



May 2010

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LAWSUIT FILED AGAINST DAIRY FARM AND SPECIALTY FOODS STORE DUE TO ILLNESS ALLEGEDLY CAUSED BY RAW MILK CONTAMINATION

by Christine Arena

A Pennsylvania couple has filed suit against a Lawrence County dairy farm and a Pittsburgh-based retailer as a result of illnesses allegedly caused by the consumption of raw milk. *Orchard v. Pasture Maid Creamery, LLC*, Case No. GD-10-008710 (Allegheny Ct. Com. Pl., filed Apr. 27, 2010). On March 16, 2010, Maureen Orchard purchased raw milk from a retail store owned by McGinnis Food Center, Inc. This milk had been produced and bottled at Pasture Maid Creamery. Shortly after consumption of the raw milk, Mrs. Orchard and her husband, James Orchard, were sickened from *Campylobacter* bacteria. Mr. Orchard now has been diagnosed with Guillain-Barré syndrome, which has left him completely paralyzed except for minimal head and eye movement. In their complaint, the Orchards seek in excess of \$25,000 for each of the fifty counts of negligence, negligent misrepresentation, strict liability, breach of warranty, and loss of consortium. At the time of the incident, Pasture Maid was selling raw milk pursuant to a permit issued by the Pennsylvania Department of Agriculture (PDA) under the authority of the Milk Sanitation Law, 31 PA. STAT. §§ 645-660g. Following testing which revealed the presence of *Campylobacter*, PDA suspended Pasture Maid’s raw milk permit on April 5, 2010. At the present time, there are more than 120 farms that hold raw milk permits issued by PDA. For more information on this case, visit the Web site of the Orchards’ attorney at www.pritzkerlaw.com.



Photographs courtesy of Penn State College of Agricultural Sciences.

DAIRY FARMERS RECOVER DAMAGES AGAINST GAS COMPANY FOR FAILURE TO RESTORE LAND FOLLOWING INSTALLATION OF PIPELINE

by Ross Pifer

Two Erie County dairy farmers, Ronald and Catherine Gates, have received a mixed verdict in litigation following the installation of natural gas transmission lines and the construction of a compressor station on their land. *Gates v. Exco Resources, Inc.*, 2010 WL 1416740 (W.D. Pa. Apr. 8, 2010). The Gates executed an oil and gas lease with Exco Resources in 1998, and three gas wells were drilled on the property in 2001. Subsequently, transmission lines were installed and a compressor station was constructed in conjunction with the three producing wells. Among the many claims asserted in the lawsuit, the Gates sought damages for a devaluation of their property due to improper reclamation of the property following installation of the pipelines. The court agreed that 20 acres of land had been “rendered almost unable to be used again” due to damaged drainage tiles and the presence of rocks near the transmission lines. Accordingly, the court awarded \$16,000 in damages. The court, however, rejected a claim that poor drainage on an additional 25 to 30 acres was attributable to drilling activities. The court also rejected a claim that the Gates were entitled to royalties on gas from their wells that was utilized in the operation of the compressor station. Pursuant to the lease agreement, the Gates were entitled to royalties “for gas marketed and used off the premises.” As the gas to operate the compressor station was neither marketed nor was it used off the premises, the court denied the requested relief.



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**SUPREME COURT HEARS ARGUMENT
CHALLENGING PROHIBITION ON SALE
OF ROUNDUP READY ALFALFA**

by Joshua Wilkins

On April 27, 2010, the U.S. Supreme Court held oral argument in *Monsanto Co. v. Geertson Seed Farms*, No. 09-475. Monsanto genetically engineered an alfalfa that was resistant to the herbicide Roundup and was originally classified by the USDA's Animal and Plant Health Inspection Service (APHIS) as a "regulated article." Monsanto requested that APHIS deregulate the plant, which APHIS granted after a public comment period. In so doing, APHIS did not prepare an Environmental Impact Statement (EIS). Plaintiffs, consisting of organic farmers and others concerned about the potential impact on non-genetically modified alfalfa, filed suit against APHIS for violating the National Environmental Policy Act (NEPA) by failing to prepare an EIS. A federal district court ordered a permanent injunction prohibiting future sale of the plant until the EIS was prepared. The issues now before the Court include whether the balance of harms test employed by the district court was appropriate, and whether an evidentiary hearing was required before issuing the injunction. A transcript of the oral argument is available on the [Supreme Court](#) Web site.

**UNITED STATES DISTRICT COURT
PERMITS ANTITRUST ACTION TO
PROCEED AGAINST DEAN FOODS**

by Ross Pifer

A federal district court has denied a motion filed by Dean Foods Company (Dean) seeking to dismiss an antitrust complaint filed against it by the United States Department of Justice (DOJ). *United States v. Dean Foods Co.*, 2010 WL 1417926 (E.D. Wis. Apr. 7, 2010). In April 2009, Dean, one of the nation's largest dairy processors, acquired two milk processing plants in Wisconsin from Foremost Farms. DOJ filed suit on January 22, 2010, to challenge this acquisition on the basis of its impact upon the competition for fluid milk in the geographic area encompassing Wisconsin, northeastern Illinois, and the upper peninsula of Michigan. DOJ seeks to have Dean sell the acquired plants as well as provide thirty days notice of future acquisitions. In response to the DOJ complaint, Dean filed a motion to dismiss challenging the specificity with which DOJ described the geographic market impacted by the acquisition. Although the court criticized the content of the complaint, it held that these shortcomings did not warrant a dismissal of the action. For more on agricultural competition issues, visit the [DOJ Antitrust Division](#) Web site.

**FOOD AND DRUG ADMINISTRATION
ISSUES SMALL ENTITY COMPLIANCE
GUIDE FOR NEW EGG SAFETY RULES**

by Ross Pifer

On April 13, 2010, the Food and Drug Administration (FDA) published a guidance document to assist small businesses comply with the new shell egg safety rules that became effective on September 8, 2009. GUIDANCE FOR INDUSTRY: PREVENTION OF SALMONELLA ENTERITIDIS IN SHELL EGGS DURING PRODUCTION, TRANSPORTATION, AND STORAGE; SMALL ENTITY COMPLIANCE GUIDE (Apr. 2010). These new rules require egg producers to establish procedures during production, transportation, and storage of shell eggs to minimize the incidence of Salmonella Enteritidis. 74 Fed. Reg. 33,030 (July 7, 2009) (codified at 21 C.F.R. pt. 118). Producers with less than 3,000 laying hens are exempt from the regulatory requirements, while producers with 3,000 to 50,000 laying hens need not be in compliance until July 9, 2012. The guidance document does not establish any new requirements for producers, but rather is intended to explain the shell egg safety rule in plain language. For more information and to obtain a copy of the guidance document, please visit the [FDA Egg Safety Final Rule](#) Web site.

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