Washington Legal Foundation
Advocate for freedom and justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302

April 27, 2005

SUPREME COURT NARROWS SCOPE OF FEDERAL PREEMPTION UNDER FIFRA

(Bates v. Dow AgroSciences LLC)

The U.S. Supreme Court today held that buyers of pesticides and herbicides can bring state law tort claims against the product manufacturer even where the product and the product label comply with all federal regulatory requirements. The decision is a loss for WLF, which had filed a brief asking the Court to find that federal law preempts such lawsuits.

Bates v. Dow AgroSciences LLC is the latest case before the High Court concerning the effect of federal regulatory regimes on the ability of plaintiffs to bring state law civil actions asserting standards different from those of federal law. The lawsuit, brought under Texas law, is based on allegations that the herbicide Strongarm caused crop damage because its label failed to warn against use on high-pH soil. The district court and the U.S. Court of Appeals for the Fifth Circuit accepted the defendant's argument that the preemption language of the relevant federal statute – the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) – renders those claims invalid. The Supreme Court reversed that decision.

In reaching its decision, while finding some state law claims not preempted by FIFRA, the High Court reaffirmed the principle that FIFRA preempts any state law, regulation, or tort action that would impose a labeling requirement different from those of federal law.

In its brief, WLF argued that private lawsuits, such as this one, are inconsistent with Congress's intent in enacting FIFRA, in which Congress specifically directed that EPA should exercise prosecutorial discretion in enforcing federal standards. The brief noted that if plaintiffs' lawyers were given leeway to bring labeling actions under state law, then enforcement would be limited only by the ability of those lawyers to recruit claimants, not by the congressionally-mandated policy considerations such as protection of agriculture.

WLF's brief also observed that lawsuits based on subsequent improvements in labeling – as in this case – are inconsistent with congressional and judicial policy as expressed in Federal Rule of Evidence 407, which bars evidence of corrective measures and product improvements in federal cases. Finally, the brief pointed out the international implications of state law actions based on labeling, which would frustrate EPA's efforts to harmonize U.S. labeling standards with recently-adopted global standards (the Globally Harmonized System of Classification and Labeling of Chemicals). The brief argued that the U.S. government cannot speak with a single

voice in negotiations over labeling standards if federal standards can be overridden by a jury in a state law action.

WLF is a public interest law and policy center with supporters nationwide. As part of its mission to promote and defend free enterprise, it has filed briefs in numerous cases as an *amicus curiam* to address the proper scope of federal preemption. See, e.g., *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341 (2001); *Geier v. American Honda Co.*, 529 U.S. 861 (2000); Greater N.Y. Metro. *Food Council v. Giuliani*, 195 F.3d 100 (2nd Cir. 1999); *Lindsey v. Tacoma-Pierce County Health Dept.*, 195 F.3d 1065 (9th Cir. 1999); *Taylor v. SmithKline Beecham Corp.*, 468 Mich. 1, 658 N.W.2d 127 (Mich. 2003); *Etcheverry v. Tri-Ag Services*, 22 Cal. 4th 316, 993 P.2d 366 (Cal. 2000).

* * *

For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302.