

FLAG



FARMERS' LEGAL
ACTION GROUP,
INCORPORATED

Top Ten Agricultural Law Cases of 2004

By David R. Moeller and Susan E. Stokes*

With all due respect to David Letterman and everyone who does year-end Top Ten lists, here are our top ten United States agricultural law cases for 2004. There are no set criteria for the list except importance for family farmers. Links to the decisions can be found at www.flaginc.org.

1. Captive Supplies in the Cattle Industry

Pickett v. Tyson Fresh Meats, 315 F. Supp. 1172 (U.S. District for the Middle District of Alabama April 23, 2004). A jury found that Tyson violated the federal Packers and Stockyards Act through its use of captive supply contracts in purchasing cattle and awarded cattle farmers and ranchers up to \$1.28 billion in damages. Then federal Judge Lyle Strom overturned that verdict, ruling that the evidence was insufficient to support it. The cattle farmers and ranchers appealed to the Eleventh Circuit Court of Appeals. Oral argument was heard on December 17, 2004, and the appeals court decision is expected in 2005.

2. Mad Cow Disease and USDA Rulemaking

R-CALF v. USDA, No. CV-04-51-BLG-RFC (U.S. District Court for the District of Montana April 26, 2004). On April 22, 2004, R-CALF filed a motion for a temporary restraining order to prohibit USDA from lifting a ban on importation from Canada of beef and other bovine tissue for human consumption. The ban was in place due to the discovery of bovine spongiform encephalopathy (BSE) or "Mad Cow Disease" in a Canadian-born cow in Alberta, Canada. USDA, without using the notice-and-comment rulemaking process, had issued a memorandum that would have allowed Canadian beef to once again be imported into the United States. Federal Judge Richard Cebull granted R-CALF's motion stopping USDA from reopening the U.S.-Canada border to imports of Canadian beef. In May 2004, the parties reached an agreement that allowed USDA to engage in rulemaking on reopening the border to Canadian beef and, at some point, most likely live cattle. USDA's new rule is to be published in the January 4, 2005, Federal Register.

3. First Amendment Challenges to Commodity Checkoff Programs

Cochran v. Veneman, 359 F.3d 263 (Third Circuit Court of Appeals February 24, 2004). 2004 saw a lot of action over the constitutionality of mandatory checkoff programs. In the *Cochran* case, two Pennsylvania dairy farmers successfully challenged the entire Dairy Checkoff Program. The district court held that the dairy checkoff was constitutional, finding that the dairy industry is as heavily regulated as the California tree fruit industry whose marketing order was held constitutional in a 1997 Supreme Court ruling. The Third Circuit reversed the district court. The court concluded that the tree fruit decision was not applicable because the dairy checkoff is a stand-alone program not connected with the federal milk marketing order system or other dairy industry regulatory schemes. The *Cochran* case is being held by the U.S. Supreme Court pending its decision in the Beef Checkoff challenge, *Veneman v. Livestock Marketing Association*, 335 F.3d 711 (Eighth Circuit Court of Appeals July 8, 2003). Also being held pending the Supreme Court's decision in *LMA* are challenges to the Pork Checkoff Program, *Veneman v. Campaign for Family Farms*, 348 F.3d 157 (Sixth Circuit Court of Appeals October 22, 2003) and the Louisiana alligator checkoff, *Pelts & Skins v. Landreneau*, 365 F. 3d 423 (Fifth Circuit Court of Appeals April 2, 2004).

4. Feedlot Regulation

Gacke v. Pork Xtra, L.L.C., 684 N.W.2d 168 (Iowa Supreme Court June 16, 2004) and *Worth County Friends of Agriculture v. Worth County*, 688 N.W.2d 257 (Iowa Supreme Court October 6, 2004). These two Iowa Supreme Court cases dealt with the conflict between large feedlots and government regulation. In *Gacke*, the Iowa Supreme Court struck down Iowa's right-to-farm law that barred nuisance lawsuits against feedlot owners. The court ruled the law violated Iowa's Constitution because the bar on nuisance claims could allow feedlot owners to take other landowners' private property without just compensation. In *Worth County*, the Iowa Supreme Court struck down a county ordinance that attempted to regulate large feedlots. The court ruled that because the Iowa Legislature had enacted a statute regulating feedlots at the state level, that statute preempted the county ordinance.

The issue of feedlot regulation will likely continue to be contested in courts and legislatures across the country.

5. Corporate Farming Restrictions

Smithfield Foods v. Miller, 367 F.3d 1061 (Eighth Circuit Court of Appeals May 21, 2004). In 2003, the Eighth Circuit struck down an anti-corporate farming amendment to the South Dakota Constitution—so-called “Amendment E”—because it was held to violate the dormant Commerce Clause of the U.S. Constitution. This put other states' corporate farming restrictions in question. In this case, Smithfield Foods challenged Iowa's law banning packer ownership of livestock. Smithfield challenged the law under the dormant Commerce Clause of the U.S. Constitution and won at the district court. After the district court's ruling, however, the Iowa Legislature amended Iowa's law. The Eighth Circuit

decided the district court should take another look at the law in light of the legislative changes and sent the case back to the district court. A trial is expected to begin in early 2005.

6. Discrimination in USDA Programs

Garcia v. Veneman, 224 F.R.D. 8 (U.S. District Court for the District of Columbia September 10, 2004) and *Love v. Veneman*, 224 F.R.D. 240 (U.S. District Court for the District of Columbia September 29, 2004). These two cases were brought against USDA for discrimination in USDA programs. *Garcia* was brought on behalf of a class of Hispanic farmers. The district court denied the Hispanic farmers' class certification motion because the court believed each individual farmer had different disputes with USDA, and therefore the farmers could not satisfy the commonality requirement for certification. In *Love*, a case brought on behalf of women farmers claiming discrimination on the basis of gender, the same district court denied the women farmers' motion for class certification on the same grounds. The D.C. Circuit Court of Appeals has granted a motion to review the class certification issue in the *Love* case.

7. Seed Saving Penalties

Monsanto Co. v. McFarling, 363 F.3d 1336 (Federal Circuit Court of Appeals April 9, 2004). The Federal Court of Appeals upheld a finding that a farmer violated his 1998 Technology Agreement with Monsanto by saving seed, but held that because the remedies provisions in the Agreement were "invalid and unenforceable under Missouri law," the \$780,000 judgment against the farmer must be vacated. The court reasoned that Monsanto's liquidated damages clause requiring farmers to pay 120 times the applicable technology fee for each bag of seed purchased was not a reasonable estimate of the financial harm Monsanto suffered when the farmer saved seed. Monsanto removed this portion of the remedies clause from its 2005 Technology Agreement.

8. Deceptive Herbicide Pricing and Marketing

Peterson v. BASF Corp., 675 N.W.2d 57 (Minnesota Supreme Court February 19, 2004). The Minnesota Supreme Court unanimously affirmed a jury verdict and entry of a \$52 million judgment for a nationwide class of farmers of minor crops who claimed that BASF's herbicide marketing and pricing schemes were deceptive. BASF filed a petition for the U.S. Supreme Court to review the case, which is apparently being held pending that Court's decision in *Bates v. Dow Agrosciences*, 332 F.3d 323 (Fifth Circuit Court of Appeals June 11, 2003). The *Bates* case concerns whether state law product liability claims against a herbicide manufacturer are preempted by the Federal Insecticide, Fungicide and Rodenticide Act and will be heard by the U.S. Supreme Court in January 2005. It is expected that the *Peterson* case will finally be decided by the end of 2005, nearly eight years after it was filed.

9. Binding Arbitration in Production Contracts

Tyson v. Archer, 147 S.W.3d 681 (Arkansas Supreme Court February 19, 2004). The Arkansas Supreme Court ruled that the binding arbitration clause in a Tyson hog production

contract was not enforceable because the contract did not impose mutual obligations on Tyson and the farmer. The issue arose when Tyson suddenly terminated contracts of more than 100 hog farmers. The hog farmers sued for compensatory and punitive damages alleging that they incurred substantial debt to build commercial hog farms that were rendered useless without a contract. Tyson had contended that the contract the hog farmers had signed required disputes to be resolved through binding arbitration instead of litigation. The court found that the contract was unenforceable because the farmers' only remedy was to use arbitration, but Tyson could pursue litigation if it chose to. State and federal legislation has been introduced to address problems with binding arbitration provisions in agricultural contracts.

10. Termination of Peanut Production Quotas

Members of the Peanut Quota Holders Association v. United States, 60 Fed. Cl. 524 (United States Court of Claims April 30, 2004). A group of peanut farmers who held peanut production quotas that were terminated by the 2002 Farm Bill sued for compensation under the Takings Clause of the Fifth Amendment of the U.S. Constitution. The court held that the peanut quota system was created by Congress and Congress has the right to modify or terminate a federal program. Accordingly, the court found that no benefit from such a program would constitute a property interest protected by the Fifth Amendment, and it dismissed the peanut farmers' claims. For the first time since 1938, peanut farmers are without a production quota safety net.

Cases to Watch in 2005

There are a number of cases farmers should keep in an eye on in 2005. The U.S. Supreme Court will issue at least four decisions that will be important to farmers. In *Veneman v. Livestock Marketing Association*, the Court will decide whether the federal beef checkoff violates the First Amendment of the U.S. Constitution. In *Bates v. Dow Agrosciences*, the Court will decide whether state law claims based on defective pesticides are preempted by the Federal Insecticide, Fungicide and Rodenticide Act. In *Kelo v. City of New London*, the Court will decide whether government has the power to condemn or take private property for private redevelopment uses. And in *Orff v. United States*, the Court will decide whether farmers have the right to sue the federal government over breach of water rights contracts.

In addition, the First Circuit Court of Appeals in *Harvey v. Veneman* will decide an organic farmer's challenge to rules implementing the Organic Foods Production Act of 1990. There may also be a decision in *Been v. OK Industries*, a case involving the cancellation of more than 400 Oklahoma poultry growers' contracts. The trial in that case is scheduled to begin in Oklahoma state court in March 2005.

FLAG will continue to follow these cases and other legal developments that concern family farmers.

* David R. Moeller is a FLAG Staff Attorney and Susan E. Stokes is FLAG's Legal Director. FLAG is dedicated to providing legal services to family farmers and their rural communities in order to help keep family farmers on the land. See www.flaginc.org for more information.