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Farmers Nat. Bank v. Green River Dairy, LLC Respondent's Brief 3 Dckt. 40101

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IN THE SUPREME COURT OF THE STATE OF IDAHO

FARMERS NATIONAL BANK,)
)
Plaintiff-Counterdefendant-)
Appellant)

vs.)
)

GREEN RIVER DAIRY, LLC;)
HERCULANO J. ALVES and FRANCES)
M. ALVES, husband and wife, dba GREEN)
RIVER DAIRY,)

Supreme Court Case No. 40101-2012

Defendants-CrossDefendants-)
Respondents,)

and)
)

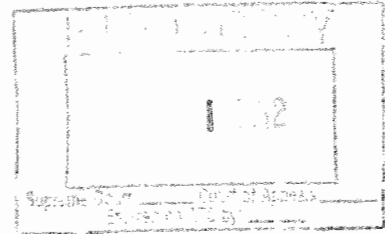
ERNEST DANIEL CARTER dba CARTER)
HAY AND LIVESTOCK; LEWIS)
BECKER; JACK MCCALL,)

Defendants-Counterclaimants)
Cross Claimants-Respondents,)

and)
)

HULL FARMS, INC; TIM THORNTON,)

Defendants – Respondent)
_____)



**RESPONDENTS' BRIEF –
RESPONDENTS ERNEST DANIEL CARTER AND JACK MCCALL**

Appeal from the District Court of the Fifth Judicial District for Twin Falls County, District Judge

G. Richard Bevan presiding.

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Respondents McCall and Carter are each entitled to costs and attorney’s fees on appeal pursuant to Idaho law, including I.A.R. 40, I.A.R. 41 and I.C. §§ 12-120, 10-1210 and 45-1809.

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III.
STATEMENT OF THE CASE

A. Nature of the Case

This case arises out of a declaratory judgment action commenced by Appellant Farmers National Bank (“Appellant”) as a creditor of Green River Dairy, LLC (“Green River”) and Herculano J. Alves and Frances M. Alves, husband and wife, dba Green River Dairy (collectively, “Alves”). Appellant also included in the action various other creditors of Green River and Alves, including Respondent Jack McCall (“McCall”) and Respondent Ernest Daniel Carter, dba Carter Hay and Livestock (“Carter,” and together with McCall for purposes of this brief, the “Respondents”).

At issue in the underlying action is whether a perfected feed lien pursuant to I.C. § 45-1801 *et seq.* is destroyed by its subsequent and inevitable consumption. By its *Memorandum Decision Re: Plaintiff’s Motion for Summary Judgment* (the “Order”), the District Court held that I.C. § 45-1802 unambiguously provides that, in such cases, the feed lien also attaches to the livestock that consume the feed. Appellant timely appeals from the *Judgment and Amended Judgment* entered on the *Order* contending the District Court’s holding was erroneous. Carter and McCall, for their part, hereby contend that the District Court applied the proper interpretation and application of I.C. § 45-1802.

B. Course of Proceedings

Respondents do not disagree with the course of proceedings as detailed by Appellant. *See Appellant’s Brief* at 2-4.

C. Statement of Facts

The material facts of this case are not in dispute and the question presented is solely one of statutory interpretation. For the Court's convenience and understanding of the pertinent issues presented, Respondents direct the Court to the *Order* which accurately and succinctly delineated the material facts for the Court's consideration. *See* Aug. R. at 1-13. Appellant made multiple loans to Green River which were guaranteed by Alves and secured by a perfected security interest in Green River's cattle (the "Cattle"). *Affidavit of Scott Tverdy* at ¶¶ 4-8; R. at 132-33. Subsequent to the perfection of Appellant's security interest in the Cattle, Respondents sold feed for the Cattle to Green River which was consumed by the Cattle. *Affidavit of Jack McCall* ("McCall Aff.") at ¶¶ 4-6, 10; *Affidavit of Earnest Daniel Carter* ("Carter Aff.") at ¶¶ 4-6, 10; R. at 514-15, 525-26. Respondents perfected liens for the unpaid balance pursuant to I.C. § 45-1804. *Id.* Green River defaulted on its obligations to Appellant and Appellant seized the Cattle and sold it at auction for a total of \$211,957.58. *McCall Aff.* at ¶ 11; R. at 515-16.

At the time of commencement of the underlying action, Green River owed approximately \$2,616,008.24 to Appellant, \$19,696.25 to McCall and \$30,612.75 to Carter, in addition to any amounts owed to any of the remaining Defendants/Respondents in this action. *McCall Aff.* at ¶ 12; *Carter Aff.* at ¶¶ 12; R. at 516, 527; *Order* at 4; Aug. R. at 4. Despite the feed being used to maintain the Cattle—without which the Cattle would not be alive to sell at auction—Appellant asserts that it should receive all of the benefit of this unpaid feed and leave Respondents and the remaining lien claimants unpaid for the benefit conveyed by the feed that was delivered to Green River.

IV.

RESTATED ISSUES PRESENTED ON APPEAL

I.C. § 45-1801 *et seq.* unambiguously extends a feed lien to livestock that consume an Agricultural Product and Appellant's proposed interpretation is unreasonable.

If I.C. § 45-1802 is held ambiguous, principles of statutory construction also lead to the result that a feed lien extends to livestock that consume an Agricultural Product.

Respondents McCall and Carter are each entitled to costs and attorney's fees on appeal pursuant to Idaho law, including I.A.R. 40, I.A.R. 41 and I.C. §§ 12-120, 10-1210 and 45-1809.

V.

ARGUMENT

A. Standard of Review

This Court exercises free review over questions of law. *Fuller v. Callister*, 150 Idaho 848, 851, 252 P.3d 1266, 1269 (2011). This Court also exercises free review over matters of statutory interpretation and application. *KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 527, 236 P.3d 1284, 1287 (2010); *Flying Elk Inv., LLC v. Cornwall*, 149 Idaho 9, 15, 232 P.3d 330, 336 (2010).

Statutory interpretation begins with the plain, usual, and ordinary meaning of the literal words of the statute, construed as a whole. *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011). Where a statute is unambiguous, its plain language controls. *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 307, 312, 109 P.3d 161, 166 (2005). Statutory provisions should not be read in isolation but instead are interpreted in the context of the entire document. *Farm Bureau Mut. Ins. Co. v. Eisenman*, ___ Idaho ___, 286 P.3d 185, 188 (2012). If a statute is ambiguous because more than one reasonable interpretation exists, this Court looks to rules of statutory construction for guidance. *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley Cnty.*, 132 Idaho 551, 557, 976 P.2d 477, 483 (1999). However, statutory language is not ambiguous merely because the parties present differing interpretations to the court. *Farm Bureau Mut. Ins. Co.*, 286 P.3d at 188. In the event that this Court engages in statutory construction, it may ascertain legislative intent from the statute's context, the public

policy in support of the statute, and the statute's legislative history. *Pioneer Irrigation Dist. v. City of Caldwell*, 2012 Ida. LEXIS 203, at *8 (Nov. 14, 2012).

B. I.C. § 45-1801 *et seq.* unambiguously extends a feed lien to livestock that consume an Agricultural Product and Appellant's proposed interpretation is unreasonable.

The sole issue on this appeal, as mentioned previously, is whether statutory feed liens are extinguished when the feed is used, as intended, by feeding it to livestock following the sale in order to maintain or increase the value of the livestock. The answer to this issue depends on the interpretation and application of I.C. § 45-1802, which provides:

An agricultural commodity producer or an agricultural commodity dealer who sells, or delivers under contract or bailment, an agricultural product has a lien on the agricultural product or the proceeds of the sale of the agricultural product as provided in section 45-1804, Idaho Code. **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.**

(Emphasis added). There is no dispute that McCall and Carter meet the requirements of the first sentence of this Section as agricultural commodity producers/dealers who sold agricultural products (hay and other feed) to Green River Dairy. The relevant inquiry is what happens when the feed is consumed, as is not only common, but expected within a relatively short time of the sale. Appellant argues that the lien is destroyed and the producer is effectively left as an unsecured creditor. However, that is contrary to the plain meaning of the second sentence.

The second sentence clearly provides that the feed lien may “attach”—defined by Black’s Law Dictionary as the “creation of a security interest in property”—regardless of whether the product is “used”—defined by Black’s Law Dictionary as the “application or employment of

something; esp. . . . for the purpose for which it is adapted.” See BLACK’S LAW DICTIONARY, 2d pocket ed., “Attachment” and “Use”, p. 50, 739. It should be understood that the “purpose for which [feed] is adapted” is to be consumed by the animal. So, according to the plain language implemented by I.C. § 45-1802, feed liens attach regardless of whether the feed is consumed. The statute goes even further to clarify that it makes no difference whether the feed consumed by the livestock—a notable choice of words by the Legislature—actually increases the value of the livestock or merely maintains the value or health of the livestock. That is, the feed supplier does not need to prove, as a threshold matter, that the feed provided any additional monetary benefit to the owner of the livestock.

Despite this plain meaning, Appellant advocates for an interpretation of I.C. § 45-1802 that would grant feed suppliers a lien in the feed supplied, but only so long as the purchaser never feeds it to his livestock. According to Appellant, the purchaser could subvert the lien right altogether by merely allowing his livestock to consume the feed, forever extinguishing any security interest of the supplier. In making this argument, Appellant provides little analysis, if any, as to what it proposes the literal meaning of the second sentence of I.C. § 45-1802 to be. Appellant makes references to what the sentence “plainly says,” yet focuses primarily on alleged analytical errors by the District Court—which are irrelevant for this Court’s free review of the statute—and provides little substantive analysis and support for the meaning it actually ascribes to the statute.

The thrust of Appellant’s argument focuses on the alleged absence of explicit terminology creating a lien in livestock, rather than on the meaning of the actual words of the

statute. Appellant contends that “[t]he sentence is a statement that certain events do not affect whether a lien attaches.” *Appellant’s Brief* at 14. Appellant proposes that the language is meant to predicate the attachment of the lien to the use to which the goods are put. *Id.* at 15. In this same vein, Appellant argues “[l]ikewise, because the second sentence of Idaho Code § 45-1802 states that the lien created attaches regardless of certain subsequent uses of the goods, it does not imply the lien attaches only when the goods are used. It simply states the lien attaches regardless.” *Id.* Appellant suggests that the sentence “states that the lien may attach regardless of what the subsequent use of the product might be.” *Id.* at 17. Accordingly, it appears that Appellant actually agrees that the plain language of the statute creates a lien in feed that attaches regardless of whether the feed is consumed. However, Appellant’s argument entirely ignores the meaning and subsequent import of that plain statutory language.

Appellant relies heavily on the analysis of Judge Pappas arguing that the sentence merely explains that the statutory agricultural commodity lien created by the first sentence shall attach to the agricultural product, and to the proceeds from the sale of that product, without regard to whether the purchaser uses the commodity for either of two different purposes, namely, to increase the value of livestock or to maintain the value of livestock.

Id. at 20, quoting *In Re Goedhart & Goedhart*, 03.3 IBCR 167, 167 (Bankr. D. Idaho 2003).

However, in interpreting a statute, a court must view the statute as a whole so that no words are superfluous or rendered a nullity. See *BHC Intermountain Hosp., Inc. v. Ada County*, 150 Idaho 93, 95, 244 P.3d 237 (2010) (finding that a statute must be viewed as a whole and “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant”); *Hecla Mining Co. v. Idaho State Tax Comm’n*, 108 Idaho 147, 151, 697 P.2d 1161,

1165 (1985) (stating that “it is incumbent upon a court to give a statute an interpretation that will not render it a nullity”); and *In re: Idaho Dept. of Water Resources Amended Final Order Creating Water District No. 170*, 148 Idaho 200, 211, 220 P.3d 318, 329 (2009) (finding that language of a particular section need not be viewed in a vacuum, but in conjunction with all other applicable sections so as to determine the legislature’s intent). Finally, statutes creating lien rights are to be liberally construed “with a view to effect their objects and promote justice.” *Baker v. Boren*, 129 Idaho 885, 895, 934 P.2d 951, 961 (Idaho Ct. App. 1997).

What Appellant proposes is an unreasonable interpretation of I.C. § 45-1802 that, on one hand, acknowledges the creation of the feed lien and its attachment despite consumption of the feed, but on the other hand renders it a nullity by destroying the lien upon its consumption. It is unclear exactly how Appellant proposes that a lien can attach and be destroyed at the same moment. Appellant’s unreasonable interpretation does not create an ambiguity in the statute. That is why the District Court rejected Appellant’s circular and legally impossible analysis. It renders the entire second sentence a complete nullity.

As noted above, Appellant incorporates the analysis of Judge Pappas in *Goedhart*. *Goedhart* is not binding on this Court. However, even as persuasive authority, *Goedhart’s* analysis erroneously focuses on the alleged absence of explicit language creating a lien in livestock and the absence of “livestock” or “milk” from the definition of “Agricultural Product.” Assuming that I.C. § 45-1802 does not explicitly create a lien in the livestock, at the very least it plainly creates a lien in the Agricultural Product. It is that lien in the Agricultural Product that Respondents perfected and in which they have priority over Appellant. It is that very lien for

which the statute plainly contemplates attachment despite consumption of the feed by livestock. It is that very lien that cannot reasonably be destroyed by its subsequent consumption—rendering worthless the entire subsequent amendment—or quite possibly the purpose behind the entire statutory framework. The statute was meant to protect the sellers of feed, which is clearly included in the definition of “Agricultural Product.” The underlying transaction was not one involving the sale of livestock or milk. Accordingly, livestock and milk do not need to be included in the definition of “Agricultural Product.”¹ What this case involves and what the statute provides is a priority security interest in feed that is sold—a security interest that attaches to the feed despite being consumed by livestock. This is the plain and actual meaning of I.C. § 45-1802 and this meaning is apparently undisputed. However, Appellant contends that, despite the plain meaning of the words, this Court should give them no legal effect.

This Court is confronted with two proposed interpretations of I.C. § 45-1801 *et seq.* The first, advocated by Appellant, acknowledges the attachment of the lien in the feed despite its subsequent consumption, but would destroy that lien upon its consumption nonetheless, rendering the second sentence of I.C. § 45-1802 a legal nullity in the process and hindering the statute’s purpose. The second interpretation, advocated by Respondents, acknowledges the attachment of the lien to the feed despite its subsequent consumption and, consistent with the remainder of that section, extends the preferred lien to the livestock that consumed the feed

¹ Appellant also questions the extent to which Respondents’, or similarly situated litigants’, lien rights would extend if allowed to attach to the livestock. The issue of whether the lien extends to milk or manure is not before this Court. The issue before the Court concerns the livestock. Milk and manure are not mentioned in the statutes, but livestock is expressly mentioned, as analyzed herein, and it is not unreasonable to extend the lien to the livestock given the absurdity of destroying the lien at the same time the statute expressly calls for its attachment despite consumption of the feed by the livestock.

without rendering any part of that section a superfluous nullity. Respondents' interpretation is the only plausible, reasonable conclusion from the plain meaning and import of the words of I.C. § 45-1802.

C. If I.C. § 45-1802 is held ambiguous, principles of statutory construction also lead to the result that a feed lien extends to livestock that consume an Agricultural Product.

In the event this Court determines that Appellant's proffered interpretation is reasonable, then an ambiguity exists in the statute, or its application would lead to a patently absurd result, and this Court should consider rules of statutory interpretation. This Court should resort to judicial construction only if the statute is ambiguous, incomplete, absurd, or arguably in conflict with other laws. *Arambarri v. Armstrong*, 152 Idaho 734, 739, 274 P.3d 1249, 1254 (2012). When engaged in statutory construction, courts have the duty to give effect to legislative intent. *State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999). Legislative intent can be ascertained not only by examining the literal words of the statute, but also its legislative history, the reasonableness of the proposed interpretations, and the policy behind the statute. *See BHC Intermountain Hosp., Inc.*, 150 Idaho at 95, 244 P.3d at 239; *State v. Yzaguirre*, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007).

1. Legislative history reflects an explicit understanding that the feed lien extends to livestock that consume the Agricultural Product.

In case there was any doubt after examining the plain meaning of I.C. § 45-1802, an examination of the legislative history behind that section, and its subsequent amendment, also provides an explicit, conclusive answer to the issue concerning the legislature's intent. The disputed second sentence was added as a result of a 1989 amendment. The amendment began as

House Bill 314 and the first substantive discussion involving the bill occurred on March 2, 1989, before the House Agricultural Affairs Committee. The committee minutes on such date, attached as Appendix A hereto, report as follows:

Rep. Newcomb said that in the past **it has been understood in the feed industry that when feed is sold to consumer, that the feed lien would attach to the animal which was being fed** - - it had to add value. This legislation says that **even if it does not add value, it is still valid**. In other words, if it just maintained the livestock rather than adding value, a lien filed on the livestock would be a valid lien.

(Emphasis added).

It is important to note that the bill's sponsor spoke to the underlying assumption in the industry that the feed lien attaches to the animal being fed. That is the assumption upon which this language was drafted and passed by the legislature. There were objections made to the language by Pat Collins, attorney for the Idaho Bankers Association, which are better understood in the context of his comments before the Senate Agricultural Affairs Committee on March 21, 1989. Those committee minutes, attached as Appendix B hereto, report as follows:

Rep. Newcomb spoke to the legislation which amends the lien chapter of the Idaho code to provide that a **lien has validity or may attach even if the feed fed to an animal does not add value to the animal but just maintains it**. Rep. Newcomb referred to a court case that had refuted this concept.

Senator Smyser pointed out the difficulty of understanding either the intent or the language contained in the bill, and suggested that clarification of the words "agricultural product" was needed on line 15 and line 17.

....

Pat Collins, attorney for the Idaho Bankers Association, informed the committee members that the drafter of the bill was faced with two problems (1) the language of the existing chapter, and (2) the court case referred to by Rep. Newcomb. **The**

court assumed that the lien on the feed continued into the cattle; in order to avoid that result the court ruled it didn't increase the value of the cattle; therefore, there is no lien in the cattle. Mr. Collins stated that he does not believe the lien continues in the cattle that eats the feed; **the language that has been added assumes that this lien does continue.** It is his opinion that the bill is responding to an ill-advised court decision and does not accomplish what he thinks the sponsor seeks to accomplish.

(Emphasis added).

Once again, it is very clear from the committee minutes that this amendment operated under the assumption that the feed lien continued to the cattle consuming the feed. Even the Idaho Bankers Association itself, through its attorney, acknowledged as much. Mr. Collins made known his disagreement with the underlying premise—as Appellant continues to advocate 23 years later—but, it nevertheless was the understanding of the legislature and the banker's lobby that the lien, as constituted, continued to the livestock. It is also made clear that this amendment was necessary to solidify the agricultural lien's status in light of a recent court decision that, while assuming the lien continued in the cattle, held that the lien did not attach because the feed did not increase the value of the cattle. That decision is not specifically identified, but it is clear that at the time this language was added to Section 45-1802, the courts, the legislature, and the banking lobby all recognized the underlying assumption that the feed lien extended to the livestock consuming the feed.

Senator Smyser's objection is also noteworthy. The minutes record that after hearing Representative Newcomb's explanation of the intent of the amendment, he took issue with the clarity of the language to accomplish the stated objectives. His observation was heeded and the bill was sent to the floor with a recommendation that it be referred for amendment. Attached as

Appendix C hereto is a record of the amendments to H.B. 314 once it left the Senate Agricultural Affairs Committee. The language of the amendment originally provided:

The lien created in this chapter may attach regardless of whether the purchaser uses the agricultural product purchased to increase the value of his agricultural product or whether he uses the agricultural product purchased to maintain the value, health or status of his agricultural product without actually increasing the value of his agricultural product.

However, the title and wording of the bill were themselves amended to replace various references to “agricultural product” with “livestock” to make it even clearer that this amendment related to the extension of the agricultural lien to livestock. Thereafter, the final version of the amendment that was passed on the floor of the Senate and subsequently by the House, as amended, provided:

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.

(Emphasis added to reflect amended language). As shown previously, there was an underlying assumption that the feed lien extended to livestock consuming the feed and the language of the bill was altered to more clearly articulate and accomplish that purpose.

The foregoing review of the legislative history of the 1989 amendment to Section 45-1802 is supported by the simple statement of purpose published by the legislature: “This legislation defines feed and lien so that **when a feed lien is filed on domestic livestock the lien would be valid even though the feed just maintained the livestock** rather than added value.” Statement of Purpose, RS 22816, H.B. 314 (emphasis added), attached hereto as Appendix D.

Appellant's interpretation ignores the underlying assumption that the lien continues to the livestock in the first place. But, the legislature made it clear that the purpose was for the lien to remain valid despite consumption. Without that underlying assumption, the amendment is rendered superfluous. If the lien does not extend to the livestock and disappears as soon as the feed is consumed, as Appellant contends, then there is absolutely no reason for the legislature to clarify that the lien attaches even though it just maintained the livestock, rather than adding value. At that point, if Appellant is correct, the feed would have been used and there would not be a lien left to enforce.

2. Reading I.C. § 45-1802 in conjunction with all other applicable sections supports extending the feed lien to livestock.

According to this Court, language of a particular section need not be viewed in a vacuum, but in conjunction with all other applicable sections so as to determine the legislature's intent. *In re: Idaho Dept. of Water Resources Amended Final Order Creating Water District No. 170*, 148 Idaho at 211, 220 P.3d at 329. Discharge of the lien created by Section 45-1802 is addressed in Section 45-1806. That Section provides that "[t]he lien created by section 45-1802, Idaho Code, is discharged when the lienholder receives full payment for the agricultural product."

A plain reading of this section harmonizes with the Respondents' interpretation outlined above that the lien attaches and continues in the livestock following consumption of the feed. However, this section is at odds with Appellant's proffered interpretation. According to Appellant, the lien is discharged upon payment in full or upon the consumption of the agricultural product, whichever occurs first. Under Appellant's interpretation, there would be

virtually no lien at all when it comes to agricultural products that are sold for consumption by livestock. By their very nature, such products are going to be consumed within a relatively short timeframe—more than likely even before the expiration of the statutorily-imposed timeframe for the filing of the lien by the producer. Appellant contends that the lien should be extinguished the moment it is consumed. However, this renders the lien worthless as it relates to agricultural products that are used as feed.

3. The interpretation that a feed lien may attach to livestock that use the feed is reasonable given the consistency of this interpretation throughout the country, as well as its practical application.

An examination of agricultural commodity producer liens from other states consistently reflects that feed liens often attach to livestock. *See, e.g.*, IOWA CODE ANN. § 570A.3(2) (2003) (stating that a feed lien attaches to all livestock that consume the feed); KAN. STAT. ANN. § 58-243(b) (2002) (stating that a feed lien attached to all livestock products and proceeds); NEB. REV. STAT. § 52-1406(1)(d) (2003) (“The agricultural production input lien attaches to: All livestock consuming the feed and continues in livestock products and proceeds.”); N.D. CENT. CODE § 35-31-01 (2001) (“Any person who furnishes supplies used in the production of crops, agricultural products, or livestock is entitled to a lien upon the crops, products produced by the use of the supplies, and livestock and their products, including milk.”); OKLA. STAT. ANN. TIT. 4, § 192 (2003) (stating that a feed lien attaches to all animals that consume the feed); MINN. STAT. § 514.945; TEX. AG. CODE ANN. § 188.002; and WYO. STAT. ANN. § 29-8-104. Yet, contrary to Appellant’s contention that extending the feed lien to the livestock that consume the feed would

devastate the dairy lending industry, lenders presumably continue to lend to dairies and cattle companies in those states.

It is unreasonable to suggest that the Idaho legislature intended to ignore the rest of the country's feed lien laws and, instead, put together a backwards feed lien law that is essentially worthless. Under Appellant's interpretation (that the lien is extinguished the moment the feed is consumed), there would be no reason for Idaho's entire statute to exist because, by their very nature, such "agricultural products" are going to be consumed within a relatively short timeframe. There would be no reason to file a lien within one year after filing notice with the Secretary of State because the "agricultural product" would already be consumed. No feedlot or dairy is going to purchase and take of delivery of an "agricultural product" that it is not going to use for a year. The only reasonable interpretation of Idaho Code § 45-1802 that is consistent with other jurisdictions and the practical nature of agriculture is that the feed lien attaches to livestock that consume the feed.

4. The policy underlying I.C. § 45-1802 is to protect the farmer or dealer—not provide additional protections for lending institutions.

Appellant's complaints about uncertainty and instability in lending to the dairy and cattle industry are without merit. Appellant, and other similarly situated lenders, are in a superior bargaining position to every other party to these transactions and business operations. Yet, Appellant would have this Court believe that they are unable to adequately protect themselves against the risk of an insolvent debtor. At the very least, lending institutions are in a much stronger position to protect themselves than feed suppliers, who more often than not, simply run

small farm operations whose continued existence depends on payment for that year's crops. The entire purpose of Idaho's feed lien (like mechanic's liens, agister liens or other statutory liens) is to protect those with unequal bargaining power that contribute goods or services into an underlying product.

For example, with regards to mechanic's liens, a general contractor can select from numerous roofing laborers and pay them when the house is sold or the work is completed. However, the roofing laborer is not in a bargaining position to demand payment up front or demand to review the general contractor's financial position prior to beginning work. As such, the mechanic's lien allows the laborer to put a lien on the end product of his goods and services. The sole burden placed on the contractor and lending institution is to confirm payments, whether through lien waivers for construction draws, or otherwise. These simple processes allow for lenders to maintain confidence in their secured position—they simply refuse to dole out more money to the borrower until confirmation is made that all potential superior security interests have been satisfied.

Similarly, in the present case, the dairy or cattle operation can choose from numerous sources for its feed. The agricultural producer has no leverage with which to confirm that he will receive payment for his product. He simply cannot demand payment upon delivery or review the purchaser's financial statements prior to delivery. A lender can obtain financial information from the borrower prior to making a loan and confirm that the money it lends for feed is actually spent on feed. Again, it is unclear exactly how Appellant contends that it is in a weaker secured position compared with the agricultural producer or how a reversal of the District Court's

decision will not have drastic negative repercussions on the feed industry and, by extension, the dairies and cattle operations relying on their products to keep their cattle alive.

The legislature recognized this issue and implemented I.C. § 45-1802, with a priority that is senior to any other prior recorded security interest, to ensure an equitable result. Like the lending institutions in numerous sister states with large dairy and cattle industries, such as Iowa, Kansas, Nebraska, North Dakota, Oklahoma, Minnesota, Texas, and Wyoming—where the feed lien attaches to the cattle—Idaho lending institutions can take sufficient protective measures in providing loans in the future. However, without the enforceable feed lien that attaches to the cattle that consume the feed, Idaho’s farmers and commodity dealers have no protection and no other options. As a result, whenever a significant feedlot or dairy encounters financial problems in the future, the effect will ripple throughout the entire farming community—all of which could be avoided through the more common sense application of Idaho’s feed lien laws advocated by Respondents.

VI.

COSTS AND ATTORNEY’S FEES ON APPEAL

In the event this Court finds that Respondents are the prevailing party on appeal, Respondent Carter and Respondent McCall each seek their costs on this appeal pursuant to I.A.R. 40 and I.C. § 10-1210 and attorney’s fees on this appeal pursuant to Idaho law, including without limitation I.A.R. 41, I.C. §§ 12-120 and 45-1809.

Idaho Code Section 45-1809 authorizes attorney fees to lien claimants under I.C. § 45-1801 *et seq.* providing, in pertinent part:

The court shall also, as part of the cost, allow the moneys paid for filing and recording the claim, and a reasonable attorney's fees for each person claiming a lien.

(Emphasis added). Should the Court determine that Respondents have prevailed on appeal and that their liens have priority in the proceeds of the Cattle, then Respondents also respectfully request that the Court award their attorney's fees pursuant to that section.

Alternatively, the Court may award attorney fees pursuant to I.C. § 12-120(3) which provides for an award of attorney fees

[i]n any civil action to recover on an **open account**, account stated, note, **bill**, negotiable instrument, guaranty, **or contract relating to the purchase or sale of goods**, wares, merchandise, or services **and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court**, to be taxed and collected as costs.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

(Emphasis added). The transaction at the center of this dispute involved the sale of goods in a commercial transaction. Accordingly, the prevailing party should be allowed its attorney fees out of the proceeds of the Cattle.

VII.

CONCLUSION

As argued above, the Court is presented with two potential interpretations of I.C. § 45-1802. Respondents respectfully contend that the proposed interpretation of the Appellant is unreasonable and leads to an absurd result. Should the lien in the feed not extend to the livestock

that consume the feed, then the lien would be destroyed at the precise moment that the legislature expressly provided for its attachment. Such a conclusion would render the 1989 amendment a superfluous nullity and, in fact, would render the entire statutory framework meaningless as it pertains to feed. Essentially, Appellant contends that the legislature intended to grant a lien in producers of feed, but only until the feed was actually fed to livestock, at which point producers would be out of luck.

On the other hand, Respondents contend that I.C. § 45-1801 *et seq.* plainly and expressly includes feed within the definition of “Agricultural Product” and creates a statutory lien for producers of feed, plainly provides that the statutory lien attaches despite the use of the feed to maintain or increase the value of livestock, and plainly provides that the lien shall have priority. Alternatively, in the event this Court holds the statute ambiguous, the legislative history and policy considerations strongly support the position advocated by Respondents and reflect an underlying assumption at the time of passage of the amendment, by courts, the legislature and the banking lobby, that such liens extended to the livestock consuming the feed.

The feed supplied by producers keeps the livestock alive so that all involved can receive the benefit. The practical effect of Appellant’s position would be to (1) increase bankruptcies of feed suppliers who will increasingly go unpaid for their products with no cover; and (2) lead to increased costs or an inability of cattlemen and dairies to provide feed for their cattle due to reluctance from feed producers to provide feed without upfront payment. Despite the gloomy outlook provided by Appellant and its supporters on appeal, the lending institutions are in a much stronger position to protect themselves and their investments, as has been done in

numerous other states and in numerous other areas of statutory liens. All the lenders have to do is make sure the dairymen are actually using their feed lines to pay the feed producers. If the feed lines are not adequate to pay the feed producers, then that is a problem that needs to be addressed by the lender and the borrower. That is not the fault of the feed supplier.

Respondents respectfully request that this Court affirm the District Court's interpretation and application of the plain language of I.C. § 45-1801 *et seq.* holding that the statutory feed lien extends to livestock consuming the feed. In the alternative, Respondents respectfully request that if the Court finds the statute ambiguous, it reach the same result through the principles of statutory construction.

Oral argument is requested.

DATED this 21st day of December, 2012.

WRIGHT BROTHERS LAW OFFICE, PLLC

By: 

Andrew B. Wright

Attorney for Respondent Ernest Daniel Carter dba

Carter Hay and Livestock and Respondent Jack McCall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of December, 2012, I caused two true and correct copies of the foregoing document to be served, pursuant to I.A.R. 34, upon the following persons in the following manner:

John S. Ritchie
Coleman, Ritchie & Robertson
P.O. Box 525
Twin Falls, ID 83303-0525

U.S. Mail, Postage Prepaid
 Express Mail
 Hand Delivery
 Facsimile Transaction

Brent Robinson
Robinson, Anthon & Tribe
P.O. Box 396
Rupert, ID 83350

U.S. Mail, Postage Prepaid
 Express Mail
 Hand Delivery
 Facsimile Transaction

Gery Edson
Gery W. Edson, PA
P.O. Box 448
Boise, ID 83701


U.S. Mail, Postage Prepaid
 Express Mail
 Hand Delivery
 Facsimile Transaction

William R. Hollifield
P.O. Box 66
Twin Falls, ID 83303

U.S. Mail, Postage Prepaid
 Express Mail
 Hand Delivery
 Facsimile Transaction

William F. Nichols
White Peterson Gigray Rossman
Nye & Nichols, PA
5700 East Franklin Road, Suite 200
Nampa, ID 83687-7901

U.S. Mail, Postage Prepaid
 Express Mail
 Hand Delivery
 Facsimile Transaction


Tyler Rands for Andrew B. Wright

APPENDIX A

AGRICULTURAL AFFAIRS COMMITTEE

MINUTES

TIME: 2:50 p.m.

DATE: THURSDAY, March 2, 1989

PRESENT: Chairman Sutton
Joseph Proksch (for Rep. Infanger)
Rep. Geddes
Rep. Field
Rep. Robbins
Rep. Gould
Rep. Newcomb

Rep. Jones (29)
Rep. Bengson
Rep. Bell
Rep. VieseImeyer
Rep. Reid
Rep. Judd
Rep. Tucker

GUESTS: Hugh Nelson, Idaho State Grange; Rob Onnen, Idaho Bankers Association;
Pat Collins, Idaho Bankers Association; Roger Vega, Dept. of Agriculture

A quorum being present, Chairman Sutton called the meeting to order at 2:50 p.m.

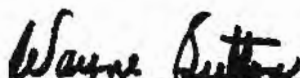
MOTION Rep. Bell moved that the minutes of the previous meeting be accepted as written.
Rep. Tucker seconded the motion.
MOTION CARRIED.

H 238 RELATING TO THE STATE PURE SEED LAW
Dr. Vega addressed this stating that there has been an addition of one farmer member to the state seed advisory board as requested by the committee. There was a short explanation concerning lines 25 and 26 of the bill - the one grower member who shall serve as the ninth official member of the board. Dr. Vega also said that Charlie Thompson had sent his regrets to the committee as he had another obligation and could not attend to speak to this proposal. Hugh Nelson thanked the committee for placing a "grower" in the legislation.
MOTION Rep. Bell moved that H 238 be sent to the floor with a DO PASS recommendation.
Rep. Field seconded the motion.
MOTION CARRIED.
Rep. Bell will sponsor H 238.

H 191 RELATING TO AGRICULTURAL COMMODITY DEALER LIENS
Rep. Newcomb stated that the purpose of this legislation is to better define the product that can be used in a lien. It will define the word "feed" so that a feed lien can be the vehicle that includes all types of feed, even though those feed may have been altered, i.e. altered feed remains "feed". He spoke briefly about the section on definitions (45-1801), reviewing the different processes of alteration.
MOTION Rep. Geddes moved that H 191 be sent to the floor with a DO PASS recommendation.
Rep. Judd seconded the motion.
MOTION CARRIED.
Rep. Newcomb will sponsor H 191.

H 314 RELATING TO AGRICULTURAL COMMODITY DEALER OR PRODUCER LIENS
Rep. Newcomb said that in the past it has been understood in the feed industry that when feed was sold to consumer, that the feed lien would attach to the animal which was being fed - - it had to add value. This legislation says that even if it does not add value, it is still valid. In other words, if it just maintained the livestock rather than adding value, a lien filed on the livestock would be a valid lien.
Pat Collins, Idaho Bankers Association, spoke in opposition to this legislation. He feels it is poor language and the definitions bad. He stated that the language will not do what it says it will do. He said the definitions stretch the meanings to include a lot of products. He feels the term "agricultural product" is a bad term.
MOTION Rep. Gould moved that H 314 be sent to the floor with a DO PASS recommendation.
Rep. Tucker seconded the motion.
MOTION CARRIED.
Rep. Reid and Rep. Judd are recorded as voting NAY.
Rep. Newcomb will sponsor H 314.

There being no further business, Chairman Sutton adjourned the meeting at 3:10 p.m.


WAYNE SUTTON, Chairman


Mary Ellen Drashner, Secretary

March 2, 1989

APPENDIX B

MOTION:

A MOTION was made by Senator Hansen, seconded by Senator Blackbird, that HB 192aa be sent to the floor with the recommendation that it be referred to the Fourteenth Order of Business for amendment; that it be amended to make involvement in the program voluntary.

SUBSTITUTE
MOTION:

A SUBSTITUTE MOTION was made by Senator Noh, seconded by Senator Twiggs, that HB 192aa be sent to the floor with a DO PASS recommendation. THE SUBSTITUTE MOTION CARRIED ON A ROLL CALL VOTE, as follows:

AYE: Senators Noh, Twiggs, Hyde, Marley, Christiansen,
Carlson

NAY: Senators Smyser, Hansen, Peavey, Wetherell, Blackbird

SPONSOR: Senator Twiggs.

HB 317aa

RELATING TO BONDED WAREHOUSE AND COMMODITY DEALERS. Rep. Jones informed the committee members that this legislation is a companion measure to HB 192aa amending section 2 to add a minimum net worth requirement to the bond warehouse code to make it parallel to the commodity dealers section of the code. It also changes the type of financial statements required to be submitted with a license application or renewal. Section 3 changes the type of financial statements required to be submitted with a license application or renewal for a commodity dealer's license to make the requirements equal to the warehouse license as changed in Section 2 of the bill.

Skip Kellogg spoke in favor of the legislation especially as it relates to the financial statement requirement.

Jonathan Schleuter echoed Mr. Kellogg's remarks; anything that improves the integrity of their industry is beneficial; a financial statement reflecting the viability of a warehouse is necessary and desirable. The feed and grain companies in his organization support this legislation.

MOTION:

A MOTION was made by Senator Smyser, seconded by Senator Christiansen, that HB 317aa be sent to the floor with a DO PASS recommendation. THE MOTION CARRIED UNANIMOUSLY ON A VOICE VOTE. SPONSOR: Sen. Blackbird.

HB 314

AGRICULTURAL COMMODITY DEALER OR PRODUCER LIENS. Rep. Newcomb spoke to the legislation which amends the lien chapter of the Idaho code to provide that a lien has validity or may attach even if the feed fed to an animal does not add value to the animal but just maintains it. Rep. Newcomb referred to a court case that had refuted this concept.

Senator Smyser pointed out the difficulty of understanding either the intent or the language contained in the bill, and suggested

SENATE AGRICULTURAL AFFAIRS COMMITTEE

MINUTES - MARCH 21, 1989

PAGE 5

that clarification of the words "agricultural product" was needed on line 15 and line 17.

Berne Jensen, Idaho Bankers Association, stated that his organization could neither support nor oppose the legislation since they were unable to understand what the intent of the bill is. He suggested the bill needs redrafting for clarification.

Pat Collins, attorney for the Idaho Bankers Association, informed the committee members that the drafter of the bill was faced with two problems (1) the language of the existing chapter, and (2) the court case referred to by Rep. Newcomb. The court assumed that the lien on the feed continued into the cattle; in order to avoid that result the court ruled it didn't increase the value of the cattle; therefore, there is no lien in the cattle. Mr. Collins stated that he does not believe that the lien continues in the cattle that eats the feed; the language that has been added assumes that this lien does continue. It is his opinion that the bill is responding to an ill-advised court decision and does not accomplish what he thinks the sponsor seeks to accomplish.

MOTION:

A MOTION was made by Senator Blackbird, seconded by Senator Christiansen, that HB 314 be held in committee.

SUBSTITUTE
MOTION:

A SUBSTITUTE MOTION was made by Senator Peavey, seconded by Senator Twiggs, that HB 314 be sent to the floor with the recommendation that it be referred to the Fourteenth Order of Business for amendment. THE MOTION CARRIED ON A VOICE VOTE, WITH SENATOR CHRISTIANSEN VOTING "NO." SPONSOR: Senator Peavey. MOVER: Peavey; SECOND: Twiggs.

HB 243aa

REQUIREMENTS FOR PACKAGING OF MILK AND MANUFACTURED MILK PRODUCTS. Rep. Smock displayed a cup of yogurt and yogurt in a package which had a tamper-evident cover, explaining that 93% of yogurt sold is contained in a cup or a cone; 6-7% is sold in pre-packaged cartons. The tamper evident material takes 30 seconds to put on the carton and costs fractions of a cent. He displayed Fisher salad dressing which is manufactured locally and packaged with a tamper evident collar, which costs an additional four cents for the sealing process.

Pat Tate, president of M & W markets, spoke in favor of the legislation, stating that grocery stores are under a great deal of pressure to protect the consumer from contaminated products, especially dairy products.

Senator Smyser pointed out that the language is much too broad to deal with retail sales only.

APPENDIX C

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 314

BY AGRICULTURAL AFFAIRS COMMITTEE

1 AN ACT
2 RELATING TO AGRICULTURAL COMMODITY DEALER OR PRODUCER LIENS; AMENDING SECTION
3 45-1802, IDAHO CODE, TO PROVIDE THAT A LIEN MAY ATTACH WHETHER THE PUR-
4 CHASER OF THE AGRICULTURAL PRODUCT USES IT TO INCREASE THE VALUE OF HIS
5 AGRICULTURAL PRODUCT OR WHETHER HE USES IT TO MAINTAIN THE CURRENT STATUS,
6 HEALTH, OR VALUE OF HIS AGRICULTURAL PRODUCT.

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 45-1802, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 45-1802. LIEN CREATED -- WHO MAY HAVE. An agricultural commodity producer
11 or an agricultural commodity dealer who sells an agricultural product has a
12 lien on the agricultural product or the proceeds of the sale of the agricul-
13 tural product until payment is made in full. The lien created in this chapter
14 may attach regardless of whether the purchaser uses the agricultural product
15 purchased to increase the value of his agricultural product or whether he uses
16 the agricultural product purchased to maintain the value, health or status of
17 his agricultural product without actually increasing the value of his agricul-
18 tural product.

Moved by Peavey

Seconded by Smyser

IN THE SENATE
SENATE AMENDMENTS TO H.B. NO. 314

AMENDMENTS TO SECTION 1

1
2 On page 1, line 15, of the printed bill, delete: "agricultural product"
3 and insert: "livestock"; and in line 17, delete "agricultural product" and
4 insert: "livestock".

CORRECTIONS TO TITLE

5
6 On page 1, line 5 of the printed bill, delete "AGRICULTURAL PRODUCT" and
7 insert: "LIVESTOCK"; and in line 6, delete "AGRICULTURAL PRODUCT" and insert:
8 "LIVESTOCK".

APPENDIX D

STATEMENT OF PURPOSE

RS 22816

This legislation defines feed and lien so that when a feed lien is filed on domestic livestock the lien would be valid even though the feed just maintained the livestock rather than added value.

FISCAL NOTE

There is no fiscal impact.