordance with the Kansas Eminent Domain Procedure Act.

In closing, I simply ask that each of you listen closely to the individual examples presented here today. I assure you the problems I have outlined are real and the number of businesses that will be positively affected by this legislation greatly exceeds the number of individuals gathered here today. Thank you for the opportunity to share these comments in support of H.B. 2715.

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E. S. HAMPTON (1905-1982)  
TOM W. HAMPTON (1935-1984)  
JOHN Q. ROYCE (1918-1991)

**Statement of W. Dean Owens  
in Support of House Bill No. 2715,  
Before The House Committee on Transportation**

February 18, 1998

I am Dean Owens, a Salina attorney and principal draftsman of this bill. During 30 years of practice, I have represented many grain companies and have worked closely with the Kansas Grain and Feed Association and its members on many projects.

Last fall, my firm was hired by KGFA to draft legislation which would address two critical problems faced by grain elevators and other businesses located on land leased from railroads:

Imposition of oppressive lease terms and rents by railroads on their tenants; and

Uncertainties as to the rights and title of tenants when the land is abandoned or otherwise transferred by the railroads.

House Bill 2715 has been thoroughly researched, carefully drafted, and introduced to relieve railroad tenants from these unreasonable and unnecessary burdens.

In considering this bill, it is very important to your understanding that:

There are no present safeguards or standards which limit the absolute power of a railroad to dictate unfair or unreasonable lease terms and rents under the threat of "take it or move your elevator"; and

Kansas courts have consistently held that railroads hold only an easement for rights-of-way and adjoining land, which will terminate when the land is no longer used for railroad purposes.

Others will tell you their real life stories about the severity of these problems and their need for this legislation. The overwhelming support of farm organizations and their members further demonstrate this need.

I will briefly discuss with you how the provisions of this bill parallel many existing laws, and why I firmly believe the provisions of this bill are reasonable and will be upheld by the courts.

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**Statement of W. Dean Owens**  
**In Support of House Bill No. 2715,**  
**Before the House Committee on Transportation**  
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The "Whereas" clauses on the first page explain the historical background, present situation, objectives of the bill, and the reasons for adoption of the bill by the legislature. These will assist the courts in better understanding the purpose, meaning, and intent of the bill.

Section 2 contains important definitions used throughout the bill. The definition of "railroad land" is new and particularly significant. If I could now change any part of the bill, I would amend the definition of "railroad land", as indicated on the last page of my written statement. Recent comments and information lead me to believe that this amendment would more clearly restrict the bill to Kansas state property law and better avoid any perceived conflict with federal jurisdiction of railroad operations.

Sections 3 and 7 are adapted from provisions of the Kansas Landlord and Tenant Act, which were referred to with approval by the Kansas Supreme Court in upholding another section of that act as follows:

While the act allows a landlord and tenant to negotiate an individualized lease, it prohibits the enforcement of unconscionable provisions (K.S.A. 58-2544), . . . and prohibits the inclusion of certain per se unreasonable terms (K.S.A. 58-2547). *See* 225 Kan. 359 at 364.

Similarly, this bill leaves the parties free to negotiate any lease terms which are not unconscionable or per se unreasonable. There is no reason to believe that any court will find that unfair or unconstitutional.

Sections 4 and 5 are borrowed from Iowa statutes enacted to provide an independent forum for resolution of railroad lease disputes and to protect tenants from losing their valuable improvements to speculators or profiteers. These statutes have been upheld by both federal and state courts in cases challenging them on many of the same grounds the railroads will no doubt cry about:

Constitutional guarantees of equal protection, due process, and sanctity of private contract;

Preemption of state law by federal law; and

A "taking" for a private use without adequate compensation.

The Iowa experience and well-reasoned court decisions provide exceptionally fine precedent and authority for the value and legality of these laws. In addition, similar laws have been enacted and are working well in Minnesota, North Dakota, and Wisconsin. It is our understanding that similar

**Statement of W. Dean Owens**  
**In Support of House Bill No. 2715,**  
**Before the House Committee on Transportation**  
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bills have been introduced in Oklahoma and other states this year, for the same reasons that H.B. 2715 has been introduced in Kansas.

Section 6 requires that litigation concerning railroad leases be conducted in the county where the land is located, consistent with K.S.A. 60-601. The second sentence affords any party the right to have the court resolve any uncertainties or differences, in advance of suffering damage or making the wrong decision on some necessary course of action. This is consistent with the Kansas Declaratory Judgment Act (K.S.A. 60-1701 through 1716).

Section 8 is adapted from K.S.A. 60-1004, which protects any person who has made improvements to land occupied "under color of title in good faith" from being ejected by someone else establishing a superior title to the land, unless full compensation is paid for such improvements.

Section 9 grants a public grain warehouse the right of condemnation in the event of abandonment or sale of the leased premises by the railroad. This is based on K.S.A. 17-618, which presently grants the right of condemnation to private road, hospital, irrigating, milling, and manufacturing corporations and K.S.A. 66-501 which grants that right to private railroad companies. This requires compliance with the Kansas Imminent Domain Procedure Act and payment of just compensation.

Section 10 provides that the Act will apply only to new leases and leases which are renewed or modified after its effective date.

Sections 11 and 12 are self-explanatory.

We regret that we are unable to address the specific concerns and objections which you will hear from the opponents next week. Our requests for specific comments and concerns have not been answered. However, a response to some comments made by the railroads' lobbyist may be helpful to you.

Constitutionality. Every law is subject to constitutional scrutiny by the courts. Where those in need of this law are ready and willing to defend it in the courts, they should be allowed to do so. Constitutionality is not a valid reason to vote against this bill.

Negotiation. If the railroads were willing to negotiate reasonable lease terms in good faith, parts of this bill would not be needed. But, railroads have always been reluctant if not defiant when asked to negotiate, and absent enactment of this bill, they will have no reason or incentive whatsoever to ever negotiate in good faith with their tenants. Furthermore, the questions of title to the land need to be answered and those cannot be negotiated under present Kansas law.


**Statement of W. Dean Owens**  
**In Support of House Bill No. 2715,**  
**Before the House Committee on Transportation**  
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A Taking. Only those railroads which want to continue to dictate oppressive lease terms, or want to acquire valuable improvements for nothing, will be affected by this bill. If this constitutes "a taking", the state has a legitimate interest in protecting businesses which have in good faith located their operations on railroad property, to assure that they are not forced to submit to unjust lease terms due to the parties' unequal bargaining power.

Condemnation Rights. It is fundamental that only the legislature can grant power to exercise the right of condemnation and that the courts determine whether that grant is for a public use. As a regulated industry, public grain elevators serve public needs similar to railroads, privately owned public utilities, and other private corporations which have condemnation rights.

Having carefully researched and drafted this bill, I believe that it is needed, that its provisions are reasonable, and I am confident that it will pass muster and be upheld by the courts of this state.

Enactment of this bill is vitally needed by an essential part of the agricultural economy of Kansas. We ask you to do what is right, fair, and proper. These problems simply will not go away without your direct involvement and intervention. I urge your vote and active support for passage of House Bill 2715 this year.

  
\_\_\_\_\_  
W. Dean Owens

## Railroad Leasing Act

Suggested Amendment to Sec. 2(h) definition of "railroad land":

(h) "railroad land" means any and all interest in any tract or parcel of real property which is or has been owned, held or used by a railroad and which is or has been occupied by a person who has made or acquired any improvement or improvements thereon pursuant to a lease, license or permit granted to such person by such railroad, together with all ~~rail sidings and trackage, access rights, and~~ appurtenances thereto; ~~except that railroad land shall not include any property which is subject to the exclusive jurisdiction of the federal surface transportation board or its successors;~~



# KANSAS FARMERS SERVICE ASSOCIATION

★ ★ ★ ★ ★ KF AGRI INSURANCE ★ ★ ★ ★ ★

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Testimony on H.B. 2715  
House Transportation Committee  
February 18, 1998  
Prepared by Tony Dyer  
Kansas Farmers Service Association

Mr. Chairman and Committee Members:

I am Tony Dyer, President of Kansas Farmers Service Association, Hutchinson, Kansas. I'm here today in support of H.B. 2715.

KFSA is owned by 139 local cooperatives in Kansas. We provide cooperative services and insurance to our members. Kansas cooperatives are engaged in every aspect of agribusiness plus many other business ventures. Many of them need economical, dependable rail service offered on a fair and equitable basis.

One of their, and our, major concerns is the basic unfairness of the hold harmless language contained in Railroad Lease Agreements.

An accident that occurred in Russell, Kansas, on November 23, 1983 is a prime case in point. This involved Agco, Inc. of Russell, Kansas, Union Pacific Railroad Company, and Randall Miller, an employee of Agco, Inc.

The U.P. was switching cars at the cooperative when an accident occurred resulting in Mr. Miller having his lower leg crushed resulting in the loss of a foot.

The case was tried in U.S. District Court and on August 27, 1986, Mr. Miller was awarded \$1,678,700. Negligence was determined by the jury as follows: Union Pacific Railroad Company - 47%; Randall J. Miller - 20%; and Agco, Inc. - 33%. U.P.'s portion of this award was \$788,989 as of August 27, 1986.

The Union Pacific Railroad Company appealed this verdict in the U.S. Court of Appeals Tenth Circuit on April 5, 1990. The Court denied the appeal on May 29, 1990.

The original judgment against the railroad entered on August 27, 1986 had now grown to \$1,113,432.71 when interest was added to the original award. After appeals failed, the Union Pacific Railroad Company then came to Agco, Inc. and demanded that they pay 50% of the railroad's judgment and interest for the railroad's negligence. Why should Agco, Inc. have to pay 50% of the judgment for the railroad's negligence? The railroad's negligence was determined by a district court jury and upheld by the U.S. Court of Appeals?

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We feel the hold harmless language in these leases should be against public policy. An individual or company should be willing to hold someone else harmless for their wrongful acts, but there is something inherently unfair about being forced to sign a contract that holds you liable for someone else's negligence.

Enclosures

No

Audit No. OMA-5610

No

# LEASE

Date. THIS AGREEMENT, made and entered into this 12th day of March, 1981.

Parties. by and between UNION PACIFIC RAILROAD COMPANY  
a corporation of the State of Utah (hereinafter called "Lessor"), party  
of the first part, and AGCO, INC., a corporation of the State of  
Kansas, having a place of business at Russell, Russell County,  
Kansas 67665  
(hereinafter called "Lessee"), party of the second part, WITNESSETH:

Lease. Section 1. The Lessor, for and in consideration of the covenants and payments hereinafter mentioned to be performed  
and made by the Lessee, hereby agrees to lease and let and does hereby lease and let unto the Lessee for a term begin-  
ning on the 1st day of December, 1978, and extending to and including the  
30th day of November, 1983, unless sooner terminated as herein provided,

Location. the portion of the premises of the Lessor  
at Russell  
Russell County, Kansas, shown outlined by yellow lines  
on the plat, or described in the description, or both, hereto attached and hereby made a part hereof; RESERVING,  
however, to the Lessor the right to place and maintain at prominent places on the leased premises signs advertising  
Union Pacific Railroad.

Improvements. It is agreed that no improvements placed upon the leased premises by the Lessee shall become a part of the realty.

Rental. Section 2. The Lessee agrees to pay to the Lessor for the use of said premises rental at the rate of  
THREE THOUSAND ONE HUNDRED EIGHT NINE Dollars (\$ 3,189.00) per  
annum, payable annually in advance. Acceptance of said rental in advance by the  
Lessor shall not act as a waiver of its right to terminate this lease as hereinafter provided.

Taxes. The Lessee further agrees to pay, before the same shall become delinquent, all taxes levied during the life of this  
lease upon the leased premises and upon any buildings and improvements thereon, or to reimburse the Lessor for sums  
paid by the Lessor for such taxes, except taxes levied upon the leased premises as a component part of the railroad  
property of the Lessor in the state as a whole.

Assessments. If, during the life of this lease, any street or other improvement, whether consisting of new construction, main-  
tenance, repairs, renewals, or reconstruction, shall be made, the whole or any portion of the cost of which is assessed  
against or is fairly assignable to the leased premises, the Lessee agrees to pay in addition to the other payments herein  
provided for —  
(a) ten and one-half percent (10 1/2%) per annum on the amount so assessed against or  
assignable to the said premises when expenditures by the Lessor for such improvements are properly chargeable  
to capital account under the accounting rules of the Interstate Commerce Commission current at the time;  
(b) the entire amount so assessed against or assignable to the said premises when expenditures for such improve-  
ments are not properly chargeable to capital account under said accounting rules.

Use of Leased Premises. Section 3. The Lessee covenants that the leased premises shall not be used for any other purpose than for  
storage and handling of grain, warehouse and tank storage  
facilities for unloading, storing and distributing petroleum  
products, (wholesale purposes only) and liquid  
fertilizer, including anhydrous ammonia and agrees that if  
the Lessee abandons the leased premises, the Lessor may enter upon and take possession of the same, and that a non-  
user for the purpose mentioned continuing for thirty days shall be sufficient and conclusive evidence of such abandonment.

Abandonment. the Lessee abandons the leased premises, the Lessor may enter upon and take possession of the same, and that a non-  
user for the purpose mentioned continuing for thirty days shall be sufficient and conclusive evidence of such abandonment.

Lessee Not to Sublet or Assign. Section 4. The Lessee agrees not to let or sublet the leased premises, in whole or in part, or to assign this lease  
without the consent in writing of the Lessor, and it is agreed that any transfer or assignment of this lease, whether  
voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option  
of the Lessor, shall terminate this lease.

Use for Unlawful Purposes Prohibited. Indemnity. Section 5. It is especially covenanted and agreed that the use of the leased premises or any part thereof for an  
unlawful or immoral purposes whatsoever is expressly prohibited; that the Lessee shall hold harmless the Lessor and  
the leased premises from any and all liens, fines, damages, penalties, forfeitures or judgments in any manner accruing or  
reason of the use or occupation of said premises by the Lessee; and that the Lessee shall at all times protect the Lessor  
and the leased premises from all injury, damage or loss by reason of the occupation of the leased premises by the Lessee  
or from any cause whatsoever growing out of said Lessee's use thereof.

Lease, Section 5:

"It is especially covenanted and agreed that the use of the leased premises or any part thereof for any unlawful or immoral purposes whatsoever is expressly prohibited; that the Lessee shall hold harmless the Lessor and the leased premises from any and all liens, fines, damages, penalties, forfeitures, or judgments in any manner accruing by reason of the use or occupation of said premises by the Lessee; and that the Lessee shall at all times protect the Lessor and the leased premises from all injury, damages, or loss by reason of the occupation of the leased premises by the Lessee from any cause whatsoever growing out of said Lessee's use thereof."

Industry Tract Contract, Section 9, Paragraph 2:

"The Industry also agrees to indemnify and hold harmless the Railroad Company, its officers, agents and employees, for loss, damage, or injury from any act or omission of the Industry, its employees or agents, to the person or property of the parties hereto and their employees and agents, and to the person or property of any other person or corporation, while on or about the Track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of the parties hereto (or of any two or more of them if there be more than two), it shall be borne equally by the parties at fault, except as provided in Section 8 hereof."

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

RANDALL J. MILLER,

Plaintiff,

v.

UNION PACIFIC RAILROAD  
COMPANY,

Defendant.

CIVIL ACTION

NO. 84-2174-S

VERDICT

We, the jury, duly empanelled and sworn, upon our oaths, present the following answers to the questions submitted by the court.

1. . Do you find any of the following entities to be at fault: Union Pacific Railroad Company, Randall Jay Miller, Agco, Inc.?

YES  NO

NOTE: If you answered Question No. 1 "YES", proceed to Question No. 2. If you answered Question No. 1 "NO", you have completed your deliberations and judgment will be rendered in favor of the defendant.

2. Considering all of the fault at one hundred percent (100%), what percentage of the total fault is attributable to each of the following entities?

UNION PACIFIC RAILROAD CO. (0% to 100%)	<u>47</u> %
RANDALL J. MILLER (0% to 100%)	<u>20</u> %
AGCO, INC. (0% to 100%)	<u>33</u> %

---

100%

3. Without considering the percentage of fault found in Question No. 2, what total amount of damages do you find was sustained by the plaintiff, Randall J. Miller?

\$ 1,678,700.<sup>00</sup>

August 27, 1986  
DATE

A. E. Wadell  
FOREPERSON

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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RANDALL JAY MILLER,

Plaintiff - Appellee/Cross-Appellant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant - Appellant/Cross-Appellee.

)  
)  
)  
) Nos. 87-1005  
) 87-1012  
)  
)  
)  
)

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ORDER

Filed May 29, 1990

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Before HOLLOWAY, Chief Judge, MCKAY, LOGAN, SEYMOUR, MOORE, ANDERSON,  
TACHA, BALDOCK, BRORBY and EBEL, Circuit Judges.

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This matter comes on for consideration of appellant's petition for rehearing with suggestion for rehearing en banc, filed in the captioned cases.

Upon consideration of the petition for rehearing, the petition is denied by the panel to whom the case was argued and submitted.

In accordance with Rule 35(b) of the Federal Rules of Appellate Procedure, the suggestion for rehearing en banc was transmitted to all the judges of the court in regular active service. No member of the hearing panel and no judge in regular active service on the court having requested

at the Court be polled on rehearing en banc, Rule 35, Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

Entered for the Court

ROBERT L. HOECKER, Clerk

By



Patrick Fisher  
Chief Deputy Clerk

AMOUNT DUE AS OF 8/27/91

Refer to Tab 9 for actual jury verdict and judgment form.

Refer to Tab 12 for Union Pacific's settlement after appeal denied.

<u>Date</u>		<u>Judgement Amount</u>
8/27/86		\$788,989.00
8/27/87	Interest for one year at 6.18% compounded annually:	48,759.52
8/27/88	Interest for one year at 6.18% compounded annually:	51,772.86
8/27/89	Interest for one year at 6.18% compounded annually:	54,972.42
8/27/90	Interest for one year at 6.18% compounded annually:	<u>58,369.71</u>
	Subtotal as of 8/27/90:	\$1,002,863.52
	Court Costs as of 8/27/90:	<u>9,348.03</u>
	Subtotal:	\$1,012,211.55
8/21/91	Amount of interest at 10% contract rate (under 10% contractual rate for indemnification claim after settlement, not at 6.18% post-judgment interest rate claim), for past year since payment by Union Pacific:	<u>\$ 101,221.16</u>
	TOTAL AMOUNT:	\$1,113,432.71
	50% of \$1,113,432.71 =	\$ 556,716.36
	Interest per day at 10% interest rate (\$101,221.16 x 50% ÷ 365 days) =	\$ 138.66



TESTIMONY OF JAROLD BOETTCHER  
PRESIDENT, BOETTCHER ENTERPRISES, INC., BELOIT, KANSAS  
BEFORE THE HOUSE TRANSPORTATION COMMITTEE  
GARY HAYZLETT, CHAIRPERSON

FEBRUARY 18, 1998

IN FAVOR OF HB2715, RAILROAD LEASING ACT

Thank you, Mr. Chairman, for the opportunity to present my testimony in favor of HB2715, Railroad Leasing Act.

My name is Jarold Boettcher. I am President of Boettcher Enterprises, Inc., with headquarters in Beloit, Kansas. We are a family and employee owned business serving agriculture in Northcentral Kansas and Southern Nebraska. We have 35 retail fertilizer plants located in twelve counties in Kansas and two in Nebraska, serving over 4000 farmer customers.

Ten of these locations are currently served by rail. Eleven of these locations used to have rail service. The balance of fourteen are located on off-rail sites. We have lease agreements in place with the Union Pacific, the Santa Fe (now B.N.), the Burlington Northern, and the MidStates Port Authority in sixteen locations. Several involve multiple leases. Most lease agreements date back 20 or 30 years. No new lease for a new location has been signed for over ten years.

The Railroad Leasing Act will significantly impact relationships with the railroads and bring about much needed reform. The fundamental problem is that the leases are one sided. All the power for change rests with the railroads. The lessees have no rights, have no protection against unreasonable seizure and cancellation, are exposed to unilateral changes in the leases to suit the interests of the railroads, and have significant economic exposure to rising lease rates.

Years ago, the railroads were anxious to have anyone build structures on their property, in the hopes that freight would be generated. Lease rates were low. Restrictions were few. Terms were flexible. Fixed (unmovable) facilities were put in place with expectations that current lease terms would continue, that service would be provided, and that freight would be generated, both inbound and outbound.

Times change. The railroads first discovered the development potential of their real estate in the 1960's and 1970's, at or about the same time that their fortunes as

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railroads began to falter with increased competition from the trucking industry. Real estate subsidiaries were formed. Development proceeded. The railroads, for the first time began to look at their leased property as real assets, rather than as sites for freight generation. Along the way, concrete and buildings were put in place. The lessees generally took the current situation for granted.

With the bust in real estate values in the mid 1980's, there was some re-consideration of the non-rail operations but another trend emerged - concern over the environment and identification of responsible parties. The railroads moved aggressively to minimize their exposure to any past, current, or future environmental problems by inserting broad, hold-harmless agreements in virtually all leases.

Specifics:

- 1) Leases are for one year, cancelable on 30 day notice by either party.
- 2) There is unlimited exposure on the upside to lease rates.
- 3) Hold harmless clauses make the lessee responsible not only for his actions but also those of the lessor.
- 4) Eviction is possible. It happened to us at Courtland, Kansas.
- 5) It is possible for the railroads to unilaterally make material changes in the leases, and then present them to the lessee who must sign or move.
- 6) The presence of fixed facilities makes the negotiating position of the lessee weak or ineffective.
- 7) The railroads have refused to negotiate any and all terms of the leases. At a recent meeting, the respective positions of the lessees and the railroads were discussed. We were told by railroad representatives that they would negotiate. Negotiation has occurred twice in my dealings with four different railroads over the past 15 years where our moving was a real option. The one-sided nature of the leases makes us dependent upon the generosity of the railroads to even listen to us, let alone to consider making any changes. I don't think that is realistic. Common sense tells us the railroads have no reason to voluntarily give up their monopoly position on the leases.
- 8) The railroads are non-communicative and arbitrary when dealing with any lessee. Requests for information are ignored or dismissed out of hand. Without the monopoly position, competition would force them to become more customer-responsive. Since a monopoly is present, protection is needed.

We have two examples which illustrate the problems generated by the existing lease relationships.

For many years, we held a lease from the U.P., at Republic, Kansas. The rail line was abandoned in the mid-1980's. The U.P. sold the property to a third party who made a demand of us to "pay or move". However, the railroad had billed us, twice, for the lease, after they had sold the property. I believe this action is equivalent to fraudulent conveyance of property - i.e., representing that you own something when you don't. Our county attorney thought this was fraud. I contacted the U.P. They hastily arranged a meeting whereby we purchased our formerly leased property for what we considered to be a reasonable price. I have no idea what settlement the U.P. made with the third party. This situation illustrates the ability of the railroad to totally ignore the circumstances of the lessee and any improvements he might have and act solely in their interest - because of the clauses in the lease.

In 1995, one of our leases at Courtland, Kansas, was canceled. The alleged reason for cancellation was that the Santa Fe needed the land for a track expansion for a unit train load-out. We were given 30 days to tear down our structure, a dry fertilizer storage building which had been on this site for nearly 30 years. The terms of the lease provide that if we failed to remove our building, ownership reverts to the railroad, or alternatively, the railroad can hire a contractor, tear down the building, and send us the bill. We were forced to purchase land and rebuild our facility at an out of pocket cost in excess of \$70,000. Our former leased property exists today as a flat concrete slab. No track has been laid on the site. The entire transaction was a waste.

Railroads have minimum lease rates which sometimes lead to large numbers. We have two locations where we lease a small piece of ground which have existing buildings on them. Using the railroads minimum lease rates and applying them to an equivalent acre base yields a lease rate in excess of \$5000 per year per acre. This is a very high price to pay for ground that would otherwise lay empty in rural Kansas. There is unlimited upside exposure to even higher numbers in the future.

The railroads have said they would sit down and negotiate some of these issues. They tell us that this bill is not needed. The historical record says they have refused to negotiate in the past. Common sense tells us that they will not do so in the future, other than telling us they will. In a few situations where whatever structure we had in place on a lease was movable, the railroads have been remarkably responsive and flexible. If we truly had the option of moving and indicated we would do so, we have been successful in re-negotiating leases. This dichotomy in behavior by the railroads indicates they are very much aware of their preferred position if their lessee has permanent fixtures in place which would be impossible to move.

**THE RAILROAD LEASING ACT WOULD:**

- 1) Provide protection against unreasonable contract provisions.
- 2) Provide a mechanism where by the Kansas Corporation Commission could become involved to resolve questions of lease value.
- 3) Provide first-right-of-refusal clauses in the event of sale of property to prevent the situation that we experienced at first hand.
- 4) Provides for disputes to be resolved in the local County Court and defines any such action as one concerning real property.
- 5) Provides for the County Court to determine just compensation for improvements to real property.

Current railroad leases are a historical accident. They arose out of circumstances and conditions not present today. Absent the existence of permanent structures, no person exercising sound business judgment would sign a new lease today and entertain the notion of placing a permanent structure on a piece of ground with a one-year term, with a 30 day cancellation clause, with broad hold-harmless clauses, with no provision for compensation for improvements. Yet those circumstances exist today. The railroads tell us we signed the leases, these are commercial contracts, and that we should trust them to have good will and to treat us as customers. Reasonable judgment tells us no change will occur unless it is forced.

Please give HB 2715 your serious consideration. Thank you.

**FARMERS COOPERATIVE ASSOCIATION**  
**Partners in Progress**  
**P.O. Box 868**  
**Talmage, Kansas 67482**

Mr. Chairman and members of the committee, I am Dean Sparks appearing today on behalf of the Farmers Cooperative Association of Talmage, Kansas. I appreciate the opportunity to appear today in support of H.B. 2715.

I am the General Manager of the Farmers Cooperative Association which is headquartered in Talmage, Kansas. This company was founded in 1908 to serve the farming community. We have Branch locations in Abilene, Solomon, New Cambria, Salina, Bennington, Niles and Wells. We are served by the Union Pacific, Burlington Northern/ Sante Fe and Kyle Railroads. The majority of our grain assets are located on leased railroad property.

We serve approximately 1100 producers / customers with our facilities. We handle grain, fertilizer , feed , fuel , propane and other farm supplies. We are a full service Cooperative. We have 42 full time employees as well as a number of seasonal employees. We ship all of our grain out by truck to area terminals. We receive most of our farm supplies by truck.

We are very concerned about the lease rate structure the railroads are using. The property in Talmage, Kansas is leased from the Burlington Northern/ Sante Fe Railway Company. We have a 700,000 bushels concrete elevator located on a 6 acre tract of land. Our annual lease rate has gone from \$2,574.00 in 1996 to \$ 4,990.00 in 1997 and will be \$7,100 effective July 1, 1998 . That is a 176% increase in two years. It also equates to a lease rate of \$1183.00 per acre per year. Our options are to pay the increase or vacate the property.

We have two locations in Abilene located on Burlington Northern / Sante Fe Railroad leased property. One site will see a 50% increase in 1998 and the other a 23% increase in 1998.

Fair Market values have not risen in the areas we are located in the past two years. The railroads contend they are adjusting rates on a fair market basis. The rate we will be paying annually in reality is close to the total value of the land. The Railroad will not acknowledge our complaints nor will the Catellus Management Corporation which manages their leased properties.

This is happening throughout our industry. We are asking for your help in an effort to establish an appraisal process that will establish a fair lease rate for railroad property. We support House Bill 2715 and ask this committee to support it also.

Thank you for the opportunity to appear today and I would be happy to answer any questions.

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## RAILROAD LEASES

**Talmage;** ATSF ;Feed Mill & Warehouse ; 6 acres  
Old Office / Grain Elevator / Behlens  
Bolted Steel Tanks  
Dry Fertilizer Plant  
Concrete Elevator & NH3 Plant  
Total Rent ; 1996 \$ 2,574.00  
1997 \$ 4,990.00  
1998 \$ 7,100.00 = \$ 4,526.00 increase or 176%  
\$ 1,183.00 / acre / year

**Solomon;** Union Pacific ; Dry Fertilizer Plant & NH3 Plant  
Total Rent ; 1997 \$ 1,200.00

**Abilene;** Union Pacific ; Feedmill  
Total Rent ; 1996 \$ 2,900.00  
1997 \$ 3,478.00  
1998 \$ 3,582.00  
ATSF ;Old Behlen / Tank / Leg South of Feedmill  
Total Rent ; 1996 \$ 772.00  
1997 \$ 795.00  
1998 \$ 1,200.00  
ATSF ; Dry Fertilizer Plant / NH3 Plant / Steel Tanks  
Total Rent ; 1996 \$ 3,600.00  
1997 \$ 3,600.00  
1998 \$ 4,200.00

**Bennington;** Union Pacific ; North Side of Tracks  
Total Rent ; 1997 \$ 700.00  
Union Pacific ; South of Tracks  
Total Rent ; 1997 \$ 1,200

**Wells ;** ATSF  
Total Rent ; 1997 \$ 360.00

**New Cambria;** Union Pacific ;  
Total rent \$ 2,052.00

**Total Lease Payments:** 1997 \$ 16,323.00  
1998 \$ 20,894.00

**Increase:** \$ 4,571.00



# CATELLUS

*Example*

June 10, 1997

Farmers Cooperative Association  
Talmage, Kansas 67482

Dear Lessee:

RE: The Burlington Northern and Santa Fe Railway Company, successor by merger with The Atchison, Topeka and Santa Fe Railway Company, Contract No. 177932 at Talmage, Dickinson County, Kansas ; Rental Anniversary Date: July 1, 1997.

Our present agreement, as specified above, provides that said base rental shall be subject to revision to a fair market basis. We are presently reviewing rentals on our system and have found it necessary to establish the annual rental for the leased property at \$7,100.00 per year. Said base rental will also be subject to rental review at five (5) year intervals.

To make a gradual transition to the new rate, we will adjust the rent in two steps. Effective July 1, 1997 it will be \$4,990.00 per year and effective July 1, 1998 it will be \$7,100.00 per year, payable annually in advance. You will receive a statement shortly before each date.

The next bill you receive for rental will reflect the first increase of \$4,990.00. Effective July 1, 1999, subsequent bills will reflect fluctuation that has occurred in the U.S. Labor Department's Consumer Price Index (CPI) during the most recent twelve (12) month period for which index figures have been released preceding the month in which rental is due.

Your continued occupancy of the premises beyond the date rental is due will confirm that you elect to continue on the site under the revised rental program. We suggest you file this notice with your copy of the above agreement and appreciate your cooperation in the matter.

If there are any questions, please contact me at (972) 719-6111. Catellus Management Corporation is acting as agent for Burlington Northern Santa Fe Corporation.

Sincerely,

  
Kathy Harlan, CPM®  
Area Property Manager

KAH/mb

*1996 = \$2574.00*

# Walker Products Company, Inc.

414 South 6th  
Lincoln, Kansas 67455

Mr. Chairman and members of the committee, My name is Craig Walker, President of Walker Products Co., Inc. I appreciate this opportunity to appear before you today in support of H.B. 2715.

Walker Products is a family corporation that was founded in 1954 by my father and his two brothers as a grain elevator. We have six full time employees serving 200 farmers. Some of our services are handling grain, seed, fertilizer, chemical application and some merchandise. Walker Products operated solely from this location until 1986 when we purchased another elevator in town to use for extra storage in years of excess production. This facility originally resided on Santa Fe Railroad leased property but is now leased from the Central Kansas Railroad (CKR).

Since November of 1996 our primary problem with the CKR realty company has been skyrocketing lease rates. Since 1994 yearly lease rates have increased from \$1895.00 to the present day rate of \$6,174.00. The following list shows the lease rates for each of these years.

<u>YEAR</u>	<u>LEASE PERIOD</u>	<u>LEASE RATE</u>	<u>% INCREASE</u>
1994	11/1/93 - 10/31/94	\$1,895.00	
1995	11/1/94 - 10/31/95	\$1,940.00	2.4%
1996	11/1/95 - 10/31/96	\$1,998.00	3.0%
1997	11/1/96 - 10/31/97	\$5,250.00	262.8%
1998	11/1/97 - 10/31/98	\$6,174.00	17.6%

The 1997 year lease increased by 263 percent over the 1996 lease rate. In 1998 the percentage increase for the two year period from 1996 to 1998 was 309%.

The CKR has been very difficult to negotiate with. Originally the 1997 proposed rate was \$5,994.00 or 300 percent higher than the 1996 rate. We were only able to negotiate this down to the final 263 percent rate increase. Although we experienced what could questionably be called a success by negotiating a lower rate for 1997, in the 1998 rate increase to \$6,174.00 we lost what little we had gained in negotiation and more. That's \$6,174.00 to lease ground for one year that should be valued according to the local real estate market at a maximum \$950.00 to own the 1.27 acres in question.

When we started to try to negotiate for purchase of the property in November of 1996 the price was in excess of \$20,000. CKR's price as of October 1997 is \$17,500. Again for land that has a local value of \$950.00.

#### Property & Lease Description:

- ♦ The property in question is not prime developable property. The property lies in a flood plain. The buildings and bins constructed in 1911 and the 1950's are on top of 3 foot tall foundations to keep out of the flood water. It has been flooded numerous times 2 to 3 feet deep over all the property and up to just below floor level of the bins and office.
- ♦ The area of land in this lease constitutes 1.27 acres. At \$6,174.00 = \$4861/acre lease rate

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- ◆ The highest value of the property as determined by the two people who appraise and sell real estate in the Lincoln area is as farm land at a value of \$500-\$750 per acre. In their opinion to sell and use it for new business or residential construction would be extremely undesirable due to flooding.
- ◆ The facility on this property is no longer served by the railroad. When Walker Products requested CKR in 1995-96 to repair the rail spur serving this facility, since it had become unusable, they refused citing that it would not be economically desirable for them. Whereupon we requested to not pay the lease rate for this track. In July of 1996 they submitted a form letter to us for our signature to be released from the track lease.
- ◆ Lease contract contains a 30 day eviction notice. At any time they can evict us from the premises without compensation for the improvements (buildings and bins).
- ◆ Lease contract contains a hold harmless clause that states that Walker Products will be liable for all costs and legal fees associated with the use of the premises "whether such claim arises in whole or in part from the negligence or alleged negligence of the Licensor (CKR)".

In negotiating with CKR to lease or purchase this property 2 representatives that I have dealt with have stated that if we could not come to terms and instead chose to abandon said property that they would force us to remove all the improvements under terms of the contract and that this would be economically undesirable for Walker Products to do. We are at the unreasonable mercy of the railroad to purchase or lease land at prices that are beyond comprehension or face forced removal of the office and buildings at costs far in excess of any gain that Walker Products receives through the operation of this facility.

I believe that we need your help to ensure that our local Kansas communities and businesses are not forced to compete or even survive under such an oppressive business environment where rural land and properties are being treated as urban gold mines. We support House Bill 2715 and ask that this committee help us by looking favorably upon this legislation. Thank you for the opportunity to appear before you today. I would be happy to answer any of your questions at this time or in the future.



**SCOTT COOPERATIVE ASSOCIATION**

P. O. Box 350  
SCOTT CITY, KANSAS 67871  
Phone: (316) 872-5823  
Fax: (316) 872-5417

**Presentation To Transportation Committee**  
(Regarding House Bill #2715)  
By Junior Strecker

Mr. Chairman and Members of the Transportation Committee:

My name is Junior Strecker, General Manager of the Scott Cooperative Association in Scott City, Kansas. We serve six locations totaling seven elevators on railroad lease property. Scott Coop is comprised of over 1270 stockholders with the majority residing in Scott and Wichita counties.

In 1993, we purchased a 460,000 bushel elevator in Grigston, Kansas, from Bunge Corporation. At that time, rail service was provided by the Santa Fe Railroad and the total lease cost was \$600.00 per year. The railroad was then purchased by the Central Kansas Railway and in 1994 the lease was \$1500.00. In 1995 the same lease increased to \$2800.00. The trend continued in 1996 as the lease cost climbed to \$4100.00. I attempted to negotiate with the CKRY and was informed by their employee that "if you don't like the lease, move your damn elevator". Those were exactly his words, "if you don't like the lease, move your damn elevator." Not given any option, we paid the lease only to receive bills for 1997 totaling \$5,200.00. At this time our board of directors said "enough is enough" and instructed our attorney to attempt to negotiate. The CKRY would only agree to reduce the lease by \$200.00 leaving a new balance of \$5000.00.

The Scott Coop directors instructed our attorney to continue negotiations with the CKRY until October 15, 1997, when we received "Notice of Lease Termination" instructing us to vacate the premises and restore the site to its original condition. As you all know, to comply with this directive is impossible. So, once again, we paid against our better judgment. A copy of the Notice of Lease Termination is attached to my presentation.

As I mentioned earlier, this elevator is located in Grigston, Kansas, where there are a total of three houses. One house is a small trailer house; one is a house with goats and chickens all around, and the third house is one we acquired when we purchased the elevator. The area is basically growing in weeds, except where we mow. Real estate in that immediate area is selling for \$550.00 to \$600.00 per acre, and we lease approximately one acre from the CKRY.

Adding to our frustrations, on July 22, 1997, I ordered 88 cars for that location and informed them we would like to load these cars over a two-month period to create storage space for the fall harvest. During that two-month span, we received one spot of eight cars in early September..... Not even ten percent of the cars requested!!

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**Members of the committee, these comments are the reason I ask you to support House Bill #2715. I assure you, there are many, many more horror stories just like ours in the country today.**

**Thank you very much for your concern!!**

**OmniTRAX, Inc.**

252 Clayton Street, 4th Floor  
Denver, Colorado 80206  
Telephone (303) 393-0033  
Fax (303) 393-0041



October 15, 1997

**NOTICE OF LEASE TERMINATION**

**Via 1<sup>ST</sup> Class &  
U.S. Certified Mail-RRR**

Scott County Cooperative  
C/o Keen Brantley, Esq.  
P.O. Box 605  
325 Main Street  
Scott City, KS 67871

RE: Leased Premises Located in the City of Grigston and the County of Scott, State of Kansas, and Further Identified as CKR REALTY, L.L.C. Lease Audit Number 95817.

**NOTICE IS HEREBY GIVEN** that, pursuant to the lease dated May 4, 1949, as subsequently amended, between Scott County Cooperative, as Lessee, and CKR Realty, a Colorado Limited Liability Corporation, as Lessor, as provided under the Basic Lease Terms, under which you hold possession of the premises described in the Lease, and further described on Drawing No. 13204, dated February 25, 1949, attached hereto, you are hereby given 30 days' notice that Lessor does hereby terminate said lease effective November 30, 1997.


**YOU ARE FURTHER NOTIFIED** that, pursuant to Paragraph 16 of said Lease, your Landlord, CKR Realty, L.L.C., requires that you remove all Lessee-owned alterations and improvements of whatever nature and restore the leased premises, and that all persons holding or claiming interest or possession under Lessee's authority or pursuant to Lessee's tenancy must vacate the premises and, if you fail to deliver up the premises on or before November 30, 1997, the undersigned will institute legal proceedings against you to recover possession of the premises, and to recover **TREBLE RENTS AND DAMAGES** for the malicious, unlawful detention of the premises, along with attorneys' fees and costs.

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Scott County Cooperative  
C/o Keen Brantley, Esq.  
P.O. Box 605  
325 Main Street  
Scott City, KS 67871

**YOU ARE FURTHER NOTIFIED** that nothing contained in this notice shall be construed as a waiver of any preceding breach by Lessee of any provision or obligation of said Lease and Lessor's acceptance of any rental amount which is or was a tender of any rental payments for any period after the termination provided in this extension of the Notice and that CKR Realty, L.L.C. will refund payments for any period beyond termination of the tenancy. To avoid any confusion or delay with regard to the possible refund of rental payments, it is suggested that you pay only that amount of rent accrued through the expiration date of November 30, 1997, which is \$2,946.24.

**CKR REALTY, L.L.C.**

By:   
Clark A. Robertson, Vice President-Real Estate  
Authorized Agent

CKR Realty, L.L.C.  
252 Clayton Street, 4<sup>th</sup> Floor  
Denver, CO 80206  
(303) 393-0033

# EXHIBIT 'A'

ATTACHED TO LEASE FROM

## THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

WESTERN DIVISION

GREAT BEND DISTRICT

TO

### GANO GRAIN CORPORATION

AT

### GRIGSTON, SCOTT COUNTY, KANSAS

Scale 1"=100'

DODGE CITY, KANSAS

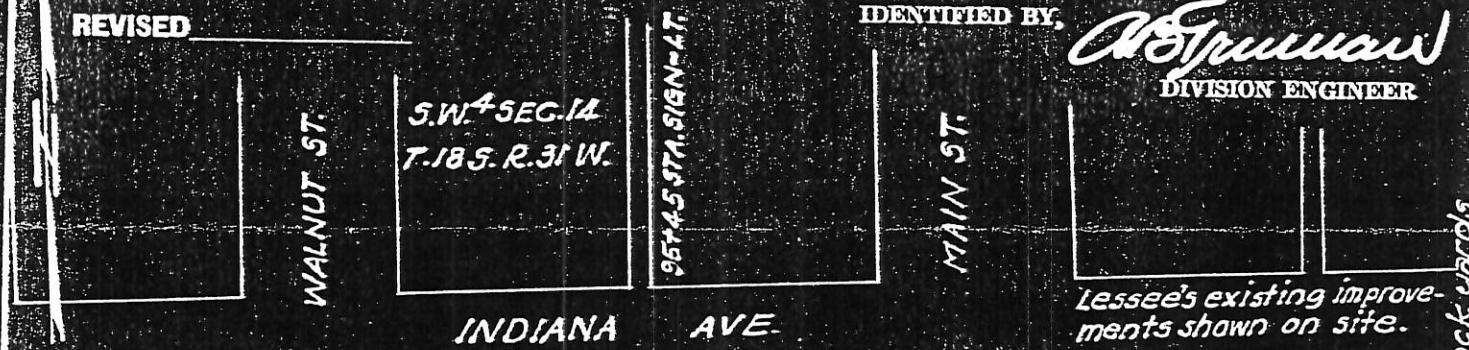
D.E.O. No. 13204

DATED Feb. 25, 1949

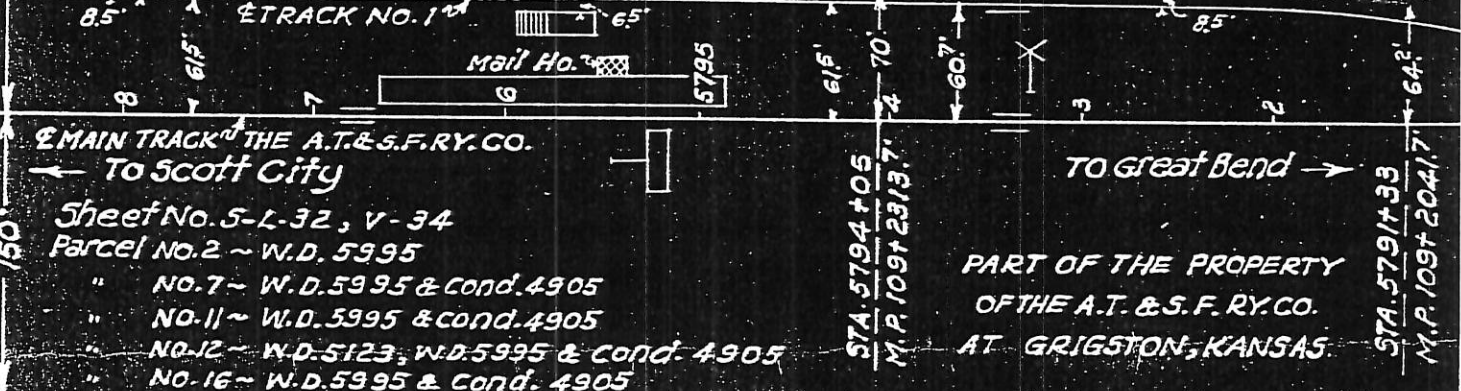
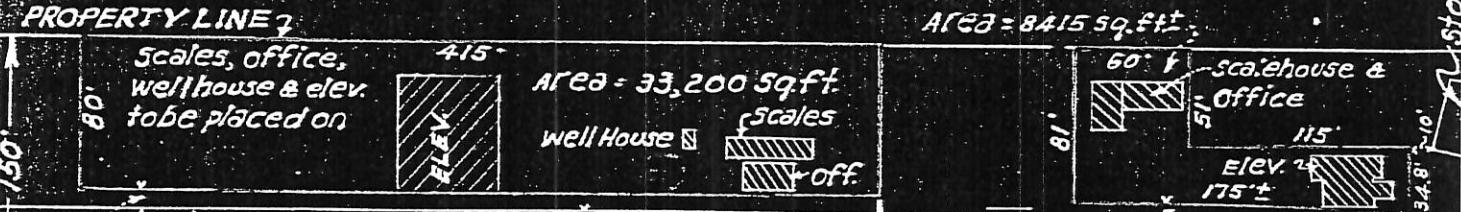
REVISED

IDENTIFIED BY,

*W. J. Spurr*  
DIVISION ENGINEER



Lessee's existing improvements shown on site.



- Sheet No. 5-L-32, V-34  
Parcel No. 2 ~ W.D. 5995
- NO. 7 ~ W.D. 5995 & COND. 4905
  - NO. 11 ~ W.D. 5995 & COND. 4905
  - NO. 12 ~ W.D. 5123, W.D. 5995 & COND. 4905
  - NO. 16 ~ W.D. 5995 & COND. 4905
  - NO. 17 ~ W.D. 5310, W.D. 5995 & COND. 4905
  - NO. 18 ~ W.D. 5633, W.D. 5995 & COND. 4905
  - NO. 25 ~ W.D. 5995 & COND. 4905
  - NO. 29 ~ W.D. 5995 & COND. 4905
  - NO. 30 ~ W.D. 5122, W.D. 5995 & COND. 4905

PART OF THE PROPERTY OF THE A.T. & S.F. RY. CO. AT GRIGSTON, KANSAS.

PROPERTY LINE 2

NOTE: Two sites as shown above in red to be used for elevators, offices, scales, scalehouse and wellhouse.

25377-B

95817

**STATEMENT OF THE  
KANSAS SEED INDUSTRY ASSOCIATION  
TO THE HOUSE TRANSPORTATION COMMITTEE  
REP. GARY HAYZLETT, CHAIR**

**RE: HOUSE BILL 2715**

**FEBRUARY 18, 1998**

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Member Services of Kansas Seed Industry Association (KSIA). Our Association represents approximately 200 member firms involved in the production, distribution and marketing of agricultural seed in Kansas. KSIA is in support of H.B. 2715, the Railroad Leasing Act.

While most of our seed company members' facilities are located on private property, there are a few who have facilities sited on railroad leased property. The experience of one of these members points to the need for this legislation. This member is located in central Kansas and has a 30 foot wide building, of which 4 inches is on railroad owned property. For this area - a total of 10 square feet, his lease price is currently \$1000. The lease price has increased by an average of 6% per year over the past six years. This is at a time when there has been no appreciation in the land or facility value; if anything, there is a decrease in value, because the railroad removed the loading track five years ago and can no longer serve this facility.

The leaseholder offered to purchase the property from the railroad for \$5000, but was told that the railroad was not willing to consider an offer to purchase the property. He was also told

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that if he did not pay the new lease price immediately, the railroad would have his building torn down and send him the bill for tearing it down.

We believe this is unconscionable and warrants action of the Legislature to provide a reasonable avenue for leaseholders to address such problems.

Thank you for your consideration.

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# KANSAS AGRICULTURAL ALLIANCE

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**STATEMENT OF THE  
KANSAS AGRICULTURAL ALLIANCE  
BEFORE THE  
HOUSE TRANSPORTATION COMMITTEE  
GARY HAYZLETT, CHAIRMAN  
REGARDING H.B. 2715**

The Kansas Agricultural Alliance (KAA) is a coalition of 23 agribusiness organizations that spans the entire spectrum of Kansas agriculture, including crop, livestock, and horticultural production, suppliers, allied industries and professions.

The Alliance appreciates the opportunity to appear today in support of H.B. 2715.

As you well know, agriculture is vital to the strength of the Kansas economy. As previous conferees have explained the ability to keep agricultural production in the state of Kansas competitive requires that producers have an economically viable way of moving their product to market. The current trend of consolidating and merging railroads, and abandonment of short lines has created a situation in which country elevators are cut off from rail lines, leaving producers with few, if any, local options for transporting grain. Additionally, the increase in lease rates for grain facilities located on railroad property has proven a burden to these businesses in a time of reduction or elimination of service. The effect of this combination of factors is forcing grain producers to move their grain to market by less efficient and more expensive methods.


The members of the Kansas Agricultural Alliance hope you will consider H.B. 2715 favorably and we thank you for your attention to this issue.



P.O. Box 1266 • Manhattan, KS 66505-1266 • (785) 587-0007 • FAX (785) 587-0003

**DATE:** February 19, 1998

**TO:** Kansas House of Representatives, Committee on Transportation

**FROM:** Ray E. Crumbaker, President  
Kansas Association of Wheat Growers 

**RE:** Railroad Leasing Act - H.B. 2715

My name is Ray Crumbaker. I currently serve as the President of the Kansas Association of Wheat Growers (KAWG). My family and I farm near Brewster, Kansas in the northwestern part of Kansas. I am also president of a local, privately owned grain elevator. Since 1952, the KAWG has worked to enhance the profitability of our wheat producer-members. I am here today, in representation of our membership, supporting the Railroad Leasing Act (H.B. 2715) because we believe this legislation *will affect* the bottom line of our wheat-producer members.

As the federal government relaxes direct support of producers, we must in turn hold down our costs and increase the value of our crops to stay in business. The direct cost we are addressing today is the cost of transportation.

Transportation costs show up as the "basis," or difference between cash bids in rural areas and bids at market centers, or consumption areas. For example, the basis between my local elevator and Kansas City for wheat is currently 53.3 cents/bushel. To put real numbers to this, by the end of the 1998 wheat crop year, we will pay over \$50,000 to transport our wheat to a demand market. Transportation costs are real. They affect our bottom line.

As we approach each legislative session, we carefully choose issues which we believe the KAWG should focus on. This year, our Legislative Affairs Committee chose to focus our support on the Railroad Leasing Act for at least the following reasons:

- We believe grain elevators serve the rural public's best interests when they are allowed to enter reasonable leases with those who hold the rights to the property their facilities occupy. That is to say, we believe the Railroad Leasing Act would provide public benefits.

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- Our producer members directly pay for unreasonable lease rates and terms. Lack of service and an overall increase in the cost of storage and transportation results when railroads are allowed to enforce leases which tend to “gouge” grain elevators.
- While we are sensitive to the private property issues surrounding the Railroad Leasing Act, we believe the legislation addresses the concerns our KAWG membership would have. The legislation provides for fair compensation and property ownership which is in the public good. Rural Kansas will benefit from continued grain storage and transportation service.

Producers and grain elevators enjoy a good working relationship which is vital to the success of rural Kansas. The Railroad Leasing Act provides for the continuation of this relationship. We ask this committee to favorably recommend H.B. 2715 to the full House of Representatives. Thank you for your consideration and attention on this important issue.

Testimony on HB2715  
House Transportation Committee  
February 18, 1998  
Prepared by Joe Lieber  
Kansas Cooperative Council

Mr. Chairman and members of the committee, for the record, I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of nearly 200 cooperative businesses, which have a combined membership of 200,000 Kansans. Approximately 130 of our members handle grain for their member/owners.

Most of our cooperative elevators also belong to the Kansas Grain and Feed Association and this is why the passage of HB2715 is a joint effort.

Because cooperatives are owned by their producer/owners, high lease rates have a direct impact on them. This money would come out of any savings that the cooperative pays back to its members.

You have just heard a few examples of how railroad leases and their rates have affected local cooperatives. From the stack of written testimony and some possible telephone calls from your constituents, you know there are many more problems.

As you consider HB2715, I would ask you to remember the following words: portable, barrel and fairness.

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The reason we are here today asking for the legislature to help is that many elevators are paying exorbitant lease rates to the railroads. The railroads have been able to do this because our elevators are not portable, we can't move them. So you can see the railroads have us over a barrel.

The elevators are not asking for a free ride, they are just asking for fairness. We are asking for a procedure that will determine a fair price that we will pay. We are also asking for a fair contract that does not make us libel for the railroad's actions.

I can assure you that the railroads will tell you that they are willing to set down and discuss rates with the elevators. As you have heard from previous testimony, this is not always the case.

The passage of HB2715 will insure that they do set down and negotiate a fair rate.

The Kansas Cooperative Council supports the passage of HB2715 and we ask for your support.

Thank you, Mr. Chairman and members of the committee.