exemptions for research and for farmers to save seed from their crops for replanting. Utility patents issued for plants do not contain such exemptions.

13 The Court noted that denying patent protection under 35 U.S.C. § 101 simply because such coverage was thought technologically infeasible in 1930 would be inconsistent with the forward-looking perspective of the utility patent statute. See, e.g., *In re* Bergy, 596 F.2d 952 (C.C.P.A. 1979) (section 101 drafted broadly and in general terms). Also, the trial court in *Pioneer* noted that the intent of the Congress in adopting the PPA and the PVPA was to extend patent protection to an area not often able to meet the requirements of 35 U.S.C. §112 (written description requirement), given the limits of plant science at the time each act became law. 49 U.S.P.Q.2d (BNA) 1813 (N.D. Iowa 1998).

14 See also S. Rep. No. 91-1246 at 3 (the PVPA "does not alter protection currently available within the patent system."

15 35 U.S.C. §§200 *et. seq*. (effective July 1, 1981, the Act allows public research institutions to patent research resulting from federal support, and represented a landmark change in United States technology policy).

16 Presently, the top 10 seed companies control approximately 31 percent of the worldwide commercial seed market. In North America, two firms control 69 percent of the seed corn market and 47 percent of the soybean market. One firm, Monsanto, sells approximately 90 percent of the genetically engineered seeds in the United States.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

ANIMAL ABUSE. The defendant was convicted of one misdemeanor count of animal abuse under Mo. Rev. Stat. § 578.012, arising out of the escape of 30 cattle after a tree blew down in a storm onto the defendant's fence. The defendant challenged the conviction on the grounds that the state failed to show that the defendant knowingly failed to provide adequate control of the cattle. The court pointed to extensive testimony from area farmers that cattle fences had to be inspected almost daily and that the defendant's cattle had escaped on several occasions. In addition, the court noted that the defendant's own testimony demonstrated that the defendant's fence was particularly susceptible to damage from erosion and falling trees. The defendant also testified that the defendant did not frequently check the fences. The court held that the evidence demonstrated that the defendant was so careless in maintaining the fences that the defendant knew the cattle were going to escape; therefore, the state had proven the defendant knowingly failed to provide adequate control of the cattle. The decision is a bit troubling because the conviction arose from only one incident, the escape of the cattle after a storm blew a tree down on the fence. There was no discussion of how much time elapsed after the storm and before the cattle escaped, which would have indicated that the defendant's infrequent fence inspection led to the cattle escape. Without this information, it appears that the defendant was convicted for the previous escapes as a pattern of behavior, since the event which gave rise to the conviction was beyond the control of the defendant. Justice may have been done, but bad law may have resulted. **State v. Blom, 45 S.W.3d 519 (Mo. Ct. App. 2001)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

DISCHARGE. The debtor borrowed money from a bank and told the bank that the money was to be used for purchasing horses. The debtor granted the bank a purchase money security interest in all horses located at the debtor's farm. The money was deposited in the debtor's checking account but was never used to purchase horses. Instead, the debtor testified that the money was used for unforeseen expenditures, including paying off a loan on the debtor's truck so the vehicle could be traded-in for a new truck, paying off large telephone bills, the purchase of new furniture for the debtor's home, the purchase of a new heating unit and roof for the house, and for mental health care for the debtor's son. The loan was in default when the debtor filed for bankruptcy and the bank sought to have the debt declared nondischargeable, under Section 523(a)(2)(A), for false representation in obtaining the loan. The bank claimed that the debtor had no intention of purchasing horses with the loan proceeds. The court found that several of the expenditures were not unforeseen: (1) the telephone charges existed before the loan was made, (2) the payment of the truck loan was not necessary for the trade-in, and (3) the purchase of the new furniture was not necessary. The court held that the debtor did not intend to use the loan proceeds to purchase horses and used false representation to obtain the loan; therefore, the loan amount was not dischargeable. ***In re* McCoy, 269 B.R. 193 (Bankr. W.D. Tenn. 2001)**.

PREFERENTIAL TRANSFERS. Two days before the debtor's marriage, the debtor transferred 712 acres of farmland to the debtor's son for $10, but did not record the deed. The deed was recorded during divorce proceedings in which the former spouse was awarded a lien on the debtor's interest in the farmland. The former spouse sued to set aside the transfer to the son but the state court ruled that the transfer was not fraudulent. The former spouse and two other creditors filed an involuntary bankruptcy petition and the trustee sought to avoid the recording of the deed as a preferential transfer. The court held that the state court suit precluded the former spouse from relitigating the fraudulent transfer issue in bankruptcy but did not affect the right of the trustee to seek avoidance as to the other creditors. The Bankruptcy Court held that, under Arkansas law, Ark. Code § 4-59-206(1)(i), the conveyance occurred when the deed was recorded, because a good faith purchaser could have obtained an interest in the land superior to the transferee until the deed was recorded. Because the conveyance occurred within 90 days of the bankruptcy petition without consideration, the conveyance was avoidable as a preferential transfer. Although the court allowed avoidance of the farmland conveyance, no proceeds from the avoidance could be used to satisfy any claim of the former spouse. ***In re*** **Marlar, 267 F.3d 749 (8th Cir. 2001),** ***aff'g*****, 252 B.R. 743 (Bankr. 8th Cir. 2000),** ***aff'g*****, 246 B.R. 606 (Bankr. W.D. Ark. 2000)**.

CHAPTER 12-*ALM* § 13.03[8].*

CONFIRMATION OF PLAN. The debtor had borrowed money from a bank and pledged the farm land as security in a deed of trust. The debtor also borrowed other funds from the bank but the other loans were secured by personal property on the farm. The bank foreclosed on the farmland loan but the debtor filed for Chapter 12 before the property was sold. The Chapter 12 plan was confirmed and provided that all of the loans were to be secured by the farmland. The Chapter 12 case was dismissed before any discharge. The deed trustee then proceeded with the foreclosure sale which produced proceeds in excess of the farmland loan and costs of sale. The trustee applied the excess proceeds to the other loans and the debtor filed for Chapter 7. The Chapter 7 trustee sought recovery of the excess proceeds as property of the gross estate under theories of fraudulent conveyance under Section 548, breach of contract and wrongful foreclosure. The bank argued that the confirmed Chapter 12 plan was binding on the debtor and allowed the farmland to secure all of the loans. The court held that, upon dismissal of the Chapter 12 case, the parties were placed back in the position as before the filing of the Chapter 12 case unless the Bankruptcy Court orders otherwise. The court next held that the application of the excess sale proceeds to the other loans was not a fraudulent conveyance because the debtor received value from the reduction of the loans. The court held that the use of the excess proceeds by the deed trustee to pay the other loans was outside the trustee's authority under the deed of trust. Because the excess proceeds should have been paid to the debtor, the excess proceeds were bankruptcy estate property and had to be returned by the bank. ***In re*** **Keener, 268 B.R. 912 (Bankr. N.D. Tex. 2001)**.

CONVERSION. The debtor filed for Chapter 12 on May 15, 2001 and had filed the 2000 income tax return on March 27, 2001. Although the income tax return showed that less than 50 percent of the debtor's gross income was from farming, the debtor filed for Chapter 12 under the belief that the debtor's income from two farm corporations would be included in farm income for Chapter 12 purposes. When it became apparent that the income from the corporations would not qualify for farm income, the debtor sought to convert the case to Chapter 11. The creditors argued that conversion was not permitted either under the statute or because the debtor did not file the Chapter 12 petition in good faith. The court acknowledged that the courts were divided as to whether Chapter 12 cases could be converted to Chapter 11, since the state was silent on the point. However, the court held that a Chapter 12 case could be converted to Chapter 11 if the original filing was made in good faith and conversion would not prejudice creditors. The court held that the debtor did not have good reason to file for Chapter 12 since the income tax return clearly showed that less than 50 percent of the debtor's gross income was from farming; therefore, the court held that the debtor could not convert the case to Chapter 11. The court stated that the case would be converted to Chapter 7 or dismissed. ***In re*** **Gregerson, 269 B.R. 36 (Bankr. N.D. Iowa 2001)**.

RESIGNATION OF TRUSTEE. The court received a notice that the U.S. Trustee had accepted the resignation of the standing Chapter 12 trustee for the court's district. The UST did not file the letter with the court or provide any notice to the court, parties or attorneys involved in current Chapter 12 cases. The UST argued that, because the UST had the power to appoint the standing trustee and to appoint a successor trustee, the UST had the authority to remove the standing trustee. The court held that the standing trustee could be removed only after notice and a hearing as required by Section 324 and that the UST's powers did not include the power to remove the standing trustee without court approval. ***In re*** **Brookover, 259 B.R. 884 (Bankr. N.D. Ohio 2001),** ***aff'd sub nom.,*** **Robiner v. Demczyk, 269 B.R. 167 (N.D. Ohio 2001)**.

FEDERAL TAX-*ALM* § 13.03[7].*

DISCHARGE. The taxpayer operated a restaurant over the tax years involved and failed to record all sales as income or deposit all cash receipts in the restaurant's bank accounts. The taxpayer filed income tax returns which did not include the income even though the taxpayer's accountant warned that the returns and records were missing substantial amounts of income. The court held that the taxes for these unreported income amounts were dischargeable under section 523(a)(1)(C) for filing of fraudulent returns and for willfully attempt to evade taxes. **Mastrontoni v. United States, 2002-1 U.S. Tax Cas. (CCH) ¶ 50,140 (Bankr. M.D. Fla. 2001)**.

FEDERAL AGRICULTURAL PROGRAMS

TOBACCO. The CCC has issued final regulations which amend the tobacco marketing quota regulations at 7 C.F.R. part 1464 to require burley tobacco producers to designate where they will sell their tobacco in order to qualify for price

*Agricultural Law Manual (ALM).

support and marketing cards. Currently only flue-cured tobacco producers, as a condition of price-support, must designate where they will market their tobacco. **67 Fed. Reg. 481 (Jan. 4, 2002)**.

FEDERAL ESTATE AND GIFT TAX

No new items.

FEDERAL INCOME TAXATION

ACCOUNTING METHOD. The IRS has issued amended procedures by which a taxpayer may obtain automatic consent to change the method of accounting. This revenue procedure clarifies, modifies, amplifies, and supersedes *Rev. Proc. 99-49, 1999-2 C.B. 725*. **Rev. Proc. 2002-9, I.R.B. 2002-__**.

BUSINESS EXPENSES. The taxpayers, husband and wife, owned several C corporations, two of which owned partnership interests in partnerships which developed, owned and operated businesses. The partnerships were assessed local taxes and the taxpayers paid the taxes for the partnerships. The taxpayer argued that the taxes were deductible as business expenses. The court held that the taxes would be deductible only if they were an ordinary and necessary expense of the taxpayers' business. The court held that the taxpayers failed to provide evidence of any business operated by the taxpayers other than through the S corporations; therefore, the court disallowed the deduction for the taxes by the taxpayers. **Griffin v. Comm'r, T.C. Memo. 2002-6**,

COURT AWARDS AND SETTLEMENTS-ALM § 4.02[14].* The taxpayer had been employed as a loan officer in a bank but was forced to leave when the taxpayer refused to divulge confidential information about clients. The taxpayer sued the bank for intentional interference with contract and economic expectations for wrongful discharge from employment. The parties eventually reached a settlement which included punitive damages and payment directly to the taxpayer's attorneys. The taxpayer argued that the compensatory damages, the portion of the settlement paid to the attorneys and the punitive damages were excludible from income. The court acknowledged that the taxpayer's lawsuit was based on tort but held that the settlement proceeds and punitive damages were included in income because the tort was not based on personal injuries. Although acknowledging a split of authority on the issue, the court also held that the settlement proceeds paid directly to the taxpayer's attorney were included in income. **Banaitis v. Comm'r, T.C. Memo. 2002-5**.

The taxpayer filed a suit against a former employer for failure to pay overtime compensation and earned wages. The parties reached a settlement and the taxpayer received $15,000, although $2,500 was retained improperly by the taxpayer's attorney. The taxpayer argued that the proceeds were not included in taxable income because the proceeds were unpaid wages for which the former employer would have withheld and paid income taxes. The court rejected this argument and held that the proceeds were included in the taxpayer's income, except for the $2,500 withheld by the attorney. The $2,500 was excluded because the attorney refused to pay that amount to the taxpayer and the taxpayer could not force the payment without further litigation. **Lehmuth v. Comm'r, T.C. Summary Op. 2001-190**.

EMPLOYEE BENEFITS. The IRS has announced that it has revoked Notice 2001-10, I.R.B. 2001-5, 459 which provided guidance on "split-dollar" life insurance arrangements between employers and employees. The IRS also announced that it will issue proposed regulations that will provide comprehensive guidance regarding the federal tax treatment of split-dollar life insurance arrangements. The proposed regulations are expected to provide that, in an employment-related split-dollar life insurance arrangement, if an employer is formally designated as the owner of the life insurance contract, then the benefits provided to the employee under the arrangement are subject to tax. Under this regime, the employer will be treated for tax purposes as the owner of the life insurance contract prior to termination of the arrangement and will be treated as providing current life insurance protection and other economic benefits to the employee, which are taxable under Code Sec. 61. A transfer of the life insurance contract to the employee is taxed under Code Sec. 83. An employer will not be treated as having made a transfer of a portion of the cash surrender value of a life insurance contract to an employee for purposes of Code Sec. 83 solely because the interest or other earnings credited to the cash surrender value of the contract cause the cash surrender value to exceed the portion thereof payable to the employer. The proposed regulations are also expected to provide that, if the employee is formally designated as the owner of the life insurance contract under a split- dollar arrangement, then the premiums paid by the employer will be treated as a series of loans by the employer to the employee, if the employee is obligated to repay the employer. Where applicable, the loans are subject to the principles of I.R.C. §§ 1271—1275, 7872. If the employee is not obligated to repay the premiums paid by the employer, those amounts will be treated as compensation to the employee at the time the premiums are paid by the employer. **Notice 2002-8, I.R.B. 2002-__**.

HOBBY LOSSES. The taxpayers, husband and wife were employed as a business owner and a schoolteacher. The taxpayers started a horse breeding operation which was intended to be a source of retirement income. The court held that the operation was operated with the intent to make a profit because (1) the taxpayers made use of expert trainers, advertised extensively, kept separate and accurate records and abandoned unprofitable business practices; (2) the taxpayers sought the advice of experts, had experience in raising animals, had a degree in zoology, and immersed themselves in the horse breeding industry; (3) the taxpayers devoted substantial amount of time to the activity; (4) the taxpayers' horses had appreciated in value; (5) the taxpayers had invested a substantial amount of their income in the activity; and (6) the taxpayers did not use the horses for pleasure riding nor attend many of the exhibitions. The court noted that the activity had achieved only losses but accepted these losses as part of the startup expenses for a new venture. **Routon v. Comm'r, T.C. Memo. 2002-7**.

The taxpayer operated a quarter horse breeding activity which was held to be operated with the intent to make a profit because (1) the taxpayer formed a business plan, kept separate and accurate records, and changed business practices to make the operation more profitable; (2) the taxpayer consulted experts and did considerable personal study of horse breeding and business methods; (3) the taxpayer spent substantial amounts of time on the activity; (4) the ranch increased in value during the taxpayer's operation; (5) the taxpayer had successfully operated two previous horse breeding activities; (6) although the activity produced only losses, the losses were reasonable as to the startup of an activity and the taxpayer made efforts which decreased the losses; and (7) the taxpayer did not use the ranch or horses for personal pleasure or entertainment. **Rinehart v. Comm'r, T.C. Memo. 2002-9**.

INCOME AVERAGING. The IRS has adopted as final regulations governing the income averaging provisions for farmers. The proposed regulations provide that the term "farming business" has the same meaning as provided in I.R.C. § 263A(e)(4) and the regulations thereunder. **Treas. Reg. § 1.1301-1(b)**. The regulations also provide that an individual engaged in a farming business includes a sole proprietor of a farming business, a partner of a partnership engaged in a farming business, and a shareholder of an S corporation engaged in a farming business. **Treas. Reg. § 1.1301-1(b)**. The regulations provide that farm income includes all income, deductions, gains, and losses attributable to an individual's farming business, including wages paid by a farming S corporation but not wages paid by a C corporation. **Treas. Reg. § 1.1301-1(e)**. Under the final regulations, a landlord's crop share income reported on Form 4835, "Farm Rental Income and Expenses," Schedule F, "Profit or Loss From Farming,'" or Part II of Schedule E,"Supplemental Income or Loss,'" is eligible for income averaging if, after December 31, 2002, the landlord's share of a tenant's production is set in a written rental agreement before the tenant begins significant activities on the land. If a landlord receives a fixed rent or a share of a tenant's production that is set after the tenant begins significant activities, the landlord is not considered to be engaged in a farming business with respect to the leased land, and the rental income is not eligible for income averaging, even if the landlord materially participates in the tenant's farming business. **Treas. Reg. § 1.1301-1(b)(2)**. An individual may designate what type, and how much of each type, of farm income is to be treated as elected farm income. The elected farm income may not exceed an individual's taxable income. In addition, elected farm income from net capital gain attributable to a farming business may not exceed total net capital gain. One-third of each type of elected farm income is then allocated to each base year. The proposed regulations provide that a farm income averaging election is made by filing Schedule J, Farm Income Averaging, with an individual's timely filed federal income tax return (including extensions). **Treas. Reg. § 1.1301-1(c)**. In general, the proposed regulations had provided that if an individual has an adjustment for an election year or base year, the individual may also make a late farm income averaging election or change or revoke a previous election. The final regulations make the availability of late elections, changed elections and revocation of an election subject only to the generally applicable rules on the period of limitations on filing a claim for credit or refund. The regulations provide that the allocation of elected farm income to the base years does not affect any determination (other than the calculation of the I.R.C. § 1 tax attributable to the elected farm income) with respect to the election year or the base years. **Treas. Reg. § 1.1301-1(c)**. The regulations provide that calculation of the I.R.C. § 1 tax on elected farm income allocated to a base year is to be made without any additional adjustments or determinations with respect to that year. A future issue of the *Digest* will publish an article by Neil Harl on these regulations. **67 Fed. Reg. 817 (Jan. 8, 2002), *adding* Treas. Reg. § 1.1301-1**.

LETTER RULINGS. The IRS has issued its annual list of procedures for issuing letter rulings. **Rev. Proc. 2002-1, I.R.B. 2002-__**.

The IRS has issued its annual list of procedures for furnishing technical advice to District Directors and Chiefs, Appeals Offices. **Rev. Proc. 2002-2, I.R.B. 2002-__**.

The IRS has issued its annual list of tax issues for which the IRS will not give advance rulings or determination letters. **Rev. Proc. 2002-3, I.R.B. 2002-__**.

The IRS has issued its annual list of procedures for issuing letter rulings on employee plans. **Rev. Proc. 2002-4, I.R.B. 2002-__**.

LIKE-KIND EXCHANGES. The taxpayers co-owned a ranch which was used for cattle grazing. The taxpayer granted a perpetual conservation easement on the land to a tax-exempt cooperative in exchange for other ranch land which was subject to a PCE. The IRS ruled that, assuming that a PCE was an interest in real property under state law, the PCE and the acquired interest in the ranch were like-kind property which entitled the taxpayers to not recognize gain for loss from the transaction. The IRS noted that gain would be recognized to the extent of the share of the PCE which applied to the residential portion of the original ranch and to the extent any other non-like-kind property was received in the exchange. **Ltr. Rul. 200201007, Oct. 2, 2001**.

PENSION PLANS. The IRS has published the cost-of-living adjustments (COLAs), effective on Jan. 1, 2002, applicable to dollar limitations on benefits paid under qualified retirement plans and to other provisions affecting such plans. The maximum limitation for the I.R.C. § 415(b)(1)(A) annual benefit for defined benefit plans is increased to $160,000 and the I.R.C. § 415(c)(1)(A) limitation for defined contribution plans is $40,000. **Notice 2001-84, I.R.B. 2001-53, 642**.

The IRS has issued a revenue procedure which provides (1) guidance to drafters of individual retirement arrangements, simplified employee pensions and SIMPLE IRA plans; (2) guidance to users of IRS model IRAs and plans; and (3) transitional relief for users of IRAs and plans that have not received IRS approval. The guidelines, which take effect on January 28, 2002, modify section 4.01 of Rev. Proc. 87-50, 1987-2 CB 647. **Rev. Proc. 2002-10. I.R.B. 2002-4**.

The IRS has issued a revenue procedure which provides guidance for complying with the user fee program of the Internal Revenue Service as it pertains to requests for letter rulings, determination letters, etc., on matters under the jurisdiction of the Commissioner, Tax Exempt and Government Entities Division; and requests for administrative scrutiny determinations under *Rev. Proc. 93-41, 1993-2 C.B. 536*. **Rev. Proc. 2002-8, I.R.B. 2002-__**.

RETURNS. The IRS has posted the following forms and publications on its website at www.irs.gov, in the "Forms & Pubs" section: Publication 1524 (Rev. Dec. 2001), Procedures and Specifications for the 1065 e-file Program: U.S. Return of Partnership Income for Tax Year 2001; Form 990-C (2001), Farmer's Cooperative Association Income Tax Return, and instructions; Form 1040-SS (2001); Instructions for Form 706 (Rev. November 2001), United States Estate (and Generation-Skipping Transfer) Tax Return; Form 706 (Rev. November 2001), United States Estate (and Generation-Skipping Transfer) Tax Return.

NUISANCE

HOG OPERATION. The plaintiffs were neighbors of the defendant with residences which existed prior to the existence of defendant's hog farm. The plaintiffs claimed that the hog operation violated a township ordinance which prohibited land use which resulted in obnoxious dangerous odors beyond the boundaries of the land. The defendant argued that the state right-to-farm statute, Mich. Cod. Laws § 286.471 et seq., barred any nuisance action, including an action for violation of an ordinance. The trial court returned a verdict for the plaintiffs and awarded monetary damages on the basis of an agreement between the parties. The court noted that the statute had been recently amended to remove a provision which exempted local ordinances from application of the statute. The court held, however, that the amendment was not to be applied retroactively; therefore, the township ordinance was not pre-empted by the right-to-farm statute in this case. Although the court held that a suit under the local ordinance was not barred by the right-to-farm statute, the case was remanded for a new trial because the trial judge, as trier of fact, had made five visits to the area without informing the parties. The court also remanded on the issue of damages, holding that the only remedy available in court was an abatement of the violating use of the land. The court noted that, under Mich. Cod. Laws § 125.294, a use violation of an ordinance was a nuisance per se and required an abatement. The court also noted that any fines imposed under that statute could be imposed only by a township board. **Travis v. Preston, 635 N.W.2d 362 (Mich. Ct. App. 2001)**.

STATE REGULATION OF AGRICULTURE

WETLANDS. The plaintiff had purchased land which was regulated wetlands and was previously used as a peat farm. The plaintiff wanted to convert the land with some trenching and filling to make it suitable for cranberry farming but the state denied a permit under the Michigan Wetlands Protection Act (WPA), Mich. Cod. Laws §§ 324.30301 *et seq*. The plaintiff argued that, under an exemption provided by Mich. Cod. Laws §§ 324.30305(2)(e), because the plaintiff was going to farm the land, the plaintiff was exempted from the WPA provisions. The Court of Appeals looked to the federal Clean Water Act (CWA) which required a state to enact laws at least as restrictive as the federal act in order for the state to administer the CWA in the state. Because the CWA prohibited activities on wetlands that made farming possible or expanded farming operations, the state law had to be interpreted to require the same restrictions. Therefore, the Court of Appeals held that activities on wetlands which made a new type of farming possible were prohibited by the WPA and the state was correct to deny the plaintiff's permit. The Michigan Supreme Court affirmed as to the result but based its decision directly on the exemption statute. The court noted that the exemption statute lists farming as exempt from the permit requirements but lists activities which allowed an exemption: "plowing, irrigation, irrigation ditching, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices." The court held that the drainage and filling proposed by the plaintiff were not of the same nature or class as the listed exempt activities; therefore, the plaintiff was required to obtain a permit for those activities. The court also held that the plaintiff's cranberry farm would not be exempt under the grandfather exemption for existing farms because the cranberry farm was a different farming method from the previous peat farm. **Huggett v. DNR, 629 N.W.2d 915 (Mich. 2001), *aff'g*, 590 N.W.2d 747 (Mich. Ct. App. 1998)**.

AGRICULTURAL LAW PRESS
P.O. Box 50703 Eugene, OR 97405

CITATION UPDATES

Cook v. Comm'r, 269 F.3d 854 (7th Cir. 2001), ***aff'g*****, 115 T.C. 15 (2000)** (trusts) see 12 *Agric. L. Dig*. 172 (2001).

IN THE NEWS

By Roger A. McEowen

An Alabama federal District Court has certified a nationwide class action against Iowa Beef Packers, Inc. involving, as members of the class, all cattle producers with an ownership interest in cattle that were sold to IBP, exclusively on a cash-market basis, from February 1994 through and including the end of the month 60 days before notice being provided to the class. The legal question at issue in the case is whether IBP's use of captive supply violated Sections 192(a), (d) and (e) of the Packers and Stockyards Act (PSA). The claim is that IBP's privately held store of livestock (via captive supply) allows IBP to need not rely on auction-price purchases in the open market for most of their supply. IBP is then able to use this leverage to depress the market prices for independent producers on the cash and forward markets, in violation of the PSA. The court specifically noted that the plaintiffs had demonstrated that they possessed a workable economic analysis to determine the effect of captive supply on cash market prices. The case is of particular importance in that without class certification the case would have likely been dismissed. Also, as of November 30, 2001, retail beef prices were up 9 percent from the previous time period one year earlier, but live cattle prices were down 18 percent (about $300 per head). **Picket v. IBP, No. 96-A-1103-N (M.D. Ala. Dec. 26, 2001).**