

**IN THE SUPREME COURT OF IOWA**

No. 21-0774

Monroe County Equity No. EQEQ009517

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QUALITY PLUS FEEDS, INC.,

*Plaintiff / Appellee,*

vs.

COMPEER FINANCIAL, FLCA,

*Defendant-Appellant.*

ETCHER FAMILY FARMS, LLC; ETCHER FARMS, INC.;  
AGRILAND FS, INC.; DEWITT VETERINARY SERVICES, P.C.  
d/b/a DEWITT VETERINARY CLINIC; JASON DENNING;  
PRECISION PUMPING, INC.; and ELMWOOD FARMS, LLC,

*Defendants.*

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Appeal from the Iowa District Court for Monroe County  
The Honorable Daniel P. Wilson

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Brief of Amicus Curiae Iowa Institute for Cooperatives  
In Support of Plaintiffs-Appellees

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## **Identity and Interest of Amicus Curiae**

The Iowa Institute for Cooperatives (the “Institute”) is a statewide trade association of cooperatives in Iowa, with grain and farm supply cooperatives comprising a majority of the Institute’s membership. The Institute’s member grain and farm supply cooperatives are, in turn, composed of Iowa farmer-producers who raise crops or livestock on local farms. Many of the Institute’s members operate feed mills that produce feed for large numbers of livestock in their communities, feeding millions of animals across the state. These feed mills provide a place for farmers to sell grain while providing income to the cooperative that will be returned to the farmers who own the cooperative. The Institute, therefore, represents the interests of its cooperative members who manufacture feed, as well as farmer members of the cooperatives who buy feed.

The Institute submits this amicus brief because the Court’s decision may impact Institute member cooperatives and their ability to provide feed to farmers on credit. Further, many farmers who comprise the Institute’s member cooperatives themselves raise grain and/or livestock and who therefore have a strong interest in ensuring access to credit to purchase feed for their livestock. The Iowa Court of Appeals’ decision in this case imperils feed suppliers’ ability to obtain liens on feed provided to farmers and,

consequently, farmers' ability to obtain feed for their livestock on credit during times of financial stress. This threatens a return to the unavailability of credit that contributed to the 1980s farm crisis. The Institute possesses a unique perspective that will assist the Court in assessing the ramifications of any decision rendered in this case.

**Rule 6.906(4)(d) Statement of Authorship**

The Institute is represented by the undersigned counsel from the Nyemaster Goode, P.C., law firm, who authored this brief in whole. No party, party's counsel, or other person contributed money to fund the preparation or submission of this brief.

## **Introduction**

In Iowa, feed suppliers, including agricultural cooperatives, who supply feed to farmers on credit may obtain a lien on the farmer's livestock and proceeds generated thereby. The ruling of the Court of Appeals, which Plaintiff-Appellee Quality Plus Feeds, Inc. ("Quality Plus") challenges on further review, imposed a requirement that in order to obtain priority on proceeds generated from livestock consuming feed from the feed supplier, the supplier must trace those proceeds from identifiable animals, or some who can also be shown to have consumed feed provided by the feed supplier. If the Court of Appeals' ruling is affirmed, the result would adversely impact Iowa's many feed suppliers, including the Institute's member cooperatives, who may hesitate before supplying feed on credit to a farmer under a statutory scheme specifically designed to encourage the continued supply of feed on credit with minimal burden to the parties by providing for "superpriority" of agricultural supply dealer liens. The Court of Appeals' ruling would also, consequently, impact the ability of farmers to obtain feed on credit and would imperil the welfare of livestock by discouraging feed suppliers from extending credit in the absence of clear records showing that specific proceeds were can be traced to specific

animals who consumed specific feed, as advocated by Defendant-Appellant Compeer Financial, FLCA. (“Compeer”) in this case.

### **Argument**

#### **I. IOWA CODE SECTION 570A.3(2) DOES NOT REQUIRE “TRACING” OF SPECIFIC ANIMALS.**

In reversing in part the District Court’s grant of summary judgment in favor of Quality Plus, the Court of Appeals erred in holding that Iowa Code Section 570A.3(2) requires that a feed supplier engage in “tracing” on an individual animal-level basis in order to establish that proceeds from a farmer’s livestock who consumed feed from the dealer were covered by an agricultural supply dealer’s lien. The text of the statute does not contain such a requirement, which would contravene the purpose of Chapter 570A, which is to encourage feed suppliers to provide feed on credit, and to protect those agricultural supply dealers by establishing “superpriority in part of the livestock collateral.” *See Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 190 (Iowa 2011) (“*Oyens I*”). The Court of Appeals’ opinions threaten to subvert this legislative intent, imposing burdensome—if not impossible—recordkeeping requirements upon farmers and feed suppliers, which could restrict farmers’ access to credit and to feed necessary to maintain their livestock at the times such credit is most needed.

Compounding this problem, the opinion of the Court of Appeals declined to define the unit-level at which this new “identifiab[ility]” or “trace[ability]” requirement is to be assessed. The Court of Appeals simply stated that this requirement “requires some level of identification of the proceeds.” (Court of Appeals Opinion, at 5.) While on one hand, the Court of Appeals professed that its ““identifiab[ility]” or “trace[ability]” requirement “would not require burdensome and intensive recordkeeping documenting a separate lien on each animal,” within the very next sentence the Court of Appeals stated that “[i]dentifying the proceeds here requires answers to questions about such things as whether *cattle* that consumed Quality Plus feed were sold, whether replacement *cattle* were purchased, or whether *the cattle* ended up in the Elmwood herd.” (Court of Appeals Opinion, at 5-6 (emphases added).)

From a feed supplier’s perspective, the Court of Appeals’ tracing obligation in effect would require that a lienholder supply documentation showing which individual animals (“the cattle”) consumed feed provided by that supplier and identifying the specific proceeds generated from each individual animal. This is, of course, exactly the result Compeer has advocated in this case. (*See* Appellant’s Br. 37 (suggesting that a lienholder under Section 570A.3 must establish that specific feed “was consumed by



the *specific* cattle” that generated proceeds for the debtor).) This is not practical and would render the rights granted by the Legislature to feed suppliers through Chapter 570A a dead letter.

The District Court, by contrast, correctly determined that the Etcher entities’ “livestock,” collectively, constituted the proper unit-level for assessing the applicability of the agricultural supply dealer’s lien. (Dist. Ct. Ruling ¶ 21 (“There is no dispute Quality Plus sold feed to Etcher Farms entities that was consumed by Etcher cattle. Quality Plus is still owed for some of this feed.”). Because Quality Plus could trace the disputed proceeds to the Etcher entities’ livestock, any tracing requirements had been satisfied. The District Court’s ruling accords with the text of the statute and the clear legislative intent.

**A. The plain text of Section 570A.3 does applies a lien to livestock, not individual animals.**

Section 570A.3 reads, in full:

An agricultural supply dealer who provides an agricultural supply to a farmer shall have an agricultural lien as provided in section 554.9102. The agricultural supply dealer is a secured party and the farmer is a debtor for purposes of chapter 554, article 9. The amount of the 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.

Iowa Code § 570A.3. The first step in statutory interpretation is to determine the plain meaning of the language. *See, e.g., Beverage v. Alcoa, Inc.*, 975 N.W.2d 670, 680 (Iowa 2022). A court must interpret a statute as a whole. *E.g., Oyens I*, 808 N.W.2d at 193.

The District Court found that Quality Plus satisfied its burden to show that Quality Plus had perfected a “superiority” lien pursuant to Section 570A.3 in the amount claimed because Quality Plus established that it had “sold feed to Etcher Farms entities that was consumed by Etcher cattle.” In other words, because the farmer’s “[l]ivestock” had “consum[ed] the feed” provided by Quality Plus, a lien applied under the statute. *See* Iowa Code § 570A.3. This interpretation accords with the plain text of the statute. As the District Court noted, “the legislature did not include a specific tracing requirement in Section 570A.3.” (Dist. Ct. Ruling, at 8.) This Court must infer from the lack of such language that no such requirement exists. *E.g.*,

*Barnes v. Iowa Dep't of Transp.*, 385 N.W.2d 260, 263 (Iowa 1986)

(“[L]egislative intent is expressed by omission as well as by inclusion.”).

Further, Section 570A.3(2) does not speak to a lien attaching to “specific cattle” that consume feed provided on credit, as Compeer has suggested. Nor does this provision use the definite article “the” in connection with the subject of the lien, which is “livestock.” *See* Iowa Code § 570A.3(2). “The” is “a word of limitation that indicates a reference to a specific object.” *Doe v. State*, 943 N.W.2d 608, 611 (Iowa 2020) (quoting *State v. Hohenwald*, 815 N.W.2d 823, 830 (Minn. 2012)). The unmistakable inference to be drawn from this omission is that the Legislature did not intend for the lien to be applied to specific “identifiable” livestock consuming the feed but instead, the *group* of livestock consuming the feed.

Nor does this provision include language specifying a particular sub-unit within a farmer’s livestock such as the livestock at a particular site where feed is received. The preceding subsection (1), by contrast, limits a chemical supplier’s lien to “Crops which are produced upon the land to which the agricultural chemical was applied.” Iowa Code § 570A.3(1). Had the Legislature wished that the lien conveyed by Section 570A.3 apply to “specific cattle,” or even particular groups of livestock within a farmer’s inventory, the Legislature had ample ways of doing so. Instead, the

Legislature chose to make the subject of the lien the collective noun “livestock,” with no definite article. So long as the farmer’s livestock “consume the feed” provided on credit by a grain supplier, the lien applies to that farmer’s livestock. Indeed, while not presented with this question directly, this Court has previously recognized that the lien granted by Section 570A.3 applies to the producer’s “herd.” *See Oyens Feed & Supply, Inc. v. Primebank*, 879 N.W.2d 853, 864 (Iowa 2016) (“*Oyens I*”).

Finally, as this Court recognized in *Oyens II*, the Legislature was perfectly capable of stating explicitly exactly when and how an agricultural supply dealer should bear any administrative burden associated with establishing a “superpriority” agricultural lien under chapter 570A. *See id.* at 861-862. The statute imposes a specific set of requirements for making filings to perfect an agricultural supply dealer’s lien under this chapter. *See generally* Iowa Code § 570.4. This Court has concluded that the burdens imposed upon agricultural supply dealers by these requirements, which are present in the text, reflects a compromise made by the legislature in light of the “super-priority status the filing [required by Iowa Code § 570A.4] helps to acquire.” *Oyens II*, 879 N.W.2d at 862 (quoting *In re Shulista*, 451 B.R. 867, 881 (Bankr. N.D. Iowa 2011)). The legislature chose not to require that an agricultural supply dealer show more than that a farmer’s livestock

consumed the feed that is the subject of the lien. To the extent “tracing” is required to establish an interest in any proceeds, the lienholder must trace the proceeds to the farmer’s livestock, as opposed to other assets of the farmer’s beyond livestock. This Court should give effect to this choice by declining to impose a “tracing” requirement upon individual animals where none exists within the statute.

**B. The Court of Appeals’ interpretation Section 570A.5(3) would strongly discourage feed providers from providing feed on credit.**

This Court has previously recognized that Section 570A was enacted to further the Iowa Legislature’s “goal to encourage feed sales to livestock producers already burdened with bank debt.” *Oyens I*, 808 N.W.2d at 195. During the farm crisis of the 1980s, “[f]armers’ assets were often encumbered by lender security interests, making agricultural suppliers hesitant to sell seed, feed, or other products to farmers on credit.” *Id.* at 189 (citing Thomas E. Salsbery & Gale E. Juhl, *Chapter 570A Crop and Livestock Lien Law: A Panacea or Pandora’s Box*, 34 Drake L. Rev. 361, 364 (1984–85)). By offering feed suppliers a “superpriority” lien, the Legislature intended to “increase[e] available credit to debt troubled farmers from suppliers” in the “hop[e] farmers could continue to operate through difficult times.” *Id.* This Court has even recognized that Section 570A

provides feed suppliers greater rights than suppliers of other agricultural products, in part because livestock feed must be supplied on an ongoing basis. *Id.* at 195 (noting that Iowa Code § 570A.5(3) “articulates a specific priority rule applicable only to livestock feed”).

Issues relating to livestock feed are particularly sensitive because the interruption of a steady supply of feed could have disastrous consequences for animal welfare. The Institute’s members, comprising feed mills across the state, supply livestock feed to small and large customers alike. These suppliers provide literal sustenance to millions of cattle, hogs, and poultry on a daily basis.

Yet these feed suppliers generally do not have visibility into the “specific” animals that consume the feed which may trigger the creation of a lien pursuant to Section 570A.3. (*See* Appellant Br. 37 (arguing that feed supplier must show that proceeds were generated from “*specific* cattle that may have consumed feed”).) Any interpretation of Chapter 570A that prevents a feed supplier from perfecting a lien on proceeds in the absence of “tracing” between individual animals, as Defendant-Appellant advocates here, would discourage feed suppliers from providing feed on credit to farmers who cannot demonstrate the recordkeeping capability to track the feed consumption and movement of “specific cattle” on a day to day basis.

The instant case illustrates the difficulties that would be inherent in such a regime. Quality Plus provided feed to the Etcher entities on credit for six months. (*See* Appellee Br. 26.) Livestock owned by the Etcher entities consumed the feed provided on credit, and the disputed proceeds were traceable to Etcher entities livestock. Yet as Compeer discusses in detail, the Etcher entities appear to have been wholly unable to provide records that sufficed to identify, on an individual basis, the disposition of the cattle that were in the entities' possession as of the time that Quality Plus provided feed on credit. (Appellant Br. 26-27.) According to Compeer, “approximately 1,130” cattle “disappeared without a trace.” (Appellant Br. 29.)

Adoption of a “tracing” requirement at some unit-level narrower than the farmer’s livestock, such as on an “specific cattle” basis as advocated by Compeer, would require the feed suppliers to satisfy itself that the farmer could meet these documentation requirements *prior* to extending credit. In other words, a feed supplier would need to ensure that a farmer could identify which specific animals—out of thousands or perhaps tens of thousands—consumed feed each time feed was provided on credit, and then connect those records to longitudinal data tracking the proceeds derived from those same specific animals. If Chapter 570A is interpreted to require such recordkeeping, and a feed provider is not satisfied that a farmer—

whose business, in this scenario, may already be experiencing significant disruption—is unwilling or incapable of meeting these administrative burdens, then the law would incentivize the feed provider to *refrain* from providing feed on credit. This, naturally, would subvert the entire purpose of the statute. “The legislature presumably sought to encourage a fluid feed market without burdening cooperatives and farmers . . . .” *Oyens I*, 808 N.W.2d at 194. This Court should not adopt an interpretation that would make the process of supplying feed on credit “impractical and cumbersome.” *Id.*

Imposition of a burdensome requirement that proceeds be traced to specific animals or some hypothetical specific sub-group of the farmer’s livestock would result in negative-sum outcomes. It would impair the ability of the feed supplier to obtain a lien if needed. It could severely restrict the availability of credit for farmers—precisely the problem that Chapter 570A was designed to address. And by restricting the availability of credit for critical feed supplies, the proposed limitation to Chapter 570A also could harm financial institutions such as Compeer who lend to farmers. After all, it is not inevitable that a farmer experiencing cash flow issues will be required to liquidate their livestock. The current law, as correctly interpreted by the District Court, therefore, also helps agricultural lenders by allowing feed



suppliers to give farmers’ the best possible chance of satisfying their debts through continued operations.

### **Conclusion**

Feed suppliers provide crucial services that not only help farmers maintain valuable business assets but ensure the continued survival of millions of animals raised on Iowa farms. The Iowa Legislature has made the policy choice to provide feed suppliers with “superpriority” liens in a farmer’s livestock where feed is provided on credit to the farmer and livestock consume the feed. The Court of Appeals’ decision reversing the District Court and imposing a requirement that proceeds be “traced” at a unit-level smaller than the farmer’s livestock is contrary to the text of Section 570A.3 and contrary to the intent of the Iowa Legislature by discouraging feed suppliers from providing feed on credit to struggling farmers. The Iowa Institute for Cooperatives respectfully requests the Court vacate the Court of Appeals’ order and affirm the District Court’s order granting summary judgment in favor of Quality Plus Feeds, Inc.

Dated: September 1, 2022

Respectfully submitted,

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**Certificate of Compliance with Typeface Requirements and Type-  
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[X] This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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**PROOF OF SERVICE AND CERTIFICATE OF FILING**

I hereby certify that on September 1, 2022, I electronically filed the foregoing with the Clerk of the Supreme Court of Iowa using the Iowa Electronic Document Management System, which will send notification to the counsel of record.

/s/ Matthew A. McGuire  
NYEMASTER, GOODE, P.C.