

Leader

An ArborOne Farm Credit Member Publication

Spring 2013

President's Message



Kathy Heustess

Spring is just around the corner and we are quickly approaching the end of the first quarter of 2013. Good things are going on at ArborOne as earnings are off to a good start this year. We ended 2012 with

record earnings and we will again pay a very strong patronage to you, our member/borrowers. If you haven't done so, ask your relationship officer to show you the impact of patronage on your interest rate! I think you will be pleasantly surprised. ArborOne offers a competitive rate up front and then because of our cooperative structure; we return our profits to you! Commercial banks don't offer the same deal. As a member of the Farm Credit System, we have been around for almost 100 years—doing what we know how to do—financing agriculture!

Changing gears, because we realize the importance of a college education today but also the cost to attain it; we are happy to announce that ArborOne will be offering two scholarships for 2013. The "Aim-At-Ag Scholarships" will be awarded to two rising college freshmen whose majors have an agricultural focus. Visit our website for more information about how to submit an application. Tell your friends and neighbors about this opportunity—or check it out yourself if you have children ready to take the leap into their college careers!

We enjoy highlighting customers; in this issue we introduce you to Rebecca Farms, a mushroom operation in Williamsburg County. And we welcome guest columnist Jim Blair, a member of the Nexsen Pruet law firm.

As always, thank you for your continued trust and support. You are the best advertisement we have!

Sincerely,

Kathy S. Heustess, President and CEO

Putting Our Profits Back in Your Pockets ... Again!

The results of 2012 ensure that ArborOne will remain "well capitalized and ready to lend" to you, our loyal customers. We will continue to focus on meeting the needs of our customers—both present and future.

Because 2012 was such a good year, ArborOne is pleased to announce that we will be paying a very strong patronage this year, approximately 50%. 2012 ended with record earnings and it is our pleasure to share these profits with you, our member/borrowers.

This patronage refund represents approximately 50 percent of the interest that accrued on

your loan in 2012. In other words, for every \$1 of interest that accrued, we are refunding 50 cents. The patronage distribution is comprised of 41 percent Qualified Surplus Allocated with the remaining 59 percent in Nonqualified Allocated Surplus. Approximately 46 percent of the total distribution of Qualified Surplus Allocated will be paid in cash, which comes to \$2,000,000.

Feel free to talk to your relationship manager about patronage in greater detail. ☺

Rebecca Farms

It is hard to beat locally grown, farm fresh food. Here in South Carolina we are blessed with a wide range of seasonal delights. And thanks to Rebecca Farms, you can add Oyster Mushrooms to the list of locally grown items available.

Before visiting Rebecca Farms in Kingstree, South Carolina, my image of a mushroom was always toadstools in the yard or the white ones you buy at the grocery. But walking into the small, cool building that was filled with wheat straw bales covered with Oyster Mushrooms was truly educational.



It's easy to see that Jay and Rose Lewis love what they do. Jay is the full-time farmer while Rose is the branch manager at the Andrews Library. But they both share a passion for mushrooms. Their website, LowCountryMushrooms.com, is filled with recipes and tips.

Rebecca Farms, located in Williamsburg County, is the result of a gift Rose gave Jay for his birthday—a mushroom growing kit. He loved it. They decided to move to South Carolina from South Florida after much research. Both were impressed with the strong local food movement here. And they haven't been disappointed. Restaurants in Georgetown (Limpin' Jane's on Front Street is one) and in Charleston purchase their mushrooms regularly. They are also available at local farmer's markets and through fresh produce distributor, Millgrove Farms. ☺



Rose and Jay Lewis

Leader is published for stockholders, directors and friends of ArborOne Farm Credit.

Address changes, questions, comments or requests for copies of the association's financial reports should be directed to ArborOne, ACA at 1-800-741-7332 or P.O. Box 3699, Florence, SC 29502. Contact us by e-mail: mdickson@arborone.com. Our quarterly financial statement can also be obtained from our Web site, www.ArborOne.com.

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Establishing and Protecting Rights Under the Perishable Agricultural Commodities Act

By JAMES A. BLAIR III



James A. Blair III

Not all products which find their way into interstate or foreign commerce are created equal. Perishable goods are subject to becoming spoiled, bruised, contaminated and a host of other ills caused by things such as temperature variations, improper

handling and the simple passage of time in ways that non-perishable goods are not.

The Perishable Agricultural Commodities Act (“PACA”) is a federal statute which was enacted by Congress in 1930 to partially address this issue (generally, 7 United States Code § 499). PACA provides for the regulation of the interstate sale and marketing of certain perishable agricultural commodities. PACA is primarily designed to benefit and protect eligible perishable agricultural commodity sellers who are the beneficiaries of PACA and the PACA Trust. Under PACA “Perishable Agricultural Commodities are any of the following, whether or not frozen or packed in ice: fresh fruits and fresh vegetables of every kind and character” Although PACA was originally designed to primarily protect sellers and shippers of fresh (and frozen) fruits and vegetables, (7 USCA 499a(b)(4)(A)), over time, this has been further determined to mean certain types of minimally processed foods being prepared for shipment. For example, tomatoes, sliced and oil seared in preparation for freezing (to avoid turning black during shipment), are perishable agricultural commodities within the meaning of PACA. However, products which contain less than ninety percent (90%) fresh product, such as onion rings containing less than ten (10%) percent actual onion for the making of frozen onion rings, are not a perishable agricultural commodity under PACA.

PACA provides important protections. Fresh fruits and vegetables being delivered through various means of transport and often over long distances cannot easily be preserved for inspection prior to spoilage in the event there is a dispute between the seller and the purchaser in the same way as non-perishable or other preserved goods. Indeed, a dispute over a load of tomatoes delivered from South Carolina to a processing facility in Virginia is much more time sensitive, and subject to potential unscrupulous behavior, than a similar shipment of non-perishable goods. Imagine two different scenarios: 1) A shipment of cloth arrives from South Carolina to a finishing manufacturer

in Georgia. The Georgia company claims the cloth is non-conforming to the order and defective. The parties to the dispute have time to sort through the claim, which will be governed by their respective contracts and the Uniform Commercial Code; 2) A similar dispute but the product is peaches. Obviously, by the time a full inspection can be done, even if it is only a matter of days, some of the load may be lost or rendered unusable, even if it were otherwise conforming at the time the shipment arrived. This is only one example of a situation (out of many possible) where PACA may apply.

PACA is primarily designed to benefit and protect eligible perishable agricultural commodity sellers who are the beneficiaries of PACA and the PACA Trust.



Establishing PACA Rights

How are PACA rights established? PACA is primarily designed to protect growers, sellers, and suppliers of perishable agricultural commodities from losses due to the unscrupulous and “sharp practices” of commission merchants, dealers and brokers of such commodities. PACA also protects against the mere non-payment of amounts due by purchasers of eligible commodities, even in the event of bankruptcy. Thus, every “commission merchant,” “dealer,” and “broker,” (as defined under PACA and rules promulgated by the Secretary of Agriculture), must obtain a license through the U.S. Department of Agriculture’s Agricultural Marketing Service (see application at, www.ams.usda.gov) in order to conduct their business in interstate or foreign commerce. (7 USCA §499c).

As generally defined by PACA:

(a) a “commission merchant” is any person or business “...engaged in the business of receiving in interstate or foreign commerce any perishable agricultural commodity for sale, on commission or for or on behalf of another;”

(b) a “dealer” is any person or business “... engaged in the business of buying or selling in wholesale or jobbing in quantities, as defined by the Secretary, any perishable agricultural commodity in interstate or foreign commerce...;”

(c) a “broker” is any person or business “... engaged in the business of negotiating sales and purchases of any perishable agricultural commodity in interstate or foreign commerce for or on behalf of the vendor or the purchaser, respectively...”

Different rules and possible violations of PACA may apply differently to each of the categories of “commission merchant” “dealer” and “broker” and as each group is further treated under PACA and rules promulgated by the Secretary of Agriculture. However, “commission merchant”, “dealer”, and “broker” are largely lumped together regarding requirements under PACA and possible breaches of such requirements. PACA is fairly expansive as to the types of individual businesses that may be required to obtain a license. Once an application is submitted, a license obtained and the applicable fee is paid, the license must be maintained pursuant to PACA rules.

The paid license fees and other trust assets are placed into a non-segregated “floating trust” in the Department of the Treasury, which is commonly known as the PACA Trust. The PACA Trust is, in turn, partially available to pay claims by eligible claimants for valid claims pursuant to law.

While commission merchants, brokers and dealers, as previously identified, are required to obtain and maintain a license (note that the consequences of not doing so can be severe including

Employee News



On December 31, 2012, ArborOne's **Richard Calhoun** retired after almost 32 years with Farm Credit.



And on January 31, 2013, **Genny Hayes** also retired from ArborOne's operations department. We hope you both enjoy every moment of retirement!

Grant Lyerly is now the relationship manager for Williamsburg County. He can be reached at 843.289.0987 or glyerly@arborone.com.

Jason Creamer will be handling Chesterfield County. His number is 843.245.2649 or email him at jcream@arborone.com.

Both were analysts at ArborOne Farm Credit before becoming relationship managers. They look forward to helping local farmers do business. ~

a significant fine), sellers and growers are not required, but may, also obtain a license. A PACA licensee may preserve its rights under the PACA Trust by placing specific, exact language on the face of its invoice or billing materials to a purchaser as follows:

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

Sellers not licensed may also preserve PACA Trust rights under PACA by giving a "Notice of Intent to Preserve Trust Benefits" to a purchaser according to strict rules which are time sensitive. If eligible, a seller may make claims under PACA, in addition to whatever other legal claims may be available at law or equity, which can provide significant additional benefit.

PACA Claims

PACA outlines behavior that constitutes "unfair" conduct or transactions in interstate or foreign commerce by a commission merchant, dealer or broker which may trigger a PACA claim (7 USCA §499b). Likewise, purchasers which fail to remit proper payment to perishable agricultural commodity sellers may have additional PACA Trust liability. The range of possible PACA violations are broad and diverse, but include: misbranding/rebranding fruits and vegetables; dumping and discarding claims; improper rejection of product or consignment product and refusal to account and make full payment for joint account or consignment sales.

In order for a non-licensee seller to make a PACA claim, such unpaid seller of perishable agricultural commodities must provide a written "Notice of Intent to Preserve the Benefits" to the applicable purchaser within the time period set forth in 7 USCA § 499e (c)(3).

In the event that a PACA licensed seller provides the specific required statement contained

in its ordinary billing or invoicing statements (as identified above), and otherwise is within the PACA defined requirements (such as engaging in interstate commerce) then its PACA Trust rights are automatically preserved. If PACA rights are properly preserved, such seller or supplier (or their agents) may enforce their PACA rights by filing a complaint with the Secretary of Agriculture (USDA), as provided in PACA, or file suit in any court of competent jurisdiction. PACA rights are in addition to otherwise available rights as may normally be enforced in common law, such as breach of contract.

A claim made directly to the USDA is somewhat less formal than a corresponding action in the court system and the USDA, which has authority over licensee parties, typically acts more like a mediator of the dispute. However, the USDA is not a court and anything beyond the direct complaint/reparations process to the USDA must take place in a court of competent jurisdiction regarding the dispute. Should the claim involve the PACA Trust, then trust law of the applicable jurisdiction will apply. This is significant, since a PACA Trust claim can provide a seller with valid remedies, even if the non-paying purchaser files for bankruptcy. Since the law presumes that the sold perishable agricultural commodities are held in trust by purchaser until full payment is made, the products do not become part of a debtor's "estate" but still "belong" to the trust beneficiaries (i.e. the sellers until paid for) and are not then subject to other creditor's claims (which are typically in a better position than a perishable agricultural commodity seller to collect). Therefore, the seller maintains a claim against the purchaser for the eligible commodities sold. As these claims involve applicable, and sometimes complex, trust law rules and concepts, appropriate legal representation should be engaged.

Conclusion

PACA is a valuable tool for sellers of perishable agricultural commodities to possess. PACA provides not only strong remedies in the event of problems, but also a good incentive for individuals and businesses which operate in the fresh fruit and produce industry to do so in an upright manner. ~



Bill Aston and Jason Creamer present South Carolina 4-H with their portion of the proceeds from the Aim-At-Ag Sporting Clays Event.

For more information, James Blair can be reached at Nexsen Pruet LLC, 205 King Street, Suite 400, Charleston, SC 29401.



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Inside

Putting our Profits Back
in Your Pockets ... Again!

Rebecca Farms

Establishing and Protecting
Rights Under the Perishable
Agricultural Commodities Act

By James A. Blair III

Holidays

ArborOne Farm Credit Offices are Closed

Memorial Day	May 27
Independence Day	July 4

SC AgriBiz & Farm Expo

We hope you were one of the more than 2,000 people that attended the first annual SC AgriBiz & Farm Expo, but if not, go ahead and mark your calendar for the 2014 Expo which has been scheduled for Thursday, January 16th & Friday, January 17th.

ArborOne had a fantastic booth location – and a fantastic booth! Manned by our relationship managers and crop insurance experts, people were able to stop, visit, and ask questions. ☺



Aim-At-Ag Scholarships

Calling all rising college freshman interested in pursuing an agricultural related field! ArborOne Farm Credit is introducing “Aim-At-Ag Scholarships.” Applicants must be high school seniors planning to attend a two or four-year college on a full-time basis and students must be pursuing a career path in agriculture.

The deadline for applying is May 1, 2013. So tell your kids, grand kids, neighbor's kids that may be interested to apply. Applications are available online at www.ArborOne.com. Have questions? Call us at 800.741.7332. ☺