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FIFRA under fire

By Frank H. Andorka Jr.
Editorial Director

It's not often the Supreme Court of the United States weighs in on subjects of interest to our industry. That's why it's doubly important that when it does, it makes the right decision.

Unfortunately, the Court's decision in the recent *Bates v. Dow AgroSciences* case may be a colossal mistake, opening a Pandora's Box of problems for pest management professionals (PMPs) and manufacturers alike.

The case, detailed in this issue by Legal Ease columnist Arthur Cook on page 46, centered around a lawsuit filed against Dow by a group of Texas peanut farmers who said their crops were damaged by the application of a pesticide despite being applied in accordance with its label. Dow argued that the Court should dismiss the case because a finding in favor of the plaintiffs would violate the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which gives the Environmental Protection Agency (EPA) the prerogative to set national labels for pesticides. Giving the farmers legal recourse outside of the label, Dow argued, would give the states the right to demand stricter label requirements and warnings than what the EPA sets at a national level.



I spent an hour on the phone with Washington lawyer Larry Ebner, a partner at McKenna Long & Aldridge, who filed a friend of the court brief on Dow's side on behalf of the National Pest Management Association (NPMA) and CropLife America (a sister organization to Responsible Industry for a Sound Environment, or RISE), to discuss the case and its implications.

Ebner says there are four potential outcomes from the decision for PMPs:

- The decision may result in more lawsuits against the pesticide industry. NPMA Vice President of Government Affairs Bob Rosenberg adds that includes PMPs.
- It may mean more detailed and complex labels — and thus, more time and money spent on training staff and technicians.
- The EPA and the states may now have a say in how pesticide labels are developed, undermining the national label concept that FIFRA established.
- Telling the court that you followed the label may no longer be enough to get a lawsuit dismissed against a PMP.

Ebner says the confusion created by the Supreme Court decision won't be cleared up until lower courts figure out how to interpret and apply it.

"Neither side got what they wanted out of this decision," he says. "The long-term implications of this decision have yet to play out. Right now, the picture is muddy."

Ebner says it's crucial for manufacturers and PMPs to stick together as the *Bates* decision is hashed out in the courts. I agree with his assessment. **PC**

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