CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AVOIDABLE TRANSFERS. Within the 90 days prior to the debtor's filing for bankruptcy, the debtor made several payments to a creditor who supplied the debtor with cheese products. Most of the cheese delivered remained unpaid at the filing for bankruptcy. The trustee argued that the payments were preferential transfers to the extent the payments exceeded the amount still owed to the creditor, because the new value defense of Section 547(c)(4) was applicable only to the extent the goods remained unpaid for. The court found that the value of the cheese shipped after each payment exceeded the amount of each payment; therefore, the court held that under Section 547(c)(4), the transfers were not preferential because the creditor supplied new value for each payment. ***In re* IRFM, Inc., 52 F.3d 228 (9th Cir. 1995),*aff'g unrep. D. Ct. dec. aff'g*, 144 B.R. 886 (Bankr. C.D. Cal. 1992)**.

DISCHARGE. The debtors had obtained several loans over several years from the FmHA (now CFSA) and had filed financial statements listing items of farm equipment and livestock as collateral. The debtors' Chapter 7 bankruptcy schedules, however, did not list any of these assets. The debtors did not present any records to show what happened to the assets and the debtors admitted that the financial statements were inaccurate. The court held that the debts were nondischargeable and denied the debtors' discharge for failure to provide accurate and complete records of their business operations and assets. ***In re* Hartman, 181 B.R. 410 (Bankr. W.D. Mo. 1995)**.

The debtor owned and operated several farm corporations with the debtor's brother. The brothers had obtained several loans from the SBA and FmHA (now CFSA) and had defaulted on the loans before filing for bankruptcy. The Bankruptcy Court had held that the SBA and FmHA claims were nondischargeable because the brothers had obtained the loans by fraud, had disposed of collateral without consent and without remitting the proceeds to the creditors, and had misrepresented the true interrelationship of the corporations to the SBA and FmHA. The District Court took additional testimony from the debtor and reversed the Bankruptcy Court decision as to the debtor because the court found that the debtor did not have control of the farm operations. The appellate court reversed, holding that the Bankruptcy Court had sufficient evidence of the debtor's involvement in the management of the farming operations to make the debtor responsible for the fraud. ***In re* Foust, 52 F.3d 766 (8th Cir. 1995)**.

CHAPTER 12-*ALM* § 13.03[8].*

AUTOMATIC STAY. A creditor sought relief from the automatic stay or at least adequate protection payments during the case. The debtors' farm and timber land, farm equipment and livestock were found to have a value in excess of the creditor's secured claims. The court found the equity cushion to be between 12 and 20 percent and noted that other courts have been divided as to the need for adequate protection payments where the equity cushion was within that range. The court held that because the debtor had some time yet to propose a plan, the adequate protection payments would not be required but that the creditor could reapply for adequate protection payments if a workable plan was not proposed by the required date. **In re Glenn, 181 B.R. 105 (Bankr. E.D. Okla. 1995)**.

The debtor had filed a previous Chapter 12 case which was dismissed for cause because the debtor failed to provide any evidence of sufficient finances to operate a hog facility to produce enough income to fund the plan. Four days after the dismissal, the debtor filed the instant Chapter 12 case, with the only change as a possible loan from another lender. The court held that relief from the automatic stay would be granted the secured creditor because the debtor did not have sufficient change of circumstances to change the reasons for the first dismissal since the new loan would not change the amount of debt owned by the debtor. **Matter of Kennedy, 181 B.R. 418 (Bankr. D. Neb. 1995)**.

DISMISSAL. The debtors had originally filed in Chapter 12 but moved to dismiss the case after relief from the automatic stay was granted to a creditor. The creditors objected and moved to have the case converted to Chapter 7 because of fraud committed by the debtors during the bankruptcy case. The court held that once the court has determined that the case should be converted because of fraud committed by the debtors, the debtors no longer have a right to have the case dismissed under Section 1208(b) because the case is no longer under Chapter 12. The court's reasoning was that the debtor's motion can be held under advisement by the court while it holds hearings on the fraud charges. Once the fraud has been established, the case can be converted to Chapter 7. Once the case has been converted, the court can again bring up the debtors' motion and deny it since the case is no longer in Chapter 12. This procedural maneuvering to side-step the clear language of Section 1208(b) seems less straightforward than the approach taken by *In re Graven, 936 F.2d 378 (8th Cir. 1991)* where the court looked to legislative history to find authority to grant conversion for fraud when the debtor has requested dismissal. ***In re* Neal, 181 B.R. 560 (D. Utah 1995)**.

ELIGIBILITY. The debtors owned and operated a cow and calf operation on land which also included timber land. The debtors also purchased standing timber from other land owners and sold the standing timber to lumber companies who harvested the timber. The debtors managed the forests between the time of purchase and the time of resale. The court held that the timber business was a farming operation because the debtors did manage the timber lands before sale; therefore, the debtors' income from the timber sales was included in their gross income from farming and made them eligible for Chapter 12. The court focused on the debtors' risk from fire or other hazards during the time they owned and managed the trees. **In re Glenn, 181 B.R. 105 (Bankr. E.D. Okla. 1995)**.

TRUSTEE FEES. The debtor's plan provided for annual payments on a secured claim. Although not in accordance with the plan, the debtor sold all cattle at once and submitted the proceeds to the secured creditor in complete payment of the claim. The trustee did not know about the sale until the debtor placed the excess proceeds in an escrow account for disbursement as required by the court. The trustee applied to the court for payment of the escrow proceeds to the trustee in payment of the trustee's fee on the proceeds paid to the creditor. The court held that the trustee was entitled to the fee on the payment of the cattle proceeds to the creditor. The court followed *In re Fulkrod, 126 B.R. 584 (Bankr. 9th Cir. 1991)* in holding that all plan payments were subject to the trustee's fee, whether paid directly to the creditor or disbursed through the trustee. ***In re* C.A. Jackson Ranch Co., 181 B.R. 552 (Bankr. E.D. Okla. 1995)**. See also Harl, "Paying Creditors Directly in Chapter 12 Bankruptcy," 6 *Agric. Law Dig*. 73 (1995).

FEDERAL TAXATION-*ALM* § 13.03[7].*

ALLOCATION OF TAX PAYMENTS. The debtor had owed unpaid employment taxes and agreed to sell the debtor's dentistry practice in order to pay these taxes. The debtor had worked closely with an IRS agent and had obtained a delay of a levy while the debtor sought the sale of the practice. When the practice was sold, the debtor remitted the proceeds equal to the taxes owed but the IRS allocated the payment to the debtor's income tax deficiency instead of the employment tax deficiency. The court held that the IRS was required, under these circumstances, to allocate the payment to the employment taxes. ***In re* Jones, 181 B.R. 538 (Bankr. D. Kan. 1995)**.

DISCHARGE. The issue in this case was whether the debtor had signed tax returns prepared by the IRS for 1981 and 1982 so as to make the taxes dischargeable. Neither the debtor nor the IRS presented any evidence of a substitute return. The court held that summary judgment on the issue could not be granted because an issue of fact remained as to whether the debtor did sign any return prepared by the IRS. **Matter of Gless, 181 B.R. 414 (Bankr. D. Neb. 1993)**.

In 1987, more than three years before the debtors filed for Chapter 7, the IRS conducted an audit of their 1982 through 1986 tax years. The debtors cooperated with the IRS and signed a Form 4549, Income Tax Examination Changes, prepared by the IRS. The issue was whether the Form 4549 functioned as a return for those years for purposes of the dischargeability of the taxes under Section 523(a)(1)(B). The court held that the Form 4549 functioned as a return and allowed the discharge of the taxes. **Matter of Berard, 181 B.R. 653 (Bankr. M.D. Fla. 1995)**.

ESTATE PROPERTY. The debtor had owed unpaid employment taxes and agreed to sell the debtor's dentistry practice in order to pay these taxes. As part of the sales agreement, the debtor received an amount equal to the employment taxes owed plus an amount stated as for an agreement to to compete with the buyer. However, the debtor admitted that this amount was actually for goodwill and existing customer base. The debtor argued that the payments were not subject to the pre-petition IRS liens because the payments arose postpetition so long as the debtor did not compete with the buyer. The court held that the payments were included in the gross estate because the payments were in exchange for the debtor's pre-petition property. ***In re* Jones, 181 B.R. 538 (Bankr. D. Kan. 1995)**.

EMPLOYER LIABILITY

FELLOW SERVANT DOCTRINE. The plaintiff was an officer in a farm corporation and was injured while working with another officer for the corporation. The plaintiff was standing in the back of a truck loaded with hogs and the other officer was driving the truck. The plaintiff alleged that the driver negligently operated the truck to cause the plaintiff to fall and be injured. The corporation argued that the fellow servant doctrine prohibited the suit. The plaintiff argued that the plaintiff and officer were not working together sufficiently to invoke the fellow servant doctrine. The court held that summary judgment for the defendant was not proper because a fact issue remained as to whether the two workers were cooperating in a particular task at the time of the injury. **Heepke v. Heepke Farms, Inc., 649 N.E.2d 958 (Ill. Ct. App. 1995)**.

FEDERAL AGRICULTURAL PROGRAMS

COTTON. The CCC has adopted as final determinations that the 1995 Upland Cotton acreage reduction is zero and that no paid land diversion program will be implemented for the 1995 crop. **60 Fed. Reg. 31623 (June 16, 1995)**.

CROP INSURANCE. The CCC has adopted as final regulations which require producers to obtain at least the catastrophic level of crop insurance for each crop of economic importance in order to be eligible for any price support, production adjustment benefit, or payments under any CRP contract. **60 Fed. Reg. 32899 (June 26, 1995)**.

DAIRY TERMINATION PROGRAM. The plaintiff was a dairy farmer who enrolled in the Dairy Termination Program (DTP). The ASCS ruled that the plaintiff had violated the DTP contract in that two cows were not destroyed and were still being milked by a former employee of the plaintiff on another farm. Although the plaintiff pursued the ruling through DASCO and presented substantial evidence to refute the statements of the former employee as to how the cows escaped slaughter, the plaintiff was not allowed to cross-examine the former employee. The court first held that the DASCO decision was not reviewable de novo because the instant case was a review of an administrative decision and not a contract case. The court also held that the administrative appellate procedure was governed by the ASCS appeal regulations, 7 C.F.R. Part 780, and not the Administrative Procedures Act. However, the court held that the ASCS abused its discretion under Part 780 in not allowing cross-examination of the former employee, given the substantial contradictory evidence and the ASCS's strong reliance on the former employee's statements in finding that the plaintiff had violated the DTP contract. In addition, in its remand order, the court required DASCO to make specific findings as to the knowledge of the plaintiff as to the removal of the cows by the former employee, because if the plaintiff did not know about the removal, the plaintiff could not be held in violation of the contract. DASCO failed to conduct a remand hearing within the allotted time and the plaintiff sought judgment on all issues in the plaintiff's favor. The court held that the plaintiff was entitled to judgment removing all penalties resulting from the adverse DASCO rulings. Because the plaintiff's right to contract payments required either an ASCS affirmative ruling of compliance with all contract provisions or a waiver of violations based on good faith compliance, the case was remanded to DASCO for such determinations; however, the court prohibited use of the former employee's testimony as support for any DASCO ruling. On remand, DASCO again ruled, based on the record, that the plaintiff had not slaughtered all cattle and had acted in bad faith. DASCO also held that the plaintiff had not kept sufficient records, although that issue had not been raised in the first hearing. The Court of Federal Claims upheld the decision on the grounds of no jurisdiction to review the final determination of DASCO. The appellate court reversed, holding that the courts have authority to review DASCO decisions for abuse of authority, including violations of procedural requirements and court orders. The court held that DASCO had violated the first Court of Federal Claims ruling by continuing to consider evidence which DASCO was ordered to exclude. The court held that, without the testimony of the former employee, the only proper ruling was that the plaintiff had complied with the DTP requirements and the court ordered that the plaintiff receive all DTP payments without penalty. **Doty v. U.S., 53 F.3d 1244 (Fed. Cir. 1995), *rev'g unrep. Fed. Cls. dec.* See also Doty v. U.S., 27 Fed. Cl. 598 (1993); Doty v. U.S., 24 Cls. Ct. 615 (1991)**.

FEDERAL ESTATE AND GIFT TAX

FLOWER BONDS. The decedent's estate included "flower bonds" which the executor used to pay federal estate taxes based on the par value of the bonds plus accrued interest. The executor argued that the value of the bonds should have been increased to account for additional interest accrued during the nine month grace period available to estates in paying federal estate tax. The court held that only the value of the bonds as of the date of death can be used and that any subsequent effects on bond value cannot be included in the date of death value. **Weld v. Comm'r, 95-1 U.S. Tax Cas. (CCH) ¶ 60,198 (Fed. Cir. 1995), *aff'g*, 31 Fed. Cls. 81 (1994)**.

GENERATION SKIPPING TRANSFERS-*ALM* § 5.04[6].* The decedent and spouse had created an inter vivos revocable trust in 1968. The trust provided that upon the death of one of the trustors, the trust was to be split into two trusts to minimize the estate taxes by creating a marital trust with sufficient assets to reduce the estate tax to zero. The remainder of the trust after the death of both trustors passed to the trustor's children and grandchildren. The trust was amended in 1981 to create three trusts to add a credit shelter trust. The trust was amended a third time in 1983 but the attorney drawing up the amendment did not know about the second amendment; thus, the third amendment created ambiguities in the trust agreement. After the death of the decedent, the ambiguities were discovered and the estate petitioned the local court to restate the trust to remove the ambiguities. The IRS ruled that the restatement of the trust agreement did not subject the trusts to GSTT. **Ltr. Rul. 9523025, March 13, 1995**.

GIFT-*ALM* § 6.01.* At the death of the decedent, the decedent's estate passed to two trusts, a marital trust and a family trust. The surviving spouse was the income beneficiary of both trusts and the couple's children were the remainder beneficiaries. The marital trust was funded with various parcels of real property, personal property and shares of stock in a wholly-owned family corporation in which two of the children were officers. The family trust was funded with most of the rest of the stock. A dispute arose between the children and surviving spouse about the conduct of the corporation's business and the non-officer children and the surviving spouse did not want to share the risk of the corporation. Thus, a settlement was reached which provided that (1) the marital trust would purchase half of the family trust stock; (2) the marital trust was split into two trusts, one funded only with stock and the other funded only with nonstock property; (3) the family trust was split into two trusts, one owning stock and one owning other assets; and (4) the surviving spouse remained income beneficiary of all four trusts but the officer children were the only remainder beneficiaries of the trusts holding the stock and the other children were the only remainder beneficiaries of the nonstock trusts. The IRS ruled that because all beneficiaries consented to the change, no gain or loss was recognized by the transactions. The IRS also ruled that the transfers resulted from the financial and business concerns of the parties; therefore, the transfers were made in the ordinary course of business. Because the transfers were made in the ordinary course of business, the transfers were deemed to have been made for adequate and full consideration and would not be considered a taxable gift under Treas. Reg. § 25.2512-8. **Ltr. Rul. 9523029, March 15, 1995**.

POWER OF APPOINTMENT. The decedent was a co-trustee and beneficiary of a trust established by the decedent's predeceased parent. The trust provided that the trustees could distribute corpus to the decedent for the decedent's "care and comfort." In 1977, the decedent became the sole trustee for a short time before a second trustee was named. The IRS argued that the decedent had a general power of appointment over the trust during the time the decedent was sole trustee and that the appointment of a second trustee was a release of that power. The court held that the decedent had a power of appointment subject to an ascertainable standard of care and comfort; therefore, the trust corpus was not included in the decedent's gross estate. **Estate of Strauss v. Comm'r, T.C. Memo. 1995-248**.

TRANSFERS WITH RETAINED INTERESTS-*ALM* § 5.02[3].* A year before death, the decedent transferred $350,000 to an investment fund which also received $547,666 from three trusts in which the decedent was a beneficiary. The decedent received a lifetime income interest in the investment fund. The decedent received only $6,000 from the fund before death. The estate did not include the $350,000 in the decedent's gross estate. The IRS argued that the $350,000 was included in the gross estate because (1) the decedent had not received adequate consideration for the transfer and (2) the income interest received by the decedent was not capable of valuation because of the uncertainty of the amount of the three trusts which would have been otherwise paid to the decedent. The IRS cited *Gradow v. U.S., 11 Ct. Cls. 808 (1987), aff'd, 897*

F.2d 516 (1987) to support its argument that the decedent received a life estate in the value of the principal of the three trusts contributed to the fund, which was valued at $257,671. Because the life estate received was less than the amount contributed, $350,000, the adequate consideration exception of I.R.C. § 2036(a) did not apply. Although the court expressed some reservations about the *Gradow* holding, the court agreed with the IRS valuation because the estate failed to demonstrate why *Gradow* did not apply to this case. The IRS also argued that, because the decedent had a right to income and possibly corpus from the trusts, the amount of the trusts' contribution was not measurable because the decedent had a right to receive some of that property even before the transfer to the investment fund. The court agreed with the IRS, holding that because the decedent already had a right to most, if not all, of the trusts' property, the decedent potentially received nothing from the transfer of the trusts to the investment fund. **Parker v. U.S., 95-1 U.S. Tax Cas. (CCH) ¶ 60,199 (N.D. Ga. 1995)**.

FEDERAL INCOME TAXATION

BAD DEBTS The taxpayer had given money to the taxpayer's daughter for capitalization of a skating rink business. The checks had notations that the funds were loans. The court held that the loans were bona fide because the taxpayer intended to be repaid. The court also held that the bad debts were claimed in the correct taxable year because the taxpayer knew that the business had lost its assets to the landlord and the daughter was unable to pay the business debts. **Bowman v. Comm'r, T.C. Memo. 1995-259**.

COURT AWARDS AND SETTLEMENTS-*ALM* § 4.02[14].* The taxpayer had filed suit against third parties for malicious prosecution. The jury award for the taxpayer included punitive damages which the taxpayer excluded from gross income. The taxpayer argued that under Texas case law, punitive damages had an element of compensation of the plaintiff. The court held that under Texas law, punitive damages were noncompensatory; therefore, the punitive damage award was included in gross income. **Estate of Moore v. Comm'r, 53 F.3d 712 (5th Cir. 1995), *aff'g*, T.C. Memo. 1994-4**.

The taxpayer was an airline pilot who filed an action against a former employer under the Age Discrimination in Employment Act (ADEA) for back pay and liquidated damages. The court held that the award received by the taxpayer in the action was included in the taxpayer's gross income because the award was either punitive damages or for back pay, neither of which was an award for personal injuries or sickness. **Commissioner v. Schleier, 95-1 U.S. Tax Cas. (CCH) ¶ 50,309 (S. Ct. 1995)**.

The taxpayer, an airline pilot, brought a suit against an airline under the Age Discrimination in Employment Act for wrongful termination of employment. The parties reached a settlement which included back pay and liquidated damages. Under 1977 law, the court held that the back pay and liquidated damages were excludible from the taxpayer's income. The Supreme Court remanded the case for consideration in light of the holding in *Schleier, supra.* **Schmitz v. Comm'r, 95-1 U.S. Tax Cas. (CCH) ¶ 50,322 (S. Ct. 1995), *rem'g*, 34 F.3d 790 (9th Cir. 1994)**.

INSURANCE PROCEEDS. The taxpayer was a lumber company which had suffered the loss of its mill and inventory in a fire. The taxpayer received the proceeds of a fire insurance policy which exceeded the basis of the property destroyed. The taxpayer excluded most of the proceeds from income based on claimed expenses for clean-up costs and inventory replacement. The court held that the amount of insurance proceeds in excess of the taxpayer's basis was taxable income and held that the clean-up expenses could not be offset against the proceeds because the taxpayer failed to substantiate those expenses. **Gorman v. Comm'r, T.C. Memo. 1995-268**.

INTEREST RATE. The IRS has announced that for the period July 1, 1995 through September 30, 1995, the interest rate paid on tax overpayments is 8 percent and for underpayments is 9 percent. The interest rate for underpayments by large corporations is 11 percent. Note: the just-enacted GATT legislation reduces the interest rate on overpayments above $10,000 by 1.5 percentage points. **Rev. Rul. 95-46, I.R.B 1995-26**.

JOINT RETURNS. The taxpayer was the wife of a man who owned a corporation which operated an electrical business. The taxpayer did not participate in the business and was not an officer or shareholder in the business. The couple had been married for several years and the man prepared all the couple's joint tax returns. For the tax year in question, the husband had secretly sold all the stock in the corporation and had included the gain on the tax return. The husband forged the taxpayer's signature on the return and left town. The court held that the taxpayer was not liable for the taxes on the return because the taxpayer never intended to sign the return, the taxpayer did not know about the transaction which gave rise to the tax liability and the taxpayer did not benefit from the transaction. ***In re* Kaiser, 181 B.R. 395 (Bankr. E.D. Mo. 1995)**.

LIKE-KIND EXCHANGES. The taxpayer owned an undivided interest in a parcel of land with several other persons. All owners agreed to an exchange of interests so that each co-owner would receive a complete fee interest in a portion of the land equal to the value of the original undivided interest in the whole parcel. The exchange was made through a qualified intermediary who received title to the property and then simultaneously reconveyed title to each portion to each person. The taxpayer held the property for investment before and after the exchange and all property was of like-kind. The IRS ruled that the exchange qualified for nonrecognition of gain. The IRS cautioned that if any of the other owners were related to the taxpayer, I.R.C. § 1031(f) could cause recognition of gain from the exchange if the property is sold by the taxpayer or the related party within two years after the exchange. **Ltr. Rul. 9522006, Feb. 15, 1995**.

PENSION PLANS. For plans beginning in June 1995, the weighted average is 7.27 percent with the permissible range of 6.54 to 7.92 percent (90 to 109 percent permissable range) and 6.54 to 7.99 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 95-37, I.R.B. 1995-25, 6**.

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S CORPORATIONS-*ALM* § 7.02[3][c].[*]

PASSIVE INVESTMENT INCOME. The taxpayer was an S corporation which leased commercial real estate. The corporation employed a building manager and employees to provide services to the tenants, including hiring of maintenance personnel for the building, finding tenants, negotiating leases, mediating of tenant disputes, and approving of alteration of the premises by the tenants. The corporation paid the utility costs, taxes and insurance for the buildings. The IRS ruled that the rental income from the properties was not passive investment income to the corporation. **Ltr. Rul. 9523015, March 10, 1995**.

The taxpayer was a corporation which rented commercial real estate to another corporation which had the same shareholders as the taxpayer. The lease was not a net lease. The taxpayer provided services for the tenant, including general building maintenance, general equipment maintenance, employees for the tenant's tool room, landscaping services, snow and ice removal around the building, and cafeteria services for the tenant's employees. The IRS ruled that the rental income from the property was not passive investment income to the taxpayer. **Ltr. Rul. 9523016, March 10, 1995**.

SAFE HARBOR INTEREST RATES
July 1995

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.97	5.88	5.84	5.81
110% AFR	6.57	6.47	6.42	6.38
120% AFR	7.18	7.06	7.00	6.96
		Mid-term		
AFR	6.28	6.18	6.13	6.10
110% AFR	6.92	6.80	6.74	6.71
120% AFR	7.56	8.42	7.35	7.31
		Long-term		
AFR	6.76	6.65	6.60	6.56
110% AFR	7.45	7.32	7.25	7.21
120% AFR	8.14	7.98	7.90	7.85

SALE OF RESIDENCE. The taxpayer resided in a building used by the taxpayer's partnership for business purposes. The partnership claimed depreciation and business expenses for the operation and maintenance of the entire property and the taxpayer did not pay rent to the partnership for use of a portion of the property as a residence. When the partnership dissolved, the taxpayer sold the building and purchased another residence. The Tax Court held that the taxpayer could not rollover any part of the gain on the sale of the building under I.R.C. § 1034 as a sale of a residence. The decision was affirmed in a case designated as not for publication. **Walshe v. Comm'r, T.C. Memo. 1994-46, *aff'd*, 95-1 U.S. Tax Cas. (CCH) ¶ 50,301 (2d Cir. 1995)**.

THEFT LOSSES The taxpayer had invested in stock in a corporation. When the stock price went down, the taxpayer claimed a theft loss for the loss in value, arguing that a corporate officer had made misrepresentations which induced the taxpayer to buy the stock. The court held that no theft loss deduction was allowed because no theft under state law had occurred, since no one had appropriated any of the taxpayer's property. **Marr v. Comm'r, T.C. Memo. 1995-250**.

PRODUCTS LIABILITY

CATTLE FEED. The plaintiffs were partners in a family partnership which operated a dairy farm. The plaintiffs purchased cattle feed from the defendants who were the sellers and manufacturers of the feed. The plaintiffs alleged that the feed was contaminated and resulted in the death of cows, loss of breeding ability of cows, injuries to the cows, loss of milk production, and caused the cows to fall, resulting in injury to two of the plaintiffs. The plaintiffs filed claims for products liability under Or. Rev. Stat. § 30.920; breach of implied warranty of fitness for a particular purpose; breach of implied warranty of merchantability; negligence per se for violation of Or. Rev. Stat. § 633.045; negligence in the manufacture, inspection and testing of the feed; and fraudulent misrepresentation. The plaintiffs sought economic damages, non-economic damages for the personal injuries and punitive damages. The defendants argued that the plaintiffs' claim for loss of goodwill and business reputation were not allowed because the partnership was not a party to the action. The court held that damages for goodwill and business reputation were not allowed in breach of contract actions. The defendants argued that no action arose under Or. Rev. Stat. § 30.920 because the feed was not unreasonably dangerous since it caused only economic losses. The court held that, because the plaintiffs alleged that the feed caused injury to the plaintiffs' cows, the claim was sufficient under the statute. The defendants argued that punitive damages were not allowed in a products liability action. The court held that because the plaintiffs alleged that the defendants knowingly sold the contaminated feed without telling the plaintiffs, the punitive damages could be awarded. The defendant argued that Or. Rev. Stat. § 30.920 did not provide a private right of action. The court held that a violation of the statute did not give rise to a private cause of action but could be used as a standard of negligence to support the plaintiffs' claim. The defendants also sought to exclude the damages for the personal injuries suffered by the plaintiffs from falling cows as not foreseeable. The court held that this issue was not sufficiently developed in the record for determination. **Carpenter v. Land O'Lakes, Inc., 880 F. Supp. 758 (D. Or. 1995)**.

SECURED TRANSACTIONS

DRAGNET CLAUSE. The debtors operated a ranch and farm in Arizona with a wholly-owned corporation. The debtors and their corporation had obtained loans from a creditor and the security agreements contained dragnet clauses which made the collateral subject to all indebtedness of the debtors to the creditor. The debtors also borrowed funds from the creditor for a cotton gin operation run by another corporation and a partnership. The court held that the dragnet clauses in the first security agreements did not reach the cotton gin assets because the two sets of loans were not related and the creditor did not rely on the dragnet clauses in granting the cotton gin loan. ***In re* Auza, 181 B.R. 63 (Bankr. 9th Cir. 1995)**.

FEDERAL FARM PRODUCTS RULE. The GIPSA has announced that the certification of the Oklahoma central filing system now includes sesame crops. **60 Fed. Reg. 32651 (June 23, 1995)**.

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DEBTOR'S RIGHTS IN COLLATERAL. The debtor had contracted with a third party to produce sunflower seeds. The third party had agreed to provide financing for the raising and harvesting of the crop plus a portion of the profits from the crop. The third party did not file any security interest with the state central filing system. The debtor leased land from related business entities which also did not record their interests in the debtor's crops. The debtor sought a loan from the plaintiff bank but did not disclose the third party's interest in the crop nor the leases. The plaintiff searched the central filing system records and local records and found no record of any other interests in the crops. After the loan was made and the bank perfected a security interest in the crops, the other interests were discovered and the bank sought a declaratory judgment that its security interest held priority. The third party argued that the debtor did not have title to the crops because the crop contract reserved title in the third party; therefore, the debtor did not have sufficient interest in the crops for a security interest to attach. The court held that mere lack of title was not sufficient to prevent attachment of a security interest and that the debtor's control over the land and the production of the crop was sufficient interest in the crop for the security interest to attach. Because the bank was the first party to perfect its security interest, the bank's security interest had priority. **First Nat'l Bank v. Pleasant Hollow Farm, 532 N.W.2d 60 (S.D. 1995)**.

CITATION UPDATES

Est. of Carpenter v. Comm'r, 52 F.3d 1266 (4th Cir. 1995), *aff'g*, T.C. Memo. 1994-108 (marital deduction) see p. 92 *supra*.

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