

A Remedy for Reparation Claims

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No longer having to choose one reparation solution over another

Produce growers seeking reparation from buyers that fail to make payments for products purchased in interstate commerce can bring their claims to the U.S. Dept. of Agriculture's (USDA's) Perishable Agricultural Commodities Act (PACA) Branch. In some states, growers can file a claim against the state's agricultural bond fund to recover the unpaid debt; however, those funds are often under pressure for a number of reasons, including the current economic downturn in the United States.

Historically, if a state's bond fund did not completely satisfy a claim, growers were left with no further recourse through PACA because seeking payment through a state bond program was considered an 'election of remedy,' which excluded other remedies. Similarly, PACA has been interpreted as requiring claimants to choose between pursuing reparation by filing a formal complaint with PACA and pursuing a civil suit in state or federal court.

A 2009 USDA reparation decision concerning a dispute that arose in Georgia held that claimants can pursue full payment from PACA if a state's agricultural bond falls short. Consequently, growers faced with such a shortfall may now rely on this decision as they pursue an additional remedy through PACA. "They're



not being left with the short straw when they aren't getting everything due to them," said John Koller, director of PACA's Dispute Resolution Section. In this particular case, a bond claim filed with the Georgia Department of Agriculture by a grower was found to have not constituted an election of remedies.

Prior PACA precedent cases deemed claims made with a state administrative body to be an election of

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Marketing Service (AMS), and has worked for the USDA since 2000. Her first position at the USDA was with the Marketing Order Administration Branch and its fruit and vegetable marketing order compliance team. Whalen took over as chief in early 2008.

Key Elements

Good news for growers or shippers involved in reparation disputes:

- ✦ PACA has overturned the widely criticized "election of remedy" precedent
- ✦ reparation can now be sought from PACA and state bond funds
- ✦ PACA is no longer a grower's only option when buyers fail to pay.

To learn more about each key element, look for the ✦ symbols throughout the article.

remedies, even if the claimant only received partial payment from the bond. The latest USDA decision, however, reversed previous conclusions in this regard. This ruling opens the door so that other states bond programs can be examined in the same manner.

In the Georgia case, the USDA issued an order that took into account the pro rata share that the plaintiff received from the state bond and awarded the unpaid balance not satisfied by the payment of the state bond claim. "We don't want complainants to believe they only have one option," explains Koller. "This latest USDA decision puts them in a position to minimize their losses as much as possible."

For more information about resolving your disputes, call the USDA's PACA Branch at (202) 720-2890.

Election of Remedies: An out-moded stipulation requiring plaintiffs seeking two remedies based on separate legal theory to choose the most provable claim, usually before going to trial, thus placing a possibly unfair burden on the plaintiff. Courts have increasingly dispensed with election of remedies as unfair until all the evidence is fully presented.

Source: Farlex.com.

State Bond Requirements

Seventeen states have bond requirements for buyers and sellers of perishable agricultural commodities: California, Colorado, Delaware, Florida, Georgia, Hawaii, Maine, Michigan, Minnesota, Mississippi, New Jersey, New York, Oregon, South Carolina, Utah, Washington, and Wisconsin.

Each state requires some form of security (security or cash bond, or an irrevocable letter of credit), the amount of which is usually based on previous invoice amounts. For more information about each state's licensing requirements, contact the individual departments of agriculture.



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