greatly exceeded the amount of actuals, the transactions have been held to be speculative in nature.[41]

Recently issued regulations

Final regulations were issued in late 1994 providing guidance on reporting hedging and speculative transactions involving futures.[42] Taxpayers other than farmers and other small businesses are required to take gains and losses from hedges into account in the same period as the income, deductions and gains or losses on the item hedged.[43] However, for farm and small business taxpayers on the cash method of accounting, the simpler methods used previously and allowing the reporting of gains and losses on a cash accounting basis can continue to govern the reporting of hedge transactions if the taxpayer has no more than $5,000,000 of gross receipts.[44]

Taxpayers are required to identify hedges when entered into, along with the item or items hedged.[45]

FOOTNOTES

1 See generally 4 Harl, *Agricultural Law* § 27.03[8][d] (1996); Harl, *Agricultural Law Manual* § 4.02[6] (1996). See Harl, "Final Regulations on Hedging," 5 *Agric. L. Dig*. 137 (1994); Harl, "Income Tax Treatment of Hedges," 4 *Agric. L. Dig*. 165 (1993).

2 I.R.C. § 1256(e)(2).

3 7 U.S.C. § 2(i).

4 See *In re* Bybee, 945 F.2d 309, 312 (9th Cir. 1991). See 7 U.S.C. § 6(a).

5 7 U.S.C. § 6a(c). See 17 C.F.R. § 1.3(z).

6 7 U.S.C. § 1a(11).

7 *Id*.

8 CFTC v. Noble Metals International, Inc., 68 F.3d 766 (9th Cir. 1995); CFTC v. Co Petro Mktg. Group, Inc., 680 F.2d 573, 579-80 (9th Cir. 1982); *In re* Bybee, 945 F.2d 309, 313 (9th Cir. 1991); *In re* Stovall, Comm. Fut. L. Rep. ¶ 20,941 at 23,777-728 (1979).

9 CFTC v. Co Petro Mktg. Group, Inc., 680 F.2d 573, 579 (9th Cir. 1982).

10 Pub.L. 67-66, Sec. 2, 42 Stat. 187 (1921).

11 S. Rep. No. 212, 67th Cong., 1st Sess. 4-5 (1921).

12 Futures Trading Act of 1921, Sec. 4(a), 42 Stat. 187 (1921).

13 *Id*.

14 *Id*., Sec. 4(b).

15 S. Rep. No. 212, 67th Cong., 1st Sess. 1 (1921).

16 See Cong. Rec. 4762, Aug. 9, 1921.

17 Hill v. Wallace, 259 U.S. 44 (1922).

18 Pub. L. 67-331, 42 Stat. 988 (1922).

19 Pub. L. 67-331, Sec. 2, 42 Stat. 998 (1922):
"The term 'future delivery,' as used herein, shall not include any sale of cash grain for deferred shipment or delivery."

20 *Id*.

21 H.R. Rep. No. 421, 74th Cong., 1st Sess. 4-5 (1935).

22 H.R. Rep. No. 93-975, 93d Cong., 2d Sess. 129-130 (1974).

23 CFTC v. Co Petro Mktg. Group, Inc., 680 F.2d 573, 579 (9th Cir. 1982).

24 See "Characteristics Distinguishing Cash and Forward Contracts and 'Trade' Options," 50 Fed. Reg. 39656, Sept. 30, 1985.

25 *Id*. at 39657-39658.

26 *Id*. at 39658.

27 "Regulation of Hybrid and Related Instruments," 52 Fed. Reg. 47022, Dec. 11, 1987.

28 See "Statutory Interpretation Concerning Forward Transactions," 55 Fed. Reg. 39188, 39189, Sept. 25, 1990.

29 See *In re* Bybee, 945 F.2d 309, 315 (9th Cir. 1991) (application of exchange trading requirement precluded; CFTC "Statutory Interpretation" given great weight).

30 See n. 2 *supra*.

31 I.R.C. §§ 1092(e), 1256(e)(1).

32 I.R.C. § 1256(a)(1).

33 I.R.C. § 1256(a)(3).

34 I.R.C. § 1211(b).

35 I.R.C. § 1212(b).

36 I.R.C. § 1212(a).

37 I.R.C. § 1212(c)(1).

38 I.R.C. § 1212(c).

39 See, e.g. Stewart Silk Corp. v. Comm'r, 9 T.C. 174 (1947).

40 Hendrich v. Comm'r, T.C. Memo. 1980-322 (patern of futures trading did not provide protection for wheat held by taxpayer).

41 See, e.g., Lewis v. Comm'r, T.C. Memo. 1980-334 (volume of futures trading by cattle feeder was three to five times cattle on hand).

42 Treas. Reg. § 1.1221-2; Treas. Reg. § 1.446-4.

43 Treas. Reg. § 1.446-4(b).

44 Treas. Reg. § 1.446-4(a)(1).

45 Treas. Reg. § 1.1221-2(a).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

CATTLE. The plaintiff was injured when the plaintiff's car struck a steer owned by the defendant on a public highway. The steer had wandered 1400 feet to the highway through an open gate. The defendant had testified that the gate was closed when the defendant last used it the day before the accident. The plaintiff provided no evidence of any negligent act by the defendant which resulted in the gate being left open. After noting that Fla. Stat. § 588.15 required a showing of intentional or negligent act by the defendant before liability would attach for livestock running at large on a public road, the trial court granted summary judgment for the defendant. The plaintiff argued that the statute, as interpreted by the trial court, placed too high a burden on the plaintiff. The plaintiff also argued that the "dog bite" statute subjected dog owners to a strict liability standard; therefore, the plaintiff argued that Section 588.15, as interpreted by the trial court, violated the plaintiff's equal protection rights. The court noted that a similar case was decided in 1973 and that the legislature had not changed the statute after that decision; therefore, the lack of legislative action implied acceptance of the ruling. The court held that absent some evidence of the defendant's intentional or negligent actions causing the gate to be open, the defendant was not liable for the accident. **Fisel v. Wynns, 667 So.2d 761 (Fla. 1996)**.

BANKRUPTCY

FEDERAL TAXATION-*ALM* § 13.03[7].*

COMPROMISE OFFERS. The debtors had made an offer to compromise prior to assessment of back taxes and the compromise was rejected by the IRS. After the assessment, IRS alleged that the debtors had made an oral second offer of compromise and the debtors' attorney had sent a letter appealing the rejection of the second offer. The court held that the first offer did not extend the period for making pre-petition assessments under Section 507(a)(7)(A)(ii) (now 507(a)(8)(A)(ii)) because it occurred prior to the assessment, the oral second offer was not a valid offer because it was not made on IRS forms, and the appeal of the second rejection did not constitute an offer for purposes of Section 507. ***In re* Aberl, 78 F.3d 241 (6th Cir. 1996), *aff'g*, 175 B.R. 915 (N.D. Ohio 1994), *aff'g*, 159 B.R. 792 (Bankr. N.D. Ohio 1993)**.

DISCHARGE. The debtor was found to have concealed assets from the IRS during tax years in which the debtor failed to pay taxes and during which the IRS had outstanding assessments against the debtor for previous years. The debtor argued that concealment of assets was insufficient to make the taxes for those years nondischargeable under Section 523. The court held that concealment of assets was sufficient evidence of an attempt to evade taxes to make the taxes nondischargeable. **Dalton v. I.R.S., 77 F.3d 1297 (10th Cir. 1996)**.

REFUND. The debtor filed for Chapter 7 in February of 1995 and filed a 1994 joint return with the nondebtor spouse in April 1995, claiming a refund. The tax return reflected items of income and loss from the debtor's law practice, rental activity, farming activity and the nondebtor spouse's coffee shop business which had a significant loss for the year. The debtor had paid $8,000 in estimated taxes but the nondebtor spouse had not paid any estimated taxes. The debtor argued that one-half of the refund was not estate property and belonged to the spouse because the refund resulted from the losses incurred by the spouse's business. The court held that the proration of a refund was to be determined by comparing the income of each spouse to the amount of estimated or withheld taxes paid by each. Because the spouse did not make any tax payments, none of the refund was allocated to the spouse, resulting in the total refund being included in the bankruptcy estate. ***In re* Gleason, 193 B.R. 387 (Bankr. D. N.H. 1996)**.

TAX LIENS. The debtors were spouses married to two brothers who had received farm property by inheritance. The property became subject to a judgment lien after a judgment was entered against two other brothers who also inherited part of the property. The debtors sought protection of their dower rights in the farm property as superior to the judgment lien. The IRS filed tax liens against the property for federal estate taxes due from the estates of the parents. The debtors then filed for bankruptcy. The debtors prevailed in the state court adjudication of the dower rights which provided for compensation from the foreclosure sale to the debtors' dower rights. The IRS then filed a claim in the bankruptcy case, asserting a security interest in the compensation to be received for the dower rights. This series of events produced a circular priority of security interests with the judgment lien superior to the IRS lien, the dower rights superior to the judgment lien and the tax lien superior to the dower rights. The court held that the circuity was resolved by first setting aside the judgment lien priority amount, then allowing the IRS its priority in the remaining amount, with the dower rights receiving a priority in the remainder. If any funds remained, they belonged to the judgment creditor. ***In re* Stump, 193 B.R. 261 (Bankr. N.D. Ohio 1995)**.

CONTRACTS

BREACH OF CONTRACT. The plaintiff contracted with the defendant for the defendant to find a 10 year old gelding trained as a hunter-jumper for about $10,000. The defendant located a horse in another state which was purported to be 11 years old. Both parties traveled to the owner's farm and viewed the horse. The plaintiff arranged to have the owner's "barn vet" examine the horse to determine its age. The veterinarian stated that the horse was 11 years old and the plaintiff agreed to purchase the horse. About one year later, the horse was re-examined and found to be almost 20 years old and the plaintiff sued the defendant for breach of contract, arguing that it was the defendant's responsibility to verify the horse's age. The court held that the Arkansas products liability statutes did not apply because the defendant was not the seller of the horse. The court also held that once the plaintiff arranged for a veterinarian to determine the horse's age, accepted that determination and purchased the horse, the defendant's duties under the contract were fulfilled and the defendant was not liable if the horse later turned out to be older. **Mason v. Jackson, 914 S.W.2d 728 (Ark. 1996)**.

FEDERAL AGRICULTURAL PROGRAMS

EGGS. Puerto Rico promulgated a Market Regulation, Number 3, section X(F) which required all eggs imported from the continental United States to be labeled with the two letter state postal abbreviation of its state of origin. The plaintiff challenged the regulation as violating the Dormant Commerce Clause because it imposed a substantial burden on interstate commerce. The Puerto Rico Department of Agriculture argued that the regulation was allowed by the Egg Products Inspection Act, 21 U.S.C. § 1052(b)(2) which allowed noncontiguous states to require labeling showing the state or area of production. The court noted that Section 1052(b)(2) was worded as an exemption from the labeling restrictions of the Act and could not be read so as to exempt noncontiguous states from the Dormant Commerce Clause protections. Therefore, the court held that the regulation was subject to the Dormant Commerce Clause. The court further held that the regulation violated the Commerce Clause because it placed a burden on commerce from other states and the defendant failed to prove a legitimate local purpose.

******Agricultural Law Manual* **(ALM). For information about ordering the** ***Manual*****, see the last page of this issue.**

United Egg Producers v. Puerto Rico Department of Agriculture, 77 F.3d 567 (1st Cir. 1996).

EXPORT OF CATTLE. The plaintiff was a Zimbabwean cattle breeder who sought to purchase breeding stock in the United States. The plaintiff chose three heifers from one farm and contracted with a veterinarian to test the animals for bovine leucosis because animals with or exposed to animals with this diseased could not be imported into Zimbabwe. The three heifers tested positive for the disease and three other heifers were selected from the same herd. These animals tested negative for the disease but the veterinarian certified on the health certificate that the animals did not come from a herd with a history of the disease, even though three other animals had tested positive. The USDA veterinarian issued export health certificates based on the veterinarian's report. The heifers were retested in Zimbabwe after showing symptoms of the disease and tested positive, requiring the slaughtering of the entire herd. The plaintiff sued the examining veterinarian and the USDA veterinarian. Since the Federal Tort Claims Act did not waive governmental immunity for misrepresentation suits, the plaintiff alleged that the USDA breached its duty under the "good Samaritan" obligation which arose when the USDA certified the cattle for export to Zimbabwe. The court held that the plaintiff's action was still barred as basically one for misrepresentation but also held that even under the "good Samaritan" rule, the USDA was not liable because it did not undertake any examination of the cattle. The court held that the only possible negligent party was the examining veterinarian. The veterinarian argued that the veterinarian owed no duty to the plaintiff because the veterinarian was hired by the seller of the cattle. The court held that the trial court's summary judgment for the defendant veterinarian was improper because the plaintiff could provide evidence that the veterinarian was hired for the purpose of fulfilling a part of the sales contract, benefiting the plaintiff. **Dorking Genetics v. U.S., 76 F.3d 1261 (2d Cir. 1996)**.

HERBICIDE. See **Eide v. E.I. Du Pont de Nemours & Co., 542 N.W.2d 769 (S.D. 1996)** summarized *infra* under **Products Liability**.

FEDERAL ESTATE AND GIFT TAX

GENERATION SKIPPING TRANSFERS-*ALM* § 5.04[6].* The decedent's estate included the decedent's interest in an inter vivos trust which became irrevocable upon the decedent's death. At the decedent's death, the trust was to be split into two trusts, one funded with a fraction of the estate equal to the amount of the GSTT exemption amount over the total trust value. The other trust was to receive the remainder of the estate. The trustee funded the trusts with non-prorata shares of the estate property but the property chosen for each trust fairly represented the appreciation or depreciation which had occurred since the decedent's death. The IRS ruled that the first trust was eligible for the GSTT exemption and that the inclusion ratio for that trust was zero. **Ltr. Rul. 9617029, Jan. 26, 1996**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent's estate included an inter vivos trust which became irrevocable upon the decedent's death. Upon the decedent's death, the trust passed to the surviving spouse and was split into two trusts, a marital GSTT exemption trust and a marital share trust. The decedent's will bequeathed an amount of trust property equal to the GSTT exemption amount to the GSTT trust. The remainder of the trust property passed to the marital share trust. The decedent's will provided that estate, inheritance and other taxes, and all debts, funeral expenses, last illness expenses and administrative expenses were to be paid from trust principal except to the extent the executor elects to pay such expenses from trust income generated during the time between the decedent's death and the distribution to the two trusts but only if such election did not diminish the marital deduction. The IRS cited *Estate of Street v. Comm'r, 974 F.2d 723 (6th Cir. 1992)* for the rule that all estate expenses are considered to have accrued as of the decedent's date of death; therefore, such expenses diminish the estate before any bequests are satisfied, regardless of whether the expenses are paid from estate property or income from estate property. The IRS ruled that the marital GSTT trust was not reduced by the expenses because that trust was funded with a specific bequest; however, because the marital trust received the residue of the trust property, the expenses, whether paid from principal or income, reduced the amount of the estate passing to the surviving spouse and eligible for the marital deduction. **Ltr. Rul. 9617003, Jan. 3, 1996**.

The U.S. Supreme Court granted certiorari on April 29, 1996 for **Est. of Hubert v. Comm'r, 63 F.3d 1083 (11th Cir. 1995), *aff'g*, 101 T.C. 314 (1993)** which conflicted with *Estate of Street, supra* and *Burke v. United States, 994 F.2d 1576 (Fed. Cir. 1993), cert denied., 114 S. Ct. 546 (1993)* on the issue involved in **Ltr. Rul. 9617003, Jan. 3, 1996**.

VALUATION. The taxpayer received several parcels of land as gifts, with the donor retaining a life estate in each parcel. The IRS used several sales of comparable nearby land to determine the fair market value of the parcels. The taxpayer's appraiser claimed that no comparable sales were available and used an income-producing approach to value the parcels. However, both parties agreed that a comparable sales approach would produce the most accurate valuation. The court held that the IRS value was to be used to value the gifts. ***In re* Taylor, 96-1 U.S. Tax Cas. (CCH) ¶ 60,229 (Bankr. M.D. Fla. 1996)**.

FEDERAL INCOME TAXATION

BAD DEBT-*ALM* § 4.03[7].* The taxpayers obtained a default judgment in 1991 against another person for general and punitive damages; however, the taxpayers were unable to collect on the judgment. The taxpayers claimed the general and punitive damages as a nonbusiness bad debt on their 1991 tax return. The taxpayers argued that the damage awards became a debt which was not collectible. The court held that because the taxpayers did not include the damage awards in income, no deduction was allowed. The IRS also claimed that the taxpayers failed to show any tax basis in the debt or that the debt became worthless in 1991. **Walter v. Comm'r, T.C. Memo. 1996-200**.

CAPITAL EXPENSES. The taxpayer was a commercial airline. The taxpayer was required by the FAA to perform periodic full inspections of the aircraft engines, which included repair or replacement of engine parts if necessary. The IRS ruled that the cost of the inspections and repairs were capital expenses because the life expectancy of the engines and the value of the engines were significantly enhanced by the inspections and repairs. **Ltr. Rul. 9618004, Jan. 23, 1996**.

DEPRECIATION-*ALM* § 4.03[4].* The IRS has issued procedures for obtaining automatic consent to change a taxpayer's method of accounting in order to claim allowable depreciation or amortization where the taxpayer has claimed less than the allowable depreciation or amortization. The omitted depreciation or amortization is taken into account through an I.R.C. § 481(a) adjustment. Taxpayers may also elect to make the change through the procedures provided in Rev. Proc. 92-20, 1992-1 C.B. 685. The procedure is available for property (1) for which less than allowable depreciation or amortization was claimed due to the accounting method used by the taxpayer, (2) to which I.R.C. §§ 167, 168, 197 or 168 (prior to amendment in 1986) apply, and (3) which is held by the taxpayer at the beginning of the year of the change in accounting method. The procedure does not apply to (1) property subject to I.R.C. § 1016(a)(3); (2) intangible property subject to I.R.C. § 167 (except § 167(f)); (3) property for which the taxpayer is seeking to revoke a timely election or to make a late election under I.R.C. §§ 167, 168, former 168 or 197; (4) property for which the taxpayer is seeking to change the estimated life (except property subject to I.R.C. §167(f); (5) property for which the use is changing; (6) changes in accounting involving a change from deducting the cost or other basis of any property as an expense to capitalizing and depreciating the cost or other basis; (7) changes from a permissible method to another permissible method; and (8) changes affecting items other than depreciation. **Rev. Proc. 96-31, I.R.B. 1996-20**.

INSTALLMENT REPORTING-*ALM* § 6.03[1].* The taxpayer was an employee of a corporation and acquired stock in the corporation which was subject to a repurchase agreement if the taxpayer's employment terminated. The taxpayer division in the corporation was sold to another company and the taxpayer entered into an agreement to resell the stock to the corporation for cash and a promissory note. The note provided for annual payments during the following two years. The corporation had significant legal problems in the year of the stock repurchase agreement and filed for bankruptcy before paying anything on the promissory notes. The taxpayer did obtain some recovery in the bankruptcy case. The first issue was whether the stock repurchase agreement was an installment contract. The taxpayer argued that the agreement was not an installment contract because the promissory note did not qualify as an installment "payment." The court held that, although a promissory note itself would not qualify as an installment payment, the payments on the note would; therefore, the repurchase agreement was an installment contract. The taxpayer claimed the note as a bad debt deduction for the year of the stock repurchase agreement, arguing that the corporation's legal troubles indicated that no payments would be made on the note. The court held that the taxpayer failed to prove that the note was worthless in the year claimed since the corporation did continue in business for two years before filing for bankruptcy. **Barrett v. Comm'r, T.C. Memo. 1996-199**.

FARM EXPENSES. The taxpayers purchased a rural residence on 113 acres. The taxpayer claimed that they intended to start a farming operation on the land and incurred equipment and maintenance expenses related to the farm. The court found that the taxpayers failed to provide any evidence to support their claimed expenses or that the expenses were related to farming. Therefore, the deductions for the expenses were denied. **Mitchell v. Comm'r, T.C. Memo. 1996-217**.

LEGAL FEES. The taxpayer was a residuary legatee of an estate. The estate included rental property which was sold by the executors. The taxpayer filed a suit against the executors for mismanagement of the estate, including the loss of income from the rental property. The taxpayer won a portion of the suit and claimed the legal fees and costs incurred as a deduction. The taxpayer argued that because a portion of the estate included business income property, the legal fees were incurred for the protection of income. The court held that the underlying cause of the action pursued by the taxpayer was the mishandling of the estate by the executors causing a reduction of the residuary estate passing to the taxpayer; therefore, the legal fees were incurred primarily to protect the taxpayer's interests in the estate and the legal fees were not deductible. **Looby v. Comm'r, T.C. Memo. 1996-207**.

PARTNERSHIPS-*ALM* § 7.03.*

LIMITED LIABILITY COMPANIES. A general partnership converted to a limited liability company with all assets and liabilities passing to the new organization. The IRS ruled that no gain or loss would be recognized from the conversion and the partners' basis in the LLC would be the same as in the partnership. **Ltr. Rul. 9618021, Feb. 2, 1996; Ltr. Rul. 9618022, Feb. 2, 1996; Ltr. Rul. 9618023, Feb. 2, 1996**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

ELECTION. The taxpayers claimed to have timely mailed a Form 2553 to the IRS but the IRS claimed to have not received it. The court found that the taxpayers presented credible evidence that the form was mailed but that the IRS provide sufficient evidence to rebut the presumption of the mailing. The court also held that I.R.C. § 7502(a) did not apply because the taxpayers did not provide any evidence of a postmark. The appellate decision is designated as not for publication. **Smith v. Comm'r, 96-1 U.S. Tax Cas. (CCH) ¶ 50,232 (9th Cir. 1996), *aff'g*, T.C. Memo. 1994-270**.

SALE OF RESIDENCE. The taxpayer had purchased rental real estate with the taxpayer's parents as tenants in common. The purchase was made with a loan for which the taxpayer was personally liable. The taxpayer then sold the taxpayer's personal residence. The taxpayer gave the parents the taxpayer's interest in the rental property but remained liable on the debt. The taxpayer then repurchased the rental property from the parents for use as the personal residence and assumed the entire remaining balance of the loan. The court held that taxpayer could not include the assumed debt in calculating the tax gain or loss deferment on the sale and repurchase of a personal residence because the assumed debt was not incurred within two years of the sale and repurchase, since the taxpayer became liable on the debt many years before the sale of the personal residence.

Dunnegan v. Comm'r, 96-1 U.S. Tax Cas. (CCH) ¶ 50,234 (3d Cir. 1996), *aff'g*, T.C. Memo. 1995-167.

SOCIAL SECURITY BENEFITS. In 1991, the taxpayers received Social Security disability benefits but did not include any of the benefits in gross income. The taxpayers stated that they relied on a Form 886-A from an audit of the taxpayers' 1987 tax returns which stated that Social Security disability payments were nontaxable. The court held that one-half of the benefits were included in gross income and upheld the IRS assessment of an accuracy-related penalty under I.R.C. § 6662(a). **Maki v. Comm'r, T.C. Memo. 1996-209**.

LANDLORD AND TENANT

LEASE. The plaintiff corporation was formed to operate a hydroponics greenhouse on land owned by the defendants. The defendants were also shareholders in the plaintiff corporation and the parties entered into an "Incorporators' Letter of Agreement" which provided for the construction of the greenhouse and lease of the land and greenhouse to the corporation. However, several aspects of the lease were not spelled out in the Agreement and the Agreement listed several other issues which needed to be agreed to before the lease could be executed. The court held that the Agreement did not create a binding lease because the Agreement, the actions of the parties (including the failure to charge any rent), and the negotiations leading to the Agreement indicated that the lease was yet to be negotiated. Therefore, the defendants' eviction of the plaintiff corporation was not a breach of any lease. **Waterfall Farm Systems, Inc. v. Craig, 914 F. Supp. 1213 (D. Md. 1995)**.

NEGLIGENCE

ATTRACTIVE NUISANCE. The plaintiff's son was injured when the son trespassed on the defendant's land, climbed into the second story of a barn and fell through a hole made when the son removed a floor board. The plaintiff sued, arguing that the barn was an attractive nuisance and that the defendant failed to exercise reasonable care to eliminate the danger or protect children who might be attracted to the barn. The court held that the attractive nuisance doctrine did not apply because the barn was not an artificial condition on the land which was used as a farm. In addition, the court held that the barn did not impose an unreasonable risk for trespassing children because the danger of falling through a hole in a floor after removing a plank was an open and obvious danger to children. **Cruce v. Kennington, 467 S.E.2d 227 (Ga. Ct. App. 1996)**.

PATENTS

HYDROPONIC SYSTEM. The plaintiff corporation had acquired the rights to develop and market a hydroponic growing system which it had acquired from one of its shareholders who held the original patent. The system was constructed in a greenhouse on land owned by two other shareholders. After a dispute among the shareholders became unreconcilable, the land and greenhouse owners evicted the plaintiff and continued the operation of the greenhouse using the hydroponic system. The plaintiffs sued for violation of the patent. The defendants argued that the patent was invalid, under 35 U.S.C. § 102(b), because the inventor had sold a system more than one year before applying for the patent. The court agreed that the testimony of the inventor demonstrated that the patent was invalid because a sale of the system was made more than one year before the inventor applied for the patent. **Waterfall Farm Systems, Inc. V. Craig, 914 F. Supp. 1213 (D. Md. 1995)**.

PRODUCTS LIABILITY

CULTIVATOR. The plaintiff was injured while replacing a hydraulic cylinder on one wing of a cultivator manufactured by the predecessor in interest to the defendant. The plaintiff sued for negligence in failing to provide a warning that the new cylinder had to be fully charged before removing the pin which held the wing in an upright position. The defendant was found to be 67 percent at fault and the plaintiff was awarded actual and punitive damages. The cultivator had been manufactured by a company which was sold or consolidated with other companies over several years, with the defendant being the current owner of the rights to produce the cultivator used by the plaintiff. Although only one similar accident occurred during the life of the original manufacturer, by the time the defendant acquired the manufacturing rights, several accidents had occurred but the defendant had not made any attempt to warn current cultivator owners about the dangers of replacing hydraulic cylinders. The defendant argued that it had no duty to warn in this case because it did not manufacture the cultivator. The court held that because the defendant had knowledge of the accidents and received a current benefit from selling cultivators with the same name, the defendant was liable for failing to warn current owners. The court noted that the jury had allocated liability among the various owners of the manufacturing company. The court upheld the jury allocation of fault based on sufficient evidence. The court upheld the jury award of punitive damages because the evidence demonstrated wanton conduct by the defendant in failing to warn cultivator owners after the defendant had knowledge of several similar accidents. **Patton v. TIC United Corp., 77 F.3d 1235 (10th Cir. 1996)**.

HERBICIDE. The plaintiff purchased a herbicide manufactured by one defendant and sold by the other defendant. The plaintiff applied the herbicide to a corn crop and claimed that the herbicide damaged the crop. The plaintiff sued in negligence, products liability, and breach of express and implied warranty. The actions were based on claims that the defendants failed to warn about the damage caused by the herbicide and that the herbicide was defectively designed and manufactured. The defendants argued that the actions were preempted by FIFRA. The court held that the actions for failure to warn were preempted by FIFRA but the actions for defective design and manufacture were not preempted. **Eide v. E.I. Du Pont de Nemours & Co., 542 N.W.2d 769 (S.D. 1996)**.

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PROPERTY

USUFRUCT (LIFE ESTATE). The plaintiff owned naked title (vested remainder interest) in timberland in which the defendant owned an usufruct (life estate). The defendant had contracted for the clear cutting of 113 acres of the land and the plaintiff objected to anything more than selective cutting. The land was not actively managed as a tree farm but was merely an old stand of trees which had naturally grown on the property. The court held that because the land was not managed as a tree farm with periodic harvesting of the trees, the usufruct owner did not have a right to harvest all of the trees but could harvest only so much as a prudent administrator would harvest in order to provide a regular income but also preserve the substance of the property for the naked title owner. The court found that a clear cut would impair the value of the property for almost 40 years until another stand of marketable trees would be produced. Thus, the court allowed the defendant to selectively harvest the timber on the 113 acres such that the stand would still produce such income when the land passed to the naked title owner. **Kennedy v. Kennedy, 668 So.2d 485 (La. Ct. App. 1996)**.

STATE TAXATION

SALES TAX. The Washington legislature has passed an exemption from sales tax for labor and services for constructing, repairing or improving new and existing agricultural employee housing and for the sale of personal property which becomes an ingredient or component of the housing. **Ch. 117, Laws 1996, eff. March 20, 1996**.

CITATION UPDATES

Moretti v. Comm'r, 77 F.3d 637 (2d Cir. 1996) (net operating losses) see p. 68 *supra*.

ISSUE INDEX

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