



**BERGESON & CAMPBELL, P.C.**

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**MEMORANDUM**

Via E-Mail

DATE: September 15, 2005

TO: Firm Clients and Friends

FROM: Bergeson & Campbell, P.C.

RE: *Spray Drift Task Force vs. Burlington Bio-Medical Corporation*

On August 30, 2005, a federal judge confirmed an arbitration award under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in the matter of *Spray Drift Task Force vs. Burlington Bio-Medical Corporation*. The arbitration award, issued on August 24, 2005, awarded \$669,847 plus interest and administrative fees and expenses (\$1,625) to the Spray Drift Task Force (SDTF), which claimed that Burlington Bio-Medical Corporation (Burlington) relied up SDTF data to register a pesticide product containing carbaryl with EPA.

**Background**

To satisfy certain data requirements for registering pesticides, the SDTF formed pursuant to a Joint Data Development Agreement to develop pesticide spray drift data. SDTF initiated an arbitration proceeding against Burlington because SDTF believed that the companies could not agree to the amount of data compensation owed SDTF for Burlington's reliance on its data. The arbitration hearing was conducted on March 14-16, 2005, and, according to SDTF's Points and Authorities in support of its Petition to Confirm the Arbitration Award, Burlington "elected not participate" in the hearing.<sup>1</sup>

On August 24, 2005, arbitrator James Mercurio issued a two-page arbitration award ordering Burlington to pay SDTF \$669,847 for its reliance on SDTF data. The award does not specify the studies deemed to be compensable, but states that this amount is "by the preponderance of the evidence, fair compensation under FIFRA Section (3)(c)(1)(F) for Burlington's reliance, in support of its application for registration of the pesticide carbaryl, upon data that SDTF submitted to the United States Environmental Protection Agency ('EPA') prior

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<sup>1</sup> *Points and Authorities in Support of the Petition of Spray Drift Task Force to Confirm Arbitration Award* at 4 (Points and Authorities).



Memorandum to Firm Clients and Friends  
September 15, 2005  
Page 2

to September 22, 2000.”<sup>2</sup> The decision also awards SDTF \$1,625 “representing that portion of the [American Arbitration Association’s] fees and expenses in excess of the apportioned costs previously incurred by SDTF.”<sup>3</sup> The award additionally provides for interest to be paid to the SDTF at the rate of six and one half (6.5) percent per annum “on all or any portion of an amount payable under this Award that is not paid when due.”<sup>4</sup> The award states that upon Burlington’s compliance and payment of the award, “Burlington’s compensation obligation to SDTF for all present and future reliance by Burlington in support of its carbaryl registrations and any other applications to EPA, upon data that SDTF submitted to the EPA prior to September 22, 2000 shall be fully discharged.”<sup>5</sup>

### Order Confirmation

On August 30, 2005, the U.S. District Court for the District of Columbia (D.C. District Court) issued an order confirming the August 24, 2005, arbitration award. SDTF stated that such confirmation was necessary because of statements made by Burlington to SDTF’s counsel that Burlington did not intend to pay the award.<sup>6</sup> The D.C. District Court also granted SDTF’s motion to register the judgment in other district courts to facilitate SDTF in its efforts to collect its award. SDTF submitted information indicating that Burlington did not have significant assets in the District of Columbia, where the order was entered, but had significant assets in other districts where SDTF may be able to enforce the arbitration award and court order.

We hope this information is helpful. As always, please let us know if you have any questions.

### [Attachment](#)

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<sup>2</sup> *Spray Drift Task Force v. Burlington Bio-Medical Corporation*, No. 16 171 Y 00474 03 (Aug. 24, 2005) at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1-2.

<sup>6</sup> Points and Authorities at 2.