



Potential Consequences of Implementing Contracting Interpretations and Laws of Oklahoma and South Dakota

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Poultry Contract Development

- ❖ Historical evolution
- ❖ Mechanism to compartmentalize risk
 - Integrators – price
 - Growers – management
- ❖ Mechanism to limit risk
- ❖ Risks may be shifted



What the Future Holds

- ❖ Contracts are about much more than simply payments
- ❖ Other issues inextricably limited to contracts include:
 - Food safety and traceability
 - GMOs and biotechnology
 - Animal welfare
 - Environmental issues
 - Producer fairness



Producer Fairness

- ❖ Growing fervor related to fairness
- ❖ Evidences by litigation
 - Contract severance
 - Contract inequities
 - Contract inconsistencies
- ❖ But...on the face, contracts are not considered nasty...or new producers would not be continuing to sign them



Producer Motivations

- ❖ Major producer concerns relate to “keeping the farm”
- ❖ This is most readily achieved by limiting variations in income to the extent possible
- ❖ Contracts provide an effective avenue to smooth out income fluctuations
- ❖ Producers may well be willing to exchange this reduced income risk for profits, especially for production without “hedges”



Contract Problem

- ❖ Problems with contracts are relational
- ❖ Can (or should) public policy address relational issues?
 - Constitutional right to contract
 - Long-term vs. short-term fairness
 - Implications for related ownership and management issues



Litigation

- ❖ Historically, this has been the way to address fairness issue
- ❖ Problem: Individual's capacity to litigate
 - Too costly
 - Too time consuming
 - Inequitable results



Results of Litigation

- ❖ At the end of the day, no winners emerge
- ❖ If courts resolve relational issues:
 - Potential loss of property rights
 - Potential loss of freedom to manage
 - Joined to an overburdened and suffering court system

Everybody Loses.



Alternative Solution: Employee Relationships

- ❖ Oklahoma Attorney Generals opinion (April 11, 2001)
 - Contract growing arrangements are “contracts by adhesion”
 - State where growing arrangements are initiated or performed laws govern
 - Contract growers are considered to be employees of the company
- ❖ Only an opinion until tested in court (Been, et al vs. OK Foods currently under consideration)
- ❖ Legal position may be valid, but...severe problems come when opinion is applied



Repercussions

- ❖ Tax liability
- ❖ Entitlement to employment related benefits (e.g., workers and unemployment compensation, retirement, coverage under FLSA requirements)
- ❖ Insurance/Tort liability
- ❖ Environmental liability
- ❖ Financial/Credit implications
- ❖ Bankruptcy implications
- ❖ Farm program and technical assistance eligibility
- ❖ Management issues across companies and farms
- ❖ Impact on rural communities



South Dakota's Amendment E

- ❖ Constitutional prohibition preventing corporations and syndicates, subject to certain exemptions, from acquiring or obtaining an interest in land used for farming and from otherwise engaging in farming in South Dakota. Passed by voters in a 1998 referendum
- ❖ Exemptions available for:
 - Family farm corporations or syndicates
 - Land/livestock in which coop has legal interest
 - Grandfathered for land/livestock ownership
 - Acquisition for non-farming purposes



Basis for Overturning Amendment E

- ❖ Overturned as unconstitutional by U.S. Eighth Circuit Court, August 19, 2003; In violation of the dormant Commerce Clause
- ❖ Ruled as discriminatory against interstate commerce as it refers to differential treatment of out-of-state economic interests
- ❖ Plaintiffs showed injury was suffered
- ❖ Lack of cogent information as to whether corporations and syndicates practices adversely affected family farmers and environment
- ❖ Inadequate information as to effectiveness of alternative courses of action that were not discriminatory



What Can We Expect Regarding Use of Contracts ?

- ❖ The more specific the crop or product, the greater the use of contracts to ensure truth in advertising and product consistency
- ❖ Contracting can replace capital in production and marketing efforts
- ❖ Contracts are a potential avenue to meet consumer expectations and ensure food safety, security and product quality



Summary – Contracts are:

- ❖ Not just a poultry issue
- ❖ Likely to become more widespread
- ❖ A vehicle for limiting risk exposure
- ❖ Not the only alternative
- ❖ Better if everyone is a cooperator, not an adversary



Litigation: American Style

- ❖ You have two cows. You are sued by someone.
- ❖ The grounds for the suit are questionable.
- ❖ To defend yourself, you hire a lawyer.
- ❖ You sell one cow to pay the lawyer and the court costs.
- ❖ Your lawyer loses the case. Judgment for plaintiff...he gets your other cow as a settlement.
- ❖ Plaintiff sells this cow to pay his lawyer.
- ❖ Plaintiff buys a goat with the remaining funds.

Where's the beef?