



AGRIBUSINESS AND FOOD

Agribusiness and Food

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Scientific developments, technological efficiencies, global trade, and government support and regulation have changed food and fiber production in the United States into a sophisticated and complex business. From a farmer's field to a consumer's kitchen table, there are now many complex legal issues that growers, agribusinesses, distributors, brokers, and food retailers encounter along the way. Hall Booth Smith (HBS) has extensive experience in providing legal counsel, litigation support and regulatory advocacy for farmers, agribusinesses and others in the food supply chain.

Because most of our Agriculture Law Practice Group attorneys either grew up on a farm, earned degrees in agriculture or spent their careers counseling farmers and agribusinesses, our deep understanding of the business practices and needs of farmers and agribusinesses give us unparalleled insight and expertise to handle any agricultural matter. With six offices throughout Georgia plus offices in South Carolina, North Carolina, Tennessee, Alabama and Florida, HBS marries the expertise and resources of a large firm with the accessibility and superior service of a local firm.

United States Department of Agriculture Programs

Created in 1862 by President Abraham Lincoln, the United States Department of Agriculture (USDA) continues to play an essential role in regulating, supporting, and promoting agriculture in the United States. The attorneys at HBS assist farmers and agribusinesses as they navigate USDA's alphabet soup of programs and provisions. We counsel fruits and vegetable producers, suppliers, and buyers about their rights and obligations under the Perishable Agricultural Commodities Act (PACA) and help them understand USDA's informal dispute resolution program under PACA. Our attorneys assist clients with the filing or defending of formal PACA complaints pending before USDA or the local federal district court.

We also aid clients with appeals of Farm Service Agency (FSA) Payment determinations and issues arising out of the Packers and Stockyards Act and the Agricultural Marketing Agreement Act. Our agricultural attorneys assist qualifying entities submit competitive grant applications to USDA through the Farmers Market Promotion Program (FMPP), a federal program meant to improve and expand domestic farmers markets, roadside stands, community-supported agriculture programs, agri-tourism activities, and other direct producer-to-consumer market opportunities.

Litigation and Dispute Resolution

HBS Agriculture Lawyers have years of civil litigation and alternative dispute resolution (ADR) experience. This experience, while valuable at the negotiation table, is even more critical when our farm and agribusiness clients find themselves in a courtroom or formal dispute proceedings.

As an example, when any seed purchaser alleges to have been damaged by the failure any agricultural, flower, tree, shrub, or vegetable seed (with limited exclusions) to conform to or perform as represented by a label or by warranty, as a prerequisite to the purchaser's right to maintain a legal action against the seller, the purchaser must submit a complaint to the Commissioner of the Georgia Department of Agriculture against the seed seller alleging the damages sustained. Once the Commissioner refers the complaint to the Georgia's statutorily-created Seed Arbitration Council, HBS attorneys bring the ability to aid farmers or the sellers of the seed in navigating through the Council's procedural rules.

HBS litigation attorneys are experienced in the litigation of crop insurance claims and casualty claims related to the loss of tractors and farm equipment. Additionally, partnering with our [Intellectual Property](#) practice group, our agriculture practice group can assist farmers or seed producers in defending or prosecuting patent infringement and breach of licensing agreement cases related to re-use of advanced seed technology.

Property Rights

Farmers, forest owners, and agribusinesses are inherently tied to the land. Attorneys are often needed when the rights associated with property ownership are implicated by nuisance claims, eminent domain, zoning and comprehensive planning, and environmental regulations. As an example of our expertise in such areas of the law, HBS attorneys recently won a client a defense verdict where a nuisance claim was made arising out of the operation of poultry houses near a new subdivision. HBS attorneys are well-versed on Georgia's "Right to Farm" law, the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the federal Clean Water Act, and the federal Clean Air Act.

People often own property together either by choice or as a result of an inheritance or gift. When several people own property as tenants in common or as joint tenants, unique issues regarding property rights arise. Specifically, our firm is

experienced in handling partition actions and claims involving an accounting between co-tenants.

In 2008, hunting leases and agri-tourism accounted for \$138 million in farm gate value in Georgia. Increasingly, landowners who lease their property for such recreational use must be concerned with how to limit their liability when people use their property. HBS attorneys will negotiate appropriate leases and ensure compliance with the warning requirements of Georgia's agri-tourism immunity statute. Our agricultural attorneys defend landowner interests in cases of an invitee's or licensee's personal injury during agri-tourism, hunting, and fishing activities.

The agriculture law group of HBS also helps large land owners create conservation easements to gain select tax benefits and assist taxpayers in defense of Conservation Use Valuation Assessment (CUVA) and Georgia Forest Land Protection of Act (FLPA) disputes with local tax assessors.

Agricultural Water Withdrawal Permits and Water Law

Increasingly, water is a scarce resource in the Southeastern United States. Already, areas of Georgia have experienced moratoriums on new water withdrawal permits, and residential uses have been limited during period of droughts. Attorneys at HBS work with farmers and agribusinesses to determine if water withdrawal permits are needed and then, if needed, coordinate with the Georgia's Environmental Protection Division (EPD) to expedite the issuance of ground and surface water withdrawal permits for agricultural uses.

Our attorneys have been involved in the development and applications by EPD of all major water legislation passed since 2000 and have drafted regulations for the Georgia Soil and Water Conservation Commission. Our agricultural attorneys have also represented the Flint River Water Policy Center and Flint River Water Council, Inc.

Government and Regulatory Affairs

Partnering with our [Government Affairs](#) practice group, HBS's agricultural lawyers are available to track legislation and offer draft amendments and substitutes to bills pending before the Georgia General Assembly. On cases involving nuanced areas of the law, HBS attorneys are able to provide expert testimony before legislative committees on behalf of individual farmers, agribusinesses, or trade associations. We also work with individuals and trade associations to ensure compliance with state and federal ethics laws.

HBS agricultural attorneys also defend users of certain pesticides who are accused of violating Georgia's Pesticide Use and Application Act of 1976. Partnering with our [Energy, Regulatory, and Utilities](#) group, we have represented agricultural trade associations on matters such as the negotiation of propane supply contracts and agricultural electric rate matters. We also represent clients before the Georgia Public Service Commission who are accused of violating the Georgia Utility Facility Protection Act (GUFPA), which requires excavators using mechanized equipment, which often includes farmer, to call for a utility facility locate prior to excavating or blasting.

International Trade

Working with our International Trade group, HBS attorneys are able to help our agricultural clients export commodities

throughout the world. Our team is knowledgeable about the United States Department of Agriculture unique export and import requirements and financing opportunities available for the exporting of agricultural commodities.

Agribusiness Organization and Transactions

Historically, many farms and small agribusinesses have operated as a sole proprietorship, meaning individual owners remained personally liable on contracts and for the tortious conduct of their employees. As farms and agribusinesses have grown, their owners have sought the limited liability protection associated with the creation of a limited liability partnership, limited liability company (LLC), or a closely-held corporation. Generally, such incorporation helps protect the personal assets of partners, members, or shareholders of the legal entity in cases where insurance does not cover a loss or where bankruptcy of the organization is unavoidable. HBS attorneys have extensive experience with the formation of such legal entities, with special awareness of how such corporate entities may affect the availability of federal farm support payments and federal income taxes.

Production of our nation's food and fiber is a series of performed contracts. While it may be easy to see how the purchase, sale, or financing of a pivot, tractor, or harvest equipment is a contract, since it often implicates the Uniform Commercial Code (UCC), we may not think of how a similar transaction for fertilizer, seed, labor, or pesticide is a similar promise to perform or pay. The common practice of entering into forward contracts for the delivery of raw commodities certainly involves contractual principles. One of the best ways to avoid a contractual dispute is by a thorough review of the terms and conditions of an agreement prior to its execution. HBS attorneys specialize in the review of such commercial agreements

Additionally, our agricultural attorneys, working closely with our [Wills, Trusts & Estates](#) group, can help ensure that property held by an LLC, corporation, partnership, or sole-proprietorship passes to the next generation with minimal probate costs and limited federal and state gift and estate taxes.



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Overcoming Bad Seed: Legal Protections for Farmers and Seed Dealers

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How to Protect What is Yours

Author - Joel McKie and Mike Pruett

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Business Transactions

The HBS Agribusiness and Food team has considerable experiencing counseling farm and agribusiness clients, both institutional and family-owned, during every stage of farm land and agricultural operations transactions. We have handled numerous purchase/sale agreement negotiations and drafting, due diligence, closing, and post-closing integration and operations. In addition to our farm and timber land experience, our teams have assisted clients in the acquisition and divestiture of fruit and vegetable packing and processing facilities, trucking operations, confined feeding livestock operations, permanent crops, and farm suppliers.

Because these transactions often include implications beyond agribusiness and food, our collective HBS team also has knowledge and experience in water rights and associated regulatory issues, property tax abatements under programs such as Georgia's Conservation Use Valuation Assessment ("CUVA"), federal farm programs, agricultural exemptions to the Federal Motor Carrier Safety Regulations and the Fair Standards Labor Act, and various food laws such as the Food Safety Modernization Act and the Food, Drug and Cosmetic Act.

Our attorneys have served as outside general counsel for vertically integrated farms, providing extensive counsel on custom farming agreements, marketing agreements, buy/sale agreements, logistics arrangements, hunting leases, and other operational matters. We also assist farm and agribusiness interests in establishing a variety of corporate entities and

structures that address the concerns of our clients – including federal farm support and succession planning.

HBS attorneys also negotiate appropriate leases and ensure compliance with the warning requirements of Georgia's agritourism, hunting, and fishing immunity statutes.

Conservation Use

Georgia's Conservation Use Valuation Assessment program, known as CUVA, is a complex property tax abatement program that allows qualifying natural or naturalized citizens, qualifying estates and trusts, and family-owned farm entities to pay lower property taxes in exchange for maintaining the land as is for 10 years. If the 10-year covenant is broken, the qualifying person must repay double the saved taxes plus interest, unless an exception applies or is granted. While the application of CUVA is highly technical, interpretation of its implementing statute is often left to the decision of county attorneys with little binding precedent from Georgia's appellate courts to guide their advice to boards of tax assessors. Our attorneys have helped guide numerous clients through determining whether their land qualifies under CUVA. Our holistic approach includes developing strategies to minimize breach penalties should they occur, and when necessary, negotiate with and challenge local taxing authorities regarding decisions under CUVA. Our team provides similar services for clients seeking to take advantage of the Forest Land Protection Act ("FLPA").

Litigation

HBS's Food and Agriculture team has many decades of civil litigation and alternative dispute resolution (ADR) experience. While valuable at the negotiation table, our experience is even more critical when our farm and agribusiness clients find themselves in a courtroom or encounter formal dispute proceedings.

Our attorneys represent a variety of clients in civil and administrative proceedings involving the Perishable Agricultural Commodities Act ("PACA"), Packers and Stockyards Act ("PSA"), food adulteration, seed and input warranties, farm partitions, wrongful farm foreclosure, and contract disputes.

We have extensive knowledge of agronomic principles, commodity markets, and overall industry practices, which gives us an edge in creating favorable outcomes for clients in a variety of settings. HBS attorneys are well-versed on Georgia's "Right to Farm" law and our agricultural attorneys can defend landowner interests in cases of an invitee or licensee experiencing personal injury during agritourism, hunting, and fishing activities.

PACA

In 1930, Congress enacted the Perishable Agricultural Commodities Act, 7 U.S.C. § 499e (also known as "PACA") to promote fair trading practices in the produce industry.

To further protect the interests of the suppliers of perishable agricultural commodities, Congress amended PACA in 1984 by creating statutory trust provisions that resulted in the collection of millions of dollars in receivables with an incomplete or faulty understanding of what the trust is and how it works.

PACA's administrative and statutory trust remedies provide important tools that allow growers and sellers of fresh fruits and vegetables to recover payment in the event of insolvency. Our attorneys are experienced in defending and prosecuting statutory PACA trust claims and working with the USDA through the administrative PACA process. Additionally, HBS's Agricultural and Food team has provided extensive guidance to produce sellers regarding credit terms and credit evaluation processes that assist in the PACA collections process.

Urban Agriculture

Our attorneys frequently advise clients who are endeavoring to deliver locally grown or organically grown food in urban areas, which involves unique and often complex challenges. We provide guidance to clients on the full spectrum of laws that may impact such businesses, including PACA, state and federal food safety law, product labeling laws, and transportation laws. We have also provided counsel on custom farming agreements, buy/sale agreements, logistics arrangements, and end-user agreements. Our attorneys also assist these urban agricultural interests in establishing a variety of corporate entities that will best suit the needs and business objectives of our clients.

Regulatory Compliance

The HBS Agribusiness and Food team assists farmers and agribusinesses as they navigate USDA's alphabet soup of programs. We counsel fruit and vegetable producers, suppliers and buyers about their rights and obligations under the Perishable Agricultural Commodities Act (PACA), and help them understand USDA's informal dispute resolution program under PACA. We also assist clients in filing or defending against formal PACA complaints pending before USDA. We also aid clients on a variety of federal farm programs, including appeals of Farm Service Agency (FSA) payment determinations and issues arising out of the Packers and Stockyards Act (PSA).

At the state level, we regularly work with the Georgia Department of Agriculture on a variety of issues, and we have extensive experience under Georgia's Vidalia Onion Act and the Food Establishment and Manufacturing regulations. Our attorneys assist clients on a variety of Georgia Environmental Protection Division (EPD) matters, including Land Application System permit transfers and ground and surface water withdrawal permitting issues.

Related Industries

Food & Agriculture

Scientific developments, technological efficiencies,

Government & Municipalities

With a team of former and current government

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The legal issues farmers and agribusinesses face are often unique to the agriculture sector. For example, HBS handles issues for buyers and sellers under the Perishable Agricultural Commodities Act (PACA), a complex federal statute which establishes a code of fair business practices that protects businesses dealing in fresh and frozen fruits and vegetables. In many cases, the laws relevant to the issues facing agriculturists arise out of the laws and regulations that are applicable to any contract, insurance policy, property right, business organization, or succession plan.

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leaders, and those actively involved in various areas of government, HBS offers comprehensive representation and advice to those in government, including states, counties, cities, non-profits and other related industries.

Our team members are regarded as among the most influential leaders in the state of Georgia and are repeatedly recognized for their work on behalf of clients in the government arena. Regularly interacting with legislative leaders concerning client needs, we maintain close working relationships with elected officials, appointed officials, and agency staff, enhancing our ability to provide expertise and counsel. Leveraging our connections, regulatory know-how and legal experience, we work with local, county and state government officials to craft good policy and address our clients' legislative, regulatory and legal concerns.

HBS attorneys assist clients with the full range of local, county and state government affairs, regulatory matters, lobbying efforts, and political and campaign finance issues. Understanding the regulatory framework which affects our clients' business operations, we are particularly adept at helping related regulated industries such as utilities, energy and trade associations, telecommunication companies, health care, insurance, local governments, and nonprofit organizations with compliance matters.

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