Updates
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Large Jury Verdicts in Hog Nuisance Cases Signal CAFO Litigation Is Rising

A federal jury last week returned a $473.5 million verdict against the world's largest pork producer for nuisances caused by three industrial-scale hog farms. The verdict is the largest of three matching verdicts against Smithfield Foods and its subsidiary Murphy-Brown, and may signal public opinion trending against agriculture. In this update, we review the Murphy-Brown jury verdicts, discuss key takeaways and consider the broader implications of the verdicts on concentrated animal feeding operation (CAFO) litigation generally.

Background

Smithfield, through its subsidiary Murphy-Brown, contracts with a number of hog farms in North Carolina to raise pigs. Under the agreements, the hog farmers own the farm, but Murphy-Brown owns the pigs and dictates most aspects of the operation.

Beginning in 2014, neighbors of hog farms contracting with Murphy-Brown, all represented by the same counsel, sued Murphy-Brown for nuisances they allegedly suffered from foul odors, noise, clouds of flies and spray drift. In all, 26 lawsuits were filed against Murphy-Brown by more than 500 people. The lawsuits were consolidated in 2015. The trial court ordered the parties to begin with two test trials, followed by new trials starting every month until the cases were resolved.

The two test cases were tried to federal juries earlier this year and resulted in multimillion dollar verdicts against Murphy-Brown. In the first case, *McKiver, et al. v. Murphy-Brown, LLC*, No. 7:14-cv-180 (E.D.N.C.), neighbors of a 15,000-head hog production complained that the company's waste-management practices, consisting of a system of open-air lagoons and spray fields, negatively impacted their health and quality of life. The plaintiffs further alleged that Murphy-Brown had the resources to implement a better system that would have reduced the odors and impacts to the neighbors but chose not to do so. After a three-week trial, the jury agreed and awarded plaintiffs $51 million in damages. That award was subsequently reduced in line with a state law capping punitive damages.

In the second case, *McGowan, et al. v. Murphy-Brown, LLC*, No. 7:14-cv-00182 (E.D.N.C.), the jury awarded $25 million in damages to a husband and wife who lived near a 4,700-head hog farm, even though that couple moved into their home after the farm had already been built, and had never complained about the farm before they filed their complaint.

Most recently, in *Jacobs, et al. v. Murphy-Brown, LLC*, No. 7:14-cv-00237 (E.D.N.C.), a jury awarded $473.5 million to neighbors of three industrial-scale hog farms for unreasonable nuisances they suffered from odors, flies and rumbling trucks. At $473.5 million, the verdict is the largest to date, and seems to indicate the momentum is in favor of the plaintiffs as the remaining trials advance through the courts.

Key Takeaways

First, in each of these cases, North Carolina's right-to-farm law was deemed inapplicable. Right-to-farm laws, enacted in all 50 states in varying forms, protect qualifying farmers and ranchers from nuisance lawsuits filed by individuals who move into a rural area where normal farming operations exist, and who then use nuisance actions in attempt to stop those ongoing operations. In North Carolina, the right-to-farm law protects farmers from nuisance claims when the area around the farm changes (e.g., new residential development occurs) and neighboring property owners claim preexisting farm uses create a nuisance. In the *McKiver* case, the trial court found that Murphy-Brown was not protected by the right-to-farm law because the plaintiffs or their predecessor

landowners had lived in the area before the farms were built.

Note, however, that every state's right-to-farm law differs, and even subtle differences in language may create dramatically different results. For example, Texas's right-to-farm law applies to any agricultural facility that has been operating for at least one year where the conditions complained of are unchanged. Thus, whereas North Carolina focuses on the conditions in or around the operation, Texas focuses on the operation itself and the conditions that allegedly constitute a nuisance.

Second, recovery was allowed in each of these cases even though the farms were operating within the bounds of applicable laws and permits. For example, in the *McKiver* case, the plaintiffs did not allege that the system of open-air lagoons and spray fields were illegal or in violation of a permit; rather, they alleged that Murphy-Brown could afford to implement a better system that would have prevented or minimized the odors and other impacts to plaintiffs. While the verdicts in these cases were limited to money damages, nothing prohibits plaintiffs in nuisance cases from seeking injunctive relief, such as asking the court to require the farmer to change certain production practices or install additional equipment on a farm.

Third, and perhaps not surprisingly, the chief issue in each of these cases was odor. To this end, hog producers and other agribusinesses would be wise to ensure that proper manure management procedures (both storage and application) are followed.

Future Implications

Both the number of claims and the size of the jury verdicts against Murphy-Brown suggest that litigation challenges to CAFOs are on the rise.

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