ANNUAL REVIEW OF AGRICULTURAL LAW: COMMERCIAL LAW DEVELOPMENTS

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I. INTRODUCTION

This summary of recent cases, decided between September 20, 1996 and September 19, 1997, deals with issues of interest to agricultural lenders and borrowers. The majority of the cases covered in this Article deal with security

interests created, perfected, and enforced pursuant to Article 9 of the Uniform Commercial Code (UCC). However, cases summarized also include a few decisions about scope and classification issues (Article 1), and sales and warranty issues (Article 2). The Article 9 case summaries begin with validity and attachment in Part IV, then cover perfection in Part V, priorities is in Part VI, and remedies in Part VII. Also included are non-UCC cases on mortgage foreclosures, wrongful employment discharge, the Perishable Agricultural Commodities Act (PACA), the Federal Food Security Act (FSA), bankruptcy issues, and state statutes.[1]

In each topical section below, federal cases precede state cases, with decisions of higher courts appearing before lower court decisions. The state cases are listed alphabetically by state. Because several of the highlighted cases address more than one issue relevant to the UCC, these decisions appear more than once.

II. GOOD FAITH - UCC ARTICLE 1

A. Grain Traders, Inc. v. Citibank, N.A.[2]

New York's UCC § 1-203 "good faith" provision does not give rise to an independent cause of action.[3] Grain Traders (Transferor) attempted to transfer $310,000 in funds owed to Claudio Goidanich Kraemer (Kraemer) from (1) Banco de Credito Nacional's (BCN) account at Citibank, to (2) Banque Du Credit Et Investissement Ltd.'s (BCI) account at Citibank, to (3) Banco Extrader, S.A. (Extrader), to (4) Kraemer's account at Extrader.[4] The money never reached Kraemer's account because it was taken by Citibank for the overdrawn (by $12 million) BCI account at Citibank.[5] The court held that Citibank owed no duty of good faith and fair dealing to Transferor,[6] owed no refund to Transferor,[7] had met its obligation under the payment order it accepted,[8] and Transferor could not recover the money under the tort claim of conversion.[9]

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1. The included cases were identified using WESTLAW® searches done in the ALLCASES and UCC-CS databases. To update this survey or review other UCC cases that fell outside the scope of this Article, the search terms used were "*ranch farm orchard crop timber livestock aquaculture & security mortgage "deed of trust" & "commercial code,*" except that "*commercial code*" was omitted from the UCC-CS search. Cases addressing agricultural issues or the Uniform Commercial Code only in a peripheral way have been omitted.
2. Grain Traders, Inc. v. Citibank, N.A., 960 F. Supp. 784 (S.D.N.Y. 1997).
3. *See id.* at 792.
4. *See id.* at 787.
5. *See id.*
6. *See id.* at 792.
7. *See id.* at 789.
8. *See id.* at 792.
9. *See id.*

III. ISSUES UNDER UCC ARTICLE 2

A. In re Bruening[10]

Transfer of cattle from Mr. Fulkerson (Fulkerson) to Mr. Bruening (Bruening) prior to Bruening's bankruptcy petition was a sale and not a bailment under UCC § 2-401(1).[11] Thus Fulkerson lost to Bruening's creditors.[12] Prior to Bruening's Chapter 11 bankruptcy, Fulkerson transferred several dozen cattle to him, pursuant to an oral agreement that Bruening would pay Fulkerson $22,500 per year for "100 Bred Heifers."[13] Bruening had acted in his individual capacity in some of his transactions, and in his capacity as owner of Bruening Holding Company (BHC) in others, which confused the determination of ownership of Fulkerson's cattle.[14] Bruening, as owner of BHC, owed Kearney Trust Company (Kearney) for loans used to finance his cattle operations.[15] When BHC defaulted on these loans, Kearney liquidated all of the cattle in Bruening's possession, including those transferred to Bruening by Fulkerson.[16] The court found that the transaction between Fulkerson and Bruening was a sale, not a bailment.[17] Thus, the proceeds of Kearney's sales of the cattle at Bruening's feed lot became part of Bruening's bankruptcy estate.[18]

B. Schweizer v. DeKalb Swine Breeders, Inc.[19]

Tim Schweizer, John Kramer, Steve Kramer, J-Six Farms, Inc., and Keith Boone (Swine Breeders) sued DeKalb Swine Breeders, Inc. (Seller) for fraud, misrepresentation, and unconscionability; Seller sold Swine Breeders hogs with porcine reproductive and respiratory virus (PRRS).[20] Swine Breeders were unsuccessful in their suits because the sales contract provided a clear disclaimer of liability for diseases that might be present in the pigs at the time of sale.[21]

The Swine Breeders had purchased breeding stock from Seller on several prior occasions, were familiar with the provisions in the contracts including Seller's liability disclaimers, and had therefore assumed the risk of purchasing diseased hogs

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10. Stover v. Fulkerson (*In re* Bruening), 113 F.3d 838 (8th Cir. 1997).
11. *See id*. at 841.
12. *See id.*
13. *See id.* at 839.
14. *See id.*
15. *See id.* at 840.
16. *See id.*
17. *See id.* at 841.
18. *See id.*
19. Schweizer v. DeKalb Swine Breeders, Inc., 954 F. Supp. 1495 (D. Kan. 1997).
20. *See id.*
21. *See id.* at 1504.

by agreeing to the contract terms.[22] Swine Breeders asserted that Seller representatives made assurances that buyers would be informed if any pigs were diseased and that these pigs would not be sold or delivered.[23] This claim of fraud and misrepresentation also failed because of the contract's health disclaimer, stating that Seller did not guarantee that its pigs were, or would be, disease free.[24]

C. Bank of California v. Thornton-Blue Pacific, Inc.[25]

Just because Jay Fisher Farms, Inc. (Grower) knew that Thornton-Blue Pacific, Inc. (Debtor) sold goods of others did not mean that the debtor-wholesaler was generally known to sell others' goods, and therefore consignment proceeds for sales and returns were subject to Bank of California's (Bank) security interest claims under UCC § 2-326(2)-(3).[26]

Grower delivered its flowers to Debtor to be sold on consignment.[27] Bank lent Debtor $600,000 guaranteed by a security agreement granting Bank a security interest in certain assets of the Debtor.[28] The security interest was perfected by the filing of a UCC-1 financing statement.[29] Debtor subsequently defaulted on its loan.[30] Bank commenced action to recover monies that had been deposited into a fund containing cash receipts from Thornton's business and prevailed over the Grower.[31]

D. Wang v. Miss Ark Fisheries, Inc.[32]

Fish buyer Henry Wang (Wang), an exporter from the United States to Taiwan, and fish seller Miss Ark Fisheries, Inc. (Miss Ark), an Arkansas corporation, brought breach of contract claims against each other under UCC §§ 2-207, 2-209, 2-606, and 2-703.[33]

Beginning in 1992, Wang bought hybrid striped bass fingerlings ("goods" under UCC § 2-105) for nine cents per piece from Miss Ark, then packaged them and shipped them to Taiwan.[34] Prior to 1993, the parties did not have a written contract

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22. *See id.* at 1506.
23. *See id.* at 1507.
24. *See id.*
25. Bank of California v. Thorton-Blue Pacific, Inc., 62 Cal. Rptr. 2d 90 (Ct. App. 1997).
26. *See id.* at 95.
27. *See id.* at 92.
28. *See id.*
29. *See id.* at 93.
30. *See id.*
31. *See id.*
32. Wang v. Miss Ark Fisheries, Inc., No. 4:93CV325-D, 1996 WL 671728 (N.D. Miss. Oct. 11, 1996).
33. *See id.* at *1.
34. *See id.* at *2-3.

for their transactions.[35] Miss Ark sent Wang one or more shipments of fish that exceeded the agreed-upon size, causing Wang to incur $31,190 in additional packaging costs.[36] Wang withheld this amount from his payment to Miss Ark claiming that it was a legitimate deduction under the 1992 contract modification.[37]

After determining that Mississippi law applied (the parties' dealings occurred in Arkansas, California, Louisiana, and Mississippi), the district court for the Northern District of Mississippi found the following: there was no modification of the original 1992 contract under UCC § 2-209;[38] Wang had accepted the goods pursuant to UCC § 2-606;[39] Miss Ark did not waive its objections to the disputed shipping charge (UCC § 2-207);[40] the July 1993 contract did not extinguish the debts Wang owed under the January 1993 contract (UCC § 2-703);[41] and Miss Ark did agree to ship one million pieces to Wang, or pay $4.09 per piece for fish not delivered,[42] and therefore Miss Ark owed Wang $90,000 for the misdelivered fish.[43] Consequently, the Miss Ark owes Wang $14,300.[44]

E. Mesa Produce, Inc. v. Produce Cellar, Inc.[45]

Mesa Produce, Inc. (Mesa) won its summary judgment motion against Produce Cellar, Inc. (Cellar) on a UCC § 2-204 breach of contract claim for failing to deliver watermelons ("goods" under UCC § 2-105) according to contract terms concerning time frame, quantity, and price.[46] The same claim against Charlton Offut, Cellar's owner, was denied because Offut was acting in his official, not individual, capacity as a representative of Cellar when the contract was breached.[47] A fraud claim against Cellar also was denied because, "[i]n Texas, the general rule is that failure to perform the terms of an agreement sounds in contract, not tort."[48]

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35. *See id.* at *3.
36. *See id.*
37. *See id.* at *4.
38. *See id.* at *4.
39. *See id.* at *3.
40. *See id.* at *5.
41. *See id.* at *7.
42. *See id.* at *8.
43. *See id.* at *9.
44. *See id.*
45. Mesa Produce, Inc. v. Produce Cellar, Inc., No. CA3:95-CV-2056-BC, 1997 WL 21386 (N.D. Tex. Jan. 13, 1997).
46. *See id.* at *6.
47. *See id.*
48. *See id.* at *5.

F. Cox v. Lewiston Grain Growers, Inc.[49]

William and Terrilie Cox (Cox), Washington farmers who suffered enormous crop losses to their winter wheat, sued Lewiston Grain Growers, Inc. (LGG), an Idaho seed corporation, for selling them uncertified wheat that did not produce a crop.[50] After determining that Washington law applied to the transactions between Cox and LGG, the court held the following: (1) LGG's warranty disclaimer and limitation of remedies clause was unenforceable (UCC § 2-316(2));[51] (2) an express warranty existed between the parties as to the quality of the seed, and this warranty was breached by LGG (UCC § 2-313(1)(a)-(b));[52] (3) LGG violated several provisions of the Seed Act and the Consumer Protection Act (Revised Code of Washington §§ 15.49.051(6)(b), 19.86.920), to which LGG did not provide an adequate defense;[53] and (4) payments to Cox by insurers were collateral source payments and could not be used to offset the judgment that LGG owed to Cox.[54]

IV. VALIDITY/ATTACHMENT OF SECURITY INTEREST

A. In re 4-R Management, Inc.[55]

First Bank of Eva (Bank) had a valid security interest under UCC § 9-203(1)(a) in 4-R Management, Inc.'s (Debtor) coin collection when the principals of the Debtor expressly granted the security interest in two renewals of the original promissory note held by the Bank, even though they signed the documents in their individual capacities.[56]

The Ryans, officers of the Debtor, pledged the coin collection, in addition to other property and farm items as collateral on the promissory note.[57] The Bank's continuous possession of the coin collection from the date the security interest was created, was automatic perfection of this security interest pursuant to UCC § 9-304(1) and § 9-305.[58]

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49. Cox v. Lewiston Grain Growers, Inc., 936 P.2d 1191 (Wash. Ct. App. 1997).
50. *See id.* at 1191.
51. *See id.* at 1198.
52. *See id.* at 1199.
53. *See id.* at 1200.
54. *See id.*
55. *In re* 4-R Management, Inc., 208 B.R. 232 (Bankr. N.D. Ala. 1997) (*mem.*).
56. *See id.* at 232-33.
57. *See id.* at 234.
58. *See id.* at 233.

B. Michigan Livestock Credit Corp. v. Porter (In re Porter)[59]

Ambiguous contracts for the care of hogs created bailment, not a security interest.[60] The bankruptcy court erroneously held that the contracts created a security interest with the intent of eventually vesting title to the hogs in the Porters.[61] Michael and Rosalie Porter (Porters), hog and crop farmers who filed Chapter 11 bankruptcy, had a contract with Michigan Livestock Credit Corporation (Michigan Livestock) whereby Michigan Livestock would purchase hogs for the Porters to care for and fatten for slaughter.[62] Porters would be paid "on the gain" for the hogs, and would pay Michigan Livestock a monthly "service fee" for a percentage of the calculated value of the hogs.[63] In their appearance before the bankruptcy court, the Porters alleged that Michigan Livestock had a mere security interest in the hogs, and were not bailees.[64] The bankruptcy court agreed with the Porters and entered judgment in their favor.[65] The United States District Court, Northern District of Indiana, vacated the judgment and remanded the cause of action.[66]

C. Security State Bank v. Firstar Bank Milwaukee[67]

Security State Bank (SSB) filed claims against Firstar Bank Milwaukee (Firstar) for wrongful dishonor, set-off, and conversion (Complaint I), and for unjust enrichment and constructive trust (Complaint II).[68] Using the UCC § 9-306's lowest intermediate balance rule, the court held that the proceeds, in which SSB claimed an interest, had been dissipated while the funding account had a positive balance, and thus the proceeds were no longer available when SSB claimed its security interest. Therefore, SSB no longer had collateral necessary to maintain a claim against Firstar based on its valid security interest.[69]

The two banks in this case were both creditors to John Morken and Spring Grove Livestock Exchange (SGLE), his wholly owned corporation.[70] When Morken's cattle investment scheme collapsed, his creditors were left to fight

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59. Michigan Livestock Credit Corp. v. Porter (*In re* Porter), 202 B.R. 109 (Bankr. N.D. Ind. 1996).
60. *See id.* at 110.
61. *See id.* at 110-11.
62. *See id.* at 112.
63. *See id.*
64. *See id.* at 113.
65. *See id.*
66. *See id.* at 110.
67. Security State Bank v. Firstar Bank Milwaukee, 965 F. Supp. 1237 (N.D. Iowa 1997).
68. *See id.* at 1238.
69. *See id.* at 1248.
70. *See id.* at 1238.

amongst themselves over any remaining monies in the Morken and SGLE accounts.[71] Firstar held the accounts that Morken and SGLE used to collect proceeds from cattle sales, and disburse payments to creditors.[72] SSB extended credit to Morken to purchase four lots of cattle that were subsequently sold to Monfort, Inc.[73] The proceeds from this sale were placed in Morken's funding account at Firstar.[74] Morken wrote checks on behalf of himself and SGLE from this account, and overdrew the account prior to SSB's attempt to collect the proceeds it was owed from the cattle sale.[75] SSB sued Firstar for not honoring the checks Morken wrote to satisfy his debt to SSB.[76]

D. Southwest Cattlemen's Credit Corp. v. McCloy (In re McCloy)[77]

Neither Southwest Cattlemen's Credit Corporation (SW) nor Willard McCloy (Willard) had a valid lien on farm equipment owned by Alfred Delbert McCloy (Debtor).[78] SW did not describe the collateral covered by the security agreement in the original financing statement or in the subsequent continuation statements as required by UCC § 9-401 in order to retain perfection of its interest in the collateral.[79] Delbert, the Debtor, therefore was able to avoid SW's lien under 11 U.S.C. § 544(a)(1).[80] Willard's agricultural landlord's lien claim failed because:

> (1) he failed to identify the equipment to which his purported lien attached, (2) he did not establish the amount of his claim against equipment, (3) he did not establish that the repairs were furnished to enable Debtor to grow a crop or to gather, store or prepare a crop for marketing, and (4) he did not establish that the equipment to which his purported lien attached was still on the leased property or that it had been removed within the last month.[81]

Both SW and Willard's claims were reduced to those of unsecured creditors.[82]

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71. *See id.*
72. *See id.*
73. *See id.*
74. *See id.*
75. *See id.*
76. *See id.*
77. Southwest Cattlemen's Credit Corp. v. McCloy (*In re* McCloy), 206 B.R. 428 (Bankr. N.D. Tex. 1997).
78. *See id.* at 429.
79. *See id.* at 430.
80. *See id*. at 431-32.
81. *Id.* at 435.
82. *See id.*

E. Pitcock v. First Bank of Muleshoe (In re Pitcock)[83]

First Bank of Muleshoe (Bank) could not trace its valid security interest in David Pitcock's (Debtor) pasture rents, which came from third parties' cattle grazing on crops covered by Debtors' security agreement with the Bank, after those rents had been deposited in the Debtor's account and spent prior to the commencement of the bankruptcy.[84]

The Debtor borrowed from the Bank to plant crops for cattle grazing and gave the Bank a security interest or lien in the crops, which the Bank perfected by filing a UCC-1 financing statement.[85] The Debtor used the pasture rents to pay his bills.[86] The court held that the Bank was an unsecured creditor because the Debtor had no interest in the collateral (neither the crops nor the pasture rents), because, at the time Debtor filed his bankruptcy petition, the crops no longer existed (having been "severed"), and the pasture rents had long since been spent to pay the Debtor's bills.[87] Therefore, the validity of the lien was moot because the collateral had disappeared.[88]

V. PERFECTION OF SECURITY INTERESTS

A. In re 4-R Management, Inc.[89]

First Bank of Eva (Bank) perfected its security interest in a coin collection owned by 4-R Management (Debtor) by continuous possession of the collateral pursuant to UCC § 9-304 and § 9-305, and by filing the necessary UCC-1 financing statement.[90]

The Ryans, officers of the Debtor, pledged the coin collection, in addition to other property and farm items, as collateral on the promissory note. The Bank's continuous possession of the coin collection from the date the security interest was created constituted automatic perfection of this security interest pursuant to UCC § 9-304(1) and § 9-305.[91]

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83. Pitcock v. First Bank of Muleshoe (*In re* Pitcock), 208 B.R. 862 (Bankr. N.D. Tex. 1997).
84. *See id.* at 864.
85. *See id.*
86. *See id.*
87. *See id*. at 866.
88. *See id.*
89. *In re* 4-R Management, Inc., 208 B.R. 232 (Bankr. N.D. Ala. 1997).
90. *See id.* at 238.
91. *See id.*

B. Farmers & Merchants Bank v. DeKalb Swine Breeders, Inc. (In re Jack-Rich, Inc.)[92]

The proceeds of hogs sent by DeKalb Swine Breeders, Inc. (DeKalb) to Jack-Rich, Inc. (Debtor) for slaughter and sale were not protected under a "custom kill" arrangement and therefore were not protected against Farmers & Merchants Bank of Carlinville's (Creditor) perfected security interest.[93] Creditor's security interest continued in the proceeds under UCC § 9-306 because they were not improperly commingled, and because proceeds were received by Debtor, even though the physical proceeds were received by Debtor's meat broker.[94] Hogs were "inventory," subject to Creditor's perfected security interest.[95] In addition, Creditor was not unjustly enriched by receipt of money to the detriment of DeKalb because DeKalb had every opportunity to protect itself under the Packers and Stockyards Act.[96]

C. Mather v. Northfield Freezing Systems, Inc. (In re Southern Star Foods, Inc.)[97]

Under Oklahoma law, an equipment lease agreement was classified as a sale, and the seller took a purchase money security interest in the equipment.[98] The seller perfected its security interest, and was entitled to be paid for the equipment out of the proceeds from the sale of debtor's assets.[99]

Northfield Freezing Systems, Inc. (Seller) leased to Southern Star Foods, Inc. (Debtor) a freezing system, spiral conveyor, and various other equipment related to Debtor's business of processing and marketing chicken parts.[100] The agreement between Seller and Debtor was termed a "lease," but was more accurately described as a lease-to-own agreement.[101] After the initial payment of $45,000 and monthly payments of more than $8,000 for sixty months, the title for the equipment would transfer to Debtor's ownership.[102] Oklahoma holds this arrangement to be classified as a sale.[103] Seller perfected a security interest in this equipment by having Debtor

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92. Farmers & Merchants Bank v. DeKalb Swine Breeders, Inc. (*In re* Jack-Rich, Inc.), 204 B.R. 709 (Bankr. C.D. Ill. 1997).
93. *See id.* at 712.
94. *See id.* at 712-13.
95. *See id.* at 712.
96. *See id.* at 713.
97. Mather v. Northfield Freezing Systems, Inc. (*In re* Southern Star Foods, Inc.), 202 B.R. 784 (Bankr. E.D. Okla. 1996).
98. *See id.* at 788 (citing OKLA. STAT. tit. 12A, § 1-201(37)).
99. *See id*. at 790.
100. *See id.* at 785-86.
101. *See id.* at 786.
102. *See id.*
103. *See id.* at 788.

sign a security agreement containing a description of the collateral, pursuant to UCC § 9-203, and therefore qualified to be paid out of the sale of Debtor's assets upon Debtor's bankruptcy.[104]

D. Marlow v. Rollins Cotton Co. (In re Julien Co.)[105]

Rollins Cotton Company (Creditor) was a fully secured creditor of The Julien Company (Debtor) at the time of two prepetition transfers, and therefore the transfers could not be avoided by the trustee or other creditors.[106] Creditor had a perfected security interest in uncertificated cotton receipts in the possession of L & S Cotton Systems, Inc. (L & S), acting as Creditor's bailee.[107]

Creditor sold uncertificated cotton to Debtor, who then sold it to a third party.[108] The Debtor then decided to repurchase the cotton (now certificated) and asked Creditor to finance the cotton, which Creditor did.[109] The Creditor held the warehouse receipts as security.[110] Debtor then asked Creditor to substitute the warehouse receipts for farmer's trust receipts held by L & S so that Debtor could uncertificate and recertificate the cotton to avoid paying overage charges.[111] L & S held the warehouse receipts, acting as a bailee for the Creditor.[112] Debtor then paid Creditor for the warehouse receipts, and Creditor returned the farmer's trust receipts to L & S.[113] Creditor's security interest in the warehouse receipts and in the $22 million was perfected by the continuous possession of the collateral (receipts) by L & S and by L & S's notice that it was holding the receipts for Creditor (UCC § 9-305).[114] The court held that because L & S held the receipts as a bailee for Creditor, Creditor had a valid security interest in the uncertificated cotton receipts (UCC § 9-101 and § 9-102).[115]

E. Cooperative Finance Ass'n v. B & J Cattle Co.[116]

B & J Cattle Co. (Seller) appealed a lower court's summary judgment order in favor of the Cooperative Finance Association (Creditor).[117] The Colorado Court

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104. *See id.* at 788, 790.
105. Marlow v. Rollins Cotton Co. (*In re* Julien Co.), 202 B.R. 89 (Bankr. W.D. Tenn. 1996).
106. *See id.* at 92.
107. *See id.* at 92-93.
108. *See id.* at 92.
109. *See id.*
110. *See id.*
111. *See id.*
112. *See id.*
113. *See id.* at 93.
114. *See id.* at 95.
115. *See id.* at 99.
116. Cooperative Finance Ass'n v. B & J Cattle Co., 937 P.2d 915 (Colo. Ct. App. 1997).

of Appeals affirmed the judgment of the lower court, holding that Creditor held a valid perfected security interest in all of MRC Sheaf Corporation's (Debtor) livestock under UCC § 9-103,[118] and because of the after-acquired property clause in the security agreement Creditor held a valid security agreement in the heifers which had attached at delivery of the heifers (UCC § 9-204).[119]

Creditor held a promissory note given by Debtor secured by all of Debtor's livestock, "whether now owned or hereafter acquired by [MRC] and wherever located."[120] Both Creditor and its predecessor had perfected the security interest in Debtor's livestock by filing the necessary financing statements.[121] When the Seller sold 203 heifers to Debtor for immediate resale, Creditor had already begun its replevin action against Debtor, but was unaware of the additional livestock in Debtor's possession.[122] Debtor never paid Seller for the additional heifers, and Seller sought to retain possession of the livestock to protect them against the interest of Debtor.[123] Creditor became aware of the additional heifers and amended its complaint against Debtor to include them, and named Seller as a defendant.[124] The heifers were sold and the proceeds were put into an interest-bearing account pending the outcome of the dispute.[125] The court held that Creditor held a valid perfected security agreement pursuant to UCC § 9-103, and because of the after-acquired property clause in the security agreement its security interest attached immediately upon the delivery of the heifers to Debtor.[126]

F. Farmer's Bank v. Dykes Tobacco Warehouse, Inc.[127]

A warehouseman's unrecorded and unperfected security interest in tobacco proceeds is not superior to a bank's security interest because the Kansas version of UCC § 9-307(2) is intended to protect unsuspecting middlemen, not warehousemen who are also creditors.[128]

Dykes Tobacco Warehouse, Inc. (Dykes) advanced $30,000 to David Loveless (Loveless) for tobacco production, in return for which Dykes received a security interest in all of the Loveless tobacco grown during the 1994-95 crop

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117. *See id.* at 916.
118. *See id.* at 919.
119. *See id.* at 920.
120. *Id.* at 916.
121. *See id.*
122. *See id*. at 917.
123. *See id.*
124. *See id.*
125. *See id.*
126. *See id.* at 920.
127. Farmer's Bank v. Dykes Tobacco Warehouse, Inc., 945 S.W.2d 433 (Ky. Ct. App. 1997).
128. *See id.* at 434.

year.[129] Dykes did not perfect this security interest by filing the necessary UCC-1 financing statement.[130] Farmer's Bank (Bank) also loaned Loveless $31,500 to purchase a tobacco base secured by a security agreement in the tobacco.[131] The bank perfected its security interest in the collateral by filing with the appropriate county clerk, in accordance with UCC § 9-401.[132] The tobacco was harvested and placed in Dykes's warehouse.[133] Dykes then sold the tobacco to cover a portion of the debt owed by Loveless.[134] The court determined that Dykes sold the tobacco in his position as a creditor and not as an unsuspecting middleman, and therefore did not qualify for the protection of UCC § 9-307.[135]

G. Smith & Spidahl Enterprises, Inc. v. Lee[136]

A lender's financing statement, which contained an erroneous description of land where crops were grown, was insufficient to perfect lender's security interest, and therefore the lender did not have priority over the bank in the proceeds of crops under UCC § 9-312.[137] The land was not easily identifiable and did not put others on notice of lender's security interest in the debtor's crops.[138]

Smith & Spidahl Enterprises, Inc. (Lender) loaned Mark Lee (Debtor) $55,000 for farming operations, securing the loan with a security agreement signed by Debtor.[139] The description of the lands upon which the crops were growing, however, was wrong.[140] Lender's claim as a more recent secured creditor failed, and therefore Lender did not have priority over Clare Bank's properly perfected security interest (UCC § 9-402).[141]

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129. *See id.*
130. *See id.*
131. *See id.*
132. *See id.*
133. *See id.*
134. *See id.*
135. *See id.* at 435.
136. Smith & Spidahl Enters., Inc. v. Lee, 557 N.W.2d 865 (Wis. Ct. App. 1996).
137. *See id.* at 866.
138. *See id.* at 868.
139. *See id.* at 866.
140. *See id.*
141. *See id.* at 867.

VI. PRIORITIES

A. In re Kevin W. Emerick Farms, Inc.[142]

In a battle among three competing creditors, Firstar Bank Burlington (Firstar), Stark Agricultural Services (Stark), and Phi Financial Services, Inc. (PHI), for assets in the estates of three debtors, two farm corporations (Kevin W. Emerick Farms, Inc. and Simon Kenton Farms, Inc.) and the sole shareholder of Kevin W. Emerick Farms, Inc. (Kevin Emerick),[143] the following principles were affirmed: (1) lack of any legal description of the land on which the subject crops were grown did not make the security agreement ambiguous, but incomplete, so a reference to the land in the UCC-1 financing statement was not a cure;[144] (2) the requirement that a legal description of the land on which the crops grow remains after the crops are severed as long as they are in the possession of the farmer-debtors;[145] (3) debtors cannot be thought to have signed a security agreement in a dual capacity as an individual and an officer of a corporation, when such dual capacity is never mentioned in the agreement;[146] and (4) a prior decision of a bankruptcy court not to consolidate bankruptcies of related parties precluded a veil-piercing argument to gain a security interest in a corporation's equipment based on an individual debtor's security agreement.[147]

Both Firstar and Stark attempted to invalidate each other's claims by alleging a security interest, using the composite document theory of UCC § 9-203(1)(b) in collateral owned by debtors who did not sign security agreements.[148] UCC § 9-203(1)(a) prohibits this practice, and both attempts failed.[149] Only those security agreements that complied with the UCC were allowed to succeed.[150] Thus, Stark held two valid security interests, and Firstar held one.[151] PHI's claim to the 1993 crop proceeds owned by Simon Kenton was not contested.[152]

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142. Kevin W. Emerick Farms, Inc. v. Stark Agric. Servs. (*In re* Kevin W. Emerick Farms, Inc.) 201 B.R. 790 (Bankr. C.D. Ill. 1996).
143. *See id.* at 792-93.
144. *See id.* at 797.
145. *See id.* at 799.
146. *See id.* at 802.
147. *See id.* at 802-03.
148. *See id.* at 797.
149. *See id.*
150. *See id.*
151. *See id.*
152. *See id.*

B. In re White[153]

A bank had a nonpossessory, nonpurchase money lien in a debtor's farm equipment, even though the bank filed the proper UCC-1 financing statement and UCC-3 continuation statement, when equipment sold by the bank was listed as exempt on the debtor's Chapter 7 bankruptcy schedule.[154]

Kevin White (Debtor) borrowed more than $300,000 from the First National Bank of Haskell (Bank), and secured the debt with notes giving the Bank a security interest in his farm equipment.[155] Debtor subsequently filed Chapter 7 bankruptcy proceedings, in which he listed $5,000 in exempt equipment and implements.[156] The Bank had repossessed Debtor's equipment and held the equipment as security for the notes on which he had defaulted.[157] Also, the Bank had a lien on all of the Debtor's equipment, including that which Debtor listed as exempt.[158] Debtor sought, and was allowed, to avoid the lien.[159]

C. Bayou Pierre Farms v. Bat Farms Partners, III[160]

A cotton picker had higher priority over proceeds of the sale of cotton than did two lessors and a crop lender.[161] A contractor providing cotton pickers did not qualify as a cotton picker under Louisiana statutes, and therefore did not enjoy priority security interest ranking.[162]

The Louisiana Supreme Court agreed to determine whether Bayou Pierre Farms (a farm labor contractor) qualified as a laborer under Louisiana law.[163] The court held that the intent of the statute was to protect actual laborers, not those who contracted to provide laborers, and therefore Bayou Pierre did not meet the qualifications to be considered a cotton picker or laborer.[164] The creditors' claims were then ranked based on the order in which the creditors had perfected their security interest, which meant that T.L. James (landowner/lessor) ranked first, followed by Ag Services of America (lender), then Bayou Pierre, and finally Melrose

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153. *In re* White, 203 B.R. 613 (Bankr. N.D. Tex. 1996).
154. *See id.* at 614, 617.
155. *See id.* at 614.
156. *See id.* at 615.
157. *See id.* at 614.
158. *See id.*
159. *See id.* at 617.
160. Bayou Pierre Farms v. Bat Farms Partners, III, 693 So. 2d 1158 (La. 1997).
161. *See id.* at 1159.
162. *See id.* at 1160-61 (citing LA. REV. STAT. § 9:4521 and LA. CIV. CODE art. 3217).
163. *See id.*
164. *See id.* at 1162.

Planting Company (lessor).[165] Melrose ranked last because it had not perfected its security interest in Bat Farms's cotton crop.[166]

D. Bank of California v. Thornton-Blue Pacific, Inc.[167]

Jay Fisher Farms, Inc. (Grower) delivered its flowers to Thornton-Blue Pacific (Debtor) to be sold on consignment.[168] Bank of California (Bank) lent Debtor $600,000 that was guaranteed by a security agreement granting Bank a security interest in certain assets of the Debtor.[169] The security interest was perfected by filing a UCC-1 financing statement.[170] Debtor subsequently defaulted on its loan.[171] Bank commenced an action to recover monies that had been deposited into a fund containing cash receipts from Debtor's business.[172] Grower contested Bank's priority to the funds.[173] The court held the following: (1) the flowers in Debtor's possession were subject to Bank's security interest under UCC § 9-203;[174] (2) Bank's priority interest continued to proceeds from sale of flowers under UCC § 9-306;[175] and (3) flowers are "inventory" under UCC § 9-109.[176] Thus the Bank defeated the Grower.[177]

E. Cooperative Finance Ass'n v. B & J Cattle Co.[178]

Creditor's perfected security interest in debtor's cattle under an after-acquired property clause had priority over unpaid cash seller's right to reclaim its heifers.[179]

B & J Cattle Co. (Seller) appealed a summary judgment motion in favor of the Cooperative Finance Association (Creditor).[180] The court of appeals affirmed the summary judgment motion in favor of Creditor, holding the following: (1) Debtor's

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165. *See id.* at 1160.
166. *See id.*
167. Bank of California v. Thornton-Blue Pacific, Inc., 62 Cal. Rptr. 2d 90 (Ct. App. 1997).
168. *See id.* at 92.
169. *See id.*
170. *See id.*
171. *See id.*
172. *See id.*
173. *See id.*
174. *See id.* at 94.
175. *See id.* at 97.
176. *See id.* at 93.
177. *See id.* at 98. (In this case the grower may have wished for the protection of PACA or the PSA).
178. Cooperative Finance Ass'n v. B & J Cattle Co., 937 P.2d 915 (Colo. Ct. App. 1997).
179. *See id.* at 915-16.
180. *See id.* at 916.

after-acquired interest in cattle was enough to permit attachment of Creditor's security interest under UCC § 9-203;[181] (2) Creditor held valid perfected security interest in all of Debtor's livestock under UCC § 9-103, and, under the after-acquired property clause in the security agreement, the security interest under UCC § 9-204 to Seller's cattle that were purchased after the security agreement was executed;[182] (3) Creditor had priority over Seller's right to reclaim the heifers;[183] and (4) heifers are "inventory," not "farm products" under UCC § 9-109.[184]

F. Underwood Grain Co. v. Farmer's State Bank[185]

In this competition between the lien of a prior perfected security interest in cattle and proceeds and an agricultural product supply lien for cattle feed, the lender's prior-in-time perfected security interest in cattle had priority over a feed supplier's agricultural production lien in proceeds from the sale of cattle.[186] The court found that UCC § 9-312(2) does not apply to livestock.[187] The supply lien was not a purchase money lien on collateral other than inventory.[188] Mortgage lender responded to notice of the agricultural production lien holder's action to seek proceeds by refusing to commit any of the proceeds to such claim and thus protected the superiority of the lender's lien.[189]

Farmer's State Bank (Bank) held a perfected security interest in cattle, inventory, farm property, and government payments to Ramond and Judy Harthun (Debtors).[190] Bank was subsequently notified that Underwood Grain Company (Underwood) had filed an agricultural production input lien on the Debtor's cattle to secure Underwood's interest in the cattle feed Underwood had provided to Debtors.[191] Underwood's agricultural production lien lost to the Bank's prior-in-time security interest.[192]

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181. *See id.* at 919.
182. *See id.* at 919-20.
183. *See id.*
184. *See id.* at 918.
185. Underwood Grain Co. v. Farmer's State Bank, 563 N.W.2d 278 (Minn. Ct. App. 1997).
186. *See id.* at 281.
187. *See id.*
188. *See id.*
189. *See id.* at 280.
190. *See id.* at 279.
191. *See id.* at 279-80.
192. *See id.* at 280.

G. Smith & Spidahl Enterprises, Inc. v. Lee[193]

Smith & Spidahl Enterprises, Inc. (Lender) loaned Mark Lee (Debtor) $55,000 for farming operations, securing the loan with a security agreement that Debtor signed.[194] The description of the lands upon which the crops were growing, however, was incorrect.[195] Because Lender's financing statement contained an erroneous description of the land on which the crops were grown, the land could not be easily identified by others, thereby failing to give appropriate notice of the Lender's security interest.[196] Because the description of the land was insufficient to perfect Lender's security interest in the crops, Lender did not have priority over Bank's prior and properly perfected security interest in the proceeds from the crops.[197]

VII. REMEDIES

A. In re Carter[198]

The bank lost its deficiency rights when it failed to notify debtors of the disposition of their collateral under § 400.a-504(3) of Missouri's Revised Statutes which is equivalent to UCC § 9-504.[199] After Darin and Lori Carter (Debtors) defaulted on their livestock loan, Diamond Bank (Bank) repossessed the collateral used to secure the debt.[200] Bank then sold the collateral, including cattle and equipment, without notifying the Debtors.[201] In doing so, Bank violated Missouri's version of UCC § 9-504 requiring that debtors must be notified that disposition of their collateral will occur, prior to the actual disposition.[202]

B. Hartford-Carlisle Savings Bank v. Shivers[203]

Iowa's absolute bar rule precludes a secured creditor from obtaining a deficiency judgment when the creditor fails to notify debtor of sale of the debtor's collateral, as required by UCC § 9-504(3).[204] Larry Shivers (Debtor) entered into a

193. Smith & Spidahl Enters., Inc. v. Lee, 557 N.W.2d 865 (Wis. Ct. App. 1996).
194. *See id.* at 866.
195. *See id.* at 867.
196. *See id.*
197. *See id.* at 870.
198. Diamond Bank v. Carter (*In re* Carter), 203 B.R. 697 (Bankr. W.D. Mo. 1996).
199. *See id.* at 708.
200. *See id.*
201. *See id.* at 700-01.
202. *See id.* at 701.
203. Hartford-Carlisle Sav. Bank v. Shivers, 566 N.W.2d 877 (Iowa 1997).
204. *See id.* at 878.

security agreement with Hartford-Carlisle Savings Bank (Bank) granting Bank a security interest in Debtor's livestock, machinery, and equipment.[205] When Debtor filed Chapter 7 bankruptcy, Bank had his livestock sold at a sale barn and retained the proceeds.[206] Bank then filed a motion for relief from stay in order to obtain the equipment and machinery to sell.[207] Bank offered to sell any of the equipment and machinery to Debtor and his family, which offer the Debtor declined with the exception of some fence-line feed bunks.[208] Bank then sold the remaining equipment and machinery, paying John Deere from the proceeds for a purchase money security interest and retaining the rest of the proceeds for the two notes guaranteed by Debtor's security agreement with Bank.[209] Debtor charged Bank with violating UCC § 9-504 by not notifying him about the method, manner, or time of the sale of his collateral.[210]

C. Roberts v. First-Citizens Bank & Trust Co.[211]

A suit for wrongful discharge from employment resulted when an employee was discharged for refusing to cash out a certificate of deposit (CD) without informing the owner who had provided the CD as collateral to secure a loan to third party borrower.[212] An owner is considered to be in the same class as a debtor where collateral is concerned under UCC § 9-105(d).[213] A CD is an "instrument" under UCC § 3-104(j), and therefore the bank must notify the debtor before the bank can dispose of the CD by cashing it out.[214]

The bank did not act in good faith when asking an employee to cash out a CD owned by Mrs. Church that was used as collateral to secure loans for her sons, without first notifying Mrs. Church that the bank would retain the CD under UCC § 9-505 in satisfaction of her sons' debt.[215]

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205. *See id.* at 878-79.
206. *See id.* at 879.
207. *See id.*
208. *See id.*
209. *See id.*
210. *See id.*
211. Roberts v. First-Citizens Bank & Trust Co., 478 S.E.2d 809 (N.C. Ct. App. 1996) *temporary stay and writ of supersede as allowed in* Roberts v. First-Citizen Bank & Trust Co., 483 S.E.2d 176 (N.C. 1997).
212. *See Roberts*, 478 S.E.2d at 811-12.
213. *See id.* at 812.
214. *See id.* at 814.
215. *See id.* at 813-14.

D. Berger Farms v. First National Bank of Oregon, N.A.[216]

An arbitration agreement entered into by Berger Farms (Debtor) and First National Bank of Oregon, N.A. (Bank) precluded the Debtor from taking a loan dispute claim to court before arbitration.[217] The agreement also barred the individual partners in Berger Farms from litigating in their individual capacities.[218] Bank's motion to Stay Action under 9 U.S.C. § 3 was remanded to the trial court for a ruling.[219] Debtor took two loans from Bank for its seed growing business.[220] Debtor sued Bank for allegedly forging and filing UCC-1 financing statements on loans Debtor claimed were guaranteed by a Bank representative to be unsecured.[221]

E. Northwest Natural Gas Co. v. Chase Gardens, Inc.[222]

Unsecured creditor gas company brought an action against a flower grower to collect for gas and gas transport services and to foreclose its agricultural service lien on flower crops.[223] Grower countersued alleging breach of contract and intentional interference with grower's business relationship with its lender.[224] The court held that the gas company had intentionally interfered with the relationship with the lender and awarded the grower $3,000,000 in damages.[225]

Chase Gardens, Inc. (Grower) contracted to purchase gas to heat its greenhouses from Northwest Natural Gas Company (Creditor) under an interruptible service plan that allowed Creditor to order Grower to cease using gas during times of high demand.[226] The seasonality of Grower's income cycle caused it to fall behind in payments to Creditor, leading to an unpaid balance of more than $52,000.[227] Despite assurances from Creditor's representatives that it would "work with" Grower, creditor filed an agricultural service lien on Grower's crops and notified Grower's lender that it had done so.[228] Lender then terminated its line of credit to Grower, causing Grower to file for bankruptcy.[229]

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216. Berger Farms v. First Nat'l Bank of Oregon, N.A., 939 P.2d 64 (Or. Ct. App. 1997).
217. *See id.* at 73.
218. *See id.*
219. *See id.*
220. *See id.* at 67.
221. *See id.*
222. Northwest Natural Gas Co. v. Chase Gardens, Inc., 938 P.2d 778 (Or. Ct. App. 1997).
223. *See id.* at 779.
224. *See id.* at 778.
225. *See id.*
226. *See* Northwest Natural Gas Co. v. Chase Gardens, Inc., 933 P.2d 370, 373 (Or. Ct. App. 1997).
227. *See id.*
228. *See id.*
229. *See id.*

VIII. CONVERSION

A. Security State Bank v. Firstar Bank Milwaukee[230]

Security State Bank (SSB) filed claims against Firstar Bank Milwaukee (Firstar) for wrongful dishonor, set-off, and conversion.[231] Using the UCC § 9-306's lowest intermediate balance rule, the court held the proceeds in which SSB claimed an interest had been dissipated while the funding account had a positive balance, and therefore the proceeds were no longer available when SSB claimed its security interest.[232] Morken, the owner of a cattle feeding business drew checks on the funding account, containing the proceeds from the cattle sale in which SSB claimed an interest.[233] These checks caused the account to be overdrawn, therefore Firstar could not have converted the funds.[234]

B. Fischer v. Machado[235]

Fischers, whose fruit proceeds were converted by their commission merchant sales agents (Machado, as North States Distributors), were allowed to proceed in a suit based on a common law conversion claim despite the availability of a PACA claim.[236] Machado's use of funds received in connection with the sale of Fischers consigned farm products for its own personal benefit constituted conversion.[237]

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230. Security State Bank v. Firstar Bank Milwaukee, 965 F. Supp. 1237 (N.D. Iowa 1997).
231. *See id.*
232. *See id.* at 1248.
233. *See id.* at 1238.
234. *See id.* at 1248. For more facts, see *supra* Part IV (C).
235. Fischer v. Machado, 58 Cal. Rptr. 2d 213 (Ct. App. 1996).
236. *See id.* at 216.
237. *See id.*

IX. PERISHABLE AGRICULTURAL COMMODITIES ACT (PACA)

A. Sunkist Growers, Inc. v. Fisher[238]

The district court granted a summary judgment motion in favor of a juice company on grounds that the grower was precluded from suing the shareholders of the juice company under a PACA provision for a trust remedy against dealers who fail to pay for perishable agricultural commodities.[239] The Ninth Circuit reversed.[240]

After Sunkist (Grower) received a breach of contract judgment against Quality Fresh (Dealers), a juice company, it voluntarily dismissed its PACA claims against Dealers.[241] Dealers never paid on their breach of contract judgment, so Grower brought another PACA suit against the Fishers as sole shareholders of Dealers.[242] The court held that the Fishers *were* individually liable as "dealers" under Section 499b of PACA, and reversed the district court's grant of summary judgment.[243]

B. Rajala v. Guaranty Bank & Trust[244]

United Fruit and Vegetable (United), a produce dealer under PACA, filed for Chapter 11 bankruptcy.[245] While operating as a debtor in possession, United became aware that twenty-six of its suppliers (including Everkrisp) had filed notices to preserve PACA trust benefits totaling about $800,000.[246] United then opened an account with its sales receivables with Guaranty Bank & Trust (Bank) in which it deposited about $100,000.[247] Bank then froze the account to cover debts United owed it.[248] The court held that the bankruptcy trustee failed to respond to defedant's motion to dismiss based on trustees failure to state a claim under which relief could be granted.[249] However, Everkrisp and the other suppliers stated a valid PACA claim over which the court had jurisdiction.[250]

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238. Sunkist Growers, Inc. v. Fisher, 104 F.3d 280 (9th Cir. 1997).
239. *See id.*; 7 U.S.C. § 499e(c)(2) (1994).
240. *See Sunkist Growers, Inc.*, 104 F.3d at 280.
241. *See id.* at 281.
242. *See id.*
243. *See id.* at 282-83.
244. Rajala v. Guaranty Bank & Trust, No. 96-2393-WJL, 1997 WL 94232 (D. Kan. Feb. 10, 1997).
245. *See id.* at *1.
246. *See id.*
247. *See id.*
248. *See id.*
249. *See id.* at *3.
250. *See id*.

C. In re Kelly Food Products, Inc.[251]

The fact that G & G Sales Corporation and Red River Valley Potato Marketing Association, produce suppliers, included notice of intent to preserve PACA trusts on their regular billings and invoices submitted to Kelly Food Products did not make the notices disguised security interests.[252] Thus Kelly's assets available to the suppliers were not decreased when Kelly became a Chapter 11 debtor in possession.[253] The claim of another creditor to $330,000 of Kelly's assets held under 11 U.S.C. § 551 was inferior to produce suppliers' PACA trust claim.[254]

D. Heartland Produce Co. v. Kazmer, Inc.[255]

C.K. Finer Foods (C.K. Foods) defaulted on its payment to Heartland Produce (Heartland) for agricultural commodities Heartland delivered to C.K. Foods.[256] After C.K. Foods failed to pay, Heartland sought specific enforcement and declaratory relief for its established PACA trust claim through a motion for a preliminary injunction.[257]

The court found that Heartland had fulfilled all of the requirements under PACA, was entitled to the PACA trust benefits, and was highly likely to win on the merits of its claim against C.K. Foods.[258] The court also held that Heartland could suffer irreparable injury for which there would be no adequate remedy of law if the injunction was not granted, and therefore granted the injunction.[259]

E. Weis-Buy Services, Inc. v. Roncone[260]

Weis-Buy Services, Inc., Greg Orchards & Produce, Plantation Produce Company, and Tom Lange Company, Inc.(Wholesalers) brought PACA trust claims against Edwin Roncone, Paul Roncone, Alan Roncone, and the Austin J. Merkel Company, Inc. (Merkel) for failing to pay Wholesalers the proceeds from produce

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251. G & G Sales Corp. v. Kelly Food Prods., Inc. (*In re* Kelly Food Prods., Inc.), 204 B.R. 18 (Bankr. C.D. Ill. 1997).

252. *See id.* at 22.

253. *See id.*

254. *See id.*

255. Heartland Prod. Co. v. Kazmer, Inc., No. 96C5183, 1996 WL 680009 (N.D. Ill. Nov. 21, 1996).

256. *See id.* at *1.

257. *See id.*

258. *See id.* at *2.

259. *See id.* at *3.

260. Weis-Buy Servs., Inc. v. Roncone, No. 95C6602, 1997 WL 323523 (N.D. Ill. June 9, 1997).

that wholesalers had delivered to Merkel.[261] The court held that Weis-Buy had waived its PACA trust rights by failing to reduce to writing its agreements with Merkel concerning the statutorily required ten-day payment period.[262] Wholesalers Plantation, Greg Orchards and Tom Large complied with PACA trust beneficiary requirements and therefore preserved their rights to be paid in full.[263]

F. In re Zois[264]

A PACA trust res consisting of perishable goods disappears as the perishable goods perish.[265] Produce seller did not establish that its goods were all resold, or that it gave notice of seller's PACA trust pursuant to § 499e(c)(4) of PACA.[266] Thus when the goods perished, the claim for payment became personal because no trust res remained.[267] The court further found that triable issues of fact existed on whether debt for unpaid produce is nondischargeable under the fiduciary fraud and defalcation exception.[268]

The Zoises (Perry, George, and John), as officers and agents of Five Star Food Distributors (debtor company), bought more than $82,000 in perishable produce from Strube Celery & Vegetable Co. (Strube) and defaulted in paying approximately $44,000.[269] Strube brought an adversary proceeding against each of the Zoises individually, asserting that its claim of payment for unpaid produce was nondischargeable.[270] With the bad facts in this particular case, the grower lost its PACA trust claim because evidence was insufficient to prove that the goods were ever sold, but the grower retained claims for breach of fiduciary duty against the individuals.[271]

G. Farm-Wey Produce, Inc. v. Bowman Co.[272]

The sole shareholder of Wayne L. Bowman Co. (Bowman), Van L. Thornton (Thornton), could not be held secondarily liable for PACA trust debts owed by his

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261. *See id.* at *4.
262. *See id.* at *9.
263. *See id.*
264. Strube Celery & Vegetable Co. v. Zois (*In re* Zois), 210 B.R. 501 (Bankr. N.D. Ill. 1996).
265. *See id.* at 509; 7 U.S.C. § 499e(c)(2) (1994).
266. *See Zois*, 210 B.R. at 510.
267. *See id.*
268. *See id.*
269. *See id.* at 505.
270. *See id.*
271. *See id.* at 510.
272. Farm-Wey Produce, Inc. v. Bowman Co., 973 F. Supp. 778 (E.D. Tenn. 1997).

corporation simply because he was the sole shareholder.[273] Bowman was a small produce broker, buying from producers and selling to retailers for a small markup.[274] After losing a large account, Bowman's gross sales fell by more than fifty percent.[275] Bowman continued to do business with C & W, its next largest client.[276] C & W provided Bowman with fraudulent financial statements in order to retain Bowman as its supplier.[277] When C & W went under, Bowman was never paid what C & W owed.[278] When Bowman was unable to collect these and other revenues owed by retailers, Bowman could not pay its producers the amount owed to them under their established PACA trust.[279] The producers sought to collect the remaining amount from Thornton individually as the sole shareholder and responsible party for Bowman.[280]

H. Ideal Sales, Inc. v. McGriff[281]

Ideal Sales, Inc. and others (Produce Wholesalers) notified Sharp Farms of their intention to preserve their PACA trust benefits within the thirty-day time limit after payments were due.[282] Sharp Farms subsequently filed for Chapter 7 bankruptcy.[283] The court held that a PACA trust was in fact created, and that Sharp Farms violated PACA by dissipating the trust assets.[284] However, because the Wholesalers sued Sharp Farm shareholders McGriff and Scribner individually and not Sharp Farms, the court determined that Scribner, as only a twenty percent shareholder with no financial responsibilities, was not liable to the Wholesalers for the PACA violation.[285] Therefore, McGriff was ordered to pay the Wholesalers for their trust assets due, plus prejudgment interest under 28 U.S.C. § 1961.[286]

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273. *See id.*
274. *See id.* at 779.
275. *See id.* at 779-80.
276. *See id.* at 780.
277. *See id.*
278. *See id.*
279. *See id.*
280. *See id.* at 778.
281. Ideal Sales, Inc. v. McGriff, No. CA 3-95-CV-0991-R, 1997 WL 148043 (N.D. Tex. Mar. 26, 1997).
282. *See id.* at *1.
283. *See id.*
284. *See id.* at *2.
285. *See id.* at *3-5.
286. *See id.* at *6.

I. Fischer v. Machado[287]

PACA did not preclude a common law conversion claim by farmers against corporate officers of commission merchant that sold farmers' products but never paid them.[288] The fact that farmers had not perfected their rights to establish a PACA trust had no bearing on their ability to bring conversion charges against commission merchant.[289]

Joseph and Joan Fischer, owners of a farm and small fruit packing company (Cottonwood Packing Co.), contracted with Craig and Marcia Machado, owners of a distribution company (North State), to sell the Fischers' 1992 crop, retaining a six percent fee.[290] North State sold Cottonwood's fruit, but instead of paying the Fischers, North State used the money to pay its operating expenses.[291] This conversion was exactly the type that PACA was designed to protect against—small farmers and growers being taken advantage of by brokers in perishable commodities.[292]

X. FEDERAL FOOD SECURITY ACT (FSA)[293]

A. Security State Bank v. Firstar Bank Milwaukee[294]

Creditor bank's security interest in cattle was terminated under the FSA and UCC § 9-307, both of which provide that a buyer of farm products takes free of a security interest created by the debtor seller, except under certain conditions, when funds from cattle sale were dissipated prior to the creditor being repaid.[295]

XI. BANKRUPTCY

A. In re Bruening[296]

Transfer of cattle from Mr. Fulkerson (Creditor) to Mr. Bruening (Debtor) prior to Debtor's bankruptcy petition was a sale and not a bailment under UCC § 2-

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287. Fischer v. Machado, 50 Cal. Rptr. 2d 213 (Ct. App. 1996).
288. *See id.* at 213.
289. *See id.*
290. *See id.* at 214.
291. *See id.*
292. *See* 7 U.S.C. §§ 499a-499q, 499s (1994).
293. 7 U.S.C. § 1631(1994).
294. Security State Bank v. Firstar Bank Milwaukee, 965 F. Supp. 1237 (N.D. Iowa 1997).
295. *See id.* at 1247. For more facts, see *supra* Part IV(C).
296. Stover v. Fulkerson (*In re* Bruening), 113 F.3d 838 (8th Cir. 1997).

401(1);[297] payment by Debtor into Debtor's non-bankrupt company for Creditor's payment prior to bankruptcy filing was a voidable preference under 11 U.S.C. § 547(b);[298] and all but $700 of Creditor's payment was returned to the bankruptcy estate.[299] Under 11 U.S.C. § 547(b)(2), "a trustee may recover a transfer of property made on account of an antecedent debt owed by the debtor before such transfer was made," thus Fulkerson was precluded from retaining the additional $13,000 owed to him.[300]

B. In re Torcise[301]

The bank was not subject to multiple or inconsistent liability when an additional suit was brought by secured lender Bel-Bel International Corporation (Bel-Bel) because the bank had received a total of between $7-8 million in its "lock-box" operation with Torcise, had paid out about $3.55 million to Torcise's creditors (which included the bank), and had released the remaining $3-4 million back to Torcise.[302] Also, Bel-Bel brought a common law suit for the intentional torts of fraud and conspiracy,[303] but the $3.55 million judgment in favor of the bankruptcy estate was brought under bankruptcy law.[304]

Torcise engaged in a lock-box operation to facilitate payments to the bank and individual creditors for debts he owed for money lent to his tomato farm business.[305] The system took payments received by Torcise from the sale of his and other growers' tomatoes, placed them into a lock-box at the Bank to pay his debts to Bank and individual creditors.[306] When these creditors had been paid, the lock-box scheme was discontinued.[307] Other creditors, including Bel-Bel and unsecured farmers who sold Torcise their tomatoes to broker, did not get paid.[308] Bel-Bel was allowed to proceed in its suit against the bank for the remaining $3-4 million, which the bank had turned over to Torcise, and which Torcise spent without paying its remaining creditors.[309]

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297. *See id*. at 841.
298. *See id.* at 842.
299. *See id.*
300. *Id.* at 840. For more of the facts of this case, see *supra* Part III (A).
301. Torcise v. Community Bank of Homestead (*In re* Torcise, 116 F.3d 860 (11th Cir. 1997).
302. *See id.* at 866-67.
303. *See id.* at 866.
304. *See id.*
305. *See id.* at 862.
306. *See id.* at 862-63.
307. *See id.* at 863.
308. *See id.*
309. *See id.* at 864.

C. In re Jack-Rich, Inc.[310]

Hog shipper, paid by Chapter 7 debtor corporation with proceeds from sale of meat, had a valid Packers and Stockyards Act trust claim against the funds received under Illinois UCC § 9-306(4)(b), even though proceeds were deposited into the debtor's accounts after filing for Chapter 7 bankruptcy.[311]

D. In re Spring Grove Livestock Exchange, Inc.[312]

This is part IV in the Morken series.[313] Trustees of Chapter 7 estates of individual and corporate debtors that had engaged in a check kiting scheme brought an adversary proceeding against debtors' banks to recover on preference, fraudulent transfer, and other theories when banks attempted to minimize their losses by reversing provisional credits to debtors' accounts.[314] The Bankruptcy Court found the following: that the provisional credits did not create "antecedent debt" of a kind required to support a preference claim;[315] that Morken's fraud relieved the banks of liability for failing to return the checks prior to expiration of the midnight deadline;[316] that there was not enough of a property interest created in uncollected funds provisionally credited to the accounts to support a fraudulent transfer claim arising from transfers out of that account;[317] and that the banks' conduct did not rise to the level necessary to warrant equitable subordination of the banks' claims.[318]

At the suggestion of an employee of Firstar Bank of Milwaukee, (Firstar Milwaukee), John Morken began using controlled disbursement accounts to alleviate the negative cash flow problem plaguing his wholly-owned cattle corporation, Spring Grove Livestock Exchange (SGLE).[319] Morken used the control disbursement, however, to facilitate a check-kiting scheme between Firstar Milwaukee and Firstar Wausau, resulting in a multimillion dollar debt when Firstar Milwaukee began reversing provisional credits and dishonoring checks written on SGLE's accounts.[320]

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310. Farmers & Merchants Bank v. DeKalb Swine Breeders, Inc. (*In re* Jack-Rich, Inc.), 204 B.R. 709 (Bankr. C.D. Ill. 1997).

311. *See id.* at 710.

312. Spring Grove Livestock Exch., Inc. v. Firstar Bank Milwaukee (*In re* Spring Grove Livestock Exch., Inc.), 205 B.R. 149 (Bankr. D. Minn. 1997).

313. *See id.* at 152.

314. *See id.* at 152-53.

315. *See id.* at 155.

316. *See id.* at 160.

317. *See id.* at 161.

318. *See id.* at 162.

319. *See id.* at 152.

320. *See id.* at 153.

E. In re Carter[321]

Debtor wife's intent to defraud bankruptcy court by falsely stating that the house she owned was actually owned by her father was enough to deny her motion for discharge under 11 U.S.C. § 727(a).[322] Debtor husband's motion for discharge could not be denied absent a showing by the bank that he knowingly lied on his bankruptcy schedules, and that he had an unexplained loss of assets immediately prior to filing bankruptcy.[323]

F. In re Southern Star Foods, Inc.[324]

Manufacturer that was also a creditor with a perfected security interest was entitled to receive proceeds from sale of debtor's collateral, pursuant to prior bankruptcy court order approving sale.[325]

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321. Diamond Bank v. Carter (*In re* Carter), 203 B.R. 697 (Bankr. W.D. Mo. 1996).
322. *See id.* at 708.
323. *See id.* at 707.
324. G.M. Mather v. Northfield Freezing Sys., Inc. (*In re* Southern Star Foods, Inc.), 202 B.R. 784 (Bankr. E.D. Okla. 1996).
325. *See id.* at 784-85.