

# **Case Law Index Updates – January 1, 2010**

L. Paul Goeringer Research Associate

#### **Administrative Law**

#### Ninth Circuit

Horne v. USDA, No. CV-F-08-1549 LJO SMS, 2009 WL 4895362 (E.D. Cal. Dec. 11, 2009) (review of agency decision)

Levine v. Vilsack, 587 F.3d 986 (9<sup>th</sup> Cir. 2009) (standing to challenge interpretive rule) Delano Farms Co. v. Calif. Table Grape Comm'n, No. 1:07-CV-1610 OWW SMS, 2009 WL 3586056 (E.D. Cal. Oct. 27, 2009) (violations of the APA)

#### Colorado

Pagosa Area Water & Sanitation Dist. v. Trout Unlimited, 219 P.3d 774 (Colo. 2009) (agency's decision was reasonable)

#### Florida

Siegers Seed Co. v. Williams Farm P'ship, 17 So.3d 848 (Fla. Dist. Ct. App. 2009) (final agency action)

#### Ohio

A & Q Mkt., Inc. Liquor Control Comm'n, No. 09AP-283, 2009 WL 3633875 (Nov. 3, 2009) (jurisdiction of state commission)

#### **Alternative Dispute Resolution**

#### **Fifth Circuit**

Bell v. Koch Foods of Miss., LLC, No. 09-60433, 2009 WL 4885174 (5<sup>th</sup> Cir. Dec. 16, 2009) (granting arbitration on production contracts)

#### Sixth Circuit

Garnett v. NAU Country Ins. Co., No. 5:09-CV-00144-R, 2009 WL 3644762 (W.D. Ky. Oct. 27, 2009) (nullification of arbitration award)

#### Mississippi

Cmty. Bank of Miss. V. Stuckey, --- So.3d ---, 2009 WL 4263567 (Miss. Ct. App. 2009) (compelling arbitration on loan agreements)

## **Animal Feeding Operations**

#### Nebraska

Farmers Elevator, Inc. v. Harford Fire Ins. Co., No. A-09-005, 2009 WL 3654739 (Neb. Ct. App. Nov. 3, 2009) (confined hog deaths not covered by policy)

## **Animal Welfare**

# Fifth Circuit

Hoog-Watson v. Guadalupe County, --- F.3d ---, 2009 WL 4828742 (5<sup>th</sup> Cir. 2009) (warrantless search and seizure of animals)

#### Georgia

In re C.B., --- S.E.2d ---, 2009 WL 3712009 (Ga. 2009) (constitutionality of animal welfare statute)

## Michigan

Mills v. Rodabaugh, Nos. 08-14291, 09-10921, 2009 WL 5171846 (E.D. Mich. Dec. 22, 2009) (challenging seizure of animals and arrest)

## Missouri

In re 8 Horses, 22 Dogs, 297 S.W.3d 125 (Mo. Ct. App. 2009) (awarding custody of animals to Humane Society)

## North Dakota

In re Peterson's Dogs, --- N.W.2d ---, 2009 WL 4824760 (N.D. 2009) (relinquish ownership of dogs)

## Texas

Texas v. Almendarez, --- S.W.3d ---, 2009 WL 4688726 (Tex. App. 2009) (double jeopardy)

## Bankruptcy

## Iowa

Monsanto Co. v. Roeder, Bankr. No. 07-01422S, Adv. No. 07-09189S, 2009 WL 4907014 (Bankr. N.D. Iowa Dec. 14, 2009) (patent infringement debt not dischargeable)

In re Malatek, No. 03-02281, 2009 WL 3754234 (Bankr. N.D. Iowa Nov. 9, 2009) (homestead exemption)

#### Kansas

Exch. State Bank v. Murphy (In re Murphy), Bankr. No. 08-41222, Adv. No. 08-7076, 2009 WL 3786795 (Bankr. D. Kan. Nov. 10, 2009) (dischargeability of debt)

#### **Rhode Island**

In re Teolis, Nos. 08-12131, 09-10106, 2009 WL 3601539 (Bankr. D.R.I. Oct. 26, 2009) (qualifying as "family farmer")

## Vermont

Ag Venture Fin. Servs., Inc. v. Montagne (In re Montagne), --- B.R. ---, 2009 WL 3816119 (Bankr. D. Vt. 2009) (standing to enforce commercial loan note in Ch. 12)

#### **Biotechnology**

## **Eighth Circuit**

In re Genetically Modified Rice Litig., NO. 4:06MD1811 CDP, 2009 WL 4801399 (E.D. Mo. Dec. 9, 2009) (dismissal of state unfair trade practices & nuisance claims)

Schoenbaum v. E.I. Dupont De Nemours & Co., No. 4:05CV01108 ERW, 2009 WL 4782082 (E.D. Mo. Dec. 8, 2009) (claims that biotech companies violated anti-trust law)

## Ninth Circuit

Sharafabadi v. Univ. of Idaho, No. C09-1043JLR, 2009 WL 4432367 (W.D. Wash. Nov. 27, 2009) (patent infringement on yellow mustard seed lines)

## **Eleventh Circuit**

AGSouth Genetics LLC v. Terrell Peanut Co., No. 3:09-CV-93 (CDL), 2009 WL 4893588 (M.D. Ga. Dec. 9, 2009) (claims that company violated license in wheat variety)

#### **Business Organizations**

# Hawaii

Fisherv. Grove Farm Co., Nos. 28626, 28772, 2009 WL 4362580 (Haw. Ct. App. Dec. 3, 2009) (stockholder's challenge to merger)

#### Iowa

Daniels v. Holtz, No. 08-1729, 2009 WL 4118336 (Table) (Iowa Ct. App. Nov. 25, 2009) (sheriff sale of corporation's stock)

## Utah

Utah v. Johnson, --- P.3d ---, 2009 UT App 382 (Utah Ct. App. 2009) (securities fraud involving dairy)

## **Checkoff Programs**

# Ninth Circuit

Delano Farms Co. v. Calif. Table Grape Comm'n, 586 F.3d 1219 (9<sup>th</sup> Cir. 2009) (generic advertising constituted government speech)

## **Clean Water Act**

## Seventh Circuit

Domino v. Didion Ethanol, LLC, --- F.Supp.2d ---, 2009 WL 4067800 (W.D. Wis. 2009) (standing; violations of permit)

## **Climate Change**

## Ninth Circuit

Ctr. for Biological Diversity v. Kempthorne, 588 F.3d 701 (9<sup>th</sup> Cir. 2009) (standing to challenge the taking of polar bears)

#### **Commercial Law**

## Sixth Circuit

Magical Farms, Inc. v. Land O'Lakes, Inc., No. 07-3568, 2009 WL 4641742 (6<sup>th</sup> Cir. 2009) (damages from sale of feed that caused the death of alpacas)

## Ninth Circuit

Stanislaus Farm Supply v. Brady, No. 09-CV-01413-OWW-DLB, 2009 WL 3748500 (E.D. Cal. Nov. 5, 2009) (breach of alfalfa seed contract)

#### Kansas

Unruh v. Purina Mills, LLC, --- P.3d ---, 2009 WL 4725743 (Kan. 2009) (breach of state consumer protection law; self cattle feeder)

## South Dakota

McGregor v. Crumley, 775 N.W.2d 91 (S.D. 2009) (breach of dairy cattle contract) **Texas** 

Taft v. Sherman, --- S.W.3d ---, 2009 WL 4120051 (Tex. App. 2009) (statute of frauds)

## Cooperatives

## Ninth Circuit

Bybee Farms, LLC v. Snake River Sugar Co., No. CV-06-5007, 2008 WL 2873364 (E.D. Wash. July 21, 2008) (breach of growers' agreement)

## **Disaster Programs and Federal Crop Insurance**

## Ninth Circuit

Adams v. United States, No. CV-03-49-E-BLW, 2009 WL 4782102 (D. Idaho Dec. 8, 2009) (crop disaster programs are not a collateral source)

#### **Environmental Law**

## **First Circuit**

Animal Welfare Inst. v. Martin, No. CV-08-267-B-W, 2009 WL 3766937 (D. Me. Nov. 10. 2009) (incidental taking of endangered species)

## **Third Circuit**

Animal Welfare Inst. v. Beech Ridge Energy LLC, --- F.Supp.2d ---, 2009 WL 4884520 (D. Md. 2009) (challenge to wind farm that it would take an endangered species)

## Ninth Circuit

Family Farm Alliance v. Salazar, Nos. 1:09-CV-00407 OWW DLB, 1:09-CV-01201 OWW DLB, 2009 WL 4716050 (E.D. Cal. Dec. 3, 2009) (biological opinion under ESA) Ctr. for Biological Diversity v. Lubchenco, No. C-09-4087 EDL, 2009 WL 4545169 (N.D. Cal. Nov. 30, 2009) (listing animal under ESA)

In re Delta Smelt Consol. Cases, --- F.Supp.2d ---, 2009 WL 3823934 (E.D. Cal. 2009) (biological opinion for delta smelt)

## **Tenth Circuit**

WildEarth Guardians v. Salazar, No. CV-09-00574-PHX-FJM, 2009 WL 4270039 (D. Ariz. Nov. 25, 2009) (listing of prairie dogs under ESA)

Wildearth Guardians v. U.S. Forest Serv., --- F.Supp.2d ---, 2009 WL 3672864 (D.N.M. 2009) (violations of NEPA; opening federal lands to grazing)

#### **D.C.** Circuit

Friends of Animals v. Salazar, --- F.Supp.2d ---, 2009 WL 3953578 (D.D.C. 2009) (listing of animals as threatened or endangered under the ESA)

## **Estate Planning and Taxation**

## Georgia

Clements v. Weaver, --- S.E.2d ---, 2009 WL 3953578 (Ga. Ct. App. 2009) (validity of contract over decedent's will)

#### **Food Safety**

## **Eighth Circuit**

In re Bisphenol-A Polycarbonate Plastic Prods. Liab. Litig., MDL No. 1967, No. 08-1967-MD-W-ODS, 2009 WL 3762965 (W.D. Mo. Nov. 9, 2009) (federal preemption; regulation of food additive)

## California

Am. Meat Inst. v. Leeman, --- Cal. Rptr.3d ---, 2009 WL 4913268 (Cal. Ct. App. 2009) (state labeling law preempted by federal law)

#### Delaware

Conagra Foods, Inc. v. Lexington Ins. Co., No. 09C-02-170 FSS, 2009 WL 3688014 (Del. Super. Ct. Oct. 30, 2009) (salmonella outbreak in peanut butter; duty to defend)

#### Labor

## **Third Circuit**

Montalvo v. Larchmont Farms, Inc., No. 09-2704 (RBK/AMD), 2009 WL 4573279 (D.N.J. Dec. 3, 2009) (violations FLSA and AWPA)

Oritz v. Paramo, No. 06-3062 (RBK/AMD), 2009 WL 4575618 (D.N.J. Dec. 1, 2009) (claim of negligence by employer)

# Sixth Circuit

Thayer v. Tyson Foods, Inc., No. 09-5185, 2009 WL 4609787 (6<sup>th</sup> Cir. Dec. 8, 2009) (workers' compensation claims)

Abadeer v. Tyson Foods, Inc., No. 3:09-00125, 2009 WL 4110295 (M.D. Tenn. Nov. 25, 2009) (FLSA claims)

Johnson v. Koch Foods, Inc., --- F.Supp.2d ---, 2009 WL 3817447 (E.D. Tenn. 2009) (payment for donning and doffing)

## **Seventh Circuit**

Anderson v. JCG Indus., Inc., No. 09 C 1733, 2009 WL 3713130 (N.D. Ill. Nov. 4, 2009) (violations of the FLSA and state minimum wage law)

## Ninth Circuit

Garcia v. Sun Pac. Farming Coop., No. 08-16815, 2009 WL 4912213 (9<sup>th</sup> Cir. 2009) (refusal to deny class certification)

## **Eleventh Circuit**

Luna v. Del Monte Fresh Produce (Se.), Inc., No. 09-12464, 2009 WL 4366953 (11<sup>th</sup> Cir. Dec. 3, 2009) (violations of AWPA and FLSA)

Ojeda-Sanchez v. Bland, No. 608CV096, 2009 WL 3851623 (S.D. Ga. Nov. 17, 2009) (reduction in wages from minimum in FLSA)

Ramos-Barrientos v. Bland, No. 606CV089, 2009 WL 3851624 (S.D. Ga. Nov. 17, 2009) (unpaid wages claims under FLSA)

Reyes-Fuentes v. Shannon Produce Farm, Inc., No. 608CV059, 2009 WL 3855177 (S.D. Ga. Nov. 16, 2009) (anti-retaliation provision of FLSA)

#### Louisiana

Johnson v. Conagra Poultry Co., --- So.3d ---, 2009 WL 4725757 (La. Ct. App. 2009) (workers' compensation claims)

#### Washington

Elliott v. Custom Apple Packers, Inc., No. 27398-9-III, 2009 WL 3739433 (Wash. Ct. App. Nov. 10, 2009) (agricultural exemption to state minimum wage law)

## Landowner Liability

## California

Kelly v. CB&I Constructors, Inc., 102 Cal. Rptr.3d 32 (Cal. Ct. App. 2009) (damages for fire at a ranch)

## North Dakota

Minto Grain, LLC v. Tibert, --- N.W.2d ---, 2009 WL 4842609 (N.D. 2009) (damages for neighbors interfering with expansion plans of grain elevator)

## **Third Circuit**

#### **Marketing Order**

Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd., No. 1:CV-99-487, 2005 WL 6363889 (M.D. Pa. Mar. 30, 2005) (constitutionality of state milk marketing law) Sixth Circuit

In re Se. Milk Antitrust Litig., MDL No. 1899, No. 2:08-MD-1000, 2009 WL 3747130 (E.D. Tenn. Nov. 3, 2009) (violations of antitrust law; breach of protective order)

## **National Organic Program**

## Ninth Circuit

All One God Faith, Inc. v. Hain Celestial Group, Inc., No. C 09-03517 JF (HRL), 2009 WL 4907433 (N.D. Cal. Dec. 14, 2009) (claim that products do not meet the NOP standards)

#### **Nutrition Programs**

#### **First Circuit**

Gonzalez v. United States, --- F.Supp.2d ---, 2009 WL 4884528 (D.R.I. 2009) (disqualification from food stamp program)

#### **Third Circuit**

United States v. Nunez, No. 08-3210, 2009 WL 4023512 (3d Cir. Nov. 23, 2009) (conspiracy to commit food stamp fraud)

## Ninth Circuit

Mansour v. United States, No. CV F 08-1313 LJO DLB, 2009 WL 3763778 (E.D. Cal. Nov. 9, 2009) (disqualification from food stamp program)

#### Ohio

Stoyer v. Ohio Dep't of Job & Family Servs., No. 09AP-236, 2009 -Ohio- 6662, 2009 WL 4861444 (Ohio Ct. App. Dec. 17, 2009) (reduction in food stamp benefits)

## Packers and Stockyards Act

## Fifth Circuit

Wheeler v. Pilgrim's Pride Corp., --- F.3d ---, 2009 WL 4823002 (5<sup>th</sup> Cir. 2009) (anticompetitive effect is necessary for claim under PSA)

## Perishable Agricultural Commodities Act

#### Second Circuit

Basciani Foods, Inc. v. Mid Island Wholesale Fruit & Produce, Inc., No. 09-CV-4585(JS)(WDW), 2009 WL 3756603 (E.D.N.Y. Nov. 3, 2009) (enforcing payment out of PACA trust)

## **Fifth Circuit**

May Produce Co. v. E. W. Imports, Inc., No. 3:09-CV-1383-L, 2009 WL 4884154 (N.D. Tex. Dec. 15, 2009) (attorneys fees under PACA)

Eagle Eye Distributing, Inc. v. Ben Parker, Inc., No. 3:09-CV-0095-L, 2009 WL 4251105 (N.D. Tex. Nov. 25, 2009) (PACA trust claims)

## **Seventh Circuit**

Anthony Marano Co. v. Springbrook Mkt. No. 3, LLC, No. 08CV5665, 2009 WL 4065704 (N.D. Ill. Nov. 20, 2009) (attorneys' fees)

#### Ninth Circuit

Andrew Smith Co. Paul's Pak, Inc., No. C-08-04802 RMW, 2009 WL 3833638 (N.D. Cal. Nov. 16, 2009) (waiver of PACA rights)

# **Production Contracts**

## Fifth Circuit

Bell v. Koch Foods of Miss., LLC, No. 09-60433, 2009 WL 4885174 (5<sup>th</sup> Cir. Dec. 16, 2009) (granting arbitration on production contracts)

## **Renewable Energy**

# Third Circuit

Animal Welfare Inst. v. Beech Ridge Energy LLC, --- F.Supp.2d ---, 2009 WL 4884520 (D. Md. 2009) (challenge to wind farm that it would take an endangered species)

# Pennsylvania

Tink-Wig Mountain Lake-Forest Prop. Owners Ass'n v. Lackawaxen Twp. Zoning Hearing Bd., --- A.2d ---, 2009 WL 4827043 (Pa. Commw. Ct. 2009) (challenging zoning permit to construct wind farm)

Piccolella v. Lycoming County Zoning Hearing Bd., --- A.2d ---, 2009 WL 4432371 (Pa. Commw. Ct. 2009) (zoning ordinance that allows wind farms)

Plaxton v. Lycoming County Zoning Hearing Bd., --- A.2d ---, 2009 WL 4432373 (Pa. Commw. Ct. 2009) (zoning ordinance that allows wind farms)

## **Secured Transactions**

# Second Circuit

In re Montagne, --- B.R. ---, 2009 WL 3849431 (Bankr. D. Vt. 2009) (conversion of collateral) In re Montagne, 417 B.R. 232 (Bankr. D. Vt. 2009) (not entitled fraudulent transfer judgement) In re Montagne, 413 B.R. 148 (Bankr. D. Vt. 2009) (conversion in accepting proceeds from sale of collateral)

# **Eighth Circuit**

S. Bancorp Bank, N.A. v. Bayer CropScience LP, No. 2:09CV00136 JLH, 2009 WL 3837396 (E.D. Ark. Nov. 17, 2009) (security interest in rebate checks)

# Urbanization and Agriculture

# First Circuit

Kunelius v. Town of Stow, 588 F.3d 1 (1<sup>st</sup> Cir. 2009) (tax relief to keep land agriculture; statutory right-of-first refusal for city)

## Sixth Circuit

New Day Farms, LLC v. Bd. of Tr. of York Twp., No. 2:08-cv-01107, 2009 WL 4016480 (S.D. Ohio Nov. 17, 2009) (claim fire code passed to hurt egg farm)

## Maryland

Md. Agric. Land Pres. Found. v. Claggett, --- A.2d ---, 2009 WL 4909318 (Md. 2009) (agricultural preservation easement)

## Ohio

Campbell v. Carlisle, No. CA2009-05-053, 2009 -Ohio- 6751, 2009 WL 4895669 (Ohio Ct. App. 2009) (detachment of farmland from municipality)

## Pennsylvania

Tink-Wig Mountain Lake-Forest Prop. Owners Ass'n v. Lackawaxen Twp. Zoning Hearing Bd., --- A.2d ---, 2009 WL 4827043 (Pa. Commw. Ct. 2009) (challenging zoning permit to construct wind farm)

Piccolella v. Lycoming County Zoning Hearing Bd., --- A.2d ---, 2009 WL 4432371 (Pa.

Commw. Ct. 2009) (zoning ordinance that allows wind farms)

Plaxton v. Lycoming County Zoning Hearing Bd., --- A.2d ---, 2009 WL 4432373 (Pa. Commw. Ct. 2009) (zoning ordinance that allows wind farms)

## Washington

Feil v. E. Wash. Growth Mgmt. Hearings Bd., --- P.3d ---, 2009 WL 4348945 (Wash. Ct. App. 2009) (challenge of recreational use in area zoned agricultural)

## Water Law

# **Tenth Circuit**

Tarrant Regional Water Dist. v. Hermann, No. CIV-07-0045-HE, 2009 WL 3922803 (W.D. Okla. Nov. 18, 2009) (out-of-state water purchases)

## California

Rainbow Farms v. Natomas Cent. Mut. Water Co., No. C059322, 2009 WL 4049564 (Cal. Ct. App. Nov. 24, 2009) (mutual water company immune from suit by member)

## Colorado

Well Augmentation Subdistrict of Cent. Colo. Water Conservancy Dist. v. City of Aurora, ---P.3d ---, 2009 WL 4023056 (Colo. 2009) (challenging water augmentation plan)

Meridian Ranch Metro. Dist. Colo. Ground Water Comm'n, --- P.3d ---, 2009 WL 3765490 (Colo. Ct. App. 2009) (groundwater district could restrict water use)

Pagosa Area Water & Sanitation Dist. v. Trout Unlimited, 219 P.3d 774 (Colo. 2009) (application for conditional water rights)