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Farmers Nat. Bank v. Green River Dairy, LLC Amicus Brief Dckt. 40101

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In the Supreme Court of the State of Idaho

FARMERS NATIONAL BANK,

Plaintiff/Appellant,

vs.

GREEN RIVER DAIRY, LLC;
HERCULANO J. ALVES and FRANCES M.
ALVES, husband and wife, dba GREEN
RIVER DAIRY; HULL FARMS, INC.;
ERNEST DANIEL CARTER, dba CARTER
HAY AND LIVESTOCK; LEWIS BECKER;
JACK McCALL; TIM THORNTON,

Defendants/Respondents.

LEWIS BECKER,

Counterclaimant,

vs.

FARMERS NATIONAL BANK,

Counterdefendant.

LEWIS BECKER,

Cross-Claimant,

vs.

HERCULANO J. ALVES and FRANCES M.
ALVES, dba GREEN RIVER DAIRY,

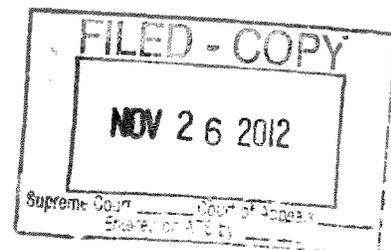
Cross-Defendants.

EARNEST DANIEL CARTER, d/b/a
CARTER HAY AND LIVESTOCK,

Counterclaimant,

Supreme Court No. 40101-2012

**AMICUS CURIAE'S BRIEF OF THE
IDAHO DAIRYMEN'S ASSOCIATION,
INC.**



vs.

FARMERS NATIONAL BANK,

Counterdefendant.

EARNEST DANIEL CARTER, d/b/a
CARTER HAY AND LIVESTOCK,

Cross-Claimant,

vs.

HERCULANO ALVES, FRANCES ALVES,
and GREEN RIVER DAIRY, LLC,

Cross-Defendants.

JACK McCALL,

Counterclaimant,

vs.

FARMERS NATIONAL BANK,

Counterdefendant.

JACK McCALL,

Cross-Claimant,

vs.

HERCULANO ALVES and GREEN RIVER
DAIRY, LLC,

Cross-Defendants.

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho in and for the County of Twin Falls

Honorable G. Richard Bevan presiding

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The Idaho Dairymen's Association, Inc., an Idaho nonprofit corporation ("IDA") is participating in this appeal pursuant to the Court's order granting IDA's participation as amicus curiae and hereby submits this Amicus Curiae Brief.

I. STATEMENT OF THE CASE

This is an action brought by Plaintiff/Appellant Farmers National Bank ("Farmers") for a declaratory judgment that pursuant to certain promissory notes, security agreements and UCC Financing Statements, it has a first priority lien on livestock owned by Defendants Green River Dairy, LLC and Herculano J. Alves and Frances M. Alves, husband and wife, dba Green River Dairy, and the proceeds from the sale of the livestock. The Respondents in this case (Respondents collectively shall hereinafter be referred to as "Sellers") all provided cattle feed to the livestock owned by Green River Dairy. Farmers had an existing security interest in the Green River Dairy livestock owned by Green River Dairy. The Sellers maintained that their subsequent agricultural lien created by I.C. § 45-1802 was superior in priority to the lien of Farmers in livestock. Summary judgment was granted in favor of the Sellers by the District Court in Twin Falls, County Idaho. The District Court determined that under I.C. § 45-1802, a commodity dealers' agricultural lien attaches to the livestock who ingest the agricultural product, and such lien has priority and is senior to Farmers' prior perfected security interest.

II. FACTS

IDA adopts and incorporates the Statement of Facts set forth in the Plaintiff/Appellant Farmers' brief.

III. STATEMENT OF THE ISSUES

Whether the District Court correctly interpreted I.C. § 45-1802 to mean that a person who sells an agricultural product has an immediate lien with priority over all other security interests in the livestock who ingest the agricultural product.

IV. ARGUMENT

As explained below, the District Court erroneously held that the lien created by I.C. § 45-1802 extends to livestock that consume feed delivered by an agricultural commodity producer or dealer. The District Court's interpretation improperly infers the creation of a lien on livestock where none exists, contradicts the plain meaning of the statute, conflicts with the remainder of the agricultural commodity lien law in Title 45, Chapter 18, and undermines the legislature's objective of providing greater certainty and predictability to agricultural financing and commerce through its 2001 revision of Article 9 of the Uniform Commercial Code ("UCC").

The District Court's interpretation of the scope of the lien created by I.C. § 45-1802 does not establish the relative priorities of liens at issue for two reasons. First, I.C. § 45-1802 does not address the priority of the lien it creates. The priority described in I.C. § 45-1805 applies only to liens on an "agricultural product or proceeds of the sale of the agricultural product," it does not provide for priority over security interests or liens in livestock, such as those possessed by Farmers in this case. Second, UCC Article 9 adopted in Idaho applies to all agricultural liens, including agricultural product liens created by I.C. § 45-1802, providing that such liens must be perfected to have priority over other security interests and liens. In this case, the Farmers' previously perfected security interests are senior to the subsequent liens of the Sellers.

A. The District Court Erred In Its' Interpretation of I.C. § 45-1802 Because the Lien Created by I.C. § 45-1802 Does Not Extend to Livestock.

1. Standards of Review and Statutory Interpretation.

“The interpretation of a statute is a question of law over which this Court exercises free review.” Gonzalez v. Thacker, 148 Idaho 879, 881, 231 P.3d 524, 526 (Idaho 2009). This Court owes little or no deference to the District Court’s interpretation of I.C. § 45-1802.

Reviewing courts interpret statutes in order to give effect to the legislature’s intent and purpose. Sweitzer v. Dean, 118 Idaho 568, 571, 798 P.2d 27, 30 (Idaho 1990). To do this, courts “interpret statutes according to the plain, express meaning of a provision in question, and we will resort to judicial construction only if the provision is ambiguous, incomplete, absurd, or arguably in conflict with other laws.” Sandpoint Indep. Highway Dist. v. Bd. of County Comm'rs, 138 Idaho 887, 890, 71 P.3d 1034, 1037 (Idaho 2003). “[T]he rational and obvious meaning of a statute is always preferred to any curious, narrow, hidden sense.” Sandpoint Indep. Highway Dist. v. Bd. of County Comm'rs, *supra*, at 138 Idaho 891, 731 P.3d 1038. In determining its ordinary meaning "effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant." State v. Yzaguirre, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (Idaho 2007).

2. I.C. § 42-1802 Creates a Lien Only on Agricultural Products.

The issue of statutory interpretation presented by this case involves the Idaho Legislature’s 1989 amendment of the 1983 Act which created the agricultural product lien. As originally enacted, I.C. § 45-1802 provided: “An agricultural commodity producer or an

agricultural commodity dealer who sells an agricultural product has a lien on the agricultural product or the proceeds of the sale of the agricultural product until payment is made in full.” *1983 Idaho Sess. Laws*, ch. 202, § 1, at 549. The 1983 act defined the “agricultural products” to which the lien would attach as various types of crops and seeds and “any other agricultural commodity.” I.C. § 45-1801(1). No animals or livestock were included in the definition.

The 1989 amendment modified I.C. § 45-1802 by adding the following sentence, which is at issue in this case: “***The lien created in this chapter*** may attach regardless of whether the purchaser uses the agricultural product purchased to increase the value of his livestock or whether he uses the agricultural product purchased to maintain the value, health or status of his livestock without actually increasing the value of his agricultural product.” *1989 Idaho Sess. Laws*, ch. 299, § 1, at 746 (emphasis added). The District Court concluded that this sentence extends the agricultural product lien created by the 1983 Act in the first sentence of I.C. § 45-1802 based on its erroneous interpretation that the word “uses” is the “triggering verb” in that sentence. The court reasoned: “[O]nce the agricultural product is ‘used’ to increase or maintain the value of livestock, the agricultural product is no longer in a state of livestock feed - it has been ingested and is not distinguishable from the livestock that ingested it. The second sentence ***indicates*** that the agricultural lien attaches even when this triggering event occurs.” (emphasis added.) (Augmentation R. p.10).

The District Court’s finding an “indication” of a lien on livestock in the 1989 amendment to I.C. § 45-1802 is not a proper basis to construe the statute to create such a lien. Statutory amendment by implication is disfavored and will not be inferred absent clear legislative intent.

Idaho v. Harrington, 133 Idaho 563, 567, 990 P. 2d 144, 148 (Idaho Ct. App. 1999) (citing Sunshine Mining Company v. Allendale Mutual Ins. Co., 107 Idaho 25, 27, 684 P.2d 1002, 1004 (Idaho 1984). The rule that statutes creating lien rights are to be liberally construed to accomplish their purposes “does not permit the court to create a lien where none exists or was intended by the legislature.” L & W Supply Corp. v. Chartrand Family Trust, 136 Idaho 738, 742-743, 40 P.3d 96, 100-101 (Idaho 2003).

The District Court’s reading of the statute is contrary to its plain meaning. The subject of the sentence added to I.C. § 45-1802 by the 1989 amendment is “[t]he lien created in this chapter,” specifically the “lien on the agricultural product” created by the 1983 Act in the preceding sentence of I.C. § 45-1802. Nothing in the sentence added by the 1989 amendment has the effect of modifying that subject. The remainder of the sentence added by the 1989 amendment begins with the verb “attaches” to explain that *the lien on the agricultural product* attaches to that product regardless of whether the purchaser uses it to maintain or increase the value of his livestock. This phrase does not modify the subject of the sentence, and therefore cannot be construed to modify the lien created by the 1983 Act. The verb “uses” does not modify the subject of the sentence. The only significance of the verb “uses” is that it explains how the purchaser may use the agricultural product, without affecting the attachment of the lien created by the first sentence of I.C. § 45-1802 to the agricultural product.

A very thorough examination of I.C. § 45-1802 was made by Judge Pappas of the U.S. Bankruptcy Court for the District of Idaho in In Re: Goedhart & Goedhart, 03.3 IBCR 167 (Bankr. D. Idaho 2003). The issue in Goedhart was identical to the issue before this Court. That

is, several commodity dealers had supplied animal feed to a dairy that subsequently filed for bankruptcy. The animal feed had been fed to the dairy cattle. The dairy cattle were subject to a bank's prior perfected security interest. The commodity dealers in Goedhart maintained that the lien created by I.C. § 45-1802 extended to the livestock who ingested the agricultural products, and they therefore had priority over the bank. Goedhart, 03.3 IBCR at 169.

As part of his analysis in finding the commodity dealers' lien did not continue in the livestock, Judge Pappas referenced the fact that in no fewer than three separate instances, the Idaho Legislature indicated its intent that a commodity lien attaches only to the agricultural product sold and to the proceeds from a subsequent sale of the product, but not to any other types of property. 03.3 IBCR at 171.

Judge Pappas also conducted a thorough review and analysis of the Legislative History of I.C. § 45-1802, noting the legislative history of I.C. § 45-1802 from the 1989 session offers no definitive insight into the Legislature's intent because the commentators offer inconsistent views on the amendment's goal.¹ "The 1989 amendment to Idaho Code § 45-1802 does not alter the scope of the lien as created in the first sentence of that statute" 03.3 IBCR at 167 at 171.

Judge Pappas also observed that during its 1989 session, the Idaho Legislature:

[A]mended the definition of 'agricultural product' [in I.C. § 45-1801(1)] by specifying that a commodity lien would continue despite the fact that a raw product was processed in some fashion for use as feed. [*Citation omitted.*] The Legislature was obviously capable of extending the reach of the lien where the agricultural product originally sold was incorporated or 'processed in some

¹ "The relevant legislative history offers little interpretive guidance, and instead shows there was considerable disagreement and confusion about the import of the 1989 addition to the Idaho Code § 45-1802 at the time the second sentence was added." Goedhart, 03.3 IBCR at 172.

fashion' into feed. It is therefore fair to infer that had the Legislature also intended the lien to extend to the animals that consume an agricultural product, or to the products of those animals, it could have amended the statutes to provide such.

03.3 IBCR at 171.

The Legislature's passage of I.C. § 45-304 during that same 1989 session, creating a seed lien which extends to "the crop or crops produced from the seed," emphasizes the Bankruptcy Court's point. That statute provides that: "Any person who furnishes seed to a producer to be sown or planted on lands owned, rented or otherwise lawfully occupied by the producer, shall have a lien in the crop or crops produced from the seed for the purchase price of the seed." This statute exemplifies the simple language necessary to extend a lien beyond an agricultural product furnished by the producer. Various types of seed are among the "agricultural products" to which an agricultural product lien attaches under I.C. §§ 45-1802 and 45-1803. If the seed lien created by I.C. § 45-1802 extended beyond the seed itself, it would have been unnecessary for the legislature to enact I.C. § 45-304. The Legislature understood that the lien created by I.C. § 45-1802 does not extend beyond either the product itself or "proceeds" from the sale of the product.

3. **The Court's Interpretation of I.C. § 45-1802 that the Commodity Lien Continues in the Livestock Who Ingest the Feed Is Not Supported By the Entirety of Chapter 18, Title 45.**

When confronted with the issue of interpreting whether the lien created by I.C. § 45-1802 also extends to the livestock who ingest the feed, the District Court narrowly focused its attention on the second sentence of I.C. § 45-1802 (Augmentation R. p.10). It should instead have examined the law as a whole, and not the second sentence in isolation. Doing so would result in

an interpretation that the statutory lien created by I.C. § 45-1802 does not extend to livestock who ingest feed.

The U.S. Supreme Court has cautioned against interpreting a statute based upon a single sentence. “[I]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.” U.S. Nat. Bank of Oregon v. Indep. Ins. Agents of Am., Inc., 508 U.S. 439, 455, 113 S. Ct. 2173, 2182, 124 L. Ed. 2d 402 (1993) (citations omitted). This Court has likewise cautioned against a narrowly focused statutory interpretation, stating: “Provisions should not be read in isolation, but should be interpreted in the context of the entire document.” State v. Schulz, 151 Idaho 863, 866, 264 P.3d 970, 973 (Idaho 2011). “Statutes that are *in pari materia* are to be construed together to the end that legislative intent will be effected.” Union Pac.R. Co. v. Board of Tax Appeals, 103 Idaho 808, 811 654 P.2d 901, 904 (1982) (citing Magnuson v. Idaho State Tax Commission, 97 Idaho 917, 556 P.2d 1197 (Idaho 1976)).

The District Court based its decision exclusively on an isolated reading of the second sentence of I.C. § 45-1802, and failed to consider or address the remainder of the provisions that comprise the Agricultural Dealer Commodity Lien statutes (*i.e.* I.C. §§ 45-1801 through 45-1810). Had it done so, the result would be that the commodity dealers’ lien does not extend to the livestock who ingest the feed. The Agricultural Dealer Commodity Lien Statutes, when read together, do not provide for a lien on livestock who ingest feed. We begin our analysis by considering the definition of an *agricultural product*:

‘Agricultural product’ means wheat, corn, oats, barley, rye, lentils, soybeans, grain sorghum, dry beans and peas, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed or other small seed, or any other agricultural commodity, including any of the foregoing, whether cleaned, processed, treated, reconditioned or whether mixed, rolled or combined in any fashion or by any means to create a product used as animal, poultry or fish feed.

I.C. § 45-1801(1).

Noticeably absent from the definition of an agricultural product is any reference to “livestock.”

Next, I.C. § 45-1803 provides, in part, that the “lien created by I.C. § 45-1802, attaches to the agricultural product and to the proceeds of the subsequent sale of the agricultural product on the date the agricultural product is physically delivered to the purchaser. . . .” I.C. § 45-1803. There is no reference to the lien attaching to the livestock who ingest the feed; the lien only attaches to the “agricultural product” and to the “proceeds” of a subsequent sale of the agricultural product. Nowhere in Title 45, Chapter 18, is “proceeds” defined. Nowhere in Title 45, Chapter 18, does it make any reference to a security interest continuing in livestock that ingest feed.

I.C. § 45-1804 discusses the required *information* for the lien. I.C. § 45-1804(2) spells out the information that is required for notice of a commodity dealers’ lien form. There is no reference to “livestock.” Specifically, I.C. § 45-1804(2)(d) provides that the notice of lien must contain “a description of the agricultural product charged with the lien, including crop year. . . .” but does not require any identification of livestock. I.C. § 45-1804(2)(d)

I.C. § 45-1805, governing the preference of the lien created by I.C. § 45-1802, provides in part that the lien is “preferred to a lien or security interest in favor of a creditor of the purchaser, regardless of whether the creditor’s lien or security interest attaches to the agricultural product or proceeds of the sale of the product before or after the date on which the lien created by I.C. § 45-1802, attaches.” I.C. § 45-1805. Nowhere in the discussion of I.C. § 45-1805 is there any reference to the priority of the lien extending to the livestock who ingest or use the agricultural products. In fact, the plain language of I.C. § 45-1805 does not even imply the lien continues in livestock. The lien extends to the proceeds of the sale of the agricultural product. Livestock could not logically be included in the “proceeds” of a sale. When an animal ingests an agricultural product—no sale has occurred; an animal has only ingested a commodity.

Interpreting I.C. § 45-1802 to extend an agricultural product lien to livestock wreaks havoc upon the statutory scheme of Idaho’s agricultural product lien law. Under the District Court’s interpretation, a lien on livestock consuming feed may exist under I.C. § 45-1802, but it is not defined by I.C. § 45-1801, does not attach under I.C. § 45-1803, need not be described in a lien continuation notice under I.C. § 45-1804, and has no priority under I.C. § 45-1805. The District Court’s interpretation of I.C. § 45-1802 simply cannot be read *in pari materia* with the remainder of the agricultural product lien law in Title 45, Chapter 18.

4. The District Court’s Interpretation of I.C. § 45-1802 Undermines the Certainty Required for Financing Dairy Operations.

The District Court’s interpretation of I.C. § 45-1802 results in a creditor, who has given value and has a prior perfected security interest in livestock, without any prior notice, becoming

junior to the lien of the commodity dealer at the point the feed is ingested by the livestock. Such an interpretation is commercially unreasonable and goes against the purpose of the Uniform Commercial Code.

The drafters of the Uniform Commercial Code “designed it to bring commercial law into the contemporary world of business, with the general purpose of creating a precise guide for commercial transactions under which people may predict with confidence the results of their business dealings.” 79 C.J.S. *Secured Transactions* § 2 (1995). “[T]he fundamental purpose of Article 9 is to give notice to third persons and simplify the filing process.” 9 Ronald A. Anderson & Lary Lawrence, *Anderson on the Uniform Commercial Code* § 401:5, at 483 (3d ed. rev.1999). A fundamental purpose of Article 9 is “to create commercial certainty and predictability by allowing [creditors] to rely on the specific perfection and priority rules that govern collateral within the scope of Article 9.” Boatmen's Nat. Bank of St. Louis v. Sears, Roebuck & Co., 106 F.3d 227, 230-31 (8th Cir. 1997).

The interpretation of I.C. § 45-1802 by the District Court means that without any prior notice to an existing secured party, their security interest in dairy cattle immediately becomes junior to the commodity dealer when the cattle ingests the feed. The unknown potential for such future subordination creates significant uncertainty for lenders in evaluating dairy operators’ credit applications, in assessing the strength of their loan portfolios, and when enforcing their security interests. Such a reading means lenders who want to securitize a loan on

livestock, will become junior to the commodity dealer without notice or warning.² That result has a chilling effect on commercial transactions and specifically affects the ability of dairy operators to secure financing using their cattle as collateral.³

The Idaho Legislature adopted the UCC Article 9 revision in 2001, in part, to provide greater certainty and predictability in the perfection and priority of security interests and liens on agricultural products. (See I.C. § 28-9-101, comment 1 and I.C. § 28-9-101, comment 3, a, *Nonpossessory statutory agricultural liens*). The District Court's decision undermines this objective by incorrectly inferring from I.C. § 45-1802 a "ghost lien" on livestock with priority over all other prior perfected security interests. Such uncertainty has no place in contemporary commercial financing.

² A purchase money security interest does grant priority over an existing security interest in the product purchased. I.C. § 28-9-324. In the case of a purchase money security interest however, the existing secured creditor is junior to the purchase money security interest holder with regard to the asset subject to the purchase money security interest. A purchase money security interest also applies only to goods and specifically, not livestock. I.C. § 28-9-324(a). Further a purchase money security interest applies almost exclusively in the case of after acquired property clauses. See, Comment 2 to I.C. § 28-9-324. The seniority of a purchase money security interest holder is logical. If buyer purchases equipment on credit by granting a purchase money security interest, there is no purpose for an after acquired property clause to supersede the purchase money security interest in the equipment; the prior security holder has not given any value for that equipment, and, the prior security interest holder's security interest in other collateral is not affected.

³ Not only is there a chilling effect on commercial transactions, the District Court's interpretation also raises several questions, such as who has the burden of proving which cattle ingested the feed? Does the security interest continue in offspring? In the milk? What happens if the farmer feeds his livestock with feed purchased from different commodity dealers? Who has priority in the livestock in that case? See In Re Goedhart, 03.3 IBCR 167 at 172, footnote 11.

B. The District Court's Interpretation of I.C. § 45-1802 Does not Establish Priority of an Agricultural Product Lien Over Previously Perfected Security Interest.

The parties and the District Court appear to have assumed that the District Court's interpretation of the scope of the lien created by I.C. § 45-1802 would resolve the issue of the relative priorities of Farmers' liens and the Sellers' liens. This assumption is incorrect for the following reasons.

1. I.C. § 45-1805 Does Not Establish Priority Over Security Interests or Liens In Livestock.

I.C. § 45-1802 does not establish the priority of an agricultural product lien. I.C. § 45-1805 defines the priority of the lien vis-a-vis other liens and security interests that have attached to the agricultural product or proceeds from the sale of that product:

The lien created by section 45-1802, Idaho Code, is preferred to a lien or security interest in favor of a creditor of the purchaser, *regardless of whether the creditor's lien or security interest attaches to the agricultural product or proceeds of the sale of the agricultural product* before or after the date on which the lien created by section 45-1802, Idaho Code, attaches. (Emphasis added.)

I.C. § 45-1805.

I.C. § 45-1805 does not define the priority of an agricultural product lien in relation to security interests or liens that have attached to livestock, such as the ones held by Farmers in this case. As previously discussed, the 1989 amendment did not modify the statutory definition of an agricultural product in I.C. § 45-1801, and proceeds of the sale of the agricultural product cannot be construed to include livestock consuming feed.

For this simple reason, the District Court's interpretation of I.C. § 45-1802 does not establish or resolve the relative priorities of the security interests held by Farmers and the liens of the Sellers in this case.

2. An Agricultural Product Lien Must Be Perfected Pursuant to UCC Article 9 to Have Priority Over Previously Perfected Security Interests.

Farmers' lien was perfected in the Green River livestock at least two (2) years before each of the Sellers filed their commodity dealers' liens. Despite this, the District Court concluded the lien created by I.C. § 45-1802 in the feed continued in the same livestock that Farmers had their prior security interest in, and that the commodity dealers' lien was superior to Farmers UCC-1F perfected security interest in that livestock. (Augmentation R. p.10). This conclusion is incorrect; the Idaho Uniform Commercial Code applies and leads to a different conclusion.

The starting point is to examine the competing claims of lien. Farmers had a properly perfected security interest in the Green River Dairy livestock. Subsequent to Farmers' lien, the Sellers in this case filed their commodity dealers' agricultural lien with the Idaho Secretary of State for the feed delivered to Green River Dairy.

Idaho's codification of UCC Article 9 applies to agricultural liens, including agricultural product liens created by I.C. § 45-1802, providing that such liens must be perfected by filing a financing statement as in order to have priority over previously perfected security interests. Under Article 9, I.C. § 28-9-322, perfected security interests, such as the ones held by Farmers, have priority over unperfected and subsequently perfected agricultural product liens, such as the ones held by the Sellers.

Analysis of the relationship between Title 45, Chapter 18, and UCC Article 9 begins with the 2001 revision to UCC (2001 *Sess. Laws*, ch. 208, § 1, p. 704)⁴, which brought nonpossessory agricultural liens within the scope of Article 9. I.C. § 28-9-109, comment 3; I.C. § 28-9-101, comment 4.

The Sellers' lien created by I.C. § 45-1802 is properly classified as an agricultural lien pursuant to I.C. § 28-9-109(a)(5)(B)(i).⁵

The next step for this analysis is I.C. § 28-9-322(g) which provides: “A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.” I.C. § 28-9-322(g) (emphasis added). Section 12 of the Official Comment to I.C. § 28-9-322(g) further explains:

(12) *Agricultural Liens.* Statutes other than this Article may purport to grant priority to an agricultural lien as against a conflicting security interest or agricultural lien. Under subsection (g), if another statute grants priority to an agricultural lien, the agricultural lien has priority only if the same statute creates the agricultural lien and the agricultural lien is perfected. Otherwise, subsection

⁴ The background and history of the 2001 revision to Idaho's UCC Article 9 is summarized in comment 2 to I.C. § 28-9-101.

⁵ An “agricultural lien” is defined by I.C. § 28-9-102 (a)(5) as:[A]n interest, other than security interest, in farm products:(A) which secures payment or performance of an obligation for:(i) goods or services furnished in connection with a debtor's farming operation; or (ii) rent on real property leased by a debtor in connection with its farming operation; (B) which is created by statute in favor of a person that:(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or(ii) leased real property to a debtor in connection with the debtor's farming operation; and(C) whose effectiveness does not depend on the person's possession of the personal property.

(a) applies the same priority rules to an agricultural lien as to a security interest, regardless of whether the agricultural lien conflicts with another agricultural lien or with a security interest (emphasis added).

Official Comment 12 to I.C. § 28-9-322(g) (emphasis added).

The UCC makes it clear that only perfected agricultural liens have priority over conflicting security interests. Id. Perfection of agricultural liens is also discussed in I.C. § 28-9-308. Specifically, the first sentence of I.C. § 28-9-308(b) provides: “An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 28-9-310 have been satisfied.” I.C. § 28-9-308(b). The agricultural lien on the feed in this instance became effective when it attached, and that was when the feed for the livestock was delivered to Green River Dairy or when the payment for the feed became due. I.C. § 45-1803. But the requirements for perfection under the UCC did not occur.⁶

The Sellers’ lien was never perfected because no UCC-1 Financing Statement was ever filed. I.C. § 28-9-308(b) provides that, the agricultural lien, to be perfected, must satisfy all the applicable requirements of I.C. § 28-9-310. And, under I.C. § 28-9-310 (a), a financing statement must be filed to perfect all security interests and agricultural liens. “Except as otherwise provided in subsection (b) of this section and section 28-9-312 (b), a financing statement must be filed to perfect all security interests and agricultural liens.” I. C. § 28-9-

⁶ Section 2 to the Official Comment to I.C. § 28-9-308 provides in part: “This Article uses the term “attach” to describe the point at which property becomes subject to a security interest. The requisites for attachment are stated in Section 9-203. When it attaches, a security interest may be either perfected or unperfected. ‘Perfected’ means that the security interest has attached and the secured party has taken all the steps required by the Article as specified in Section 9-310 through 9-316.”

310(a) (emphasis added). Perfection of an agricultural lien is unquestionably governed by the UCC; there is nothing in all of Chapter 18, Title 45, that discusses perfection of the commodity dealers' lien. If any part of the lien created by of I.C. § 45-1802 is inconsistent with Article 9, Article 9 controls.⁷

The UCC priority rules of I.C. § 28-9-322(a) apply and the question of which lien has priority between Farmers and the Sellers, is answered by I.C. § 28-9-322. I.C. § 28-9-322(a)(1) and (2) provide:

(a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

....

I.C. § 28-9-322(a).

Assuming, *arguendo*, that the lien created by I.C. § 45-1802 extends to livestock, under these priority rules, Farmers' prior perfected security interests in Green River Dairy's livestock are prior to the Sellers' liens. Farmers' prior in time perfected security interest in the livestock wins the priority battle over the Sellers' unperfected agricultural lien in the livestock and related proceeds. *See also, Hawkland, Miller & Cohen, Hawkland UCC Series § 9-322:3 (Rev. 2001)*

⁷ "Except as provided in the following section, all acts and parts of acts inconsistent with this act are hereby repealed." I.C. § 28-10-103.

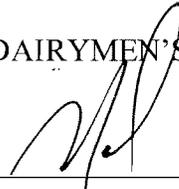
(“The basic priority rule for conflicting perfected security interests and agricultural liens in the same collateral is set forth in revised Section 9-322(a)(1): they rank according to priority in time of filing or perfection.”).

V. CONCLUSION

The commodity dealer has a lien in the agricultural product pursuant to the first sentence of I.C. § 45-1802. The District Court has misinterpreted the second sentence of I.C. § 45-1802 and failed to consider equally applicable UCC statutes. An interpretation that a commodity dealers’ lien continues in livestock who consume the fed, and the lien is superior to a prior perfected lien, has negative and serious consequences to commercial transactions. A creditor advancing credit secured by livestock has no certainty of the value of their security interest in livestock. Furthermore, a party cannot establish a valid perfected lien in livestock or proceeds therefrom without a description of the same in a proper filing as required by Title 28, Chapter 9. When Title 45, Chapter 18, is read as a whole together with Idaho’s applicable UCC provisions, a commodity lien attaches only to the agricultural product sold and to the proceeds from a subsequent sale of the product. It does not extend to the livestock that consumed the product, the proceeds from the sale thereof, or any other types of property; likewise, it does obtain super priority over existing, properly perfected security interests in the same livestock. The District Court erred in its narrow interpretation and should be reversed.

Dated this 26 day of November, 2012.

IDAHO DAIRYMEN'S ASSOCIATION, INC.



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CERTIFICATE OF SERVICE

I hereby certify that on this 24 day of November, 2012, I caused a true and correct copy of the foregoing document to be served upon the following as indicated:

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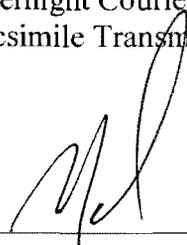
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