for $63,120 representing the margin calls paid to that date by the elevator.[10]

The court's opinion

The trial court first concluded that the contracts were not illegal, off-exchange contracts under the Commodity Exchange Act.[11] That continues to be a major concern for contracts calling for the sale of several years of production.[12]

Even though the court said the contracts were not invalid under federal law, the court held against the elevator as to the reasonableness of the demand for assurance.[13] The UCC provision reads as follows:

> "A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until that party receives such assurance may if commercially reasonable suspend any performance for which that party has not already received the agreed return."

The UCC provision goes on to state -

"Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards."[15]

> Thus, any request for adequate assurance should come only after there are good, solid grounds for believing that the other party may not perform under the contract.

The cooperative in this case argued three grounds for its insecurity - (1) the rising market price for corn in 1996 (which the court rejected); (2) statements of public officials (apparently the Iowa Attorney General) regarding the potential illegality of the six contracts in question (which the court also rejected); and (3) the farmer's past refusal to purchase herbicide under a "booking" arrangement with the cooperative when the farmer found a cheaper price elsewhere (which the court did not view as providing grounds for a demand for adequate assurance).[16] In rejecting the grounds for invoking the adequate performance provision, the court said the cooperative had worked itself into a financial corner and that the demand for assurance from Heyes was in bad faith. The court concluded that it was the elevator's indebtedness that had caused the demand for adequate assurance. Thus, the elevator was responsible for breach of the contracts; the losses remained with the elevator.

In conclusion

The message is clear – anyone feeling insecure should proceed cautiously and with an eye to what the contract calls for before making demands for adequate performance. For contracts between merchants, and the Iowa court determined that both the farmer and the elevator were merchants, demands for adequate assurance must be commercially reasonable.

There are dozens of cases slated for trial over the next several weeks in Iowa alone, not to mention the other states where the hedge-to-arrive contract virus had spread. Moreover, the Commodity Futures Trading Commission commenced agency hearings in Minnesota in early February, 1998. More guidance is expected on the legality of HTAs.

FOOTNOTES

1 Farmers Coop. Elevator v. Heyes, No. 23493 (Dist. Ct. for Kossuth County, Iowa, December 23, 1997).

2 See generally 10 Harl *Agricultural Law* § 74.04 (Supp. 1997). See Harl, "Hazards of Hedge-to-Arrive Contracts," 7 *Agric. L. Dig.* 77 (1996); Harl, "Hedge-to-Arrive Contracts: Two Federal Court Cases," 8 *Agric. L. Dig.* 153 (1997).

3 UCC § 2-2609.

4 See n.1 *supra*.

5 *Id*.

6 *Id*.

7 *Id*.

8 *Id*.

9 *Id*.

10 *Id*.

11 Futures Trading Act of 1921, Sec. 4, 42 Stat. 187 (1921). See Harl, "Hazards of Hedge-to-Arrive Contracts, 7 *Agric. L. Dig.* 77 (1996).

12 See Harl, "Hedge-to-Arrive Contracts: Two Federal Court Cases," 8 *Agric. L. Dig*. 153 (1997).

13 Iowa Code § 554.2609 (1997).

14 *Id*., § 554.2609(1).

15 *Id*., § 554.2609 (2).

16 Farmers Cooperative Elevator v. Heyes, n. 1 *supra*.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

HORSES. The plaintiff was a veterinarian who had treated horses owned by the defendant on several occasions. The plaintiff was injured while treating one horse for lameness in a paddock. Another horse, either already in the paddock or after entering the paddock from an adjoining pasture, kicked the plaintiff. The plaintiff sued under theories of negligence or "animal injury liability." The defendant argued that (1) the plaintiff had to show that the defendant knew the kicking horse had a propensity to kick or (2) the plaintiff assumed the risk of being kicked. The trial court granted the defendant summary judgment, alternatively on both arguments. The assumption of risk issue was not discussed on appeal. The plaintiff recognized that the need to prove propensity to kick was the law in South Carolina, but argued that the rule created in *Hossenlopp v. Cannon, 329 S.E.2d 438 (1985)* for dogs should apply as well to horses. In *Hossenlopp*, the court held that an owner of a dog was liable for injuries caused by the bite of the dog unless the dog was provoked by the person bitten. The legislature also enacted a law incorporating that judge-made rule. The court in this case declined to expand that rule to include injuries caused by kicking horses and held that, because the plaintiff failed to prove that the horse had a propensity to kick humans, the defendant was not liable for injuries caused by the kicking horse. **Henry v. Lewis, 489 S.E.2d 639 (S.C. Ct. App. 1997)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

SECURED CLAIMS. The debtor had purchased an automobile on installments with a loan from a creditor. The creditor perfected a security interest in the automobile 21 days after the debtor took possession of the automobile. The debtor filed for Chapter 13 and the trustee sought to avoid under Section 547 the security interest as a preference because the security interest was not perfected within 20 days after possession of the collateral by the debtor. Under state law, the creditor had 30 days to file the security interest which then became effective on the day of creation of the security interest. The court held that the federal 20-day period controlled for purposes of avoidance by the trustee and that the state law allowing relation back to the day of creation had no affect on the federal rule. The court noted that enforcement of the federal rule fulfilled the policy of uniformity of bankruptcy cases throughout the states. **Fidelity Financial Services, Inc. v. Fink, 118 S. CT. 651 (1998)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

ADMINISTRATIVE EXPENSES. The bankruptcy estate incurred post-petition interest and penalties. The trustee filed the estate's income tax return late and requested a determination of the estate's unpaid tax liability. The IRS sent the trustee a "Section 505(b) letter" stating that the return was accepted as filed. The Chapter 7 plan provided for payment of the remaining post-petition tax liability with the other unsecured creditors and the IRS objected to the plan, arguing that the post-petition taxes, interest and penalties were entitled to administrative expense priority. The trustee argued that the Section 505(b) letter removed any further tax liability. The court held that Section 505(b) affected only the liability of the trustee and the debtor and the bankruptcy estate remained liable for any unpaid taxes; therefore, the post-petition taxes were entitled to administrative expense priority. ***In re* Goodrich, 215 B.R. 638 (Bankr. D. Mass. 1997)**.

DISCHARGE. The debtor failed to timely file tax returns for 1980-1982. In 1985, the IRS prepared substitute returns and assessed the debtor for the taxes determined by those returns. The debtor did not assist the IRS in preparing the returns nor did the debtor sign those returns. In 1995, the debtor filed returns for 1980-1982 mirroring the returns prepared by the IRS. The debtor sought to have the 1980-1982 taxes declared dischargeable because the debtor filed the returns more than three years before the bankruptcy filing. The IRS argued that the debtor's returns were a legal nullity because the returns were ineffectual to change the assessment of taxes. The court held that a valid return must appear on its face to be an honest and genuine endeavor to satisfy tax law. The court held that the debtor's over ten-year late returns were not an honest and genuine endeavor to comply with the return filing requirements because the only reason the returns were filed was to make the taxes dischargeable. The court noted that the debtor made no attempt to help the IRS prepare the substitute returns nor did the debtor's returns provide additional information. ***In re* Mickens, 215 B.R. 693 (Bankr. N.D. Ohio 1997), *aff'd*, 214 B.R. 976 (N.D. Ohio 1997)**.

The debtors filed a tax return for 1991 by crossing out all lines as to income or deductions and putting a zero in the line for tax due. The return claimed a refund for all withheld taxes. The IRS argued that the 1991 return did not qualify as a return for purposes of Section 523(a)(1)(B)(i) because the returns did not contain any income or deduction information. The court distinguished the current case from *United States v. Long, 618 F.2d 74 (9th Cir. 1980)* where the taxpayers put zeros in each line. The court held that the 1991 return was not a return for purposes of Section 523 and the taxes, interest and penalties were nondischargeable. **In re LaRue, 215 B.R. 766 (Bankr. D. Ariz. 1997)**.

JURISDICTION. The debtor was a corporation which owed employment taxes. The IRS filed a claim for the taxes but had also assessed a director the 100 percent penalty under I.R.C. § 6672. The director filed a motion in the bankruptcy case for a determination of whether the penalty was properly assessed. The IRS argued that the court did not have jurisdiction over the issue because the issue was not related to or arose out of the bankruptcy case. The director argued that Section 505(a)(1) allowed the court to determine the tax liability of the director, a nondebtor. The court held that Section 505 applied only to the tax liability of the debtor or tax liabilities that would affect claims against the debtor; therefore, the court did not have jurisdiction over the I.R.C. § 6672 liability of a nondebtor. The court also held that it had no authority to issue a stay against collection of the director's tax liability because the Anti-Injunction Act prevented restraint of collection efforts by the IRS. **In re Proactive Technologies, Inc., 215 B.R. 796 (Bankr. N.D. Ga. 1997)**.

FEDERAL AGRICULTURAL PROGRAMS

APPEALS. The plaintiff were farmers who borrowed funds from the FSA. The plaintiffs defaulted on the loans and were denied delinquent farmer loan servicing. The plaintiffs appealed the denial and were successful in overturning the decision. The plaintiffs then sought attorney fees and other expenses under the Equal Access to Justice Act (EAJA). The plaintiffs appealed denial of the fees and expenses through the National Appeals Division which denied the fees and expenses on the basis that the EAJA did not apply to NAD appeals because NAD appeals were not under Section 554 of the Administrative Procedures Act (APA) as required by the EAJA. The court held that NAD proceedings were under the APA because (1) the proceedings were adjudications; (2) there is an opportunity for a hearing; and (3) the hearing must be on the record. The USDA also argued that NAD enabling law and regulations makes the APA inapplicable to NAD proceedings. The court held that the statute did not expressly remove NAD proceedings from under the APA; therefore, the plaintiffs were entitled to fees and expenses if the USDA position was not substantially justified. The District Court had ruled that the USDA position was not substantially justified but the appellate court reversed, holding that there must first be a determination of that issue at the NAD level before a court review of the issue. **Lane v. USDA, ___ F. 3d___, No. 96-3285ND (8th Cir. 1997)**.

HERBICIDES. See McAlpine v. Rhone-Poulenc Ag. Co., 947 P.2d 474 (Mont. 1997), under **Product Liability** *infra*.

PESTICIDES. See Hopkins v. American Cyanamid Co., 674 So.2d 1042 (La. Ct. App. 1996), *on rem. from*, 666 So.2d 615 (La. 1996), *aff'g in part and rev'g in part*, 658 So.2d 196 (La. Ct. App. 1995), under **Product Liability** *infra*.

POULTRY. The FSIS has adopted as final regulations amending the poultry products inspection regulations by adding a provision to permit manufacturers of poultry products to interchange the amounts and kinds of poultry, within specified limits, in a product without requiring that each such formulation change have a separate label. The provision applied in situations where two kinds of poultry make up at least 70 percent of the poultry and poultry ingredients used in the product formulation and neither of the two kinds of poultry used constitute less than 30 percent of the poultry and poultry ingredients used. In these situations, one label with the word ``and'' instead of a comma between the names of each of the kinds of poultry in the ingredients statement, and in the product name, indicates to consumers that the order of predominance of the two kinds of poultry may be interchanged. This action was designed to provide consistent provisions for meat and poultry products. **63 Fed. Reg. 11359 (March 9, 1998)**.

TOBACCO. The FSA has adopted as final regulations improving the administration of the tobacco marketing quota and price support program by amending program regulations to: (1) provide for making quota "inequity adjustments" on a "common ownership unit" basis rather than strictly on a "farm" basis; (2) eliminate unduly restrictive deadlines for the mailing of certain quota notices; permit, for burley and flue-cured tobacco, disaster transfers to be made by cash lessees, from cash rented farms, without the owner's signature; (3) provide greater flexibility in the setting of penalty amounts for burley and flue-cured tobacco violations; (4) eliminate a provision that requires yearly publication in the Federal Register of certain routine and noncontroversial penalty computations; (5) remove regulations governing the 1994-calendar year only "domestic marketing assessment", which was applicable to the use by certain cigarette manufacturers of set percentages of domestic tobacco; and (6) codify certain statutory provisions concerning, and penalties related to, setting burley and flue-cured tobacco quotas. **63 Fed. Reg. 11581 (March 10, 1998)**.

FEDERAL ESTATE AND GIFT TAX

JOINT TENANCY PROPERTY-*ALM* § 5.02[1].* The decedent's father purchased a New Mexico ranch in 1958 and had the warranty deed recorded in the names of the decedent and the father as joint tenants. The decedent's parents owned real property in Arizona and in 1974, the decedent exchanged the interest in the New Mexico property for the father's interest in the Arizona property, so the decedent and mother ended up owning the Arizona property. In the following years, the decedent and mother exchanged the property they owned for other properties, eventually acquiring a property in California in 1981 and 1986. In all these transactions, the decedent was recorded as "dealing with his sole and separate property." The decedent died intestate in 1990. The decedent's wife was the estate's personal representative. In 1991 the spouse petitioned a California court, alleging that the California property was community property and requesting a determination that half the property passed to the spouse by intestate succession and that the other half was the spouse's own property. The state court granted the petition. The spouse included half the value of the California property in the decedent's gross estate and deducted the value of the spouse's interest as property passing to the spouse. The IRS determined an estate tax deficiency, asserting that the property was the decedent's separate property. The court held that the property belonged entirely to the decedent because the spouse never asserted any community property interest in the New Mexico property or any of the subsequent properties. The appellate court decision is designated as not for publication. **Kenly v. Comm'r, 98-1 U.S Tax Cas. (CCH) ¶ 60,032 (9th Cir. 1998), *aff'g*, T.C. Memo. 1996-516**.

MARITAL DEDUCTION-*ALM* § 5.04[3].* Under the terms of the decedent's will a QTIP trust was established for the surviving spouse with the remainder passing to the decedent's child. The surviving spouse was entitled to all

**Agricultural Law Manual* (ALM). For information about ordering the *Manual*, see the last page of this issue.

trust income, payable at least annually for the spouse's life but the spouse did not have a general power of appointment over trust principal. The spouse purchased the child's remainder interest for a promissory note for the fair market value, then the trustee distributed all of the trust principal to the spouse and the spouse used some of those assets to pay off the promissory note. The trust was terminated with the spouse holding assets equal in value to the value of the original life interest in the trust and the child held assets equal in value to the value of the remainder interest. The spouse argued that no gift tax resulted because the child received full and adequate consideration in exchange for the child's interest in the trust. The IRS first ruled that the transaction was a commutation of the respective trust interests and that a commutation was a disposition under I.R.C. § 2519 and Treas. Reg. § 25.2519-1(g), Example 2. As a disposition of the spouse's income interest in the QTIP trust, the spouse is treated as having made a gift of the value of the income interest to the child. The IRS provided an alternative analysis to reach the same holding. The IRS ruled that, because the acquisition of the income interest by the spouse from the trust did not increase the spouse's gross estate, the receipt of the income interest was not adequate consideration for the assets paid in exchange for the income interest. The IRS noted that the same result would apply where only a portion of the income interest was acquired by the spouse and the result would not be changed if the spouse had paid for the interest from the spouse's own assets instead of using the trust's assets to pay off the note. **Rev. Rul. 98-8, 1998-6, __**.

TRUSTS. The taxpayer established an irrevocable trust for a child. The beneficiary was to receive trust income as in the trustee's discretion was necessary for the beneficiary's health, education and support, with undistributed income accumulated in principal. The beneficiary had the power to appoint all trust principal when the beneficiary reached the age of 35. The beneficiary also had a testamentary power to appoint trust principal. The remainder interest in the trust was to pass to the beneficiary's issue per stirpes. The trust also provided that when any additional property was contributed to the trust, the trustee was to inform the beneficiary of the contribution within 14 days after the contribution and the beneficiary had 30 days from the date of the notice to request withdrawal of the contributed property. The IRS ruled that the beneficiary was considered the owner of the trust and that the contributions to the trust would be eligible for the gift tax annual exclusion. **Ltr. Rul. 9810006, Nov. 6, 1997; Ltr. Rul. 9810007, Nov. 6, 1997; Ltr. Rul. 9810008, Nov. 6, 1997**.

The IRS has issued guidance, in anticipation of regulations, on the ordering and taxation of tax items in I.R.C. § 664(b)(2) distributions which included capital gains by a charitable remainder trust. **Notice 98-20, I.R.B. 1998-__, __**.

FEDERAL INCOME TAXATION

DEPRECIATION-*ALM* § 4.03[4].* The taxpayer, an experienced tax attorney, purchased bonds through a broker. The taxpayer purchased a life estate in the bonds and the taxpayer's daughters purchased the remainder interests with funds given to them by the taxpayer. After enactment of I.R.C. § 167(e), the ownership of the daughters was changed to life estates and the remainder was held by the taxpayer's secretary, also purchased with funds supplied by the taxpayer. The taxpayer claimed amortization deductions for the life estate interest in the bonds. The court used the step-transaction doctrine to hold that the taxpayer purchased the entire interests in the bonds and divided the interests in the bonds afterward, making the taxpayer's interest in the bonds ineligible for amortization. **Kornfield v. Comm'r, 98-1 U.S. Tax Cas. (CCH) ¶ 50,241 (10th Cir. 1998), *aff'g*, T.C. Memo. 1996-472**.

The IRS has issued tables detailing the limitation on depreciation deductions for electrically propelled automobiles first placed in service after August 5, 1997 and before January 1, 1998:

Tax Year	Amount
1st tax year	$9,480
2d tax year	15,100
3d tax year	9,050
Each succeeding year	5,425

The amounts are three times the amounts allowed for gas powered automobiles. The IRS also issued tables providing the amounts to be included in income for automobiles first leased after August 5, 1997 and before January 1, 1998. **Rev. Proc. 98-24, I.R.B. 1998-10, 31**.

DISASTER LOSSES-*ALM* § 4.05[2].* The IRS has issued a list of areas declared by the President to be adversely affected by disaster of sufficient severity and magnitude to warrant Federal assistance. Under I.R.C. § 165(i), the taxpayers in these areas may elect to deduct (if otherwise deductible as a casualty loss or business losses) losses suffered from these disasters in the tax year immediately preceding the tax year in which the disaster occurred. The election is to be made by filing a return, amended return or claim for refund by the later of (1) the due date of the taxpayer's income tax return (not including extensions) for the tax year in which the disaster occurred or (2) the due date of the taxpayer's income tax return (not including extensions) for the tax year preceding the tax year in which the disaster occurred. See Treas. Reg. § 1.165-11(e). **Rev. Rul. 98-12. I.R.B. 1998-10, 5**.

HOME OFFICE-*ALM* § 4.03[13].* The taxpayer had obtained a paralegal degree and worked sporadically as a paralegal for several employees for two years. The taxpayer suffered injuries and illnesses which prevented the taxpayer from working full-time and the taxpayer set up a home office to work as an independent contractor of paralegal services. During the time of the office set up, the taxpayer did not earn any income but the taxpayer intended to return to work as soon as the taxpayer was physically able. The court held that the taxpayer could deduct expenses related to the home office during the non-working period, except for the portion of rent paid on the office area. **Gallo v. Comm'r, T.C. Memo. 1998-100**.

INSTALLMENT REPORTING-*ALM* § 6.03[1].* The taxpayer was a shareholder in a corporation and sold some stock to another corporation for cash equal to the "net asset value" plus an earnout payable for 48 months. The earnout was contingent on the buyer generating earnings greater than a percentage of sale on a specified date. The taxpayer was liable for repayment of an amount if the same percentage of sales does not equal or exceed that repayment amount. The buyer's earnings included the earnings from the taxpayer's corporation's business. Neither corporation expected to generate sufficient earnings to produce any earnout amount over the 48 months. The taxpayer argued that, under Temp. Treas. Reg. § 15A.453-1(c)(3)(i), the taxpayer's stock basis would be allocated in equal increments to the taxable years in which payments would be received, i.e., 20 percent in each of five years. Under the first year of the sale contract, the taxpayer received 88.5 percent of the total expected sale proceeds and argued that 88.5 percent of the stock basis should be allocated to that tax year, resulting in recovery of basis at a rate more than double the normal 20 percent rate. The IRS ruled that the basis recovery rate provided in Temp. Treas. Reg. § 15A.453-1(c)(3)(i) would unreasonably defer recovery and that the taxpayer could use the alternative basis recovery method to reflect the payment of the sale proceeds. **Ltr. Rul. 9811039, Dec. 11, 1997**.

INTEREST RATE. The IRS has announced that for the period April 1, 1998 through June 30, 1998, the interest rate paid on tax overpayments is 7 percent and for underpayments is 8 percent. The interest rate for underpayments by large corporations is 10 percent. **Rev. Rul. 98-17, I.R.B. 1998-__**.

PASSIVE ACTIVITY LOSSES-*ALM* § 4.05[3].* The taxpayers owned a condominium in another part of the country from where they lived. The taxpayers hired a management company to handle rental of the unit. The management company advertised the unit, approved tenants, handled repairs and made utility payments. The taxpayers received a portion of the management company's income from the unit based on the number of days the unit was rented each year. The unit was rented on an "at will" basis. The taxpayers argued that they actively participated in the rental activity because, when the rent statements arrived each month, the taxpayers made the decision to retain the tenants or not. However, the taxpayers provided no evidence that they personally approved of tenants, decided rental terms, approved of expenditures for repairs and capital improvements or otherwise participated in the management of the unit. The court found that the management company did all of these activities. Thus, the court held that the taxpayers did not actively participate in the rental of the unit and were not eligible for the $25,000 offset of passive activity losses under I.R.C. § 469(i). **Madler v. Comm'r, T.C. Memo. 1998-112**.

PENSION PLANS. The IRS has issued procedures for comprehensive correction programs for sponsors of retirement programs which do not satisfy the requirements of I.R.C. §§ 401(a) or 403(a). Previous procedures had created several separate programs, including the Voluntary Compliance Program, the Walk-in Closing Agreement Program and the Audit Closing Agreement Program. The new procedure modifies and consolidates these programs into one Employee Plans Compliance Resolution System (EPCRS). The new procedures, however, do not modify the Tax Sheltered Annuity Voluntary Correction Program. **Rev. Proc. 98-22, 1998-__, __**.

SAFE HARBOR INTEREST RATES
April 1998

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	5.51	5.44	5.40	5.38
110% AFR	6.07	5.98	5.94	5.91
120% AFR	6.64	6.53	6.48	6.44
		Mid-term		
AFR	5.70	5.62	5.58	5.56
110% AFR	6.28	6.18	6.13	6.10
120% AFR	6.85	6.74	6.68	6.65
		Long-term		
AFR	5.98	5.89	5.85	5.82
110% AFR	6.58	6.48	6.43	6.39
120% AFR	7.19	7.07	7.01	6.97

S CORPORATIONS-*ALM* § 7.02[3][c].*

SHAREHOLDER BASIS. The taxpayers were shareholders in an S corporation which had a loan obligation with a bank. The shareholders gave the bank their personal notes in exchange for the bank canceling the corporation note. The shareholders' liability on the notes was proportionate to their interests in the corporation. The shareholders' notes carried current market terms and rates. The corporation note and the shareholders' notes used some of the same collateral to secure the notes, but the collateral was owned by the shareholders. The IRS ruled that (1) the exchange of shareholder indebtedness for the corporation's indebtedness to the bank created indebtedness from the corporation to the shareholders, increasing the shareholders' basis in the corporation, (2) the use of the shareholders' collateral for both notes did not constitute a protection against loss under I.R.C. § 465(b)(4), and (3) each shareholder is at risk as to each shareholder's portion of the notes. The ruling did not cover the deductibility of any corporation losses by the shareholders under I.R.C. § 465(b)(2)(A). **Ltr. Rul. 9811016, Dec. 3, 1997; Ltr. Rul. 9811017, Dec. 3, 1997; Ltr. Rul. 9811018, Dec. 3, 1997; Ltr. Rul. 9811019, Dec. 3, 1997**.

PRODUCT LIABILITY

HERBICIDE-*ALM* § 2.04.* The plaintiffs were wheat and barley farmers and applied to their crops herbicide manufactured by the defendant. For several weeks after the application, the nighttime temperatures were near or below freezing. A state Department of Agriculture expert told the plaintiffs that cold temperatures could cause damage to crops treated with the herbicide. The plaintiffs sued in negligence, breach of warranty and strict liability, claiming that the defendant was negligent in manufacturing, advertising and selling a product which could cause damage when applied at the normal time for application, in the spring when the nights were cold. The trial court dismissed all claims as preempted by FIFRA. The appellate court held that the negligence action was preempted by FIFRA because the action was based on the defendant's failure to warn about the cold problem. The court held that the breach of warranty action was not necessarily preempted by FIFRA because the plaintiff alleged some representations were made by agents of the defendant during the sale of the herbicide. The court also allowed the strict liability claim to remain until discovery was completed by the parties to see if any actions by the defendant, outside of the label, gave rise to a strict liability claim. The court noted that the EPA approval of the herbicide label did not absolve the defendant of all liability where the product was advertised and sold in areas were the product would not work according to the label instructions. **McAlpine v. Rhone-Poulenc Ag. Co., 947 P.2d 474 (Mont. 1997)**.

PESTICIDES-*ALM* § 2.04.* The plaintiffs were cotton farmers who applied an insecticide to their cotton crop in combination with a herbicide. The plaintiffs sued the manufacturer of the insecticide for negligence, breach of warranty and strict liability. Four of the claims against the defendant involved the failure to warn about the dangers to crops from applying the insecticide with the herbicide. The Court of Appeals initially ruled that these claims were pre-empted by FIFRA. The plaintiffs also alleged that (1) the defendant negligently designed the insecticide so that if used with another product it would cause damage to cotton crops and (2) the defendant failed to adequately test the insecticide with other products to discover the danger of combined application. The Court of Appeals held that these two claims were essentially claims of failure to warn and were also pre-empted by FIFRA. The Supreme Court affirmed the holding that the actions based on the failure of the defendant manufacturers to warn about the mixing of the chemicals were preempted by FIFRA. The Supreme Court held that the claim that either or both chemicals were defective for use on cotton crops was not preempted by FIFRA. The Supreme Court upheld the jury verdict for the plaintiffs on this issue. The breach of warranty action was remanded for determination of whether sufficient evidence was presented to support the jury verdict for the plaintiffs. On remand, the Court of Appeals held that the plaintiff failed to demonstrate that the defendant's statements were an express warranty or guarantee that the two products could be used together safely. **Hopkins v. American Cyanamid Co., 674 So.2d 1042 (La. Ct. App. 1996), *on rem. from*, 666 So.2d 615 (La. 1996), *aff'g in part and rev'g in part*, 658 So.2d 196 (La. Ct. App. 1995)**.

WATER RIGHTS

TRANSFER OF WATER RIGHTS. The plaintiff sold 80 acres of farmland to the defendant who granted the plaintiff an easement to draw water from the land. The water was transferred from the well to another parcel of farm land. At the time of the contract, Nebraska law prohibited the transfer of water under one parcel of land to another; however, the parties complied with the contract for five years until the plaintiff rented land from a third party that the defendant had previously rented. The plaintiff sued to enforce the contract. After the contract was executed and before the suit was brought, the Nebraska legislature enacted a law allowing the transfer of water to another parcel of land. The defendant argued that the contract was void because it had an illegal purpose when executed. The court held that the enactment of the new law made the contract legal because it was the legislature's intent to legalize a practice which was common. Because the contract had a legal purpose when the suit was brought, the court enforced it to require the defendant to allow the plaintiff to draw water from the land as provided in the contract. **Springer v. Kuhns, 971 N.W.2d 323 (Neb. Ct. App. 1997)**.

WORKERS' COMPENSATION

AGRICULTURAL WORKER EXEMPTION. The plaintiff was employed by an independent contractor hired by the defendant as a chicken catcher, boxer and loader. The plaintiff performed the services on farms but only for so long as necessary to catch and load the chickens. The plaintiff was injured while performing these duties and sought workers' compensation for the injuries. The state Board of Workers' Compensation denied the plaintiff's claim, ruling that the plaintiff was a poultry handler which met the definition of "farm laborer" exempt from workers' compensation coverage. The independent contractor was not engaged in farming but was only involved in the catching and loading of chickens purchased by the defendant from farmers. The court held that the plaintiff was not a farm laborer, because the plaintiff's employment was more similar to trade and commerce than to the raising of chickens. **J & C Poultry v. Reyes-Guzman, 489 S.E.2d 853 (Ga. Ct. App. 1997)**.

ZONING

CONDITIONAL USE. The plaintiff owed and operated a golf course situated on urban land in an urban growth boundary. The plaintiff sought to expand the golf course on to land zoned for exclusive farm use (EFU), some of which was "high-value farmland." The central issue was whether Or. Rev. Stat. § 215.283(2)(e) prohibited expansion of a golf course on EFU land unless the golf course was already situated on EFU land. The court held that the statute provided rules only to govern the expansion of golf courses on EFU land and had no requirement that only golf courses located on EFU land could expand on EFU land. **DLCD v. Jackson County, 948 P.2d 731 (Or. Ct. App. 1997)**.