

TO: Committee on Judiciary

FROM: Francis E. Bemis, Esq., Attorney for Ireland Farms, Inc.

FEB

**RE: Testimony of Francis E. Bemis in Support of L.D. 2202, S.P. 939 –
Authorization to Allow Ireland Farms, Inc., to Sue the State of Maine**

DATE: February 20, 2024

Economic Impact

The Maine potato industry has an economic output of \$1.3 billion each year, providing over 6,500 jobs and generating \$237 million in labor income. The potato industry is a vital part of the entire Maine economy but is especially important to Aroostook County.

Basics of Growing Potatoes

There are three types of potato growers: (1) fresh pack or tablestock growers for potatoes sold in stores and restaurants, (2) processing growers for potatoes processed into fries, chips, etc. (think McCain and Frito-Lay), and seed growers for potatoes that will be stored, cut and planted for next year's potato crop. Each type of potato grower has different protocols for raising their potatoes, different standards to meet, and different markets for the sale of their potatoes. Seed potatoes have more stringent standards that cost more to grow but bring a higher price for the end product. For instance, processing potatoes might sell this year for 12.00 per hundredweight while seed potatoes might sell this year for \$21.00 per hundredweight. (Hundredweight is 100 pounds). Ireland Farms is a seed potato grower with 130 acres in Presque Isle, Maine that supports another 3,000 acres of potatoes.

Seed potatoes are a state regulated product and are certified so that growers can be assured that the seed they rely on to grow next year's crop is not starting out diseased. The State of Maine has rules for the importation and growing of seed potatoes.

History of Dickeya

In 2015, an outbreak of Dickeya struck the potato industry. (Dickeya is a Blackleg bacterium, and a cousin of Pectobacterium.) It was first identified in the United States in Aroostook County. Dickeya is aggressive and causes rapid soft rot in potatoes and lowers the yield and marketability of potato crops. Maine was given an unfair black eye for the Dickeya outbreak and local farmers have been sensitive to protecting their crops from this bacterium and protecting the industry from a reputation for a Dickeya infestation. The source of Dickeya is from infected potato seed or from infected irrigation water. (Note, Ireland Farms does not irrigate its crop.) Maine has a testing regimen for protecting the industry from Dickeya under its Blackleg potato disease protocols.

July 20, both Mr. Ireland and Joseph Vigue, a spray salesman, noticed single stems dying, with brown stems about 2 to 3 inches above the ground along with telltale stem decay. Mr. Ireland sent four samples of symptomatic whole potato plants to Dr. Jay Hao at the University of Maine. Dr. Hao reported back to Larry that all four samples had Blackleg: one with Pectobacterium and three with Dickeya. Mr. Ireland informed Frank Richards of the presence of the Blackleg pathogen. On or about July 31, Mr. Richards selected five samples from the Ireland potato fields and submitted them for testing at the Potato Seed Testing Lab. The lab results dated August 1, 2023, showed positive results for Dickeya in four out of the five samples submitted. **A copy of the lab results were not shared with Ireland Farms until November 2023 despite repeated requests. (Ireland Farms had to hire an attorney to get a copy of the report.)**

Mr. Richards did not conduct further sampling to determine whether the seed crop exceeded tolerances for Blackleg. Mr. Richards performed a second field inspection on August 1, 2023, and he did not reject the Ireland Farms 2023 seed crop but wrote his report passing the seed crop. Mr. Ireland questioned this report but was told by Mr. Richards that if the weather became dryer, then it would not be a problem. There is no option in the rules for the inspector to wait out the weather. If the lot was over the tolerance for Blackleg, it should have been disqualified. Unfortunately, the weather did not get dryer but got wetter toward the end of the summer and through harvest.

Once harvest began, Mr. Ireland could smell and see the effects of the Blackleg. There was the telltale smell of rotten potatoes and numerous potatoes lacked any physical integrity and were melting during the harvest process. Mr. Ireland called Mr. Richards to review the potatoes in the field and in storage. On September 26, 2023, two inspectors, Mr. Richards and Christie Bradstreet, reviewed the potatoes and said that it looked like 10 to 12 percent of the crop was affected but there was nothing that could be done about it. That same day, the University of Maine Cooperative Extension performed its field sampling of unharvested potatoes. The report shows the presence of Blackleg/Soft Rot of either the Dickeya or Pectobacterium type in every sample location. Only rotten potatoes were sampled and each rotten potato was infected with the Blackleg pathogen. The proportion of infection of many test locations exceeded the 2% tolerance for Blackleg.

Late September of 2023 was a third opportunity for the Department to reject the Ireland Farms' seed potato crop. If the potatoes were rejected, Ireland Farms would have had options available to it that would have reduced its losses resulting from the Dickeya infestation.

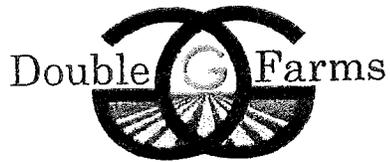
In January of 2024, Ireland Farms had 200 potatoes randomly picked from the seed potatoes in storage and tested at the Department of Agriculture laboratory in Presque Isle. There was a 16% infection rate for the sampled potatoes, well in excess of the 2% tolerance by rule.

The seed potatoes infected with Dickeya are not marketable as seed potatoes. The seed potatoes stored extremely poorly, with patches of rotten potatoes growing by the day. Ireland Farms was forced to sell the potatoes as processing potatoes at a much lower price than would otherwise be received.

If Ireland Farms had been rejected for Blackleg/ Dickeya in July or August, it could have arranged for their sale to McCain's as processing potatoes directly from the field, saving the farm from storage costs, fuel expenses, and cleaning and transportation costs.

The Department failed to inspect the seed potatoes upon importation. The Department failed to properly report the presence of Blackleg/Dickeya upon the first field inspection. The Department failed to properly report the presence of Blackleg/Dickeya on a second field inspection. The Department failed to provide Ireland Farms with the lab report dated August 1, 2023 for three months. Ireland Farms conservatively estimates its loss caused by the Department to be over \$500,000.

A failure to recover from the Department for its failure to perform the import inspection and negligence in field inspections could be existential for Ireland Farms. We respectfully encourage this committee to vote in favor of S.P. 939 and allow Ireland Farms, Inc., to sue the State of Maine for damages related to the 2023 potato crop.



FARMING FOR TOMORROW

PO Box 307
Blaine, ME 04734

February 13, 2024

To whom it may concern:

On October 1, 2023, I was notified by Larry Ireland of Ireland Farms Inc that his russet seed had a high level of black leg. Because of this finding, he informed me that he was not going to sell his russets as seed for the crop year 2024. I appreciate that he notified me early, because I would not want to plant this seed and possibly contaminate my crop. The early notification also enabled me to replace the seed from another source.

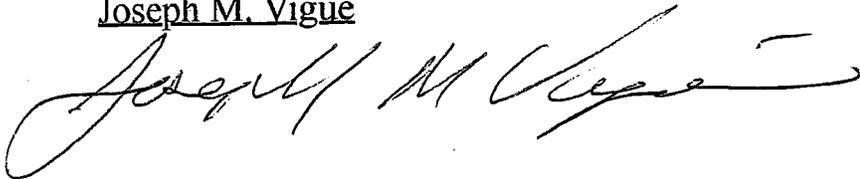
Gregg Garrison
President
Double G Farms Inc.
PH: 207-429-9106
Email: gregg@doubleg farmsinc.com

To whom it may concern,

My name is Joe Vigue and I have been a salesman with United Agri Products, Crop Production Services and Nutrien Ag Solutions since March 15, 2007. I hold a restricted pesticide dealer license and a certified crop advisor license in the State of Maine. Throughout this period of time I have worked with Larry Ireland on his seed potato farm helping him scout fields and make decisions on what products to apply to his crop. The 2023 growing season on Larry's farm was different in the respect that there was a high percentage of blackleg showing up.

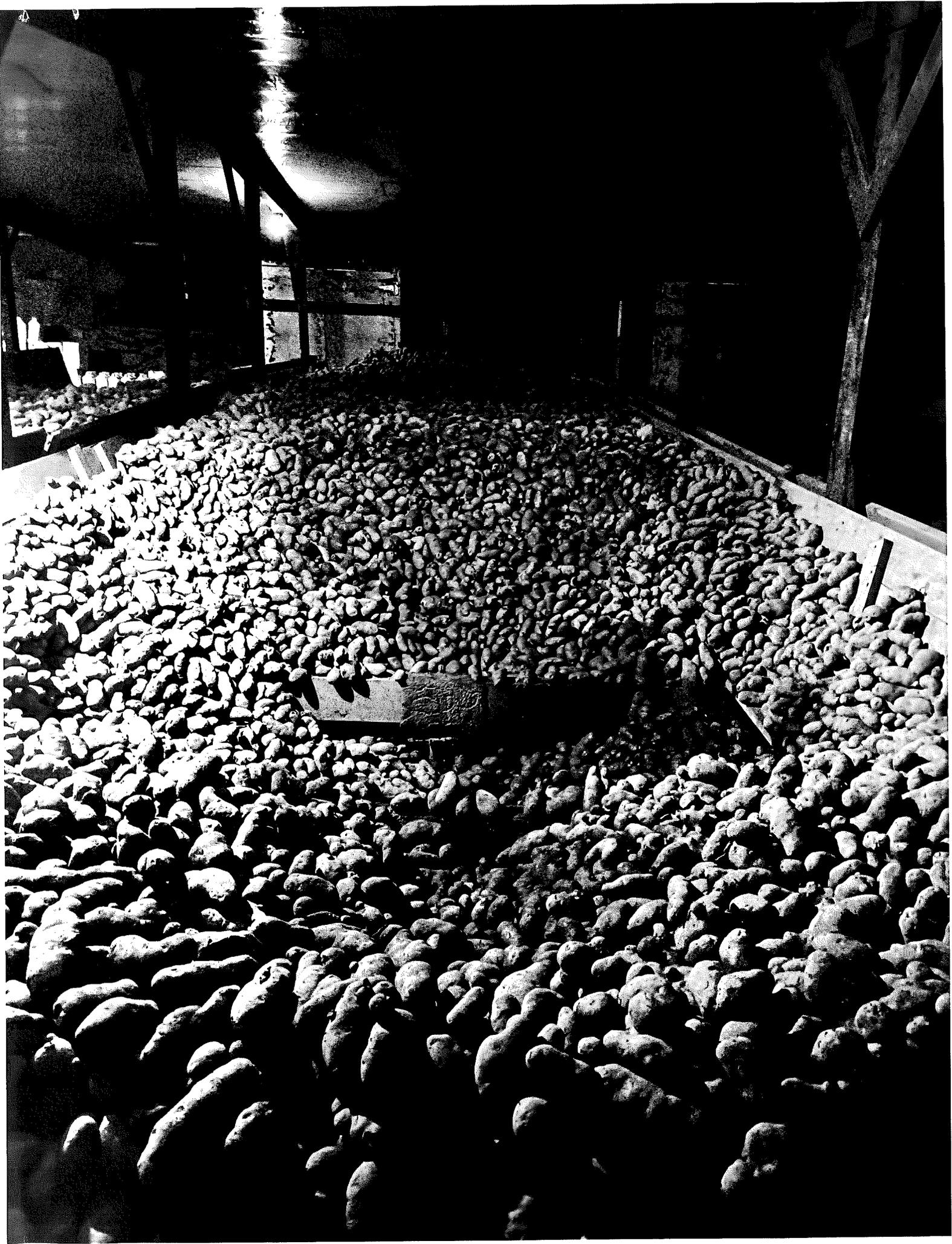
The blackleg problem at Larry's was very uncustomary for this farm because Larry had always flushed out his seed crop and brought new seed in each year. The population of blackleg was alarming to me to be seen in a seed growers field. I immediately contacted Larry and informed him of what I was seeing. The percentage of blackleg in the field was enough to prevent Larry from feeling comfortable selling it to all of his longtime seed customers in Aroostook county. If this seed crop had been sold and replanted over Aroostook county the losses would have compounded with all of his customers. It was in the best interest of the Maine potato industry for this crop to go into the processing plant to be made into french fries instead of being used as seed for certain.

Joseph M. Vigue

A handwritten signature in cursive script, appearing to read "Joseph M. Vigue". The signature is written in black ink and is positioned below the typed name.







2/20/2024

Porter Farms LLC
749 Pulcifer Road
Mapleton, ME 04757

To whom it may concern,

Planting a crop of potatoes takes a few key components for a successful crop. The correct fertilizer for fertility needs, a balanced amount of water during the entire growing season, sun, and high quality seed. In late September of 2023 Porter Farms was contacted by Larry Ireland a long time seed supplier for the farm. His seed crop had quality issues that he had never seen and made the decision to not sell as seed so he would not pass this along to his customers. Thanks to Mr. Irelands early decision Porter Farms was about to source seed from outside the State to replace the russet volume of seed. However, this came at a high cost with the price of seed with freight almost being doubled.

Porter farms helped Mr. Ireland move his entire crop to a local processor between November and February. The crop had very poor storability in this short time span. Many loads had to be washed and sorted with optical sorter due to high levels of breakdown.

Ireland Farms has set the standard in the highest quality seed in our industry for decades. Porter Farms raises the question as to how the 2023 crop could be such a problem for such a high-quality seed operation. The fact that Ireland Farms took a financial loss to protect its customers speaks to the integrity of Mr. Ireland and how he runs his seed operation.

Sincerely,



Matthew K. Porter
Porter Farms LLC