

Agribusiness Alert: Minnesota Court Limits Scope of Statutory Feeder's Lien to Exclude Feed Suppliers That Provide Feed and Other Services

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Livestock feed suppliers are entitled under Minnesota law to assert a livestock production input lien on livestock that consumed its feed. However, livestock feed suppliers that provide feed and other services often also assert a feeder's lien under Minnesota law. The distinction between a feeder's lien and a livestock production input lien is important because certain notice requirements, lien amount limitations, and priority rules are applicable to a livestock production input lien that do not apply to a feeder's lien. A livestock production input lien is available to a "supplier furnishing livestock production inputs in the ordinary course of business." (Minnesota Statute § 514.966, subd. 3(a).) Livestock production inputs include "feed and labor used in raising livestock." (Section 514.965, subd. 8.) A livestock "feeder" is not defined, but the feeder's lien is available to a person who "stores, cares for, or contributes to the keeping, feeding, pasturing or other care of livestock." (Section 514.966, subd. 4.). Livestock feed suppliers that provide feed and other services have argued that they obviously contribute to the feeding and care of the livestock and, therefore, the feed supplier should be entitled to the less burdensome and more advantageous feeder's lien.

A recent Minnesota Court of Appeals case addressed the question of whether a feed seller which, rolled and cracked grain to industry size, mixed the grain with materials such as corn, minerals, and antibiotics based on the buyer's requests, delivered the feed to the buyer's facility, recorded hog performance, and recommended a staged feeding program based on hog growth, was entitled to claim a feeder's lien. The court said that such a seller of feed and other services was only entitled to the benefits of a livestock production input lien. (*First National Bank v. Profit Pork, LLC*, No. A11-1732, September 4, 2012.)

The Court of Appeals rejected the feed seller's claim that as the party who mixed, monitored, and delivered the feed "contributes to ... feeding ... of livestock" as those terms are used in the feeder lien section of the statute. The court said this part of the statute was ambiguous and then turned to the statute as whole. The court concluded "that the production-inputs lien provision applies to one who provided feed and labor to be used by another in raising livestock, whereas the feeder's lien provision applies to one who provides feed and labor directly to the livestock." In this case, the feed seller lost its priority dispute with the bank because the feed seller did not give the statutory notice. This problem of notice is one of several reasons a feed seller

would rather have a feeder's lien than a livestock production input lien:

1. **Value of the lien.** A feeder's lien is for "the price or value of the storage, care, or contribution, and for any legal charges" (Section 514.066, Subd. 4(b)). A livestock production input lien is for the lesser of the "unpaid retail cost of the livestock production inputs" and the amount by which the sales price of the animals exceeds the value of the animals at the time the lien attaches or the acquisition price of the animals. (Section 514.966 Subd 3(a)). A person who sells feed would prefer to be treated as a "feeder" because the statute allows a "feeder" to collect all the unpaid costs of the feed and labor, including legal costs.
2. **Automatic Priority over a Bank or other Article Nine Security Holder.** Minnesota statutes also provide for a veterinarian's lien and a breeder's lien on livestock. The holder of a veterinarian's lien, a breeder's lien, or a feeder's lien "has priority over all competing security interest and all agricultural liens on the same animals," except that a veterinarian's lien has priority over all the other liens and the feeder's lien has priority over a breeder's lien. (Section 514.966, subds. 4(a), (c) and (e)). Unlike a feeder's lien, a livestock production input lien does not automatically have priority over "all competing security interests," including over a Uniform Commercial Code Article 9 security interest.
3. **Livestock Production Input Lien Notice Requirement.** In order for the holder of a livestock production input lien to achieve priority over a properly perfected Article 9 lender, such as a bank which made a loan advance, the feed seller must satisfy the statutory notice requirements and give notice to the bank. (Sections 514.966, subd. 3(b) and 514.996, subd. 8(i)). The bank can then respond with a written commitment to pay all or part of the amount stated in the notice or with a written refusal to issue a letter of commitment. In both cases, the bank retains its priority lien position. (Section 514.966, subd. 3(e)). If the bank fails to respond within ten calendar days, then the feed seller has priority over any security interest of the bank for the statutory amount of the lien, as described above. (Section 514.966, subd. 3 (b)).

If the bank fails to respond in ten days, the priority position of the feed seller will then depend on whether the notice was adequate. The feed seller shall: (1) provide a lien-notification statement to the lender; (2) in an envelope marked "IMPORTANT - LEGAL NOTICE;" and (3) sent by certified mail or other verifiable method. The second element of the notice requirements and the issue of "substantial compliance" was addressed last year in *Minnwest Bank, M.V. v. Chadley Arends, et al.*, 802 N.W. 2d 412 (Minn. App. 2011).

The hogs in Arends were located on the property of non-owner third parties and feed was supplied by outside sellers. A feed seller sent a lien notification statement to the bank by certified mail in an envelope that was not marked "IMPORTANT - LEGAL NOTICE." The bank admitted that it received the notice. The feed seller argued that because the bank actually received the lien notification statement, the seller had substantially complied with the statute. The Court of Appeals held that a livestock production input supplier must properly mark the envelope "IMPORTANT - LEGAL NOTICE" for the notice to be effective, and for the feed seller to obtain a priority lien in the livestock. The Court of Appeals stated: "[the feed seller's] failure here is not merely a defective attempt to comply with the requirement to place notice on the exterior of the envelope, but a complete failure to attempt compliance with this requirement."



These two recent cases have clarified several aspects of the agricultural lien statute, but the courts have not addressed other potential lien claimants. The issue of the existence of a livestock production input lien or a feeder's lien may arise when a hog owner contracts with an unrelated party to raise the animals, and that party, rather than a third party feed supplier, also sells the feed and then provides labor to mix the feed and deliver it to the animals. In light of the court's reading of the statute to only allow a feeder's lien for those that provide "direct" care and feeding, the issue now is whether the party has a feeder's lien or a livestock production input lien for that portion of the services related to the value of the feed and labor to mix the feed before delivery "directly to the livestock."

Two other issues also may arise with the livestock production input lien notice statute. The first is whether the "substantial compliance" standard applies to the document inside of the envelope. The statute contains a rather detailed set of information to be included in the notice document. (Section 514.966, subd. 3(b)). The Arends case suggests that question will be whether there is "a complete failure to attempt compliance with this requirement." The other unresolved issue is whether a feed seller may assert a statutory livestock production input lien for feed supplied before the lien notification is delivered to the bank. Although an issue in Arends, the Court elected not to decide this issue. The feed seller will likely argue that it gets a lien for all the feed identified in the notice so long as it complies with the notice requirements because the bank can protect itself by responding within 10 days. The bank will argue that, as with all lien priority issues, notice is critical. A secured lender cannot lose its priority to a feed supplier prior to the date the Bank receives the notice and has the opportunity to respond.

In the past year, Minnesota courts have limited the scope of those entitled to assert agricultural liens and clarified the requirements to qualify for these liens. However, with the increasing complexity of livestock production and the volatility of feed and livestock markets, other issues remain to be resolved. Banks with agricultural borrowers need to be aware of these issues and take precautions to avoid contested liens disputes. Suggested best practices for livestock lending were provided in an earlier article: [resources/newsletters/agribusiness-alert-feed-supplier-liens.aspx](#). Although the article related to the Iowa agricultural supply dealer's lien, these same best practices should be considered to avoid potential claims by barn owners or others that provide direct services under the Minnesota feeder's lien. As the earlier article discussed, the Iowa agricultural supply dealer's lien does not require advance notice to the lender. As discussed above, the same is true for the Minnesota feeder's lien but notice is required for the livestock input lien.

Gray Plant Mooty is a full-service law firm with specialized practices in agribusiness and agricultural lending and litigation. Contact Thomas Melloy, Jeffrey Peterson, or Phillip Kunkel if you have any questions regarding this alert.



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