SPECIAL FOCUS ON COVID-19 EDITION

THE LEGAL RAMMIFICATIONS OF THE CORONAVIRUS ON AGRICULTURAL BANKS

Fear and panic over the Coronavirus seem to be increasing at an exponential rate. Nervous clients of mine have already asked me how the Coronavirus is likely to affect their agricultural bank. This article will provide a bullet point list of some of the biggest affects the Coronavirus is likely to have on ag banks from a legal perspective:

- Collection efforts may be delayed due to Court limitations/closures. In recent days, both the state and federal courts in Minnesota have instituted restrictions such as delaying jury trials, cancelling/delaying hearings of all types, and indicating that all "non-essential" cases and hearings will be delayed. These delays have also emboldened adverse parties to start playing games in discovery, and refusing to provide required information, knowing that there is no good mechanism to punish misconduct. Bottom line here, while the courts are still (at this point) open, everything is taking longer.
- Renewal decisions may need to be reevaluated in light of a dropping, and more unstable global commodities market. Corn and soybean prices have already taken a beating over the last few weeks, and that could continue into the foreseeable future as panic escalates. If it does, cash flow projections may need to be rerun using lower estimated prices. Given the largely poor yields from 2019, these price reductions could be the difference between renewal and non-renewal for marginal credits.
- Land prices may start showing greater instability. Plausibly, land values could increase given that tangible, domestic investments tend to be viewed as safer on a relative basis in times of crisis. As foreign investment seems relatively riskier, there could be a drive to put money in real estate – including ag land. This could help stabilize declining land values and keep ag portfolios in alignment from a regulatory perspective. Conversely, land values could decrease if falling prices and anxiety over global markets cause investors to liquidate ag holdings. Such action could greatly accelerate the looming crisis.
- Ag equipment values may start to suffer. As global trade is disrupted and the economy as a

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whole weakens, the prices of many pieces of equipment, including farm equipment, are likely to be adversely affected. This reality may warrant an adjustment to the balance sheet and could result in marginal credits becoming viewed as undercollateralized.

- Input costs may increase as foreign supply chains are disrupted. Increased production costs may warrant an adjustment to cash flow projections, which could result in marginal credits becoming unviable and warranting non-renewal.
- The likelihood of desperate borrower actions such as fraud and conversion of collateral may increase as virus related panic increases. If people's lives and livelihoods appear threatened borrowers may be driven to take drastic action. Increased bank vigilance is advisable.

-Matthew J. Bialick, Esq

Outside Insights

A Forum for Thoughts and Articles from Sources Outside of the M|J|B Law Firm

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Market Moves in Response to COVID-19 Reach into Future and Past to Threaten Working Capital

An Article by Tom Walker of Praexis Business Labs

Let's be clear: we don't know the end of the story. Whether this dramatic plunge in market price for a broad slate of traded commodities and assets is a temporary paper artifact, or translates to real hits to cash flows remains to be seen. It depends on timing. It depends on how we, and our clients, react.

The facts are not all in, even at this date, on the 2019 crop year for Minnesota farmers. Perfect financial judgment is available only in hindsight and given the ongoing disputes between economists and historians of repute, very rarely even then.

So: we have to judge for ourselves what the upper and lower bounds that these nausea-inducing market moves seem to be. The upper bounds are not our problem, but rather, the survival prospect of our clients at some lower bound. Coincidentally, our President said in *The Art of the Deal*: "I always go into a deal anticipating the worst. If you plan for the worst—if you can live with the worst—the good will always take care of itself."

The rest of us are forced to contend with what seems to be a lower bound even now, if only because the thought of prices slipping lower and staying there is too wrenching to consider. The abyss does look back at you.

What data we had gathered on 2019, including crop prices as of the end of harvest, seem to indicate that something like accounting breakeven was an average result for Minnesota crop farms.

These are local price movements from the end of 2019 to this past week.

	Old Crop (local cash, western MN)			New Crop (futures less $.50 basis)		
	1/1/2020		3/20/2020	1/1/2020		3/20/2020
Corn	$3.54	-19%	$2.88	$3.50	-17%	$2.90
Soybeans	$8.71	-6%	$8.16	$8.70	-7%	$8.10

Relative to the movement in crude oil prices, or equities, this is rather tame on its face. But if 2019 was, best case, the 7th year in succession of accounting breakeven and declining working capital, these market moves are potentially painful.

In our average Minnesota crop farm, the movement on 2019 crop price, assuming inventory is stored unpriced—as the vast majority of it is—the movement above would knock operative profit to the tune of $70,000 and reduce working capital accordingly.

Sequentially, the market moves on 2020 crops could, if the prices persist, erase $130,000 in operating profit and working capital.

The lower bound *could* mean the loss of the $190,000 in working capital that the average Minnesota farm reported in the beginning of 2019.

We all have in mind the actions that mitigate against this lower bound. Some portion of 2019 production will have been sold, or at least hedged, some time ago. As to 2020 production, time is still on our side.

Nonetheless, any hope for a price-driven "fix" for Minnesota farms is on the wane, pointing us toward a cost-driven adjustment (land, inputs) that returns our farms to historical profitability.

-Thomas Walker, Jr., Agricultural Economist with Praexis Business Labs, 651-999-9970

THE ENLIGHTENING ROUND

Q: I have heard that the federal government is considering imposing a one-year ban on residential foreclosures – would this also apply to farms that contain a homestead?

A: At this point, no, but there is no guarantee that the ban will not be extended to agricultural homesteads at some point in the future. Currently, the existing proposals talk about purely residential properties that are subject to Fannie Mae and Freddie Mac. These regulations do not apply to agricultural property that is used primarily in a farming operation. However, if the primary character of the property is residential, but agricultural structures just happen to be present on the property, it is possible that the proposed one-year ban may be found to apply.

Q: What recourse exists for farmers and ag banks if an agricultural good or service provider who was prepaid by the borrower is either unable to perform based on Coronavirus related supply chain disruptions, or goes out of business entirely?

A: If the supplier is outside of bankruptcy or receivership, the borrower could bring a lawsuit against the provider to get the money back – provided the applicable contract does not contain a force majeure provision that eliminates recourse. However, even without a force majeure provision, all the borrower can get is a judgment, which very well may be totally uncollectable if the provider is dealing with numerous, similar lawsuits or is experiencing intense financial disruptions.

A second, more troubling problem is for the provider to fail entirely after the prepayment was made, but before the good or service is delivered. This would leave the farmer as an unsecured claimant in a bankruptcy or receivership. In that situation, it does not matter if there was a contract and if the farmer would otherwise have had recourse, they would simply become a claimant who might receive ten cents on the dollar for what they are owed or less.

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