

Bet-the-Farm Litigation

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Key Legal Issues in Farming Operations

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Companies might bet-the-company while executives might bet-the-career. But in Eastern North Carolina, agribusiness might force a farmer to bet-the-farm. North Carolina has more than 50,000 active farms, averaging nearly 170 acres, and over 85% of those farms are family owned and operated. Even more interesting – over 7,000 of those farmers are female! The economic impact of agriculture in the state economy tops \$76 billion dollars a year. North Carolina's top agricultural products are poultry and eggs, broilers, meat animals, hogs and tobacco. The state's agricultural reach extends beyond farming operations with 252 farmers markets and 29 colleges with agricultural programs. Whether it is the food on your table, the boost to the North Carolina economy, or the freshly plowed field you pass on your way home, agricultural touches every citizen of our state.

Farmers and companies that support agribusiness face hardships each year. Whether it is a decrease in the price of crops, rising costs and crippling expenses, devastating weather, or tariffs that significantly affect exports, operating a farm is a delicate balance. It's no secret to a North Carolina farmer though – it's a way of life. Legal problems cannot only exacerbate the hardship, they can create economic disaster and even cause the loss of the farming operation. For example, recent nuisance litigation in North Carolina has resulted in multi-million dollar jury verdicts that threaten the entire hog industry - unpredictably defending its operation against neighbors which had a devastating impact on their business. What about the trade war dispute between the United States and China? Regardless which side of the political isle you are on, tariffs on crops grown in American hit the farmer first and hardest. As times change, so does the operation of a farm. Farmers today not only face the hardships of decades passed, but new, complicated issues have emerged, including complex legal matters and draconian regulations.

Key Issues and How to Address Them

Immigration Issues. Farms require labor. With technology, many operations can now utilize automated machinery which creates efficiency and reduces the number of laborers. However, many industries such as sweet potatoes,

tobacco, blueberries and apples still require a large labor force, particularly during harvest season. And farmers face the same challenges as other employers nationwide: the lack of skilled and available employees. Migrant workers are often the solution to having enough labor on hand to get crops in the ground or during harvest season. But the regulations governing placement of migrant workers, adequate pay, supervision and the risks that accompany the use of migrant workers are hard to navigate. The devil is in the details, the details are in the paperwork, and farmers need to be compliant with our nation's immigration laws.

- Farmers must have properly completed Form I-9s, E-Verify (if required), and an H-2A worker program fully compliant with federal law.
- If you get a visit from a federal immigration agency, you should immediately contact an attorney to help with the company's response.
- Be friendly with the agents, but insist that you be given the time necessary to consult with your attorney before providing the government agency with any substantive response.

Pay and Labor Issues. Is an operation exempt from paying overtime? Are workers being pressured to unionize? Do you have laborers being paid at one rate and others at a different rate? Because small family farms have evolved into multi-million dollar operations, bigger operations invite bigger problems. Much like document compliance, understanding the requirements and options before an alleged violation can save time, money and heavy sanctions down the road.

- Have a wellness check performed – let a lawyer make sure everything is in good working order before a problem arises.

Litigation Defense. Even with best practices in place to avoid immigration or pay/labor violations, disputes arise that force a farming operation to defend itself in court. Litigation can literally force a businessman to “bet-the-farm.” Additionally, regulators and investigators do not wait for an invitation and sooner or later, a farming operation will receive a surprise visit. Or, a contract dispute will arise with a vendor or a customer. Unfortunately, there are challenges in collecting payments in the business or buying and selling goods. Sometimes there are alternative dispute mechanisms available that can be a cost savings for a farm. However, compromise is not always on the table and expensive litigation sometimes cannot be avoided – you just have to “bet-the-farm” and hire the right team to protect the farm.

Several areas of operation are less defensive in nature and farmers should be well versed in these measures to maintain a healthy operation.

- **Production Financing.** There is a vast network of credit and financing opportunities for farming operations. Knowledge and an avenue to access this network can provide financing for all types of operating needs related to agricultural production and processing. Operating loans provide capital for all types of crops including row crops, fruit orchards, timber production and husbandry, as well as livestock (cattle, poultry, swine, etc.). Crop inputs and associated labor costs are also eligible. The Farm Credit System and other commercial lenders specializing in financing agribusiness are knowledgeable sources of these types of capital.

- **Legislative Updates.** Because of the economic impact of agribusiness in our state, there is always pending legislation with both beneficial and negative impacts. Farmers should remain up-to-date on proposed legislative changes and also aggressively support measures that will positively impact their farm and the state's economy. A law firm well versed in government relations routinely works with legislatures on the state and federal level and can keep you updated on changes in laws that impact agribusiness.

- **Environment Concerns.** There are many environmental implications on a farming operation, to include by environmental impacts and regulations on the operation of farms. Farms often face aggressive investigations and prosecutions of environmental matters that result in millions in fines and penalties and even criminal prosecution. Beyond government inquiries, anyone with farming ties in North Carolina is familiar with the ongoing hog farm lawsuits (related to hog waste smell and the alleged nuisance to homeowners neighboring farms) in the Eastern District of North Carolina. Verdicts in past cases, all in favor of farmer neighbors, have seen staggering dollar amounts, having lasting effects on the hog industry. The real question is can other farming operations face similar nuisance complaints and how can a farm defend against such allegations. An assessment of systems in place, maintaining adequate documentation, staying up-to-date on sustainability practices and staying at the forefront of innovative technologies can assist a farming operation in establishing best practices.

- **Foreign Market Opportunities.** Challenges create opportunities, especially in international agricultural markets. Working with a qualified international team can assist you with structuring new relationships in new markets for your products. With an in-depth knowledge of state and federal agricultural initiatives, international lawyers help with locating grants and loans for farmers to you find new, international customers.

Staying abreast of all types of compliance requirements is important as you expand your farm and sales. From trademark protection, and shipping and labeling requirements, to payment terms, trusted counsel will be there with step-by-step guidance.

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