

## **Nuisance Suit Against Hog Farmer "Doesn't Fly" in Indiana**

Earlier this month, the United States Court of Appeals for the Seventh Circuit dismissed a nuisance claim against a hog farm located in rural Indiana. The full text of the court's opinion in *Dalzell v. Country View Family Farms, LLC* can be read [here](#).

Mr. Leis purchased his farm, which grew corn and soybeans, in 2005. By 2007, Mr. Leis converted the farm into a hog farm, housing approximately 2,800 hogs. Mr. Leis' neighbors complained of odor from the hog farm, and filed a nuisance suit in federal court against the operation. The nuisance claim alleged that the defendant's hog farm interfered with the neighbors' use and enjoyment of their own property.

Mr. Leis argued that the lawsuit was barred by the Indiana Right to Farm Act. Indiana's Right to Farm Act was passed in order to "conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products" by limiting the instances in which an agricultural operation can be considered a nuisance. The Act applies to bar most nuisance suits against a farm that arise from changed conditions in the vicinity of the farm after the agricultural operation has been in existence for more than one year.

The neighbors argued that the Act did not apply because the hog farm did not begin until 2007, at which time the neighbors properties already existed and, therefore, no changed conditions in the vicinity had caused the nuisance complaint. But the federal court disagreed, stating that this "argument won't fly." In analyzing the case, the court noted that Mr. Leis' property had been involved in agricultural production since the 1950s, before the neighbors' homes existed. Thus, rather than looking at 2007 as the established date of the hog farm, the court looked to 1950 when determining if the claim was caused by changed conditions in the vicinity of the operation. The court broadly interpreted the right to farm statute to afford protection based upon *any* agricultural operation, not just the specific one at issue. Thus, because farming on the land began in the 1950's, and the neighbors moved in subsequently and changed the vicinity of the location, Mr. Leis' operation could not be deemed a nuisance. Therefore, the court dismissed the suit. This broad interpretation of the statute will provide additional protection to farmers under this statute in Indiana.

All 50 states have passed some form of Right to Farm law protecting agriculture from nuisance lawsuits. Although the specific provisions of these laws differ, they generally protect production agriculture from suits filed by neighbors claiming that normal farming practices are a nuisance. These statutes began being passed in the 1980's after many people who were not used to agriculture moved from cities to the country. No statutes provide unlimited protection to farmers and ranchers. For example, every state excludes protection for farms that are operated negligently or illegally. It is important for producers in every state to be aware of their state's Right to Farm law, and to understand what they need to do in order to fall within the statute's protection. The National Ag Law Center has collected the Right to Farm laws for all 50 states [here](#).

