CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

ANIMALS

HORSES. The plaintiff was an experienced life-long horseback rider and visited the defendant's riding stables to practice riding. The plaintiff was injured when the horse bit the plaintiff when the plaintiff approached the horse which the plaintiff had ridden before. The plaintiff had observed the horse eating and had waited until the horse had finished before approaching the horse. The defendant provided evidence that the plaintiff was aware that horses can kick and bite. The trial court dismissed the plaintiff suit for negligence, holding that the plaintiff had assumed the risk of the injury as part of the natural risks of horseback riding. The appellate court affirmed. **Tilson v. Russo, 2006 N.Y. App. Div. LEXIS 8242 (N.Y. Sup. Ct. 2006)**.

BANKRUPTCY

GENERAL

DISCHARGE. The debtors, husband and wife, leased farm land for several years. The debtors sought farm operation loans from a bank which were guaranteed by the FSA. The debtors wrote checks for the rent but the checks were returned for insufficient funds. The debtor thought that the guaranteed loans would cover the rent checks but the bank refused to lend more money until the debtor paid off the previous loan balance. The rent remained unpaid when the debtors filed for Chapter 7. The landlord had not filed a landlord's lien and the bank had the priority security interest in the proceeds of crops grown by the debtors. The landlord sought a ruling that the claim for unpaid rent was nondischargeable, under Section 523(a)(4), because the unfunded checks were a "debt for fraud or defalcation or both while acting in a fiduciary capacity." The court held that the rent claim was dischargeable because the debtors acted as fiduciaries for the landlord when the unfunded checks were written. In addition, the court held that the debtors were not shown to have stolen or embezzled any of the landlord's property through the writing of the checks; therefore, the rent claim was dischargeable. ***In re*** **Hermes, 340 B.R.369 (Bankr. C.D. Ill. 2006)**.

A creditor objected to the debtor's discharge, under Section 727(a)(2)(A), because the debtor (1) failed to accurately list the number of cattle owned; (2) concealed some cattle by transferring them to the debtor's spouse; (3) failed to keep accurate employment and income records; and (4) failed to accurately list all assets on the bankruptcy schedules. The court found that the cattle were properly excluded because the cattle were not exclusively owned by the debtor and were not transferred to the debtor's spouse. The court also held that, because the debtor worked irregular jobs and did not receive regular paychecks or pay stubs, the lack of records was excusable. The court found that the property excluded from the bankruptcy schedules was revealed to the trustee or was excluded because of inadvertence. The court held that the debtor was eligible for a discharge. ***In re*** **Greene, 340 B.R. 93 (Bankr. M.D. Fla. 2006)**.

EXEMPTIONS

CHILD TAX CREDIT. The debtors, husband and wife, filed for bankruptcy on December 8, 2004. The debtors claimed the child tax credit on the return for 2004 and claimed in bankruptcy that the refund on the return was post-petition property not included in the estate. The court held that the child tax credit was "sufficiently rooted" in pre-petition earnings to be considered property of the estate. The court noted that the only contingent aspect of the credit was the timely filing of the income tax return, which was almost certain, given the claim for a refund. However, the court held that the child tax credit would be excluded from the estate to the extent of taxable income earned after the bankruptcy petition. ***In re*** **Griffin, 339 B.R. 900 (Bankr. E.D. Ky. 2006)**.

HOMESTEAD. The debtors, husband and wife, claimed their residence as exempt under Ariz. Rev. Stat. § 33-1101, valuing the property at $257,000 and $150,000 as the amount of the exemption, with a statement that the debtors were claiming the maximum exemption regardless of the final value of the residence. No one objected to the exemption claim. The Chapter 7 trustee moved for authority to sell the residence for $405,000 and the debtors objected, arguing that any amount received above $257,000 was post-petition appreciation which was not part of the bankruptcy estate. The debtors argued that, because the trustee failed to object to the value of the residence stated in the exemption claim, the value was established for the remainder of the bankruptcy case. The court held that the failure of the trustee to object to the exemption claim affected only the trustee's right to object to the exemption claim itself and not the entire property, where the exemption claim is less than the value of the property. The exempt property passed out of the bankruptcy estate but the remainder of the property, the value above the exemption amount, and any appreciation in its value, remained part of the bankruptcy estate. ***In re*** **Farthing, 340 B.R.376 (Bankr. D. Ariz. 2006)**.

CHAPTER 12

ELIGIBILITY. The debtors, husband and wife, owned a 3.8 acre farm on which the debtors bred, boarded, trained and sold walking horses. The husband claimed to spend 80 percent of each workday on the operation and the wife claimed to spend 50 percent of each workday on the operation. The case does not mention any outside income. A creditor objected to the Chapter 12 filing, arguing that the debtors were not farmers because the debtors filed only federal income tax Schedule C for the operation and did not filed Schedule F. The court held that use of Schedule C did not negate the other factors showing that the debtors were engaged in traditional farming operations subject to the risks associated with other forms of farming. ***In re* Buchanan, 2006 U.S. Dist. LEXIS 50968 (M.D. Tenn. 2006)**.

FEDERAL AGRICULTURAL PROGRAMS

COOPERATIVES. The CCC has adopted as final regulations amending the regulations governing Cooperative Marketing Associations to provide that a CMA is no longer required to distribute Marketing Assistance Loan (MAL) and Loan Deficiency Payment (LDP) proceeds directly to members of the CMA within 15 days of receipt of such proceeds from CCC. The new regulations allow delayed payment under deferred payment agreements between the CMA and its members. **71 Fed. Reg. 42749 (July 28, 2006)**.

CROP INSURANCE. In 2002, the defendants purchased crop revenue coverage insurance which continued through 2004 and covered their 2004 crop of soybeans on leased farm land in Louisiana. The defendants leased 2000 acres but were prevented from planting all but 41 acres. The defendants filed a claim with the plaintiff insurance company but the claim was denied because (1) the defendants did not file intended acreage reports in 2003 and 2004; (2) the land was disked before the land could be inspected by the plaintiff; and (3) the defendants did not plant and harvest at least the same number of acres in the previous crop year. The defendant presented evidence that two notices of the claim were filed with the plaintiff before the land was disked and that the land was disked by the landlord when the defendants gave notice that they were not going to continue the lease. The claim denial was submitted to arbitration and the arbitrator awarded the claim to the defendants. The court upheld the arbitrator's decision because (1) the defendants were not required to file intended acreage reports after the year of the initial application for insurance, even though the defendants had provided sufficient information to the plaintiff as to the intended acres for 2004; (2) the failure to obtain prior consent to destroy the planted acres by disking was justified by the plaintiff's failure to timely respond to the defendants' timely claims; and (3) although the defendants did not personally raise crops on the same number of acres in 2003 as in 2004, the landlord had planted and harvested crops on those same acres in 2003. The defendants also sought damages as allowed by the CRC policy and federal crop insurance regulations. The court held that such damages were allowed where the defendants prove that the damages were the result of a culpable failure of the plaintiff to substantially comply with federal crop insurance law or regulations or were the result of actions by the plaintiff beyond the scope of its authority. **Farmers Crop Insurance Alliance v. Laux, 2006 U.S. Dist. LEXIS 48717 (S.D. Ohio 2006)**.

The FCIC has issued proposed regulations amending the fresh market sweet corn crop insurance provisions of the common crop policy to allow for the expansion of fresh market sweet corn coverage into more areas where the crop is produced, when provided in the actuarial documents and when it is marketed through direct marketing. This change will be applicable for the 2008 and succeeding crop years. **71 Fed. Reg. 42770 (July 28, 2006)**.

The FCIC has issued proposed regulations amending the common crop insurance regulations; northern potato crop insurance provisions, northern potato crop insurance quality endorsement, northern potato crop insurance processing quality endorsement, potato crop insurance certified seed endorsement, northern potato crop insurance storage coverage endorsement, and the central and southern potato crop insurance provisions to provide policy changes and clarify existing policy provisions to better meet the needs of the insureds, and to reduce vulnerability to fraud, waste and abuse. The changes are intended to apply for the 2008 and succeeding crop years. **71 Fed. Reg. 42761 (July 28, 2006)**.

FARM AND RANCH LANDS PROTECTION PROGRAM. The Natural Resources Conservation Service has issued interim final regulations amending the Farm and Ranch Lands Protection Program at 7 C.F.R. Part 1491 to clarify (1) fair market value definition; (2) program eligibility as to forest lands; (3) the nature of the real property rights the United States is acquiring and how it will exercise those rights; (4) compliance with Department of Justice Title Standards; (5) exercising United States' rights; (6) the implementation of federal appraisal requirements required by the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970; (6) impervious surface limitations on the easement area; and (6) indemnification requirements. **71 Fed. Reg. 42567 (July 27, 2006)**.

FARM LOANS. The debtor had obtained loans from the FmHA, now FSA, and defaulted on the loans. The loans were secured by mortgages on the debtor's farm. The debtor also failed to pay real estate taxes and a state tax lien was filed against the farm. The farm was sold at foreclosure by the state for the amount of unpaid taxes. No notice of the state tax lien or foreclosure sale was given to the FSA. However, the FSA became aware of the foreclosure but did not seek to foreclose its mortgage for several years. Under Maine law, Me. Rev. Stat. Tit. 36, § 943, the FSA mortgage was extinguished three months after the FSA had actual knowledge of the state tax lien and foreclosure. The person who purchased the farm at foreclosure argued that the Maine law applied to extinguish the FSA loan as to the purchaser. The court agreed and held that the purchaser held title to the farm free of the FSA mortgage. **United States v. Sayer, 450 F.3d 82 (1st Cir. 2006), *rev'g*, 2005 U.S. Dist. LEXIS 2952 (D. Me. 2005)**.

NATIONAL ORGANIC PROGRAM. The AMS has issued proposed regulations amending the USDA National List of Allowed and Prohibited Substances regulations to add 13 substances, along with any restrictive annotations, to the list of substances allowed for organic livestock production. The list of approved substances for livestock production can be found at 7 C.F.R. § 205.603. Note that some substances are allowed only for specific uses, such as cleaning equipment. **71 Fed. Reg. 40623**

(July 17, 2006).

FEDERAL ESTATE AND GIFT TAXATION

ALTERNATIVE VALUATION DATE. The decedent was a member of a family which owned a privately-held manufacturing corporation. Prior to the death of the decedent, the family had decided to reorganize the corporation to provide for continuity of ownership by family members and to accomplish various estate planning objectives. The decedent died two months before the reorganization occurred and the executor elected the alternate valuation date to value the stock held by the decedent. Under the reorganization, the decedent's shares were exchanged for similar shares but the new shares had a higher value because non-family member shareholders had received cash for their shares. The reorganization qualified for tax-free treatment under I.R.C. § 368(a). The IRS argued that the reorganization date was the alternate valuation date because the reorganization was a disposition of the decedent's shares. The court held that the reorganization was not a distribution, exchange, sale or other disposition under I.R.C. § 2032(a) and Treas. Reg. § 20.2032-1(c)(1); therefore, the alternate valuation date was six months after the decedent's death. The court also upheld the estate's valuation of the stock as based on credible expert appraisals. **Kohler v. Comm'r, T.C. Memo. 2006-152**.

FAMILY-OWNED BUSINESS DEDUCTION. The decedent's estate included a farm which passed in equal shares to four heirs. The estate elected to claim the family-owned business deduction for three of the heirs' interests, leaving one-fourth without the deduction. A federal estate tax lien was placed on the three-fourths interests in the farm to secure the deduction. The one-fourth holder wanted the farm partitioned into separate interests and the farm was placed for sale. The three-fourths owners successfully bid on the three-fourths interests and sought contribution from the one-fourth owner for payment of one-fourth of the tax lien, attorney fees and title insurance. The tax lien issue was not decided because several fact issues remained. The court held that the one-fourth owner was required to pay one-fourth of the attorney's fees for the legal work which benefitted all owners and one-fourth of the title insurance costs. **Klock v. Klock, 2006-2 U.S. Tax Cas. (CCH) ¶ 60,529 (N.D. Ill. 2006)**.

IRA. The taxpayer was the surviving spouse of a decedent who owned an IRA. The taxpayer was the beneficiary of the IRA and had the decedent's IRA funds distributed directly to the taxpayer's IRA in 1998. In 2002, the taxpayer requested a distribution from the taxpayer's IRA. The taxpayer was age 55 at the time of the distribution. The taxpayer included the distribution in income but did not pay the 10 percent additional tax for early distribution. The taxpayer argued that the distribution was from the decedent's IRA; therefore, as allowed by I.R.C. § 72(t)(2)(A)(ii), the distribution was not subject to the 10 percent additional tax. The court held that, once the decedent's IRA funds were rolled over to the taxpayer's IRA, the funds became part of the taxpayer's IRA and lost their character as a distribution from an IRA to a beneficiary; therefore, when the taxpayer received the funds four years later, the funds were treated as a distribution from the taxpayer's IRA and were subject to the 10 percent additional tax for early distributions. **Gee v. Comm'r, 127 T.C. 1 2006**.

FEDERAL INCOME TAXATION

ALIMONY. The taxpayer's former spouse filed for divorce in July 2001 and an arbitration session was scheduled for March 13, 2002 to settle all issues as to the dissolution of the marriage. On that day, all issues were settled and an agreement was reached that the taxpayer was to pay $20,000 in alimony to the spouse in monthly $4,000 payments. The taxpayer made a payment of $3,000 after the arbitration agreement but before the court entered the final divorce decree, which ordered the alimony to be paid beginning April 1, 2002. The IRS argued that the $3,000 payment did not qualify as alimony because it was not made "under a divorce or separation instrument," as defined by I.R.C. § 71(b)(1). The court held that the arbitration agreement qualified as a "divorce or separation instrument" because it was merged into the court's divorce decree under principles of state contract merger rules. However, the court agreed with the IRS that the $3,000 payment was not made "under" the divorce instrument because the payment was made before the day authorized by the divorce decree. Thus, the court held that the $3,000 payment was not alimony. **Ray v. Comm'r, T.C. Summary Op. 2006-110**.

AUDITS. The IRS has published "MSSP Audit Technique Guide on Farming Operations." For this and other farm-related IRS publications, see http://www.irs.gov/businesses/small/farmers/index.html

DISASTER LOSSES. On June 30, 2006, the president determined that certain areas in Pennsylvania are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms, flooding and mudslides, which began on June 23, 2006. **FEMA-1649-DR.** On July 1, 2006, the president determined that certain areas in New York are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on June 26, 2006. **FEMA-1650-DR**. On July 2, 2006, the president determined that certain areas in Ohio are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on June 21, 2006. **FEMA-1651-DR**. On July 2, 2006, the president determined that certain areas in Maryland are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on June 22, 2006. **FEMA-1652-DR**. On July 7, 2006, the president determined that certain areas in New Jersey are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on June 23, 2006. **FEMA-1653-DR**. On July 5, 2006, the president determined that certain areas in Delaware are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on June 23, 2006. **FEMA-1654-DR**. On July 13, 2006, the president determined that certain areas in Virginia are eligible for assistance from the government under the Act as a result of severe storms, tornadoes and flooding, which began on June 23, 2006. **FEMA-1655-DR**. Taxpayers who sustained losses attributable to these disasters may deduct the losses on their 2005 returns.

DISCHARGE OF INDEBTEDNESS. The taxpayer negotiated with a credit card company to pay the balance of a credit card account with an amount less than the balance. The credit card company issued FORM 1099-C, listing the difference between the amount paid and the amount owed as discharge of indebtedness income. The taxpayer claimed that the amount of discharge of indebtedness was not taxable because the taxpayer was insolvent at the time of discharge. The taxpayer argued that the taxpayer's interests in real property were not included in the taxpayer's assets because the taxpayer and others owned the property jointly and severally. The court held that, without proof that the other owners were also insolvent, the mere ownership as a joint tenant did not prove insolvency. The court also noted that the taxpayer failed to provide substantial evidence of the taxpayer's assets and debts at the time of the discharge; therefore, the discharged indebtedness was taxable income. **Robbins v. Comm'r, T.C. Summary Op. 2006-119**.

HYBRID VEHICLE TAX CREDIT. The IRS has announced that Honda vehicles which have qualified for the alternative motor vehicle credit under I.R.C. § 30B continue to qualify for the credit because Honda has not sold more than 60,000 vehicles as of the previous calendar quarter. **IR-2006-115**.

PENSION PLANS. For plans beginning in July 2006 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities rate for this period is 4.83 percent, the 90 percent to 105 percent permissible range is 4.35 percent to 5.07 percent, and the 90 percent to 110 percent permissible range is 4.35 percent to 5.31 percent. The corporate bond weighted average is no longer relevant for plans beginning after 2005. **Notice 2006-66, I.R.B. 2006-30**.

SELF-EMPLOYMENT INCOME. The taxpayer worked as a packager and received cash payments of wages. The IRS produced written evidence that the taxpayer had signed an employment agreement to be treated as an independent contractor and oral evidence from the employer that the taxpayer was hired as an independent contractor. The employer filed a Form 1099-MISC showing over $14,000 of nonemployee paid compensation to the taxpayer. The taxpayer argued that the taxpayer was not employed by the employer but was employed as an employee with another company. The court did not believe the taxpayer's claims and held that the taxpayer had over $14,000 of self-employment income. **Munoz v. Comm'r, T.C. Summary Op. 2006-107**.

SAFE HARBOR INTEREST RATES

August 2006

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.26	5.19	5.16	5.13
110 percent AFR	5.79	5.71	5.67	5.64
120 percent AFR	6.33	6.23	6.18	6.15
		Mid-term		
AFR	5.21	5.14	5.11	5.09
110 percent AFR	5.73	5.65	5.61	5.58
120 percent AFR	6.27	6.17	6.12	6.09
		Long-term		
AFR	5.36	5.29	5.26	5.23
110 percent AFR	5.90	5.82	5.78	5.75
120 percent AFR	6.45	6.35	6.30	6.27

Rev. Rul. 2006-39, I.R.B. 2006-32.

TAX RETURN PREPARERS. The IRS was granted a preliminary injunction against the defendant, prohibiting the defendant from acting as a federal income tax return preparer because the defendant had knowingly prepared returns with overstated refund claims. **United States v. Adams, 2006-2 U.S. Tax Cas. (CCH) ¶ 50,419 (W.D N.C. 2006)**.

TAX SCAMS. The IRS has issued a warning to taxpayers of another phishing (attempting to obtain taxpayer personal information through internet interaction) e-mail. The latest scam is the first known to mention the Electronic Federal Tax Payment System (EFTPS). The scam e-mail claims that the recipient's credit card has been enrolled in the EFTPS and also that there have been fraud attempts involving the recipient's bank account. The recipient is asked to click on a link for assistance. In reality, the linked site attempts to collect personal information that could be used to steal the recipient's identity. The IRS reiterated that it does not send out unsolicited e-mails or ask for detailed personal information via e-mail. To track down these bogus e-mails, the IRS has established an electronic mailbox where taxpayers can send information about suspicious e-mails. More than 8,000 bogus e-mails have been forwarded to the IRS. Taxpayers should send the information to: phishing@irs.gov. Instructions on what to do if a taxpayer becomes aware of an IRS-related phishing scam can be found on the IRS website, www.irs.gov. **IR-2006-116.**

WITHHOLDING. The IRS has adopted as final regulations amending the regulations that provide for determining the amount of income tax withholding on supplemental wages, reflecting changes in the law made by the American Jobs Creation Act of 2004, Pub. L. No. 108-357, Sec. 904, 118 Stat. 1418 (2004). The regulations apply to all employers and others making supplemental wage payments to employees. Under the final regulations, supplemental wages include any wages paid by an employer that are not regular wages. Regular wages are defined as amounts paid by an employer for a payroll period either at a regular hourly rate or in a predetermined fixed amount. Wages that vary from payroll period to payroll period based on factors other than the amount of time worked, such as commissions, tips, and bonuses, are supplemental wages. **71 Fed. Reg. 42049 (July 25, 2006)**.

LABOR

EXEMPT EMPLOYEES. The plaintiffs were crew leaders employed as salaried workers for the defendant. The plaintiffs supervised chicken catcher crews. The plaintiffs' duties included transporting the catchers from their residence to the job location and back. The plaintiffs did not hire or fire crew members but did report misconduct and crew performance. Although the plaintiffs received annual salaries, the plaintiffs' pay could be decreased for non-worked hours. Vacation and sick pay were calculated using an hourly rate. The plaintiffs were not paid overtime when the transportation duties caused work weeks to exceed 40 hours and the plaintiffs brought suit under the Fair Labor Standards Act, 29 U.S.C. §§ 206(a)(1), 207(a)(1), for recovery of back overtime pay. The plaintiffs were first hired as hourly employees but were changed to salaried status in 2002. The defendant argued that the plaintiffs were exempt from the overtime provisions, under 29 U.S.C. § 213(a)(1), because the plaintiffs were executives. The court reviewed the plaintiffs' responsibilities under the definition of executive employee provided by 29 C.F.R. § 541.100. The court found that the plaintiffs met the first three conditions: (1) paid on a salaried basis; (2) having primarily management duties; and (3) customarily and regularly directed the work of other employees. However, the court held that the plaintiffs were not executives because the plaintiffs did not meet the fourth requirement that the plaintiffs had the authority to hire, fire or discipline employees. The court found that, although the plaintiffs had made reports and recommendations about employees, all hiring, firing and disciplinary actions were the sole authority of the defendant's administrators. **Davis v. Mountaire Farms of Delmarva, Inc., 2006 U.S. App. LEXIS 18224 (3d Cir. 2006), *rev'g*, 2005 U.S. Dist. LEXIS 12534 (D. Del. 2005)**.

PROBATE

ABATEMENT. The decedent's estate included a one-half interest in a farm and $137. The decedent's will first bequeathed the one-half interest in the farm to the decedent's child who owned the other half. The will then listed several monetary bequests to heirs and unrelated persons and charities. The first monetary bequest was to another of the decedent's children but was expressed in terms of a set monetary amount or 50 percent of the decedent's interest in the farm. The probate court ruled that the first bequest of property would be allowed but that the remaining monetary bequests would be abated because there were insufficient funds in the estate to fill any of the bequests. The beneficiary of the second bequest appealed the probate court ruling, arguing that the wording of the bequest indicated the intent of the decedent to split the bequest of the farm if there were insufficient funds to make the monetary bequest. The court stated that the rule for abatement was that specific bequests are to be satisfied first with general bequests abated to the extent there are insufficient funds to cover the general bequests. The court held that the bequest of an interest in real property was a specific bequest and was not made contingent upon the funding of the general bequests; therefore, the general bequests were properly abated when the estate had no funds to fill the general bequests. ***In re* Estate of Marie A. Porath, 2006 Wis. App. LEXIS 635 (Wis. Ct. App. 2006)**.

PRODUCT LIABILITY

STRAY VOLTAGE. The plaintiffs owned a dairy farm and the dairy herd suffered from various health problems. The plaintiff investigated the herd's feed, consulted with a nutritionist and a veterinarian and finally had the farm tested for stray voltage. The defendant electric utility tested the farm and found some ground voltage but indicated that the amount was below any "level of concern." The plaintiffs hired an electrician who found substantial amounts of stray voltage and installed an isolation transformer. The herd improved but continued to have health problems. Again, an independent electrician found stray voltage but the defendant found no stray voltage. The plaintiffs sued for negligence, nuisance, strict liability and trespass for damage to the herd from stray voltage. Although the trial court dismissed the claims for strict liability and trespass, the jury awarded damages to the plaintiffs on the claim of negligence. The defendant initially raised an objection that the suit was barred by the six year statute of limitation imposed by Wis. Stat. § 805.14(1) because the plaintiffs did not exercise reasonable diligence in discovering the problem. The trial court included a jury instruction that provided that the plaintiffs could be found negligent if they failed to exercise ordinary care to discover the source of the problem. The appellate court held that this instruction was sufficient to cover the issue of whether the six year statute of limitations applied to the action. Because the jury found that the plaintiffs were not negligent, the six year statute of limitation did not apply. The defendant also objected to the trial court's refusal to allow a specific jury instruction that other causes, such as poor herd management, could have caused the damages to the herd. The court upheld the trial court, holding that the trial court's comparative negligence instruction allowed the defendant an opportunity to argue that non-electrical factors caused the damages to the herd. The defendant also argued that the damages should be limited to injuries suffered after the

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

plaintiffs notified the defendant that stray voltage was suspected of causing the health problems. The court held that there was no precedent for limiting damages in a stray voltage case to those occurring after notice. **Gumz v. Northern States Power Co., 2006 Wis. App. LEXIS 634 (Wis. Ct. App. 2006)**.

PROPERTY

EASEMENT BY ESTOPPEL. The parties owned neighboring land and the defendant's land had a road which ran to the plaintiff's land. The road had once been a public road but was abandoned by the county after the road became impassable. After the abandonment, the owner of the land at that time improved the road and placed a locked gate where the road met another public road. The road was not used by the plaintiffs except once when they requested a key so that the road could be used one time to walk to a third property. The plaintiffs sought an easement by estoppel for use of the road to access their properties. The court held that several elements of estoppel were not shown in that (1) no representation was made by the defendant that the plaintiffs could use the road and (2) the plaintiffs had not made any use of the road in reliance on the representation. The single incident of permission to use the road was insufficient to support a ruling that the defendant had granted the plaintiff permission to use the road. **Carpenter v. Morris, 2006 Tex. App. LEXIS 6191 (Tex. Ct. App. 2006)**.

CITATION UPDATES

Davis v. Taylor, 132 P.3d 783 (Wash. Ct. App. 2006) (right-to-farm) see p. 80 *supra*.

Peterson, et. al. v. BASF Corp., 657 N.W.2d 853 (Minn. Ct. App. 2003), ***aff'd*****, 675 N.W.2d 57 (Minn. 2004),** ***vac'd and rem'd*****, 125 S. Ct. 1968 (2005),** ***on remand*****, 711 N.W.2d 470 (Minn. 2006)** (pre-emption) see p. 64 *supra*.

IN THE NEWS

USDA Expands CRP Haying, Grazing. Deputy Secretary of Agriculture Chuck Conner recently announced the expansion of Conservation Reserve Program (CRP) acreage eligible for emergency haying and grazing in specific counties in Alabama, Colorado, Kansas, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming. Conner also announced that CRP rental payments will be reduced by only 10 percent instead of the standard 25 percent on CRP lands that are grazed in 2006. The expanded area radiates 150 miles out from any county approved for emergency haying and grazing in any above-mentioned state. A map of the counties approved for emergency haying and grazing with an approximate 150-mile radius will be posted on the Farm Service Agency (FSA) web site at www.fsa.usda.gov. Click on Conservation. To be approved for emergency haying or grazing, a county must be listed as a level D3 drought -- Extreme or greater, or have suffered at least a 40 percent loss of normal moisture and forage for the preceding four-month period. State FSA committees may authorize emergency haying or grazing of CRP in counties currently listed as level D3 drought according to the U.S. Drought Monitor. CRP participants should submit applications with their local FSA offices. More information is available at FSA offices and the web site. **Ehay Weekly, July 18, 2006**.

AMERICAN AGRICULTURAL LAW ASSOCIATION ANNUAL CONFERENCE

The 27th Annual Agricultural Law Symposium will be held October 13-14, 2006 at the Hyatt Regency Hotel on the Savannah Riverfront in Savannah, GA. Information about the symposium program and registration materials are available at www.aglaw-assn.org For a conference brochure or more information about the conference, contact Robert P. Achenbach, AALA Executive Director at RobertA@aglaw-assn.org