

# PROVING LIABILITY FOR FEED AND WATER TOXIC TO LIVESTOCK

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## FEED TOXIC TO LIVESTOCK

- Feed
  - Excessive/toxic levels of feed ingredients or additives mistakenly mixed in feed
  - Proper feed mix but mistakenly fed to species for which feed is toxic

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## WATER TOXIC TO LIVESTOCK

- Water
  - Water from well drilled into aquifer naturally containing excessive levels of substances toxic/injurious to livestock
  - Water from well contaminated with chemical substances toxic/injurious to livestock

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## PRE-LITIGATION

- Discovery of problem
- Investigation into cause
- Remedial action
- Putting responsible party or parties on notice of damages
- Parties affected other than livestock owner
- Responsible party - insurance

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## PRE-LITIGATION

- Demand for compensation
- Settlement negotiations
- Settlement agreement
  - Release
  - Responsible party or insurance carrier for responsible party may require indemnification by injured party for any claims by other potential injured parties

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## LITIGATION - PETITION

- Plaintiff
  - Livestock owner
  - Other affected parties
    - Livestock contract feeder
- Defendants
  - Feed dealer
  - Feed manufacturer
  - Well driller/installer
  - Livestock producer consultants

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## LITIGATION - CAUSES OF ACTION

- Breach of Contract
- Negligence
- Breach of Implied Warranty of Fitness
- Breach of Duty Voluntarily Assumed
- Negligent Misrepresentation

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## LITIGATION - CAUSES OF ACTION

- Negligence per se
  - Violation of Commercial Feed Law
    - Incorrect labeling and adulterated feed
    - Failure to have correct license
- Products liability – Strict Liability

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## LITIGATION - AFFIRMATIVE DEFENSES

- Comparative Fault
- Actions of Others/Natural Causes/Sole Proximate Cause/Superseding or Intervening Causes
- Failure to Mitigate Damages
- Economic Loss Doctrine
- Acceptance of Goods/Waiver

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## LITIGATION – PLEADINGS

- Petition
- Answer
- Bench or jury trial
- Defenses and Affirmative Defenses
- Counter claims
- Cross claims

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## LITIGATION - WITNESSES

- Fact witnesses
  - Livestock producer and employees
  - Defendants
  - Feed company reps (not Defendant's - subpoena)
  - Lenders – damages
  - Accountant - damages

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## LITIGATION - WITNESSES

- Expert witnesses
  - Liability
    - Treating veterinarian (also fact witness)
    - Diagnostic veterinarian(also fact witness)
    - Production consultant
  - Damages (actual and future)
    - Production consultant
    - Accountant
    - Economist/market analyst

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## LITIGATION

- Discovery
- Pre-trial motions
  - Summary judgment
  - Motions in limine
- Trial
- Post-trial motions
- Appeal

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## REMEDIES – COMPENSATORY DAMAGES

- Compensatory, Actual
  - Livestock death loss
  - Surviving livestock
    - Reduction in FMV (reduced sales price due to potential future effects)
    - Reduction in market weight (lost gain)

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## REMEDIES – COMPENSATORY DAMAGES

- Remedies, Money damages
  - Compensatory, Actual
    - Expenses
      - Remedial feed, Lab analysis, Vet bills, Labor, Mileage, Pre-litigation legal & professional fees
    - Breeding stock replacement cost

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## REMEDIES - FUTURE DAMAGES

- Business interruption
- *Ballard v. Amana Society, Inc.* 526 NW2d 558 (Iowa 1995)
  - Swine sow herd
  - Toxins in corn caused death and reduction or elimination of sow reproductive abilities
  - Future damages due to historical basis for expected future profits

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## REMEDIES - FUTURE DAMAGES

- *Swanson v. R&B Feeds, LLC*, (Iowa Ct. App. 2015)
  - Cow-calf herd
  - Toxic levels of monensin (ionophore toxicity) in creep feed
  - Actual damages awarded but no future damages due to no historical basis for expected future profits

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## REMEDIES

- Punitive
  - Contingent on compensatory damages for particular causes of action
- Attorney fees – contingent on types of damages awarded
- Costs
- Interest

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