

Developments in Agriculture Law

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OVERVIEW

- **The *Bates* Decision and FIFRA**
- **Other Developments**
 - **Hunting baited fields**
 - **Livestock Liability**
 - **CRP contract termination**

The *Bates* Ruling

- Label protection for an Agricultural Chemical is no longer a certainty

The *Bates* Decision: Unguarded Representations ^{cont'd}

- Under FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) pesticides must be registered with and approved by the EPA, which imposes certain requirements for labeling.
- Manufacturers must comply with the EPA labeling requirements; if they do, they are exempt from state-law claims of mis-labeling.

The *Bates* Decision: Unguarded Representations ^{cont'd}

- In the *Bates* case (April 2005), the U.S. Supreme Court declared, contrary to a number of lower court decisions, that FIFRA did not pre-empt state-law remedies for negligent failure to warn, breach of warranty, defective design, or defective manufacture, if those claims were not based on the labeling requirements of the EPA.

The *Bates* Decision: Unguarded Representations cont'd

- In approving pesticides, the EPA is principally concerned with issues of human health and environmental safety. When FIFRA was amended in 1978, the EPA was relieved of any obligation to review or approve efficacy data.
- Thus, EPA approval of a label containing language related to performance issues does not imply that EPA has evaluated efficacy, or that it approved or required the label language.

The *Bates* Decision: Unguarded Representations ^{cont'd}

- Since performance information is not required by the EPA, manufacturers cannot rely upon the EPA's approval of label language to avoid liability for the failure to warn of performance risks.
- Labeling alone will not pre-empt state-law liability claims; only labeling *requirements* imposed by the EPA will have that effect.

The *Bates* Decision: Unguarded Representations ^{cont'd}

- Under FIFRA, growers are required by law to handle and apply pesticides in conformance with label directions. In the past, some courts held that off-label application recommendations given by a manufacturer's representative would not support a claim, because the label language controlled.

The *Bates* Decision: Unguarded Representations ^{cont'd}

- This protection is no longer available. Representations made by company personnel may be actionable under state law, because most application directions found in a label are not specifically required under FIFRA.

The *Bates* Decision: a look ahead

- More claims against chemical manufactures
 - This trend has already began
 - Companies have been willing to settle early
 - The old trend was to never settle once suit began
- Regional markets will be targeted
- Supplemental labels will be more common

Other Developments

- **Hunting baited fields**
- **Livestock Liability**
 - **Are horses and cattle inherently dangerous?**
- **CRP contract termination**

Other Developments

- Hunting baited fields
 - Falk v. United States
 - South Dakota case, July 2006

Hunting Baited Fields

- The Falks owned land used for both crop production and hunting migratory waterfowl
- The hunting business generated an average annual gross income of \$284,250
- In order to attract more geese, they began to “strip harvest” their corn crop
 - Harvesting one header width for every three

Hunting Baited Fields

- Geese would not venture into the standing corn
- Would return after 2 to 3 weeks and harvest another strip pass
- Geese would return annually as they migrated

Hunting Baited Fields

- South Dakota goose season runs from the last week of October through late January
- Corn harvest is generally near 95% complete by the last week of October
- The Falks admitted that they would harvest only one-third of their corn prior to December 1st of each year
- Also began aurally planting wheat into standing corn
- Neighbor complained that if the Falk's fields were considered "baited" then neighbor could not hunt

Hunting Baited Fields

- The court had three things to determine
 - Is a post December 1st corn harvest considered a “normal harvesting practice”?
 - Is aerial seeding a “normal planting practice”?
 - Is hunting prohibited within the zone of influence of a baited area regardless of who baited the area?

Hunting Baited Fields

- Court held:
 - Post Dec. 1st corn harvest is not a normal harvesting practice
 - Aerial seeding is a normal planting practice, but not when it is done into standing corn
 - Hunting is prohibited within the zone of influence of a baited area regardless of who baited the area
 - Side note: can baiter be found liable for loss to neighbor

Other Developments

- Livestock Liability
 - A horse named Lady
 - A bull protecting his turf

Horse Liability

- Tilson v. Russo
 - 2006 ruling from New York
 - Issues
 - Is the risk of being bitten by a horse inherent within horse recreation?
 - Can a horse's vicious propensities result in applying "strict liability" instead of "duty-risk"

Horse Liability - background

- Tilson, a recreational horseback rider with 30 years of experience went to Horizon Stables during June with a friend
- Tilson was assigned to “Lady,” a horse she had previously ridden.
- Tilson approached Lady with a lead rope while Lady was eating from a feed trough
- Lady did not like being interrupted and bit Tilson on her left should, causing undisclosed injuries

Horse Liability

- Court holding:
 - The risk of being bitten by a horse is inherent within horse recreation
 - The vicious propensities of a horse may result in applying “strict liability” instead of “duty-risk”; however, not for an experienced horseman that should commonly appreciate the risks she has engaged in for 30 years

Cow Liability

- Bard v. Hemlock
 - 2006 ruling from Pennsylvania
 - Issues
 - Is a bull inherently violent and vicious?
 - Is the bull's owner strictly liable or does duty-risk apply
 - If duty-risk applies, was owner of the bull negligent for failing to restrain bull or warning Bard of its presence

Cow Liability

- Bard is a self employed carpenter who was sub-contracted by another self employed carpenter to repair part of Hemlock's dairy barn
- A hornless "cleanup" bull, Fred, was the only bull around the barn
- Fred stepped behind Bard, bellered, then rammed Bard in the chest until he drove Bard against a stall wall and then struck him an unknown number of times
- The injuries were fractured ribs and a lacerated liver

Cow Liability

- Court holding:
 - A bull is not inherently dangerous or vicious by nature; however, if Fred had acted in a similar fashion before he would have been considered dangerous
 - This is similar to Louisiana: dog's first bite is free
 - Fred is considered inherently dangerous from the time his owner learned of the attack on Bard

Cow Liability

- Court holding (cont.)
 - The bull's owner is not strictly liable and duty-risk applies
 - Can not be strictly liable as this was Fred's first attack
 - Hemlock is not negligent for failing to restrain bull, but does have a degree of liability for failing to warn Bard of its presence

Livestock Liability

- What is important about these cases?
 - There is a growing trend that protects the animal's owner on the first pass
- Louisiana has applied strict liability to animal cases, primarily dog bites, in the past
 - Now the first bite is “free”

Other Developments

- CRP contract termination
 - Barrientos v. United States
 - 2006 holding from Texas

CRP contract termination

- In 2002, Barrientos entered into a 15 year CRP contract with the CCC (USDA)
- Barrientos claimed that an employee of the county office had a personal agenda against him and convinced the USDA to terminate the CRP contract
- Barrientos sued for breach of contract and U.S. says he failed to exhaust administrative remedies

CRP contract termination

- Barrientos sued in Federal Court claiming that he should recover damages for mental anguish and injury to his reputation
 - The court held that the National Appeals Division (NAD) should have been Barrientos next step in the process and he did not exhaust that remedy
 - If the NAD would have reinstated the contract, he would not have standing to sue for punitive damages.

CRP contract termination

- The message delivered from this case is to follow the USDA guidelines and use their appeal system
- This is no different than the state law restrictions of a medical review board or a worker's compensation panel



- Questions & Discussion



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