Volume 13 | Number 20 Article 2

10-18-2002

Cases, Regulations, and Statutes

Robert P. Achenbach Jr
Iowa State University

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

COWS. The plaintiffs represented the deceased and injured passengers of three cars which collided with a cow on a state highway in an unfenced area posted as open range. The cow was owned by the defendant and was grazed on fenced land. Several cows had escaped the fenced pastures and were loose on unfenced BLM land. The highway was posted with signs warning motorists about livestock on the highway. A car hit one of the cows on the highway but proceeded to its destination. A second car hit a cow lying on the highway at night and stopped. The evidence was contradictory as to whether the passengers in the second car attempted to give notice of the cow to a third car which also hit the cow. The defendant argued that it had no duty of care to prevent cattle from straying on to the highway in an open range area. The plaintiffs argued that the open range doctrine did not excuse a livestock owner from the exercise of reasonable care in pasturing cattle and applied only to claims for damage caused by trespass of the livestock and not to highway accidents. The court reviewed Wyoming common and statutory law and found no duty imposed on livestock owners to prevent livestock from wandering on to a public highway in an open range area other than the general duty to take reasonable care. Thus, the mere presence of cattle on a public highway in an open range area did not constitute negligence per se. **Andersen v. Two Dot Ranch, Inc., 49 P.3d 1011 (Wyo. 2002)**.

ADVERSE POSSESSION

HOSTILE USE. Soon after the plaintiff had acquired property neighboring the defendants' property in 1964, the plaintiff asked the defendants' predecessor in interest if the plaintiff could use the disputed property. The predecessor in interest did not object and the plaintiff used the disputed property for raising cattle. The plaintiff repaired fences and filled in some gullies on the disputed property. The plaintiff stated that the plaintiff had no contact with the defendants or their predecessor in interest after the initial request to use the disputed property. The court held that the plaintiff did not acquire title to the disputed property because the initial use of the property was by permission of the title owner and the plaintiff did no acts during the use of the property which indicated that the plaintiff claimed the title to the property. **Commander v. Winkler, 67 S.W.3d 265 (Tex. Ct. App. 2001)**.

BANKRUPTCY

CHAPTER 12-*ALM* § 13.03[8].*

SECURED CLAIMS. The debtor filed for Chapter 12 in May 2001 and a bank was listed as a secured creditor in the debtor's schedules. The debtor filed a plan of reorganization after the claims bar date. The bank filed only a notice of appearance of counsel and request for service. The debtor obtained court permission to secure additional post-petition credit from the bank. Another creditor objected to the plan because it included the bank's pre-petition secured claim as an allowed claim. The creditor argued that the secured claim was not allowed because it was not timely filed. The bank argued that, although it failed to formally file a claim, it should be allowed its claim under the informal proof of claim doctrine. Although the court acknowledged that such a doctrine was approved by *In re Reliance Equities, Inc., 966 F.2d 1338 (10th Cir. 1992)*, the filing of a notice of appearance was insufficient to apply the doctrine in this case. The court held that the bank's claim was not allowed. The court noted that the secured claim would survive the bankruptcy case, but held that the claim would not be included in the reorganization plan. ***In re* Boucek, 280 B.R. 533 (Bankr. D. Kan. 2002)**.

FEDERAL TAX-*ALM* § 13.03[7].*

AUTOMATIC STAY. The debtor filed for Chapter 7 in May 2002. The IRS had been levying against the debtor's wages pre-petition and continued to do so after the petition was filed because the debtor failed to serve notice with the IRS Insolvency Unit until May 2002. However, the IRS continued the levy because of an internal computer error until June 2002 when the IRS stopped the levy and made arrangements for return of the amounts levied post-petition. The debtor sought damages for the IRS violation of the automatic stay. The court noted that, because the debtor had not filed any income tax returns since 1994, the taxes due would not be dischargeable in the Chapter 7 case and that the failure to file the returns would likely cause a dismissal of the case. The court held that no damages would be awarded for the short and unintentional violation of the stay because the debtor failed to prove any damages. ***In re* Carrick, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,681 (Bankr. W.D. N.C. 2002)**.

TAX LIEN. The debtor originally filed for Chapter 13 but the case was dismissed for failure to file a feasible plan. After the dismissal, the trustee attempted to return undistributed funds to the debtor but was unable to locate the debtor. The undistributed funds were paid to the Clerk of the Bankruptcy Court. The IRS filed a petition to recover the undistributed funds under its pre-petition tax lien. The court held that the undistributed funds could be distributed to the IRS after execution of a levy. ***In re* Brown, 280 B.R. 231 (Bankr. E.D. Wis. 2002)**.

FEDERAL AGRICULTURAL PROGRAMS

BEEF CHECK-OFF. The AMS has adopted as final regulations which amend the Beef Promotion and Research regulations established under the Beef Promotion and Research Act of 1985 by providing producers the opportunity to voluntarily pay the $1-per-head assessment to the qualified state beef council located in the producer's state of residence prior to sale, where the cattle has been transported for feeding to another state. **67 Fed. Reg. 61762 (Oct. 2, 2002)**.

COMMUNITY LOANS. The FSA has adopted as final regulations which amend the Community Facilities loan program to remove administrative requirements and the requirement to complete Forms RD 1942-14, 1942-43, and 1942-45. Forms RD 1942-14, 1942-43, and 1942-45 are completed by federal employees processing loan requests to summarize information concerning project feasibility. **67 Fed. Reg. 60853 (Sept. 27, 2002)**.

KARNAL BUNT. The APHIS has issued interim regulations changing the list of areas of Arizona, Texas, and New Mexico which are regulated because of the existence of Karnal bunt disease. **67 Fed. Reg. 61975 (Oct. 3, 2002)**.

PAYMENT LIMITATIONS. The CCC has adopted as final regulations implementing provisions of the Farm Security and Rural Investment Act of 2002 regarding per person payment limitations on certain programs. The rule limits the amount of payments that may be received by one person for direct and counter-cyclical payments, marketing loan and loan deficiency payments, and conservation and environmental programs. In section 1603 of the 2002 Act, by amendment to Section 1001 of the Food Security Act of 1985 (7 U.S.C. § 1308), Congress limited the amount of such payments that could be received by one person. The per person payment limits are for direct payments, counter-cyclical payments, marketing loan gains, and loan deficiency payments of $40,000, $65,000, and $75,000 respectively for the "covered commodities" of corn, grain sorghum, barley, oats, wheat, soybeans, minor oilseeds, cotton and rice. Separate limits for comparable peanut payments are set; however, the $75,000 limit for marketing loan gain and loan deficiency payments includes payments for wool, mohair and honey. **67 Fed. Reg. 61468 (Oct. 1, 2002)**.

PEANUTS. The CCC has adopted as final regulations which implement the peanut quota buyout program (QBOP) as required by Title I of the Farm Security and Rural Investment Act of 2002. The regulations provide for payments to be made to each eligible peanut quota holder based on the amount of the peanut quota that was available to such holder for the 2001 crop year as provided by 7 C.F.R. Part 729 as it was codified on January 1, 2002. An eligible peanut quota holder is, generally, a person who, as of May 13, 2002, owned a farm that was otherwise eligible for a permanent peanut quota under Section 358-1(b) of the Agricultural Adjustment Act of 1938. Temporary quota leases, transfers of peanut quotas for seed, and peanut quotas established for experimental purposes are not eligible peanut quotas for the buyout program established by this rule. Eligible quota holders may elect to receive payment under this program in five equal installments in each of the 2002 through 2006 fiscal years, or as a single lump sum payment in any of these years. To the extent practical, CCC intends to make the 2003 through 2006 fiscal year payments between January 2 and January 31 of the applicable year. For those who choose the five-payment option, each QBOP payment will be determined by multiplying the $0.11 per pound rate provided in the law times the pounds of peanut quota for which such holder has been determined eligible for a payment. Persons who opt for the single lump payment will have their payment calculated in the same manner, except the payment rate will be $0.55 per pound. See Peanut Quota Compensation under **Federal Taxation** *infra* for and IRS notice as to the tax consequences of this program. **67 Fed. Reg. 61470 (Oct. 1, 2002)**.

RICE. The GIPSA has adopted as final regulations revising the United States Standards for Milled Rice to establish and add a new level of milling degree, "hard milled," to the existing milling requirements, and to eliminate reference to "lightly milled" from the milling requirements of U.S. Standards for Milled Rice. **67 Fed. Reg. 61249 (Sept. 30, 2002)**.

FEDERAL ESTATE AND GIFT TAX

DISCLAIMER. The taxpayer held a contingent remainder in four trusts. The taxpayer disclaimed any interest in the trusts within nine months after reaching age 18 and the IRS ruled that the disclaimers were qualified and effective and without gift tax consequences. **Ltr. Rul. 200240015, June 24, 2002**.

TAX RATE. The U.S. Supreme Court has denied certiorari in the following case. The decedent died in March 1993 during a time when the federal estate tax maximum rate had decreased to 50 percent because of a presidential veto and the application of the Economic Recovery Tax Act of 1981. In August 1993, legislation was passed which retroactively increased the maximum rate back to 55 percent. The decedent's estate argued that the retroactive increase was unconstitutional. The court upheld the constitutionality of the retroactive increase in the estate tax rate. **NationsBank of Texas, N.A. v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 60,423 (Fed. Cir. 2001), *aff'g*, 99-2 U.S. Tax Cas. (CCH) ¶ 60,345 (Fed. Cls. 1999)**.

VALUATION OF STOCK. The U.S. Supreme Court has denied certiorari in the following case. The taxpayers transferred stock in a corporation to their children. The stock was valued using a discounted future cash flow approach which included a "tax effect" which would occur if the corporation was converted to a C corporation, subject to corporate income tax. The court held that the "tax effect" could not be considered in valuing the stock because there was no evidence that the corporation would lose its S corporation status. A 25 percent discount for lack of marketability applied by the IRS was approved because the taxpayer failed to show that the discount was inappropriate. **Gross v. Comm'r, 2001-2 U.S. Tax Cas. (CCH) ¶ 60,425 (6th Cir. 2001), *aff'g*, T.C. Memo. 1999-254**.

**Agricultural Law Manual* (ALM).

FEDERAL INCOME TAXATION

COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14]. The taxpayer was terminated from employment with the Federal Aviation Administration (FAA) and sought compensation under the Federal Employees' Compensation Act (FECA) for emotional injury resulting from harassment and racial discrimination during the employment. The taxpayer did receive disability payments under the Federal Employees' Retirement System (FERS). The taxpayer excluded the payments from income, under I.R.C. § 104, arguing that the payments should have been made under FECA and not FERS; therefore, the payments were excludible from income. The court held that, although the taxpayer may have suffered a disability resulting from employment and covered by FECA, the payments were actually made under FERS and were included in gross income. **Norris v. Comm'r, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,684 (50,684), *aff'g*, T.C. Memo. 2001-152**.

DEPENDENTS. The taxpayer's son was incarcerated during all of 1999 in a public prison. The taxpayer sent the son $50 every two weeks for incidentals not furnished by the prison. The taxpayer provided no evidence of the cost of the son's support by the prison; therefore, the court held that the taxpayer was not entitled to claim the son as a dependent on the taxpayer's income tax return. The taxpayer was also denied the earned income credit using the son as a qualified child. **Haywood v. Comm'r, T.C. Memo. 2002-258**.

DISASTER PAYMENTS. On September 25, 2002, the President determined that certain areas in Indiana were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms and tornadoes beginning on September 20, 2002. **FEMA-1433-DR**. On September 26, 2002, the president determined that certain areas in Texas were eligible for assistance under the Act as a result of tropical storm Fay beginning on September 6, 2002. **FEMA-1434-DR**. On October 1, 2002, the president determined that certain areas in Louisiana were eligible for assistance under the Act as a result of tropical storm Isidore beginning on September 21, 2002. **FEMA-1435-DR**. Accordingly, a taxpayer who sustained a loss attributable to these disasters may deduct the loss on his or her 2001 federal income tax return.

EMPLOYEE BENEFITS. The taxpayer was a corporation which manufactured and sold a printing press attachment. The taxpayer held an annual fishing trip which was attended by employees, although not all employees attended. The fishing trip was planned so as to encourage employees to freely discuss the manufacturing and sales business and included formal meetings as well as informal conversations during the fishing activities. The court found that the employees spent from one to three hours each day discussing taxpayer business. The IRS assessed a deficiency of employment taxes based on the value of the fishing trip as recreation expenses for the employees. The IRS sought a summary judgment that the assessment was proper because the taxpayer could not meet the standards of I.R.C. § 274. The taxpayer argued that Section 274 did not apply because the taxpayer was not seeking a deduction for the trip expenses. The court held that the issue was whether the expenses were deductible by the employees because if the employees were entitled to deductions, the expenses would be ordinary and necessary business expenses and not wages from the taxpayer. The court held that summary judgment was not proper because assuming that the taxpayer could show that the fishing trips constitute ordinary and necessary business travel expenses, a material issue of fact remained regarding whether the taxpayer could meet the heightened standard set by I.R.C. § 274. *Townsend Industries, Inc v. United States, 207 F. Supp. 2d 931 (S.D. Iowa 2002)*. After presentation of the evidence at trial, the court found that "The trip was not an integral part of [the taxpayer's] employees' ability to perform their jobs, it was not a part or a continuation of a sales meeting, but rather was a relaxed and fun event where business was discussed as part of the background to the primary fishing endeavor." The court also found that the taxpayer failed to prove sufficient evidence to substantiate the business purpose of the trip. The court held that the costs of the fishing trips were wages subject to employment taxes. **Townsend Industries, Inc v. United States, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,697 (S.D. Iowa 2002**.

EMPLOYEE EXPENSES. The IRS has issued revenue procedures updating *Rev. Proc. 2001-47, I.R.B. 2001-42, 332*, which provided rules under which the amount of ordinary and necessary business expenses of an employee for lodging, meals, and incidental expenses or for meals and incidental expenses incurred while traveling away from home would be deemed substantiated under Temp. Treas. Reg. § 1.274-5T when a payor (the employer, its agent, or a third party) provides a per diem allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. This revenue procedure also provides an optional method for employees and self-employed individuals to use in computing the deductible costs of business meal and incidental expenses paid or incurred while traveling away from home. Use of a method described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. This revenue procedure does not provide rules under which the amount of an employee's lodging expenses will be deemed substantiated when a payor provides an allowance to pay for those expenses but not meals and incidental expenses. **Rev. Proc. 2002-63, I.R.B. 2002-41**.

IRA. The IRS has issued a revenue ruling which provides relief to taxpayers who selected a fixed annual distribution from their IRA. Due to market value declines, the fixed distributions could deplete the IRA more quickly than desired. These taxpayers will be permitted to change from a method for determining the payments, under which the amount is fixed, to a method under which the amount changes from year to year based on the value of the account. Additionally, the guidance: (1) clarifies how an individual can satisfy the permitted method that tracks the required minimum distribution rules in light of the recently finalized regulations implementing I.R.C. § 401(a)(9); (2) explains what constitutes a reasonable rate of interest for determining payments to satisfy the substantially equal periodic payment rule; and (3) provides a choice of mortality tables that can be used in satisfying the permitted methods. **Rev. Rul. 2002-62, I.R.B. 2002-42**.

LEGAL FEES. The taxpayer, a university professor, was not allowed a Schedule C deduction for legal fees incurred during an audit of the university because the fees did not result from the taxpayer's separate business activity. **Test v. Comm'r, 2002-2 U.S. Tax Cas. (CCH) ¶ 50,692 (9th Cir. 2002)**.

MEDICAL SAVINGS ACCOUNTS. Under I.R.C. §§ 220(i) and (j), if the number of Medical Savings Account (MSA) returns filed for 2001 or a statutorily specified projection of the number of MSA returns that will be filed for 2002 exceeds 750,000, then October 1, 2002, is a "cut-off" date for the Archer MSA pilot project. The IRS has determined that the applicable number of MSA returns filed for 2001 is 21,079 and that the applicable number of MSA returns projected to be filed for 2002 is 59,151 (after reduction in each case for statutorily specified exclusions, such as the exclusion for previously uninsured taxpayers). Consequently, October 1, 2002, is not a "cut-off" date and 2002 is not a "cut-off" year for the Archer MSA pilot project. **Ann. 2002-90, I.R.B. 2002-40**.

PARTNERSHIPS-*ALM* § 7.03.*

ACCOUNTING METHOD. The IRS has issued a new revenue procedure that applies to eligible partnerships that elect the monthly closing election and to partners that consent to take into account their distributive shares of partnership income on a monthly basis. In addition, procedures are provided that apply to all eligible partnerships, whether or not they make the monthly closing election. Previously, the IRS had issued Rev. Proc. 2002-16, I.R.B. 2002-9, 572, to provide procedures for certain partners to take into account on a monthly basis their distributive shares of partnership items if the partnership satisfied the definition of an eligible partnership and made an election under the revenue procedure. A partnership is generally eligible to make a monthly closing election if 95 percent of the partnership's income for the tax year is income that is exempt from tax under I.R.C. § 103 and the partnership's allocations of income, gain, loss, deduction and credit are made in accordance with I.R.C. § 704(b). The new revenue procedure is effective as of October 7, 2002. Partners and partnerships that consented and made elections under Rev. Proc. 2002-16 may continue reporting as authorized in that revenue procedure; however, the partnerships are no longer required to provide monthly statements. **Rev. Proc. 2002-68, I.R.B. 2002-__.**

COMMUNITY PROPERTY**.** The IRS has issued a revenue procedure which allows a husband and wife who own an entity as community property to either treat the entity as a disregarded entity or a partnership for federal tax purposes. The entity can have no other person or entity as an owner and the entity cannot be considered as a corporation under Treas. Reg. § 301.7701-2. If this election is a change in reporting position, the change is treated as a conversion of the entity. **Rev. Rul. 2002-69, I.R.B. 2002-__**.

DEFINITION. The IRS has issued a revenue procedure which provides guidance under I.R.C. § 7701 for certain newly formed entities to request relief for a late initial classification election filed prior to the due date (excluding extensions) of the federal tax return (excluding extensions) of the entity's desired classification for the year of the entity's formation. The tax return due date for an entity desiring to be disregarded as an entity separate from its owner is the due date for its sole owner's tax return for the taxable year in which the entity was formed. An initial classification election is an election by an eligible entity newly formed under local law to be classified effective on the date of its formation as other than its default classification under Treas. Reg. § 301.7701-3(b)(1) and (2). **Rev. Proc. 2002-59, I.R.B. 2002-39, 615, *modifying*, Rev. Proc. 2002-15, I.R.B. 2002-6, 490**.

PEANUT QUOTA COMPENSATION. The IRS has issued, in question and answer form, guidance as to the income tax treatment for payments received under the Farm Security and Rural Investment Act of 2002 which repealed the marketing quota program for peanuts. The notice provides that payments produce gain to the extent they exceed the taxpayer's basis in a peanut quota and may include taxable interest income. Installment reporting of the gain is possible if payments are received in more than one tax year. If the quota was held more than one year and used in the taxpayer's business, the compensation payment is a Section 1231 transaction and the recognized gain would be long-term capital gain and any loss would be ordinary loss. If the quota was held as an investment, the compensation would produce capital gain or loss. The gain could be recharacterized as ordinary gain or loss if the taxpayer had previously deducted acquisition costs or taken depreciation, amortization or depletion deductions for the quota. The compensation is not self-employment income. The compensation is not eligible for farm income averaging. The compensation program is not an involuntary conversion of the peanut quota. See Peanuts under **Federal Agricultural Programs**, *supra*. **Notice 2002-67, I.R.B. 2002-42**.

PENSION PLANS. For plans beginning in October 2002, the weighted average is 5.60 percent with the permissible range of 5.04 to 6.16 percent (90 to 120 percent permissible range) and 5.04 to 6.72 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2002-68, I.R.B. 2002-43**.

RETURNS. The IRS has announced the publication of Form 940-EZ (2002), Employer's Annual Federal Unemployment (FUTA) Tax Return; Form 1041-T (2002), Allocation of Estimated Tax Payments to Beneficiaries; and Form 8832 (Rev. September 2002), Entity Classification Election. These publications can be obtained by calling 1-800-TAX-FORM (1-800-829-3676); they are also available on the IRS's web site at www.irs.gov.

S CORPORATIONS-*ALM* § 7.02[3][c].*

SHAREHOLDERS. The taxpayer S corporation provided an employee stock option plan (ESOP) which provided for distributions in cash or stock. The ESOP owned all of the taxpayer's stock and the ESOP provided that if any stock was distributed to an employee or an employee's IRA, the stock was to be immediately repurchased by the taxpayer and cash distributed to the employee or IRA. However, the stock would be owned by an IRA upon eligibility for a distribution. The IRS ruled that the momentary ownership of the stock by an IRA did not cause the taxpayer's loss of eligibility for S corporation status. **Ltr. Rul. 200240038, June 27, 2002**.

TAX SHELTERS. The taxpayer had invested in a jojoba partnership which was audited and denied research and development expense deductions. The taxpayer was then denied a passthrough deduction for their share of those expenses. This case involved assessment of the I.R.C. § 6653(a)(1) 5 percent

***Agricultural Law Manual* (ALM).**

addition to tax for underpayment of tax for negligence. The court held that the taxpayers had unreasonably relied on the partnership promoter for information about the tax benefits of the partnership. The court noted that the taxpayer was not an inexperienced investor and should have seen the need to seek expert advice about the tax and profit risks from the investment. The court also held that the taxpayer was properly assessed the 10 percent substantial understatement of income penalty because the taxpayer did not have substantial authority and did not make adequate disclosure with respect to claiming the jojoba partnership deduction. **Henn v. Comm'r, T.C. Memo. 2002-261**.

The taxpayer had invested in a jojoba partnership which was audited and denied research and development expense deductions. The taxpayer was then denied a passthrough deduction for their share of those expenses. This case involved assessment of the I.R.C. § 6653(a)(1) 5 percent addition to tax for underpayment of tax for negligence. The court held that the taxpayers had unreasonably relied on the advice of a person involved with the partnership promoter for information about the tax benefits of the partnership. The court held that the taxpayer should have seen the need to seek independent expert advice about the tax and profit risks from the investment. **Bronson v. Comm'r, T.C. Memo. 2002-260**.

NUISANCE

STRAY VOLTAGE. The plaintiffs owned a dairy farm and had complained to the defendant electric utility that stray voltage from a nearby power station was appearing on their farm. The plaintiffs filed an action for nuisance and received a jury award of $700,000. The defendant argued that no action for nuisance could exist without some claim of negligence. The court held that negligence was not an essential element of nuisance. The court also held that a plaintiff need not show that the defendant's nuisance actions were intentional, if the activity was inherently damaging. The court found that stray voltage was inherently damaging to a dairy cow operation. The court upheld that jury verdict as proper under the law. **Martins v. Interstate Power Co., No. 121/00-0791 (Iowa Oct. 9, 2002)**.

PRODUCTS LIABILITY

HERBICIDE. The plaintiff manufactured a pre-emergence herbicide for use on peanuts. The defendants were peanut growers who used the herbicide and experienced crop losses which they blamed on the failure of the herbicide to control weeds. The defendants filed claims for misrepresentation, false advertising, breach of warranty, and statutory claims for deceptive and fraudulent trade practices. The plaintiff filed an action for declaratory judgment that the defendants' claims were preempted by FIFRA. The defendants claimed that the plaintiff's agents made representations as to the effectiveness of the herbicide which were not included on the label but the court found that the defendants failed to provide any evidence of these additional representations. The court held that the defendants' claims were preempted by FIFRA because the claims were based on information provided on the label. The court also held that the breach of warranty claims were limited by warranty restrictions on the labels which restricted all express and implied warranties to the limits of the label specifications. **Dow Agrosciences, LLC v. Bates, 205 F. Supp. 2d 623 (N.D. Tex. 2002)**.

PESTICIDE. The plaintiff was injured by contact with a registered pesticide manufactured by the defendant. The pesticide label had several warnings against any skin, eye, or lung contact with the pesticide by humans or animals. The product was purchased by the plaintiff's parent and placed in an unlabeled spray bottle. The plaintiff sprayed the pesticide onto horses before the plaintiff rode them. The plaintiff alleged that the plaintiff came in contact with the pesticide during the application of the pesticide and during the riding. The plaintiff provided expert evidence that the contact with the pesticide caused the plaintiff's injury. The plaintiff filed suit under theories of failure to warn, negligence, breach of express warranty, and strict liability. All of the causes of action were based on the same allegation that the defendant failed to provide some warning that the pesticide was not suitable for use on horses. The court held that all of the causes of action were preempted by FIFRA because they were based on the failure of the label to warn against the use of the pesticide on horses. The court acknowledged that the strict liability action could conceivably be based on other factors which would not be preempted by FIFRA; however, the plaintiff's own expert evidence demonstrated that the pesticide was not defective in design, manufacture or labeled use. **Netland v. Hess & Clark, Inc., 284 F.3d 895 (8th Cir. 2002), *aff'g*, 140 F. Supp.2d 1011 (D. Minn. 2001)**.

IN THE NEWS

NUISANCE. An Iowa District Court jury has awarded four farm owners $1.06 million in compensatory and $32 million in punitive damages from the owner of a hog confinement operation. The plaintiffs had alleged that the defendant willfully and recklessly located a 30,000-hog facility on a 640-acre parcel of land without regard to its impact on neighbors. **Clark Kauffman, Des Moines Register, Oct. 10, 2002**.

CITATION UPDATES

Estate of Grant v. Comm'r, 294 F.3d 352 (2d Cir. 2002) (administrative expenses) see p. 115 *supra***.**

Livestock Marketing Ass'n v. USDA, 207 F. Supp.2d 992 (D. S.D. 2002) (beef check-off) see p. 115 *supra*.

Toberman v. Comm'r, 294 F.3d 985 (8th Cir. 2002), *aff'g*, T.C. Memo. 2000-221 (discharge of indebtedness) see p. 117 *supra*.

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