

Kilpatrick Stockton Wins Major Environmental Ag Case With National Implications

Overview of the case:

Kilpatrick Stockton client Bible Pork, Inc., a leading pork producer in Illinois, was sued in Illinois Circuit Court by 21 nearby residents -- many of whom had operated their own livestock operations, claiming that Bible Pork's newest facility (a "breed-to-wean" facility) was a public and private nuisance. The complaint alleged that dust, noise, gases such as hydrogen sulfide and ammonia, and odors from the facility constituted a criminal public nuisance, a common law public nuisance, and a private nuisance at the Plaintiffs' homes. Prior to the trial, the court dismissed both of the public nuisance counts on summary judgment. The matter proceeded to trial on the private nuisance claim. The parties presented 33 witnesses, including three experts for the Plaintiffs and two experts for Bible Pork. On February 4, 2009, following nine days of testimony, a jury rendered a verdict in favor of Bible Pork, finding that the new facility was not a private nuisance.

An important and significant case for several reasons:

First, *on a national level*, Plaintiffs were attempting to undermine the nature of today's modern integrated livestock industry. Plaintiffs' groups and anti-agriculture interests have been using common law claims such as nuisance to by-pass agricultural regulatory programs such as "right-to-farm" statutes. Had the Plaintiffs prevailed, critics of modern agriculture would have used the verdict to attack the other swine and livestock facilities throughout the country.

Second, *on a statewide level*, the new facility was built using the provisions of Illinois' Livestock Management Facilities Act ("LMFA"). The LMFA balances protections for the surrounding neighbors with the recognition of the significance of the livestock industry to Illinois' economy. As a part of the case, Plaintiffs were asking the jury to implicitly overrule the LMFA, which would have had a chilling impact upon the state's entire agricultural economy.

Third, *on a local level*, Bible Pork, Inc. is one of the largest private employers (nearly 70 jobs) in the area and its newest facility represented a \$10 million dollar investment in the local economy, an additional \$100,000 in property taxes, and 20 new jobs for the community. Had the jury declared the facility to be a nuisance, there would have been a real danger that the facility would have been forced to close.

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