



MARTIN LAW OFFICE

AGRICULTURE LAW & COMPLEX LITIGATION

CALCULATION OF AGRICULTURE LOSS

Economic loss to crops or plants from whatever cause in agriculture can be calculated by a decades old crop loss formula as follows: “Value of the crop to be raised, less salvage, and less any cost which would have been incurred, but was not.”

The value of the crop to be raised is established in two steps. First, establish the yield the plants would have had but for the event you allege caused the loss. Lost yield can be established by comparing prior yields in the same fields under similar environmental conditions, comparing injured plants with those in adjoining fields that have been unaffected, or by comparing yields from neighboring fields of other owners whose crops were grown under like conditions which were not affected by the product or event you believe caused your loss. The remainder of the value of the crop to be raised can be established by market price during the year in question. Market price can be ascertained from product you were able to sell as well as recorded market price by county, state and federal agencies.

If your damage involves plants which may show a continuing loss, such as citrus, blueberries, or peaches, keep an accurate record of what you were able to salvage each year the plant is regenerating. If all of your plants have been affected, find the closest similar plants to your farm which remain unaffected and compare production from those plants with yours. Be able to demonstrate that your husbandry practices, weather, insects, or disease are not the cause of the difference in yield between your injured plants and your neighbor’s unaffected ones. Have your local agricultural agent visit your fields, photograph your plants, and keep accurate records of fertilization, irrigation, and use of pesticides.

You are required to mitigate your loss from plant injury by salvaging as much of the crop as possible. This offset to your loss is calculated by ascertaining the amount of crop or fruit you were able to salvage, less any production and selling cost you did not incur. These costs are normally those of picking, hauling, packing, and commissions.

For example, a citrus grove of Marsh grapefruit should produce 1,000 boxes of grapefruit at \$10 per box, or \$10,000 per acre. The citrus grove, after plant injury, produced 500 boxes, or \$5,000 per acre. The loss is calculated by establishing the value of the crop to be raised (\$10,000), less salvage of \$5,000, less cost of picking, hauling, packing and commissions. Assuming those costs to be \$2 per box, the grove would have a net compensable loss of \$4,000 per acre.

When valuing loss of nursery stock based upon a buyer’s failure to comply with a contract, the ancient crop loss formula still applies. The number of plants to be purchased by contract or purchase order establishes yield. Market price is established by the amount stated in the contract. Nursery stock taken pursuant to the contract is salvage, and avoided costs can be subtracted from the contract price to establish the nursery owner’s compensable loss. These avoidable costs may

include liners, pots, soil, fertilizer, pesticides, labor, delivery, and commissions, if any.

While your testimony regarding the condition of your plants is admissible in Court, with corroboration or backup it may fail to convince the jury. It is important that you keep accurate records, photograph your fields, and have other persons view your field conditions which would include neighboring farms as well as those with horticultural knowledge specific to your plants.

This discussion is simply an overview and is in no way a substitute for your consultation with your attorney, CPA, or agricultural economist.

