CASES, REGULATIONS AND STATUTES

ADVERSE POSSESSION

FENCE. The disputed land once belonged to one farm of the parents of the parties and was distributed among the children. The disputed land was set off by a hog wire fence that was built to enable the owners to keep pigs separated from cattle on neighboring land. The fence was built on the defendants' side of the actual boundary between the plaintiffs' and defendants' properties and the plaintiffs claimed title to the disputed land by boundary acquiescence or adverse possession. *Boundary by acquiescence*. The court stated that, under Arkansas case law, a fence, by acquiescence, may become the accepted boundary even though it is contrary to the survey line. When adjoining landowners occupy their respective premises up to a line, which they mutually recognize and acquiesce in as the boundary for a long period of time, they and their grantees are precluded from claiming that the boundary thus recognized and acquiesced in is not the true one, although it may not be. A boundary line by acquiescence is inferred from the landowners' conduct over many years so as to imply the existence of an agreement about the location of the boundary line. The intention of the parties and the significance they attach to the fence, rather than its location or condition, is what is to be considered. The trial court found and the appellate court agreed that the hog wire fence was not constructed as a boundary fence but only to separate the hog pens from the cattle pasture. *Adverse possession*. The court stated that, to prove the common-law elements of adverse possession, a claimant must show that he or she has been in possession of the property continuously for more than seven years and that the claimant's possession has been visible, notorious, distinct, exclusive, hostile, and with the intent to hold against the true owner. Under Ark. Code Ann. § 18-11-106 added, as a requirement for proof of adverse possession, that the claimant prove color of title and payment of taxes on the subject property or contiguous property for seven years. The trial court found that the construction of the hog wire fence and use of the disputed land by the plaintiffs was permissive because both owners were aware of the construction of the fence and were jointly involved in the cattle business; thus, the plaintiffs' use of the disputed land was not hostile or exclusive as to the defendants' title. The court upheld the trial court's ruling that the plaintiffs did not acquire title to the disputed land by boundary acquiescence or adverse possession. **McJunkins v. McJunkins, 2018 Ark. App. LEXIS 315 (Ark. Ct. App. 2018)**.

BANKRUPTCY

CHAPTER 12

PLAN. The debtor filed for Chapter 12 and the plan was confirmed on all provisions except a provision under which the debtor would make all payments to secured creditors directly. The case had four secured claims, only one of which was substantially modified by the plan and was further modified after confirmation of the plan. The trustee objected to the plan provision for paying secured creditors directly, arguing that without payment of the claims through the trustee, the trustee would not receive enough compensation. Under Section 586(e)(2), a standing trustee collects a commission on "all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee." The statute is clear that a standing trustee is only entitled to a percentage fee on payments received by the trustee under the plan. However, there is no statutory rule addressing when payments must be made through the trustee or when they may be made directly to creditors. The court noted that other courts have either allowed all payments to be made by a debtor directly to creditors or required all payments to be made through the trustee. In this case, the court adopted the approach of *In re Pianowski, 92 B.R. 225 (Bankr. W.D. Mich. 1988)* which used 13 factors to determine, on a case by case and claim by claim basis, whether to allow some or all payments to be made directly to creditors: (1) the past history of the debtor; (2) the business acumen of the debtor; (3) the debtor's post-filing compliance with statutory and court-imposed duties; (4) the good faith of the debtor; (5) the ability of the debtor to achieve meaningful reorganization absent direct payments; (6) the plan treatment of each creditor to which a direct payment is proposed to be made; (7) the consent, or lack thereof, by the affected creditor to the proposed plan treatment; (8) the legal sophistication, incentive and ability of the affected creditor to monitor compliance; (9) the ability of the trustee and the court to monitor future direct payments; (10) the potential burden on the Chapter 12 trustee; (11) the possible effect upon the trustee's salary or funding of the U.S. Trustee system; (12) the potential for abuse of the bankruptcy system; and (13) the existence of other unique or special circumstances. In reviewing the factors, the court found that most favored allowing the debtor to make the payments directly except for the secured claim which was modified twice, once before confirmation and once after confirmation. The court held that this modified claim must be paid through the trustee. The court noted that requiring this one claim to be paid through the trustee provided sufficient compensation for the trustee without endangering the feasibility of the Chapter 12 plan. ***In re* Speir, 2018 Bankr. LEXIS 2359 (Bankr. N.D. Miss. 2018)**.

FEDERAL FARM PROGRAMS

POULTRY. The APHIS has adopted as final regulations amending the regulations pertaining to certain diseases of livestock and poultry to specify conditions for payment of indemnity claims for highly pathogenic avian influenza (HPAI). The regulations provide a formula that will allow the splitting of such payments between poultry and egg owners and parties with which the owners enter into contracts to raise or care for the eggs or poultry based on the proportion of the production cycle completed. The regulations also provide for the payment of indemnity for eggs required to be destroyed due to HPAI, thus clarifying an existing policy. The regulations require owners and contractors, unless specifically exempted, to provide a statement that at the time of detection of HPAI in their facilities, they had in place and were following a biosecurity plan aimed at keeping HPAI from spreading to commercial premises. **83 Fed. Reg. 40433 (Aug. 15, 2018).**

RETAIL SALES OF MEAT. The FSIS has announced the dollar limitations on the amount of meat and meat food products, poultry, and poultry products that a retail store can sell to hotels, restaurants, and similar institutions without disqualifying itself for exemption from federal inspection requirements. In accordance with FSIS's regulations, for calendar year 2018, the value for the dollar limitation for meat and meat food products remains unchanged at $75,700. For calendar year 2018, the value for the dollar limitation for poultry and poultry products also remains unchanged at $56,600. FSIS reviews the dollar limitations on a yearly basis and makes adjustments based on price changes for these products evidenced by the Consumer Price Index. **83 Fed. Reg. 40501 (Aug. 15, 2018).**

FEDERAL INCOME TAXATION

ABLE ACCOUNTS. The IRS has published information about Achieving a Better Life Experience (ABLE) accounts which are authorized tax-advantaged I.R.C. § 529A accounts to help disabled people pay for qualified disability-related expenses. *Annual Contribution limit increase*. The limit is $15,000 in 2018 and certain employed ABLE account beneficiaries may make an additional contribution up to the lesser of: (1) the designated beneficiary's compensation for the tax year and (2) the poverty line for a one-person household which, for 2018, is $12,140 in the continental U.S., $13,960 in Hawaii and $15,180 in Alaska. *Saver's Credit*. ABLE account designated beneficiaries may now be eligible to claim the Saver's Credit for a percentage of their contributions. The credit is claimed on Form 8880, *Credit for Qualified Retirement Savings Contributions*. The Saver's Credit is a non-refundable credit available to individuals who (1) are at least 18 years old at the close of the taxable year, (2) are not a dependent or a full-time student, and (3) meet the income requirements. *Rollovers and transfers from Section 529 plans*. Families may now roll over funds from a Section 529 plan to another family member's ABLE account. The ABLE account must be for the same beneficiary as the Section 529 account or for a member of the same family as the Section 529 account holder. Rollovers from a Section 529 plan count toward the annual contribution limit. *Example*: the $15,000 annual contribution limit would be met by parents contributing $10,000 to their child's ABLE account and rolling over $5,000 from a 529 plan to the same ABLE account. **IRS Tax Tip 2018-136**.

CHARITABLE DEDUCTION. The IRS has issued proposed regulations governing the deductibility of contributions to a state government in exchange for a state tax credit as part of a plan to circumventing the limitation of the state and local tax credit imposed under TCJA 2017. The proposed regulations generally provide that if a taxpayer makes a payment or transfers property to or for the use of an entity listed in I.R.C. § 170(c), and the taxpayer receives or expects to receive a state or local tax credit in return for such payment, the tax credit constitutes a return benefit, or *quid pro quo*, to the taxpayer and reduces the charitable contribution deduction. In addition to credits, the proposed regulations also address state or local tax deductions claimed in connection with a taxpayer's payment or transfer. The proposed regulations allow taxpayers to disregard dollar-for-dollar state or local tax deductions. However, the proposed regulations state that, if the taxpayer receives or expects to receive a state or local tax deduction that exceeds the amount of the taxpayer's payment or the fair market value of the property transferred, the taxpayer's charitable contribution deduction must be reduced. The proposed regulations include a *de minimis* exception under which a taxpayer may disregard a state or local tax credit if such credit does not exceed 15 percent of the taxpayer's payment or 15 percent of the fair market value of the property transferred by the taxpayer. The *de minimis* exception reflects that the combined value of a state and local tax deduction, that is the combined top marginal state and local tax rate, currently does not exceed 15 percent. Accordingly, under the proposed regulations, a state or local tax credit that does not exceed 15 percent does not reduce the taxpayer's federal deduction for a charitable contribution. Trusts and decedents' estates may claim an income tax deduction for charitable contributions under I.R.C. § 642(c). For the same reasons provided above, the proposed regulations amend Treas. Reg. § 1.642(c)-3 to provide that the proposed rules under Treas. Reg. § 1.170A-1(h)(3) apply to payments made by a trust or decedent's estate in determining its charitable contribution deduction under I.R.C. § 642(c). **83 Fed. Reg. 43563 (Aug. 27, 2018)**.

DEPENDENTS. Prior to amendment by the TCJA 2017, I.R.C. § 151 provided an exemption for dependents at $4,150. The TCJA 2017 repealed that exemption for 2018 through 2025. The TCJA 2017 added a $500 credit for (1) qualifying children for whom a child tax credit is not allowed and (2) qualifying relatives as defined in I.R.C. § 152(d). Neither provision changed the definition of dependent. I.R.C. § 2(b)(1)(A) defines a head of household to include an individual who is not married at the close of the taxable year, who is not a surviving spouse, and who maintains as his or her home a household for a qualifying individual for the required period of time. A qualifying individual under I.R.C. § 2(b)(1)(A)(ii) includes a qualifying relative if the taxpayer is entitled to a deduction under I.R.C. § 151 for the person for the taxable year. Under I.R.C. §151(c), a deduction is allowed for individuals who are dependents as defined in I.R.C. § 152, including qualifying relatives described in I.R.C. § 152(d). The IRS has announced that it intends to issue proposed regulations providing that the reduction of the exemption amount to zero under I.R.C. § 151(d)(5)(A) for taxable years 2018-2025 will not be taken into account in determining whether a person is a qualifying relative under I.R.C. § 152(d)(1)(B). In defining a qualifying relative for purposes of various provisions of the Code that refer to the definition of dependent in I.R.C. § 152, including, without limitation, for purposes of the new credit under I.R.C. § 24(h)(4) and head of household filing status under I.R.C. § 2(b), the I.R.C. § 151(d) exemption amount referenced in I.R.C. § 152(d)(1)(B) will be treated as $4,150 (adjusted for inflation), for taxable years in which the I.R.C. § 151(d)(5)(A) exemption amount is zero. **Notice 2018-70, I.R.B. 2018-38**.

DISASTER LOSSES. On July 19, 2018, the President determined that certain areas in Massachusetts were eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe winter storm which began on March 13, 2018. **FEMA-4379-DR.** On July 30, 2018, the President determined that certain areas in Vermont were eligible for assistance from the government under the Act as a result of a severe storm and flooding which began on May 4, 2018. **FEMA-4380-DR.** On August 2, 2018, the President determined that certain areas in Michigan were eligible for assistance from the government under the Act as a result of a severe storm and flooding which began on June 16, 2018. **FEMA-4381-DR.** On August 4, 2018, the President determined that certain areas in California were eligible for assistance from the government under the Act as a result of wildfires which began on July 23, 2018. **FEMA-4382-DR.** Accordingly, taxpayers in these areas may deduct the losses on their 2018 or 2017 federal income tax returns. See I.R.C. § 165(i).

DISCHARGE OF INDEBTEDNESS. In 1974, the taxpayer purchased a residence and used it as a primary residence until 2009 when the taxpayer purchased a new residence. In 2010, two loans owed by the taxpayer were discharged, one relating to the first residence. The creditors for both loans issued Forms 1099-C, *Cancellation of Debt*, for 2010 reporting the discharged loans. The taxpayer did not file a return because the taxpayer had no wage income in 2010. The IRS created a substitute for return and assessed taxes on the cancellation of indebtedness income listed on the Forms 1099-C. The taxpayer did not produce any evidence to substantiate either the taxpayer's insolvency or the nature of the indebtedness related to the first residence. Under I.R.C. §108(a)(1)(B), an eligible taxpayer may exclude income that arises from a discharge of indebtedness occurring when the taxpayer is insolvent. A taxpayer is considered insolvent to the extent liabilities exceed the value of assets immediately before the discharge. I.R.C. § 108(a)(1)(E) provides an eligible taxpayer an exclusion from gross income for any income that arises prior to January 1, 2018 from the cancellation of qualified principal residence indebtedness. The Code defines qualified principal residence indebtedness as, generally, any debts incurred by a taxpayer in order to facilitate the acquisition, construction, or substantial improvement of a taxpayer's principal residence, which are then secured by that residence. The court held that the taxpayer had to include all of the Form 1099-C income as taxable income because the taxpayer failed to provide any evidence to substantiate the taxpayer's insolvency in 2010 and that the discharged indebtedness was qualified principal residence indebtedness. **Smethers v. Comm'r, T.C. Memo. 2018-140**.

PARTNERSHIPS

ENTITY CLASSIFICATION. A corporation formed a limited partnership, interests in which were sold in an initial public offering or conveyed to an existing publicly traded partnership. The corporation represented that the limited partnership was engaged in the production and marketing of three nitrogen-based fertilizers: ammonia, urea (both granulated and in solution), and urea ammonium nitrate. The corporation also represented that these products were all direct application fertilizers and that the partnership sells these products in bulk to customers operating in agricultural and non-agricultural industries. I.R.C. § 7704(a) provides that, except as provided in Section 7704(c), a publicly traded partnership will be treated as a corporation. I.R.C. § 7704(b) provides that the term "publicly traded partnership" means any partnership if (1) interests in that partnership are traded on an established securities market, or (2) interests in that partnership are readily tradable on a secondary market (or the substantial equivalent thereof). I.R.C. § 7704(c)(1) provides that Section 7704(a) does not apply to a publicly traded partnership for any taxable year if such partnership meets the gross income requirements of I.R.C. § 7704(c)(2) for the taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence. I.R.C. § 7704(c)(2) provides, in relevant part, that a partnership meets the gross income requirements of Section 7704(c)(2) for any taxable year if 90 percent or more of the gross income of the partnership for the taxable year consists of qualifying income. I.R.C. § 7704(d)(1)(E) provides that the term "qualifying income" includes income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber). The IRS ruled that income derived by the partnership from the production and marketing of ammonia, urea (both granulated and in solution), and urea ammonium nitrate to both agricultural and non-agricultural customers is qualifying income for purposes of I.R.C. § 7704(d)(1)(E). **Ltr. Rul. 201833008, May 22, 2018**.

S CORPORATIONS.

ACCOUNTING METHOD. As amended by TCJA 2017, I.R.C. § 481(d) provides rules relating to adjustments required by I.R.C. § 481(a)(2) that are attributable to certain revocations of S corporation elections under I.R.C. § 1362(a). The IRS has issued a revenue procedure amending *Rev. Proc. 2018-31, I.R.B. 2018-22, 637* (list of automatic accounting changes) to reflect the statutory amendments. The revenue procedure requires an eligible terminated S corporation, as defined in I.R.C. § 481(d)(2), that is required to change from the overall cash receipts and disbursements method of accounting to an overall accrual method of accounting as a result of a revocation of its S corporation election, and that makes this change in method of accounting for the C corporation's first taxable year after such revocation, to take into account the resulting positive or negative adjustment required by I.R.C. § 481(a)(2) ratably during the six-year period beginning with the year of change. The revenue procedure also provides that an eligible terminated S corporation that is permitted to continue to use the cash method after the revocation of its S corporation election and that changes to an overall accrual method for the C corporation's first taxable year after such revocation, may take into account the resulting positive or negative adjustment required by I.R.C. § 481(a)(2) ratably during the six- year period beginning with the year of change. **Rev. Proc. 2018-44, I.R.B. 2018-37**.

SAFE HARBOR INTEREST RATES
September 2018

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	2.51	2.49	2.48	2.48
110 percent AFR	2.76	2.74	2.73	2.72
120 percent AFR	3.01	2.99	2.98	2.97
		Mid-term		
AFR	2.86	2.84	2.83	2.82
110 percent AFR	3.14	3.12	3.11	3.10
120 percent AFR	3.44	3.41	3.40	3.39
		Long-term		
AFR	3.02	3.00	2.99	2.98
110 percent AFR	3.33	3.30	3.29	3.28
120 percent AFR	3.63	3.60	3.58	3.57

Rev. Rul. 2018-21, I.R.B. 2018-36.

TAX DATA SECURITY. The IRS has published information for tax professionals to use strong passwords on their accounts to help protect their clients' data from cyberthieves. Cybersecurity experts' recommendations on what constitutes a strong password has recently changed. Tax professionals should: (1) Opt for a multi-factor authentication process when available. Many e-mail providers now offer customers two-factor authentication protections to access e-mail accounts. (2) Use word phrases that are easy to remember rather than random letters, characters and numbers that are harder to remember. By using a phrase, preparers do not have to write down the password, which exposes it to more risk. (3) Use strong, unique passwords for all accounts, whether it is to access a device, tax software products, cloud storage, wireless networks or encryption technology. (4) Use a minimum of eight characters; longer is better. (5) Use a combination of letters, numbers and symbols; something like "SomethingYouCanRemember@30!" (6)Avoid personal information or common passwords. (7) Change default and temporary passwords that come with accounts or devices. (8) Not reuse passwords. For example, changing "Bgood!17" to "Bgood!18 "is not good enough. (9) Do not use e-mail addresses as usernames. (10) Store any password list in a secure location, such as a safe or locked file cabinet. (11) Do not disclose passwords to anyone for any reason. (12) Use a password manager program to track passwords, but protect it with a strong password. **IRS Tax Tip 2018-129**.

The IRS has published information to help tax professionals navigate tax-related rules and regulations related to protecting data. The Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley (GLB) Act, gives the Federal Trade Commission authority to set information safeguard regulations for various entities, including professional tax return preparers. According to the FTC Safeguards Rule, tax return preparers must create and enact security plans to protect client data. Failure to do so may result in an FTC investigation. The IRS also may treat a violation of the FTC Safeguards Rule as a violation of *Rev. Proc. 2007-40, I.R.B. 2007-26, 1488*, which sets the rules for tax professionals participating as an Authorized IRS e-File Provider. The FTC-required information security plan must be appropriate to the company's size and complexity, the nature and scope of its activities and the sensitivity of the customer information it handles. According to the FTC, each company, as part of its plan, must:

• designate one or more employees to coordinate its information security program;

• identify and assess the risks to customer information in each relevant area of the company's operation and evaluate the effectiveness of the current safeguards for controlling these risks;

• design and implement a safeguards program and regularly monitor and test it;

• select service providers that can maintain appropriate safeguards, make sure the contract requires them to maintain safeguards and oversee their handling of customer information; and

• evaluate and adjust the program in light of relevant circumstances, including changes in the firm's business or operations, or the results of security testing and monitoring.

The IRS has revised Publication 4557, *Safeguarding Taxpayer Data*, to detail critical security measures that all tax professionals should enact. The publication also includes information on how to comply with the FTC Safeguards Rule, including a checklist of items for a prospective data security plan. For more information, see IRS Publication 3112 - *IRS e-File Application and Participation*, I.R.C. § 7216 (imposes criminal penalties on any person engaged in the business of preparing or providing services in connection with the preparation of tax returns who knowingly or recklessly makes unauthorized disclosures or uses information furnished to them in connection with the preparation of an income tax return); I.R.C. § 6713 (imposes monetary penalties on the unauthorized disclosures or uses of taxpayer information by any person engaged in the business of preparing or providing services in connection with the preparation of tax returns); and Publication 5293, *Data Security Resource Guide for Tax Professionals* (provides a compilation of data theft information available on IRS.gov). To improve data security awareness by all tax professionals, the IRS will host a webinar on Sept. 26, 2018. **IR-2018-175**.

THEFT. The taxpayer was a tax return preparer who had many clients referred from a gold mining investment company. The company was charged with operating a ponzi investment scheme and the taxpayer sought to recover invested money on behalf of the taxpayer's company and the clients through forcing an involuntary bankruptcy on the investment company. However, the bankruptcy case did not produce any recovery for the taxpayer or clients. The taxpayer claimed a theft loss from investments and lost compensation resulting from the investment company's fraudulent operations. Under I.R.C. § 165, taxpayers are entitled to deduct losses resulting from theft. A taxpayer must establish three elements to substantiate a theft loss deduction: the occurrence of a theft, the quantifiable loss, and the date that the taxpayer discovered the theft. For Federal tax purposes, theft is given a general and broad connotation and includes any criminal appropriation of another's property, including theft by swindle, false pretenses and other forms of guile. The IRS agreed that a loss from a Ponzi scheme was a deductible theft loss. However, the taxpayer must prove ownership of the property stolen. In this case, the court found that the taxpayer failed to provide evidence that the taxpayer or the taxpayer's company had made any investment with the investment company or that the investment company had failed to pay any owed compensation for services provided by the taxpayer and included by the taxpayer in taxable income. Thus, the court held that the taxpayer was not eligible for a theft deduction for lack of substantiation. **Evensen v. Comm'r, T.C. Memo. 2018-141**.

SECURED TRANSACTIONS

LIEN PRIORITY. The debtor purchased a line of harvesting and hay equipment, 2,000 round alfalfa bales, growing crops on leased ground, and "feedlot contracts" from a trust. The debtor paid a portion in cash, with the rest covered by a promissory note. The trust filed a financing statement in January 2011 covering all the collateral. In 2013, the debtor borrowed from a bank and granted the bank a security interest in the same property. The bank filed its financing statement in January 2014. The debtor purchased insurance for the hay equipment, including a grinder, and designated the debtor, the trust and the bank as loss-payees. The trust failed to file a continuation statement for the financing statement and its security interest lapsed in January 2016, giving the bank's security interest priority. A piece of the haying equipment was destroyed in a fire in 2016 and the insurance proceeds were sought by the trust and bank as proceeds of their collateral. The debtor filed for Chapter 12 in October 2017 and the bank sought to enforce its priority lien in the collateral, including the insurance proceeds. The trust alleged that the debtor had violated the purchase agreement by failing to obtain insurance on most of the collateral and the trust had repossessed the collateral and leased it to the debtor. The court found that the purchase contract did require the debtor to obtain insurance but that the provision pertained only to the period prior to completion of the sale, after which the provision expired. In the alternative, the court found that the insurance provision was only a reservation of a security interest which melded into the security interest granted by the contract. The court also found that the trust failed to provide sufficient evidence of any lease agreement. Thus, the court held that the bank's perfected security interest retained its priority in all of the collateral and the insurance proceeds after the trust's financing statement expired. ***In re* Novak, 2018 Bankr. LEXIS 2586 (Bankr. D. Kan. 2018)**.

STATUTORY CROP LIEN. The plaintiff contracted with the debtors to perform agricultural services on the debtors' crops. The plaintiff's invoices list charges for a variety of different goods and services including: (1) various pesticides, fungicides, and herbicides, charged by weight (gallon, ton, quart); (2) "custom spraying," "truck 500# under fert," and "streaming liquid nitrogen under," charged by the acre; (3) hybrid charges which appear to reflect charges for both product and application (optimize inoculation applied); and (4) miscellaneous charges for items such as proboxes, racing fuel, pallets, and soybeans (charged by the bag). After the debtors failed to pay the invoices, the plaintiff filed crop lien statements under Ky. Rev. Stat. § 376.135 for the full amount of the unpaid invoices. The defendants also had liens against the crops but agreed that the plaintiff's lien had priority under the statute; however, the defendant argued that the amount of the lien was limited to the value of the plaintiff's services and could not include the cost of any products or materials supplied. Ky. Rev. Stat. § 376.135(1) provides that "Any custom operator who performs a service on a farm, including but not limited to filling of silos, hay baling and crop spraying, by contract with, or by the written consent of the owner or manager of the farm, shall have a lien upon the farm crop involved to secure the cost of the service furnished." At issue was the meaning of the phrase "the cost of the service furnished." The court noted that other lien statutes identified "services and goods" or "labor and materials" included in the liens involved; therefore, this indicated that the legislature was aware of the difference and intentionally omitted goods and materials from coverage of the Ky. Rev. Stat. § 376.135 lien. Thus, the court held that the plaintiff's statutory lien covered only the value of the services. The court also noted that several items on the invoices were not clear as to whether the costs involved services and goods and remanded the case to the trial court to determine the final value of the services provided. **Reliance AG, LLC v. S. States Simpson Coop., Inc., 2018 Ky. App. Unpub. LEXIS 280 (Ky. Ct. App. 2018)**.

WORKERS' COMPENSATION

EMPLOYEE. The plaintiff's decedent had been a ranch hand on the defendants' cattle ranch for over six years. The decedent was killed by a bull while the decedent was herding cattle alone. The defendants did not obtain workers' compensation insurance and the plaintiff brought suit to recover damages for wrongful death, specifically for negligence in failing to provide proper equipment and proper warnings. The defendant argued that the Texas Farm Animal Activities Act, (FAAA) *Tex. Civ. Prac. & Rem. Code Ann. §§ 87.001-.005*, prohibited liability for the defendants in this case. The FAAA was an expanded version of the Texas Equine Liability Act and covered most animal activities instead of only horse-related activities. The plaintiff argued that the FAAA did not apply because the FAAA did not apply to employees. The court held that the decedent was an employee of the defendants and not an independent contractor because, in order to be an independent contractor under Texas law, the decedent had to have been an employee of someone else who contracted with the defendants for the work. Under the FAAA a "participant" is defined to mean "with respect to a farm animal activity, a person who engages in the activity, without regard to whether the person is an amateur or professional or whether the person pays for the activity or participates in the activity for free." The court held that this definition of participant excluded employees and was limited to amateurs and professionals; therefore, the FAAA did not apply to this accident and the defendants were open to a suit for negligence. The Texas Workers' Compensation Act (TWCA), *Tex. Labor Code Ann. §§ 406.001-406.165*, specifically applies to allow "an action to recover damages for personal injuries or death sustained by a farm or ranch employee" who is employed by a person with a gross annual payroll of at least $25,000 or "who employs three or more farm or ranch employees other than migrant or seasonal workers." The court found that the defendants had three ranch hands employed on their ranch; therefore, the court held that the TWCA covered this accident. **Rodriquez v. Waak, 2018 Tex. App. LEXIS 6596 (Tex. Ct. App. 2018)**.

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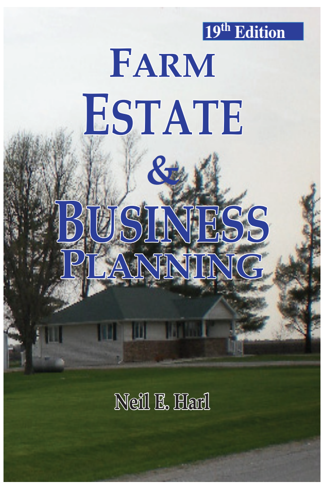

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