



The Agricultural Law Resource & Reference Center

The Agricultural Law Brief

Summarizing Local, State, National, and International Legal Developments Impacting Food and Agricultural Law in Pennsylvania

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LITIGATION FILED AGAINST PEANUT CORPORATION OF AMERICA AS A RESULT OF SALMONELLA OUTBREAK

In the wake of the national outbreak of *Salmonella*-contaminated peanut products, noted foodborne illness attorney William Marler of Seattle, Washington has filed two lawsuits against Peanut Corporation of America (PCA). In the first suit, *Meunier v. PCA*, Civil Action No. 1:09-cv-00012 (M.D. Ga. filed Jan. 20, 2009), Gabriella and Daryl Meunier of Vermont allege that their son was hospitalized from November 28 to December 4 as a result of eating contaminated peanut butter products. The Meuniers seek compensatory and punitive damages from PCA based upon the legal theories of strict liability, breach of warranty, and negligence. Similarly, Derek and Cindy Trone of California allege that their son was hospitalized after eating food products manufactured by PCA. *Trone v. PCA*, Civil Action No. 3:09-cv-00418 (N.D. Cal. filed Jan. 29, 2009).



Photo by Scott Bauer, USDA Agricultural Marketing Service

On January 13, PCA announced a voluntary recall that was later expanded to include all peanut products processed by its Blakely, Georgia plant after January 1, 2007. Because PCA is a bulk supplier of peanut product ingredients, hundreds of companies have issued voluntary recalls of potentially contaminated food items. To date, over 500 individuals in 43 states have been affected, and the U.S. Food and Drug Administration (FDA) has confirmed that a criminal investigation is ongoing against PCA. For additional information, please visit the [FDA Peanut Recall](http://www.fda.gov/oc/opacom/hottopics/Salmonellatyp.html) Web page at www.fda.gov/oc/opacom/hottopics/Salmonellatyp.html.

POULTRY PLANT EMPLOYEES MUST BE PAID FOR TIME TO DON, DOFF, AND SANITIZE PROTECTIVE CLOTHING

In *Lugo v. Farmers Pride, Inc.*, No. 582 EDA 2007, 2009 WL 96139 (Pa. Super. Jan. 15, 2009), employees at a chicken processing plant in Lebanon County sought the payment of unpaid wages from their employer. Specifically, the workers alleged that Farmers Pride, Inc., had failed to compensate them “for the time it takes to receive, don, doff, and sanitize the required [personal protective equipment and clothing], the time it takes to sanitize themselves at the beginning of their shifts and time spent walking from their lockers to the production line.” The workers’ claims were based, in part, upon the Pennsylvania Minimum Wage Act of 1968 (PMWA), 43 P.S. §§ 333.101 - 333.115, which requires that employees be paid a specified minimum wage for all hours worked and overtime wages for time worked in excess of forty hours per week. In reversing the trial court’s dismissal of the case, the Pennsylvania Superior Court ruled that that “the time spent donning, doffing, and sanitizing the protective gear” fit within the definition of “hours worked” in the PMWA. This ruling is in accord with recent federal case law interpreting the Fair Labor Standards Act, 29 U.S.C. §§ 201-19. On January 29, Farmers Pride, Inc., filed a Petition for Reargument with the Superior Court. The court opinion may be obtained from www.aopc.org/OpPosting/Superior/out/a10011_08.pdf.

Securities and Exchange Commission Amends Oil and Natural Gas Reporting Requirements

The U.S. Securities and Exchange Commission (SEC) has modernized its regulations governing the disclosure of information by oil and natural gas companies. 74 Fed. Reg. 2158 (Jan. 14, 2009) (to be codified at 17 C.F.R. pts. 210, 211, 229, and 249). According to the final rule promulgated by the SEC, “[t]he revisions are intended to provide investors with a more meaningful and comprehensive understanding of oil and gas reserves, which should help investors evaluate the relative value of oil and gas companies.” The final rule expands the definition of “proved oil and gas reserves” by permitting the use of new technologies to establish with “reasonable certainty” that reserves will be recoverable. The final rule also permits oil and natural gas companies to disclose to investors their “probable reserves” and “possible reserves.” These reserves are those that can be demonstrated to have a 50% and 10% probability of recovery, respectively. This rule will become effective on January 1, 2010. The full text of the final rule can be obtained from the SEC Web site at www.sec.gov/rules/final/2009/33-8995fr.pdf.

Superior Court Rules that Ambiguity in Dog Law Prevents Conviction for Animal Cruelty

Wendy Kneller was convicted of conspiracy to commit animal cruelty and sentenced to imprisonment for her role in the killing of her dog. She gave a gun to her dog’s co-owner and told him to kill the dog. Prior to shooting the dog, the co-owner allegedly beat it repeatedly with a shovel. In reviewing Ms. Kneller’s conviction, the court analyzed the animal cruelty statute, 18 Pa.C.S.A. § 5511(a)(2.1), together with specific provisions of Pennsylvania’s Dog Law, 3 P.S. §§ 325 and 328.2., and found that these statutes were “ambiguous as to whether a dog owner can kill his dog by means of a firearm.” The court opined that if the legislature wishes to criminalize this action “it must do so in a clear, unambiguous manner.” Because the statutes did not clearly prohibit her from shooting the dog and because there was no evidence to establish that she was an accomplice to beating the dog, the court reversed her conviction. *Commonwealth v. Kneller*, No. 1016 EDA 2007, 2009 WL 215322 (Pa. Super. Jan. 30, 2009). This opinion may be obtained from www.aopc.org/OpPosting/Superior/out/e05002_08.pdf.

California Strengthens Right to Farm Law By Adding Purchaser Notification Requirement

Each of the fifty states has adopted a Right to Farm Law. While the specific provisions vary from state to state, the general purpose of these laws is to prohibit or limit the filing of nuisance lawsuits against agricultural operations. Effective January 1, 2009, California has mandated that certain real estate purchasers be notified of the state’s Right to Farm Law. Under the terms of Assembly Bill No. 2881, a seller of property that is located within one mile of land designated on the statewide “Important Farmland Map” must provide a prospective purchaser with written notification of the state’s Right to Farm Law. In this prescribed notice, the purchaser is cautioned that normal agricultural operations may impact neighboring properties and that the Right to Farm Law may limit available nuisance remedies. CAL. BUS. & PROF. CODE § 11010(b)(17) (West 2009). For information on Pennsylvania’s Right to Farm Act, which does not contain a notification requirement, visit the [Agricultural Law Center Right to Farm Resource Area](#).

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The Agricultural Law Resource and Reference Center is a collaboration between The Pennsylvania State University’s Dickinson School of Law and College of Agricultural Sciences as well as the Pennsylvania Department of Agriculture. The Center is designed to provide the highest quality educational programs, information, and materials to those involved or interested in agricultural law and policy.

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