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Supreme Court Clarifies Ability of Farmers to Sue Pesticide Manufacturers

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Supreme Court Clarifies Ability of Farmers to Sue Pesticide Manufacturers

Overview
There are several situations that a farmer may face that will limit the farmer’s ability to sue a manufacturer on a product liability claim. One of these involves damages arising from the use of registered pesticides. The Federal Insecticide, Fungicide, and Rodenticide Act limits the ability of injured parties to sue pesticide manufacturers on either an inadequate labeling or wrongful death claim basis. A significant question has been whether state law damage claims for pesticide-related agricultural crop injury are pre-empted by FIFRA and whether FIFRA pre-emption of damage claims is limited to the specific subjects that the Environmental Protection Agency (EPA) reviews at the time it first approves a pesticide product’s labeling. The recent opinion of the U.S. Supreme Court in Bates, et al. v. Dow Agrosciences LLC provides important guidance on how courts are to analyze FIFRA preemption claims in the future.

FIFRA
FIFRA takes a preventative approach with respect to air, water and land pollution. The Act is administered by the EPA and requires registration of all pesticides intended to prevent, destroy, repel or mitigate certain pests. FIFRA also regulates pesticide use and requires certification of pesticide applicators. The EPA must assess the risks of using a pesticide at the time of registration and the submission of scientific data to aid in that decision. Pesticide registrants must disclose expert opinions on the adverse effects of pesticides to the EPA, along with other “factual information” so that EPA can reach a proper determination concerning potential registration. A “general use” pesticide is one that the EPA determines will not cause “unreasonable adverse effects” on the environment when used as directed or in accordance with commonly recognized practices. “Restricted use” pesticides are those determined to have the potential to cause adverse environmental effects.

Under FIFRA, a pesticide manufacturer must obtain permission to market a pesticide by submitting a proposed label and supporting data to the EPA, which will register the pesticide if it will not cause unreasonable adverse effects to humans or the environment, and its label complies with FIFRA’s misbranding provision. A pesticide is “misbranded” if its label, for example, contains a statement that is false or misleading or lacks adequate instructions or warnings.

A state may regulate the sale and use of federally registered pesticides to the extent the regulation does not permit any sales or uses prohibited by FIFRA, but a state cannot impose or continue in effect any requirements for labeling or packaging in addition to or different from what FIFRA requires. A significant legal question concerns the...
extent to which FIFRA preempts state common law tort claims on the basis that the claims impose labeling or packaging requirements in addition to or different from those imposed by FIFRA. A majority of courts has held that FIFRA preempts all common law tort claims that challenge the adequacy of pesticide labels. However, while most courts have held that FIFRA preempts state law claims for failure to warn, actual defective label claims, and claims for breach of express and implied warranties, the courts have recognized that FIFRA does not necessarily preempt all state law claims.

Overall, the courts have utilized different rationales for determining the extent of preemption of state common law and statutory claims.

The Bates Case

The plaintiffs in Bates were 29 Texas peanut farmers who claimed that in the 2000 growing season their crops were severely damaged by the application of the defendant’s pesticide. The farmers claimed that the defendant knew or should have known that the pesticide would stunt the growth of peanuts in acidic soils. However, the pesticide label stated that the pesticide was recommended in all areas where peanuts were grown. Before the 2001 growing season the defendant reregistered the pesticide with the EPA, and the EPA approved a supplemental label that specified that the product was not to be used on peanuts grown in soils with a high acidity level (pH of 7.2 or greater). After negotiations failed, the farmers gave notice of intent to sue under Texas law, and the defendant filed a motion for declaratory judgment in Federal District Court on the grounds that FIFRA preempted the farmers’ claims. The farmers also brought tort claims based in strict liability and negligence, fraud, breach of warranty and violation of the Texas Deceptive Trade Practices-Consumer Protection Act. The District Court granted the defendant’s motion, finding that FIFRA preempted the farmers’ claims, and the U.S. Court of Appeals for the Fifth Circuit affirmed. The Fifth Circuit reasoned that the farmers’ claims were preempted on the basis that if the claims were successful, the defendant would be induced (as opposed to being actually required) to change its label. Accordingly, the farmers’ successful claim would impose an additional “requirement” on the defendant under state law – something the states cannot do under FIFRA.

The Supreme Court’s Analysis

The Supreme Court began its analysis in Bates by noting that FIFRA preemption applies to state rules that (1) establish a requirement for labeling or packaging that; (2) is in addition to or different from what FIFRA requires. The Court noted, therefore, that rules that require manufacturers to design reasonably safe products, use due care in conducting appropriate testing of their products, market products free of manufacturing defect, and to honor their express warranties or other contractual commitments are not preempted because they do not qualify as requirements for labeling or packaging. Thus, the Court ruled that the farmers’ claims for defective design, defective manufacture, negligent testing and breach of express warranty were not preempted. The Court rejected the Fifth Circuit’s “inducement” test as overbroad – that the farmers’ claims were preempted because, if successful, the defendant would be induced to change the pesticide label. However, the Court ruled that the farmers’ fraud and negligent-failure-to-warn claims were premised on common law rules that qualified as “requirements” for labeling or packaging. But, such claims are only preempted, the Court reasoned, if the state level common law rules establish requirements that are “in addition to or different from” FIFRA’s standards. The farmers claimed that their claims based on fraud and failure-to-warn were not preempted because these common law duties were equivalent to FIFRA’s requirements that a pesticide label not contain “false or misleading” statements, or inadequate instructions or warnings.

Ultimately, the Court ruled that it had not received sufficient briefing on whether FIFRA preempted the farmers’ fraud and failure-to-warn claims brought under Texas law, and remanded the case to the Fifth Circuit for a resolution of those claims. In remanding on these claims, the Court emphasized that a state law labeling requirement must in fact be equivalent to a requirement under FIFRA to survive preemption. If, for example, the element of falsity contained in a Texas common law fraud action imposes a broader obligation than FIFRA’s requirement that labels not contain “false or misleading statements,” the action would be preempted to the extent of the difference. The Court also opined that state law requirements must be measured against any relevant EPA regulations that give content to FIFRA’s misbranding standards. Likewise, the Court stated that jury instructions must ensure that nominally equivalent labeling requirements are genuinely equivalent such that a pesticide manufacturer should not be held liable under a state labeling requirement unless the manufacturer is also liable for misbranding under FIFRA.

Implications of the Bates Opinion

In rejecting the “inducement” test of the Fifth Circuit and utilizing a “parallel requirements” test for determining FIFRA preemption, it is likely that more claims against pesticide manufacturers will survive preemption. It is no longer a valid ground for preemption that a state-based claim, if successful, would induce a manufacturer to change a label. Under the “parallel requirements” test, preemption applies only to claims that, if successful, would actually require a label to be changed. Thus, the key is whether applicable state law imposes broader obligations on pesticide manufacturers than does FIFRA.

It is reasonable to believe that the Court’s opinion will likely lead to additional litigation against pesticide manufacturers, and may cause some state legislatures to reexamine state statutes governing pesticides with an eye toward conformity with FIFRA. In any event, the Court illustrated its preference against preemption without clear direction from the Congress. That point could have implications beyond federal pesticide litigation, and could have an influence on state regulation of agricultural practices that preempt county regulation of the
same activities – most likely with respect to animal confinement operations and biotech crops.

FOOTNOTES

1 For a discussion of these situations, see McEown and Harl, *Principles of Agricultural Law*, §11.05[3][d], Agricultural Law Press (2005).

2 7 U.S.C. § 136 et seq.


4 If a pesticide registration is denied, the applicant must be notified of the denial and given the reason and factual basis for the denial. The applicant must also be given 30 days to correct the application, and the notice of the denial and the reasons for the denial must be published in the Federal Register. A registration denial constitutes a final order of the EPA and is subject to judicial review, as well as a public hearing and scientific review of the EPA's order. 7 U.S.C. § 136(d).


6 Restricted use pesticides may be applied only by individuals who are approved by the EPA as certified applicators. 7 U.S.C. § 136(e)(1).


15 Id.

16 Each of the plaintiffs’ farms have soils with pH levels of 7.2 or higher.


19 332 F.3d 323 (5th Cir. 2003).

20 The “inducement” test was also utilized in Hardin v. BASF Corp., 397 F.3d 1082 (8th Cir. 2005) (state law claims against pesticide manufacturer preempted because “a favorable outcome for...[the farmers] would induce, if not require, BASF to alter its label”).


23 While the Court noted that the defendant’s express warranty was located on the pesticide label, the Court reasoned that preemption did not apply because the essence of the claim was to make the defendant uphold the contractual commitment stated in the warranty. However, to the extent the farmers’ warranty (and fraud) claims were based on oral representations made by the defendant’s agents they would be preempted.


27 The Court stated, in dicta, “The long history of tort litigation against manufacturers of poisonous substances adds force to the presumption against preemption, for Congress surely would have expressed its intention more clearly if it had meant to deprive injured parties of a long available form of compensation.”


29 See, e.g., Iowa H.F. 642, amending Iowa Code Ch. 199 (preempting local governments from adopting or enforcing legislation which relates to the production, use, advertising, sale, distribution, storage, transportation, formulation, packaging, labeling, certification, or registration of agricultural seed). Signed into law on April 6, 2005.