# CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

## ANIMALS

**FENCE**. The defendant was charged with four counts of stock running at large for failure to maintain a lawful fence. The state presented evidence that the fences on the defendant's property were improperly constructed. The barbed wire was placed on the wrong side of the posts which allowed the cattle to easily push the wire off the posts. The statute, N.D. C.C. § 47-26-01(5), defined a lawful barbed wire fence as one with "the wire to be fastened firmly to posts. . ." The defendant argued that the definition did not state on which side of the posts the wire was to be fastened. The court held that the evidence demonstrated that the wire was not "fastened firmly" because the cattle could easily push the wire off the posts; therefore, the barbed-wire fence was not a lawful fence. **State of North Dakota v. Hatlewick, 700 N.W.2d 717 (N.D. 2005)**.

## BANKRUPTCY

### FEDERAL TAX

**AUTOMATIC STAY.** In April 2004 , the IRS issued to the debtor a notice of deficiency for 2001 and 2002 taxes. In May 2004 the debtor filed a petition in bankruptcy and the case was still open at the time of this ruling. In June 2004 the debtor filed a petition in the Tax Court challenging the deficiency notice. In March 2005 a settlement was reached in the Tax Court case and the court entered a stipulated decision based on the settlement. The IRS moved to vacate the decision because the Tax Court case violated the automatic stay. The court ruled that its stipulated decision was invalid because the ruling, if not the whole case, violated the automatic stay. The court vacated the decision and dismissed the case. **Adkins v. Comm'r, T.C. Memo. 2005-260**.

**DISCHARGE**. The debtor failed to timely file income tax returns and failed to pay taxes for several years. The IRS sought to have the unpaid taxes declared nondischargeable under Section 523(a)(1)(C) for willfully attempting to evade payment of the taxes. The IRS pointed to the debtor's significant income during the periods involved, the debtor's extravagant lifestyle during the same period, the debtor's concealment of some assets, and the debtor's commingling of business and personal assets. The debtor claimed that the taxes were not paid because of the debtor's drug dependency, gambling problems and other personal problems. The debtor also claimed that the money was otherwise spent on family living expenses and reasonable business entertainment expenses. The court held that the taxes were nondischargeable because the debtor spent the money on a extravagant lifestyle while knowing that the taxes were owed. ***In re* Harris, 328 B.R. 837 (Bankr. S.D. Ala. 2005)**.

The debtor was an accountant who prepared tax returns for a living, using a corporation as the business entity operating the accounting practice. The debtor failed to pay income taxes for four tax years and sought to discharge those taxes in Chapter 7. The court found that the debtor filed inaccurate returns which underreported income. The debtor determined taxable income by adding all bank deposits from the corporation and subtracting business expenses. The debtor did not identify any of the deposits as wages, dividends or other compensation. The court found that the debtor had falsified W-2 forms to show wage income in applying for a credit card. The court held that the debtor's occupation as an accountant and the debtor's failure to comply with tax reporting requirements well known to the debtor's profession demonstrated that the debtor willfully filed incorrect income tax returns and failed to pay taxes in an attempt to evade payment of the taxes; therefore, the taxes were nondischargeable. ***In re* Cole, 328 B.R. 237 (Bankr. M.D. Fla. 2005)**.

## CONTRACTS

**GUARANTY**. The plaintiff purchased 100 cows from the defendant under an oral sales agreement. The plaintiff claimed that the defendant had guaranteed that all of the cows were three to six years old, five to seven months bred and bred by Angus or Charolais bulls. The plaintiff resold the cows within six months, many well after they should have delivered calves, but did not. The plaintiff alleged that most of the cows were over six years old and only a few were bred at the time of sale. The plaintiff sued for the difference in value of the cows as guaranteed and as delivered. The trial produced contradictory testimony but the trial court was swayed in favor of the plaintiff because the defendant had agreed to replace some of the unbred cows with bred cows, indicating to the court that the defendant had guaranteed that all the cows were sold as bred cows. The trial court awarded the plaintiff damages for the difference in value of the cows delivered from the value as guaranteed. The appellate court upheld the trial court's ruling as supported by the evidence. **Cook v. Stowe, 2005 La. App. LEXIS 2249 (La. Ct. App. 2005)**.

**INTERFERANCE WITH CONTRACT**. The plaintiff purchased land next to the defendant's poultry farm for the purpose of building three residences for resale. Because of septic tank requirements, the houses were built close to the defendant's property and the defendant objected to the placing of the houses. When the plaintiff refused to relocate the houses, the defendant erected a sign facing the houses which said:

**WARNING**
This is a chicken farm.
It smells like a chicken farm.
Tractor/Trailer Rigs are here every night,
and sometimes all night long.
This is not a pleasant place to live.
Trespassers will be prosecuted fully,
including children and animals.
**YOU ARE NOT WELCOME HERE**
**DO NOT COMPLAIN!**

The defendant also piled chicken manure on the plaintiff's side of the property line "so the people would know what it smelled like when we spread litter." The plaintiff sued for an injunction against the sign and the location of the manure pile and for damages resulting from the loss of property value resulting from the defendant's interference with the plaintiff's contracts to sell the property. The properties were sold to a real estate investor but the plaintiff did not present any evidence of loss of value that could be attributed solely to the sign or any evidence that any business activity of the plaintiff was prevented by the defendant's actions. **Cochran v. Mullinax, 2005 Ga. App. LEXIS 1169 (Ga. Ct. App. 2005)**.

# FEDERAL AGRICULTURAL PROGRAMS

**AGRICULTURAL ECONOMICS**. The Economic Research Service has issued its 2005 report on the economic outlook for agriculture. The report provides historical estimates and forecasts of farm sector financial information that allow readers to gauge the financial health of the nation's farmers and ranchers. The report is available on the web at http://www.ers.usda.gov/publications/so/view.asp?f=economics/ais-bb/ **Agricultural Income and Finance Outlook, AIS-83, Nov. 2005**.

**COTTON**. The CCC has adopted as final regulations changing the Extra Long Staple cotton price used to calculate the payment rate from the "average domestic spot price quotation for base quality U.S. Pima cotton" to the "American Pima c.i.f. Northern Europe" price. **70 Fed. Reg. 67342 (Nov. 7, 2005)**.

**POWER OF ATTORNEY**. The plaintiff and defendant were brothers who had inherited farmland owned by their father. While the father was alive and competent, the father executed a durable power of attorney for the defendant to operate the farm. The power of attorney restricted the defendant's right to sell the property but did not restrict the defendant's ability to enroll the property in federal farm programs. The defendant enrolled the farm in the Conservation Reserve Program (CRP), which had the effect of making the farm ineligible for the Program Flexibility Contract Program (PFC). The FSA had sent a letter to the father and defendant stating that the defendant had a power of attorney to enroll the father's land in farm programs. The father did not make any changes in the FSA records. The defendant applied the PFC entitlement to the defendant's own farmland. Thus, when the father died, the land which passed to the plaintiff was enrolled in the CRP. The plaintiff sought removal of the plaintiff's land from CRP so that the plaintiff could place it in the PFC program. The plaintiff alleged that the defendant's enrolling of the plaintiff's share of the land in the CRP was improper self-dealing, fraudulent and a violation of the power of attorney because the father was incompetent at the time. The court found that the father was competent at the time the land was placed in CRP; therefore, the enrollment was not made solely pursuant to the power of attorney. The court also found no fault with the FSA for accepting the enrollment under the power of attorney because the father had not made any changes after the notice was sent. The court held that the enrollment was proper and the FSA was not required to cancel the CRP enrollment of the land. **Siebrasse v. United States, 418 F.3d 847 (8th Cir. 2005)**.

**TRANSPORTATION**. The CCC has issued a notice to all interested parties regarding additional actions pursuant to the September 20, 2005 announcement to ease transportation issues exacerbated by Hurricane Katrina. The CCC is seeking proposals from interested parties for unloading barges of agricultural commodities located in the New Orleans area to make them available to transport 2005-crop agricultural commodities. Proposals should be submitted November 14, 2005 to be assured of consideration. **70 Fed. Reg. 67410 (Nov. 7, 2005)**.

# FEDERAL ESTATE AND GIFT TAXATION

**FAMILY-OWNED BUSINESS DEDUCTION**. The decedent's estate included timber and farm land, commercial real estate, and oil and gas leases but the estate did not make a FOBD election because its valuation of the assets on the estate tax return did not exceed 50 percent of all estate assets. The estate tax return was examined by the IRS and the value of the business assets was increased by the IRS to such an extent that the value of the assets exceeded 50 percent of the estate. The estate filed an amended return with the new values and a FOBD election and sought an extension of time to make the election. The IRS granted the extension. **Ltr. Rul. 200543016, June 30, 2005**.

**VALUATION.** Commerce Clearing House has reported that on November 7, 2005, the U.S. Court of Appeals for the Fifth Circuit remanded the following case to the Tax Court "for the limited purpose of determining allowable administrative expenses, including attorney's fees." The decedent had transferred assets to a family limited partnership and transferred limited partnership interests to the decedent's heirs. The partnership was held to be valid under state law and effective for federal estate tax purposes. The restrictions on the transferability of limited partnership interests and withdrawal rights did not subject the partnership interests to valuation under I.R.C. § 2703. The decedent's interest in the partnership was discounted 25 percent for lack of marketability and 25 percent for a minority interest. The Tax Court had denied an IRS request to amend its pleadings to include a claim that, under I.R.C. § 2036, the assets transferred to the partnership were included in the decedent's gross estate. The Tax Court acknowledged, however, that if such a claim was properly raised, it might have succeeded. The amendment was made two months before trial but was denied as untimely. The appellate court ruled that the amendment should have been allowed and remanded for consideration of that claim. The appellate court affirmed on all other points. On remand, the Tax Court held that the property transferred to the limited partnership was included in the decedent's estate under I.R.C. § 2036 because the decedent retained control over the assets, the partnership funds were used to support the decedent, and the decedent's relationship to the assets was not actually changed by the transfer. The Tax Court holding was affirmed on appeal. **Strangi v. Comm'r, 417 F.3d 468 (5th Cir. 2005), *aff'g*, T.C. Memo. 2003-145, *on rem. from*, Gulig v. Comm'r, 293 F.3d 279 (5th Cir. 2002), *aff'g sub nom.*, Estate of Strangi v. Comm'r, 115 T.C. 478 (2000)**. **See also Harl, "More on Family Limited Partnerships," 12 *Agric. L. Dig.* 1 (2001)**.

# FEDERAL INCOME TAXATION

**BUSINESS DEDUCTIONS**. The taxpayer was a truck driver who worked as an independent contractor and as an employee for a company. The company had allowed the taxpayer to keep all business records at the company premises but refused access to the records after the taxpayer's employment was terminated. Thus, the taxpayer had no written records to substantiate any deduction claimed for the taxpayer's trucking activities. The court noted that the deductible expenses could be estimated by the court if there was sufficient evidence to make the estimates. However, the court also noted that deductions related to "listed property" had to be substantiated by the methods provided in Temp. Treas. Reg. § 1.274-5T(a). The taxpayer provided only oral testimony as to the amount of the expenses and the court rejected this evidence as incomplete, noting that the taxpayer made no attempt to reconstruct the records. The court also upheld the imposition of the accuracy-related penalty of I.R.C. § 6662 because the taxpayer made no effort to substantiate the claimed, but denied, deductions. **Kolbeck v. Comm'r, T.C. Memo. 2005-253**.

The taxpayer's returns included deductions for moving expenses, charitable contributions, home mortgage interest and miscellaneous job-related and business deductions. The taxpayer presented little written or oral evidence to support the deductions and the court denied the deductions to the extent denied by the IRS for lack of substantiation by the taxpayer. **Work v. Comm'r, T.C. Memo. 2005-259**.

The taxpayer's employment was terminated after the taxpayer had revealed various improprieties in the employer's handling of state funds. The taxpayer sued the state employer for lost wages, mental anguish and expenses. The parties reached a settlement but the court ruled that the settlement had to be paid from an appropriation from the state legislature. The taxpayer established two companies to lobby the legislature for the appropriation. The taxpayer was successful in obtaining the appropriation and reaching a settlement with the state. The court held that the taxpayer could exclude from taxable income the amounts received for mental anguish but could not claim any deductions for expenses incurred by the companies because they were not in a trade or business. **Green v. Comm'r, T.C. Memo. 2005-250**.

**CAPITAL GAINS**. The taxpayer won the state lottery which paid the winnings in annual installments. The taxpayer received two annual payments before selling the right to the remaining payments for a lump sum. The taxpayer reported the lump sum as capital gain, arguing that the winnings were a capital asset because the winnings had appreciated in value. The court, acknowledging substantial precedent, held that the lump sum proceeds were ordinary income. **Prebola v. Comm'r, T.C. Memo. 2005-261**.

**CLEAN FUEL VEHICLE DEDUCTION**. The IRS has certified the 2006 Ford Escape Hybrid and 2006 Mercury Mariner Hybrid as eligible for the clean-fuel vehicle deduction provided by I.R.C. § 179A. The deduction is $2,000 for vehicles first purchased and first used by the original owner in 2005. Under I.R.C. § 30, the alternative motor vehicle credit is available for qualifying vehicles paced in service after December 31, 2005. **IR-2005-132**.

**COURT AWARDS AND SETTLEMENTS**. In 2001, the taxpayer filed an employment discrimination suit against an employer. In 2002, the taxpayer was diagnosed with carpal tunnel syndrome and back injuries and received treatment which was made part of a workers' compensation claim. The suit was settled and the settlement agreement included a payment to the taxpayer but excluded all claims for which workers' compensation had been sought. The agreement also prohibited the employer from disclosing the terms of the agreement, or making disparaging remarks about the taxpayer. The employer was also required to issue a Form 1099 for the settlement proceeds. The taxpayer argued that the settlement proceeds were excludible from taxable income because (1) the proceeds were for the physical injuries and (2) the employer breached both of the above agreement terms. The court held that the proceeds were included in gross income because (1) the physical injuries were excluded from the settlement agreement because a workers' compensation claim had been filed for both injuries and (2) the breach of the agreement did not affect the taxable nature of the proceeds. **Bond v. Comm'r, T.C. Memo. 2005-251**.

**DEPRECIATION**. Representative Chocola of Pennsylvania has introduced legislation in the U.S. House of Representatives which would define "any machinery or equipment (other than any grain bin, cotton ginning asset, fence, or other land improvement) which is used in a farming business (as defined in section 263A(e)(4)) and placed in service before January 1, 2010" as

5-year property for depreciation purposes. **H.R. 4236**.

**DISASTER LOSSES.** On October 24, 2005, the president determined that certain areas in Florida are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of Hurricane Wilma, which began on October 23, 2005. **FEMA-1609-DR**. On October 19, 2005, the president determined that certain areas in Massachusetts are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on October 7, 2005. **FEMA-3264-EM**. Taxpayers who sustained losses attributable to the disaster may deduct the losses on their 2004 returns.

**DOMESTIC PRODUCTION DEDUCTION.** The proposed regulations for the domestic production deduction, discussed in Harl and McEowen, "Proposed Regulations Issued on New Domestic Production Deduction," p. 161 *supra*, were published in the Federal Register on November 4, 2005. **70 Fed. Reg. 67219 (Nov. 4, 2005)**.

**PENSION PLANS**. For plans beginning in October 2005 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the corporate bond weighted average is 5.79 percent with the permissible range of 5.21 to 5.79 percent (90 to 100 percent permissible range). The 30-year Treasury securities rate for this period is 4.88 percent, the 90 percent to 105 percent permissible range is 4.39 percent to 5.12 percent, and the 90 percent to 110 percent permissible range is 4.39 percent to 5.37 percent. **Notice 2005-72, I.R.B. 2005-47**.

**RETURNS**. The IRS has issued proposed regulations relating to the simplification of procedures for obtaining automatic extensions of time to file certain returns. The proposed regulations allow individual income taxpayers and certain other taxpayers to obtain an automatic, full six-month extension of time to file certain returns by filing a single request. Under the current rules, an individual tax payer can receive a four-month extension with one form, but must file a second form to receive an additional two-month extension. Similarly, trusts and partnerships request an initial three-month automatic extension on one form and then use a second form to request a three-month discretionary extension. For these returns, Form 4868, the proposed regulations also remove the requirements for a signature and an explanation of the need for an extension of time to file. The proposed regulations affect taxpayers who are required to file certain returns and need an extension of time to file. The proposed regulations do not change the rules regarding filing extensions for corporate income tax returns. The proposed regulations are effective for applications for an automatic extension of time to file certain returns filed after December 31, 2005. **70 Fed. Reg. 67397 (Nov. 7, 2005)**.

The IRS has announced an extension of deadline relief for victims of Hurricane Rita. If the last date for the IRS action is on or after November 7, 2005, and on or before February 28, 2006, the new deadline is February 28, 2006. The extended deadlines apply to the following federal actions:

(1) making tax assessments;
(2) issuing deficiency notices;
(3) allowing tax credits or refunds;
(4) collecting tax liabilities, by levy or otherwise;
(5) bringing suit by the United States, or any office on its behalf, with respect to a tax liability;
(6) returning property that was subject to a wrongful levy;
(7) discharging executors from personal liability for a decedent's taxes; and
(8) issuing notices of final partnership administrative adjustment to the tax matters partner with respect to the tax attributable to the partnership items of partners of any partnership subject to TEFRA proceedings. **Notice 2005-82, I.R.B. 2005-47**.

The IRS has further extended the deadlines for several actions that it could take with respect to taxpayers affected by Hurricane Katrina. If the last date for the IRS action is on or after September 6, 2005, and on or before February 28, 2006, the new deadline is February 28, 2006. The extended deadlines apply to the following federal actions:

(1) making tax assessments;
(2) issuing deficiency notices;
(3) allowing tax credits or refunds;
(4) collecting tax liabilities, by levy or otherwise;
(5) bringing suit by the United States, or any office on its behalf, with respect to a tax liability;
(6) returning property that was subject to a wrongful levy; and
(7) discharging executors from personal liability for a decedent's taxes.

The extended deadlines apply to affected taxpayers who live or work in the counties or parishes in Louisiana, Alabama, Mississippi and Florida that President Bush has designated as disaster areas. Affected taxpayers include: (1) individuals with a principal residence in a disaster area; (2) business entities with a principal place of business in a disaster area; (3) individual relief workers who are affiliated with recognized government and philanthropic organizations and are working in a disaster area; (4) individuals, business entities, estates and trusts that maintained records in a disaster area that are necessary for meeting tax deadlines; (5) spouses of affected taxpayers, but solely with regard to joint returns; (6) any other person that the IRS determines to be an affected taxpayer; and (7) taxpayers with respect to whom the IRS maintained records in a disaster area that may be lost, destroyed or are otherwise inaccessible. **Notice 2005-81, I.R.B. 2005-46**.

**TAX RATES**. The IRS has issued inflation-adjusted tax deductions for 2006. The standard deduction amount for individuals who may be claimed as dependents by other taxpayers for 2006 may not exceed the greater of $850, or the sum of $300 and the individual's earned income. The additional standard deduction amounts for the aged and for the blind remain at $1,000 for each, and increase to $1,200 if an individual is unmarried and is not a surviving spouse. Further, the amount used to reduce the net unearned income of certain minor children subject to the "kiddie tax" at their parents' marginal rate is $850. The maximum credit allowed in the case of an adoption of a child with special needs is $10,960; the maximum credit allowed with regard to other adoptions is the amount of the qualified adoption expenses up to $10,960. For tax years beginning in 2006, the value used when determining the potentially refundable amount of the child tax credit is $11,300. With respect to education credits, 100 percent of qualified tuition and related expenses not in excess of $1,100 and 50 percent of such expenses in excess of $1,100 are taken into account when determining the amount of the Hope Scholarship Credit. Additionally, a taxpayer's modified adjusted gross income in excess of $45,000 ($90,00 for joint filers) is taken into account when determining the reduction in the amount of the Hope Scholarship and Lifetime Learning Credits otherwise allowable under I.R.C. § 25A(a). Indexing has expanded the earned income credit (EIC) for 2006. The earned income limit for the maximum credit has increased to $8,080 for a qualifying individual with one child, $11,340 for a taxpayer with two or more children, and $5,380 for a taxpayer with no children. The EIC will be denied if the aggregate amount of certain investment income exceeds $2,800. **IR-2005-130**.

**TRUSTS**. The assets of several employer pension plans were held by six trusts. The six trusts were merged into two trusts with no change in any of the methods of holding assets or relationship with the pension plans. The IRS ruled that the mergers did not result in any material change in kind or legal entitlements; therefore, the mergers did not result in any recognition of gain or loss and the basis of the assets in the trusts carried over to the merged trusts. **Ltr. Rul. 200544007, July 28, 2005**.

**WITHHOLDING TAXES**. The IRS has issued new rules for determining the amount an employer should withhold from wages paid to nonresident alien employees. The new rules eliminate the current requirement that a specified additional amount, based on payroll period, be withheld from each nonresident alien's paycheck. Withholding for a payroll period, however, will be determined by applying the applicable withholding table to the sum of the wages earned during the payroll period and an additional dollar amount specified in the new guidance for the payroll period. **Notice 2005-76, I.R.B. 2005-46**.

# LANDLORD AND TENANT

**LEASE**. The plaintiff cash leased a farm to the defendant and the written lease contained a provision that the defendant would pay for any legal costs incurred by the plaintiff in enforcing the lease. The parties had a disagreement as to the correct rent to be paid and the plaintiff sought recovery of lease payments and eviction of the defendants. The trial court ruled for the defendant but *sua sponte* ruled that the lease was unenforceable because it contained the provision requiring the defendant to pay legal costs incurred by the plaintiff. The legal costs provision had been held, in *Baierl v. McTaggart, 629 N.W.2d 277 (Wis. 2001)*, to violate Wis. Admin. Code § ATCP 134.08(3). The trial court ruled that the unenforceable provision left the parties with only a month-to-month lease. The plaintiff then gave notice to the defendant of termination of the lease and filed suit when the defendant refused to vacate the farm. The trial court ruled for the plaintiff, ruling that the lease was null and void. On an initial appeal, the court held that the defendant could not seek to enforce the lease and, at the same time, seek to avoid the provision for the plaintiff's legal costs. The trial court, on remand, held for the plaintiff and ordered the defendant to pay legal costs. On further appeal, the defendant argued that the prohibited legal cost provision could be severed from the lease, allowing the lease to be enforced except for the legal costs provision. The appellate court recognized the need for guidance in determining whether the decision in *Baierl* resulted in the entire contract becoming unenforceable or whether only a prohibited provision itself became unenforceable. The court declined to make a ruling but recommended the case to the Wisconsin Supreme Court. **Dawson v. Goldammer, 2005 Wisc. App. LEXIS 935 (Wis. Ct. App. 2005)**.

# PROPERTY

**PARTITION.** A farm had been owned by the parents of seven children. At the death of the parents, the farm passed to the seven children as joint tenants. One of the children, the plaintiff, transferred the plaintiff's interest to the plaintiff and the plaintiff's children. The plaintiff operated the farm and, after a disagreement with the other siblings, sought partition of the farm and recovery of expenses in maintaining the farm. The trial court held that partition was not proper and ordered the farm sold. The sale proceeds were placed with the court and the plaintiff sought distribution of the plaintiff's share plus an amount for maintenance of the farm. The trial court awarded the plaintiff a money judgment for the maintenance costs and the plaintiff sought an appeal. The appellate court dismissed the appeal and held that no appealable final judgment had been entered because the proceeding was *in rem* for partition of the farm, no judgment finally determining the parties' interests in the farm had been entered, and the proceeds of the sale were not distributed. **Houpt v. Houpt, 2005 Mo. App. LEXIS 1569 (Mo. Ct. App. 2005)**.

# SECURED TRANSACTIONS

**INJUNCTION INVOLVING STATE COURT ACTION**. The plaintiff, the Farm Service Agency, had provided operating loans to a debtor who leased cattle from the debtor's parents. The lease provided for each party a share of the cattle born to the original leased cattle. The debtor had granted the FSA a security interest in all farm property which extended the debtor's interest in the cattle. The cattle were sold and the

Agricultural Law Press
P.O. Box 50703 Eugene, OR 97405

funds placed in escrow pending a determination of the various creditors' rights in the cattle. The parents claimed that the cattle were theirs outright and were not subject to any security interest. The parents and debtor had started a state court proceeding to determine the distribution of the cattle proceeds and the plaintiff sought a preliminary injunction of the state court proceeding to determine the interests in the proceeds. The court noted that federal court injunction of state actions was not favored but was allowed if the equities favored an injunction to protect the government's interests and the plaintiff demonstrated sufficient likelihood of success. The court discussion focused on whether the plaintiff had demonstrated a sufficient likelihood of success that the plaintiff's lien would have priority over any other creditor's interest in the cattle proceeds. The parents argued that they held a statutory suppliers' lien in the cattle or that they owned the cattle outright. The plaintiff argued that the suppliers' lien did not apply to cattle and that the state court had held already that the parents had leased the cattle to the debtor; therefore, the debtor's interest in the cattle was sufficient for the plaintiff's lien to attach. None of the defendants in this action presented any evidence or argument to rebut the plaintiff's arguments; therefore, the court held that the plaintiff was sufficiently likely to succeed on this issue to warrant the preliminary injunction, especially since a distribution of the proceeds would virtually destroy the plaintiff's chance of any recovery. **United States v. Miller, 2005 U.S. Dist. LEXIS 24948 (D. N.D. 2005)**.

## CITATION UPDATES

**Wuebker v. Wilbur-Ellis Co., 418 F.3d 883 (8th Cir. 2005),** ***rev'g*****, 338 F. Supp.2d 974 (S.D. Iowa 2004)** (federal preemption of pesticide case) see p. 127 *supra*.