

The U.C.C. and Perfection Issues Relating to Farm Products

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ABSTRACT	169
I. INTRODUCTION	171
II. BACKGROUND.....	172
III. CHAPTER 12 ISSUES	178
A. DEFINING FARM PRODUCTS AND FARMING OPERATIONS	179
B. STATE LIEN STATUTES.....	180
C. GOVERNMENT PROGRAMS AND RELATED STATUTES...	182
IV. SECURED CREDITOR ISSUES	186
V. NOTABLE CASE LAW	188
A. <i>FARM CREDIT OF NORTHWEST FLORIDA V. EASOM PEANUT CO.</i>	188
B. <i>BROOKS COTTON CO., INC. V. WILLIAMS</i>	192
C. <i>DIAMOND CRYSTAL BRANDS, INC. V. FOOD MOVERS INT'L, INC.</i>	194
D. <i>OYENS FEED & SUPPLY, INC. V. PRIMEBANK</i>	195
E. <i>GREAT W. BANK V. WILLMAR POULTRY CO</i>	197
F. <i>FIRST NAT'L. BANK V. PROFIT PORK, LLC</i>	198
VI. PROCEEDS AND PRIORITY	200
CONCLUSION	202
APPENDIX	203

ABSTRACT

The Uniform Commercial Code (the U.C.C.), first proposed in 1952, is designed to harmonize the various state laws dealing with commercial transactions. To date, the U.C.C. has been adopted in all fifty states. Article

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9 of the U.C.C. governs the creation of security interests in personal property that is pledged in exchange for debt. Primarily, Article 9 covers the creation of an enforceable security interest, referred to as attachment, the legal process of notification of a security interest to other creditors, known as perfection, the priority among secured creditors over claims to collateral, and the secured creditor's remedies for failure of the debtor to honor its obligations. Various state laws govern the creation and enforcement of security interests in farm products, as well as the priority of agricultural liens. The complex interplay of the Uniform Commercial Code as adopted among the states, and federal law relating to the perfection and priority of security interests in agricultural products, has resulted in a variety of unintended consequences.

First, the U.C.C.'s Article 9 agricultural lien provisions, primarily the rules defining farm products and agricultural liens, create some confusion when determining the U.C.C.'s applicability to agricultural liens when dealing with secured parties, debtors, and collateral. Second, Article 9's priority rules with respect to agricultural liens are subject to state lien statutes. These state lien statutes, in turn, contain their own priority rules and opt-out clauses with respect to priority under the U.C.C. In many situations, it is still unclear whether lien statute priority provisions override Article 9's priority rules.

Historically, agricultural liens were created by state legislatures to protect specific types of creditors. In general terms, agricultural liens are designed to protect those who supply real estate (e.g., landlords), services (e.g., veterinarians), or goods (e.g., feed sellers) on credit to farmers in furtherance of crop or livestock production. Agricultural liens, similar to security interests, are designed to give creditors the ability to claim farm products in order to recoup payment from a defaulting debtor.

Contrary to the purpose of the U.C.C., the failure to include statutory liens under Article 9 has resulted in a great variance from jurisdiction to jurisdiction when it comes to matters relating to the creation, enforcement, perfection, and priority in agricultural liens. Georgia agricultural lien statutes are often used throughout this Article as examples. This Article recognizes that the process for the perfection and the establishment of priority in security interests in farm products is not always clear, because the current legal regime occasionally results in uncertainty in the perfection and priority process for the related creditors and debtors. The first part of this Article will summarize the U.C.C. and federal law framework for perfecting and enforcing a security interest in agricultural products. The second part of this Article will analyze the Chapter 12 bankruptcy issues that result from the definition of farm products and farming operations, the analysis for when farm products become inventory for purposes of Article 9, and whether government entitlement payouts to farmer-debtors are reachable by secured creditors. Next, this Article will examine the issues facing secured creditors

with respect to establishing the priority between agricultural liens and Article 9 security interests. Finally, this Article will review the current status of recent cases addressing these issues.

I. INTRODUCTION¹

The Uniform Commercial Code (the “U.C.C.”), first proposed in 1952, is designed to harmonize the various state laws dealing with commercial transactions. To date, the U.C.C. has been adopted in all fifty states. Article 9 of the U.C.C. governs the creation of security interests in personal property that is pledged in exchange for debt. Primarily, Article 9 covers the creation of an enforceable security interest, referred to as attachment, the legal process of notification of a security interest to other creditors, known as perfection, the priority among secured creditors over claims to collateral, and the secured creditor’s remedies for failure of the debtor to honor its obligations. Various state laws govern the creation and enforcement of security interests in farm products, as well as the priority of agricultural liens. The complex interplay of the U.C.C. as adopted among the states with federal law relating to the perfection and priority of security interests in agricultural products has resulted in a variety of unintended consequences.

First, the U.C.C.’s Article 9 agricultural lien provisions, primarily the rules defining farm products and agricultural liens, create some confusion when determining the U.C.C.’s applicability to agricultural liens when dealing with secured parties, debtors, and collateral. Second, Article 9’s priority rules with respect to agricultural liens are subject to state lien statutes. These state lien statutes, in turn, contain their own priority rules and opt-out clauses with respect to priority under the U.C.C. In many situations, it is still unclear whether lien statute priority provisions override Article 9’s priority rules.

Historically, agricultural liens were created by state legislatures to protect specific types of creditors. In general terms, agricultural liens are designed to protect those who supply real estate (e.g., landlords), services (e.g., veterinarians), or goods (e.g., feed sellers) on credit to farmers in furtherance of crop or livestock production. Agricultural liens, similar to security interests, are designed to give creditors the ability to claim farm products in order to recoup payment from a defaulting debtor.

Contrary to the purpose of the U.C.C., the failure to include statutory liens under Article 9 has resulted in a great variance from jurisdiction to jurisdiction when it comes to matters relating to the creation, enforcement,

1. Citations to code sections do not take into account state non-uniform amendments except where indicated.

perfection, and priority in agricultural liens. Georgia agricultural lien statutes are often used throughout this Article as examples. This Article recognizes that the process for the perfection and the establishment of priority in security interests in farm products is not always clear because the current legal regime's actions occasionally result in uncertainty in the perfection and priority process for the related creditors and debtors. The first part of this Article will summarize the U.C.C. and federal law framework for perfecting and enforcing a security interest in agricultural products. The second part of this Article will analyze the Chapter 12 bankruptcy issues that result from the definition of farm products and farming operations, the analysis for when farm products become inventory for purposes of Article 9, and whether government entitlement payouts to farmer-debtors are reachable by secured creditors. Next, this Article will examine the issues facing secured creditors with respect to establishing the priority between agricultural liens and Article 9 security interests. Finally, this Article will review the current status of recent cases addressing these issues.

II. BACKGROUND

The National Agricultural Law Center provided the following general statement with respect to agricultural liens and Article 9 of the U.C.C.²

In order for an agricultural lien to be perfected under Article 9, a financing statement must be filed. The priority for an agricultural lien is the same as any other lien unless the statute that creates it provides for superior status. In an effort to preserve historical protections for some persons, some states have specifically removed certain statutory agricultural liens such as landlord liens from the definition of agricultural liens so that filing is not required for their perfection. These special agricultural liens are often granted super-priority over other interests and liens. In addition, local law, where the farm products are located, governs perfection of the agricultural lien rather than the Article 9 standard, "where the debtor is located." *Careful study of state law*

2. Established by Congress in 1987, NALC is an agricultural law research and information facility dedicated to analyzing the scope of agricultural law and its convergence with food law topics. See The National Agric. Law Center, *About the Center*, <http://new.nationalaglawcenter.org/about-the-center/> (last visited July 18, 2013).

*provisions must be employed to avoid losing priority to a superior unfiled statutory lien.*³

Article 9 is about the use of personal property pursuant to contract as collateral for a loan. Since Article 9 provides for notice of encumbrances on such property to protect those taking collateral as part of a commercial financing, Article 9 also generally covers the priority and perfection of agricultural liens. The scope section of Article 9 in Section 9-109(d) [Inapplicability of article] provides that “[t]his article does not apply to . . . (2) a lien, other than an agricultural lien”⁴ An agricultural lien is not a security interest as defined in Article 9 despite Section 9-102(a)(73), which defines a “Secured party” to include “(B) a person that holds an agricultural lien” Hence, whenever a provision of Article 9 is applicable to agricultural liens it will so indicate.⁵

There is a difference, then, between the concept of a security interest and an agricultural lien. Agricultural liens are only incorporated into Article 9 of the U.C.C. for the purposes of organizing filing, enforcement, and priority rules with security interests. The governance and creation of agricultural liens, and to some extent priority, are still relegated to the related non-U.C.C. state statute that creates an agricultural lien. As noted above, however, despite the differentiation between a security interest and an agricultural lien, for purposes of the U.C.C., a secured party includes parties with a security interest as well as parties that hold an agricultural lien. In addition, the concept of collateral under Section 9-102(a)(12) includes “property subject to a security interest or agricultural lien.”⁶ Accordingly, the definition of debtor under Section 9-102(a)(28)(A) as “a person having an interest . . . in the collateral” necessarily includes an agricultural lien debtor.⁷ As a result of these definitional concepts, those Article 9 provisions covering the enforcement of a security interest upon default by the debtor, which primar-

3. The National Agric. Law Center, *Secured Transactions: An Overview*, <http://www.nationalaglawcenter.org/overview/secured-transactions/> (last visited July 18, 2013) (emphasis added). Notice that pursuant to § 9-302, Law Governing Perfection and Priority of Agricultural Liens, U.C.C. § 9-302 (2013), an agricultural lien is to be filed in the jurisdiction where the agricultural products are located rather than or in addition to the location of the debtor. *See, e.g.*, *Stockman Bank of Montana v. Mon-Kota, Inc.*, 180 P.3d 1125, 1136 (Mont. 2008) (citing MONT. CODE ANN. § 30-9A-302 (2013)). (“A separate provision of the U.C.C. designates the local law to be followed when perfecting agricultural liens, indicating that the law of the state where the ‘farm products are located’ must govern. *See* § 30-9A-302.”).

4. *See* U.C.C. § 9-109(d) (2013). Relevant Uniform Commercial Code Sections and Selected Official Comments are listed in the Appendix.

5. *See* U.C.C. § 9-102(a)(73) (2013).

6. *See* U.C.C. § 9-102(a)(12) (2013).

7. *See* U.C.C. § 9-102(a)(28)(A) (2013).

ily use the terms secured party, collateral, and debtor, result in agricultural liens being subject to these provisions as well.

For Article 9 coverage an “Agricultural lien” (Section 9-102(a)(5)) means an interest in farm products:

- A. which secures payment or performance of an obligation for:
 - i. goods or services furnished in connection with a debtor’s farming operation; or
 - ii. rent on real property leased by a debtor in connection with its farming operation;
- B. which is created by statute in favor of a person that:
 - i. in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or
 - ii. leased real property to a debtor in connection with the debtor’s farming operation; and
- C. whose effectiveness does not depend on the person’s possession of the personal property.⁸

Section 9-102(a) (34) further provides that:

“Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation, and which are:

- (A) crops grown, growing, or to be grown, including:
 - i. crops produced on trees, vines, and bushes; and
 - ii. aquatic goods produced in aqua-cultural operations;
- (B) livestock, born or unborn, including aquatic goods produced in aqua-cultural operations;
- (C) supplies used or produced in a farming operation; or

8. See U.C.C. § 9-102(a)(5) (2013).

(D) products of crops or livestock in their unmanufactured states.⁹

Section 9-102(a) (35) provides that: “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.¹⁰ These definitions are important for distinguishing farm products that have been processed, subject to manufacture or otherwise have become inventory in the hands of a merchant.¹¹

Accordingly, an agricultural lien is definable as created by state statute in favor of those who finance farming operations, including landlords, service providers, and sellers of goods including feed. Such statutes generally contain their own priority rules.¹² For example, in Georgia a landlord is granted a statutory lien for supplies and equipment provided by a landlord to a tenant in order for that tenant to grow a crop. Such a lien is subject to a perfected Article 9 security interest.¹³ However, Section 9-102(a)(5), which defines the concept of agricultural lien, does not apply to liens created to protect the producers of farm products.¹⁴

Pursuant to Section 9-308(b), “An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9-310 have been satisfied.” An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.”¹⁵ Effective means that the agricultural lien becomes enforceable by the agricultural lien holder against the debtor, which is governed by the statute creating the agricultural lien. With respect

9. See U.C.C. § 9-102(a)(34) (2013).

10. See U.C.C. § 9-102(a)(35) (2013).

11. See FINAL REPORT ON AGRICULTURAL FINANCING UNDER ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE (STUDY COMMITTEE WORKING DOCUMENT NO. M6-48), PEB STUDY GROUP REPORT APPENDICES 479 (1992).

At the same time [not requiring the farmer to be in possession], however, we concluded that we did not want to render agricultural commodities “farm products.” Specifically, we believe that a line must be drawn so that when such commodities enter the stream of commerce they become transformed into “inventory.” We do not want the definition of farm products to be so broad as to encompass all agricultural commodities regardless of who owns them, their intended use, etc.

See also U.C.C. § 9-102 cmt. 4(a) (2002).

12. U.C.C. § 9-322(g) (2013) 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 so provides.”

13. See GA. CODE ANN. §§ 44-14-341 to 44-14-348 (West 2014).

14. U.C.C. § 9-102(a)(5) (2013).

15. U.C.C. § 9-308(b) (2013) (governs the perfection of agricultural liens).

to the aforementioned landlord's lien, effectiveness occurs on the date that the supplies or equipment is furnished by the landlord. Since the agricultural lien statutes were, for the most part, enacted prior to the 2001 revisions to Article 9, which included agricultural liens for the first time, the Article 9 procedural requirements supersede any wording to the contrary in the relevant lien statute. Pursuant to Section 9-509(a)(2), agricultural lien holders do not need the debtor's signature or consent to file a financing statement since such liens are not consensual.¹⁶

Once a filing statement is filed, whether the lien has priority over or is subject to a perfected Article 9 security interest depends on compliance with the lien statute. For example, in *Minnwest Bank, N.V. v. Arends*,¹⁷ the holder of a livestock production-input lien did not obtain priority over a lender's security interest that was perfected earlier since such lien holder failed to comply with the lien notification requirements of the statute. Arends, the feed supplier, filed a financing statement claiming an agricultural lien secured by the feed consuming livestock. The production lien became effective when feed was supplied to the farmer for his farming operation (raising livestock) and was perfected upon filing of the financing statement.¹⁸ The court held that the general first in time, first in right rule of U.C.C. Section 9-322¹⁹ "is limited by [the lien statute]" which provides for notice to the prior perfected security interest.²⁰ By strict compliance with the lien statute, a farm product feed financier will establish its priority over the prior perfected secured party in the livestock and in the proceeds generated by the sale of the livestock.²¹ In *Arends*, the feed supplier argued that it had "substantially complied" with the notice requirements governed by the lien statute, failing only to include in the address to the lender the legend "IMPORTANT LEGAL NOTICE."²² The court rejected this argument

16. U.C.C. § 9-509(a)(2) (2013) (works in accordance with U.C.C. §§ 9-509(a)(1) and 9-509(b); it is an exclusion to U.C.C. § 9-509(a)(1)'s requirement that a debtor authorized the filing of a financing statement by its authenticated record and U.C.C. § 9-509(b)'s requirement that security agreements are authorized).

17. *Minnwest Bank, M.V. v. Arends*, 802 N.W.2d 412, 418-19 (Minn. Ct. App. 2011).

18. *Id.* at 415.

19. U.C.C. § 9-322(a)(1) (2013) states that:

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

20. *Arends*, 802 N.W.2d at 415-16. See U.C.C. § 9-109(d) (2013).

21. *Arends*, 802 N.W.2d at 416-17. *But see, infra* Part VI.Part VI,*infra*.

22. *Id.*

based on “substantial compliance” pointing out that the lien statute was unambiguous and required strict compliance with its requirements.²³

The availability of financing for farmers extends beyond local lenders. For example, the Farm Service Agency (FSA), funded by congressional appropriations, offers loans up to \$300,000 for farm operating loans, which may be used for:

- a. Livestock and feed
- b. Farm equipment
- c. Fuel, farm chemicals, insurance and other operating costs, including family living expenses
- d. Minor improvements or repairs to buildings
- e. Refinancing certain farm-related debts excluding real estate.²⁴

The FSA may guarantee up to ninety percent (sometimes ninety-five percent) of a loan made by a qualifying lender, or in some cases, be the lender.²⁵

FSA lenders perfect their security interests in the relevant personal property by compliance with Article 9. They require the farmer-debtor to agree to the following as part of the loan documentation process:

PERMISSION TO FILE FINANCING STATEMENT:

Under the Uniform Commercial Code, you do not have to sign the financing statement which allows FSA to obtain a security interest in your property. If the loan is approved and funded, FSA will file a financing statement at the earliest possible date, before you enter into a **SECURITY AGREEMENT. BY SIGNING BELOW OR ITEM 50 OF PART C, I GIVE FSA PERMISSION TO FILE A FINANCING STATEMENT PRIOR TO THE**

23. *Id.* at 418.

24. The FSA is an agency for the US Department of Agriculture. The primary purpose of the FSA is to promote farm conservation and regulate related farming rules and regulations implemented by the USDA. *See* Farm Serv. Agency, *About FSA*, <http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=landing> (last modified April 27, 2012).

25. *See* Farm Serv. Agency, *Guaranteed Farm Loan*, <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=fnlp&topic=gfl> (last modified August 1, 2012).

EXECUTION OF THE SECURITY AGREEMENT AS WELL AS TO FILE AMENDMENTS AND CONTINUATIONS OF THE FINANCING STATEMENT THEREAFTER.²⁶

Another source of financing for agricultural products and farm operations is the Farm Credit System. The Farm Credit System is comprised of cooperative institutions regulated by the federal government willing to lend to farmers.²⁷ Certain life insurance companies are also involved in farm lending.²⁸ As with the FSA, these other lenders perfect under Article 9 or if real estate is involved, in the real estate records.

For any secured party in an agricultural product, careful review of the relevant state statutes is essential. Without understanding, and navigating, the web of statutes between Article 9 of the U.C.C. and related state statutes, financiers for agricultural products and farm operations may find themselves with unperfected agricultural liens, or subordinate to later-filed Article 9 security interests.

III. CHAPTER 12 ISSUES

Chapter 12 of the US Bankruptcy Code was designed to provide farmers with a streamlined bankruptcy process and an opportunity to reorganize and keep their farms.²⁹ Chapter 12 is modeled after Chapter 13, which governs consumer reorganizations. Hence, the treatment of secured creditors is relatively well established. This includes the ability of a farmer-debtor to

26. See United States Dep't. of Agric., *Information Needed to Submit an FSA Direct Loan Application 5*, http://www.fsa.usda.gov/Internet/FSA_File/tx_fo_olpackage070711.pdf (last visited July 20, 2013).

27. See Farm Credit, *Welcome to the Farm Credit System*, <http://www.farmcreditnetwork.com/about> (last visited July 20, 2013).

28. E.g., Fresno Madera Farm Credit, *Products & Services*, <http://www.fmfarmcredit.com/products-services> (last visited July 20, 2013); GreenStone Farm Credit Serv., *Farm Loans & Farm Financing*, <http://www.greenstonefcs.com/agriculture/Pages/default.aspx> (last visited July 20, 2013); Capital Farm Credit, *Our Product*, <https://www.capitalfarmcredit.com/products.htm> (last visited July 20, 2013).

29. See Bankruptcy Judges, United States Trustees, and Family Farmers Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088. Designed to temporarily respond to the downturn in the farming industry during the 1980's, Chapter 12 initially included a sunset provision, terminating the legislation on October 1, 1993. Since then, Chapter 12 was renewed eleven times, and finally became a permanent part of the US Bankruptcy Code with the enactment of the Bankruptcy Abuse and Consumer Protection Act. See also Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1001, 119 Stat. 23, 185.

lien strip and the calculation of cramdown interest rates.³⁰ This section of the Article will describe how the interplay of Chapter 12 and Article 9 raises issues related to the definition of farm products and farming operations, when farm products become inventory, the extent to which agricultural liens prime or are subordinate to a perfected Article 9 security interest, and whether payment made under government entitlement payouts are reachable by secured creditors.

A. DEFINING FARM PRODUCTS AND FARMING OPERATIONS

The treatment of secured claims by Chapter 12 is governed by 11 U.S.C. § 1225 (a)(4) and (a)(5) and Rules 3018(c) and 3012.³¹ The latter rule provides for an evaluation of the secured claim wherein the bankruptcy court may decide whether the secured creditor is over or under secured pursuant to 11 U.S.C. § 506(a), along with a determination of an appropriate interest rate for a debtor's continued use of collateral. Once a bankruptcy court has established that the value of the collateral claimed by a secured creditor is less than the contractual amount owed to the secured creditor by the debtor, the debt is split into two parts. The security interest survives and is treated as a secured claim up to the amount of the value of the collateral. The remaining amount owed to the secured creditor by the debtor is treated as unsecured debt.

Satisfaction of secured claims under Chapter 12 is similar to their treatment under Chapter 13. In short, a court could confirm a plan over a secured creditor's objection if the debtor elected either:

1. To surrender collateral to a creditor or

30. "Lien-stripping" is the process of reducing or stripping the value of a lien on secured property. Lien-Stripping Definition, *Black's Law Dictionary*, (9th ed. 2009), available at WestlawNext. When a secured creditor holds a claim in which the value of the collateral is less than the contractual amount owed the creditor, the Bankruptcy Code splits or bifurcates it. It is treated as a secured claim up to the value of the collateral, and an unsecured claim for the amount which constitutes the discrepancy between the collateral's value and the contractual amount of the claim. *See* 11 U.S.C. § 506 (2014). In other words, the claim of a secured creditor is legally protected up to the value of the collateral which secures the claim. Lien stripping is specifically used in situations where there is deflation in the value of the farm property, which allows the farmer-debtor to reduce the amounts owed to the secured lender and discharge the unsecured portion of any debt. *See id.* Although used in a variety of financial contexts, with respect to bankruptcy law, cramdowns are a procedure that enables a debtor to modify a creditor's claim over the creditor's objection. *See* 11 U.S.C.A. § 1129(b) (2014).

31. *See* 11 U.S.C. § 1225 (2014); FED. R. BANKR. P. 3018 (1997); FED. R. BANKR. P. 3012 (1987).

2. To allow a creditor to retain its lien while providing it with payments under a plan whose present value was at least equal to the allowed amount of its secured claim.³²

“Cramming down” occurs when the debtor keeps the property

over the objection of the creditor; the creditor retains the lien securing the claim . . . and the debtor is required to provide the creditor with payments, over the life of the plan, that will total the present value of the allowed secured claim, *i.e.*, the present value of the collateral.³³

A debtor must decide which option to use and may not combine both the cram down and the return option.³⁴ An exception arises for over-secured creditors wherein the debtor may make a partial transfer of collateral equal to the allowed secured claim.³⁵

It should be noted that although a secured party may obtain a blanket security interest in various items and types of collateral, including after-acquired property, a bankruptcy filing cuts off the creditor’s ability to reach property acquired after the date of bankruptcy, with the important exceptions of traceable proceeds, products, offspring, rents or profits of the prepetition property.³⁶ Accordingly, the interpretation of the statute by courts regarding what types of collateral falls into these exceptions is critical for both debtors in bankruptcy and their secured creditors.

B. STATE LIEN STATUTES

Those lien statutes that provide for priority over a previously perfected Article 9 security interest do so based on the similarity of a crop loan to a

32. See 11 U.S.C. § 1325(a)(5) (2014).

33. See *Associates Commercial Corp. v. Rash*, 520 U.S. 953, 957 (1997); See also *Till v. SCS Credit Corp.*, 541 U.S. 465, 478-80 (2004). In *Till*, creditors objected to a bankruptcy court’s decision to cram-down the interest rate on the debtor’s original loan from twenty-one percent to 9.5%. The US Supreme Court held that the “formula approach” was the proper method for calculating bankruptcy court repayment plans. The “formula approach” is purely objective, using the prime rate plus additional interest to take into consideration the risk factor for the loan. This decision addressed concerns that Chapter 13 reorganizations be financially feasible for the debtor, allowing for a high probability of success.

34. See *In re Kerwin*, 996 F.2d 552, 556-59 (2d Cir. 1993).

35. *In re Lairmore*, 101 B.R. 681, 683 (Bankr. E.D. Okla. 1988).

36. 11 U.S.C. § 552(b) (2014).

purchase money security interest.³⁷ For example, in Florida a landlord's lien for articles supplied or purchased with money loaned by the landlord is superior to all other liens.³⁸ Land owners who lease their farmland are often the beneficiary of a lien that primes other liens on crops. Such liens automatically attach to crops grown on such land as soon as these crops are planted. Likewise, in Georgia such liens are superior to all other liens except tax liens and U.C.C. perfected liens of laborers.³⁹ This type of lien should not be confused with a landlord's lien for farming supplies and equipment, which is subject to Article 9 perfected security interests, as well as laborers' liens and the landlord's lien for rent.⁴⁰

Navigating between state statutes governing agricultural liens and Article 9 governing security interests is critical for secured creditors. In *Bank of Dawson v. Worth Gin Co, Inc.*, the Bank claimed a perfected security interest in farm crops subsequently sold.⁴¹ Upon sale, the buyer of the farm products issued a check jointly payable to the Bank and farmer minus funds previously owed by the farmer to the buyer. The Bank brought suit to recover those funds based upon conversion.⁴² The buyer challenged the sufficiency of the Bank's financing statement because in Georgia pursuant to Section 9-502(b), "[r]eal-property-related financing statements" includes "growing crops," thus requiring additional compliance with Section 9-502(b)(2) and (4) by a filing in the real property records, which had been omitted.⁴³ Citing Sections 9-506(a) and 9-317(b), however, the court ruled for the Bank since the buyer had actual knowledge of the Bank's interest.⁴⁴

37. A purchase money security interest (also sometimes referred to as a "PMSI") is, pursuant to U.C.C. §§ 9-103, 9-317(e), and 9-324 (2013), a special type of security interest granted to creditors that provide financing to debtors to purchase the collateral that is pledged back to the secured creditor. Typically, PMSI's enjoy priority over other types of security interests. *See id.*

38. FLA. STAT. § 83.10 (1995).

39. GA. CODE ANN. §§ 44-14-341 to 44-14-348 (2012).

40. The National Agricultural Law Center located at the University of Arkansas School of Law has developed a "Statutory Agricultural Lien Rapid Finder Chart" for many states including Georgia, Florida and Alabama. *See generally*, Elizabeth R. Rumley & Jennifer C. Fiser, *Updated States' Agricultural Lien Charts*, NATIONAL AGRICULTURAL LAW CENTER, <http://nationalaglawcenter.org/state-compilations/agricultural-liens/> (last visited Nov. 16, 2014) (providing agricultural lien charts for many states).

41. *Bank of Dawson v. Worth Gin Co., Inc.*, 671 S.E.2d 279 (Ga. Ct. App. 2008).

42. *Id.* at 281-82.

43. U.C.C. § 9-502(b)(4) (2013) requires such filing even if the debtor does not have an interest of record in the real property. If not the debtor's filing must indicate the name of the record owner.

44. U.C.C. § 9-506(a) (2013) states that a financing statement may be effective even if it has minor errors or omissions, unless such errors or omissions make the financing statement seriously misleading. U.C.C. § 9-317(b) (2013) provides that a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and

To the extent that the court relied on the Bank's financing statement substantially satisfying the requirements of Section 9-506(a), the opinion is incorrect. A proper reading of Article 9 by the court would have resulted in a different result based on the failure of the Bank to strictly comply with state statute requirements to perfect an agricultural lien.

For a successful assertion of an agricultural lien, strict compliance with both the lien statute and U.C.C. Article 9 (for priority purposes), rather than "substantial satisfaction," are required. Official comment 5(i) of Section 9-102 provides that:

Receivables Under Government Entitlement Programs. This Article does not contain a defined term that encompasses specifically rights to payment or performance under the many and varied government entitlement programs. Depending on the nature of a right under a program, it could be an account, a payment intangible, a general intangible other than a payment intangible, or another type of collateral. The right also might be proceeds of collateral. (e.g., crops).⁴⁵

C. GOVERNMENT PROGRAMS AND RELATED STATUTES

There are numerous and seemingly ever changing government programs wherein farmers may receive entitlement payments.⁴⁶ The classification of such payments is not always easy.⁴⁷ Those payments tied to crop failure may well be analogized to insurance payments, hence, covered by Section 9-102(a)(64)(E), as a substitute for proceeds of collateral covered by Section 9-203(f) as "supporting obligations," or classified as identifiable proceeds of collateral under Section 9-315(a)(2).^{48,49} Insofar as to whether

receives delivery of the collateral *without knowledge* of the security interest or agricultural lien and before it is perfected.

45. U.C.C. § 9-102 cmt. 5(i) (2002).

46. These include, pursuant to the Conservation Reserve Program, Cotton Law Yield/ Disaster Payments, Milk Diversion Program, PIK Crop Subsidy, Diversion or Acreage Set-Aside Program and others. *See generally*, United States Dep't of Agric. Farm Serv. Agency, *Conservation Reserve Program* (Jul. 15, 2014), <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=crp> (providing additional information about the Conservation Reserve Program).

47. *See generally* Agriculture, 7 C.F.R. (2000).

48. *See In re Ring*, 169 B.R. 73, 77 (Bankr. M.D. Ga. 1993). In *Ring*, the court held that the debtor's post-bankruptcy petition entitlements under a disaster assistance program were analogous to insurance payments for crop loss and/or crop damage and therefore the disaster payments were pre-petition property proceeds and part of the bankruptcy estate.

an agricultural lien included proceeds, Section 9-322, Comment 12 provides that:

Statutes other than this Article may purport to grant priority to an agricultural lien as against a conflicting security interest or agricultural lien. Under subsection (g), if another statute grants priority to an agricultural lien, the agricultural lien has priority only if the same statute creates the agricultural lien and the agricultural lien is perfected. Otherwise, subsection (a) applies the same priority rules to an agricultural lien as to a security interest, regardless of whether the agricultural lien conflicts with another agricultural lien or with a security interest.

In as much as no agricultural lien on proceeds arises under this Article, subsections (b) through (e) do not apply to proceeds of agricultural liens. However, if an agricultural lien has priority under subsection (g) and the statute creating the agricultural lien gives the secured party a lien on proceeds of the collateral subject to the lien, a court should apply the principle of subsection (g) and award priority in the proceeds to the holder of the perfected agricultural lien.

The agricultural lien holder is otherwise protected by Section 9-320, which provides:

(a) [Buyer in the ordinary course of business.] Except as otherwise provided in subsection (e), 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

49. See *Matter of Hollie*, 42 B.R. 111 (Bankr. M.D. Ga. 1984). In *Hollie*, the debtors participated in a milk diversion program, whereby they received subsidy payments in exchange for not producing milk. The subsidy payments were held by the bankruptcy court to be cash collateral that substitutes as proceeds of the milk that would have been produced but for the subsidy. *But see In re Kruger*, 78 B.R. 538, 542-43 (Bankr. C.D. Ill. 1987). In contrast to *Hollie*, in *Krueger*, deficiency payments were held to not be proceeds of a crop since no crop was planted, sold or otherwise disposed of. See also *In re Nivens*, 22 B.R. 287, 293-94 (Bankr. N.D. Tex. 1982) (holding disaster payments were a substitute for crop proceeds, hence covered by an Article 9 security interest).

security interest is perfected and the buyer knows of its existence.

Furthermore, comment 4 of Section 9-320 provides that:

Buyers of Farm Products. This section does not enable a buyer of farm products to take free of a security interest created by the seller, even if the buyer is a buyer in ordinary course of business. However, a buyer of farm products may take free of a security interest under Section 1324 of the Food Security Act of 1985, 7 U.S.C. § 1631.⁵⁰

The relevance of the Food Security Act to Article 9 is explained in *Farm Credit Midsouth, PCA, f/k/a Eastern Arkansas Production Credit Association v. Farm Fresh Catfish Co.*⁵¹ In *Farm Credit Midsouth*, Farm Credit financed the debtor, Reece Contracting, in the purchase and operation of an Arkansas catfish farm.⁵² Farm Credit held a first priority security interest in the debtor's catfish and catfish fingerlings. Farm Fresh was a regular purchaser on credit of Reece's catfish. In order to prevent any potential termination of its security interest in the catfish, Farm Credit sent notice to Farm Fresh of its first priority interest in the catfish.⁵³ Farm Credit later discovered that Farm Fresh had failed to label payments totaling \$692,081.71 to Farm Credit. Farm Credit then sued Farm Fresh for converting its security interest.⁵⁴

Under Article 9, a buyer in the ordinary course of business may, other than a person buying farm products, take collateral free of the secured party's security interest in the same collateral.⁵⁵ Similarly, under the Food Security Act, a purchaser of farm products take such farm products "subject to a security interest created by the seller" if the seller complies with the direct notice requirements of the Food Security Act or, in a state with a central filing system for financing statements, the creditor properly filed a financing statement protecting its security interest.⁵⁶ As written, the Food Security

50. See U.C.C. § 9-320 (2013). The Food Security Act, also known as the US Farm Bill, established a dairy herd buyout program, allowed lower commodity pricing, created farm income supports, established various conservation programs, and made a variety of changes to several USDA programs. See Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354.

51. *Farm Credit Midsouth v. Farm Fresh Catfish Co.*, 371 F.3d 450 (8th Cir. 2004).

52. *Id.* at 451-52.

53. *Id.* at 452.

54. *Id.*

55. *Id.* at 454.

56. *Farm Credit Midsouth v. Farm Fresh Catfish Co.*, 371 F.3d 450, 454 (8th Cir. 2004) (quoting 7 U.S.C. § 1631(e)(1)(A) (2014)).

Act contains no permissive language and no indication that satisfaction of its notice requirements can occur with substantial compliance. The direct notice, therefore, is mandatory; whereas the “central filing” option had permissive language and substantial compliance language “so long as the errors ‘are not seriously misleading.’”⁵⁷ Since Arkansas had no central filing system for financing statements, Farm Credit was required to send direct notice to Farm Fresh.⁵⁸

Direct notice under the Food Security Act requires the financing statement to include (1) the secured creditor’s name and address, (2) the debtor’s name and address, (3) the debtor’s social security number or taxpayer Id number, (4) a description of the farm products covered by the security interest, and (5) any payment obligation conditioning the release of the security interest.⁵⁹ The description also must include the farm products subjected to the interest, the crop year, and the counties in which the farm products are located or produced.⁶⁰ Farm Credit, in its direct notice to Farm Fresh, failed to include the debtor’s address, the taxpayer identification number of the debtor, and the counties in which the catfish were grown.⁶¹

Further, potential confusion arises under U.C.C. Section 9-320(d) because there is no protection for buyers of farm products in the ordinary course of business. Nevertheless, the holder of an agricultural lien may assert that its lien not only survives but attaches to proceeds depending upon the content of the statute creating the lien. Section 9-315(a) explicitly provides “(1) 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 (2) a security interest attaches to any identifiable proceeds of collateral.”⁶²

Section 9-315(a)(2), which states that security interests attach to any identifiable proceeds of collateral, does not include proceeds from the sale of agricultural products as automatically covered. As a result, agricultural lien holders are left to rely on the plain language of the creating statute or non-code law, perhaps based on good faith or an equitable principle, in determining whether agricultural liens extend to proceeds of the related farm products.

Pursuant to U.C.C. Section 9-320(a), it is quite clear that a farmer, whether considered a merchant or not, does not sell free of an Article 9

57. *Id.* at 453 (quoting 7 U.S.C. § 1631(c)(4)(I) (2014)).

58. *See id.* at 452-53.

59. *Id.* at 453 (citing 7 U.S.C. § 1631(e)(1)(A)(ii)(I)-(IV) (2014) and § 1631(e)(1)(A)(v) (2014)).

60. *Id.* (citing 7 U.S.C. § 1631(e)(1)(A)(ii)(IV) (2014)).

61. *Farm Credit Midsouth*, 371 F.3d at 454.

62. U.C.C. § 9-315(a) (2013). *See infra* Part VI.

security interest or agricultural lien without authorization from the secured party unless applicable law so provides. If, however, the security interest is unperfected, Section 9-317(a), (b), and (c) subordinate an agricultural lien “in the same manner in which they subordinate unperfected security interests.”⁶³

In addition to various government programs and their affect on the perfection and priority of agricultural liens, secured lenders to farmers need to be aware of the Packers and Stockyards Act.⁶⁴ The Packers and Stockyards Act, designed to “regulate interstate and foreign commerce in live-stock, live-stock produce, dairy products, poultry, poultry products, and eggs, and for other purposes,” requires buyers of produce to maintain trust assets so that they are available to satisfy the outstanding obligation of the produce sellers.⁶⁵ These assets may even be recovered from a secured lender of the produce buyer.⁶⁶

IV. SECURED CREDITOR ISSUES

In a contest between an Article 9 secured creditor and a holder of an agricultural lien, the attachment rules of Article 9 do not apply to agricultural liens. Rather, such liens attach or become effective, according to the particular rules in the lien creating statute. The incorporation of agricultural liens into Article 9 are for purpose of perfection and priority, although priority rules in the agricultural lien statute may well modify the first in time first in right rules of Article 9 pursuant to Sections 11-9-322(a) and (g).⁶⁷

For example, Georgia has a non-uniform amendment to Section 9-333 which must be read in conjunction with Sections 11-9-317(b), 11-9-322(g), and 11-9-334(i) to understand the interplay between perfected Article 9 security interests and perfected (following Article 9 filing rules) agricultural liens.

Section 11-9-334(i) provides:

Priority of security interest in crops. A perfected security interest in or agricultural lien upon crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the

63. *Id.* at § 9-317 cmt. 7.

64. 7 U.S.C. §§ 181-229 (2013).

65. Agriculture, 7 C.F.R. § 46.46 (2011).

66. *See In re Gotham Provisions Co., Inc.*, 669 F.2d 1000, 1010 (5th Cir. 1982) (holding 7 U.S.C.A § 196 (West 2014) to allow unpaid sellers covered by the act to recover assets derived from the sale of livestock from a secured lending bank).

67. *See generally* U.C.C. § 9-322 (2002) cmt. 2 (which summarizes exception to the “first in time, first in right” rule of § 9-322(a)).

real property if the debtor has an interest of record in or is in possession of the real property.⁶⁸

Section 11-9-317 provides:

(b) **Buyers that receive delivery** . . . [B]uyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) *Lessees that receive delivery*. Except as otherwise provided in subsection (e) of this Code section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.⁶⁹

Section 11-9-324 provides for a purchase money priority for livestock and the procedure to be followed for perfection.⁷⁰

The above three code sections are not subject to Georgia non-uniform amendments. However, note the cross reference to section 11-9-324(g) with regard to conflicting purchase money security interests. In addition, Georgia has enacted section 11-9-322.1 which deals with crops produced with new value which seems to explicitly apply purchase money security doctrine to growing crops.⁷¹

Section 11-9-301 does require filing where the debtor is located not where the crops are located.⁷² Note that under some agricultural lien statutes, the lien must be filed where the crops are located.⁷³ In those circumstances and in those states with such a requirement, effectiveness may depend upon filing a lien where the crops are located while perfection would require a filing where the debtor is located. This has particular importance since section 11-9-204(a) provides for attachment of a blanket security in-

68. GA. CODE ANN. § 11-9-334(I) (2013).

69. GA. CODE ANN. §§ 11-9-317(b) and (c) (2013).

70. GA. CODE ANN. § 11-9-324 (2013).

71. GA. CODE ANN. § 11-9-332.1 (2013).

72. GA. CODE ANN. § 11-9-301 (2013).

73. *E.g.*, IOWA CODE § 554.9301 (2007); MISS. CODE ANN. § 75-9-302 (2002); WYO. STAT. ANN. § 34.1-9-302 (2001).

terest to future grown crops if the security agreement so indicates.⁷⁴ This section should be read with section 11-9-334(i) quoted above.

V. NOTABLE CASE LAW

Recent case law demonstrates that careful reading of the relevant articles of the U.C.C., and the language of related state statutes, will determine the attachment and priority of a secured party's security interest in farm products. This section of the Article will review six recent cases in important farming jurisdictions that address these issues.

A. *FARM CREDIT OF NORTHWEST FLORIDA V. EASOM PEANUT CO.*⁷⁵

Under Article 9, possession of the collateral by a creditor creates a "possessory security interest." With respect to possessory security interests, the local law where the collateral is located governs the perfection and priority of such a security interest. If the creditor is not in possession of the collateral, Article 9 applies to the perfection and priority in the collateral. The court in *Farm Credit of Northwest Florida v. Easom Peanut Co.* addressed this issue with respect to agricultural liens.

In *Farm Credit*, creditors involved in the bankruptcy of a peanut broker, Fidelity Foods, submitted competing claims to the proceeds from the sale of peanut crops.⁷⁶ First, Farm Credit of Northwest Florida had extended to Fidelity Foods a five million dollars line of credit and took as collateral a security interest in all of Fidelity's present and after-acquired peanuts. Farm Credit perfected its security interest in the peanuts by filing a financing statement. Second, various peanut growers had entered into contracts with Fidelity Foods providing that the growers would retain title in the peanuts until the peanuts were transferred to Fidelity. The peanut crops were actually delivered by Fidelity Foods to the Easom Peanut Company, which warehoused and processed the peanuts received from Fidelity Foods.⁷⁷

74. U.C.C. § 9-204(a) (2013).

75. *Farm Credit of Nw. Fl. v. Easom Peanut Co.*, 718 S.E.2d 590 (2011).

76. *Id.* at 595.

77. *Id.* at 596.

In January 2008, Farm Credit, a cooperative bank, extended a \$5 million line of credit to Fidelity to fund its operations. In exchange, Fidelity granted Farm Credit a security interest in its inventory, accounts, and other assets, including collateral, defined as "[a]ll peanuts of every kind and description shelled and unshelled, and wherever located and including but not limited to all peanuts owned by Debtor and stored at and/or processed by companies listed on 'Exhibit A.'" Listed on Exhibit

When Fidelity Foods entered into bankruptcy, Farm Credit, Easom, and the peanut growers claimed the remaining peanut crops and related proceeds.

Under section 9-110 of the U.C.C., security interests arising under Articles 2 and 2A of the U.C.C. are generally subject to Article 9 until the debtor obtains possession of the goods. In this situation, typical Article 9 formalities such as security agreements and filing a financing statement are unnecessary. Accordingly, the peanut growers would have had priority in the peanuts until the debtor received possession of the collateral. If the debtor, Fidelity, had possession of the peanuts, then Farm Credit's security interest in the farm products would prime that of the growers. The first question raised, then, was whether Fidelity Foods obtained possession of the collateral.

In determining whether Fidelity Foods had possession of the peanuts, the court considered the arrangement of using Easom as a warehouse of the peanuts to be effective in creating constructive possession in the crops. In particular, comment 3 to U.C.C. Section 9-313 states that

The debtor cannot qualify as an agent for the secured party for purposes of the secured party's taking possession. And, under appropriate circumstances, a court may determine that a person in possession is so closely connected to or controlled by the debtor that the debtor has retained effective possession, even though the person may have agreed to take possession on behalf of the secured party.⁷⁸

Applying both Georgia and Florida law, the court held that "when the growers completed their performance under the contracts with Fidelity by delivering the peanuts to Easom, title passed to Fidelity."⁷⁹ The attempted reservation of title by virtue of a conditional sales contract was ineffective, instead acting as a retention of a security interest which is then subject to Article 9's rules on perfection. Accordingly, the growers were unperfected secured parties whose rights were subordinate to Farm Credit's.⁸⁰ Rejecting

A were six companies, including Easom. On January 10, 2008, Farm Credit filed U.C.C. financing statements in the applicable jurisdictions. . . . In March 2008, Fidelity entered agreements with Easom for the shelling and storage of peanuts.

78. U.C.C. § 9-313 cmt. 3 (2002).

79. *Farm Credit of Nw. Fl.*, 718 S.E.2d at 598; See U.C.C. § 9-401(1); *Diamond Crystal Brands, Inc. v. Food Movers Int'l, Inc.*, 593 F.3d 1249, 1266 (11th Cir. 2010).

80. *Farm Credit of Nw. Fl.*, 718 S.E.2d at 598.

the contention by the growers that Fidelity's interest never attached since it never had possession, the court held that constructive possession was sufficient since the "peanuts were delivered to Easom at Fidelity's direction where Fidelity had the right to control" ⁸¹

The growers had two easily available options to protect their interest. They could have perfected a security interest in the peanuts and proceeds under Article 9, naming Fidelity as the debtor, or they could have required Easom to issue warehouse receipts to the growers. Easom, however, failed to issue warehouse receipts. Even if, as in this case, warehouse receipts were not issued, section 9-312(d) would apply, at least by analogy since the bailee (Easom) would have notice of the growers continuing interest. ⁸²

Finally, Easom asserted three alternative theories for priority over Farm Credit: priority under a bailee's lien, priority as a warehouseman for purposes of priority, and under a theory of quantum meruit. Under section 9-333(b), possessory liens have priority over a security interest, unless the statute expressly provides otherwise. Citing OCGA section 44-12-40, the court held the delivery of the peanuts to Easom created a bailment. ⁸³ Such bailment created a lien in favor of the bailee. ⁸⁴ However, citing the Official Code of Georgia Annotated sections 44-14-400 and 9-333(a), the court pointed out "that, with exceptions not applicable here, a perfected security interest in collateral takes priority over the liens described in title 44" in the Georgia Code. ⁸⁵ Specifically, the statute creating Easom's possessory lien over the peanut crops stated that the lien was subordinate to "duly recorded mortgages." Here, the court held that Farm Credit's security interest was a duly recorded mortgage, and by the language of the statute, Easom's lien was subordinate to Farm Credit's security interest.

Another theory analyzed by the court was whether, when the growers delivered the peanuts to the warehouse, possession of the farm products

However, we agree with Farm Credit that, in fact, the growers transferred title to the peanuts to Fidelity-and Farm Credit's security interest thus attached- when the growers delivered the peanuts to Easom. The trial court held that the growers did not transfer title to the peanuts to Fidelity because Fidelity never paid for or had possessed the peanuts and because the contracts between Fidelity and most of the growers expressly reserved to the growers all "beneficial interest" until title was transferred to Fidelity and warehouse receipts were delivered to Fidelity, events which, the trial court found, did not happen.

See U.C.C. § 9-322(a)(2).

81. *Farm Credit of Nw. Fl.*, 718 S.E.2d at 599.

82. See GA. CODE ANN. § 11-9-312(d) (2013).

83. *Farm Credit of Nw. Fl.*, 718 S.E.2d at 603.

84. GA. CODE ANN. § 44-14-320(a)(11) (2012).

85. *Farm Credit of Nw. Fl.*, 718 S.E.2d at 603.

became inventory potentially subject to Farm Credit's perfected security interest. Negotiable warehouse receipts, although provided for in the security agreement, were not delivered to Fidelity.⁸⁶ Its claims of priority under section 7-209(1) as a warehouseman were rejected since it failed to issue warehouse receipts, a requirement of the statute.⁸⁷ The court also discussed Easom's claim to be paid under a theory of quantum meruit:

It is true that when a party entitled to a statutory lien has been prevented from perfecting such lien by the acts of the adverse party, such party is entitled to an equitable lien for the improvements made on a quantum meruit theory. The equitable lien is in place of the statutory one to which the petitioner would have been entitled if the adverse party had not prevented perfection of the lien. . . .⁸⁸ Easom does not allege that any party prevented it from perfecting its lien. Consequently, it does not have a lien in the peanut proceeds under a theory of quantum meruit.

But this does not negate the fact that Easom may be entitled to payment from Farm Credit under a quantum meruit theory. Under OCGA § 9-2-7, "when one renders service or transfers property which is valuable to another, which the latter accepts, a promise is implied to pay the reasonable value thereof." Farm Credit does not dispute the trial court's findings that it directed Easom to receive, process and shell the peanuts, or that Easom's efforts were valuable to it. Therefore, we affirm the trial court's judgment to the extent that it found that Easom may have a claim for payment by Farm Credit under a quantum meruit theory. We observe that Easom is barred from a double recovery. *Lee v. Shim*, 310 Ga.App. 725, 733(3)(b), 713

86. *Id.* at 597; See U.C.C. § 9-312(c)(1) (2013) (providing for perfection of a security interest in goods by taking possession of a negotiable document of title. Other states have passed similar super-priority rules for certain types of security interests with respect to farm products); D.C. CODE § 28:9-312 (2013); MISS. CODE ANN. § 75-9-312 (2013); TENN. CODE ANN. § 47-9-312 (2013); W. VA. CODE § 46-9-312 (2013).

87. *Farm Credit of Nw. Fl.*, 718 S.E.2d at 603-04 (citing *In re Charton Co.*, 56 B.R. 91, 95 (Bankr. M.D. Fla. 1985)).

88. *Lane Supply, Inc. v. W.H. Ferguson & Sons, Inc.*, 649 S.E.2d 614, 617 (Ga. Ct. App. 2007).

S.E.2d 906 (2011). It therefore cannot recover for its charges under both a bailee's lien and theory of quantum meruit.⁸⁹

In addition to priority, state statutes also will impact certain remedies under Article 9 of the U.C.C.

B. *BROOKS COTTON CO., INC. V. WILLIAMS*⁹⁰

Courts have relied on state statutes when determining whether parties qualify as merchants for purposes of the U.C.C.⁹¹ In *Brooks Cotton Co., Inc. v. Williams*, the primary issue revolved around whether the debtor, Williams, was a merchant for purposes of the U.C.C., which governed whether a statute of frauds defense existed for failure to perform a contract.⁹² In *Brooks Cotton*, Williams allegedly entered into an oral contract on August 5, 2010, to sell his 2010 cotton production to Brooks Cotton.⁹³ The alleged contract was entered into Brooks' books on August 6, 2010, and provided for the sale of the entire one thousand acre cotton production to Brooks Cotton for twenty cents per pound over the guaranteed government loan amount of \$0.542 per pound, equaling a total sales price of \$0.742 per pound.⁹⁴ At the time of the agreement, the cotton had not been harvested.⁹⁵ Williams eventually harvested 1206 bales of cotton, and claimed \$446,000 as payment for the crop. Despite the written thirty-day confirmation of the oral deal, Williams asserted that he never entered into the contract. Williams then partially performed on his contractual obliga-

89. *Farm Credit of Nw. Fl.*, 718 S.E.2d at 604.

90. *Brooks Cotton Co., Inc. v. Williams*, 381 S.W.3d 414 (Tenn. Ct. App. 2012).

91. Under U.C.C. § 2-104(1) (2013), which defines a merchant as:

A person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having the knowledge or skill.

92. A Statute of Frauds defense does not exist where both parties are merchants and within a reasonable time a writing or record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents given within (10) days after it is received. TENN. CODE ANN. § 47-2-201(2) (2013).

93. *Brooks Cotton Co., Inc.*, 381 S.W.3d at 415.

94. *Id.*

95. *Id.*

tions by delivering 307 bales of the total 1206 to Brooks Cotton, even though he did not call or object to the written terms sent to him.

Under Tennessee statute, the status of merchant is “based upon specialized knowledge as to the goods, specialized knowledge as to business practices, or specialized knowledge as to both and which kind of specialized knowledge may be sufficient to establish . . . the nature of the provisions.”⁹⁶ Furthermore, while this definition is broad, the merchant must “only apply to a merchant in his mercantile capacity.”⁹⁷

Williams argued that Tennessee law indicated a public policy against holding farmers to be merchants.⁹⁸ In particular, Williams argued that Tennessee’s Cotton Arbitration Act, which excludes holding cotton farmers and cotton ginner to the same enforcement standards when it comes to written agreements, indicates that farmers are treated differently than merchants. The court in *Brooks Cotton*, however, disagreed with that argument, holding that the Cotton Arbitration Act only applied to waivers of one’s right to trial, and not a contract for the sale of goods.⁹⁹

The *Brooks Cotton* court extensively reviewed the case law in a variety of jurisdictions dealing with the status of farmers as merchants. A significant minority of jurisdictions maintain that farmers are not merchants based on both facts of the particular case or as a matter of law.¹⁰⁰ A slight majority hold that a farmer can be a merchant under some circumstances.¹⁰¹ Jurisdictions that treat farmers as merchants in regard to the Statute of Frauds tend to operate under the assumption that many farmers have specialized knowledge of the agricultural business and are more in tuned with the fine details of the commodity markets.¹⁰² In other jurisdictions, however, courts have interpreted the intent of the U.C.C. framers was to separate the farmer from the “act” of farming and that of the “skill and knowledge of the commodities market.”¹⁰³ Consequently, the act of farming and selling to

96. TENN. CODE ANN. § 47-2-104 (2008) cmt. 2 (a merchant for the Statute of Frauds encompasses “almost every person in business.”).

97. *Id.*

98. *Brooks Cotton Co., Inc.*, 381 S.W.3d at 421.

99. *Id.*

100. *Id.* at 422.

101. *Id.*

102. *Id.* at 426. The court cited *Goldkist, Inc. v. Brownlee*, 355 S.E.2d 773, 775 (Ga. Ct. App. 1987), which held that a farmer similar to the one in this case was held to be a merchant because oral bookings of crops could be considered merchants for the statute of frauds. Furthermore, *Rush Johnson Farms, Inc. v. Missouri Farmers Ass’n., Inc.*, 555 S.W.2d 61, 64 (Mo. Ct. App. 1977) held that the farmer at issue was a merchant by “keeping abreast of market prices in order to annually sell his crops.” The court then held that this was an issue of material fact that needed to be decided by a factfinder.

103. *Brooks Cotton Co., Inc. v. Williams*, 381 S.W.3d 414, 423 (Tenn. Ct. App. 2012). The court cited *Terminal Grain Corp. v. Freeman*, 270 N.W.2d 806, 812 (S.D. 1978) which held that

a grain elevator may not amount to the level of complexity to be called a merchant.¹⁰⁴ In determining whether a farmer is a merchant, such jurisdictions have focused on the time that a farmer spends selling the goods, a minute comparison of their labor compared to the growing and raising of the crop.¹⁰⁵

The *Brooks Cotton* court opined that the U.C.C. drafters did not intend to exclude farmers from the definition of merchants. Given that Williams was a long-time farmer, and Brooks Cotton a long-time purchaser of cotton, the court held that both parties could be merchants for purposes of Article 2 of the U.C.C.¹⁰⁶ Accordingly, the court analyzed the activities of a farmer within the framework of a merchant doing business, even though “being a farmer is not enough to establish one as a merchant. Although a farmer may sell his product every year, we do not think that this should take him out of the category of ‘casual seller’ and place him in the category with ‘professionals.’”¹⁰⁷ Despite this, the court recognized that the sale of crops is as integral to the business of commercial farming as the cultivation.¹⁰⁸ Given this, the court held that the framers included crops in their definition of goods with the intent that the concept of merchant includes those that sell crops commercially.¹⁰⁹

C. *DIAMOND CRYSTAL BRANDS, INC. V. FOOD MOVERS INT’L., INC.*¹¹⁰

Although the bulk of case law involving the U.C.C. and agricultural liens involves the interpretation of state statutes and their effect on a state’s adoption of the U.C.C., one must also consider how the U.C.C., as adopted in a state, may impact the interpretation of a state statute. In *Diamond Crystal Brands, Inc. v. Food Movers Int’l., Inc.*, the Eleventh Circuit Court of

Through training and years of experience a farmer may well possess or acquire special knowledge, skills, and expertise in the production of grain crops but this does not make him a “professional,” equal in the marketplace with a grain buying and selling company, whose officers, agents, and employees are constantly conversant with the daily fluctuations in the commodity market, the many factors affecting the market, and with its intricate practices and procedures.

104. Decatur Co-op. Ass’n. v. Urban, 547 P.2d 323, 328-29 (Kan. 1976).

105. Brooks Cotton Co., Inc. v. Williams, 381 S.W.3d 414, 422 (Tenn. Ct. App. 2012).

106. *Id.* at 429.

107. *Id.* at 423.

108. *Id.* at 427.

109. *Id.*; TENN. CODE ANN. § 47-2-105 (1963).

110. Diamond Crystal Brands, Inc. v. Food Movers Int’l., Inc., 593 F.3d 1249 (11th Cir. 2010).

Appeals analyzed actions involving section 2-319 of the U.C.C. in its determination whether minimum contacts had been found sufficient for a Georgia court to have personal jurisdiction over a defendant.¹¹¹

In *Diamond Crystal*, a Delaware corporation with facilities in Savannah, Georgia, sued Food Movers for alleged nonpayment of two shipments of Splenda.¹¹² From August 2005 to January 2006, Food Movers ordered bulk Splenda from Diamond Crystal in fourteen bulk transactions totaling \$1.9 million. In its complaint, Diamond Crystal alleged that two shipments of Splenda were not paid for, totaling \$288,111.60. Because all of the negotiations between Diamond Crystal and Food Movers took place either in Food Movers' California offices or through telephone conversations between Food Movers and Diamond Crystal's sales manager, also located in California, Food Movers moved to dismiss Diamond Crystal's complaint in Georgia for lack of personal jurisdiction.

To satisfy Georgia's long-arm statute, the Eleventh Circuit adopted the literal meaning of the statute pursuant to Georgia precedent. Specifically, the court determined that to satisfy one element of Georgia's long-arm statute, one must "do certain acts within the state of Georgia."¹¹³ Listed in section (1) is "transacts any business within the state."¹¹⁴

Taking literally the concept of "transacts any business," the court held that this language required that the "nonresident defendant . . . purposefully [do] some act or [consummate] some transaction" in Georgia.¹¹⁵ By entering into shipment contracts governed by U.C.C. section 2-319(3), and taking title in the Splenda shipments subject to U.C.C. section 2-401(2), the Eleventh Circuit held that these actions were sufficient to find minimum contacts for purposes of Georgia's long-arm statute.

D. *OYENS FEED & SUPPLY, INC. V. PRIMEBANK*¹¹⁶

State laws governing the super-priority of agricultural liens over Article 9 security interests also have been subject to litigation over the interpretation of the relevant statutes. In *Oyens Feed & Supply Inc. v. Primebank*, both Primebank and Oyens Feed were creditors of Crooked Creek, a far-

111. *See id.*

112. *Id.* at 1254.

113. *Id.* at 1260.

114. *Id.* at 1258 (citing GA. CODE ANN. § 9-10-91(1)).

115. *Diamond Crystal Brands, Inc. v. Food Movers Int'l, Inc.*, 593 F.3d 1249, 1264 (11th Cir. 2010) (citing *Aero Toy Store, LLC v. Grieves*, 631 S.E.2d 734, 737 (Ga. Ct. App. 2006)) (quoting *Robertson v. CRI, Inc.*, 601 S.E.2d 163, 166 (Ga. Ct. App. 2004)).

116. *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186 (Iowa 2011).

row-to-finish hog producer.¹¹⁷ When Crooked Creek entered into a Chapter 12 bankruptcy, both Primebank and Crooked Creek claimed priority on the proceeds of the sale of Crooked Creek's hogs, which totaled \$358,841.10.¹¹⁸ Primebank had perfected an Article 9 security interest in the proceeds of the hogs prior to Oyens Feed's agricultural supply dealer lien on the hogs.¹¹⁹ Because Oyens Feed had failed to comply with the certified request process under Iowa law, the bankruptcy court granted Primebank's motion for summary judgment against Oyens Feed.¹²⁰

In Oyens Feed's appeal, the Iowa Supreme Court utilized statutory construction to determine the priority status of a competing security interest and agricultural supply dealer lien. At issue were conflicting interpretations of several provisions of the Iowa Commercial Code. Of primary importance was Iowa Code section 570A.5, which provides that a

lien in livestock feed shall have 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.¹²¹

In its argument, *Primebank* relied on section 570A.2 of the Iowa Code, which provides an affirmative defense to financial institutions to a livestock dealer's enforcement of its lien when the dealer fails to provide the financial institution with a certified request and waiver.¹²² In its analysis, the Iowa Supreme Court held that the language of the statute did not require certified requests by agricultural supply dealers in order to maintain their super-priority status, and as a result, granted Oyens Feed's appeal.¹²³

Beyond interpreting the statute consistent with its drafting, the court reached its holding based on the livestock feed supply industry. Since livestock feed is provided on an ongoing basis, requiring repetitive certified

117. Farrow-to-finish refers to the historic farming operation of the pork industry, which involves all phases of hog raising: Breeding, gestation, farrowing, lactation, weaning, and subsequently growing the pigs to market weight of 240-70 pounds. See United States Department of Agriculture Economic Research Service, *Hogs and Pork Background* (June 27, 2014), <http://www.ers.usda.gov/topics/animal-products/hogs-pork/background.aspx#.UiIbv5ysaSo>.

118. *Oyens Feed & Supply*, 808 N.W.2d at 187.

119. *Id.*

120. *Id.* at 188.

121. *Id.* at 189.

122. *Id.* at 190.

123. *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 193 (Iowa 2011).

requests would be expensive and duplicative.¹²⁴ Moreover, the super-priority status granted to livestock suppliers only extended to the excess value of the livestock at the time the lien attaches or at the ultimate sale of the livestock, thereby protecting the financial institution's security interests up to the livestock's acquisition price.

E. *GREAT W. BANK V. WILLMAR POULTRY CO.*¹²⁵

In 2006, Great Western Bank lent two million dollars to ABTH, LLP, a turkey farm.¹²⁶ As part of the security agreement, Great Western received a security interest in all of ABTH's poultry and accounts (then-existing as well as after-acquired).¹²⁷ Great Western perfected its security interest under North Dakota law.¹²⁸ The following year, Willmar Poultry sold three shipments of poulters worth \$116,544.09 to ABTH.¹²⁹ Willmar Poultry filed an agricultural lien on the poulters following ABTH's failure to pay Willmar Poultry.¹³⁰ After raising the poulters to maturity, ABTH sold the adult turkeys to the Sara Lee Corporation for \$1,085,355.20.¹³¹ Sara Lee issued its payment to both Great Western and ABTH, but failed to include Willmar Poultry.¹³²

At issue in *Great W. Bank v. Willmar Poultry Co.* was whether poulters qualified as supplies for purposes of an agricultural lien.¹³³ Under the North Dakota Commercial Code section 35-31-01:

Any person who furnishes supplies used in the production of crops, agricultural products, or livestock is entitled to a lien upon the crops, products produced by the use of the supplies, and livestock and their products including milk. As used in this chapter, the term "supplies" includes seed, petroleum products, fertilizer, farm chemicals, insecticide, feed, hay, pasturage, veterinary services, or the furnishing of services in delivering or applying the supplies.¹³⁴

124. *Id.* at 194.

125. *Great W. Bank v. Willmar Poultry Co.*, 780 N.W.2d 437 (N.D. 2010).

126. *Id.* at 439.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Great W. Bank v. Willmar Poultry Co.*, 780 N.W.2d 437, 439 (N.D. 2010).

131. *Id.*

132. *Id.*

133. *Id.* at 440.

134. *Id.* at 440-41 (emphasis omitted) (quoting N.D. CENT. CODE § 35-31-03 (2013)).

North Dakota Commercial Code section 35-31-03 provides that “[a]n agricultural supplier’s lien . . . has priority, as to the crops or agricultural products covered thereby, over all other liens or encumbrances except any agricultural processor’s lien.”¹³⁵

The heart of Great Western’s argument then, was that poultz were not included in the definition of supplies under the statute and since both terms livestock and poultry are omitted from the list of items that constitute supplies, Willmar Poultry could not claim an agricultural lien in the poultz supplied to ABTH.¹³⁶ Using a liberal construction of the statute, however, the North Dakota Supreme Court held that the term supplies was not limited to the list provided in section 35-31-01 of the North Dakota Century Code.¹³⁷ Accordingly, the court affirmed the district court’s ruling that poultz qualify as supplies for production of livestock.¹³⁸

Great Western’s second argument was that, based on the language of the statute, Willmar Poultry could not have a super-priority lien in the “crops or agricultural products covered” by the supplies because the super-priority lien only attaches to crops and agricultural products, not livestock.¹³⁹ Looking at similar provisions in title 41 article 9 of the North Dakota Commercial Code, the court disagreed with Great Western’s argument and held that livestock falls under the umbrella of agricultural products.¹⁴⁰

F. *FIRST NAT’L. BANK V. PROFIT PORK, LLC*¹⁴¹

Court interpretation of what constitutes an agricultural lien under state statute directly impacts those creditors trying to establish super-priority status of their liens over the perfected article 9 security interests. Like many jurisdictions, Minnesota law provides special priorities for agricultural liens.¹⁴² At issue in the *First Nat’l. Bank v. Profit Pork, LLC* case was what type of activities by a feed supplier could be characterized as satisfying the activities necessary for a feeder’s lien or a production-input lien.¹⁴³ Accordingly, the Minnesota Court of Appeals had to determine whether the language of the state statute describing agricultural liens on livestock was de-

135. N.D. CENT. CODE. § 35-31-03 (2013).

136. *Great W. Bank v. Willmar Poultry Co.*, 780 N.W.2d 437, 441 (N.D. 2010).

137. *Id.* at 442.

138. *Id.*

139. *Id.* (quoting N.D. CENT. Code § 35-31-03 (2013)).

140. *Id.* at 446.

141. *First Nat’l. Bank v. Profit Pork, LLC*, 820 N.W.2d 592 (Minn. Ct. App. 2012).

142. *See* MINN. STAT. § 514.966 (2010).

143. *First Nat’l. Bank*, 820 N.W.2d at 594.

terminated to be ambiguous with respect to what type of actions a creditor had to engage in to qualify for super-priority status.¹⁴⁴

As background, First National Bank extended a line of credit to Profit Pork, which subsequently entered into bankruptcy.¹⁴⁵ Wilmont-Adrian was a food supplier that prepared feed based on Profit Pork's request, delivered the feed, and monitored the results of the feed on the Profit Pork's hogs.¹⁴⁶ When Profit Pork entered into bankruptcy, both First National and Wilmont-Adrian claimed a superior interest in Profit Pork's hogs and related proceeds.¹⁴⁷ Wilmont-Adrian argued that it held a feeder's lien on the hogs, thereby priming First National Bank's security interest, while First National Bank argued that Wilmont-Adrian held a production-input lien that was subordinate to their security interest.¹⁴⁸ Under a production-input lien, the lienholder is required to provide lenders with notice of their liens.¹⁴⁹ Any failure to do so results in the production-input lienholder having inferior right to previously perfected farm products.¹⁵⁰ Because it had not fulfilled the strict notice requirements for a production-input lien, Wilmont-Adrian's claim relied on holding feeder lien status.¹⁵¹ Moreover, noting that lower and higher priority was provided to suppliers based on the level of connection with the livestock, the Minnesota Court of Appeals clarified that production-input liens applied to those who supplied feed and labor to be used by others, while feeder's liens applied to those who provided feed and labor directly to the livestock.¹⁵² Accordingly, because Wilmont-Adrian only provided feed and information to Profit Pork, and did not directly feed Profit Pork's hogs, Wilmont-Adrian held a production-input lien, which was inferior to First National Bank's security interest.¹⁵³

144. *Id.* at 596.

145. *Id.* at 593.

146. *Id.*

147. *Id.* at 593-94.

148. First Nat'l. Bank v. Profit Pork, LLC, 820 N.W.2d 592, 594 (Minn. Ct. App. 2012).

149. *Id.*

150. *Id.*

151. *Id.*

152. *Id.* at 596.

153. First Nat'l. Bank v. Profit Pork, LLC, 820 N.W.2d 592, 596 (Minn. Ct. App. 2012).

V. PROCEEDS AND PRIORITY

Although, as pointed out, agricultural liens must satisfy the perfection requirements of Article 9,¹⁵⁴ a substantial number of state statutes creating such liens confer superiority status.¹⁵⁵ Whether that status applies to the proceeds of the sale of agricultural products in favor of feed suppliers is often disputed when the agricultural lien statute is not clear. A particularly interesting case is *In re Schley*.¹⁵⁶ In that case, the debtors executed two security agreements in favor of Cooperative Credit Company (CCC) listing as collateral, among other assets, farm products and livestock. The security interests were properly perfected. Sometime later Peoples Bank (Bank) perfected a security interest in the debtor's livestock and proceeds.¹⁵⁷ Subsequently, Watonwan Farm Service (WFS), a feed supplier, asserted rights under a perfected agricultural lien for the feed.¹⁵⁸

Livestock, arguably fattened by the feed supply, were sold pre-bankruptcy protection.¹⁵⁹ The three parties identified above made claims to all or part of the proceeds post-bankruptcy filing.¹⁶⁰

The crucial issue decided was whether the Iowa agricultural lien statute applies to the proceeds from the sale of the livestock.¹⁶¹ The code section itself "grants an agricultural lien in 'livestock consuming the feed.'"¹⁶²

U.C.C. section 9-315(a) provides: "(1) 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 (2) a security interest attaches to any identifiable proceeds of collateral."¹⁶³

Official comment 9 to 9-315 states:

This Article does not determine whether a lien extends to proceeds of farm products encumbered by

154. N.D. CENT. CODE § 41-09-22 (2013); *See* U.C.C. § 9-302 (2013) (setting forth the rule that perfection of an interest in a farm product is governed by the local law of the jurisdiction where the farm products are located).

155. *E.g.*, Iowa Code § 570A (2013) (providing super-priority to a lien in livestock feed "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.").

156. *In Re Schley*, 509 B.R. 901, 904 (Bankr. N.D. Iowa 2014).

157. *Id.* at 904.

158. *Id.* at 905.

159. *Id.*

160. *Id.* at 901.

161. *In Re Schley*, 509 B.R. 901, 904 (Bankr. N.D. Iowa 2014).

162. *Id.* at 907 (citing IOWA CODE § 570 A.3 (2013)).

163. U.C.C. § 9-315(a)(1)(2) (2013).

an agricultural lien. If, however, the proceeds are themselves farm products on which an “agricultural lien” . . . arises under other law, then the agricultural-lien provisions of this Article apply to the agricultural lien on the proceeds in the same way in which they would apply had the farm products not been proceeds.¹⁶⁴

The bankruptcy court stated the question to be considered was “whether an agricultural supply lien [under Iowa law] is limited to a lien only on the collateral—the livestock consuming the feed.”¹⁶⁵ *In re Schley* distinguished this case from *Oyens Feed*¹⁶⁶ and other bankruptcy cases wherein a superiority lien in proceeds was recognized in favor of the feed suppliers when the livestock at issue was sold post-bankruptcy petition pursuant to court order.¹⁶⁷

Ignoring the plain and unambiguous language of the lien statute and the relevant U.C.C. sections, the court ruled in favor of WFS granting it super-priority rights in the proceeds subject to certain evidentiary issues not germane here.¹⁶⁸ The court based its ruling on its perception of the legislative purpose and policy to be served supported favoring feed suppliers.¹⁶⁹

Quite obviously, the buyer of the livestock with a minimum level of diligence could determine whether an agricultural lien encumbered the livestock and arrange payment to the lien holder. The court’s reliance on Iowa Code section 570A.3(2)¹⁷⁰ to calculate the amount of the lien is not supportive of its position, rather it is supportive of how much of the sale price should be paid to the agricultural lien-holder. A careful reading of the facts indicates that the feed supplier could not, or would have had great difficulty

164. U.C.C. § 9-315(a)(1) c. 9 (2013)).

165. *In Re Schley*, 509 B.R. 901, 908 (Bankr. N.D. Iowa 2014).

166. *Id.*

167. *Id.* at 909.

168. *Id.* at 910-12.

169. *Id.*

170. IOWA CODE § 570A.3 (2013) (setting forth the language that “the amount of lien shall be the amount owed to the agricultural supply dealer for the retail cost of the agricultural supply, including labor provided. The lien applies to all of the following: 1. Crops which are produced upon the land to which the agricultural chemical was applied, produced from the seed provided, or produced using the petroleum product provided. The lien shall not apply to any crops so produced upon the land after four hundred ninety days from the date that the farmer purchased the agricultural supply. 2. Livestock consuming the feed. However, the lien does not apply to that portion of the livestock of a farmer who has paid all amounts due from the farmer for the retail cost, including labor, of the feed.”).

in proving its claim to the livestock, let alone tracing the feed to the sold livestock due to careless record keeping.¹⁷¹

*Stockman Bank of Montana v. Mon Kota, Inc.*¹⁷² applies the plain language of article 9 and Montana's agricultural lien statute to reach the opposite conclusion from *In re Schley*,¹⁷³ holding that the lien on the agricultural products continued in the products sold and could be enforced.¹⁷⁴

CONCLUSION

For commercial lawyers, nothing is more important than accurately determining the process of attachment, perfection, and priority of a security interest. Given the piecemeal application of the U.C.C., state, and federal law to achieve these ends, accurately applying the law is even more vital when it comes to navigating security interests and agricultural liens in farm products. Although intended to provide clarity and order to a confused area, the inclusion of agricultural liens for the purposes of priority and perfection under revised article 9 has continued to provide headaches to many a practitioner.¹⁷⁵

171. *In Re Schley*, 509 B.R. 901, 907 (Bankr. N.D. Iowa 2014).

172. *Stockman Bank of Mont. v. Mon-Kota, Inc.*, 180 P.3d 1125 (Mont. 2008)).

173. *Id.* at 1137-38.

174. *Id.* at 1138.

175. *See Brooks Cotton Co., Inc. v. Williams*, 381 S.W.3d 414, 427 (Tenn. Ct. App. 2012) (holding a farmer is a merchant if such a farmer sells crops commercially).

APPENDIX

UNIFORM COMMERCIAL CODE SECTIONS AND SELECTED OFFICIAL
COMMENTS CITED

9-102(a)(35)	<i>Definition of Farm Products</i>
9-102, Comment 5(i)	<i>Receivables Under Entitlement Programs</i>
9-302	<i>Law Governing Perfection and Priority</i>
9-308(b)	<i>Perfection of Agricultural Lien</i>
9-315(a)(1)(2)	<i>Rights on Disposition of Collateral</i>
9-315, Comment 9	<i>Proceeds of Collateral Subject to Agricultural Lien</i>
9-316, Comment 9	<i>Non-application of cited section</i>
9-317(a)	<i>Subordination of Unperfected Agricultural Lien</i>
9-317, Comment 7	<i>Applying General Subordination Rule</i>
9-320(a) and Comment 4 (Ag. Rule)	<i>Buyer in Ordinary Course of Business</i>
9-322.1	<i>Crops Produced with New Value</i>
9-322(a)	<i>Priorities Among Conflicting Security Interest in and Agricultural Liens on Same Collateral</i>
9-322(g) and Comment 12	<i>Priority Under Agricultural Lien Statute</i>
9-324(a)(d)(e) Comments 3, 11	<i>Priority of Purchase Money Security interest</i>
9-333	<i>Priority of Certain Statutory Liens</i>
9-334(i) and Comment 12	<i>Priority of Security interest in Crops</i>
9-502(b) (In Georgia)	<i>Real Property Related Financing Statements</i>

9-507(a)	<i>Continuation of Perfected Lien Upon Sale</i>
9-509(a)(2) and Comment 5	<i>Persons Entitled to File a Financing Statement</i>