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### *Salmonella regulations invalidated*

FEDERAL regulations intended to control the spread of salmonella enteritidis serotype enteritidis have been held to be unlawful because the rules provide that egg producers who must destroy poultry or divert eggs from the table egg market as a result of the regulations will not be indemnified for their financial losses. The court held that the regulations' non-indemnification provision conflicts with applicable statutes and the Fifth Amendment. *Rose Acre Farms, Inc. v. Madigan*, No. NA 90-175-C (S.D. Ind. June 5, 1991)(1991 U.S. Dist. LEXIS 8691).

The challenged regulations, 9 C.F.R. §§ 82.30-82.38 (1991), establish a three-tiered system for testing chicken flocks for salmonella, restrict the marketing of eggs from high risk or infected flocks, and provide for the monitoring previously tested poultry houses. Under the first tier of the regulations' testing scheme, a chicken flock suspected of being a probable source of a salmonella outbreak in humans or poultry is designated a "study flock." *Id.*, slip op. at 4 (citing 9 C.F.R. § 82.32(a)). Study flocks are not restricted unless the person controlling the flock refuses to permit further testing. *Id.* (citing 9 C.F.R. § 82.32(b)(1)).

The second stage of the testing scheme is the designation of "test houses" among the study flock. If a study flock is not separately housed in a manner providing biosecurity against the transmission of disease to other poultry houses on the premises, the entire flock is deemed a "test flock." *Id.*, slip op. at 5 (citing 9 C.F.R. § 82.30). Eggs from a test house or flock are barred from the domestic table egg market but can be exported or shipped to pasteurization facilities. *Id.* (citing 9 C.F.R. § 82.33(a)).

If blood and internal organ samples taken from a test house or flock reveal salmonella, the flock or house is deemed to be "infected." *Id.*, slip op. at 6 (citing 9 C.F.R. § 82.32). Eggs from an infected house or flock are restricted in the same manner as eggs from a test house or flock.

Infected houses are released from infected status when they have been depopulated and cleaned or when the flocks they house have twice tested negatively for salmonella. *Id.* (citing 9 C.F.R. § 82.32(e)). On premises containing an infected house, houses that have never tested positively are subject to periodic monitoring for as long as a house is infected and for 120 days afterward. *Id.*, slip op. at 29-30 (citing 9 C.F.R. § 82.38(b)).

*Rose Acre Farms* challenged the regulations and the interim rules that preceded them after flocks at several of its facilities were designated "study" and "test" flocks and after some of those flocks were subsequently deemed to be "infected." It contended that the designations and the restrictions attendant to test and infected flock status resulted in losses exceeding \$50,000 per day.

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### *Summary judgment granted in CBOT case*

A FEDERAL district court has granted summary judgment in favor of the Chicago Board of Trade (CBOT) and other defendants associated with the CBOT on claims brought by the American Agriculture Movement and others alleging violation of the Sherman Anti-Trust Act and state common law negligence and breach of fiduciary duty. *American Agriculture Movement, Inc. v. Board of Trade of the City of Chicago*, 770 F. Supp. 407 (N.D. Ill. 1991). Earlier, the same court dismissed claims in the same action alleging violations of the Commodity Exchange Act. *American Agriculture Movement, Inc. v. Board of Trade of the City of Chicago*, No. 89 C 8467 (N.D. Ill. Apr. 24, 1990)(1990 WestLaw 71025). Combined, the two decisions found in favor of the defendants on all of the claims alleged in the complaint.

The court granted summary judgment on the Sherman Anti-Trust Act claims on the grounds that the Commodity Exchange Act impliedly repealed the Sherman Act's applicability to the challenged actions taken by the defendants. Judgment was granted on the state common law claims on the grounds that they were pre-empted by the Commodity Exchange Act.

The litigation arose out of the CBOT's action in response to trading by Ferruzzi

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Rose Acre Farms premised its challenge on a variety of grounds, including the claim that the regulations exceed the Secretary's authority because they are not rationally related to animal health; that they deny it due process by failing to afford a right to an administrative hearing or review; that the monitoring provisions are not rationally related to preventing the spread of salmonella; and that the preclusion of compensation for losses violate 21 U.S.C. §§ 114a and 134a and the takings clause of the Fifth Amendment.

In a lengthy, well-reasoned opinion that addresses a host of basic administrative law principles, the district court rejected all of Rose Acre Farms' claims but for its challenge to the monitoring provisions and the preclusion of compensation. It found that the monitoring provisions were not rationally related to the prevention of the spread of salmonella because "the potential connection between an infected house and other houses which have tested negative and are non-status houses, or have been satisfactorily cleaned and disinfected, is too tenuous to support

the monitoring ... and conflicts with the agency's treatment of the houses as separate units for the purposes of blood and internal organ testing." *Id.*, slip op. at 35.

Before reaching the preclusion of compensation issue, the court first had to resolve a challenge to its jurisdiction raised by the government. The government argued that because Rose Acre Farms had asserted that it was losing over \$50,000 per day as a result of the regulations and also had asserted that it was entitled to compensation exclusive jurisdiction resided in the United States Claims Court pursuant to the Tucker Act, 28 U.S.C. § 1491(a)(1). Noting that Rose Acre Farms' complaint sought only declaratory and injunctive relief, not monetary damages, the court rejected the government's argument. *Id.*, slip op. at 36-39.

Once it reached the merits of the compensation issue, the court observed that the regulations were silent on whether producers would be compensated for losses incurred as a result of the regulations. However, the preamble accompa-

nying the rule's publication in the Federal Register states that the agency did not intend to pay claims for losses resulting from the regulations. Because of its present, hindering effect, that statement was construed to be a rule by the court and deemed to be reviewable under the same standards as the regulations themselves. *Id.*, slip op. at 43-48.

Relying on *Yancy v. United States*, 915 F.2d 1534 (Fed. Cir. 1990), and *Julius Goldman's Egg City v. United States*, 556 F.2d 1096 (Ct. Cl. 1977), the court concluded that the Secretary was obligated under 21 U.S.C. §§ 114a and 134a and the takings clause of the Fifth Amendment to compensate egg producers whose eggs are restricted under the regulations. *Id.*, slip op. at 40-43, 50-51. In essence, it concluded that the regulations effectively condemned selected eggs and chickens. *Id.*, slip op. at 48. On that basis, the court held that the regulations were invalid as a whole and enjoined their enforcement against Rose Acre Farms.

—Christopher R. Kelley, Visiting Asst. Prof., Univ. of N.D. School of Law

## Legis. Support Comm.: ag contracts project

AS NOTED in the April issue of the *Agricultural Law Update*, the AALA Board of Directors previously authorized the Ad Hoc Legislative Support Committee to undertake a pilot project for the provision of some type of support in an emerging area of agricultural law. The goal of the Committee is to explore ways to use the expertise of the AALA membership to address areas of agricultural law that are or will likely be governed by legislation. Over the past few months, that Committee has sought the names of members interested in the various categories of agricultural law and has sought suggestions for the pilot project topic.

At the October AALA Board of Directors meeting in Atlanta, the Committee chair presented the suggestions received. The appropriate role of the pilot project and the role of the Committee itself were discussed. Although several of the pilot project suggestions received involved the drafting of model legislation, the Board agreed that this may present too much of an advocacy role, particularly as an initial project. The Board also agreed that a compilation of resources and objective analysis on a selected topic may be the most beneficial form for the Committee's work.

The Board therefore authorized the Committee to begin work on a primary project involving an analysis of agricultural contracting. The goal of this project will be to collect information and resources and to provide objective legal analysis of common contract provisions. The project will likely focus on the contracts used in the contract-grower rela-

tionship. If interest and information is available in other areas of agricultural contracting, these areas will also be included in the project. It is the goal of the Committee that this project result in a useful and informative set of materials on the issue of agricultural contracting. The intent is to make the materials worthwhile to both the legislator and the practitioner working in this area.

The Board also authorized the Committee to begin to explore other areas of resource gathering, including agricultural-environmental concerns and the in-state regulation of the sales of perishable agricultural commodities.

The success of these projects will be completely dependent upon the response of the AALA membership. It is hoped that members will volunteer to form a subcommittee to focus specifically on the issue of agricultural contracting. Ideally, it would be helpful to have members agree to collect information on contracting in their states and/or on a specific industry, e.g. the poultry industry.

With regard to other areas of interest, members should indicate the topics in which they would like to be involved for reference in future projects. Because a subcommittee will be formed for each individual project undertaken, it will be possible for several projects to be ongoing.

Members who are interested in participating or would like further information are encouraged to write to Susan A. Schneider, 1510 1st Avenue North, Grand Forks, ND 58203.

—Susan A. Schneider

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## Statutory agricultural liens and UCC Article 9: harmonizing conflicting interests

By Martha L. Noble

ARTICLE 9 of the Uniform Commercial Code (UCC) provides relatively clear and uniform rules for the attachment, perfection, and priority among security interests in personal property. UCC security interests arise by voluntary agreement of a creditor and debtor and are categorized as consensual interests.<sup>1</sup> In contrast, state statutory liens on agricultural products, equipment, and production inputs are nonconsensual interests. The liens arise by operation of law, without the consent of the lien debtor, when the specific requirements of the statute creating the lien are met. These liens may be scattered throughout a state's code. Moreover, unlike the state versions of the UCC, statutory lien provisions as to filing, attachment, priority, notice, and duration of the lien may vary greatly both within the same state and among the states.

The National Center for Agricultural Law Research and Information, located at the University of Arkansas at Fayetteville, has compiled and tabulated the main provisions of statutory agricultural liens in all fifty states. This project was undertaken in association with the Agricultural Lien Task Force of the Subcommittee on Agricultural and Agri-Business Financing, Commercial Financial Services Committee, Section of Business Law of the American Bar Association.<sup>2</sup> The statutory lien survey is part of a larger project which includes suggested proposals for coordinating statutory agricultural liens with Article 9 security interests.<sup>3</sup> This essay describes the scope of the statutory agricultural lien survey and discusses the problems these liens pose for holders of perfected UCC security interests. The essay then summarizes legislative trends within the states to coordinate these statutory liens with UCC security interests and to provide greater uniformity among statutory agricultural liens within the same state.

### Scope of the survey

The survey included statutory liens that attach to any agricultural products, including crops, fruits and vegetables, livestock, fish, or timber, and liens that attach to farm equipment. The survey did not include tax liens, judgment liens, or liens on real property.

Statutory agricultural liens can be di-

vided into four major categories based on the status of the lien claimant. (1) Landlords' liens on crops and other personal property secure the rent owed on the leased premises or secure advances given by the landlord to the tenant for the purpose of growing a crop or raising livestock. (2) Liens for services, goods, or labor are provided in favor of lien claimants who preserve or increase the value of agricultural products or farm equipment. Examples are liens in favor of agricultural supply dealers who provide seed, fuel, chemicals, and other products for livestock or crop production; liens in favor of laborers who cultivate, harvest, or process agricultural products; and liens in favor of public agencies such as state departments of agriculture that treat or vaccinate livestock and agricultural produce against disease at public expense. This category includes liens in favor of artisans and repairers that are not clearly limited to claimants outside the agricultural sector. (3) Agricultural producer's liens secure the payment price for goods the producers deliver to merchants, processors, or handlers. These liens may extend to the proceeds of the sale of the products as well as the products in raw or processed form. (4) Liens in favor of persons who take custody of trespassing animals or care for neglected or abandoned animals generally secure the amount of expenses for the care and feeding of these animals.

### Conflicts between statutory liens and Article 9 security interests

UCC Article 9 does not provide a comprehensive system for reconciling state statutory liens with UCC security interests, despite the fact that both types of interests may arise in the same property and result in conflicting claims on the property. Section 9-104(b) excludes landlords' liens from UCC coverage. Section 9-102(2) provides that Article 9 does not apply to statutory liens except as provided in section 9-310. Section 9-104(c) also states that Article 9 does not apply to liens given by statute or other rule of law for services or materials except as provided in section 9-310.

Section 9-310 governs the priority of a limited category of statutory liens in relation to UCC security interests. The section reads, "When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the

lien is statutory and the statute expressly provides otherwise." Thus, the only express priority rule provided by Article 9 gives a possessory statutory lien priority over a perfected security interest, unless otherwise provided in the statute. There are no UCC priority rules for non-possessory statutory liens or for liens arising from circumstances that do not fall into the category of furnishing services or materials in the ordinary course of business. Moreover, many statutes creating liens not covered by section 9-310 also fail to specify a priority for the lien in relation to UCC security interests.

The resulting confusion is illustrated by the hesitant language in the commentary to North Carolina's version of section 9-310 which reads:

This section preserves the priority of common-law and statutory possessory liens, unless the statute giving the lien provides otherwise. Thus, the North Carolina statutory liens afforded persons who make repairs to personal property . . . the warehouse storage liens . . . liens given to hotel keepers and livery stable keepers will probably prevail over a Code-perfected security interest so long as the person entitled to the lien retains possession of the property. This is in accord with prior law, at least insofar as it relates to the lien for repairs to personal property. . . . Other liens of this class which do not involve possession of the person claiming the lien are probably subordinated to the Code-perfected security interest. At least, they are not entitled to priority by virtue of this section.<sup>4</sup>

Priority conflicts between UCC security interests and statutory liens are compounded by the difficulty in discovering the existence of statutory liens on collateral property. Many lien statutes have no provisions for filing a lien statement, even when the lien is nonpossessory. Even if filing is required, most statutes require filing only at a local office, rather than a centralized state office. Statutory provisions for filing, notice, and priority vary greatly both between states and within a single state. State legislatures have been enacting statutory liens since the early 1800's and few states have attempted to provide for uniformity among their liens.

The difficulties created by statutory liens for holders of UCC security interests increased in the 1980's when lien claimants such as agricultural suppliers and landlords, played an increasing role in agricultural financing.<sup>5</sup> Recently re-

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ported cases involving statutory agricultural liens demonstrate the continued importance of these liens to the agricultural sector.<sup>6</sup>

In some states, suppliers have lobbied successfully for the creation of new statutory liens to protect their interests. For example, in 1990 the California legislature adopted two new liens effective January 1, 1991. A Poultry and Fish Supply Lien creates a lien on eggs, domesticated birds, domesticated rabbits, or fish, or their products, in favor of suppliers of feed or material used to raise or maintain the domesticated birds, domesticated rabbits or fish or used for the production of eggs.<sup>7</sup> An Agricultural, Chemical, and Seed lien in favor of persons who supply agricultural chemicals and seeds arises on crops produced with the chemicals or seeds furnished by the supplier.<sup>8</sup>

Note also that an additional source of uncertainty as to the priority of statutory liens versus UCC security interests stems from state UCC provisions that may impliedly repeal pre-existing statutory interests. For example, in *Curry Grain Storage, Inc. v. Hesston Corp.*,<sup>9</sup> the Idaho Supreme Court considered whether a grain storage company that cleaned, processed, and stored seed was entitled to the possessory lien for services on or caring for property created by Idaho Code section 45-805. The court ruled that the statutory lien provision was repealed so far as it relates to UCC warehouse liens. The court relied on section 28-10-103 of Idaho's version of the UCC which provides that acts and parts of acts inconsistent with the UCC are impliedly repealed, unless otherwise provided for in the UCC. The court found that the lien for services established by section 45-805 is inconsistent with the warehouse lien provided by section 28-7-209, in that the liens have different methods for determining priority over UCC security interests. As a result, the grain storage company was denied the services lien, which would have prevailed over a UCC security interest in the seed held by a harvesting equipment supplier. The court further ruled that the UCC warehouse lien was ineffective against the supplier's UCC security interest in the seed.

#### **Legislative trends**

Some state legislatures have recognized the legal conflicts and confusion arising from the haphazard enactment of lien statutes without reference to other liens or UCC security interests. This section of the essay summarizes various measures taken by states to clarify the relations among these competing inter-

ests in collateral property. Note that each summary includes a discussion of representative state legislation, but is not necessarily an exhaustive review of state measures.

#### **Modification of UCC Section 9-310**

Four states have modified UCC section 9-310 to clarify priority issues or provide greater protection to holders of UCC security interests.

Alabama has modified UCC section 9-310 by adding a provision for resolving priority conflicts between a landlord's lien for rent arising by operation of law and a security interest in collateral (other than crops) brought onto leased premises. A security interest taken after property is brought onto the premises is subordinate to the landlord's lien. A security interest taken before the collateral is brought onto the leased premises has priority over the landlord's lien on the property from the time the security interest is perfected or the landlord has notice of the security interest, whichever occurs first. There is an exception for purchase money security interests. A purchase money security interest filed before or within twenty days after the debtor takes possession of the collateral takes priority over a landlord's lien.<sup>10</sup>

Two states have modified UCC section 9-310 to reverse the order of priority for statutory possessory liens and UCC security interests. Colorado's version of UCC section 9-310 provides that a statutory possessory lien does not take priority over a perfected UCC security interest, unless the lien statute provides otherwise.<sup>11</sup>

Washington has also modified section 9-310 to give priority to a possessory lien for goods and services over a perfected UCC security interest only if the lien is statutory and the statute expressly provides for such priority. Washington's version of section 9-310 includes two additional priority provisions: (1) a preparer's lien or processor's lien takes priority over any perfected or unperfected UCC security interest; and (2) conflicting priorities between crop liens and security interests are governed by the provisions of the crop lien statute.<sup>12</sup>

Georgia's version of section 9-310 states that a perfected security interest in collateral takes priority over the liens described in Georgia Code section 44-14-320, except for a mechanic's lien on farm machinery. Agricultural liens included in section 44-14-320 include liens in favor of laborers, landlords, landlords who furnish supplies, proprietors of sawmills, planing mills and other similar estab-

lishments, and the owners of stallions, jacks, bulls, and boars for stud services. A mechanic's lien on farm machinery or equipment arising on or after July 1, 1985, has priority over any perfected security interest in the farm machinery or equipment unless a UCC financing statement has been properly filed. The UCC financing statement must describe the particular piece of farm machinery or equipment to which the perfected security interest applies. An adequate description may include the make, model, and serial number of the farm equipment or machinery or other keys to identifying farm machinery or equipment.<sup>11</sup>

Note that general priority rules may be found in a state's statutory lien provisions. For example, Maine has adopted a rule giving properly perfected UCC security interests priority over any lien created or referred to by Title 10 of Maine's Code, unless the person claiming the lien has possession of the goods subject to the lien.<sup>14</sup> Title 10 contains most of Maine's statutory liens, except liens in favor of the state and law enforcement officials.

#### **Central filing systems**

A central or consolidated state filing system for statutory liens can save the holders of UCC security interests from unexpected challenges to enforcement of their interests. Centralized systems will become more common as state and local governments purchase and use computer systems and develop statewide computer networks.

Minnesota has established a central filing system for lien statements, state and federal tax lien notices, UCC financing statements and other UCC documents. The secretary of state administers a central computer system and county recorders are required to enter documents filed in their offices on this system. County recorders may retrieve information from the computerized system.<sup>15</sup> Most Minnesota agricultural lien statutes require that a lien statement be filed with the appropriate office with which financing statements for UCC security interests are filed.

Montana has established a central filing system for agricultural lien statements in the office of the Montana Secretary of State. Central filing requirements apply for most nonpossessory statutory agricultural liens filed after September 30, 1989. Statements of agricultural liens or continuation statements filed with the office of a county clerk and recorder lapsed on March 30, 1990, unless a lien statement and related documents were filed with the secretary of state.<sup>16</sup>

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Nebraska law provides for a central filing system and distribution of a Master Lien List for agricultural liens by the secretary of state. Lien claimants file the lien with the appropriate county clerk or register of deeds, who then transmits the information to the secretary of state.<sup>17</sup>

North Dakota has also authorized a central computerized filing system for UCC financing statements and the following agricultural liens: the agister's lien; the agricultural processor's lien; and the agricultural supplier's lien. Effective January 1, 1992, agricultural lien claimants may file a lien statement with the register of deeds in any county in the state or with the secretary of state. Information filed with the county register of deeds will be transmitted to the secretary of state. The secretary of state is charged with producing a monthly list for crops and a monthly list for livestock which contain information filed on UCC financing statements and statutory lien statements.<sup>18</sup>

Other states provide for central filing of one or a few liens. For example, Maine requires central filing with the Maine Commissioner of Agriculture for only one lien, the Potato Producer's Lien in favor of potato growers who deliver raw products to a processor.<sup>19</sup> Iowa law requires that an Agricultural Supply Dealer's Lien<sup>20</sup> and a Thresher's Lien be filed with the Iowa Secretary of State.<sup>21</sup>

*Incorporating UCC filing requirements into lien statutes*

Another means of harmonizing UCC security interests and statutory agricultural liens is to apply most requirements for filing UCC financing to agricultural lien statements. States which have established central filing systems for agricultural lien statements have essentially adopted this measure. Numerous other states are taking this approach as they amend old lien statutes or adopt new statutes. California, Colorado, Kansas, Minnesota, and Mississippi have all enacted lien statutes that adopt UCC filing requirements for statutory agricultural liens. For some liens, the only significant difference between a UCC financing statement and a statutory lien statement is that the debtor's signature is not required on the lien statement.

*Notice and subordination requirements*

Persons who provide goods and services to agricultural products and equipment preserve or increase the value of the collateral property. The rationale for granting priority to these liens is that without the goods or services the collateral property would decrease in value or become worthless. Some states have attempted to reconcile competing interests by giving the holders of UCC security interests the opportunity to decide whether or not to subordinate their interest to a lien for goods or services. For example, under the Minnesota Agricultural Production Input Lien statute, a

lien claimant may send a copy of the lien notification statement, signed by the purchaser, to a creditor of the purchaser. If the creditor furnishes the supplier with a letter of commitment to pay the debt for the supplies, the supplier may not obtain a lien for the amount stated in the letter. If the creditor furnishes a written refusal to provide a letter of commitment, the rights of the supplier and the creditor are not affected. If the creditor fails to respond to the supplier within a specified period after receiving the notification of the lien statement, a perfected Agricultural Production Lien has priority over any security interest of the creditor.<sup>22</sup>

Kansas has adopted an Agricultural Production Input Lien with a similar provision for notifying creditors of the lien. Under the Kansas statute, if the creditor provides a letter of commitment or refuses to provide such a letter, the UCC security interest takes priority over the lien. If the creditor fails to respond within the specified period, the lien takes priority over the creditor's perfected security interest.<sup>23</sup>

Iowa's statute authorizing an Agricultural Supply Dealer's Lien provides a similar scheme for notifying holders of UCC security interests. If a creditor fails to receive the notification or refuses to extend credit based on the purchaser's financial record, the creditor may use these facts as an affirmative defense and complete proof of the superiority of its security interest in an action by the lien claimant to enforce the lien.<sup>24</sup>

*Consolidation of lien statutes*

States have enacted lien statutes over a period of many years, often with no attention to the provisions of existing lien statutes. This has led to a proliferation of liens affecting the same type of collateral, scattered throughout the state's code, with confusing or conflicting requirements. A few states have addressed this problem by consolidating liens. Consolidation is based either on the common feature of the attached property or the status of lien claimants.

North Dakota has taken this approach. In 1987, the state repealed five disparate crop liens—a threshing and drying lien; a crop production lien; a motor fuel lien; a seed, fertilizer and farm chemical lien; and a sugar production lien. These liens were replaced with two comprehensive, general liens: one in favor of agricultural processors<sup>25</sup> and the other in favor of agricultural suppliers.<sup>26</sup>

**Conclusion**

States continue to adopt statutory agricultural liens and the number of reported cases concerning these liens indicates their continued importance to the agricultural sector. Some thirty-six states have liens requiring either no filing or only local filing. Other states, however, have adopted measures to reconcile statutory agricultural liens with UCC security

interests. As indicated in a recent commentary,<sup>26</sup> one major trend is for states to enact statutory agricultural liens which are the equivalent of "nonconsensual" UCC security interests by duplicating UCC requirements for perfecting and prioritizing these liens. This measure is a major feature of another innovation—centralized state filing systems. Another modification is the adoption of "megaliens" which cover large categories of lien claimants or attached property. In general, these trends will increase the ability of holders of UCC security interests to discover the existence of liens on collateral property and may also clarify priority issues without the need for judicial action.

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<sup>1</sup> UCC § 9-102.

<sup>2</sup> The Center and the Task Force are currently arranging for publication of State Rapid Finder Charts for these liens. The Charts include a citation to the lien, the lien claimant, attached property, possession requirements, filing requirements, date of attachment and express priority provisions. An announcement of the availability of the Rapid Finder Charts will be made in the *Agricultural Law Update*.

<sup>3</sup> A brief discussion of the statutory agricultural lien survey, including sample Rapid Finder Charts, and suggested proposals for changing UCC Article 9 are provided in Turner, Barnes, Kershen, Noble & Schumm, *Agricultural Liens and the U.C.C.: A Report on Present Status and Proposals for Change*, 44 Okla. L. Rev. 9 (1991).

<sup>4</sup> N.C. Gen Stat § 25-9-310 (1986)

<sup>5</sup> See Meyer, *Should the Unique Treatment of Agricultural Liens Continue?*, 24 Ind. L. Rev. 1315, 1321 (1991)

<sup>6</sup> See, e.g., *In re Woods Farmers Cooperative Elevator Co.*, \_\_\_ F.2d \_\_\_, 1991 Westlaw 213796 (8th Cir. (N.D.) 1991) (held that a statutory receipt holder's lien claimed by farmers on grain which the farmer's had deposited with a grain elevator was not avoidable in a Chapter 7 bankruptcy filed by the elevator company); *La Junta Production Credit Ass'n v. Schroeder*, 800 P.2d 1360 (Colo. Ct. App. 1990) (statutory agistor's lien on cattle, filed on the same day that sheriff levied writ of execution to enforce bank's foreclosure on a security interest in the cattle, held superior to the bank's security interest); *Planters Bank & Trust Co. v. Sklar*, 555 So.2d 1024 (Miss. 1990) (held that landlord's lien on tenant's cotton attached to proceeds of the sale of the cotton and took precedence over a bank's security interest in the cotton where bank made crop production loan to tenant with knowledge of the landlord-tenant relationship); *In re Loretto Winery Ltd.*, 898 F.2d 715 (9th Cir. 1990) (held that grape grower's statutory Producer's Lien on grapes delivered to winery was not avoidable under section 545 of the Bankruptcy Code, because under California law the Producer's Lien was good against a bona fide purchaser without possession).

<sup>7</sup> Cal. Food & Agric. Code §§ 57501-57545, 57700 (West Supp. 1991).

<sup>8</sup> Cal. Food & Agric. Code §§ 57551-57595, 57700 (West Supp. 1991).

<sup>9</sup> 815 P.2d 1068 (Idaho 1991).

<sup>10</sup> Ala. Code § 7-9-310 (1975)

<sup>11</sup> Col. Rev. Stat. § 4-9-310 (1973)

<sup>12</sup> Wash. Rev. Code Ann. § 62A.9-310 (Supp. 1991).

<sup>13</sup> Ga. Code Ann. § 11-9-310 (Supp. 1991).

<sup>14</sup> Me. Rev. Stat. Ann. tit. 10, § 4012 (1980).

<sup>15</sup> Minn. Stat. Ann. § 336.9-411 (West Supp. 1991).

<sup>16</sup> Mont. Code Ann. § 71-3-125 (1991).  
<sup>17</sup> Neb. Rev. Stat. §§ 52-1601 to 52-1605 (1988); Neb. Uniform Commercial Code § 9-414 (Cum. Supp. 1990).  
<sup>18</sup> N.D. Laws Ch. 449 (S.B. 2024) (West 1991) (effective Jan. 1, 1992).  
<sup>19</sup> Me. Rev. Stat. Ann. Tit. 10, §§ 3321-3331 (1980).  
<sup>20</sup> Iowa Code Ann. §§ 570A.1 to 570A.11 (West Supp. 1991).  
<sup>21</sup> Iowa Code Ann. §§ 571.1 to 571.6 (West 1950 & Supp. 1991).  
<sup>22</sup> Minn. Stat. Ann. § 514.952 (1990).  
<sup>23</sup> Kan. Stat. Ann. §§ 58-241 to 58-246 (Supp. 1990).  
<sup>24</sup> Iowa Code Ann. §§ 570A.1 to 570A.11 (West Supp. 1991).  
<sup>25</sup> N.D. Cent. Code §§ 35-30-01 to 35-30-03 (1987), as amended by N.D. Laws Ch. 449 (S.B. 2024) (West 1991).  
<sup>26</sup> N.D. Cent. Code §§ 35-31-01 to 35-31-03 (1987), as amended by N.D. Laws Ch. 449 (S.B. 2024) (West 1991). For a detailed discussion of the consolidation of North Dakota's agricultural liens, see Saxowsky, Fagerlund & Priebe, *Modernizing Agricultural Statutory Liens After the Federal "Clear Title" Law—The North Dakota Experience*, 11 J. Agric. Taxation & L. 30 (1989).  
<sup>27</sup> Nickles, *The Brendan Brown Lecture: Radical Reductionism in Debtor-Creditor Law*, 39 Cath. U. L. Rev. 765 (1990).

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Finaziaria, S.P.A., an Italian company that held a dominant position in the July 1989 soybean futures contract market. The circumstances of Ferruzzi's position and the CBOT's response are discussed in a new and informative Yale Journal on Regulation article focusing on the manipulation of commodity futures prices. Jerry Markham, *Manipulation of Commodity Futures Prices—The Un-prosecutable Crime*, 8 Yale J. Reg. 281 (1991). See also Robert Lower, *Disruptions of the Futures Market: A Comment on Dealing with Market Manipulation*, 8 Yale J. Reg. 391 (1991).

—Christopher R. Kelley, Visiting Asst. Prof., Univ. of N.D. School of Law

## Federal Register in brief

THE FOLLOWING is a selection of matters that were published in the *Federal Register* during the month of October, 1991.

1. USDA; Immigration and Nationality Act; RAWs; shortage number determination; notice. 56 Fed. Reg. 49738.

2. USDA: Regulations governing the financing of commercial sales of ag. commodities; final rule; effective date 10/9/91. 56 Fed. Reg. 50809.

3. Agricultural Marketing Service; PACA; Practice rules; labeling violations; complaints procedure and investigation; final rule; effective date 11/15/91. 56 Fed. Reg. 51825.

4. FmHA; Availability of loan servicing programs for delinquent farm borrowers; proposed rule. 56 Fed. Reg. 55009.

5. FmHA; Farmer program account servicing policies for section 1816 and other related sections for the 1990 Food,

1565 (1991).

Brussaard, *Protecting Agricultural Resources in Europe: A Report from the Netherlands*, 24 Ind. L. Rev. 1525-1542 (1991).

Casnote, *A Symbol of Change: Hawaii's Land Use Law Allows Golf Course Development on Prime Agricultural Land by Special Use Permit [Maha'ulepu v. Land Use Commissioner]*, 790 P.2d 906 (Haw. 1990)], 13 U. Hawaii L. Rev. 205-232 (1991).

Comment, *The Accretion of Cement and Steel onto Prime Iowa Farmland: A Proposal for a Comprehensive State Agricultural Zoning Plan*, 76 Iowa L. Rev. 583-607 (1991).

Krauss, *The Perils of Rural Land Use Planning: The Case of Canada*, 23 Case W. Res. J. Int'l. L. 65-81 (1991).

Smart, *Economic and Financial Analysis of Alternative Uses of Agricultural Land*, 24 Ind. L. Rev. 1567-1585 (1991).

### Organizational Form for Farming Incorporation

Thompson & Serrett, *Operating in Corporate Form May Enable Farmers and Ranchers to Deduct Expenses for Meals and Lodging*, 13 J. Agric. Tax'n & L. 258-269 (1991).

### Patents, Trademarks & Trade Secrets

Baechtold, Perry, Tegfeldt, Carson & Knudsen, *Property Rights in Living Matter: Is New Law Required?*, 68 Den. U. L. Rev. 141-172 (1991).

Beier & Benson, *The Biotechnology Patent Protection Act*, 68 Den. U. L. Rev. 173-190 (1991).

Denberg & Winner, *Requirements for Deposits of Biological Materials for Patents Worldwide*, 68 Den. U. L. Rev. 229-260 (1991).

Greenlee, *Biotechnology Patent Law: Perspective of the First Seventeen Years, Prospective on the Next Seventeen Years*, 68 Den. U. L. Rev. 127-140 (1991).

Hayhurst, *Exclusive Rights in Relation to Living Things (Canada)*, 6 Intell. Prop. J. 171-196 (1991).

### Pesticides

Comment, *Warning! Federal Preemption may be Hazardous to Plaintiff Pesticide Cases*, 1 San Joaquin Agric. L. Rev. 113-123 (1991).

### Public Lands

Beaver, *Management of Wyoming's State Trust Lands from 1890-1990: A Running Battle Between Good Politics and the Law*, 24 Land & Water L. Rev. 69-92 (1991).

Comment, *Livestock Grazing in Wilderness and Wilderness Study Areas*, 5 J. Env'tl. L. & Litigation 61-97 (1990).

Student Survey, *Public Lands*, 21 Env'tl. L. 1207-1223 (1991).

### Taxation

Bock, Harris, & Deery-Schmitt, *Agric-*

*cultural Taxation — Selected Issues*, 24 Ind. L. Rev. 1429-1449 (1991).

Thompson & Serrett, *Operating in Corporate Form May Enable Farmers and Ranchers to Deduct Expenses for Meals and Lodging*, 13 J. Agric. Tax'n & L. 258-269 (1991).

### Torts

Copeland, *Analysis of the Farmer's Comprehensive Liability Policy*, 24 Ind. L. Rev. 1451-1488 (1991).

A. Grant (ed.), *The Deadliest Work in America: Can Farming Be Made Safer?* in *Injury Prevention In America 1-24* (Roscoe Pound Foundation, 1991).

### Uniform Commercial Code

#### Article Nine

Meyer, *Should the Unique Treatment of Agricultural Liens Continue?*, 24 Ind. L. Rev. 1315-1356 (1991).

#### Federal Preemption of Farm Products Exception

Kershner & Hardin, *Section 1631: Developments in Farm Products Financing*, 45 Consumer Fin. L.Q. Rep. 394-399 (1991).

#### Water Rights: Agriculturally related

Behrens & Dore, *Rights of Landowners to Percolating Groundwater in Texas*, 32 S. Tex. L. Rev. 185-202 (1991).

Casnote, *Are Contract Rights Ever Property Rights Under the Reclamation Reform Act?* (*Peterson v. Department of the Interior*, 899 F.2d 799, 9th Cir. 1990, cert. denied, 111 S. Ct. 567, 1990), 21 Golden Gate Univ. L. Rev. 175-237 (1991).

Comment, *Muddy Waters: the Right to Conserved Water in Idaho*, 27 Idaho L. Rev. 303-317 (1990).

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Davidson, *South Dakota's Special Water Districts—An Introduction*, 36 S.D.L. Rev. 640-662 (1991).

D. Getches, *Water Allocation During Drought In Arizona and Southern California: Legal and Institutional Responses* (Natural Resources Law Center, Boulder 1991).

Hobbs, *The Reluctant Marriage: The Next Generation (A Response to Charles Wilkinson)*, 21 Env'tl. L. 1087-1090 (1991).

McGinnis, *A Carrot or a Stick? Promoting Water Conservation in Arizona Agriculture*, 1 San Joaquin Agric. L. Rev. 33-55 (1991).

Squire, *Water Quality, Water Quantity: The Reluctant Marriage*, 21 Env'tl. L. 1081-1086 (1991).

Student Survey, *Reclamation Law*, 21 Env'tl. L. 1224-1243 (1991).

Wilkinson, *In Memoriam: Prior Appropriation 1848-1991*, 21 Env'tl. L. v-xvii (1991).

—Drew L. Kershner, Prof. of Law, Univ. of Okla. School of Law, Norman, OK

Agriculture, Conservation and Trade Act of 1990; proposed rule. 56 Fed. Reg. 54970.

6. CCC; Cooperative marketing associations; eligibility requirements for price

support; notice of proposed rule; 56 Fed. Reg. 56031.

—Linda Grim McCormick

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## AMERICAN AGRICULTURAL LAW ASSOCIATION NEWS

**Report on the 1991 Annual Conference.** More than 200 practitioners, educators, government officials, and industry representatives met in Atlanta, Georgia, November 1-2, 1991 at the American Agricultural Law Association's Twelfth Annual Meeting and Educational Conference.

Over 45 speakers addressed a wide range of topics including the annual review of agricultural law; legal issues in forestry and timber production; federal farm programs and the 1990 Farm Bill; new opportunities in agricultural production and marketing; the environmental liability of financing, owning and marketing farmland; issues in agricultural practice; and international development and trade issues.

Margaret R. Grossman delivered the Presidential Address. Friday's luncheon address was delivered by James Moseley, Assistant Secretary of Agriculture for Natural Resources and the Environment, USDA.

James R. Baarda was awarded this year's "Distinguished Service Award."

Terence Centner is the Association's President-elect. Neil D. Hamilton assumed his duties as President. Joining the Board of Directors are John Becker and Patricia Rynn. Retiring Board members are Walter J. Armbruster, Donald H. Kelley, and Donald B. Pedersen. Our thanks to them for their dedication and service to the Association.

Leon Geyer, chair of the Awards Committee, announced the winners of the Student Writing Competition. First place went to John S. Markle, whose paper was entitled "Slaying the sacred cow: looking for consensus in the reformation of world agricultural trade." Second place went to Karen Duncan for a paper entitled "The back forty: can lenders prudently loan against farm real estate? (CERCLA liability for foreclosures and receiverships)."

Next year's Annual Meeting will be held September 25-26, 1992 at the Holiday Inn City Center, Chicago, Illinois.