



Agricultural Law Update

November 2013

COURT OF APPEALS HOLDS PERSON RELYING ON RIGHT TO FARM ACT AS A DEFENSE TO A NUISANCE LAWSUIT HAS THE BURDEN OF PROOF

- Liza C. Moore

The Michigan Court of Appeals recently issued a for-publication decision (meaning that the decision will be binding precedent for other courts) holding that a person relying on the Right to Farm Act (RTFA) as a defense in a nuisance action has the burden to prove the challenged conduct is protected under the RTFA.

In this September 19, 2013 decision, *Lima Township v Bateson*, the land owners were storing and using heavy equipment on their property. The township believed the land owners' uses were not permitted under the township zoning ordinance and were a nuisance. The land owners argued they were developing a tree farm on their property and that the RTFA protected their actions. After a lengthy evidentiary hearing that included testimony from farmers and a Michigan Department of Agriculture and Rural Development official, the trial court granted the township's motion for summary disposition and ordered the land owners to stop parking and storing heavy equipment on the property. On appeal, the Court considered whether the trial court properly determined that the land owner's activity was not protected by the RTFA.

The Court explained that in determining whether an activity is protected under the RTFA, a two-prong analysis is required. First, the activity must constitute either a "farm" or a "farm operation" as those terms are defined by the RTFA. Second, the "farm" or "farm operation" must conform to the applicable generally accepted agricultural and management practices

(GAAMPs). The Court wrote that the RTFA did not say which party bears the burden of proof, and no earlier published cases addressed the issue. The Court then held that when a person asserts the RTFA as a defense in a nuisance action, the person asserting the defense bears the burden to prove by "a preponderance of the evidence" that the challenged conduct is protected under the RTFA. The Court explained that its decision means that a party asserting a RTFA defense must prove that the challenged condition or activity constitutes a "farm" or "farm operation" and that the farm or farm operation conforms to the relevant GAAMPs.

Applying this analysis, the Court determined that there was a genuine issue of fact as to whether the land owners proved that they intended to produce trees and sell them for profit, and whether the alleged nuisances (the storage and use of heavy equipment) were necessarily related to the production and sale of trees. The Court also determined that no findings had been made with respect to the GAAMPs. As a result, the Court reversed the decision of the trial court and remanded the case for further proceedings consistent with the appellate opinion.

To read the full opinion in *Lima Township v Bateson*, please visit: <http://1.usa.gov/1fmyBPw>

Do you have any questions about the Right to Farm Act? Contact Liza Moore at lmoore@fosterswift.com or 517.371.8281.

TOP 10 THINGS TO DO WHEN YOU ARE INVOLVED IN A MOTOR VEHICLE ACCIDENT

- Dirk H. Beckwith

Most of the time all goes well on the road but accidents do happen and when they do, you need to be prepared. Whether operating heavy farm equipment or driving your pickup truck, these 10 tips are good advice to abide by if you get in an accident.

In order to remember all that needs to be done at that stressful moment, it helps to keep an accident report kit in your truck. The kit generally includes your cell phone or digital camera to take pictures, an accident report form and a form to use when talking to witnesses. Completing these forms and taking pictures will help preserve the details of the accident for later use. Triangles or flares should be on hand also.

If an accident occurs:

1. Stop your truck immediately or as soon as possible.
 - Turn on your emergency flashers
 - Put out triangles or flares, making sure they can be seen from all directions
2. Check the other party for injuries, but don't move them; wait for medical help if it is needed.
3. Notify the appropriate parties.
 - Call the police
 - Call the emergency number(s) listed on your insurance card
 - Call your safety director or dispatcher if instructed to do so
4. Identify the other vehicle(s) involved.
 - Get the license numbers of all the vehicles and the names of the owners
 - Also get the names of the other parties involved in the accident
5. Get statements from the witnesses.
 - Be sure to get their names and contact information including address, phone number and e-mail
 - If they will give you a statement, ask them what they saw, where they were when the accident happened and if they have an opinion on who was at fault
6. Be polite but don't make statements about the accident with anyone other than the authorities, your own insurance company representative and your lawyer.
7. Do not admit any fault or accept responsibility for the accident. Don't volunteer information; cooperate but keep it simple.
8. Protect your vehicle and cargo from theft and further damage.
9. And remember, if an accident results in a person being taken to the hospital by ambulance, a vehicle being towed or a fatality, you should be tested for alcohol or drugs within two hours of the accident.
10. Call your insurance agent.

It is hard to remember everything, which is why a list is so important. Following the steps will prevent you from missing an important piece of information.

We at Foster Swift have an Emergency Response Team available 24/7 to assist you at the scene. The team consists of experts in accident reconstruction, a forensic photographer/videographer to take photos at the scene, an investigator to take statements from witnesses and an experienced defense lawyer.

Please call Dirk Beckwith at 248.539.9918 or email him at dbeckwith@fosterswift.com if you have questions.

WHO OWNS THE DATA?

- John W. Mashni

Technological advances increase daily, especially in the agricultural industry. Precision farmers must be aware of new technology in order to stay competitive. However, there are other issues to be aware of that accompany any new technology. With the technological advances of precision agriculture comes the concept of information security - namely, who owns and controls the data that is collected? Producers need to understand who is getting access to their data.

MORE DATA THAN EVER

With the proliferation of the use of yield monitors, GPS units, grid soil sampling, scouting, remote sensing, geographic information systems and variable rate technology, there are numerous ways data can be collected on a farm. Some of the data includes instantaneous yield measurements, the nutrient composition of any section of land, and maps of an entire region with all of the data accumulated and accessible with incredible accuracy. This data is extremely valuable – some uses include improvement of the efficiency of each region of the farm, an increase in crop productivity and reduction of off-site movement of pollutants.

OWNERSHIP AND CONTROL

Two major issues exist with respect to all of this data that is collected – ownership and control.

Ownership of the data is an issue because the data has value. If a farmer completely owns all of the precision farming equipment that collects the data, then there is not really an issue of ownership or control – the farmer owns and controls his data. But this situation is not common.

More often, either the farmer hires an outside party to collect the data or partially owns the equipment that collects that data. In this scenario, ownership and control is largely determined by the terms of the contract. For example, an outside party could be collecting data for a farm and providing the farmer access to the data. But once the relationship between the farmer and the outside party is terminated, the outside party who collected the data may not provide any of the previously collected data

regarding the farm – even though the farmer has already paid for the service of collecting the data.

This is why it is extremely important to consider the terms of any agreement that involves the capture, collection, and use of any data collected by precision-farming technology.

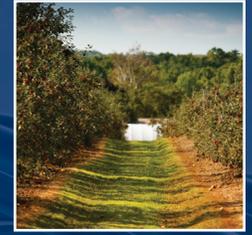
ISSUES TO WATCH FOR

Here is a list of issues to consider when forming any agreement that involves, or may involve, data collection. This list is not exhaustive but will be useful to discuss with legal counsel when evaluating any agreement.

- If the farm exists as part of a landlord-tenant relationship, who owns the data collected from land?
- Is data allowed to be sent to a central clearinghouse or databank operated by a third party?
- Is the data allowed to be passed on to a government agency without consent?
- What are the exact rights associated with the data?
- Which data source actually controls if there is a dispute regarding a conflict of data?
- If there is an independent contractor relationship, who owns the rights to the data?
- What are the responsibilities of each employee in regards to data collection?
- Are there confidentiality provisions in place in regard to the raw data, generated maps and management recommendations?
- Who can control and access the raw data?
- Can the farmer compel the transfer of data to a new provider without cost or penalty?
- Will maps be provided in physical or digital forms?
- Who owns any maps or recommendations based on the data?

These are just some of the issues associated with the ownership and control of data. Undoubtedly, these issues will grow and become more important in the future.

For any questions regarding who owns your agricultural data, contact John Mashni at jmashni@fosterswift.com or call 517.371.8257.



ENCOURAGING AGRIPRENEUERS

Have you heard? A newly-formed joint venture between the Grand Valley State University Center for Entrepreneurship and Innovation and Saginaw Valley State University wants to encourage agriculture technology startups. Sprout Labs

received a \$70,000 grant from the Michigan Initiative for Innovation and Entrepreneurship. It will be split between the two universities for the program. For more information: <http://bit.ly/1bdWSTN>

UPCOMING AG EVENTS

- Nov. 26, 2013** 2013 Forum on Anaerobic Digester Production of Energy: New Opportunities for Projects in Michigan, Okemos Conference Center, Okemos - <http://bit.ly/1fmjllR>
- Dec. 2, 2013** Ag Career Conference, Amway Grand Plaza, Grand Rapids- **Contact Jason Jaekel at jjaekel@michfb.com or call 517.679.5444 to register**
- Jan. 13-15, 2014** Michigan Agri-Business Association Winter Conference & Trade Show, Lansing Center, Lansing - <http://bit.ly/HLm3Fc>

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