

Crop Dusters Don't Owe Fees To Herbicide Co., 8th Circ. Says

By Beth Winegarner

Law360, San Francisco (March 26, 2013, 9:50 PM EDT) -- Universal Cooperatives Inc., which was sued by farmers after its weed killer drifted into their cotton fields, can't recover attorneys' fees from third-party crop dusters because it lacked a legitimate beef with them, the Eighth Circuit ruled Tuesday.

After Universal and its subsidiary, Universal Crop Protection Alliance, LLC, defeated the cotton farmers in court, it went after the crop dusters that had applied the aerial herbicide treatments for the \$1.5 million it spent defending itself in the case. The Eighth Circuit panel agreed with the Arkansas federal court, which had ruled that Universal had no standing to seek attorneys' fees from the crop dusters.

Based on recent rulings, the Arkansas Supreme Court would be unlikely to side with Universal on such a claim, according to the Eighth Circuit.

"Because the Arkansas Supreme Court most recently has rejected any cause of action against a third party for attorneys' fees incurred in earlier litigation against another party, and in this case there is no duty running from the third party to the plaintiff that would support such a cause of action in any event, we affirm the dismissal of Universal's claims," the three-judge panel wrote in its ruling.

Universal had argued in its complaint that the crop dusters had acted negligently by not following the directions on the weed killer's label, which led them to spray in unsuitable weather that caused the herbicide to drift. It also alleged that the aerial teams hadn't kept proper records, as federal and state laws require, according to court records.

However, Universal failed to show that it was one of the parties to whom the crop dusters owed that kind of duty, negating the company's negligence claim, the Eighth Circuit ruled.

Universal had also argued that the crop dusters' violations of federal and state laws constituted an unconscionable trade practice under Arkansas' Deceptive Trade Practices Act.

The Eighth Circuit rejected that line of reasoning, ruling that "[Universal] does not allege that these actions included conduct in the nature of an improper use of economic leverage in a trade transaction." Therefore, they didn't fall under the deceptive trade practices law, it said.

"We felt the court made the correct ruling," said Geoffrey Anderson of Anderson & Riddle, an attorney representing the crop dusters. "The pilots feel vindicated."

Representatives for Universal did not immediately respond to requests for comment late Tuesday.

The case arose in 2006 after the crop dusters applied Universal's 2,4-D weed killers to rice fields in northeast Arkansas. A number of cotton farmers complained that the herbicide had drifted into their fields, in part because 2,4-D is heavily regulated and hadn't been approved for use in rice fields that year, court documents said.

After the Arkansas State Plant Board and the University of Arkansas Extension Service investigated the complaints, the agencies found that the weed killer's migration into nearby cotton fields likely happened because it was applied during weather conditions for which it hadn't been approved, court documents said.

That prompted 70 cotton farmers to sue a group of 2,4-D makers, including Universal, in state court. None of the crop dusters were named as defendants. After a five-week trial, the Arkansas jury found in favor of the herbicide makers. The farmers appealed, and the parties later reached an out-of-court settlement, court records said.

Judges William J. Riley, Roger Leland Wollman and Raymond Gruender sat on the panel for the Eighth Circuit.

Universal Cooperatives Inc. is represented by Alan Marshall Anderson and Aaron Nyquist of Alan Anderson Law Firm LLC and by Benjamin D. Brenner of Mitchell Law Firm.

The defendants are represented by Jeffrey W. Anderson, Raven M. Atchison and Jonathan W. Harrison of Anderson Riddle & Kuehler LLP and by John Mark Scott of Conner & Winters.

The case is Universal Cooperatives Inc. et al. v. AAC Flying Service Inc. et al., case number 12-1970, in the U.S. Court of Appeals for the Eighth Circuit.