CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

EXEMPTIONS.

HOMESTEAD. The debtors owned 85 acres of rural land located within the boundaries of a town but not served by at least three of the municipal utilities listed in the rural exemption law, Tex. Prop. Code § 41.002(c). The court held that, under the Texas exemption statute, the property was rural because it was not served by at least three of the listed municipal utility services. Because the property was rural under Tex. Prop. Code § 41.002(c), the property was eligible for the rural homestead exemption. ***In re*** **Bouchie, 324 F.3d 780 (5th Cir. 2003)**.

CHAPTER 12

ELIGIBILITY. The debtors were dairy farmers but all of the cows and much of the equipment had been repossessed or sold before the filing for bankruptcy. The debtors' current income came from off-farm employment and the debtors stated that they intended to restart the dairy farm as soon as funding was obtained, either by savings or loans. The plan was to be funded from leasing a portion of the farm and from off-farm income. A creditor argued that the debtors were ineligible for Chapter 12 because they were no longer farming. The court held that the time for determining whether the debtors were farming was the time of the petition filing and whether, at that time, the debtors had an intent to continue farming. The court noted that the creditor had not presented any evidence to contradict the debtors' assertion that they intended to continue the dairy as soon as they could obtain financing. Because the debtors were farming when the bankruptcy petition was filed and intended to continue farming, the debtors were held to be eligible for Chapter 12. ***In re*** **Nelson, 291 B.R. 861 (Bankr. D. Idaho 2003)**.

PLAN. A secured creditor objected to two aspects of the debtors' Chapter 12 plan, (1) the plan failed to specifically state that the creditor would retain its lien on dairy farm assets and (2) the plan provides for $1,000 per month to come from leasing a portion of the farm but, at the time of the plan confirmation hearing, no lease had been negotiated. The court held that the debtors would be allowed to amend their plan to include the lien and would be allowed time to negotiate a lease. The evidence showed that the debtors had sold collateral without paying the proceeds to the creditor, had not used wind damage insurance proceeds to repair collateral which was damaged, and had allowed a neighbor to repossess collateral which secured the creditor's liens. The creditor argued that the debtors' plan should not be confirmed because these actions showed a lack of good faith. The debtors argued that these actions were taken to provide operating funds for the dairy. The court noted that the debtors' actions were less than exemplary but held that the evidence did not show that the debtors had attempted to defraud the creditor and were motivated by an honest attempt to keep the dairy operating while trying to solve their financial troubles. When the two conditions stated above had been met, the court held that it would allow the plan to be confirmed. ***In re*** **Nelson, 291 B.R. 861 (Bankr. D. Idaho 2003)**.

SECURED CLAIMS. The debtors were grain farmers who had granted a creditor a security interest in seed and farm inventory. The debtors used seed and inventory owned before the filing of the bankruptcy petition to plant crops after the filing of the petition. The creditor asserted its lien covered the post-petition crops because the crops were grown from seed and farm inventory possessed before the petition. The court agreed and held the post-petition crops were covered by the pre-petition lien. ***In re*** **Thacker, 291 B.R. 831 (Bankr. S.D. Ill. 2003)**.

FEDERAL TAX

DISCHARGE. The debtor had been convicted of fraudulent business practices through an illegal telemarketing company. The debtor and corporations did not file income tax returns or pay income tax during years of fraudulent operations, although the debtor requested extensions of the filing date. After the debtor was imprisoned, the debtor filed the missing income tax returns, overstating taxable income in order to avoid any further criminal charges. More than three years later, the debtor filed for Chapter 7 and sought to have the unpaid taxes discharged. The court held that the taxes were nondischargeable because (1) the debtor knew the tax returns were due and taxes owed and (2) the debtor failed to file the returns or make payments. ***In re*** **Passavant, 291 B.R. 879 (Bankr. M.D. Fla. 2003)**.

CONTRACTS

HEDGE-TO-ARRIVE CONTRACTS. The plaintiff cooperative entered into five hedge-to-arrive contracts with the defendant producer. Although the defendant was prevented from making initial deliveries because of a lack of storage space, the HTA contracts were rolled over to a later period. When delivery was finally made, the defendant was short on the contract amount of grain and repudiated the remainder of the contract. The defendant argued that the HTA contracts were illegal off-exchange futures contracts. The court upheld a jury verdict for the plaintiff because the parties always intended actual delivery of the grain, as evidenced by the defendant's delivery of most of the contract grain. **Top of Iowa Coop. v. Schewe, 324 F.3d 627 (8th Cir. 2003),** ***aff'g*****, 149 F. Supp. 2d 709 (N.D. Iowa 2001)**.

EMPLOYER LIABILITY

INDEPENDENT CONTRACTOR. The plaintiff was a hunter who was injured while hunting on land which had been used to dump diatomaceous earth and fruit pomace (fruit processing waste). The plaintiff fell through an earthen covering and was burned because the wastes had started burning from spontaneous combustion. The plaintiff sued the fruit processor who had hired an independent contractor, the owner of the farm, to dispose of the wastes. The evidence indicated that the defendant had been notified that the farmer had been improperly disposing of the wastes by dumping them together in a pit on the farm. The evidence also indicated that the pit had started burning and had produced smoke and odors which were the source of complaints by neighbors to the defendant. The dumping was also not licensed. The defendant sought dismissal of the case, arguing that it was not liable for the injury because the improper disposal was the act of an independent contractor. The court held that the plaintiff had pled and shown sufficient facts that, if proved at trial, would support enforcing liability against the defendant for the acts of the independent contractor. The court also held that the same facts, if proved at trial, would support a violation of the Hazardous Waste Management Act, Wash. Code Ch. 70.1.05, which would extend liability to the defendant for the acts of the independent contractor. **Hickle v. Whitney Farms, Inc., 64 P.3d 1244 (Wash. 2003), *aff'g*, 29 P.3d 50 (Wash. Ct. App. 2001)**.

FEDERAL AGRICULTURAL PROGRAMS

BEEF CHECK-OFF. The plaintiffs were livestock producers subject to the assessment of one dollar per head of cattle to be used by the USDA and the Cattlemen's Beef Board for promotion of the beef industry, as provided by the Beef Promotion and Research Act, 7 U.S.C. § 2901 *et seq*. The plaintiffs challenged the law as an unconstitutional violation of the First Amendment. The plaintiffs objected to the assessment because it paid for advertising for beef products, such as steak, which is not the product which the plaintiffs sold, live cattle. The court held that, under *United States Department of Agriculture v. United Foods, Inc., 533 U.S. 405, aff'g, 197 F.3d 221 (6th Cir. 2000)*, the assessment was a violation of the plaintiffs' first amendment rights of free speech and association. The court made its temporary injunction permanent and prospective from July 15, 2002. The court also refused to issue a stay pending further appeal to the Eighth Circuit or appeal to the Supreme Court, citing the continuing harm to the producers who are under stress from economic and environmental conditions. The Eighth Circuit affirmed. See Harl, "Future of Commodity Check-Offs," 12 *Agric. L. Dig*. 113 (2001). **Livestock Marketing Ass'n v. USDA, Nos. 02-2769/2832 (8th Cir. July 8, 2003), *aff'g*, 207 F. Supp. 2d 992 (D. S.D. 2002)**.

KARNAL BUNT. The APHIS has issued proposed regulations which amend the Karnal bunt regulation to include (1) clarifying the method for determining Karnal bunt infestation and the circumstances under which a field or area would be classified as a regulated area, as well as adding provisions and criteria for the release of fields or areas from regulation; (2) modifying the restrictions that apply to the planting of wheat, durum wheat, and triticale seed originating in regulated areas; and (3) modifying cleaning and disinfection requirements for certain equipment and storage facilities involved in the harvesting, planting, or storage of Karnal bunt-positive host crops or seeds, as well as providing for the disposal of chemically treated, spore-positive seed. **68 Fed. Reg. 40534 (July 8, 2003)**.

FEDERAL ESTATE AND GIFT TAX

ALTERNATE VALUATION DATE. The decedent's estate retained an attorney to prepare the estate tax return which was timely filed. Within one year of the due date for the return, the attorney discovered that the alternate valuation date election should have been made and sought an extension to make the election. The extension was granted. **Ltr. Rul. 200327043, March 31, 2003**.

ANNUITY. The taxpayer owned an annuity contract issued by a company. The taxpayer was the obligee under the contract. The taxpayer contracted with an insurance company to issue a new annuity contract. The taxpayer assigned 60 percent of the cash surrender value of the first annuity contract to the insurance company to be used to purchase the second annuity contract. At no time during the transaction did the taxpayer have access to the cash surrender value of the first annuity contract used to purchase the second annuity contract. No consideration other than the cash surrender value of the first annuity contract that was transferred was paid in this transaction. The terms of the first annuity contract were unchanged by this transaction, and the first annuity contract was not treated as newly issued. The IRS ruled that (1) the surrender of the first annuity contract was a tax-free exchange, (2) the basis of the second annuity contract was 60 percent of the basis of the first annuity contract, and (3) the taxpayer's investment in the second annuity contract was 60 percent of the original investment in the first annuity contract and the taxpayer's investment in the first annuity contract was 40 percent of the original investment. **Rev. Rul. 2003-76, I.R.B. 2003-33**.

CHARITABLE DEDUCTION. The IRS has adopted as final regulations which amend the existing regulations under I.R.C. §§ 170, 2055, and 2522 governing charitable guaranteed annuity interests and unitrust interests to eliminate the requirement that the charitable interest can not be preceded in point of time by a noncharitable interest that is in the form of a guaranteed annuity or unitrust interest. The regulations conform to the holding in *Estate of Boeshore v. Comm'r, 78 T.C. 523 (1982), acq. in result, 1987-2 C.B. 1*, which held that a charitable deduction was allowed for unitrust and remainder interests passing to a

charity where, although the initial interests in the trusts were noncharitable, all the nonremainder interests in the trust were unitrust interests. **68 Fed. Reg. 40130 (July 7, 2003), amending Treas. Reg. §§ 1.170A-6, 20.2055-2, 25.2522(c)-3**.

GIFTS. The taxpayer invested in timberland and formed a limited liability company to own and manage the properties. The taxpayer contributed the timberland, cash and securities to the LLC in exchange for voting and nonvoting stock. The LLC agreement provided that LLC members could not transfer, assign, convey, sell or encumber their interests without prior consent of the LLC manager, the taxpayer. The taxpayer made a series of annual gifts of voting and nonvoting interests in the LLC to the taxpayer's children and claimed the annual exclusion for each of the gifts. The court held that the gifts were not eligible for the annual exclusion because the gifts were not present interests in property since the donees could not transfer, assign, convey, sell or encumber their interests. The court also noted that the LLC was projected to receive only net losses for many years during the growth of new trees and that the LLC agreement made distributions of any income discretionary with the taxpayer as manager, thus making any economic benefit to the gifted interests only a future interest with uncertain benefit. The Seventh Circuit Court of Appeals affirmed. See also Harl & McEowen, "Gifts of Future Interests," 13 *Agric. L. Dig*. 105 (2002). **Hackl v. Comm'r, 2003-2 U.S. Tax Cas. (CCH) ¶ 60,465 (7th Cir. 2003), *aff'g*, 118 T.C. 279 (2002)**.

FEDERAL INCOME TAXATION

ACCOUNTING PERIOD. The IRS has issued a revenue procedure amending the exclusive procedure under I.R.C. § 442 and Treas. Reg. § 1.442-1(b) for individuals filing federal income tax returns on a fiscal year basis to obtain automatic approval to change their annual accounting period to a calendar year. **Rev. Proc. 2003-62, I.R.B. 2003-32**.

"AT RISK" LOSS LIMITATION. Under I.R.C. § 465(b)(3), amounts borrowed for use in an activity will not increase the borrower's amount at risk in the activity if the lender has an interest other than that of a creditor in the activity or if the lender is related to a person (other than the borrower) who has a disqualifying interest in the activity. The rule applies even if the borrower is personally liable for the repayment of the loan or the loan is secured by property not used in the activity. I.R.C. § 465(c)(3)(D) provides that Section 465(b)(3) will apply to new activities only to the extent provided in regulations. The Tax Court in *Alexander v. Commissioner, 95 T.C. 467 (1990)*, held that, until regulations are issued, Section 465(b)(3) could not be applied to a new activity. The IRS has issued proposed regulations which apply Section 465(b)(3) to the new activities described in Section 465(c)(3)(A). As originally enacted, I.R.C. § 465(b)(3) also applied to any borrowing from persons related to the taxpayer under I.R.C. § 267(b). Section 432(c) of the Deficit Reduction Act of 1984 (Pub. L. No. 98-369) eliminated this rule but provided, instead, that a taxpayer's amount at risk is not increased by amounts borrowed from a person related to a person (other than the taxpayer) who has a disqualifying interest in the activity. The proposed regulations change Prop. Treas. Reg. § 1.465-20 to reflect the amendment made by the Deficit Reduction Act of 1984. The proposed regulations also modify the previous proposed regulations to reflect Section 465(b)(3)(B)(ii), which provides that, for purposes of determining a corporation's amount at risk, an interest as a shareholder is not a disqualifying interest. Thus, amounts borrowed by a corporation from its shareholders may increase the corporation's amount at risk. Finally, the proposed regulations also modify the previous proposed regulations to reflect Section 465(b)(6)(A), which provides that "qualified nonrecourse financing," if borrowed for use in an activity of holding real property and secured by real property used in the activity, is not subject to the limitations of Section 465(b)(3). In addition, the proposed regulations expand the exception to include financing that, if it were nonrecourse, would be financing described in Section 465(b)(6)(B). **68 Fed. Reg. 40583 (July 8, 2003)**.

BAD DEBT DEDUCTION. The taxpayer owned two corporations and had one corporation execute a sale of a business plan and intellectual property in exchange for a promissory note from the other corporation. Several years later, the taxpayer claimed a bad debt deduction based on the unpaid promissory note. The court noted that the transaction required close scrutiny because the taxpayer controlled both corporations. The court held that no deduction was allowed because (1) the taxpayer did not file any tax return showing the sale of the alleged property; (2) the taxpayer did not provide any evidence of the business plan or intellectual property involved; (3) there was no evidence that the note was transferred to the taxpayer personally from the second corporation; (4) the promissory note had no terms of interest or payment, no collateral was required, and the first corporation never made any payments on the note; and (5) the taxpayer provided no evidence of any attempt to collect payment. **Sundby v. Comm'r, T.C. Memo. 2003-204**.

CHARITABLE DEDUCTION. The taxpayers established a charitable unitrust under which the taxpayers retained the power to change the trust charitable beneficiary. The IRS ruled that the contributions to the trust were not eligible for the charitable gift deduction because the gifts were incomplete. **Ltr. Rul. 200328030, April 4, 2003**.

CLERGY. The taxpayers were church ministers and received compensation from their churches for their services. The court ruled that the income received by the taxpayers was not exempt from tax, although the church may be exempt from tax on its income. ***In re* Pomeroy, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,568 (D. Nev. 2003)**.

COOPERATIVES. The taxpayer was an electrical cooperative which received payments to retire previously allocated patronage capital in 1995, 1996 and 1997 in another cooperative. The taxpayer reported the payments as income when received and allocated the payments between its members and nonmembers by using the percentages of member/nonmember power

consumption in the year the patronage capital was retired. The IRS argued that the allocation had to be made by using the percentages of member/nonmember power consumption in the year the patronage capital was earned or generated. In denying summary judgment for the IRS, the court acknowledged that there was no precedent for the factual or legal issues of the case and held that expert testimony was required to determine which method of reporting was consistent with the Internal Revenue Code. **Sho-Me Power Elec. Coop. v. United States, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,560 (W.D. Mo. 2003)**.

DEPRECIATION. The IRS has issued temporary regulations which exclude from the definition of passenger automobile any truck or van that is a qualified nonpersonal use vehicle as defined in Treas. Reg. § 1.274-5T(k). Qualified nonpersonal use vehicles include not only the trucks and vans listed in Treas. Reg. § 1.274-5T(k)(2), but also trucks and vans described in Treas. Reg. § 1.274-5T(k)(7) (relating to trucks and vans that have been specially modified, such as by installation of permanent shelving and painting the vehicle to display advertising or the company's name, so that they are not likely to be used more than a de minimis amount for personal purposes). These specially manufactured or modified vehicles do not provide significant elements of personal benefit, and a taxpayer is unlikely to purchase these vehicles unless motivated by a valid business purpose that could not be met with a less-expensive vehicle. The IRS also noted that future revenue procedures providing the depreciation limits for passenger vehicles will provide higher limits for light trucks and vans because these vehicles have a higher price inflation rate. **68 Fed. Reg. 40129 (July 7, 2003)**.

The taxpayer partnership owned low-income rental housing which was obtained with the proceeds of tax-exempt bonds. The taxpayer had claimed depreciation deductions under the general depreciation system of I.R.C. § 168(a) because the taxpayer did not initially believe that depreciation could be claimed under the alternative depreciation system of I.R.C. § 168(g). The taxpayer claimed that the property was eligible for the alternative depreciation system and sought consent from the IRS to change to that system. In a Chief Counsel Advice letter, the IRS ruled that the depreciation system election had to be made with the tax return for the year the property was placed in service and was irrevocable; therefore, the taxpayer could not change depreciation systems. **CCA Ltr. Rul. 200327041, March 27, 2003**.

PARTITION. The taxpayers, husband and wife, owned real property as tenants-in-common with their child and a trust established for the benefit of another child. The taxpayers owned jointly a one-half interest in the property and a life estate as to a one-sixth interest in the property, the child owned a one-third interest in the property and the trust owned the remainder interest in the taxpayers' life estate property interest. The parties partitioned the property so that the taxpayers owned the entire interest in one-half of the property and a life estate in one-sixth of the property, the child owned in fee one third of the property, and the trust held the remainder interest in the parcel subject to the life estate. The taxpayer held a mortgage on the property to secure debts from the child and a third child. After the partition, the mortgage was unchanged. The IRS ruled that the partition would not be treated as a sale or exchange and no gain or loss would be recognized by the transaction. **Ltr. Rul. 200328034, Oct. 1, 2002; Ltr. Rul. 200328035, Oct. 1, 2002**.

PARTNERSHIPS.

ADMINISTRATIVE ADJUSTMENTS. The taxpayer was a partner in a partnership and filed for bankruptcy. The taxpayer did not elect to end the taxpayer's tax year on the date of the petition but the partnership split the taxpayer's distributive share of partnership net operating losses between the taxpayer, for the part of the year prior to the filing for bankruptcy, and the bankruptcy estate, for that part of the year post-petition. The IRS disallowed the taxpayer's share of the partnership NOLs, arguing that the NOLs were properly reported only by the bankruptcy estate. The taxpayer argued that the matter had to be handled in a partnership level proceeding. The Tax Court held that, because the partner and bankruptcy estate were essentially the same partner, the determination of the allocation of the NOLs was a partner-level matter which did not need a TEFRA administrative proceeding at the partnership level. The Tax Court also held that the taxpayer's share of partnership NOLs was allocated entirely to the bankruptcy estate because the NOLs were considered distributed at the end of the partnership tax year which occurred after the filing of the bankruptcy petition. On appeal the appellate court held that the issue required a TEFRA partnership level administrative proceeding. The court noted that the filing for bankruptcy by the partner did not convert the NOLs to nonpartnership items. **Katz v. Comm'r, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,557 (10th Cir. 2003), *rev'g in part and rem'g in part*, 116 T.C. 5 (2001)**.

PENSION PLANS. The IRS has provided guidance on the application of Section 620 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. No. 107-16), regarding elimination of user fees for certain determination letter requests. **Notice 2003-49, I.R.B. 2003-__**.

For plans beginning in July 2003, the weighted average is 5.34 percent with the permissible range of 4.81 to 5.87 percent (90 to 120 percent permissible range) and 4.81 to 6.41 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2003-48, I.R.B. 2003-32**.

The IRS has issued a reminder to employers and plan administrators that they no longer have to file information returns, Schedule F of Form 5500, for pure fringe benefit plans. Current Form 5500 no longer has a schedule F. **IR-2003-89**.

S CORPORATIONS

BANKRUPTCY. An S corporation filed for Chapter 11 bankruptcy in 1996 and in 1997, a plan was confirmed and the corporation's assets sold. The bankruptcy trustee filed Form 1120S for the corporation's 1997 tax year and reported gain. The taxpayer was the sole shareholder of the corporation and did not report the taxpayer's share of the gain on the taxpayer's personal income tax return. The taxpayer argued that the filing of the bankruptcy petition terminated the corporation; therefore,

the taxpayer was not a shareholder in 1997. The court held that the filing of the bankruptcy petition did not terminate the corporation's Subchapter S status and the taxpayer remained a shareholder until the corporation was terminated. **Mourad v. Comm'r, 121 T.C. No. 1 (2003)**.

TRUSTS. The IRS has adopted as final regulations which incorporate changes made to I.R.C. § 1361 by the Small Business Job Protection Act of 1996, Pub. L. No. 104-88, to provide that a testamentary trust could be a permitted shareholder of an S corporation for a two-year period. The 1996 amendments also provided that a former qualified subpart E trust would be a permitted shareholder for a two-year period whether or not the entire corpus was included in the deemed owner's gross estate. The regulations eliminate the special rules for determining whether trusts consisting of community property qualify for the two-year period. The regulations refer to electing small business trusts (ESBTs), which were added by the 1996 Act, and provide that certain former qualified subpart E trusts and testamentary trusts could continue as permitted shareholders after the end of the two-year period by becoming ESBTs. The regulations reflect law changes (1) allowing certain exempt organizations to be S corporation shareholders for post-1997 tax years and (2) increasing the number of permissible S corporation shareholders from 35 to 75. The regulations clarify that a current income beneficiary of a testamentary trust that satisfies the QSST requirements could make a QSST election at any time during the two-year period in which the trust is a permitted shareholder in the 16-day and two-month period beginning on the date after the two-year period ends. Pursuant to this provision, a testamentary trust would continue as a permitted shareholder after the end of the two-year period by becoming an electing QSST. Once the trust becomes an electing QSST, the beneficiary would be treated as the shareholder of the S corporation as of the effective date of the QSST election. **68 Fed. Reg. 42251 (July 17, 2003), amending Treas. Reg. § 1.1361-1**.

SAFE HARBOR INTEREST RATES
August 2003

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	1.21	1.21	1.21	1.21
110 percent AFR	1.33	1.33	1.33	1.33
120 percent AFR	1.46	1.45	1.45	1.45
		Mid-term		
AFR	2.70	2.68	2.67	2.67
110 percent AFR	2.97	2.95	2.94	2.93
120 percent AFR	3.25	3.22	3.21	3.20
		Long-term		
AFR	4.36	4.31	4.29	4.27
110 percent AFR	4.80	4.74	4.71	4.69
120 percent AFR	5.24	5.17	5.14	5.12

Rev. Rul. 2003-94, I.R.B. 2003-__.

SPECIFIED LIABILITY LOSS. The taxpayer was a corporation which filed for Chapter 11 bankruptcy. During the bankruptcy the taxpayer hired various professionals to assist with the bankruptcy affairs and capitalized most of these costs. The taxpayer sought to claim these capitalized costs as "specified liability losses" and carry them back to previous tax years as net operating losses. The taxpayer argued that the costs met the conditions of I.R.C. § 172 because the costs arose under the bankruptcy law and by order of the bankruptcy judge. The court held that the costs were not eligible for Section 172 treatment because the costs resulted from the taxpayer's voluntary actions in bankruptcy. **Major Paint Co. v. United States, 2003-2 U.S. Tax Cas. (CCH) ¶ 50,550 (Fed. Cir. 2003)**.

NEGLIGENCE

IRRIGATION DITCH. The defendant had a prescriptive easement over the platiniff's land to run an irrigation ditch and a water right to water in a creek on the plaintiff's land. The defendant also had an irrigation ditch running near the defendant's ditch and had remodeled the ditch closer to the defendant's in order to increase the slope. The plainitff claimed that the defendant ran large amounts of water through its ditch, causing the ditch to rupture and flood the plaintiff's land. The defendant argued that the plaintiff's remodeling of the plaintiff's ditch weakened the support for both ditches and caused the defendant's ditch to collapse near the plaintiff's ditch. Both sides presented expert witnesses to support their claims. The appellate court held that the trial court's assignment of joint liability for the damage to both parties was supported by the evidence and the equal weight of the expert testimony. **Gravely Simmental Ranch Co. v. Quigley, 65 P.3d 225 (Mont. 2003)**.

PATENTS

SAVED SEED. The plaintiff produced genetically modified soybean seeds and sought an injunction against a soybean farmer using the modified soybean seeds from using saved seed to produce future crops or for sale to others. The defendant had not signed a licensing agreement for use of the patented seed. The plaintiff had publicized the use restrictions in trade journals, notices to retailers and on the seed label. The plaintiff argued that the use of saved seed violated the patent and use restrictions. The evidence showed that the defendant had large quantities of saved seed and was selling the seed to other producers. The court held that the defendant was deemed to have accepted the use restrictions by failing to object to the use restrictions within a reasonable time; therefore, the use of the saved seed was an infringement of the patent and justified the injunction against use of the saved seed pending resolution of the case. The defendant also argued that the use restriction violated Section 2543 of the Plant Variety Protection Act which allows the use of saved seed. The court held that the PVPA was not the only method of patenting seeds and that the utility patents obtained by the plaintiff were not subject to the PVPA exception for saved seeds. **Monsanto Co. v. Scruggs Family Farm Supply, 249 F. Supp.2d 746 (N.D. Miss. 2001)**.

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by Neil E. Harl and Roger A. McEowen

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