AGRICULTURAL LAW

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1. Iowa Agricultural Law Update.

A. Iowa Update.
   i. Case Law. [1]
      a. *MidWestOne Bank v. Heartland Co-op*, No. 19-1302 (Iowa 2020).
      For three years, grain farmers obtained operating loans from a bank and granted a security interest in their farm products and sale proceeds. The security agreement prevented the farmers from allowing the collateral to be subject to any other lien or security interest without prior written consent and required the farmers to ensure that the crops were properly maintained at the farmers' expense. As required, the farmers provided the name of the grain warehouse they use. The bank sent the grain warehouse a "Notice to Buyer of Security Interest in Farm Products" on three occasions informing the grain warehouse that the bank had a security interest in the farmers' grain and directing them to make a joint payment to the farmers and the bank for all proceeds from the eventual sale of the grain. Each time the farmers sold grain, the grain warehouse deducted from the sale proceeds its costs of drying and storing the grain before sending the balance in a joint check to the farmers and the bank. In total, the grain warehouse withheld $79,895.68.
      Upon learning of these withholdings, the bank filed an action against the grain warehouse, alleging $79,895.68 in damages, plus attorney fees and court costs.

[1] Thank you to Kristine Tidgren and Kitt Tovar at the Iowa State University Center for Agricultural Law and Taxation for permission to include their summaries of cases in this outline. For a complete listing and summaries of agricultural related court decisions and other agricultural law resources in Iowa, see the Iowa State University Center for Agricultural Law and Taxation website: http://www.calt.iastate.edu/.

The bank asserted that the grain warehouse had a junior interest in the grain to the bank's prior perfected security interest and that the grain warehouse was not a buyer in the ordinary course. The grain warehouse filed an answer asserting several counterclaims, including unjust enrichment.

The key question in the case was whether the grain warehouse was entitled to withhold the drying and storage charges from the proceeds before issuing the check to the bank and the farmers. The grain warehouse argued that storage and drying charges were routinely deducted from sale proceeds across the state and that the bank should have been aware of this common industry practice.

The Iowa Supreme Court affirmed that the grain warehouse had only an unsecured interest in the outstanding storage and drying debt and that the bank's prior perfected security interest in the proceeds was superior. It rejected the argument that the grain warehouse was entitled to offset the drying and storage charges because such an offset was a normal and regular practice recognized throughout the industry.

Finally, the Court affirmed found that the bank was not unjustly enriched by the value of the storage and drying charges. The Court also determined that the two-year statute of limitations in Iowa Code § 614.1(10) applied to claims based upon a secured interest in farm products. Consequently, the Court limited the bank's damages to those stemming from transactions that occurred in the two years prior to the filing of the lawsuit.

b. *Merrill and Frescoln v. Valley View Swine, LLC and JBS Live Pork, LLC* , 941 N.W.2d 10, 2020 WL 1486829. See page 23.

c. *Kohn v. Muhr*, No. 18-2059 (Iowa Ct. App. Nov. 30 2019). See page 20.

d. *Junk Brothers Land and Cattle v. Buchanan County*, No. 19-2084 (Iowa Ct. App. Sept 2, 2020). On September 2, 2020, the Iowa Court of Appeals affirmed the award of damages to a landlord for the breach of a pasture lease. Farmers entered into a three-year written lease to rent pastureland owned by the county. When the tenant found out the fence was in disrepair, they refused to honor the lease because they could not use the pastureland as it intended. The tenant brought this lawsuit claiming that the two parties had entered into a written contract and the county breached that contract. The county admitted a valid lease existed and counterclaimed for breach of contract.

The district court found the county had not breached the lease, but that the tenant had breached the lease by terminating the agreement early. The court awarded the county damages and ordered the tenant to pay the difference between the total amount the tenant still owed under the lease and the amount paid by the replacement tenant.

On appeal, the tenant claimed the lease was voidable because there was no meeting of the minds between the two parties and there was a mutual mistake as to the condition of the fence. The court found that the tenant had failed to preserve error because the argument was different than the position set forth in the pleadings and at trial.

d. *McBeth Revocable Trust v. McBeth*, No. 19-0600 (Iowa Ct. App. Sept. 2, 2020). On September 2, 2020, the Iowa Court of Appeals issued an opinion regarding an alleged breach of contract of a farm lease. Landowners allowed their son to farm about 1,430 acres for free and provided various equipment for use in the operation. After the son passed away, the wife offered to pay rent in order to continue to farm the land. The landowners accepted her offer to become the new tenant, but refused any payment. The next year, they asked the tenant to cover the cost of property taxes. After the second crop year, the tenant sent a check for the same amount. The landowners claimed they had agreed to $275 an acre for 2014. The tenant sent a check for that new amount a few months later. She paid and

farmed the land one more year and then terminated the lease. The landowners brought this lawsuit claiming the tenant breached the lease by not paying the full amount of the rent for the final crop year and petitioned in replevin for the return of several pieces of farm equipment.

The tenant denied she breached the oral farm lease by failing to pay rent for the final crop year. Through the parties' conduct, the court found clear and convincing evidence they agreed to a new rental rate. For example, the landowners returned one check and explained they believed $275 per acre would be a fair price. They also wrote the previous year in the memo line demonstrating they believed the payments sent were for preceding year. The court found the tenant impliedly consented to the new rent as well. The tenant's testimony she paid the yearly rent in advance "was not customary for farm leases" and "not credible." Additionally, if the tenant believed the new rental rate first applied to the 2015 lease, she would be obligated to issue another check after the landowners voided and returned the one written.

Based on these actions, the court found the most credible explanation was that the landowners and tenant agreed to modify the lease for 2014. Therefore, the tenant did not pay for the final crop year and the landowners were entitled to damages at $275 per acre.

ii. Legislative.
   a. SF 2413 – Iowa Department of Agriculture Bill
      i. Powers and duties of IDALS. The bill strikes requirements for a marketing news service bureau, but retains the requirement that IDALS cooperate with the ag marketing service of USDA. The bill also eliminates requirement for certain applicant numbers on commercial establishment applications.
      ii. Disease: Allows IDALS to seize an abandoned animal to prevent infectious/contagious diseases when authority is granted by governor proclamation, an order by the secretary of any other provision under Chapter 163 which provides for the control of infectious diseases. The bill requires notice to interested parties and requires final disposition to be by a court, except in exigent circumstances. The bill also allows IDALS to be awarded expenses and cost and prohibits a person from interfering with an official IDALS acts taken to prevent/control a disease. Provides allocation to DALS for expenses associated with seizure of animals under this section.
      iii. Feral Swine: Defines feral swine as any swine running at large. Allows the department to destroy feral swine found on public or private property, but only after making a reasonable inquiry to determine the swine's ownership and concluding that the ownership cannot be determined. Also allows someone other than the department to destroy feral swine found on their property or damaging their personal property but does not require the person to conduct reasonable inquiry into ownership. Requires the person who destroys feral swine to immediately notify the department of the destruction of the swine and allow the department to test the swine. Also prohibits anyone from knowingly releasing swine to become feral swine. This provision is effective upon enactment.
      iv. Food Operation Trespass, S.F. 2413, Division II, and H8268 amending H.F. 2641; effective June 10, 2020. See page 30.
      v. Fertilizer and soil conditioners: Allows IDALS to adopt rules regulating design, construction, location, installation, and operation of equipment associated with the use of fertilizers or soil conditioners. (Current law allows rules only for

anhydrous ammonia equipment). The bill also eliminates a requirement that the rules by in conformity with the published standards of the ag ammonia institute.

vi. Weights and measures (Motor Fuel): Makes changes related to weights and measures, including changes on labelling kerosene and putting gasoline in containers without warnings. Allows but does not require IDALS to charge a license fee for an out-of-service device. Makes other changes related to weights & measures and servicers.

b. HF 2310. Transporting Hay, Stover, Bedding. Eliminates the need for an annual permit for oversized loads for hauling loads of hay, stover, straw or bagged livestock bedding if the load exceeds the length, height or width restrictions for an oversized load unless the load exceeds an overall width of 12 feet 5 inches, an overall length of 75 feet and an overall height of 14 feet 6 inches. Violations of the size restrictions will be punishable by a fine of $200.

c. HF 2477. Prohibits counties from requiring an agricultural experience activity from getting a special use or similar permit if the experience is on land used for farming.

d. HF 2512. Amendments to the Agricultural Exemption to County Zoning. See page 25.

e. HF 2581. Amendments to Iowa Hemp Act. THC: Makes changes in measuring THC in hemp. Products: Deems that hemp products that comply with federal law can be sold in Iowa. Prohibits consumable hemp products, except for consumables authorized under federal law. Includes definitions and penalties for violations. Other: Establishes criminal penalties for knowingly and wrongfully identifying a product as a legal hemp product to law enforcement. Includes coordinating provisions and civil and criminal penalties. Deems the bill has a contingent effective date until DALS & DPS determine which provisions must be submitted to the USDA.

B. Federal Update.

i. Case Law.

a. *Animal Legal Defense Fund v. Reynolds,* No. 4:17-cv-00362 (S.D. Iowa 2019). See page 26

b. *Animal Legal Defense Fund v. Reynolds,* No. 4:19-cv-124 (S.D. Iowa 2019). See page 28

c. *Garrison v. New Fashion Pork, LLP and BWT Holdings, LLLP*, 449 F.Supp.3d 863, 2020 WL 1494063. See page 23.

ii. Executive Branch.

a. USDA Approves Iowa Hemp Rules. On March 20, 2020, the USDA approved the Iowa Department of Agriculture and Land Stewardship's hemp plan for the State of Iowa. IDALS published the official notice that the USDA accepted Iowa's state plan in the Iowa Administrative Bulletin on April 8th.

2. Force Majeure & Similar Defenses to Contract Nonperformance.

In general, "force majeure" contractual provisions or common law doctrines such as impossibility, frustration of purpose, or commercial impracticability may be raised as defenses for nonperformance of contract in Iowa. However, "[i]mpossibility or impracticability of performance is not an excuse where the promisor has indicated an intent to assume the risk of performing despite it, or where the language or the circumstances of the contract indicate that the risk has been allocated to the party asserting the defense." 17A Am. Jur. 2d § 647.

a. Force Majeure Provisions

In interpreting force majeure clauses, courts will look to the specific language used by the parties in the agreement as well as the common meaning and use of a force majeure

clause. In other words, a court's interpretation of a claim of force majeure is very fact specific. See generally, *Zurich American Insurance Company v. Hunt Petroleum, Inc.*, 157 S.W.3d 462 (Tex. App. 14th Dist. 2004), *Hydrocarbon Management, Inc. v. Tracker Exploration, Inc.*, 861 S.W.2d 427 (Tex App. 7th Dist. 1993), *Sun Operating Limited Partnership v. Holt*, 984 S.W.2d 277 (Tex App. 7th Dist. 1998), *Rexing Quality Eggs v. Rembrandt Enterprises, Inc.*, 360 F.Supp. 3d 817 (S.D. Ind. 2018), *Jennie-O-Foods, Inc.*, 580 F.2d 500 (Ct. Cl. 1978), *SNB Farms, Inc. v. Swift and Co.*, 2003 WL 22232881 (N.D. Iowa 2003), and *Kansas City Power & Light Co. v. Pittsburg & Midway Coal Mining Co.*, WL 151919 (U.S. Dist. Kansas 1989).

In an Iowa case interpreting a force majeure clause under Minnesota law, the Iowa Supreme Court looked at the language of the clause in the context of the agreement as a whole and applied the common meaning of force majeure, as follows:

> 'Force-majeure' is an 'event that can be neither anticipated nor controlled.' *Black's Law Dictionary* 657 (7th ed. 1999). A 'force-majeure clause' is a clause 'allocating the risk if performance becomes impossible or impracticable as a result of an event or effect that the parties could not have anticipated or controlled.' *Id.* A force-majeure clause is not intended to shield a party from the normal risks associated with an agreement. 30 Richard A. Lord, *Williston on Contracts* § 77:6, at 299 (4th ed. 2004).

Pillsbury Co., Inc. v. Wells Dairy, Inc., 752 N.W.2d 430, 440 (Iowa 2008). In a recent Iowa Court of Appeals case, the court noted that where a contract contains no such clause, courts can still relieve a party of its obligations under impossibility or impracticability doctrines such as those discussed below. *See Woodruff Construction, LLC v. Christensen*, 928 N.W.2d 687 (Table), note 2 (Iowa App. 2019) (unpublished opinion).

In general, parties should look to whether the language in their force majeure clauses contain specific examples of force majeure or whether the language is worded broadly. Other provisions of the contract may also be relevant to this issue, such as any provisions requiring a party to mitigate its damages, provisions requiring compliance with governmental orders, and notice. A party seeking to invoke a force majeure provision should ensure that it has complied with any prerequisites that it must provide notice thereof. *See, e.g., SNB Farms, Inc. v. Swift and Co.*, 2003 WL 22232881 (N.D. Iowa 2003) (unpublished opinion).

b. Impossibility of Performance or Commercial Impracticability

"The doctrine of impossibility of performance is recognized in Iowa as an excuse for nonperformance generally where that which has been promised becomes objectively impossible to perform due to no fault of the nonperforming party." *Nora Springs Co-op Co. v. Brandau*, 247 N.W.2d 744, 747 (Iowa 1976); *see also Household Finance Indus. Loan Co. of Iowa v. Rasmus*, 841 N.W.2d 355 at *14 (Iowa App. 2013) (unpublished opinion); *see also Jader Enters., L.L.C. v. Buhr*, 2019 WL 5106414 *1 (Iowa App. 2019) (final publication decision pending).

Although recognized as a valid defense, there are certain barriers to successful application of the doctrine of impossibility. For example, impossibility is generally not available as a defense if the circumstance preventing performance could have been reasonably anticipated or if the circumstance only makes performance more expensive. "[A] contingency which reasonably may have been anticipated must be provided for by the terms of the contract, or else the impossibility of performance resulting therefrom does not operate as an excuse." *Nora Springs*, 247 N.W.2d at 747 (citations omitted); *see also Associated Grocers of Iowa Coop., Inc. v. West*, 297 N.W.2d 103, 108 (Iowa 1980) and *Yager v. Farmers' Mutual Telephone Co.*, 323 N.W.2d 245, 249.

> [A] promisor who, after having assumed a contractual duty without then knowing or having reason to know the fact which makes performance impossible or impracticable, subsequently acquires knowledge of that fact in time to avoid the dire consequences of nonperformance, but who, despite such knowledge proceeds without taking reasonably prudent steps to avoid those consequences, cannot subsequently assert the defense of impossibility.

17 Am. Jur. 2d § 648.

Where a contract involves the sale of goods within the scope of Article 2 of the Iowa Commercial Code, the "impossibility" standard is replaced with the lesser standard of "commercial impracticability" or "commercial frustration." *Nora Springs*, 247 N.W.2d at 748.

> Except so far as a seller may have assumed a greater obligation and subject to section 554.2614 on substituted performance:
>
> 1. Delay in delivery or nondelivery in whole or in part by a seller who complies with subsections 2 and 3, is not a breach of the seller's duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.
>
> 2. Where the causes mentioned in subsection 1 affect only a part of the seller's capacity to perform, the seller must allocate production and deliveries among the seller's customers but may at the seller's option include regular customers not then under contract as well as the seller's own requirements for further manufacture. The seller may so allocate in any manner which is fair and reasonable.
>
> 3. The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under subsection 2, of the estimated quota thus made available for the buyer.

Iowa Code § 554.2615.

Further, "the mere fact that performance becomes economically burdensome or unattractive does not excuse performance unless the increased cost is due to some unforeseen contingency which alters the essential nature of the performance." *Nora Springs*, 247 N.W.2d at 748 (citing *Neal-Cooper Grain Co. v. Texas Gulf Sulphur Co.*, 7th Cir., 508 F.2d 283, 293–294; Comment 4, section 554.2615).

> Generally, "the party claiming the defense of impossibility or commercial impracticability must use reasonable efforts to surmount the obstacle to performance and demonstrate that it has explored and exhausted all practical alternatives available to permit performance. It has even been said that a party claiming impossibility as a defense must demonstrate that it took virtually every action possible to promote compliance with the contract.

17A Am. Jur. 2d § 648.

c. Temporary or Partial Impossibility; Partial Impracticability

Where the circumstances of COVID-19 serve only as a temporary bar to performance of the contract and the parties intend to resume performance at a later date, the law may provide a remedy, but again, the bar is set high for the party seeking to have its performance excused due to a temporary obstacle.

> As a general rule, temporary supervening impossibility of brief duration does not excuse the promisor from performing when it subsequently becomes possible to do so. The duty to perform is merely suspended, and the obligation to perform is revived when performance subsequently becomes possible, or a reasonable time thereafter. However, temporary supervening impossibility of performance will discharge a promisor's duty to perform if performance after the impossibility ceases would subject that person to a substantially greater burden than would have been imposed had there been no impossibility.

17A Am. Jur. 2d Contracts § 650; *see also* Restatement (Second) of Contracts, § 269 (1981).

> Where only part of an obligor's performance is impracticable, his duty to render the remaining part is unaffected if (a) it is still practicable for him to render performance that is substantial, taking account of any reasonable substitute performance that he is under a duty to render; or (b) the obligee, within a reasonable time, agrees to render any remaining performance in full and to allow the obligor to retain any performance that has already been rendered.

Iowa courts have recognized the concept of temporary impossibility. "Where the impossibility is only temporary, the promisor's duty is only suspended while the impossibility continues." *Nora Springs*, 247 N.W.2d at 747 (citations omitted); *see also Conrad Brothers v. John Deere Ins. Co.*, 640 N.W.2d 231 (Iowa 2001). However, Iowa courts have also noted that "[i]mpossibility of performance refers to extraordinary circumstances which could not have been anticipated and which arise without fault on the part of the one seeking to avoid performance." *Associated Grocers*, 297 N.W.2d 103, 108 (Iowa 1980); *see also Jader Enters.*, 2019 WL 5106414, at *1.

d. Frustration of Purpose

A different concept from impossibility and impracticability is the doctrine of "frustration of purpose," under which "[p]erformance remains possible but is excused whenever a fortuitous event supervenes to cause a failure of the consideration or a practically total destruction of the expected value of the performance." 17A Am. Jur. 2d § 639. "Unlike the situation of impossibility, commercial frustration is a defense where both parties can perform the contract but, as a result of unforeseeable events, performance by one party would no longer give the other party the benefit that induced the original making of the contract." *Id.*

In general, the doctrine "is given a narrow construction so as to preserve the certainty of contracts because it defeats the explicit terms of the parties' agreement." 17A Am. Jur. 2d § 641. However, the Eighth Circuit, applying Minnesota law, affirmed the summary judgment of a party's defense of frustration of purpose in a case presenting a reality, on a smaller scale, similar to that experienced in the industry in the wake of COVID-19. In *Pieper, Inc. v. Land O'Lakes Farmland Feed, LLC*, 390 F.3d 1062, 1064 (8th Cir. 2004), wherein Land O'Lakes (LOLFF) lost its ability to sell weaner pigs to third-party finishers due to Farmland's refusal to buy market hogs from third-party finishers, LOLFF claimed that it no longer had a reason to buy weaner pigs from Pieper pursuant to a Weaned Pig Purchase Agreement between Pieper and LOLFF. In that case, the district had held that LOLFF breached the

agreement but was excused under Minnesota's frustration of purpose doctrine (based on section 265 of the Restatement of Contracts), and the Eighth Circuit agreed. *Id.* at 1064–66.

In other types of cases, Iowa has adopted the doctrine of frustration of purpose as set forth in the Restatement. *See Mel Frank Tool & Supply, Inc. v. Di-Chem Co.*, 580 N.W.2d 802, 806–07 (Iowa 1998) (citing the Restatement). According to the Restatement,

> Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, *unless the language or the circumstances indicate the contrary*.

Restatement (Second) of Contracts § 265 (1981) (emphasis added). Given the language of the Restatement, it is important to check the language of the contract for any terms conflicting with this concept. *See General Elec. Capital Corp. v. FPL Service Corp.*, 986 F. Supp. 2d 1029, 1035 (N.D. Iowa 2013). Also, as with impracticability and impossibility, the frustration of purpose must rise to a level beyond that of a party simply incurring some economic damage if continuing under the contract.

> [T]he frustration must be substantial. It is not enough that the transaction has become less profitable for the affected party or even that he will sustain a loss. The frustration must be so severe that it is not fairly to be regarded as within the risks that he assumed under the contract.

Id. at cmt. a.

e. Governmental Orders

The law also generally provides guidance on whether a party's performance can be excused when its performance is rendered impossible due to government action.

> As a general principle, the failure to perform a contract is excused where performance is rendered impossible or impracticable by the law…However, this excuse is subject to the requirement that the promisor…has not assumed the risk of performing, whether it is impossible or not. Moreover, for impossibility or impracticability to be applicable, intervening governmental activities…must be unforeseeable.

17A Am. Jur. 2d § 662. This principle generally applies to governmental regulations or orders as well. *See* 17A Am. Jur. 2d 663. However, "[t]he rule that a failure to perform is excused, if after the making of the contract performance becomes impossible by reason of a change in the law, *does not apply where performance is not made impossible, but only more difficult." Id.* (emphasis added). Parties should also look to the language of their contract to see whether they "assumed the risk of subsequent governmental interference by the express or implied terms of the agreement." *Id.*

f. Contract Provisions.

1) Swine Contract Feeding Agreements

a) In the event of damage to or destruction of Grower's Facility which impairs or prevents Animals from being fed and cared for in accordance with this Agreement, the compensation to Grower shall abate during such period. If the damage cannot be repaired or reconstruction cannot be completed within one hundred twenty (120) days from the date of the damage or destruction, then this Agreement may be terminated by either party, which termination shall be effected by written notice of one party to the other.

b) Notwithstanding any other provision herein, the performance of either party to this Agreement shall be excused during any period of time when performance becomes commercially impossible due to reasons which are entirely beyond the control of such party, such as fire, explosion, accident, final governmental law or regulation or intervention and acts of God. Changes in the hog market which impact the economic effect of this Agreement are specifically excluded from this provision, as is any failure to Grower to exercise good judgment with regard to manure disposal, etc. Upon the expiration of the time that performance is commercially impossible, the responsibilities and obligations of the parties shall resume again with full force and effect.

c) Except as is otherwise expressly provided herein, neither [Owner] nor Producer shall be responsible or liable for any failure of performance under this Agreement when such non-performance or failure to perform is due to any cause directly or indirectly rendering such performance impossible or commercially impracticable, including but not limited to acts of God, floods, fires, explosions, storms, strikes, lockouts, work stoppages, slowdowns, boycotts, picketing or other industrial disturbances, wars, or any law, regulation, rule or action of any court or instrumentality of the Federal or any state government, or any event which impairs or prohibits the production or marketing of pork and pork products, or any other cause or causes beyond their reasonable control, whether or not the kind herein enumerated or otherwise, and which by the exercise of due diligence, such party is unable to prevent or overcome, provided only that the same is not willfully done or brought about for the purpose of excusing failure or omission to perform under this Agreement by such party. In the event of being rendered unable to perform, in whole or in part, in accordance with this paragraph, the affected party shall give notice in writing of the full particulars of such force majeure, as defined in this paragraph, to the other party as soon as possible after the occurrence of such cause relied upon, and the obligations of the affected party pursuant hereto shall be suspended during the continuance of any inability so caused until such time as the cause shall be remedied or otherwise removed.

d) If either party is prevented from performing any of its obligations under this Contract, by reason of any condition beyond its control, then, unless alternative provisions are set out in this Contract, the time for performance of such obligation shall be suspended until the condition preventing performance ceases. Such conditions include, but are not limited to, Act of God, Governmental action, war, fire, road or air disasters, disease, strikes or other labor disputes.

e) Despite anything in this Contract to the contrary, in the event that any law or regulation is enacted, or any opinion of the _____ Attorney General or chief law enforcement officer of any other state is issued, that would make the performance by OWNER of OWNER'S obligations under this Contract illegal or impracticable or would otherwise limit or prohibit the performance of OWNER'S duties under this Contract in the manner contemplated by the parties at the time this Contract was executed, this Contract shall be voidable by OWNER.

f) Without limiting the parties' right under Paragraph ___, in the event either party is prevented from performing this Agreement by circumstances beyond its reasonable control, including fire, explosion, Acts of God, war, riot, labor strikes, animal transfer restrictions or prohibitions, or like events (all "Force Majeure Events"), the obligations of each party shall be suspended until the condition preventing performance ceases. A party claiming it is excused from performance by a Force Majeure Event must promptly provide the other party written notice of such Force Majeure Event and its estimated duration.

2) Pig Purchase Agreements.

a) Any absence of or delay in the performance of this Agreement shall be excused when such absence of or delay in performance is due to any fire, flood, or weather condition, or other acts of God; provided, that written notice of the event must be given by to the other party within ten (10) days after the occurrence of such cause or event.

b) Neither party shall be liable for damages due to delay or failure to perform any obligation under this agreement if such delay or failure results directly or indirectly from circumstances beyond the control of such party. Such circumstances shall include, but not be limited to, acts of God, acts of war, civil commotions, riots, strikes, lockouts, acts of government in either its sovereign or contractual capacity, perturbation in telecommunications transmissions, inability to obtain suitable equipment of components, accident, fire, water damages, flood, earthquake, or other natural catastrophes.

c) Any party to this agreement shall be relieved of its responsibility and obligations hereunder when performance becomes commercially impossible because of reasons beyond its reasonable control such as, but not limited to fire, explosion, strike, governmental regulation or intervention, and acts of God. Swine health or management problems that may impact the productivity of Seller's operations, however, are generally not an excuse for non-delivery of Qualifying Pigs under this agreement. However, if a disease outbreak occurs which requires, in Seller's sole discretion, repopulation of Seller's facility, in whole or in part, Seller's delivery obligation is suspended during the period of such repopulation without liability to the Buyer and without extension of the term of the contact. Notwithstanding the above, should Seller's performance be prevented or delayed by a cause under this provision, Buyer may, but shall not be obligated to accept such portion of the pigs as it deems, in its sole discretion, it can economically process. Any of the pigs not accepted by Buyer shall automatically be released to the Seller for sale or disposal elsewhere. Damage or destruction of the Seller's Facilities or the Buyer's facilities causing the excuse or delay of Seller's or Buyer's performance under this provision shall be repaired or replaced as soon as is reasonably possible. Seller and Buyer shall carry insurance in an amount at least equal to the replacement value of their respective facilities and shall provide proof of such insurance to the other party each year this agreement is in effect. In the event either Seller's or Buyer's performance is excused hereunder, then Buyer's or Seller’s performance shall likewise be excused, with the exception of payment for Qualifying Pigs delivered.

d) Any party to this agreement shall be relieved of its responsibility and obligations hereunder when becomes commercially impossible because of reasons beyond its reasonable control such as, but not limited to fire, explosion, strike, accident, governmental regulation or intervention, and acts of God. Swine health or management problems that may impact the productivity of Seller's operation, however, are not an excuse for non-delivery of Qualifying Pigs under this agreement. Notwithstanding the above, should Seller performance be prevented or delayed by a cause under this provision, Buyer may, but shall not be obligated to accept such portion of the pigs as it deems, in its sole discretion, it can economically process. Any of the pigs not accepted by Buyer shall automatically be released to the Seller for sales or disposal elsewhere. Damage or destruction of the Seller’s Facilities or the Buyer’s Facilities or the Buyer’s facilities causing the excuse or delay of Seller’s or Buyer’s performance under this provision shall be repaired or replaced as soon as is reasonably possible. Seller and Buyer shall carry insurance in an amount at least equal to the replacement value of their

respective facilities and shall provide proof of such insurance to the other party each year this agreement is in effect. In the event either Seller's or Buyer's performance is excused hereunder, then Buyer's or Seller's performance shall likewise be excused.

e) If the performance of this Agreement by either party is prevented or delayed by an act of God, disease or epidemic, civil insurrection, fire, flood, storm, strikes, domestic and/or foreign trade barriers, lockouts, total or partial failure of transportation or delivery facility, failure or interruption of [Owner's] weaned pigs supply, interruption of power (except for failure to pay an amount owed to a utility or supplier) or by any law, regulation, or order or any federal, state, county or municipal authority, or by any other cause beyond the control of such party (a "Force Majeure Event"), such party's obligations hereunder will be suspended (except for the obligation to make payments for amounts owed) to the extent of the Force Majeure Event, except as provided hereafter. The party declaring a Force Majeure Event, will give notice to the other party stating the particulars of such and using the most expedient means available under the circumstances, provided, any oral notice will be confirmed in writing within 5 days of the original notice. If Producer's performance is prevented or delayed by a Force Majeure Event, Producer may during such period accept such portion of the pigs it deems, and its reasonable judgment, it can economically process. Any pigs not excepted by Producer due to a Force Majeure Event will be automatically released to [Owner] for sale or disposal elsewhere. The parties will use diligent reasonable efforts to properly resume normal performance hereunder after the occurrence of any Force Majeure Event. Producer will maintain fire and casualty insurance covering its nursery and finishing facilities in such coverage amounts necessary to (i) minimize the impact of any Force Majeure Event caused by a casualty loss to one or more of its facilities, and (ii) permit the prompt repair or replacement of such facility or facilities. Producer will require each of its contract growers to maintain insurance as set forth above. Producer will provide proof of such insurance to [Owner] within 5 business days of [Owner's] request. Declaration of a Force Majeure Event by Supplier will operate at [Owner's] option as a Force majeure Event under this Agreement.

3) Swine Packer Agreements.

a) Neither party shall be liable for failure to perform or delay in performing any act hereunder if such performance is rendered impossible by reason or matters beyond the reasonable control of the party, including but not limited to acts of God, governmental action, strikes, lockouts, picketing, wars, blockades, riots, fire, storms, floods, explosion or Producer's death or permanent disability (in any instance, a "Force Majeure Event"). A failure to settle or prevent any strike or controversy with employees or with anyone purporting or seeking to represent employees shall be considered a Force Majeure Event, provided such strike affects said party's performance of the requirements of this Agreement. Once performance becomes commercially possible, the responsibilities and obligations of the parties shall resume again with full force and effect. [Packer] agrees that in the event of a Force Majeure Event affecting a plant specified for delivery, [Packer] will use reasonable efforts to assist Producer in rescheduling the Market Hogs at other [Packer] plants. If a Force Majeure Event shall continue for a period longer than six months, the party not claiming such Force Majeure Event may terminate this Agreement by giving the other party written notice.

Notwithstanding the above, if Producer (i) experiences a disease problem with respect to Market Hogs that is outside Producer's control and results in an inability of

Producer to deliver those Market Hogs to [Packer] in accordance with the terms of this Agreement (a "Disease Event") and (ii) is also providing hogs to a processor other than [Packer], then the Producer will be obligated to deliver the same percentage of Producer's hogs (taking into account all of Producer's facilities) to [Packer] as were delivered to [Packer] immediately prior to the Disease Event. (For example, if Market Hogs delivered to [Packer] accounts for 50% of Producer's available Market Hogs immediately prior to a Disease Event, Producer will continue to deliver 50% of the available Market Hogs not impacted by the Disease Event for the duration of the Disease Event.)

b) Except as otherwise provided herein, neither Processor nor Producer shall be responsible or liable for any failure or lack of performance under this Agreement if such performance is rendered impossible or commercially impracticable, directly or indirectly, by a Force Majeure Event. In the event of being rendered unable to perform, in whole or in part due to a Force Majeure Event, the affected party shall give notice in writing of the full particulars of such event to the other party as soon as possible after the occurrence. The obligations of the affected party under this Agreement shall be suspended during the continuance of any inability to perform caused by the Force Majeure Event until such time as the cause shall be remedied or otherwise removed.

g. Notices of Event.

1) The COVID-19 situation is very fluid, and _____ expects, unfortunately, that other disruptions to our contract performance may occur in the coming days as a direct result of the COVID-19 pandemic and governmental declarations. As a result, we are providing this notice to advise you that the COVID-19 pandemic is a force majeure event under our contract and/or unforeseeable event making full contract performance commercially impractical under the present circumstances. While we have not yet experienced any significant disruptions in essential collection or processing services, we anticipate that such disruptions may be inevitable, such as:
   - Quarantines at, or shutdowns of, _____ facilities;
   - Shelter-in-place orders that impact travel and business operations;
   - Shutdown of _____ and/or third-party recycling and disposal facilities that restrict our ability to operate normally;
   - Worker shortages because of quarantines or sickness; and
   - Fuel and other critical equipment and supply shortages.

   At this time, no one can reliably predict the length of this emergency event, when potential service disruptions may occur, or how long they may last. _____ will continue to provide prompt notice of our operational capabilities and changes as they occur. We appreciate your understanding and cooperation in these challenging times. If you have any questions, please contact your _____ representative.
2) Due to the coronavirus pandemic and varied federal, state and local regulations relating thereto, and due to employee illness relating to such pandemic (collectively, the "Force Majeure Event"), _____ have reduced production at their _____ facility (the "Facility") until further notice.

   Pursuant to that certain Hog Purchase AGREEMENT ("Contract") between our companies, this letter serves as _____'s formal written notice of the Force Majeure Event and that such Event has rendered _____ unable to carry out its obligations under the Contract. Specifically, throughout the duration of the Force Majeure Event, _____ will not be able to perform and shall not be liable for any failure to perform, all of its obligations under the Contract, including but not limited to, it's failure to meet hog purchase quantity requirements, if any. With that said, _____ will endeavor to continue to purchase hogs from your

company where it is commercially possible and reasonable to do so in a volume proportionate to the reduction in its overall kill. _____ hog buyers will be in contact with your company on a regular basis regarding _____'s ability to purchase and receive your hogs. In addition, _____ will work with you and your company and good faith to mitigate the effects of the Force Majeure Event, including efforts, where commercially reasonable and possible, by allowing you to choose to deliver hogs currently designated for the Facility to another _____ production Facility.

3) _____ hereby notifies you that the current COVID-19 pandemic has rendered _____'s performance under the Agreement commercially impossible for reasons outside the control of _____. Pursuant to the Agreement, this constitutes a force majeure event and will impact _____'s volume commitments under the Agreement.
We are working diligently to address the effect of COVID-19 on our operations and will keep you informed of our progress as it impacts our obligations under the Agreement.

4) _____ has been severely affected by work stoppages, slowdowns and labor shortages arising from the initial outbreak of coronavirus (COVID-19). This has directly resulted in significant reductions to our operational capacity making continued performance under the Hog Procurement Agreement impossible or commercially impracticable under the Force Majeure provision in section __ of the Agreement. This letter constitutes our Notice of Force Majeure Event.
As of _____, _____ will no longer schedule or accept delivery of the full quantity of Market Hogs under the Agreement. We will be in contact to determine the number and schedule of Market Hogs we can accept under the Agreement during the Force Majeure period.
We are using, and will continue to use, commercially reasonable efforts to remedy this situation and will keep you advised as more information becomes available.

3. **Iowa Statutory Ag Liens.**

a. State Statutory Ag Liens Under Article 9. Article 9, as revised and effective July 1, 2001, applies to agricultural liens. Iowa Code §554.9109(1)(b).

b. Iowa Statutory Liens Qualifying as Agricultural Liens:
   i. Landlord's Lien, Iowa Code Chapter 570.
   ii. Agricultural Supply Dealer's Lien, Chapter 570A.
   iii. Harvester's Lien, Chapter 571.
   iv. Custom Cattle Feedlot Lien, Chapter 579A.
   v. Commodity Production Contract Lien, Chapter 579B.
   vi. Lien for Services of Animals, Chapter 580. (owner, keeper or artificial inseminator has prior lien on progeny of a stallion, bull, or jack)
   vii. Veterinarian's Lien, Chapter 581.

c. Filing Required to Perfect Ag Liens. Iowa Code §554.9310 provides:
(1) "A financing statement must be filed to perfect all . . . agricultural liens."
(3) "If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor."

d. Maintaining a Perfection of an Ag Lien When the Collateral is Moved to Another State. Iowa Code §554.9302 provides: "While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products."

Note: This section provides a different choice of law for ag liens than for security interests under Iowa Code §554.9301 (general rule is that perfection and priority of security interests are governed by the law of the jurisdiction where the debtor is located.)

If agricultural lien collateral leaves the state, the agricultural lien must be perfected in the state where the collateral is moved. If the lien is not perfected in that state, the lien loses its priority during the time the collateral is in that state. See Iowa Code section 554.9302 ("While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.") Also see UCC 9-316, Official Comment 7, Example 10.

e. Continuation of Perfection of Ag Lien Upon Sale and Attachment to Proceeds. Iowa Code §554.9315: "Except as otherwise provided in this Article and in section 554.2403, subsection 2:
a. a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
b. a security interest attaches to any identifiable proceeds of collateral."

Note: Reading Art. 9 literally, an agricultural lien does not attach to proceeds by the provisions of Art. 9. Any attachment to proceeds by an agricultural lien must arise from the lien statute itself. See 9-322 Official Comment 12. In addition, courts have ruled that an ag lien can attach to proceeds due to the underlying policy of the lien statute and because comment 9 to 554.9315 states that Article 9 does not determine whether a lien extends to proceeds of farm products subject to an ag lien. See In Re Schley discussed below.

Note: Because of the requirements in the two previous sections, one commentator has stated: "In light of the limit on proceeds, and the different filing rules, it might be wise for a creditor relying on an agricultural lien to also get a consensual security agreement. There is no prohibition to having two bites at the apple. Even without a security agreement, if the statute creating the agricultural lien contains an enforcement mechanism, the creditor should be able to enforce its statutory lien under either Part 6 of Article 9 or the statutory mechanism." The Law of Secured Transactions Under the Uniform Commercial Code, Barkley Clark, paragraph 8.09, p. 8-121.

f. Federal Food Security Act and Written Notice – Not Applicable to Ag Liens. Iowa Code §554.9320, Buyer of Goods, provides: "Buyer in ordinary course of business. Except as otherwise provided in subsection 5, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence."
7 U.S.C. §1631 provides that a buyer who in the ordinary course of business who buys a farm product from a seller engaged in farming operations takes free of a security interest created by the seller, even though the security interest is perfected; and the buyer knows of the existence of such interest unless, in states such as Iowa, the seller has provided direct written notice of the security interest to the buyer.
Iowa Code §554.9102(4) provides: "For purposes of the Federal Food Security Act, 7 U.S.C. § 1631, written notice shall be considered to be received by the person to whom it was delivered if the notice is delivered in hand to the person, or mailed by certified or registered mail with the proper postage and properly addressed to the person to whom it was sent. The refusal of a person to whom a notice is so mailed to accept delivery of the notice shall be considered receipt."
Note: Compliance with direct notice provisions of Iowa and Federal law to preserve an agricultural lien in proceeds should not be required because the Federal Food Security Act refers

to security interests (security interest is defined as an interest in farm products that secures payment or performance of an obligation) and because the Food Security Act has been interpreted to apply to consensual liens, but not nonconsensual liens. See 7 U.S.C. section 1631(e)(refers to security interests created by the seller) and Farm Financing Under Revised Article 9, Linda J. Rusch, American Bankruptcy Law Journal, Vol. 73, p. 211, 245-246 (1999). However, from a practical perspective, in certain situations a producer may want to voluntarily notify a buyer of farm products of the producer's ag lien.

g. Termination. Within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if there is no obligation secured by the collateral remaining. Iowa Code §554.9513.

h. Priority of Ag Liens. Iowa Code §554.9322(7) provides that 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 gives priority.

The following chart shows the priority of perfected Iowa Ag Liens in addition to the priority over later perfected UCC security interests and UCC liens:

Iowa Code Chapter	Lien	Priority as provided in statute
570	Landlord's Lien	Any prior security interest and prior perfected lien, except Harvester's Lien, Mechanic's Lien, Custom Cattle Feedlot Lien, Commodity Production Contract Lien, or Veterinarian's Lien. IC 570.1(2)
570A	Ag Supply Dealer's Lien	Feed: Any prior perfected lien or security interest to the extent of the difference in the acquisition price of the livestock and the fair market value of the livestock at the time the lien attaches or the sale price of the livestock, whichever is greater IC 570A.5(3) Other ag supplies: Equal priority to prior perfected lien (except LL's lien or Harvester's lien) and security interest if certified notice sent IC 570A.5(2)
571	Harvester's Lien	Any prior perfected security interest or Landlord's lien IC 571.3A(2)
579A	Custom Cattle Feedlot Lien	Any prior perfected security interest or lien other than a perfected Vet's lien or Emergency care of livestock lien IC 579A.2(5)
579B	Commodity Production Contract Lien	Any prior perfected security interest or lien other than a perfected Vet's lien or Emergency care of livestock lien IC 579B.4(4)
581	Veterinarian's Lien	Any prior perfected security interest or lien except Emergency care of livestock lien IC 581.2(2)
717	Emergency Care of Livestock	Any prior perfected security interest or lien IC 717.4(5)

i. Landlord's Lien, Iowa Code Chapter 570.

(1) A landlord has a lien for the rent on crops grown on the premises, and on any other personal property of the tenant which has been used or kept on the leased premises which is not exempt from execution. Iowa Code §570.1(1).

(2) Iowa Code §570.1, expressly provides that a landlord's lien on farm products has priority

over conflicting perfected Article 9 security interests, including those perfected before the landlord's lien was created, if the landlord's lien is perfected by filing a financing statement with the Iowa Secretary of State when the tenant takes possession of leased premises or within 20 days after the tenant takes possession. Iowa Code §570.1(2).

(3) Section 570.1(3) requires that a financing statement "include a statement that it is filed for the purpose of perfecting a landlord's lien." A financing statement perfecting a Landlord's Lien is effective until a termination statement is filed.

(4) The lien continues for one year after the rent is due or six months after the end of the lease, whichever is earlier. Iowa Code §570.2.

(5) The lien may be enforced as follows:

1. Under Iowa Code §570.5, "by the commencement of an action, within the period above prescribed, for the rent alone, in which action the landlord shall be entitled to a writ of attachment, upon filing with the clerk a verified petition, stating that the action is commenced to recover rent accrued within one year previous thereto upon premises described in the petition; and the procedure thereunder shall be the same, as nearly as may be, as in other cases of attachment, except no bond shall be required."
2. Under the general Art. 9 provisions for enforcement of an agricultural lien as provided in chapter 554, article 9, part 6.

Note:

a. *Iowa farm lease law requires that the termination date for farm tenancies be March 1 in the year that the lease terminates. Iowa Code §562.5. Thus, because most farm leases begin on March 1 and a tenant takes possession on that date, a financing statement perfecting a landlord's lien on farm products would have to be perfected by March 20 in the year which the lease begins. Under 570.1, a landlord's lien can be perfected prior to the date of the tenant's possession. It would appear that the landlord's lien would become effective at the time the debtor (tenant) takes possession, normally when the lease begins. Iowa Code §554.9509(1)(a) provides that a financing statement may be filed to perfect an agricultural lien that has not become effective only if the debtor (tenant) has authorized the filing in an authenticated record. Thus, a landlord may file a financing statement prior to the beginning of the lease only if the tenant has so authorized in the lease or in a separate authenticated record.*

b. *Landlord lien filings do not lapse after five years. However, as a precaution to avoid disputes, landlords may want to file a continuation statement for UCC-1's that remain in effect and have been on file five years.*

c. *Under Iowa farm lease law, a farm lease for a term of years continues past the contractual term under the same terms and conditions on a year-to-year basis unless it is terminated before September 1 of the final year of the contractual term. Iowa Code §562.6 and Pollock v. Pollock, 72 N.W.2d 483, 485 (Iowa 1955). The question is whether a landlord under a lease that continues pursuant to 562.6 must perfect a landlord's lien by filing every year. In addition, even if a new lease is entered into between the same landlord and tenant for the same land, must a financing statement be filed to perfect a landlord's lien under the new lease?*
While Chapter 570.1 and Article 9 do not expressly answer this question, the safest course of action is to file each year within twenty days after the lease term begins.

d. *A properly perfected landlord's lien has priority over a conflicting security interest or lien, including a prior perfected security interest ("super priority") and other ag liens except a properly perfected Harvester's Lien, Mechanic's Lien, Custom Cattle Feedlot Lien, Commodity Production Contract Lien, or Veterinarian's Lien.*

e. *Although Iowa Code §570.1 does not expressly provide that the lien attaches to proceeds, the Iowa Supreme Court has ruled (before Rev. Art. 9 was adopted) that the lien created by Iowa Code section 570.1 extends to proceeds of crops grown on leased premises and has priority over a prior perfected security interest. Meyer v. Hawkeye Bank & Trust Co., 423 N.W.2d 186, 188-189 (Iowa 1988) and Perkins v. Farmers Trust and Savings Bank, 421 N.W.2d 533, 534-535 (Iowa 1988).*

f. *Under Art. 9, a landlord may file a financing statement to perfect a security interest in crops or livestock granted in a lease. (This may be done because Bankruptcy Code section 545 may be interpreted to allow a bankruptcy trustee to avoid a landlord's lien.) This financing statement perfects a security interest and not an ag lien. Such a perfected security interest does not have the super priority provided by the landlord's lien.*

j. Custom Cattle Feedlot Lien, Chapter 579A.

(1) A custom cattle feedlot operator has a nonpossessory lien on cattle and identifiable cash proceeds for the amount of the cost for the care and feeding of the cattle. Iowa Code §579A.2(2).

(2) The lien is effective when the cattle arrive at the feedlot and continues for one year after the cattle leave the feedlot. Iowa Code §579A.2(3)(b).

(3) The lien is perfected by filing a financing statement with the Secretary of State within 20 days of the arrival of the cattle at the feedlot.

(4) The lien may be enforced under Iowa Code §579A.3 as follows:
"While the cattle are located at the custom cattle feedlot, the custom cattle feedlot operator may enforce a lien created in section 579A.2 in the manner provided for the enforcement of an agricultural lien as provided in chapter 554, article 9, part 6. After the cattle have left the custom cattle feedlot, the custom cattle feedlot operator may enforce the lien by commencing an action at law for the amount of the lien against either of the following:
1. The holder of the identifiable cash proceeds from the sale of the cattle.
2. The processor who has purchased the cattle within three days after the cattle have left the custom cattle feedlot."

(5) With the exception of a perfected Veterinarian's Lien, a perfected Custom Cattle Feedlot lien has priority over other statutory liens and Art. 9 security interests, regardless of when they are perfected. Iowa Code §579A.2(5)(a).

(6) Waivers of rights provided by the chapter are void. Iowa Code §579A.4.

(7) A custom cattle feedlot operator may file and enforce a lien under 579A or 579B, but not both. Iowa Code §579A.5.
Note: Unlike a financing statement perfecting a Landlord's Lien, an express statement that a Feedlot Lien is being perfected is <u>not</u> required.
Note: Some Iowa custom cattle feeders provide financing to the owners of the cattle placed in their feedlots for the purchase price of the cattle. This loan is then repaid upon sale of the cattle. These custom cattle feeders must be advised that neither the Custom Cattle Feedlot Lien nor the Commodity Production Contract Lien provides a lien for financing of the cattle. To obtain a priority security interest in the cattle for the amount financed, the cattle feeders must follow other procedures such as obtaining a purchase money security interest in livestock under Iowa Code 554.9324(4) or obtaining a subordination agreement from prior perfected secured parties.

k. Commodity Production Contract Lien, Chapter 579B.

(1) A producer feeding another person's cattle, sheep or swine (poultry are not included) or raising another person's crop on the producer's farm (crops are defined to include "a plant used for food, animal feed, fiber, or oil . . ." Note that crops used for other

purposes such as seed or pharmaceuticals are not included) has a nonpossessory lien on the livestock or crop and cash proceeds for the amount of the services provided. Iowa Code §579B.2 and .3.

(2) If the livestock or crop is sold by the contractor, the lien shall be on cash proceeds from the sale. Cash held by the contractor shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds. Iowa Code §579B.3.

(3) If the livestock is slaughtered or the crop is processed by the contractor, the lien shall be on any property of the contractor that may be subject to a security interest as provided in section 554.9109. Iowa Code §579B.3.

(4) The lien is effective when the livestock arrive at the farm or when the crop is planted and continues for one year after the livestock or crop leave the control of the producer. Iowa Code §579B.4.

(5) The lien is perfected by filing a financing statement with the Secretary of State within 45 days of the arrival of the livestock or planting of the crop.

(6) In addition, if there is "continuous arrival" of livestock at the animal feeding operation (monthly or more frequent as provided by contract), the lien may be perfected by filing within 180 days after the livestock's arrival.

(7) With the exception of a perfected Veterinarian's Lien, a perfected Commodity Production Contract Lien has priority over other statutory liens and Art. 9 security interests, regardless of when they are perfected. Iowa Code §579B.3.

(8) The lien may be enforced under Iowa Code §579B.5 as follows:
"Before a commodity leaves the authority of the contract producer as provided in section 579B.3, the contract producer may enforce a lien created in that section in the manner provided for the enforcement of an agricultural lien as provided in chapter 554, article 9, part 6. After the commodity is no longer under the authority of the contract producer, the contract producer may enforce the lien in the manner provided in chapter 554, article 9, part 6."

(9) Waivers of rights provided by the chapter are void. Iowa Code §579B.6.

(10) A custom cattle feedlot operator may file and enforce a lien under 579A or 579B, but not both. Iowa Code §579B.7.
Note: Neither 579A or 579B allow for perfecting the lien before the lien becomes effective, even though Art. 9 (§554.9509(1)(a)) would permit this if the debtor (owner of the cattle or commodity) had authorized the filing in an authenticated record.
Note: Because a custom cattle feedlot operator may file and enforce a lien under 579A or 579B, a feedlot operator who misses the 20-day perfection period in 579A could utilize the 45-day perfection period (or 180 days if there is continuous arrival) in 579B.
Note: Unlike a financing statement perfecting a Landlord's Lien, an express statement that a Commodity Production Contract Lien is being perfected is <u>not</u> required.

l. <u>Agricultural Supply Dealer's Lien, Chapter 570A</u>. The Ag Supply Dealer's lien creation, perfection and priority provisions are:

(1) An agricultural supply dealer who provides an agricultural supply to a farmer shall have an agricultural lien. Iowa Code 570A.3

(2) The amount of the lien is the amount owed to the agricultural supply dealer for the retail cost of the agricultural supply, including labor provided. The lien applies to crops or livestock.

(3) The lien is perfected by filing a financing statement with the Iowa Secretary of State within 31 days after the ag supply is purchased. Iowa Code 570A.4.

(4) For livestock feed, the lien has priority over an earlier perfected lien or security interest to the extent of the difference between the acquisition price of the livestock and the fair market value of the livestock at the time the lien attaches or the sale price of the

livestock, whichever is greater. Iowa Code 570A.5(3).

(5) For all other ag supplies, the lien has the following priority:

"Except as provided in section 570A.2, subsection 3, the lien shall have equal priority to a lien or security interest which is perfected prior to the time that the agricultural supply dealer's lien is perfected. However, a landlord's lien that is perfected pursuant to section 570.1 shall have priority over a conflicting agricultural supply dealer's lien as provided in section 570.1, and a harvester's lien that is perfected pursuant to section 571.3 shall have priority over a conflicting agricultural supply dealer's lien as provided in section 571.3A. 3." Iowa Code 570A.5(2).

The exception referenced at the beginning of 570A.5(2) is:

"570A.2 Financial institution memorandum to agricultural supply dealers.

1. Upon the receipt of a certified request of an agricultural supply dealer, prior to or upon a sale on a credit basis of an agricultural supply to a farmer, a financial institution which has either a security interest in collateral owned by the farmer or an outstanding loan to the farmer for an agricultural purpose shall issue within four business days a memorandum which states whether or not the farmer has a sufficient net worth or line of credit to assure payment of the purchase price on the terms of the sale. The certified request submitted by the agricultural supply dealer shall state the amount of the purchase and the terms of sale and shall be accompanied by a waiver of confidentiality signed by the farmer, and a fifteen-dollar fee. The waiver of confidentiality and the certified request may be combined and submitted as one document. If the financial institution states in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the memorandum is an irrevocable and unconditional letter of credit to the benefit of the agricultural supply dealer for a period of thirty days following the date on which the final payment is due for the amount of the purchase price which remains unpaid. If the financial institution does not state in its memorandum that the farmer has a sufficient net worth or line of credit to assure payment of the purchase price, the financial institution shall transmit the relevant financial history which it holds on the person. This financial history shall remain confidential between the financial institution, the agricultural supply dealer, and the farmer.

2. If within four business days of receipt of a certified request a financial institution fails to issue a memorandum upon the request of an agricultural supply dealer and the request from the agricultural supply dealer was proper under subsection 1, or if the memorandum from the financial institution is incomplete, or if the memorandum from the financial institution states that the farmer does not have a sufficient net worth or line of credit to assure payment of the purchase price, the agricultural supply dealer may decide to make the sale and secure the lien provided in section 570A.3.

3. Upon an action to enforce a lien secured under section 570A.3 against the interest of a financial institution secured to the same collateral as that of the lien, it shall be an affirmative defense to a financial institution and complete proof of the superior priority of the financial institution's lien that the financial institution either did not receive a certified request and a waiver signed by the farmer, or received the request and a waiver signed by the farmer and provided the full and complete relevant financial history which it held on the farmer making the purchase from the agricultural supply dealer on which the lien is based and that financial history reasonably indicated that the farmer did not have a sufficient net worth or line of credit to assure payment of the purchase price."

m. Harvester's Lien, Chapter 571.

i. A person "baling, chopping, combining, cutting, husking, picking, shelling, stacking, threshing, or windrowing a crop, regardless of the means or method employed" has a lien

"for the reasonable value of harvesting services." A crop "includes but is not limited to corn, soybeans, hay, straw, and crops produced on trees, vines, or bushes." Iowa Code §571.1A and 1B.

ii. The lien is effective when the harvesting services are rendered. Iowa Code §571.3(1).

iii. The lien is perfected by filing a financing statement with the Secretary of State within 10 days after the last date the harvesting services were rendered. Iowa Code §571.3(2).

iv. A timely perfected lien has priority over prior perfected security interests and Landlord's Liens. Iowa Code §571.3A(2).

v. The lien may be enforced in the manner provided for ag liens in chapter 554, article 9, part 6." Iowa Code §571.5.

Note: Unlike a financing statement perfecting a Landlord's Lien, an express statement that a Harvester's Lien is being perfected is <u>not</u> required.

Kohn v. Muhr, No. 18-2059 (Iowa Ct. App. Nov. 30 2019).
On November 27, 2019, the Iowa Court of Appeals ruled that a farmer who had solicited the services of a harvester was a "debtor" subject to a harvester lien because he was the person for whom the services were rendered. When a farmer did not have the ability to complete a custom farm agreement with his son, he hired a harvester to help. After the farmer and his son failed to pay, the harvester filed a financing statement listing both the farmer and the son as debtors. The son eventually paid the harvester for his services. The harvester immediately terminated the financing statement.
The farmer filed suit against the harvester for wrongfully filing a financing statement, alleging that he did not qualify as a "debtor" which cause financial damage when his commodity contracts were involuntarily liquidated. The farmer claimed that he not the debtor he was merely acting as his son's agent
A harvester may file an agricultural lien against the person for whom they harvest. "[T]he person for whom the harvester renders such harvesting services is a debtor…" The court found that the farmer was a "person for whom the harvester render[ed]" and therefore fell within the meaning of "debtor" under the harvester lien statute. Additionally, the court found that the farmer hired the harvester and gave specific instructions on harvesting and delivering the grain. The farmer was not merely an agent representing his son's interests, but was more akin to a contractor hiring a subcontractor. Therefore, the farmer was a debtor for purposes of the harvester lien statute.

n. <u>Veterinarian's Lien, Chapter 581</u>.

(1) A veterinarian has a lien "for the actual and reasonable value of treating livestock, including the cost of any product used and the actual and reasonable value of any professional service rendered by the veterinarian." Iowa Code §581.2A.

(2) The lien is effective when the veterinarian treats the livestock. Iowa Code §581.3(1).

(3) The lien is perfected by filing a financing statement with the Secretary of State within 60 days after the day the veterinarian treats the livestock. Iowa Code §581.3(2).

(4) A timely perfected lien has priority over conflicting security interests or liens, regardless of when the security interest or lien is perfected. Iowa Code §581.2(2).

(5) The lien may be enforced in the manner provided for ag liens in chapter 554, article 9, part 6." Iowa Code §571.4.

Note: Unlike a financing statement perfecting a Landlord's Lien, an express statement

that a Veterinarian's Lien is being perfected is not required.

n. Emergency care of livestock. Iowa Code Sections 717.3 -.6 (2011 Iowa Acts, ch 81, §10).

1) The Iowa Department of Agriculture & Land Stewardship (IDALS) is given authority to determine if livestock (swine, poultry, sheep and cattle) are in immediate need of sustenance (feed, water, or nutritional formulation customarily used in the production of livestock)
2) IDALS may file a petition with the district court where the livestock are located asking the court to issue an order finding that the livestock are in immediate need of sustenance, to provide sustenance to the livestock, and to sell or otherwise dispose of the livestock, if necessary.
3) The IDALS petition to the court must include, among other things:
    a. A statement signed by a veterinarian that the livestock are in immediate need of sustenance
    b. Name and address of the owner of the livestock, the person caring for the livestock if different from the owner, and anyone holding a lien or security interest in the livestock.
    c. Name and address of each person willing to provide sustenance
4) The court may notify the owner, the person caring for the livestock if different from the owner, and any lien or security interest holders that a petition has been filed. The court may also hold a hearing to determine if the livestock are in immediate need of sustenance.
5) If the court finds the livestock are in immediate need of sustenance, the court shall issue an order declaring the livestock are in immediate need of sustenance and that IDALS shall take control of supervision of the livestock and provide for sustenance (IDALS may appoint a qualified person to provide for sustenance). The order shall also provide that IDALS (or the qualified person) has a lien in the livestock for the sustenance provided and any costs of disposing of the livestock. The lien shall have priority over any other lien, security interest, or legal interest in the livestock. The lien must be filed with Secretary of State as soon as practicable, but not later than within 20 days after entry of the court order.
6) If IDALS requests in the petition, the court may also order disposition of the livestock and hold a hearing using procedures currently in place in section 717.5 for other neglected livestock.
7) The Manure Storage Indemnity Fund previously in Chapter 459 under DNR control was renamed the "Livestock Remediation Fund" and IDALS now has authority to access money in the fund. DNR is required to allocate money to IDALS if necessary to pay for costs of sustenance and disposition of livestock as provided by the court order. Any money received by IDALS from the livestock less expenses is repaid to the Fund.

o. Enforcement.

1. Provisions of each lien statute and Iowa Code section 554.9601 - 9624 (Art. 9, part 6)
2. Practical issues with enforcement:
    a. Proper & timely perfection of the lien by filing UCC-1
    b. Default - negotiation with debtor (& other secured creditors)
    c. Notification to buyer of farm product subject to ag lien- voluntary, not required, but helpful in enforcement
    d. Sale of collateral to create proceeds – proceeds placed in escrow pending resolution of priority of competing security interests
    e. Negotiation and/or litigation to determine priority

4. Nuisance.

For a more complete discussion of Iowa Nuisance law, see Drake General Practice Review on Agricultural Law, Dec. 13, 2019, pp. 9-23. This outline will focus on recent cases of interest in 2020.

Recent Ag Nuisance Jury Verdicts and Upcoming Iowa Ag Nuisance Trials.

Beginning with a case in 2018, in five court cases in United States District Court in North Carolina juries returned verdicts against Smithfield Foods finding their contract hog operations a nuisance and awarding $549,772,400 in compensatory and punitive damages. That total has been reduced under North Carolina punitive damage law to $97.9 million. Smithfield appealed the verdicts. Twenty-one additional nuisance cases to go to trial against Smithfield in North Carolina were stayed pending the appeal. On November 19, 2020, the 4th Circuit U.S. Court of Appeals issued its decision, *McKiver et. al. v. Murphy-Brown, LLC*, 2020 WL 6787917, affirming the trial court in part and vacating in part, as follows:

a. the provider was not a necessary party;
b. the nuisance was recurrent for limitations purposes;
c. an amendment to North Carolina's Right to Farm Act (RTFA), limiting compensatory damages for permanent nuisances and temporary nuisances, does not apply retroactively;
d. even if jury instruction misstated North Carolina on vicarious liability for a nuisance, producer was not prejudiced;
e. evidence of producer's willful and wanton conduct warranted punitive damages; but
f. trial regarding amount of punitive damages should have been bifurcated.

It has been reported that within hours after the Appeals Court decision was issued, Smithfield Foods announced that it had settled all of the cases, including the twenty-one awaiting trial.

The most recent cases to go to trial in Iowa are:

- *McIlrath v. Prestage Farms of Iowa*, Poweshiek County District Court, Feb. 4, 2015, jury trial. The plaintiff who lives less than 2,200 feet northeast of Prestage's 2,400 head hog operation alleged the operation was a nuisance. The jury returned a verdict in favor of the plaintiff finding the operation was a permanent nuisance and awarded plaintiff $100,000 for loss of past enjoyment, $300,000 for present value of loss of future enjoyment, and $125,000 for diminution of property value, for total damages of $525,000. In response to a post-trial motion, the district court reduced McIlrath's damage award for diminution of property value by one-half ($62,500) because McIlrath owned the property jointly with her husband who was not a plaintiff. The jury's verdict was upheld on appeal as discussed above.
- *Pauls v. Warren*, Wapello County District Court, February 1, 2016, jury trial. The action was originally filed by 42 Plaintiffs against the pork producer, Warren, who owned the hog barns and against Cargill (now JBS Live Pork, LLC) who owned the pigs being fed by Warren under contract. The court instituted a bellwether structure, requiring the Plaintiffs to choose 2 households and the Defendants to choose 2 households. The case proceeded to trial against JBS (Warren's $60,000 pre-trial offer to confess judgment was accepted by the plaintiffs) with 9 bellwether plaintiffs. The closest Plaintiff lived over 1 mile from the hog facility. The jury returned a verdict in favor of the Defendant JBS finding that the operation was not a nuisance.
- *Lympus & Fitzgerald v. Brayton & Higgins*, Buchanan County District Court, Jan. 9, 2019, jury trial. This case involved an 800 head cattle concrete open feedlot with a concrete runoff control basin brought by three plaintiffs living in two residences, each approximately 500 ft. north of the feedlot. The District Court ruled that the Iowa Code Chapter 657.11 animal feeding operation nuisance defense was constitutional under the *Honomichl* factors analysis. On Jan. 17 the jury returned a verdict of no nuisance as to each plaintiff.
- *Lappe, Bergthold & Sternas v. AWP Pork, LLC, Solar Feeders, LLC, Bill Huber & Kansas-Smith Farms, LLC*, Henry County District Court, Feb. 5, 2019, jury trial. This case was against three 4,992 head swine finishing operations, each located approximately one-half mile apart. There were six plaintiffs living in

three residences, each located from the nearest of the three swine operations 1.5 miles northeast, 1.66 miles north, and 1.04 miles northwest, respectively. The District Court ruled that the Iowa Code Chapter 657.11 animal feeding operation nuisance defense was not constitutional under the *Honomichl* factors analysis. On Feb. 20 the jury returned a verdict of no nuisance as to each plaintiff. If the jury had found a nuisance and awarded damages, the trial court stated it would have applied the Iowa Code §657.11A nuisance defense damage limitation provisions to defendant Kansas-Smith Farms, LLC because the cause of action against it did not accrue until after the effective date of the law. But because the jury found there was no nuisance the §657.11A nuisance defense was moot.

2020 court rulings:

- On March 27, 2020, a federal District Court dismissed the case of *Garrison v. New Fashion Pork, LLP and BWT Holdings, LLLP*, 449 F.Supp.3d 863, 2020 WL 1494063. This case was unusual for a livestock environmental case in that while there were odor nuisance and other state law claims, the focus of the lawsuit was that the manure handling and application at the swine finishing operation in Emmet County violated the federal Clean Water Act and the Resource Conservation and Recovery Act, a federal solid waste disposal law. In a pre-trial ruling the Court found that there was no evidence of violations of the federal laws because Garrison's water tests did not show violations. Specifically, the court ruled there was "no evidence that any increased level of nitrates correlates to once or twice-yearly manure application." To the contrary, the Court found that the evidence actually showed a slight decrease in nitrate levels. The Court declined to rule on the state law claims, including odor nuisance, leaving that to state courts if Garrison pursues those claims.
- Also on March 27, 2020, in the case of *Merrill and Frescoln v. Valley View Swine, LLC and JBS Live Pork, LLC* , 941 N.W.2d 10, 2020 WL 1486829 the Iowa Supreme Court upheld a Wapello County district court judge's ruling that two neighbors' claims for odor nuisance were frivolous and awarded $18,501.52 in legal expenses for deposition costs. The district court judge had previously ruled that Iowa law did not allow for reimbursement of attorney fees.

  The Supreme Court ruled that Merrill's claims were frivolous because:
  - His home was 2.36 and 3.69 miles from the hog farms. His evidence of harm was marginal.
  - He could identify only two times over six months when he had entries of odor in his calendar and those were the only time when odor actually affected his activities.
  - The district judge had found that he "did not produce evidence of any material impact that his infrequent detection of generalized swine odor imposed on his actual use of his property" and he had no specific basis for concluding the odors even came from the hog barns.

  The Supreme Court ruled that Frescoln's claims were frivolous because she did not live on the property where she testified she experienced nuisance level odor. Rather, she was on the property because she was a babysitter for her grandchildren. Thus, she lacked the legally required connection to the property.

  The Court expressed what it called "some words of caution." First, the Court noted that claims for up to $750,000 or $100,000 per year in damages from the odor "may have been exaggerated, but they do not render the underlying claims frivolous." Also, the Court stated that although Frescoln was an activist against confinement livestock production (she described it as "sinful"), "whether litigation motives are pure or not, a claim is not frivolous unless the claim itself lacks substance." The Court went on: "We suspect Valley View and JBS themselves had ulterior motives for filing the present motions. Presumably, their attorney fees to litigate the merits of these motions have far exceeded the $18,501.82 at issue. Yet an award of costs and expenses could have a deterrent effect on other potential plaintiffs. That too is permissible so long as the motions are well-grounded."

Currently scheduled livestock nuisance lawsuit trials in Iowa:

1. Linn Co. – swine finishing jury trial, January 24, 2022

5. County Regulation of Agriculture.

1) County Zoning.

a. Counties and other government subdivisions have the legal authority to regulate unincorporated areas of a county by zoning ordinance.

b. However, this zoning authority is subject to limitations when applied to agriculture. In Iowa, county zoning authority is subject to the following exemption: "No regulation or ordinance adopted under the provisions of this chapter shall be construed to apply to land, farm houses, farm barns, farm out-buildings or other buildings, structures, or erections which are primarily adapted, by reason of nature and area, for use for agricultural purposes, while so used." *Iowa Code §335.2*

c. Although Iowa Code Chapter 335 does not define farm or agricultural, the Iowa Supreme Court has.

i. From 1971 to November of 1996, the agricultural exemption to county zoning was controlled by the case of *Farmegg v. Humboldt County*, 190 N.W.2d 454 (Iowa 1971) in which the Iowa Supreme Court found that a 40,000 chicken operation on a 4-acre parcel was not "agriculture" because it "would not be used in conjunction with or as an incident to ordinary farming operations as distinguished from those of a commercial nature." The court held that the chicken raising activities did not constitute an "agricultural function".

ii. However, on Nov. 20, 1996, in *Kuehl v. Cass County*, 555 N.W.2d 686 (Iowa 1996) the Iowa Supreme Court "disapproved" of *Farmegg v. Humboldt County* and found that a proposed 2,000 head capacity swine finishing building (with plans for a second building of the same size) on a 5 acre parcel in rural Cass County was agricultural and therefore exempt from county zoning. The Court found that raising livestock, even with no crop production on site, is agriculture and therefore exempt from county zoning.

iii. Based on the decision in *Kuehl v. Cass County*, the Iowa Attorney General issued an opinion stating that a county zoning ordinance cannot contain a blanket requirement that a farm contain more than a minimum number of acres to be exempt from zoning regulation or to be exempt from county building codes. See Iowa Attorney General Opinion #97-1-1(L), pp. 2-7, 12 (January 17, 1997).

2) County Home Rule Regulation.

a. In general, under home rule power a county government can exercise powers unless that power is prohibited by the state or that power is inconsistent with state law.

b. In *Goodell v. Humboldt County*, 575 N.W.2d 486 (Iowa 1998) the Iowa Supreme Court ruled that ordinances adopted by Humboldt County were not valid under Iowa county home rule authority. The court invalidated the ordinances because each ordinance directly conflicted with various state environmental laws regulating confinement livestock production.

c. Immediately following the *Goodell v. Humboldt County* decision, Iowa Code §331.304A was adopted effective on May 26, 1998 and provides that a *"county shall not adopt or enforce county legislation regulating a condition or activity occurring on land used for the production, care, feeding, or housing of animals unless the regulation of the production, care, feeding, or housing of animals is expressly authorized by state law."*

d. In *Worth County Friends of Agriculture. v. Worth County*, 688 N.W.2d 257 (Iowa 2004), the Iowa Supreme Court invalidated Worth County's health ordinance because it violated the prohibition on county regulation of livestock production in Iowa Code §331.304A. The Court ruled that "[o]ur legislature intended livestock production in Iowa to be governed by statewide regulation, not local regulation. It has left no room for county regulation." The Court also ruled that Iowa Code §331.304A is constitutional under county home rule.

e. Finally, under Iowa Code §331.304(2)(b) *"[a] county building code shall not apply to farm houses or other farm buildings which are primarily adapted for use for agricultural purposes, while so used or under construction for that use."*

f. *H.F. 2512, 2020 Legislation*: Agricultural Exemption: Prohibits a county from requiring an application, approval, or a fee to qualify for the ag exemption for ag land and structures. Allows farmland and buildings to qualify for the exemption from local zoning either independently or in combination with other agricultural uses. Specifies that land in various conservation programs qualifies for the exemption. Plans: Requires supervisors to use the same procedures to amend a comprehensive plan as would be needed to adopt the plan originally. Prohibits supervisors from holding a public hearing on a recommendation from a county zoning commission unless the zoning commission has done a final report. Requires a public hearing before adopting a comprehensive plan. Zoning Commission: Establishes residency requirements for commission members.

6. Water Quality Litigation.

a. *Iowa Citizens for Community Improvement v. Iowa,* No. EQCE084330 (Polk Co. District Ct.). Citizen groups challenge Iowa law on agricultural runoff.
On March 27, 2019 Iowa Citizens for Community Improvement (ICCI)and Food& Water Watch (FWW) filed a lawsuit in Polk County District Court against the following parties: State of Iowa, Iowa Department of Natural Resources, Iowa Environmental Protection Commission, Iowa Natural Resources Commission, and Iowa Department of Agriculture & Land Stewardship. The lawsuit states that "the people of Iowa have a right to clean water, and the State of Iowa has violated its duty to protect the Raccoon River for the benefit of the people." The lawsuit claims the portion of the Raccoon River affected is from the confluence of the Des Moines River to the Polk/Dallas county line.

ICCI & FWW are claiming Iowa has failed to protect them under (1) the Iowa Constitution's due process clause and (2) the "public trust doctrine" by not protecting their rights to:
a. Drinking water. Claims of injury and fear of injury from Des Moines Waterworks (DMWW) water and costs for DMWW to treat the water for nitrate and cyanotoxin contamination.
b. Recreation. Claims of aesthetic injury and injury to recreational use and enjoyment from nitrogen and phosphorus pollution from ag sources.

Iowa Constitution, Art. I, §9: ICCI & FWW allege that Iowa has deprived citizens of their right to use the water without due process of law. To prevail on this constitutional claim, ICCI & FWW will have to prove that there is no rational basis for Iowa's regulations on water quality.
Public Trust Doctrine: This legal doctrine has in the past been used by the courts to limit the state's power to dispose of state land that serves a public purpose because the "public possesses inviolable rights to certain natural resources". The doctrine has been applied to navigable waters as well as lakes and rivers. In a 2013 case on regulation of greenhouse gas emissions, the Iowa Supreme Court rejected an attempt to extend the public trust doctrine to the atmosphere. The Court noted that the public-trust doctrine in Iowa has a narrow scope.

Plaintiffs are requesting a moratorium on new and expanding Medium and Large AFOs and CAFOs in the Raccoon River watershed until the state implements a mandatory remedial plan and monitoring data demonstrate viable recreational and drinking water use. Plaintiffs request that the following claims be submitted to a jury:
1. Declare that Iowa's actions and inactions violate the due process clause, section 25 of Article I, of the Iowa Constitution and the public trust doctrine, as to navigable waters.
2. Declare that the 2018 legislation in which the Legislature implemented the Iowa nutrient Reduction strategy is null and void as inconsistent with the public trust doctrine.
Plaintiffs request the court to:
1. Require the State to adopt and implement a mandatory remedial plan to restore and protect public use that requires agricultural nonpoint sources and CAFOs to implement nitrogen and phosphorus limitations in the Raccoon River watershed.
2. Prohibit the construction and operation of new and expanding Medium and Large AFOs and CAFOs in the Raccoon River watershed until the state implements a mandatory remedial plan and monitoring data demonstrate viable recreational and drinking water use.
3. Prohibit the state from taking any further action to violate the public trust doctrine and the Iowa Constitution with respect to the Raccoon River from the confluence of the Des Moines River to the Polk/Dallas county line.
4. Award attorney fees to Plaintiffs.

On September 10, 2019 the District Court denied Defendants' motion to dismiss, ruling: (1) that Plaintiffs have standing because their members will suffer the harms that they claim; (2) Plaintiffs are not asking the court to take over for the legislature or the governor and therefore there will be no violation of the separation of powers; and (3) Plaintiffs did not have to first exhaust their administrative remedies because DNR and the EPC enforce the law but do not set policy and the lawsuit challenged the state's water quality policy as enacted by the legislature, namely the voluntary Nutrient Reduction Strategy.

The Attorney General applied for interlocutory appeal of the District Court's denial of its motion to dismiss and the Iowa Supreme Court granted the application. Oral argument is scheduled for Dec. 16, 2020.

7. Ag Fraud & Trespass Legislation & Litigation.

d. *Animal Legal Defense Fund v. Reynolds*, No. 4:17-cv-00362 (S.D. Iowa 2019). In 2017 the Animal Legal Defense Fund, PETA, Iowa Citizens for Community Improvement, Bailing Out Benji and Center for Food Safety filed a lawsuit in U.S. District Court, Southern District of Iowa, challenging the constitutionality of Iowa's Agriculture Production Facility Fraud law passed by the Iowa Legislature in 2012 and codified as Iowa Code §717A.3A. That law establishes criminal misdemeanor penalties for anyone convicted of using false pretenses to obtain a job at or access to an

agricultural operation. On Jan. 9, 2019 the U.S. District Court ruled that the Iowa Ag-Fraud Law violated the U.S. Constitution's First Amendment protections for free speech.

Under the Iowa Ag-Fraud Law it is a crime if a person willfully:

1. "obtains access to an agricultural production facility by false pretenses" or
2. "makes a false statement or representation as part of an application or agreement to be employed at an agricultural production facility, if the person knows the statement to be false, and makes the statement with an intent to commit an act not authorized by the owner of the agricultural production facility, knowing that the act is not authorized."

The Court analyzed Iowa Ag-Fraud Law in three stages in ruling that it was an unconstitutional infringement on free speech:

- The Ag-Fraud Law implicated protected speech.
- The appropriate analysis of the Ag-Fraud Law was under strict scrutiny.
- The Ag-Fraud Law violated the First Amendment free speech protection under strict scrutiny analysis, but also under intermediate scrutiny.

Protected speech. The Court first noted that in analyzing "falsehoods" in the context of free speech, it does so in a legal and not a moral analysis. It then ruled that the false statements made a crime by Iowa's law did not cause a "legally cognizable harm" and did not provide "material gain" to the speaker. Thus, the false statements made a crime by Iowa's Ag-Fraud Law are protected speech.

Strict Scrutiny. Under strict scrutiny analysis, a law is presumed to be unconstitutional and can only be constitutional if the state proves that the law is "narrowly tailored to serve a compelling state interest."

No Compelling State Interest. The Iowa Attorney General argued that the compelling state interests were private property interests and biosecurity. The Court first noted that there was evidence that lawmakers had other interests they wanted to protect, such as stopping subversive acts by groups that want to give agriculture a bad name and protecting Iowa agriculture from "perceived harms' from undercover investigations. Neither of these were compelling state interests. As to protecting property and biosecurity, the Court found that they were important but not compelling as required by the First Amendment in that the harms were speculative.

Not Narrowly Tailored to Protect Property or Biosecurity. Even if there was a compelling state interest, the Court stated that if the state is going to restrict protected speech, the restriction must be "actually necessary" to achieve the state's compelling interest. To be actually necessary, there must be a "direct causal link between the restriction imposed and the injury to be prevented". The Court ruled that there was no evidence presented in this case that the restrictions in the Iowa Ag-Fraud Law "are actually necessary to protect perceived harms to property and biosecurity."

In addition, the Court found that there were alternatives to the Iowa Ag-Fraud Law that protected property interests without infringing on free speech, namely Iowa Code §717A.2 (persons shall not enter the facility to disrupt or otherwise harm the operation) and Iowa Code §716.7(.2) (Iowa's trespass law). Likewise, the Court found that biosecurity is protected by Iowa Code §717A.4 which prohibits the willful possession, transportation, or transfer of a pathogen with the intent to threaten the health of an animal or crop.

The Court also ruled that the Iowa Ag-Fraud Law is under-inclusive because it does not deter trespass and biosecurity breaches from "individuals who proceed to enter a facility without false pretenses or misrepresentation." At the same time, the Court ruled that the Iowa law was over-inclusive because it had no limiting features which allowed it to "apply even to the most innocent of circumstances." For example, the Court noted that the similar portion of Idaho's law that was found to be constitutional required the misrepresentation to be with the intent to cause economic or other injury. Iowa's Ag-Fraud Law, the Court ruled, was broader than that because it applied to misrepresentations not authorized by the employer. The Court stated: "But, something not authorized is not necessarily something hostile to the master's interest. An employer can choose not to authorize a wide variety of conduct, none of which may actually result in a breach of the employee's duty of loyalty (or cause harm)."

Intermediate Scrutiny. The U.S. Supreme Court has authorized the use of the lower judicial review standard of intermediate scrutiny in free speech cases involving laws that concern false statements about easily verifiable facts that do not concern more complex subject matter. The Court in this case ruled that the Iowa Ag-Fraud Law fails under this lower standard because it "is so broad in its scope, it is already discouraging the telling of a lie in contexts where harm is unlikely and the need for prohibition is small." The Court concluded:

> "The right to make the kinds of false statements implicated by [Iowa's Ag-Fraud Law] —whether they be investigative deceptions or innocuous lies—is protected by our country's guarantee of free speech and expression. [citation to U.S. Supreme Court decision omitted] For all of these reasons, [Iowa's Ag-Fraud Law] fails to survive judicial scrutiny."

This case is on appeal to the 8th Circuit Court of Appeals. Oral argument was held on Sep. 22, 2020.

e. *Animal Legal Defense Fund v. Reynolds*, No. 4:19-cv-124 (S.D. Iowa 2019). This lawsuit filed on April 22, 2019 challenges the constitutionality of Senate File 519 signed into law on March 14, 2019 and codified as Iowa Code §717A.3B.

SF 519. Agricultural Facility Trespass.

> *"Section 1. NEW SECTION. 717A.3B Agricultural production facility trespass.*
>
> *1. A person commits agricultural production facility trespass if the person does any of the following:*
>
> *a. Uses deception as described in section 702.9, subsection 1 or 2, on a matter that would reasonably result in a denial of access to an agricultural production facility that is not open to the public, and, through such deception, gains access to the agricultural production facility, with the intent to cause physical or economic harm or other injury to the agricultural production facility's operations, agricultural animals, crop, owner, personnel, equipment, building, premises, business interest, or customer.*
>
> *b. Uses deception as described in section 702.9, subsection 1 or 2, on a matter that would reasonably result in a denial of an opportunity to be employed at an agricultural production facility that is not open to the public, and, through such deception, is so employed, with the intent to cause physical or economic harm or other injury to the agricultural production facility's operations, agricultural animals, crop, owner, personnel, equipment, building, premises, business interest, or customer.*
>
> *2. A person who commits agricultural production facility trespass is guilty of a serious misdemeanor for a first offense and an aggravated misdemeanor for a second or subsequent offense.*
>
> *3. A person who conspires with another, as described in section 706.1, to commit agricultural production facility trespass is guilty of a serious misdemeanor for a first offense and an aggravated misdemeanor for a second or subsequent offense. For purposes of this subsection, a person commits conspiracy to commit agricultural production facility trespass, without regard to the limitation of criminal liability for conspiracy otherwise applicable under section 706.1, subsection 1.*
>
> *Sec. 2. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment."*

On Dec. 2, 2019, the District Court ruled on Iowa's motion to dismiss and ALDF's motion for preliminary injunction.

2. The Court denied Iowa's Motion to Dismiss, ruling:
    a. Iowa Code §717A.3B was protected free speech under the First Amendment
    b. The "intent to cause physical or economic harm or other injury" in Iowa Code §717A.3B identical to Idaho's law did not exempt the law from the First Amendment

i. The Court specifically noted that harm such as "truthful reporting on animal abuse or unsanitary conditions" would be a crime under the law and that violates the First Amendment.
ii. The Court also noted this is harm that results from legal conduct and is protected by the First Amendment.

c. Contrary to the Court of Appeals in the Idaho case:
i. False statements in offers of employment are only an example of a statement that is not protected by the First Amendment. The Court cited to its decision finding the Ag Fraud Law unconstitutional stating that the lies undercover investigators tell are about their affiliation with animal rights groups, but not about their job qualifications and experience.
ii. These lies are "associated with nominal harms" and are protected by the First Amendment.

d. Iowa Code §717A.3B is not void for vagueness.

3. The Court granted ALDF's Motion for Preliminary Injunction.
a. The factors for a preliminary injunction are:
i. Threat of irreparable harm to ALDF.
1. The Court ruled that even a temporary violation of First Amendment rights is irreparable harm.
ii. Balance between the harm and the injury from granting injunction on other interested parties.
1. The Court found that planned undercover investigations will not proceed due to the threat of prosecution under Iowa Code §717A.3B. Conversely, the Court found that the Ag Fraud Law was never enforced before it was ruled unconstitutional and that shows that the state is "unlikely" to miss out on any prosecutions of Iowa Code §717A.3B if the Court granted the preliminary injunction.
iii. Probability that ALDF will win the lawsuit (likelihood of success on the merits)
1. The Court ruled that the threat of harm to biosecurity was speculative and not supported by proof in the court record.
2. The Court noted proof that biosecurity breaches occur is not enough, there is no proof that biosecurity breaches have occurred from "outsiders using deception to gain access to or employment at an agricultural production facility with the intention of harming the facility."
3. There are alternatives in Iowa law that will protect biosecurity without violating the First Amendment.
4. Based on legislator statements during debate, at least one purpose of Iowa Code §717A.3B is to prevent critical coverage of the ag industry from undercover investigations.
iv. Whether the injunction is in the public interest.
1. The Court ruled that the state did little to show that Iowa Code §717A.3B addresses issues of public concern unrelated to suppression of free speech (i.e., no proof of harm to biosecurity, etc.). On the other hand, the Court stated:

> "By contrast, the public benefits from people and organizations exercising First Amendment rights and educating the public about important issues relating to animal abuse and safety at

agricultural production facilities. The public interest weighs in favor of granting a preliminary injunction."

b. The Court granted the ALDF Motion for Preliminary Injunction ruling:

"Defendants and their officers, agents, employees, attorneys, and all other persons who are in active concert or participation with them are hereby enjoined and prohibited from enforcing, through any action or omission or other-wise, Iowa Code § 717A.3B as currently drafted throughout the pendency of this litigation."

c. Food Operation Trespass, S.F. 2413, Division II, and H8268 amending H.F. 2641; effective June 10, 2020.

i. Trespass is entering or remaining at a food operation without the consent of a person who has real or apparent authority to allow the person to enter or remain on the property.
ii. A first offense is an aggravated misdemeanor
iii. Second or subsequent offenses are a class D felony
iv. A food animal is cattle, swine, sheep, goats, turkeys, chickens, fish, farm deer or bees.
v. A food operation is where:
    1. A food animal is produced, maintained, or otherwise housed or kept, or processed in any manner
    2. A food animal is kept including an apiary, livestock market, vehicle or trailer attached to a vehicle, fair, exhibition or business operation by a licensed vet,
    3. A meat food product, poultry product, milk or milk product, eggs or egg product, aquatic product, or honey is prepared for human consumption