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Smithfield Foods and Right to Farm in North Carolina

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A recent series of North Carolina cases involving nuisance claims against swine farms has generated a great deal of interest in right to farm statutes. The purpose of this issue brief is to describe the situation in North Carolina and consider why the right to farm statute did not apply to those operations in this specific case.

The cases in North Carolina all involve nuisance litigation. A nuisance is a substantial interference with another's use and enjoyment of their property. In this specific case, the nuisance litigation was concerning odor from the swine operations that the defendant Murphy-Brown, a division of Smithfield foods, contracted with to raise the animals. In total, twenty-nine lawsuits, involving around 500 plaintiffs, were filed against the defendants. Generally speaking the allegations were that the swine operations used open lagoons to store manure until it could be applied to fields and that the odor from these lagoons constituted a nuisance under North Carolina law.

North Carolina, like every other state, has a right to farm statute. The purpose of a right to farm statute is to provide an affirmative defense for agricultural operations that are facing nuisance litigation, as long as certain criteria are met. This defense is based on an old common law defense called "coming to the nuisance." The "coming to the nuisance" defense could be used if the neighbor bringing the nuisance action moved next to a piece of land where the current use of the land constituted a nuisance for the neighboring property. Under the common law, the judge in the case had complete discretion on whether to accept or reject "coming to the nuisance" as a defense. Right to farm statutes codify this old common law defense- taking much discretion away from the judge- and instead providing a series of factors to determine if a state right to farm statute will apply.

In the case of North Carolina, the triggering language for the right to farm statute was that "[n]o agricultural or forestry operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality outside of the operation after the operation

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has been in operation for more than one year, when such operation was not a nuisance at the time the operation began." NC Gen Stat § 106-701 (2013).

In interpreting this provision, the judge in North Carolina ruled that the right to farm statute did not apply in this case because the plaintiffs bringing the nuisance actions lived on their property before the swine farms were established. Because people (either the plaintiffs or others) had built houses and lived in the area before the swine barns were built, the judge ruled that the nuisance actions were not filed as a result of changed conditions in the area and would not allow the defendents to use the right-to-farm law as a defense.

Three of the twenty-nine lawsuits have been heard. All three cases found in favor of the plaintiffs and awarded substantial compensatory and punitive damages. However North Carolina has a statute that caps punitive damages at three times the amount of the actual damages awarded, so damages were substantially reduced. The first trial had ten plaintiffs and resulted in a total judgement in excess of $50 million. The actual damages awarded, however, were $75,000 to each plaintiff. As a result, the damage cap reduced the total amount awarded was $3.25 million. The second trial ended with a jury verdict of $25.13 million, which was reduced to $630,000. Finally, the third trial ended with a verdict of $473.5 million, which was reduced to $94 million. Murphy-Brown has already given notice that it intends to appeal the cases. In the meantime, the other twenty-six cases are being scheduled for trial.

After the first ruling, the North Carolina legislature amended the state right to farm statute; however the amendments only apply to future cases, and will not retroactively apply to the cases that have already been filed against Murphy-Brown. For future nuisance litigation in North Carolina, the triggering language has been modified. In order to successfully bring a nuisance action against a farming operation 1) the plaintiff must be the legal possessor of the property at issue, 2) they must be located within one half mile of the source of the alleged nuisance, and 3) they must file the lawsuit within one year of the establishment of the farming operation or a fundamental change to the farming operation.

Further, the legislature also changed the way damages could be assessed for the nuisance lawsuits. Now the damages are capped by the reduction in the fair market value of the property for permanent nuisances and the diminution of fair rental value for temporary nuisances. Punitive damages are prohibited against farming operations unless there is a criminal conviction or civil enforcement action brought by a state or federal environmental enforcement agency within the past three years of when the alleged nuisance first began.

STATUTES:

National Agricultural Law Center: Fifty State Compilation of Right to Farm Statutes
N.C. Gen. Stat. Ann. § 1D-25
N.C. Gen. Stat. §§ 106-700 to 106-702.

ADDITIONAL RESOURCES:

In re NC Swine Farm Nuisance Litigation, No. 5:15-CV-00013-BR (E.D.N.C. Nov. 8, 2017).