

IN THE SUPREME COURT OF IOWA  
NO. 19-1302

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MIDWESTONE BANK,  
*Plaintiff/Counterclaim Defendant/Appellee,*

v.

HEARTLAND CO-OP,  
*Defendant/Counterclaimant/Appellant.*

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Appeal from Iowa District Court for Story County  
Honorable Angela L. Doyle, Case No. LACV050666

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**Amicus Curiae Brief of the Agriculture Legal Defense Fund**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	3
IDENTITY AND INTEREST OF AMICUS CURIAE .....	5
RULE 6.906(4)(D) STATEMENT OF AUTHORSHIP .....	6
ARGUMENT .....	7
I.    THE FINANCING PROCESS IN THIS CASE IS TYPICAL IN THE INDUSTRY FOR FARMERS FINANCING THEIR CORN AND SOYBEAN PRODUCTION. ....	7
II.   DRYING AND STORING GRAIN IS A NECESSARY STEP IN THE AGRIBUSINESS INDUSTRY. ....	9
III.  THE INDUSTRY WOULD BE GREATLY IMPACTED IF WAREHOUSES COULD NO LONGER DEDUCT THEIR COSTS FROM THE SALE PROCEEDS OF THE GRAIN.....	12
IV.  HEARTLAND’S UNJUST ENRICHMENT CLAIM ALIGNS WITH STANDARD INDUSTRY PRACTICE.....	16
CONCLUSION.....	18
CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME.....	20
PROOF OF SERVICE AND CERTIFICATE OF FILING .....	21

## TABLE OF AUTHORITIES

### Cases

<i>Newsom v. Rabo Agrifinance, Inc.</i> , 427 S.W.3d 688 (Ark. Ct. App. 2013).	17
<i>Peterson v. Midland Nat. Bank</i> , 747 P.2d 159 (Kan. 1987).....	17
<i>Producers Cotton Oil Co. v. Amstar Corp.</i> , 242 Cal. Rptr. 914 (Ct. App. 1988) .....	17
<i>Sandven v. Co-op Credit Union of Montevideo</i> , No. A08-2072, 2009 WL 2447417, at *1 (Minn. Ct. App. Aug. 11, 2009) .....	17

### Statutes

7 U.S.C. § 1631.....	8
7 U.S.C. § 1631(d)–(e).....	8
Iowa Code § 203C.1 .....	11
Iowa Code § 203C.25 .....	10
Iowa Code § 203C.28 .....	12
Iowa Code § 554.1103(2) .....	16
Minn.Stat. § 336.1-103 (2008) .....	17
UCC § 9-320.....	8

### Other Authorities

<i>2018 State Agriculture Overview: Iowa</i> , United States Department of Agriculture (October 14, 2019) <a href="https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=IOWA">https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=IOWA</a> .....	15
Charles Hurburgh, Roger Elmore, and Alison Robertson, <i>Corn grain handling and storage</i> , Iowa State University Extension and Outreach (October 19, 2009), <a href="https://crops.extension.iastate.edu/corn-grain-handling-and-storage">https://crops.extension.iastate.edu/corn-grain-handling-and-storage</a> .....	10

*Competitiveness of U.S. Agriculture and the Balance of Payments*, Council for Agricultural Science and Technology (October 1995),  
[https://www.cast-science.org/wp-content/uploads/1995/10/CAST\\_R125\\_-Competitiveness-of-U.S.-Agriculture.pdf](https://www.cast-science.org/wp-content/uploads/1995/10/CAST_R125_-Competitiveness-of-U.S.-Agriculture.pdf)..... 13

*Crop Production 2018 Summary*, United States Department of Agriculture (February 2019)  
[https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/crop-an19.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/crop-an19.pdf) ..... 5, 15

Jason Henderson and Nancy Fitzgerald, *Can Grain Elevators Survive Record Crop Prices*, The Main Street Economics (2008),  
[https://www.kansascityfed.org/publicat/mse/MSE\\_0308.pdf](https://www.kansascityfed.org/publicat/mse/MSE_0308.pdf).. 13, 14

*Soybean Drying and Storage*, Iowa State University Extension and Outreach (November 2008),  
<https://www.extension.iastate.edu/grain/files/Migrated/soybeandryingandstorage.pdf> ..... 10, 11

*Soybean Storage Tips*, Iowa State University Extension and Outreach,  
<https://crops.extension.iastate.edu/soybean-storage-tips>..... 10

Steven D. Johnson, *Corn Drying, Shrink and Storage Decision Tools Now Available*, Iowa State University Extension and Outreach (October 2014),  
<https://www.extension.iastate.edu/agdm/articles/johnson/JohOct14.html> 11

William Edwards, *Cost of Storing Grain*, Iowa State University Extension and Outreach (May 2015),  
<https://www.extension.iastate.edu/agdm/crops/html/a2-33.html> ..... 9

## IDENTITY AND INTEREST OF AMICUS CURIAE

The Agriculture Legal Defense Fund exists for the purpose of protecting and advancing agricultural policy issues and interests through the legal system and educating others about the legal system's impact on agriculture. The United States is the largest corn producer in the world, with Iowa at its center as the state with the most corn production and second most soybean production. *Crop Production 2018 Summary*, United States Department of Agriculture (February 2019) [https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/cropa\\_n19.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/cropa_n19.pdf). Therefore, the Agriculture Legal Defense Fund represents a major actor in the U.S. economy.

This amicus curiae brief submitted by the Agriculture Legal Defense Fund discusses industry practice and standards surrounding the drying and storage of grain in Iowa. First, the brief discusses how the drying and storage services provided by grain warehouses not only preserve the collateral of a producer's lender but also increase the value and marketability of the grain. Next, the brief illustrates the impact that allowing a lender to be enriched by the warehouse's services without permitting the warehouse to deduct its charges from the proceeds of the collateral will have on the agricultural industry. On the whole, the Agriculture Legal Defense Fund

believes its brief can provide the Court with additional understanding of the agricultural industry in relation to the issues presented by this case.

The District Court dismissed Heartland Co-op's claims of reliance on well-established industry practice allowing warehouses to offset the necessary costs of storage and drying grain before sending payment to the producer or holder of a secured interest in the grain as "assertions only supported by the affidavit of Don Frazer, Heartland's Senior Credit Lender." (05/31/2019 Rulings on MSJ at 19). The Agriculture Legal Defense Fund therefore submits this amicus curiae brief to support Heartland's assertion and offer further information regarding this well-established industry practice.

**RULE 6.906(4)(D) STATEMENT OF AUTHORSHIP**

The Agriculture Legal Defense Fund is represented by the undersigned counsel of the Brown, Winick, Graves, Gross, Baskerville, and Schoenebaum, P.L.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.

## ARGUMENT

### I. THE FINANCING PROCESS IN THIS CASE IS TYPICAL IN THE INDUSTRY FOR FARMERS FINANCING THEIR CORN AND SOYBEAN PRODUCTION.

In this case, Justin R. Harker and Ashley N. Harker (the “Harkers”) were in the business of farming, which included the commercial production of corn and soybeans. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 4). Heartland Co-op (“Heartland”) operates a grain warehouse and handling facility where the Harkers routinely delivered their grain. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 5). The Harkers borrowed money from MidWestOne Bank (“Bank”) to pay for their farm operating expenses and in return, the Bank obtained a security interest in the Harkers’ grain after it is harvested. (Pet. ¶ 6; Pet. Ex. 1 – Security Agreement). With this security interest, the Bank required a Schedule of Buyers from the Harkers, which lists the grain warehouses where the Harkers may store and sell their grain. (Pet. Ex. 2 – Schedule of Buyers). The Harkers were required to store and sell their grain to an entity on this list. (Pet. Ex. 1 – Security Agreement at 2). The Bank sent all the entities on this list a notice, pursuant to the Federal Food Security Act, of the Bank’s security interest in the grain and directed the entities to disperse all proceeds from the eventual sale of the grain via check payable jointly to the Harkers and to the Bank. (Pet. Ex. 3 – Notices

of Security Interest; Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 6). The Harkers delivered their grain to Heartland, an entity on the Schedule of Buyers list, and Heartland dried and stored the grain until the Harkers eventually sold the grain, using storage time to wait for a favorable market price and maximize their revenue. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 10). Heartland deducted the costs of drying and storing the grain from the sale proceeds of the grain and paid the rest of the sale proceeds jointly to the Harkers and the Bank. (Heartland MSJ Appendix Ex. O – Bailey Aff. ¶ 10, 14).

The process the Harkers went through in this case is the typical financing process for farmers, grain warehouses, and banks in the commercial corn and soybean production industry. Under the Federal Food Security Act, 7 U.S.C. § 1631, when a bank sends notice of its security interest to a farmer’s potential grain warehouse, the bank’s security interest will remain attached to the grain at its eventual sale despite the buyer being a buyer in the ordinary course under UCC § 9-320. 7 U.S.C. § 1631(d)–(e). In order for such security interest to be released, the buyer must ensure that the bank is paid—typically by issuing a joint check to the bank and the farmer. It is common industry practice for a farmer to deliver their crops to the warehouse which dries and stores the grain. Upon selling the grain, the



warehouse will issue a joint check to the bank and farmer (and any other secured party that provided notice to the warehouse) for the purchase price less the warehouse's drying and storage costs.

This process has been the standard industry practice for the past 40 years and has been unchallenged, until now, even through the farm crisis of the 1980s.

## **II. DRYING AND STORING GRAIN IS A NECESSARY STEP IN THE AGRIBUSINESS INDUSTRY.**

The market price for selling corn and soybeans varies and therefore storing grain allows it to be sold at a more opportune time if the current market price is unfavorable. William Edwards, Cost of Storing Grain, Iowa State University Extension and Outreach (May 2015),

<https://www.extension.iastate.edu/agdm/crops/html/a2-33.html>

("Proper use of storage will increase a producer's income."). Corn and soybeans are also sold on a weight-basis and therefore drying is necessary for uniformity as extra moisture would make the grain heavier. William Edwards, Cost of Storing Grain, Iowa State University Extension and Outreach (May 2015),

<https://www.extension.iastate.edu/agdm/crops/html/a2-33.html>

("grain is sold on a weight basis (No. 2 corn weighs 56 lbs [per bushel])").

*See also* Iowa Code § 203C.25 (directions for adjustments to scale weight due to moisture content).

Not only is storing grain advantageous from an economic standpoint, but drying grain is necessary because, as a perishable commodity, corn and soybeans will rot and quickly decrease in value if not dried or stored properly. *Soybean Drying and Storage*, Iowa State University Extension and Outreach (November 2008), <https://www.extension.iastate.edu/grain/files/Migrated/soybeandryingandstorage.pdf> (“When storage moisture is too high, spoilage is likely and germination can be reduced in just a few days.”). *Soybean Storage Tips*, Iowa State University Extension and Outreach, <https://crops.extension.iastate.edu/soybean-storage-tips> (“As with all grains, spoilage and reduced germination will occur quickly if storage moisture is too high.”). Charles Hurburgh, Roger Elmore, and Alison Robertson, *Corn grain handling and storage*, Iowa State University Extension and Outreach (October 19, 2009), <https://crops.extension.iastate.edu/corn-grain-handling-and-storage> (“...white or pink ear rots are often found in ear corn stored too wet ...these fungi also can produce several toxins....”).

Soybeans must be dried to about 13% moisture levels and corn must be dried to about 14% moisture levels. *Soybean Drying and Storage*, Iowa State University Extension and Outreach (November 2008), <https://www.extension.iastate.edu/grain/files/Migrated/soybeandryingandstorage.pdf> (Soybeans levels must reach “13% moisture or less [for winter storage]; 12% or less for up to one year; 11% or less for more than one year.”). Steven D. Johnson, *Corn Drying, Shrink and Storage Decision Tools Now Available*, Iowa State University Extension and Outreach (October 2014), <https://www.extension.iastate.edu/agdm/articles/johnson/JohOct14.html> (“Commercial storage requires that corn be adjusted to 14% moisture to be placed under warehouse receipt.”). Therefore, the grain warehouse not only preserves the grain from rotting, but dries the grain to a marketable moisture level.

To store bulk grain in Iowa, an entity must be licensed by the Iowa Department of Agriculture and Land Stewardship or obtain a federal license under the Federal Warehouse Act and must abide by the requirements of Iowa Code § 203C.1, *et. seq.* Iowa licensed warehouses, such as Heartland, must publically file their storage rates with the Iowa Department of Agriculture and Land Stewardship and post current rates at the warehouse’s

places of business. Iowa Code § 203C.28. Therefore, these costs are known and publically available to customary banks and other lenders in the industry.

To summarize the above paragraphs, if grain is not dried, it will quickly rot and lose value. The grain also must be dried to an industry-standard moisture level before it can be sold. If grain is not stored, the seller cannot take advantage of the variable market prices of the grain. Therefore, drying and storage adds value and is necessary to sell the grain. This added value directly increases the amount the bank recovers on its security interest in the grain.

**III. THE INDUSTRY WOULD BE GREATLY IMPACTED IF WAREHOUSES COULD NO LONGER DEDUCT THEIR COSTS FROM THE SALE PROCEEDS OF THE GRAIN.**

It has been standard industry practice for the past 40 years for grain warehouses to deduct the costs of storing and drying grain from the sale proceeds of the grain before dispersing the proceeds to the farmers and the farmer's creditors. If the District Court's decision is upheld in this case and grain warehouses were no longer able to deduct their storing and drying costs, the agriculture industry would be negatively affected.

Specifically, the entire process outlined in section I of this brief would be disrupted. Instead of receiving payment when the grain is sold, the

warehouses would have to demand payment up front from the farmer for the cost of drying and storing their grain. The result of forcing warehouses to collect their costs up front would likely be to force them to require deposits from each farmer that will have to be tendered prior to delivery of the crops. This would ultimately lead to increased costs and smaller profit margins for farmers, and would be a major disruption to the entire financing process of the agriculture industry. *Competitiveness of U.S. Agriculture and the Balance of Payments*, Council for Agricultural Science and Technology (October 1995), [https://www.cast-science.org/wp-content/uploads/1995/10/CAST\\_R125\\_-Competitiveness-of-U.S.-Agriculture.pdf](https://www.cast-science.org/wp-content/uploads/1995/10/CAST_R125_-Competitiveness-of-U.S.-Agriculture.pdf) (“Economic infrastructure can be crucial to the success of an enterprise or industry.”).

Grain warehouses already operate on thin profit margins, which is only possible because they are able to deduct their costs from the sale proceeds of the grain. Jason Henderson and Nancy Fitzgerald, *Can Grain Elevators Survive Record Crop Prices*, The Main Street Economics (2008), [https://www.kansascityfed.org/publicat/mse/MSE\\_0308.pdf](https://www.kansascityfed.org/publicat/mse/MSE_0308.pdf) (“Because grain merchandising is a spread business, and the spread between the purchase price and sale price can be a few cents per bushel, elevators need to move large volumes to profit from grain merchandising.”). Any

change to this process would increase costs to farmers and put grain warehouses at further financial risk. Jason Henderson and Nancy Fitzgerald, *Can Grain Elevators Survive Record Crop Prices*, *The Main Street Economics* (2008),

[https://www.kansascityfed.org/publicat/mse/MSE\\_0308.pdf](https://www.kansascityfed.org/publicat/mse/MSE_0308.pdf)

(discusses the impacts of grain elevator bankruptcies which include “significant losses for local famers, ... delays in the sale, distribution, and payment on existing grain held in storage and grain scheduled for delivery, ... substantial losses [for lenders] arising from their lines of credit ... [and] farmers los[ing] their local market deliver point and [facing] high transportation costs by having to deliver grain to a more distant location.”).

If warehouses were forced to demand up-front payments, farmers would have to borrow more money from the bank to finance the costs of drying and storage, which would ultimately force the farmer to pay more in interest to the bank. To complicate matters further, if the grain warehouses require a cash deposit they would have to estimate the amount to be charged to the farmer due to the variables involved in drying and storing grain. These variables include (a) the number of bushels the farmer will produce and deliver to the warehouse, (b) the moisture content in the grain received, which would can vary from truckload to truckload, and (c) the length of time

that the grain will be stored. The warehouse would have to estimate the amount of the deposit, notify the farmer far enough in advance to allow the farmer to secure financing, and require that the farmer submit a deposit prior to delivering their grain to the warehouse. Additionally, the warehouse would have to require a deposit large enough to cover the different possible outcomes taking into account the variables involved. This means that the up-front cost to the farmer would likely be greater.

This alteration in long-standing industry practice is impracticable and illogical. It is economically inefficient for warehouses to require payment up front and would substantially burden farmers by driving up their costs. Iowa produces 2.51 billion bushels of corn each year and 565 million bushels of soybeans each year. *Crop Production 2018 Summary*, United States Department of Agriculture (February 2019) [https://www.nass.usda.gov/Publications/Todays\\_Reports/reports/cropn19.pdf](https://www.nass.usda.gov/Publications/Todays_Reports/reports/cropn19.pdf). Combined, corn and soybean production is an estimated 13 billion dollar industry in Iowa. *2018 State Agriculture Overview: Iowa*, United States Department of Agriculture (October 14, 2019) [https://www.nass.usda.gov/Quick\\_Stats/Ag\\_Overview/stateOverview.php?state=IOWA](https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=IOWA). A change in the financing structure of this industry has the potential to greatly affect Iowa's economy.

Instead, grain warehouses should continue to be allowed to assess their costs at the time the grain is sold in accordance with industry practice as the drying and storage fees benefit both the farmers and the secured lenders. Allowing grain warehouses to deduct their fees from the sale proceeds before dispersing payment to secured creditors is both efficient and in accordance with longstanding and, until now, unchallenged industry practice.

#### **IV. HEARTLAND'S UNJUST ENRICHMENT CLAIM ALIGNS WITH STANDARD INDUSTRY PRACTICE**

Heartland has argued in its Appellant Brief that the District Court erred by disallowing its equitable remedy of unjust enrichment. We agree with Heartland that it should be entitled to the equitable remedy of unjust enrichment because this result would align with standard industry practice.

The plain language of the UCC allows for equitable remedies, and multiple jurisdictions have found that a subordinate creditor or lienholder can succeed on an unjust enrichment claim against a higher-priority creditor.

According to the UCC, “[u]nless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity [...] supplement its provisions.” Iowa Code § 554.1103(2). Multiple jurisdictions with similar UCC provisions have interpreted this section to mean that a claim for unjust enrichment can succeed regardless of UCC



priority. *Sandven v. Co-op Credit Union of Montevideo*, No. A08-2072, 2009 WL 2447417, at \*1 (Minn. Ct. App. Aug. 11, 2009) (“Other jurisdictions have acknowledged the authority provided in their equivalents to Minn.Stat. § 336.1-103 (2008) (permitting application of “principles of law and equity” to supplement UCC provisions) to disregard the UCC’s hierarchy of priorities if the circumstances merit.”). *Producers Cotton Oil Co. v. Amstar Corp.*, 242 Cal. Rptr. 914, 927 (Ct. App. 1988) (“article 9 does not displace or prohibit the application of equitable principles ... when a party possessing a security interest in a crop and its proceeds has knowledge of and acquiesces in expenditures made which are necessary to the development of the crop, and ultimately benefits from the expenditures, a party who, through mistake, pays such costs without first obtaining subordination, is entitled to recover.”). *Newsom v. Rabo Agrifinance, Inc.*, 427 S.W.3d 688, 695 (Ark. Ct. App. 2013) (“Courts in other jurisdictions have recognized that, in rare instances, an unsecured lienholder such as Newsom may prevail over a perfected, secured lienholder on grounds of equity and unjust enrichment.”). *Peterson v. Midland Nat. Bank*, 747 P.2d 159, 167 (Kan. 1987) (“The district court was clearly correct in concluding that Midland benefited from Peterson’s delivery of hay to the cattle which otherwise would have died. We conclude the doctrine of unjust enrichment

is well suited for application to the factual situation herein and properly applied by the district court.”).

The result of allowing Heartland to recover its costs relating to storing and drying grain through an unjust enrichment claim would align with the industry custom and practice of allowing warehouses to deduct their costs at the time of sale despite the UCC’s priority hierarchy of security interests on the grain. Therefore, the Agriculture Legal Defense Fund supports Heartland’s claim for unjust enrichment.

### **CONCLUSION**

Grain warehouses provide a necessary step in the grain financing process and should be compensated fairly and in a cost-efficient manner. Drying and storing grain preserves and increases the value of the grain. These costs are known and understood by banks and lenders throughout the industry. If this Court were to affirm the District Court’s ruling denying Heartland’s claim for unjust enrichment, the result could change the entire industry practice, increase costs for farmers, and disrupt the financial process of a multibillion-dollar industry in the state of Iowa. Therefore, the Agriculture Legal Defense Fund submits this amicus curiae brief to ask that the District Court’s decision be reversed.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
LIMITATION, TYPEFACE REQUIREMENTS, AND  
TYPE-STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because it contains 2,799 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 point font.

/s/ Douglas E. Gross  
Douglas E. Gross

October 15, 2019  
Date

## **PROOF OF SERVICE AND CERTIFICATE OF FILING**

I hereby certify that on October 15, 2019, 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 of such filing to the counsel of record.

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