

Litigation

Bayer Wins Pesticide Labeling Lawsuit

THE CALIFORNIA SUPREME COURT HAS ruled that makers of federally labeled pesticides cannot be held liable in state court for crop damage or personal injury stemming from inadequate labeling.

The court last week decided against a walnut grower who sued Bayer Corp. and a distributor in 1994, seeking \$150,000 in damages for failure to warn customers that the combination of two pesticides, azinphos methyl and oxythioquinox, could destroy crops.

The 4-3 court ruling effectively prevents U.S. state authorities from mandating additional labeling on pesticide products already regulated by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Bayer says the decision will also benefit pesticide manufacturers nationwide by promoting uniform labeling.

However, the Supreme Court has remanded part of the case to a lower court, to decide which of the plaintiffs' claims are not labeling claims and therefore should be reheard.

The lawsuit was unique because federal attorneys representing EPA sided with the plaintiffs when the California court decided to consider the case in 1998. EPA argued that additional state labeling requirements should be allowed because EPA only tests a pesticide's safety and not its effectiveness.

EPA says courts have misunderstood EPA's role in regulating pesticides. When drafting the 1972 FIFRA statute, Congress encouraged EPA to waive review of a product's effectiveness to streamline the federal pesticide review process. "In authorizing the waiver, Congress anticipated that the states would fill the regulatory gap," EPA

says in a legal brief filed in the California case. "No evidence suggests that Congress intended to leave the subject of pesticide efficacy unregulated by both the state and federal governments."

"The ruling very decisively repudiates the government's attempt to influence the outcome of private tort litigation involving pesticide labeling," says Lawrence Ebner, an attorney with McKenna & Cuneo (Washington). "The government selected this particular case because it recognized the California Supreme Court is nationally influential." California consumes more pesticides than any other state.

The ruling follows decisions in other states that FIFRA preempts state law tort claims challenging the adequacy of federal pesticide labeling.

—KARA SISSELL

With Compliments Of:
McKENNA & CUNEO'S APPELLATE LITIGATION GROUP

For additional information, please contact:
Lawrence S. Ebner - Chair, Appellate Litigation Group
Phone: 202.496.7727
Email: larry_ebner@mckennacuneo.com

• Washington, D.C. • Los Angeles • San Francisco • San Diego • Denver • Dallas • Brussels