

## Minnesota Farmer Protection Law – Update

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### Overview

Last fall I wrote about a case from Minnesota involving that state's law enacted in 1991 to provide contract protection to farmers. The law arose out of the farm crisis of the 1980s and was applied in a contract production case. The farmers ultimately won that case, and now the trial court has issued its remand decision with an important ruling on the choice of law provision that was utilized in the contracts. That will be an important point for other state legislatures with or considering similar legislation.

Producer protection legislation and recent case – it's the topic of today's post.

### Minnesota Farmer Protection Law

In early 1988, the Minnesota Legislature directed the Minnesota Department of Agriculture (MDA) to put together a task force to study the issue of agricultural contract production and recommend to the legislature how it might provide additional legal and economic protection to contract growers. The MDA's Final Report was issued in February of 1990. During the 1990 legislative session, the Minnesota legislature approved various economic protections for farmers based on the task force recommendations focusing particularly on parent liability. As signed into law, MN Stat. §17.93 provides as follows:

"Parent company liability. If an agricultural contractor is the subsidiary of another corporation, partnership, or association, the parent corporation, partnership or association is liable to a seller for the amount of any unpaid claim or contract performance claim if the contractor fails to pay or perform according to the terms of the contract."

In addition, MN Stat. §17.90 specified as follows:

"Producer" means a person who produces or causes to be produced an agricultural commodity in a quantity beyond the person's own family use and: (1) is able to transfer title to another; or (2) provides management input for the production of an agricultural commodity."

The MDA then prepared a "statement of need and reasonableness" (SONAR) to implement the new statutory provision. The SONAR referred to the legislation as the "Producer Protection Act" (PPA) and the MDA's implementing rule (MN Rule 1572.0040) for MN Stat §17.93 which went into effect on March 4, 1991, read as follows:



"A corporation, partnership, sole proprietorship, or association that through ownership of capital stock, cumulative voting rights, voting trust agreements, or any other plan, agreement, or device, owns more than 50 percent of the common or preferred stock entitled to vote for directors of a subsidiary corporation or provides more than 50 percent of the management or control of a subsidiary is liable to a seller of agricultural commodities for any unpaid claim or contract performance claim of that subsidiary."

During the same 1990 legislative session the Minnesota legislature approved and the governor signed into law MN Stat. §27.133. This new law stated as follows:

"Parent company liability. If a wholesale produce dealer is a subsidiary of another corporation, partnership, or association, the parent corporation, partnership, or association is liable to a seller for the amount of any unpaid claim or contract performance claim if the wholesale produce dealer fails to pay or perform in according to the terms of the contract and this chapter."

Concerning this provision, the legislature stated, "It is therefore declared to be the policy of the legislature that certain financial protection be afforded those who are producers on the farm...".

Also, under both MN Stat. §17.93 and MN Stat. §27.133, "contractor" and "wholesale produce dealer" were defined as "persons" and "person" was to be applied to corporations, partnerships and other unincorporated associations." *MN Stat. §665.44, sub. 7.*

### Minnesota Litigation

In 2017, the defendants entered into chicken production contracts with Prairie's Best Farm, Inc. to grow chickens in exchange for monthly payments and bi-monthly bonus payments. In late 2017, Simply Essentials bought the assets of Prairie's Best and assumed the grower contracts. Simply Essentials, incorporated in Delaware and headquartered in California, was the subsidiary of the plaintiff, Pitman Farms, which owned more than 50 percent of Simply Essentials. Shortly thereafter, the plaintiff bought Simply Essentials' membership interests and became its sole owner. In 2019, Simply Essentials encountered financial trouble, ceased processing activities and notified the defendants that it was terminating the contracts effective three months later. The defendants' demands for payment in excess of \$6 million from the plaintiff for breach of contract failed. Both parties sought a declaratory judgment concerning the application of the PPA to the contracts.

The plaintiff claimed that the PPA did not apply because the defendants were not "sellers" and, even if they were, the PPA didn't apply because Simply Essentials was an LLC rather than a "corporation, partnership, or association. The plaintiff also asserted that the PPA's parent company liability provisions didn't apply to it because Delaware law applied, and that applying Minnesota law would violate the Dormant Commerce Clause. The defendant's counterclaim made the opposite arguments.

**Trial court decision.** The trial court in *Pitman Farms v. Kuehl Poultry, LLC*, 508 F. Supp.3d 465 (D. Minn. 2020), ruled for the plaintiff, finding that the PPA did not apply by its terms because the defendants were not "sellers" and because Simply Essentials was an LLC rather than a "corporation, partnership, or association."



**Appellate decision.** On appeal, the appellate court unanimously reversed and remanded. *Pitman Farms v. Kuehl Poultry, LLC, et al.*, 48 F.4th 866 (8th Cir. 2022). The appellate court read the various statutes together to determine the legislature's purpose and intent. The appellate court noted that the parent company liability statute of MN Stat. §27.133, the PPA of §§17.90-17.98 and the MDA's implementing rule all arose from the same legislative session, addressed the same issue, and contained nearly identical language. Accordingly, the appellate court determined that the trial court should have looked to MN Stat. §27.133 when construing the meaning of "seller" contained in MN Stat. §17.93 and in MDA Rule 1572.0040. When the various provisions were taken together, the appellate court determined that "seller" can include "producer" under the PPA and the MDA's implementing regulation.

The appellate court also concluded that the trial court erred in finding that "seller" was limited to transferors of title. Because the defendants did not have title to the chickens and could not therefore transfer title, the trial court held that the PPA did not apply. The appellate court held that such a construction was plainly contrary to the legislature's intent in creating the PPA which was to provide financial protections to agricultural producers in general and not merely agricultural commodity sellers. Further, because the appellate court determined that "seller" included "producer," the defendants were covered by the PPA as providing management services in accordance with MN Stat. §17.90 (2) for the growing of the chickens under contract. In addition, the appellate court held that the growers were also "sellers" for purposes of the parent company liability provision of MN Stat. §27.133.

The plaintiff also asserted that "subsidiary of another corporation, partnership or association" contained in MN Stat. §17.93 and §27.133 meant that both the parent and the subsidiary had to be either a corporation, partnership or an association. The trial court agreed with this interpretation. The appellate court also agreed but pointed out that LLCs (which Simply Essentials was) did not exist in Minnesota when the PPA was enacted and, as such, the legislature had not purposefully excluded them from the statute. The appellate court also noted that an LLC had been found to be a "person" for purposes of the Minnesota Human Rights Act. That law defined "person" to include a partnership, association, or corporation. In addition, an unpublished decision of the Minnesota Court of Appeals had previously held that an LLC was an "association" for purposes of a Minnesota oil transportation statute. Thus, there was no apparent reason why the legislature would have singled out LLCs to not be covered under the parent company liability provisions of the PPA.

The appellate court also noted the strong public policy statement of the Minnesota legislature in enacting the PPA – to protect producers of agricultural commodities from economic harm due to parent business entities using their organizational form to avoid liability for their subsidiaries' actions. The appellate court sent the case back to the trial court (remand) for a new decision consistent with the guidance that the appellate court provided.

**Trial court remand decision.** On remand, the trial court (*Pitman Farms v Kuehl Poultry, LLC, No. 19-cv-3040, 2023 U.S. Dist. LEXIS 97917 (D. Min. Jun. 6, 2023)*) was faced with five issues: 1) whether a Minnesota choice of law clause in the grower contracts with Simply Essentials bound the plaintiff; 2) if the plaintiff was bound, whether the clause actually applied in the case; 3) whether Minnesota's parent-liability line of cases apply to parents of foreign LLCs such as Simply Essentials; 4) if Minnesota parent liability law



does apply to the plaintiff, whether there is a conflict between Minnesota and Delaware law; and 5) if Minnesota's parent-liability authorities apply, whether they violate the "dormant" Commerce Clause.

The parties agreed that Minnesota law applied based on the choice of law provision in the contract that stated that Minnesota law applied. As to whether the clause applied to the grower contracts the court noted that under Minnesota law, a non-party to a contract (such as the plaintiff) may be bound by the contract's forum-selection clause when the non-party is "'closely related' to the dispute such that it becomes 'foreseeable' that it will be bound. The court determined that it wasn't foreseeable to the plaintiff that it could be bound by the choice-of-law provision. In addition, the court determined that the clause did not apply by virtue of the parent-liability theory.

The court also determined that Minnesota law governed the growers' claims. The court noted that the growers were in Minnesota, the contract production activities occurred in Minnesota, and Delaware's only connection with the matter was that Simply Essentials was organized under Delaware law. Likewise, the court determined that there was no conflict between Minnesota and Delaware law, and that the Minnesota parent-liability authorities did not violate the dormant Commerce Clause and the Minnesota producer protection statute did not impose a burden on commerce outside the state of Minnesota.

What remains of the case is a determination of damages for the growers.

## Conclusion

The case is an important one that provides a roadmap for other states as a model for legislation designed to protect growers under ag production contracts.

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