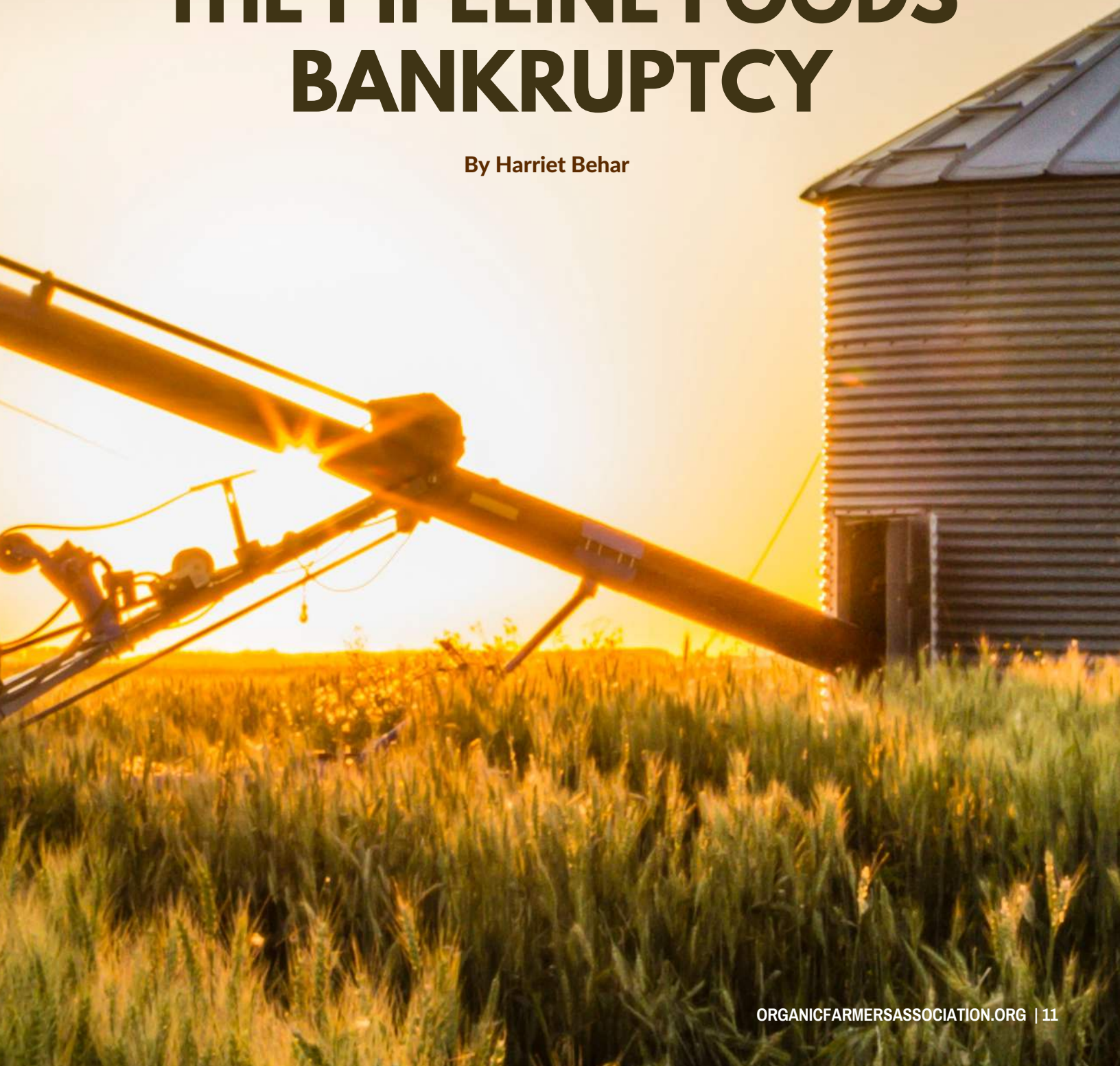


THE AFTERMATH OF THE PIPELINE FOODS BANKRUPTCY

By Harriet Behar



FARMERS NOT PAID AFTER BANKRUPTCY

On July 8, 2021, Pipeline Foods, a grain buyer, processor, and marketer of organic and non-GMO grains declared bankruptcy. At the time of the bankruptcy, farmers were affected in two ways. 1) They had delivered grain but not been paid, and now would not be paid by Pipeline Foods or 2) They had outstanding contracts to deliver grain to a company they now knew was bankrupt and unable to pay them if the grain was delivered.

Farmers who were waiting on payment had to deal with the state protections for farmers based on the states where their farmers were located or the state they delivered grain into. Many states have grain dealer licensing programs that administer funds or insurance programs to cover obligations from grain dealer defaults. Each state has its own program, so the application and loss coverage details vary by state. OFA covered most states affected in the summer of 2021.

FARMERS HOLDING CONTRACTS TO DELIVER GRAIN

Farmers who were held in contracts to deliver grain were, for the most part, able to negotiate out of those contracts and protect their grain. From July 30, 2021, through September 10, 2021, the Bankruptcy Court entered Orders Approving Stipulation Establishing Procedures for Grain Sellers to Sell Grain and Mitigate Damages to farmers under contract to deliver grain to Pipeline Foods facilities in Minnesota, Iowa, and Michigan. Where farmers under contract to deliver grain to a Pipeline Foods location in Iowa, Minnesota or Michigan were able to submit a form to opt out of any deliveries of Undelivered Grain that are otherwise due for delivery after July 8, 2021.



In a company press release, Anthony Sepich, chief executive officer of Pipeline Foods, LLC, said, “[t]he impact of the Coronavirus (COVID-19) pandemic coupled with the Company’s secured debt obligations have caused significant financial distress on our business. As a result, we believe that a bankruptcy filing and a potential sale of the business, portions of the business, and certain of its assets is the best path forward to unlock value for the benefit of all creditors. I would like to thank all of our employees, growers, customers, and business partners for their dedication and continued support through these unprecedented times.”

2022 CLAWBACK LETTERS SENT TO FARMERS

Approximately one year after the bankruptcy, in the summer of 2022, farmers who had received payment for delivered grain within 90 days of the bankruptcy 2021 date, started to receive “clawback” letters, demanding they send a legal firm, a court-appointed liquidating trustee of the Pipeline bankruptcy estate, all money they had been paid for grain delivered during this 90-day time frame to the law firm within 21 days. These one-page letters were very short and to the point, listing the amount to be returned or else the firm would commence litigation. Different approaches were taken by a variety of farmers to this clawback letter after they verified this surprising and disturbing letter was not a scam.

Organic Farmers Association, sent out communications to help farmers understand this legal activity of “clawback,” and what avenues they could use to lessen or avoid losing their hard-earned payments for their grain.

Since grain farmers may sell a full year, or even multiple years' harvests in one sale, this type of clawback is especially onerous for grain producers and could easily result in the loss of their land and livelihood, and even push the farm operation into bankruptcy, in order to raise the funds to meet the monetary obligations demanded in the clawback letter. Understanding the bankruptcy rules and typical activities taken by the large creditors to recoup as much money as possible from the bankrupt business, can be informative in helping farmers lessen their exposure to loss of income, caused by their buyer's bankruptcy.

Unfortunately, a farmer cannot protect themselves from future clawback within their contracts, nor can they specify that if the grain buyer enters bankruptcy, the contract would be null and void. There is a limitation on how many months can go by after the bankruptcy date, when a clawback letter can be sent to obtain funds from those who deliver grain to the bankrupt entity. There are circumstances that dictate the limitation, but it's approximately two years. For the Pipeline Foods bankruptcy, that limitation has been reached, so if you or someone you know has not yet received a clawback letter, or a secondary communication about a clawback letter not currently in active litigation, you can now rest easier and collect your daily mail without worry.

HOW DID FARMERS RESPOND TO THE 2022 CLAWBACK?

SMALLER PAYMENTS:

The old adage, "Don't put all of your eggs in one basket" applies to this situation. Speaking to farmers who were caught in the clawback time frame, it appears that smaller dollar amounts were not as aggressively pursued as larger ones. Since the liquidation law firm would need to file a lawsuit, which costs money, the smaller amounts of grain deliveries would not return enough dollars to justify the firm's time in court. Some farmers split the grain payments with the owners of their rented land, and this lessened the value of each of the payments. This might have been more attractive to pursue for the law firm if it had been one larger payment. Splitting up payments, such as among family members, could be a strategy to lessen the farm's exposure to clawback litigation.

ARGUED PAYMENTS WERE WITHIN THE ORDINARY COURSE OF BUSINESS:

Dairy farmers who were caught up in the Dean Foods bankruptcy in 2020 used language within the bankruptcy law to declare that their sales were "in the ordinary course of their business relationship" with the bankrupt company. In addition, they stated that the payment received was not "preferential payment treatment." These two phrases are important, and at least one farmer wrote a letter back to the Pipeline Foods litigating law firm, using these phrases within a letter that also stated they would not be returning any money they had received. Almost a year has gone by since they sent the letter, and there has not been any further communication.



ATTORNEY SETTLEMENT FOR LESSER AMOUNT:

Another farmer hired an attorney well versed in bankruptcy law, and able to practice in Delaware, where the bankruptcy was filed. While the attorney fees were a little over \$10,000, the many months of negotiations between the farmer's attorney and the bankruptcy firm cut the amount demanded in clawback letter to almost one-third of what was originally listed. This farmer needed to take out a loan to pay this lesser amount, and so incurred interest payments as well, but the total amount lost to the bankruptcy court was much less than the original amount demanded in the clawback.

IGNORED THE LETTER/ SHOW UP IN COURT:

Ignoring the letter was another strategy adopted by farmers. One farmer represented himself after being brought into the bankruptcy court after ignoring the letter, but his case was dismissed by the judge and he did not need to make any payments.

ARGUED CASH PAYMENTS:

One farmer requested that Pipeline Foods pay him before delivery after a discussion with a banker. The farmer was told by his banker after he had received the Pipeline check and was sent a clawback letter, that wiring money between banks is seen as cash, and that cash payments are not allowed to be clawed back in bankruptcy proceedings. There is a cost to wire funds, but this could be another method to protect yourself.

STRATEGIES TO PROTECT AGAINST BUYER BANKRUPTCY

Working with longer term established businesses, who have significant equity in their infrastructure rather than debt, is a protective strategy. Selling to numerous legacy businesses, rather than one, also lessens your exposure to losing money if one of them goes into bankruptcy.

Knowing the rules and protections of both the state where the grain was produced, as well as where the grain was delivered, can also prepare you to act quickly to lessen losses. Some states have indemnity funds to protect farmers who are not paid for grain delivered and some states protect farmers with bonds that grain dealers hold with the state when they are licensed to buy and sell grain. While some state indemnity funds will cover up to 90% of unpaid grain payments unfortunately, many state bonds required are short of the protections needed to cover all debts, especially for the larger businesses. Organic grain producers, as well as nonorganic grain producers, located in or delivering grain in Iowa dried up the Iowa Indemnity Fund in fall 2022 after another Iowa-based organic grain company, Global Processing Inc. declared bankruptcy. The Iowa legislature had to approve a call for all Iowa grain farmers to replenish the funds, an act that hasn't been necessary since the fund was created in 1986.

WERE THERE WARNING SIGNS AT PIPELINE FOODS?

While Pipeline Foods appeared to be a dynamic and growing business, their rapid growth was a warning sign. To grow the business in their early years, they offered the highest price in the market to attract growers and their grains to be their suppliers. This also caused them to incur debt. In order to fund rapid growth, an international market presence in organic and non-GMO grains, as well as acquisitions of storage and processing facilities, they took on a higher debt load. The bankruptcy itself was caused by some nervousness of the main investors in Pipeline Foods, and their concern that the business was not performing to expectations.



One victory in this story relates to the State of Minnesota's quick response to increase protections for farmers for future buyer bankruptcies. Before 2023, Minnesota used bonds purchased by elevators to compensate growers who went unpaid for delivered or stored grain. The required bond amounts proved to be too low to cover all the claims in the Pipeline Foods bankruptcy, which caused farmers to suffer significant losses. In May 2023, the state of Minnesota created a \$10 million grain indemnity fund to compensate growers if an elevator or grain buyer declares bankruptcy when first purchasers fail to pay them for delivered grain or redeliver the grain. This will better protect farmers located in Minnesota or selling grain into Minnesota, and provides some enhanced features over the Iowa indemnity fund. Other states may better protect farmers by creating indemnity funds rather than relying on bonds. 🌱



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IT HAPPENED AGAIN

In October 2022, another organic grain company, Global Processing Inc. of Kanawha, Iowa organic soybean business filed for bankruptcy, claiming it owed at least 100 creditors \$10 million.

The Iowa Department of Agriculture (IDALS) suspended the warehouse and grain dealer licenses of Global Processing Inc. in early October 2022 because the company failed to "have sufficient funds to cover producer grain checks" and failed to file the required monthly financial statements.

The company had organic food-grade soybean processing facilities in Iowa, Nebraska, Illinois, and Minnesota.

