

# The Agriculturalist Lawyer



A publication of the Agriculture Law Section, State Bar of Georgia

Vol. 1, Issue 2 February 2006

## From the Chair:

# Agricultural Law CLE to Be Held March 3

By Allen H. Olson  
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The Agriculture Law Section and ICLE are sponsoring a continuing legal education program on Agricultural Law to be held March 3 at the UGA Tifton Campus Conference Center in Tifton. The program will run from 9 a.m. to 3 p.m. and will cover the following topics: USDA Farm Program Payment Limitations, Agricultural Tax Law Concepts for the General Practitioner, USDA Farm Loan Programs, and Perishable Agricultural Commodities Act Issues. Lunch will be provided.

I encourage all section members to attend. This will be the first agricultural law program held in Georgia in many years. The program will focus on areas of particular interest to lawyers involved in commercial agriculture. Lawyers who represent row crop farmers, vegetable producers, agricultural lenders, seed and chemical suppliers, or other agribusinesses will all find the program very useful. The emphasis will be on practical information that can be taken back to the office and put to immediate use.

I particularly encourage South Georgia lawyers to attend. In this part of the state we all complain loudly

about having to drive to Atlanta to attend live CLE programs. No more whining. This seminar is in our backyard. The conference facilities are excellent, and the price is reasonable (particularly given it includes lunch).

For more information and to register, please contact ICLE at 800-422-0893 (toll free), 770-466-0886 (Atlanta area), or 706-369-5664 (Athens area). You may also call me at 229-888-3338 or e-mail me at aolson@mcdcr-law.com.

## PACA

This issue of *The Agriculturalist Lawyer* includes an article on the Perishable Agricultural Commodities Act written by section member Tony Thomasson of Cartersville. Tony will address this topic at greater length at the March CLE program. Other section members are encouraged to submit articles on other ag law topics for future newsletters. Many thanks to Tony for volunteering to put this article together on very short notice. Tony can be contacted at 678-923-9914 or at thomasson@1stcounsel.com.

## The Perishable Agricultural Commodities Act Trust

By Anthony Thomasson  
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When your client ships tons of fresh or frozen fruits or vegetables to other states or countries, it may have to trust its trading partners to pay for the perishables as agreed. This system works because most trading partners are honest and because of the "Trust Protection" provisions of the Perishable Agricultural Commodities Act [7 U.S.C. §§ 499a-499t (1930)], "PACA." PACA helps assure that persons in the fruit and vegetable industry live up to the terms of their agreements.

PACA makes interstate and international sales of fresh or frozen fruits and vegetables less risky. It sets up a structure "to protect the financial stability of fruit and vegetable growers, buyers and sellers." ([www.ams.usda.gov/fvpaca/FAQ.htm](http://www.ams.usda.gov/fvpaca/FAQ.htm)) It helps "prevent unfair and fraudulent conduct in the marketing and selling of perishable agricultural commodities" and facilitates the "orderly flow" of "interstate and foreign commerce." ([www.nationalaglawcenter.org/readingrooms/perishablecommodities/](http://www.nationalaglawcenter.org/readingrooms/perishablecommodities/))

Produce brokers, dealers, and commission merchants dealing in fresh and frozen fruit and vegetables must be

licensed by USDA. Licenses may be obtained online at [www.amd.usda.gov/fvpaca/va/app/pdf](http://www.amd.usda.gov/fvpaca/va/app/pdf) or by calling 800.495.7222.

Sellers of produce must protect their Trust Protection rights by giving a precisely worded written "Trust Notice" to the payee/debtor on their billing invoice or by mailing a separate notice statement to the buyer. Unlicensed growers can preserve their Trust Protection rights only by mailing a separate statement. The Trust Notice must be given within 30 days from the date payment is due or the date your client got notice that an on-time payment has been dishonored.

In order to claim "Trust Protection," the due date for payment cannot be more than 30 days from acceptance of the produce. Payment terms other than the PACA prompt payment terms, generally 10 days, must be in writing.

The "Trust Notice" must include the names and addresses of the parties, the date, commodity, invoice price and terms of payment agreed to in the deal and these precise words:

"The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 [7 U.S.C. 499e(c)]. The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

Let's assume that your client's trading partner has never paid for the Rabbiteye Blueberries he shipped in May, and that is costing him money. Here is what you can do:

1. Call PACA toll free (for Georgia: 888-639-9236) and ask the PACA personnel for help.
2. If the dispute drags on, you can file a documented claim within nine months of the breach of the agreement. An informal claim costs \$60 and permits mediation.
3. If no settlement is reached, you can file a formal claim. It costs \$300 and starts a civil administrative hearing process that can result in an award of damages including the unpaid price of the produce.
4. Your client gets an award, but your client's former trading partner, the respondent, does not pay it. USDA will suspend the respondent's PACA license and prohibit it from operating in the produce

industry until the award is paid. While its license is suspended, the respondent's officers cannot be affiliated with any other PACA licensee, unless USDA Secretary consents. The USDA monitors the firm and the principals and may go after them for any additional violations.

5. The respondent still does not pay the award, and now is out of business. PACA creates a trust on fruits and vegetables received, but not paid for. Assets of that trust are the blueberries, all inventories of food or other products derived from the blueberries, and all receivables or proceeds, cash or accounts, from the sale of the blueberries and all food or other products derived from them.
6. Now you go to the U.S. District Court and file a civil action for your client, who is a beneficiary of the trust, to reduce the USDA award to judgment and seek to enforce payment under the trust. The Secretary of Agriculture also can file an action to prevent and to restrain dissipation of the trust assets.
7. Now the respondent files for bankruptcy protection. You file a proof of claim in the Bankruptcy Court asserting a priority claim under 7 U.S.C. § 499e(c). Payment should be made from trust assets before non-priority creditors are paid.

The age old system of hauling your fresh produce to market in town still works because both trading partners can see each other and see, touch, smell and even taste the perishables. The deal is negotiated and closed right then and there with nothing to do later except to enjoy the bounty of the harvest. Thanks to PACA Trust Protection, your client can enjoy the bounty of his harvest even if the "market" is across the country or an ocean.

More information on PACA, including the statute and regulations, can be found at the USDA Perishable Agricultural Commodities Administration website: [www.amd.usda.gov/fvpaca](http://www.amd.usda.gov/fvpaca).

*Anthony Thomasson is a 1983 graduate of Emory Law School. He is admitted in Georgia and Illinois, where he became interested in Agricultural Law. His office is in Cartersville in Bartow County.*