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Texas Horse Slaughter Case

Plaintiff's Attorney: **David Broiles**

Topic: Texas Prohibition on Slaughter of Horses

Jurisdiction: **Texas**

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By Professor David Favre
(2003)

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

EMPACADORA DE CARNES DE '

FRESNILLO, S.A. DE C.V., '

BELTEX CORPORATION, '

and

DALLAS CROWN, INC., '

Plaintiffs

VS.

02CV0804-A

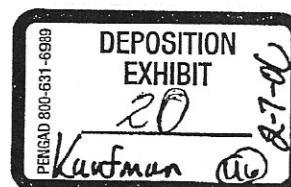
NO. 4-

TIM CURRY, District Attorney, Tarrant

County, Texas and BILL CONRADT,

District Attorney, Kaufman County, Texas,

Defendants



AND

UNITED STATES DEPARTMENT OF
AGRICULTURE, Party Needed for Just
Adjudication.

COMPLAINT

This lawsuit requests temporary and permanent injunctive relief be issued prohibiting Defendants from prosecuting Plaintiffs under a Texas statute, TEX. AGRICULTURE CODE, ' 149.001 *et. seq.*, (Chapter 149), by declaring the statute conflicts with federal law that preempts state law and unconstitutionally prohibits an activity within the regulatory and legislative province of the federal government, and illegally regulates interstate and foreign commerce.

1. Jurisdiction

Jurisdiction in this Court is based on 28 U.S.C. ' 1331, because it is a civil action arising under the Constitutional, laws, or treaties of the United States. Additionally, diversity of citizenship jurisdiction is conferred as to foreign nationals under 28 U.S.C. ' 1332, and the amount in controversy exceeds \$75,000. Because the actions threatened by Defendants are under the color of state law, and will deprive Plaintiffs of rights, privileges, or immunities secured by the Constitution of the Unites States and Acts of Congress, jurisdiction in this Court is provided under 29 U.S.C. ' 1343. The United, through an agency, is a necessary party, and no damages are sought against it, thus jurisdiction in this Court is under 28 U.S.C. ' 1346.

2. Background of the Case and Controversy

2.1. The issue is whether Texas can prohibit the commercial activities that involve the purchase, transport, and sale of horsemeat for human consumption, where the consumers are outside of Texas and the United States. There are only two processors of horsemeat for human consumption operating in the United States. Both are located in Texas-Beltex Corporation and Dallas Crown, Inc. Their product is processed in Texas, is transported in Texas, and is shipped to foreign destinations from Texas. Plaintiffs make no sales of horsemeat for human consumption in the United States.

2.2. Horses and cattle, which had for centuries been raised and eaten in Europe, were first introduced into this continent about 500 years ago, with the Spanish conquests in the central and southern Americas. While horsemeat, like beef, poultry, and game has long been consumed in Europe, in the United States the human consumption of horsemeat has never been popular enough to warrant commercial sales. Nonetheless, the presence of millions of horses on this continent has justified

commercial processing of horsemeat for human consumption abroad, and, therefore, slaughterhouses have profitably operated since the advent of refrigeration and means to safely transport meat.

2.3. The Texas Meat Inspection Law was passed by the Texas 49th Legislative Session in 1945. This act delegated to the State Health Officer the authority to regulate the processing and sale of the edible meat of cattle, calf, sheep, swine, or goat. Its purpose was to Aprohibit and prevent the sale of food for human consumption of meat from criminals . . . and to provide adequate and uniform regulations for inspection of meat and meat produces intended for human consumption.@ Section 18 provided that A [i]t shall be unlawful to sell for food for human consumption meat from the carcasses of horses, dogs, mules, donkeys, cats or other animals not normally used for human food.@ The 51st Legislature in 1949 passed what is now Chapter 149, and expressly repealed Section 18 of the Act quoted above, as to horses, replacing that prohibition with a broader and more punitive prohibition. The original purpose of that Meat Inspection Act was to protect the public from unhealthy meat, but, as to horsemeat, the Legislature concluded that healthy or not, people should not sell horsemeat to others because that was not the kind of meat Anormally used for human food.@

2.4. In 2000, worldwide export of horsemeat from the twelve largest exporting countries was 131,963 metric tons. The United States exported 10,061 metric tons of processed meat, Mexico exported 2,159. Worldwide production of horses in 2000 was 672,109 metric tons, with Mexico being the second largest processor with 156,000 metric tons, and the United States having processed 20,500 metric tons of horses. In 2001, 11,940 metric tons of processed horsemeat was exported from the United States, worth more than \$41 million.

2.5. In the United States there are only two horsemeat processors, both Plaintiffs, and they process approximately 50,000 horses a year for foreign sales. Approximately 70% of the horses they slaughter are purchased from owners in other states, and transported in interstate commerce to the processing plants. Horses sent for slaughter are typically older, neglected, displaced or retired animals no longer useful for saddle, ranch, recreation, breeding or racing activities. These horses are often purchased by commercial horse-buyers at auctions for between \$300 to \$700, and are transported to slaughterhouses that are regulated by state and federal agencies. Those who purchase horses and transport them to slaughterhouses are subject to extensive federal regulation. 21 U.S.C. ' 601 *et. seq.*

2.6. Like cattle, the horses are killed using humane methods, as required by the Humane Methods of Slaughter Act, 7 U.S.C. ' 1901 *et. seq.*, with United States Department of Agriculture (USDA) inspectors on site during all operating hours. 21 U.S.C. ' 603 *et. seq.* The Texas operations are subject to state supervision and regulation under TEX. AGRICULTURE CODE Ch. 148, which requires registration, the purchase of only marked or branded animals purchased with a bill of sale, with records kept as prescribed, and with payment of a \$2.00 fee to the Texas Agriculture Extension Service and \$4.00 to a designated state agency Afor each horse purchased for slaughter.@

2.7. In addition to the sale of horsemeat for human consumption, most parts of the horse carcass can be sold for other purposes, including baseball covers, shoes, leather products, pharmaceuticals used in open heart surgery, violin bows, pet food, fertilizer, and to feed zoo animals, some of which are endangered species dependent on horsemeat. Numerous organizations or persons will be irreparably injured if the Plaintiffs are not permitted to process horsemeat. Here are but a few examples. The Texas Animal Health Commission, an agency of the state, is permitted to have a technical representative at the facilities to test for equine disease. The authority for this is found in the Texas Agriculture Code,

Chapters 161 through 168. Specifically, surveillance is undertaken for Equine infectious anemia, an incurable disease caused by a virus and spread to animals by biting flies. Laboratory tests are done on the horses, in order to monitor this condition. Any tests that prove positive are traced back to the herd of origin through the record keeping required by the state and federal governments, so that herds can be handled according to appropriate regulations. Members of the Sheriffs' Association of Texas contact the meat processors in their efforts to recover stolen horses. Beltex Corporation has served as coordinator in several USDA funded equine projects with the School of Veterinary Medicine of the University of California, Davis. These studies rely on samples, for various physiological studies examining basic immunological and stress mechanism and pathological processes. Texas A&M College of Veterinary Medicine is supplied equine reproduction tracts and feet for instruction to students in examination of abnormalities, nerve block procedures, and reproduction tracts for abnormalities and pregnancy determinations. Horse shoeing schools are provided cadaver legs to be used by students to learn proper hoof preparation for the application of shoes as well as for dissection for the study of the anatomy of the hoof and leg. Central Nebraska Packing, Inc. relies upon horsemeat products for diets which it prepares and sells mainly for exotic animals housed in zoos throughout the United States. These animals require a nutritionally balanced diet, which closely resembles the diet they would receive in the wild. If the two horse plants in Texas were closed this product would not be available. Among the customers purchasing horsemeat for their animals are the Dallas Zoo, Fort Worth Zoo, Houston Zoo, Austin Zoo, New York Zoological Society, Ziegfried & Roy, Denver Zoo, Miami Zoo, Baltimore Zoo, Ringling Brothers, Indianapolis Zoo, Little Rock Zoo, Oklahoma City Zoo, University of California, and many others. The Texas and Southwestern Cattle Raisers Association has inspectors at the facilities pursuant to state legislation, their purpose being to inspect and try to apprehend stolen horses and to build a data base for prevention of horse theft. Edwards Life Sciences L.L.C. is a global leader in products and technologies to treat advanced cat cardiovascular disease and the leading heart valve company in the world. Its products are sold in 80 countries, and it uses equine pericardia for the manufacture of life saving products including the equine pericardial patch, valve replacement, cardiopulmonary bypass, left-ventricular assist device implantation, and numerous other procedures. Oklahoma State University has collected mare tracts utilized for teaching reproductive physiology and other equine courses.

2.8. Those who presently oppose the slaughter of horses for human consumption seek to protect the public solely from the possible offensiveness that might arise from foreigners eating horsemeat, which the Legislature considers meat not normally consumed by humans. No legitimate health or safety issues are involved, because the industry is subject to the identical regulations and inspections procedures applicable to other types of meat that are sold for human consumption. But there are people who oppose, and who would prohibit, the slaughter of horses for sale for human consumption, and the vehicle they seek to employ is TEX. AGRICULTURE CODE Ch. 149, by prosecuting those who process horse meat intended for human consumption, and enjoining their businesses from operation.

2.9. On February 13, 2002, a Texas State Representative requested from the Texas Attorney General an opinion about the enforceability of Chapter 149. In March 2002, letters urging the Attorney General to uphold the provision were submitted by lawyers representing the Society for the Prevention of Cruelty to Animals of Texas, Inc., the Humane Society of the United States, the Humane Society of Greater Dallas, and other groups with concerns for animals and horses. No brief submitted to the Attorney General suggested horsemeat posed health hazards to those who consume it, or that horsemeat was deceptively marketed. In response, the Texas Department of Agriculture suggested to the Attorney General that Chapter 149 was likely preempted by federal law and that it was not authorized to enforce Chapter 149. On August 1, 2002, the Attorney General, in Opinion No. JC-0539, opined that Chapter 149 was not preempted by the federal Meat Inspection Act, 21 U.S.C. ch. 12, and that only county or criminal district attorneys could investigate and prosecute alleged violations of Chapter 149.

3. The Defendants

3.1. Mr. Tim Curry is the elected District Attorney in Tarrant County, Texas, where Plaintiff Beltex Corporation operates its business. His office is at 401 W. Belknap, Fort Worth, Texas, where summons with this Complaint can be served on him. On August 29, 2002, Mr. Curry=s Assistant Criminal District Attorney Richard Alpert wrote Beltex a letter, in which he requested Beltex representatives to contact him because two Texas legislators had contacted Mr. Curry=s office about Chapter 149. The letter transmitted a copy of Chapter 149 and the Attorney General=s Opinion. Beltex representatives met with representatives from Mr. Curry=s office, and, as a result, believe investigation and prosecution to be imminent.

3.2. Mr. Bill Conradt is the District Attorney for Kaufman County, Texas, where the Plaintiff, Dallas Crown, Inc., operates its business. His office is at 100 W. Mulberry St., Kaufman, Texas 75142, where a summons with this Complaint can be served on him. On September 19, 2002, the Fort Worth Star Telegram reported that Mr. Conradt was investigating Dallas Crown and that he planned to file criminal charges.

4. The Plaintiffs

4.1. Beltex Corporation is a Texas corporation, operating a meat processing plant in Fort Worth, Texas. Beltex has processed horsemeat for human consumption for 27 years, and all of the product for human consumption was exported from the United States. In the United States, Beltex sells its product to zoos, and by-products for other non-consumption purposes. It has paid hundreds of thousands of dollars in property taxes, and paid significant fees to agencies of the State. Beltex employs 90 people, had gross sales exceeding \$30,000,000 in 2001, and processed more than 27,000 horses that year. Beltex pays more than \$3,000,000 a year for transportation in interstate and foreign commerce. If Chapter 149 is enforceable, Beltex will cease operations in Texas.

4.2. Dallas Crown, Inc. is a Texas corporation, operating a meat processing plant in Kaufman, Texas. Dallas Crown, Inc. processes meat for human consumption and all of that product is exported from the United States. In the United States, it sells its product to zoos, and other by-products for non-consumption purposes. It has paid hundreds of thousands of dollars in property taxes, and paid significant fees to agencies of the State of Texas. Dallas Crown employs 40 people, had gross sales exceeding \$9,000,000 in 2001, and processed more than 13,000 horses that year. Dallas Crown pays more than \$1,100,000 a year for transportation in interstate and foreign commerce. If Chapter 149 is enforceable, Dallas Crown will cease operations in Texas.

4.3. Empacadora de Carnes de Fresnillo, S.A. de C.V. is a corporation organized under the laws of Mexico, with meat processing operations in Fresnillo, in the state of Zacatecas, in north central Mexico. Empacador de Carnes employs 90 people. In 2001 its sales in pesos exceeded \$63,000,000, and it slaughtered in excess of 25,000 horses, while paying more than \$1,500,000 (Pesos) in freight charges. Most of its product is distributed in foreign commerce. Processed horsemeat for export for human consumption is transported by container truck from Fresnillo to Laredo, Mexico. It is placed in a

bonded warehouse, where it must pass United States= customs and health inspection requirements. It is then delivered into Texas, and transported to the port in Houston or to Dallas-Fort Worth Airport for international airfreight delivery. If Chapter 149 is enforceable, Empacadora de Carnes will not be able to transport its processed product through Texas, and will be denied access to an international port and airport. Texas Chapter 149 will impose a permanent embargo on its product entering or leaving Texas, subjecting the transporters to criminal liability, and will close, under the authority of Texas law alone, the 1200 mile border in Texas that separates Mexico from the United States. The effect of this Texas law is not to protect Texas residents from any food product or deceptive activity, because none of the product is sold to consumers in Texas, and all of the meets United States standards for food intended for safe human consumption.

5. Real Parties In Interest

5.1. The State of Texas is a real party in interest as defined by Fed. R. Civ. P. 17. Because the two named defendants in their official capacities are representatives of Texas, it is not necessary to make Texas a party under Fed. R. Civ. P. 19. Because the validity of a state statute is being challenged under federal law, a copy of the Complaint is being sent to The Office of the Attorney General State of Texas, P.O. Box 12548, Austin, Texas 78711-2548.

5.2. United States of America, through the Department of Agriculture, is a real party in interest. As an agency of the executive branch, it implements policies of the federal government relating to the sale and distribution of horsemeat for human consumption in interstate and foreign commerce. It is subject to the jurisdiction of this Court, and its interests relating to the subject matter of this lawsuit are ones it may want to protect, as provided by Fed. R. Civ. P. 19(a)(i). A copy of this Complaint will be served on the Secretary of Agriculture, Ann Veneman, 1400 Independence Ave. S.W., Washington, D.C. 20250, the United States Attorney General John Ashcroft, at 5111 Main Justice Bldg., 10th St. and Constitution Ave. N.W. Washington D.C. 20530, and United States Attorney for the Northern District of Texas, James Boyle, 1100 Commerce, Dallas, Texas 75242.

6. Relief Requested

6.1. Plaintiffs are under imminent threat of prosecution by the Defendants. The statute Defendants are relying on is illegal, facially and in application violates the interstate and foreign commerce clauses of the United States Constitution, purports to ban a commercial activity subject to preeminent regulation by United States statutes and executive branch regulations, contravenes treaties and international agreements and violates the Fifth Amendment. The threatened prosecutions, if charges are pursued, will cause the Texas Plaintiff=s businesses to fail or be closed. Ultimate success by the Plaintiffs in state courts could take so long that Plaintiffs will be put out of business in the interim.

6.2. To avoid irreparable injury and loss, Plaintiffs seek a declaration of their rights and legal relations, as provided by 28 U.S.C. ' 2201. Specifically, Plaintiffs seek a federal court declaration that Chapter 149 is not enforceable against them because its application is preempted by federal statutes and regulations. Alternatively, under state law, Chapter 149 has been repealed.

6.3. To prevent irreparable injury and loss to Plaintiffs until final disposition of this case, Plaintiffs seek, under Fed. R. Civ. P. 65, a temporary restraining order and temporary injunction enjoining prosecution of Plaintiffs under Chapter 149. Upon final judgment, Plaintiffs request a permanent injunction prohibiting enforcement of Chapter 149.

7. The Commerce Clause

7.1. The Commerce Clause, U.S. Const. art. I, ' 8, grants Congress the authority to Aregulate commerce with foreign nations, and among the several States.@ Chapter 149 unconstitutionally violates this provision. States may not adopt laws that directly affect interstate and foreign commerce. Congress sets the terms and conditions of interstate and foreign transportation of products.

7.2. While states have a limited are in which they can regulate activities affecting interstate and foreign commerce, Chapter 149 does not regulate Plaintiff=s commercial activities - it forbids them entirely. It constitutes an internal trade barrier. Plaintiff Empacadora de Carnes cannot transport horsemeat in sealed containers from Mexico to Europe by passing into Texas, depriving it of two major ports of trade in which hundreds of millions of federal funds have been invested to encourage foreign commerce. Plaintiffs cannot transport horsemeat on interstate highway system in Texas, including Interstate Highways 45, 35, and 10, between Dallas, Houston, Fort Forth, and Nuevo Laredo, although the federal government spent hundreds of millions of dollars building these highways to encourage interstate and foreign commerce.

7.3. Chapter 149 does not regulate commercial activities; it prohibits them, far exceeding the limitation on the powers of the states under U.S. Const. art. 1, ' 8. Processing, possession, or transporting healthy and USDA inspected horsemeat intended for human consumption, for a commercial purpose, is prohibited. Slaughtering a horsed owned by an individual, intending to consume the meat or give it away, even if it may be unhealthy or has not been inspected, and even if those to whom it is given do not know it is horsemeat, is not prohibited by Chapter 149. There is no legitimate local public interest furthered by Chapter 149, except to protect some Texas residents from the possible offensiveness arising from knowing foreigners are eating horsemeat processed in Texas. Protecting people from offense occasioned by the tastes of others is too minimal a state concern to warrant the destruction of the employment and businesses of honest and law-abiding people.

7.4. Chapter 149 bans the exportation from any port in Texas of horsemeat intended for human consumption. State restrictions burdening foreign commerce are subject to rigorous and searching scrutiny. United States foreign policy requires that the federal government speak for the nation, providing one voice, not fifty. Because Chapter 149 prohibits otherwise legal foreign commerce, it contravenes the foreign commerce clause provision. This so burdens foreign commerce that no legitimate state end can justify the ban.

7.5. Chapter 149's prohibition against transportation from foreign countries into Texas of horsemeat for human consumption is an embargo. The purpose of Chapter 149 is to prohibit the sale, possession, or transportation of horsemeat to be sold for human consumption anywhere in the world. It does not aim to protect Texas residents, to whom Plaintiffs sell no product. Plaintiffs could slaughter horses for the sale of horsemeat for animal consumption, in pet food or zoo food, and Chapter 149 would not be violated. Plaintiffs could provide free the healthy horsemeat for human consumption. It is only the possession or transportation of horsemeat for sale for human consumption that is prohibited by Chapter 149. No legitimate state interest justifies Chapter 149, so that it can overcome the application of U.S. Const. art. 1, ' 8. Any legal interests served by Chapter 149 do not outweigh national interests.

8. Federal Statutory and Regulatory Preemption

8.1. Congress has preempted state law conflicting with the statutory and regulatory provisions

embodied in federal law.

8.2. Even purchase, handling, and the transportation of horses to the slaughterhouse is governed by federal law. The Commercial Transportation of Equine for Slaughter Act of 1996, 21 U.S.C. ' 601 *et. seq.*, preempts the field of transporting horses to slaughterhouses, and delegates to the Department of Agriculture the authority to regulate this field. Regulations have been promulgated in 9 C.F.R. ' 88.1 *et. seq.*, prescribing in detail record keeping requirements for purchases and the humane procedures for handling horses intended for transportation for slaughter. Texas, by contrast, does not regulate transportation of horses for slaughter; it prohibits such transportation. Given that all horses processed for meat for human consumption are transported in, to, or from Texas, because the only two processing plants are in Texas, this defeats the Congressional purpose in the finding in 21 U.S.C. ' 602.

8.3. The Meat Inspection Act preempts the area of commerce to which Chapter 149 purports to apply. The scope of the Meat Inspection Act is set forth in 21 U.S.C. ' 602:

Meat and meat food products are an important source of the Nation=s total supply of food. They are consumed throughout the Nation and the major portion thereof moves in interstate and foreign commerce. It is essential in the public interest that the health and welfare of consumers be protected by insuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled and packaged . . . It is hereby found that all articles and animals which are regulated by this act are either in interstate or foreign commerce or substantially affect such commerce, and that regulation by the Secretary and cooperation by the states and other jurisdictions as contemplated by this act are appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers.

The Act included provisions regarding examination of animals before slaughtering, humane methods of slaughter, post-mortem examination of carcasses, and inspection of meat food products. 21 U.S.C. " 603, 604 and 606. Procedures for the examination of animals before slaughter and humane methods of slaughter, expressly included Ahorses, mules, and other equines.@ 21 U.S.C. '603.

8.4. Federal agricultural statutes regulate the slaughter animals. 7 U.S.C. ' 1902 specifically concerns humane methods of slaughter and provided specific methods of Ain the case of cattle, calves, horses, mules, sheep, swine and other livestock.@

8.5. Federal regulations govern the slaughter of animals for human consumption. 9 C.F.R. '301.2 provides a number of definitions relating to the Meat Inspection Act. Both the terms Alivestock@ and Ameat@ are defined to include Ahorse@ or Aequines@ when also referring to Acattle, sheep, swine, or goats.@ ACapable for use as human food@ references Alivestock,@ and horsemeat is capable of use as human food. The federal regulations contain provisions for inspection and slaughterhouses (Section 302.1), inspection of livestock offered for slaughter (Section 309.1), and humane methods of livestock slaughter (Part 313). The regulations apply to livestock pens, floors where livestock are kept, driveways and ramps, and the handling and herding of livestock. 9 C.F.R. " 313.2 and 313.2.

8.6. In 1921 Congress passed the Packers and Stockyards Act, 7 U.S.C. ' 181 *et. seq.* The purpose of the Act was to secure the free and unburdened flow of livestock from the ranges in the West and Southwest to the stockyards and slaughterhouses, and then to their final destination. 7 U.S.C. ' 182

defines livestock so as to include horses, while commerce includes all livestock products that will transit from a state after purchase to another state, or foreign nation, 7 U.S.C. ' 183. Deceptive practices are prohibited by packers, processors, transporters, or sellers.

8.7. At least seven states expressly authorize the sale of horse meat: Arizona, Ariz. Rev. Stat. Ann., Section 3.2122; Florida, Fla. Stat. Ann., Section 500.451; Georgia, Ga. Code Ann., Section 26-2-156; Minnesota, Minn. Stat. Ann., Section 31.621; New Jersey, N.J. Stat. Ann., Section 24:16B-38; Ohio, Ohio Rev. Code Ann., Section 919.06-07; and Virginia Va. Code Ann., Section 3.1-884.24. Aside from Texas, only California appears to impose criminal penalties for slaughtering horses for human consumption. Cal. Penal Code, Section 598c.

8.8. The Commerce Clause of the United States Constitution gives the federal government the sole right to regulate commerce with foreign nations and among the states. U.S. Const. art. 1, ' 8, ch. 3. The federal government's authority to regulate the slaughterhouse industry under the Commerce Clause was settled in the 1890's. Chapter 149 is not enforceable because it contravenes a field preempted by Congress and the Executive Branch.

9. Treaty and Trade Agreement Preemption

9.1. United States Constitution art. VI provides that "This Constitution, and the Laws of the United States . . . and all Treaties . . . shall be the supreme Law of the Land"

9.2. Effective August 1, 1999, the United States became a party to the Agreement Between the United States of America and the European Community on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products. The purpose of the agreement is to facilitate trade in animal products between the United States and the members of the European Community. The agreement applies to animal products including fresh meat, including Equine meat products and red meat (equidae). The agreement provides that United States standards will be prescribed in 9 C.F.R. ' 94 for horsemeat. 9 C.F.R. ' 94.15(a) provides that "any animal product . . . which would be eligible for entry into the United States, as specified in the regulations in this part, may transit through the United States for immediate export if the specified conditions are met."

9.3. Empacadora de Carnes legally imports its horsemeat product that is intended for human consumption into the United States, in compliance with federal regulations. It is shipped from the United States to federally approved ports in Houston and at Dallas-Fort Worth International Airport, as provided by 9 C.F.R. ' 91.1-3. Chapter 149 cannot be enforced in this area of foreign commerce preempted by federal law.

9.4. The Agreement between the United States and the European Community authorizes the establishment and recognition of health standards and inspection procedures only by federal authority in the United States, through agencies of the federal government. States cannot promulgate or enforce regulations contrary to those of the federal government. Plaintiffs comply with the regulations applicable to the safety and inspection of horsemeat shipped to Europe for human consumption. Texas cannot criminalize the exportation and transportation in interstate and foreign commerce of horsemeat intended for human consumption.

9.5. The United States, Mexico, and Canada are parties to the North American Free Trade Agreement (NAFTA), effective in 1992. NAFTA was adopted and implemented by the North American Free

Trade Implementation Act.@ 19 U.S.C. ' 3301 *et. seq.* This Act requires the federal government to consult with the states and eliminate restrictions not compatible with NAFTA. 19 U.S.C. ' 1312. It does not permit private litigants to enforce its provisions, but, should it choose, the Department of Agriculture has standing to enforce the provisions in this case. NAFTA imposes on the United States the obligation to improve access to markets by Aelimination of import barriers to trade between them in agricultural goods,@ which includes horsemeat. Plaintiffs do not seek to invalidate Chapter 149 as inconsistent with NAFTA, which it is. Rather Chapter 149 is invalid under the Commerce clause, and NAFTA is the evidence that the area of foreign commerce between the United States and Mexico has been foreclosed to state regulation, and, particularly, embargo.

9.6. Since the eighteenth century a significant component of the United States foreign economic policy has been the conclusion of the treaties of Friendship, Commerce and Navigation (FCN treaties). These treaties establish favorable terms for mutual trade, shipping, and investments between the United States and other countries. Treaties of Friendship, Commerce and Navigation are self-executing and must be enforced in federal courts. Examples of federal preemptive of the field of foreign commerce for exports between the United States and Mexico include the 1832 Treaty of Amity, Commerce, and Navigation and the 1974 Exchange of Information on Food and Drug Administration Regulated Products. These treaties and agreements, plus NAFTA, all reflect that the federal government has preempted the field of foreign commerce involving Mexico, the European Community, and the United States. Texas= embargo of foreign commerce between these countries by criminalizing the sale of horsemeat is preempted.

10. Due Process and Self-Incrimination

10.1. United States Constitution, amendment V, provides that no person Ashall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.@

10.2. Texas has either repealed Chapter 149, or passed legislation so inconsistent as to violate Plaintiff=s due process rights under the Fifth Amendment. Enforcing Chapter 149 would constitute a taking of Plaintiff=s property without just compensation or due process of law. This Court has pendant jurisdiction to decide issues of state law, and should hold that TEXAS HEALTH AND SAFETY CODE '443.033, together with ' 433.007(a), repeals or supersedes Chapter 149.

10.3. TEX. AGRICULTURE CODE Chapter 149 directly conflicts with provisions of the TEXAS HEALTH AND SAFETY CODE. Section 433.033 of the TEXAS HEALTH AND SAFETY CODE provides:

A person may not sell, transport, offer for sale of transportation, or receive for transportation, in intrastate commerce, a carcass, part of a carcass, meat, or a meat food product of a horse, mule, or other equine unless the article is plainly and conspicuously marked or labeled or otherwise identified, as required by rule of the commissioner, to show the kind of animal from which the article was derived. The commissioner may require an establishment at which inspection is maintained under this chapter to prepare those articles in an establishment separate from one in which livestock other than equines is slaughtered or carcasses, parts of carcasses, meat, or meat food products of livestock other than equines are prepared.

The statute permits a person to sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, meat or a meat food product of a horse, mule, or other equine, if the article is plainly and conspicuously marked or labeled or otherwise identified with the kind of animal from which the article was derived. A meat food product is expressly defined in the TEXAS HEALTH AND SAFETY CODE as a product which is capable of use as human food and that is made in whole or part from the meat or other portion of the carcass of livestock. TEXAS HEALTH AND SAFETY CODE ' 433.003(13) A livestock includes horses, mules, [and] other equines. TEXAS HEALTH AND SAFETY CODE ' 433.003(11).

10.4. Section 433.003 of the TEXAS HEALTH AND SAFETY CODE allows the sale of properly labeled horsemeat in Texas, and prevails over the conflicting provisions of Chapter 149 of the TEXAS AGRICULTURE CODE, because ' 433.007(a) of the TEXAS HEALTH AND SAFETY CODE provides: A This chapter [433] prevails over any other law, including Chapter 431 (TEXAS FOOD, DRUG AND COSMETIC ACT), to the extent of any conflict.

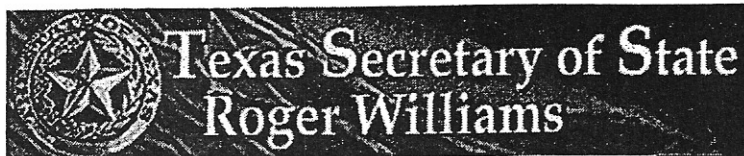
10.5. Texas has other statutes regulating slaughtering horses. TEXAS AGRICULTURE CODE ' 148.002(a) requires a slaughter facility to register with the county clerk. A slaughterer must keep a record in a bound volume of all livestock purchased and slaughtered, with specific descriptions of the livestock, the identity of the seller and transporter and the date of delivery. A slaughterer must report this information to the county commissioner court. TEXAS AGRICULTURE CODE " 148.012, 148.012(c), and 148.012(d). Texas legislative requirements for reporting and paying fees reasonably would lead one to conclude Chapter 149 has been repealed. If, as the Attorney General concludes, Chapter 149 is enforceable, then Texas law is so inconsistent and ambiguous as to be void, and any prosecution would violate due process. The Opinion of the Attorney General, recommends the use of the statutorily required reportings as evidence to be used in criminal prosecutions under Chapter 149. The Fifth Amendment prohibition against self incrimination is violated when a government requires registration and reports of activities and prosecution are based on coerced filings. The privilege requires the exclusion of such evidence in any prosecution.

11. First Amendment

11.1. The purpose of Texas Legislature sought to accomplish in 1949, when it passed what is now Chapter 149, is not reflected in any of the filings submitted to the Attorney General. The legislature apparently decided that those sources of meat not normally consumed by humans should be forbidden, and singled out horsemeat in particular..

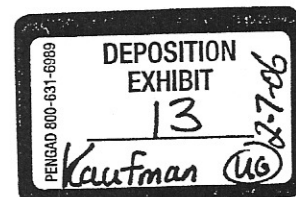
11.2. Based on the submissions to the Attorney General, those who seek enforcement against Plaintiffs of Chapter 149 appear to fall into two groups. The first group consists of those who view horses like pets, to whom the thought of eating horsemeat is repugnant. The second group consists of those whose feelings of revulsion at the slaughter of animals covers a broader range of animals, what some call animal rights advocates. The personal beliefs of those in both groups are entitled to respectful review and civil tolerance.

11.3. When the personal moral convictions of a vocal segment of the community are elevated to a status where those who disagree are legislated into criminality, First Amendment concerns about establishment of religion and freedom of belief are implicated. Personal, moral, or religious attitudes about what should or should not be eaten trace back through the centuries, have too often been embodied in laws, and have been the cause of bloody religious conflicts. The Old Testament contains prescriptions about food. Jews avoid shellfish. Muslims and Jews abhor pork. Hindus hold cows


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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 123798300 **Entity Type:** Domestic For-Profit Corporation
Original Date of Filing: July 15, 1992 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 30115910108 **FEIN:**
Duration: Perpetual

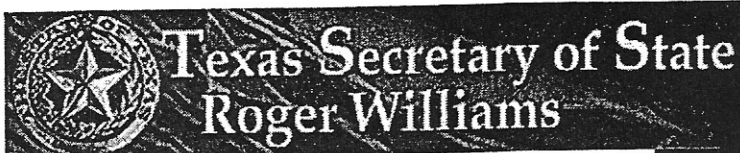
Name: WALDO, INC.
Address: 2000 W FAIR ST
 Kaufman, TX 75142-1868 USA



<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
Last Update	Name	Title	Address		
October 1, 2003	MICHIEL DE BEUKELAAR	PRESIDENT	2000 W FAIR ST Kaufman, TX 75142-1868 USA		
October 1, 2003	OLIVIER KEMSEKE	VICE PRESIDENT	2000 W FAIR ST Kaufman, TX 75142-1868 USA		
October 1, 2003	MANFRED RAMAULT	SECRETARY	706 W GROVE ST Kaufman, TX 75142 USA		
October 1, 2003	MANFRED RAMAULT	TREASURER	706 W GROVE ST Kaufman, TX 75142 USA		
October 1, 2003	MICHIEL DE BEUKELAAR	DIRECTOR	2000 W FAIR ST Kaufman, TX 75142-1868 USA		

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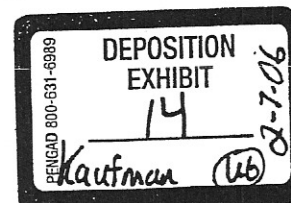
BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 123798300 **Entity Type:** Domestic For-Profit Corporation
Original Date of Filing: July 15, 1992 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 30115910108 **FEIN:**
Duration: Perpetual
Name: WALDO, INC.
Address: 2000 W FAIR ST
 Kaufman, TX 75142-1868 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
Name	Name Status	Name Type	Name Inactive Date	Consent Filing #	
WALDO, INC.	In use	Legal			
ZAROUFF-INVEST, INC.	Prior	Legal	December 8, 1994		
ZAROUSF-INVEST, INC.	Prior	Legal	July 15, 1992		

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46598326313

CORPORATE RECORDS & BUSINESS REGISTRATIONS

This Record Last Updated: 09/30/2005
Database Last Updated: 01-30-2006
Update Frequency: DAILY
Current Date: 01/31/2006
Source: AS REPORTED BY THE SECRETARY OF STATE OR OTHER
OFFICIAL SOURCE

COMPANY INFORMATION

Name: **WALDO, INC.**
Address: 2000 W FAIR ST
KAUFMAN, TX 75142
D&B DUNS: 05-234-5118

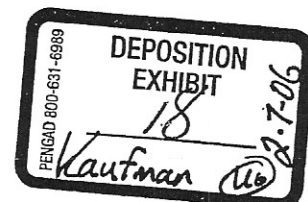
NAME INFORMATION

Former Name: ZAROUFF-INVEST, INC.
Former Name: ZAROUSF-INVEST, INC.

FILING INFORMATION

Identification Number: 0123798300
Filing Date: 07/15/1992
State of Incorporation: TEXAS
Date Incorporated: 07/15/1992
Duration: PERPETUAL
Status: IN EXISTENCE
Corporation Type: NOT AVAILABLE
Business Type: DOMESTIC CORPORATION
Address Type: MAILING

Where Filed: SECRETARY OF STATE
1019 BRAZOS ST
AUSTIN, TX 78701



REGISTERED AGENT INFORMATION

Name: CHRISTOPHER SOENEN
Address: 2000 WEST FAIR
KAUFMAN, TX 75142

PRINCIPAL INFORMATION

Name: MICHIEL DE BEUKELAAR
Title: PRESIDENT
Address: 2000 W FAIR ST
KAUFMAN, TX 75142

Name: OLIVIER KEMSEKE
Title: VICE PRESIDENT
Address: 2000 W FAIR ST
KAUFMAN, TX 75142

Name: MANFRED RAMAULT
Title: SECRETARY
Address: 706 W GROVE ST
KAUFMAN, TX 75142

Name: MANFRED RAMAULT
Title: TREASURER
Address: 706 W GROVE ST
KAUFMAN, TX 75142

Name: MICHIEL DE BEUKELAAR
Title: DIRECTOR
Address: 2000 W FAIR ST
KAUFMAN, TX 75142

AMENDMENT INFORMATION

Amendments: 10/04/2004 MISCELLANEOUS PUBLIC INFORMATION REPORT
(PIR)
10/01/2003 MISCELLANEOUS PUBLIC INFORMATION REPORT
(PIR)
07/21/2003 MISCELLANEOUS CHANGE OF REGISTERED
AGENT/OFFICE
01/27/2003 MISCELLANEOUS PUBLIC INFORMATION REPORT
(PIR)
12/31/2001 MISCELLANEOUS PUBLIC INFORMATION REPORT
(PIR)

05/30/2000 MISCELLANEOUS CHANGE OF REGISTERED
AGENT/OFFICE

12/08/1994 MISCELLANEOUS PRIOR LEGAL NAME: ZAROUFF-
INVEST, INC.

07/16/1992 MISCELLANEOUS ARTICLES OF CORRECTION

07/15/1992 MISCELLANEOUS PRIOR LEGAL NAME: ZAROUSF-
INVEST, INC.

ADDITIONAL DETAIL INFORMATION

Additional Details:

STATE TAXPAYER IDENTIFICATION NUMBER: 30115910108

Call Westlaw CourtExpress at 1-877-DOC-RETR (1-877-362-7387)
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CORPORATE RECORDS & BUSINESS REGISTRATIONS

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 Database Last Updated: 01-30-2006
 Update Frequency: DAILY
 Current Date: 01/31/2006
 Source: AS REPORTED BY THE SECRETARY OF STATE OR OTHER
 OFFICIAL SOURCE

COMPANY INFORMATION

Name: DALLAS CROWN, INC.
 Address: 2000 W FAIR ST
 KAUFMAN, TX 75142

D&B DUNS: 15-053-8130

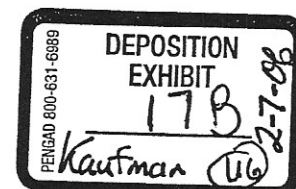
FILING INFORMATION

Identification Number: 0132647900
 Filing Date: 09/19/1994
 State of Incorporation: TEXAS
 Date Incorporated: 09/19/1994
 Duration: PERPETUAL
 Status: IN EXISTENCE
 Corporation Type: NOT AVAILABLE
 Business Type: DOMESTIC CORPORATION
 Address Type: MAILING

Where Filed: SECRETARY OF STATE
 1019 BRAZOS ST
 AUSTIN, TX 78701

REGISTERED AGENT INFORMATION

Name: CHRISTOPHER SOENEN



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Page 2

Address: 2000 WEST FAIR
KAUFMAN, TX 75142

PRINCIPAL INFORMATION

Name: MICHAEL DE BEUKELAR
Title: PRESIDENT
Address: 2000 W FAIR ST
KAUFMAN, TX 75142

Name: OLIVER KEMSEKE
Title: VICE PRESIDENT
Address: 2000 W FAIR ST
KAUFMAN, TX 75142

Name: MANFRED RAMAULT
Title: SECRETARY
Address: 706 W GROVE ST
KAUFMAN, TX 75142

Name: MANFRED RAMAULT
Title: TREASURER
Address: 706 W GROVE ST
KAUFMAN, TX 75142

AMENDMENT INFORMATION

Amendments: 09/23/2004 MISCELLANEOUS PUBLIC INFORMATION REPORT
(PIR)
09/30/2003 MISCELLANEOUS PUBLIC INFORMATION REPORT
(PIR)
07/21/2003 MISCELLANEOUS CHANGE OF REGISTERED
AGENT/OFFICE
02/07/2003 MISCELLANEOUS PUBLIC INFORMATION REPORT
(PIR)
12/31/2001 MISCELLANEOUS PUBLIC INFORMATION REPORT
(PIR)
05/30/2000 MISCELLANEOUS CHANGE OF REGISTERED
AGENT/OFFICE
09/19/1994 MISCELLANEOUS ARTICLES OF INCORPORATION

ADDITIONAL DETAIL INFORMATION

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Additional Details:

STATE TAXPAYER IDENTIFICATION NUMBER: 17525607614

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CHEVIDECO

Descriptive

Name / Business name: **CHEVIDECO**
 National No / VAT No: **412905838**
 VAT liability: **YES**
 Trade clerk's Office: **Kortrijk**
 CR No: **87204**
 Date of first registration: **14/05/1973**
 Last modification in the T.R.: **12/11/2001**
 Address: **Lar 20**
8930 REKKEM
 EAN location number: **5425016239995**
 Language: **Dutch**
 Main activity: **[15110] Production, processing, preserving meat**
 Phone number: **056/40.42.40**
 Fax No: **056/40.43.28**
 Staff employed: **From 20 to 49 persons**
 Legal form: **[203] Private company limited by shares**
 Last balance sheet published: **31/12/2004**

Financial and administrative incidents

Judgment(s)

No judgments to date

Credit advice

Euro DB ranks this entity in the following category:
Scored file, with standardised balance sheet

Credit advice: **58.453 EUR**

(Maximum credit : 247.894 EUR / 10.000 KBEF)

Score: **13**

(in a statistical distribution from 0 incl. to 20 excl., the middle profile is situated at 9.6 = global average, monthly controlled and maintained)

Summary of the last Balance Sheet seen: 31/12/2004

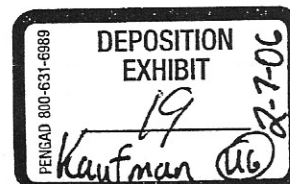
Cash flow: **very good**

Indebtedness: **very low**

Profitability: **average**

Balance: **fairly good**

Summary of the last incidents



Real estate assets (Balance Sheet code 22) (EUR): **93.669,00**

Mortgages (EUR): **396.630,00**

Mortgaged securities (EUR): **93.669,00**

Active companies

Number of active sales offices: **1**

Business name
CHEVIDECO NV

Address
**Lar 20
8930 REKKEM**

Activity (ies)

Activity (ies):	Source:
[15110] Production, processing, preserving meat	ONSS statistics
[51321] Wholesale of meat and meat products	VAT authorities
[15111] Production of fresh meat	National Bank of Belgium: annual financial statements
[15111] Production of fresh meat	ONSS index

T.R. Authorisations:

113 Wholesale butchers

Open-ended data

References to the "Moniteur Belge" (date and instrument number)

Date of publication:	Instrument:	Description:
01/07/2003	73429	Extension of mandate(s)
01/07/2003	73429	Delegation of authority
21/11/2001	49	Increase of capital

Previous address(es)

1973 **Minister Liebaertlaan 33
8500 KORTRIJK**

Board of directors

(Extract of the Official Journal annex)

Name:	Function:
KEMSEKE DONALD	Chairman/Managing Director
KEMSEKE PHILIPPE	Managing Director
KEMSEKE OLIVIER	Administrator
DE BEUKELAAR MICHIEL	Administrator

Financial Links

Identified participation

Business name:	(%) directly:	Number of shares:	(%) indirectly:	Balance sheets of:
1. WALDO INC. (United States)	100	800.000	0	31/12/2004
2. DALLAS CROWN INC USA (United States)	100	100.000	0	31/12/2004

Financial Data

Publication date	28/06/2005	24/06/2004	23/12/2003
General annual board-meeting	28/05/2005	29/05/2004	31/05/2003
Type of account	Abbreviated outline	Abbreviated outline	Abbreviated outline
Currency related to book-year	EUR	EUR	EUR
Date of the closure of the accounts	31/12/2004	31/12/2003	31/12/2002

(Extract from the annual accounts)

ASSETS (synthesis)

Long-term assets	1.575.242	1.436.577	1.433.230
Current assets	3.756.832	3.149.383	2.434.979
Realisable assets	3.108.695	2.977.410	2.159.623
Receivables over more than one year	0	0	0
Liquid assets	648.137	171.972	275.356
Net assets	4.268.857	3.163.816	2.419.121
Total assets	5.332.074	4.585.960	3.868.209

LIABILITIES (synthesis)

Equity	2.735.485	1.874.093	1.623.584
Provisions for risks and losses	827.510	779.759	56.276
Debts over more than one year	705.862	509.964	739.260
Debts payable within one year	1.062.311	1.421.742	1.445.768
Total liabilities	5.332.074	4.585.960	3.868.209

PROFITS AND LOSS STATEMENTS (synthesis)

Turnover	0	0	0
Gross value added	2.588.447	2.220.890	1.601.135
Sales and services	0	0	0
Operating Subsidies	0	0	0
Staff expenses	992.158	792.126	681.818
Income before interest and taxes	1.501.184	614.776	780.221
Year's income	861.391	250.509	327.144

COMPLETE FINANCIAL INFORMATION

Publication date	28/06/2005	24/06/2004	23/12/2003
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Chevideco

nv/sa
Transportcentrum LAR
Blok P20
B-8930 Rekkem

www.chevideco.com

Tel. +32 (0) 56 40 42 40
Fax + 32 (0) 56 40 43 28

EXHIBIT 1

Deponent Kaufman

Date 2-7-06 Rptr. UG

WWW.DEPOBOOK.COM

Michiel de Beukelaar

GSM +32 (0)496 27 07 59
E-mail: mdb@chevideco.be

Mark J. Calabria

Attorney at Law

201 W. Mulberry
Kaufman, Tx. 75142
972-962-4144 Phone
972-962-0607 Fax
mjcalabria@earthlink.net

January 12, 2006

Mr. David Dodd
City Attorney of Kaufman
1800 Lincoln Plaza
500 N. Akard
Dallas, Tx. 75201

Via facsimile: 214-965-0010

Re: Financial Documents for Dallas Crown

Dear David,

In response to your letter of January 12, 2006 and in reference to the above, I have spoken to Mr. Moe Clark, CPA for Dallas Crown, Inc.. As you and I have previously discussed, to expedite the handling of this matter, please have your accounting expert contact Mr. Clark at the following number to coordinate the exchange of the information you have requested by subpoena: 903-887-7777

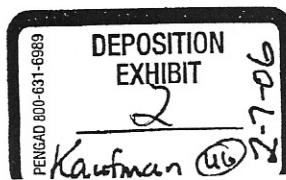
Please let me know if this arrangement is acceptable to you.

My regards,

Sincerely,
Dictated But Not Read
By Mark J. Calabria

Mark J. Calabria

MJC/bb



sacred, and, in India, cows may be protected by law. Some people in the United States believe the human consumption of horsemeat to be immoral, or the consumption of any meat to be immoral. When personal moral beliefs, often held with religious conviction, are imposed on others by using the criminal law, heightened scrutiny is called for under the First Amendment. Chapter 149, if enforced today, would be repugnant to the goals embodied in the First Amendment - to foster tolerance of others views, and permit diversity among a populace of varying tastes, beliefs, and sensibilities.

Plaintiffs request this Court declare Chapter 149 unenforceable, and enjoin Defendants from prosecuting under it.

Respectfully submitted,

David Broiles

State Bar No. 03054500

1619 Pennsylvania Avenue

Fort Worth, Texas 76104

(817) 335-3311

(817) 335-7733 fax

Of Counsel:

John Lineburger

State Bar No. 12387500

Fort Worth Club Tower

777 Taylor, Penthouse I-C

Fort Worth, Texas 76102-4196

Loe Warren Rosenfield

Kaiteer & Hibbs, P.C.

4420 West Vickery Blvd.

Fort Worth, Texas 76185

(817) 377-0060

Top of Page

**PETITION OF
BELTEX CORPORATION,
DALLAS CROWN, INC., AND
CAVEL INTERNATIONAL, INC..
FOR EMERGENCY RULEMAKING TO PROVIDE FOR
VOLUNTARY, ANTE-MORTEM INSPECTION OF HORSES
AND RELATED RELIEF**

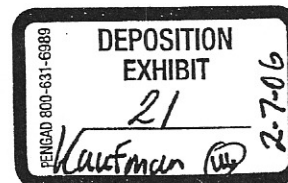
This petition is submitted on behalf of Beltex Corporation, Dallas Crown, Inc., and Cavel International, Inc., ("Petitioners") and requests action by the United States Department of Agriculture's Food Safety and Inspection Service (collectively "USDA") to promulgate on an expedited basis an interim final rule, effective as of March 10, 2006, to provide for voluntary, "fee-for-service" ante-mortem inspection of horses and transportation-related inspection of equines to slaughter under the Agriculture Marketing Act, as amended, 7 U.S.C. § 1622. As further discussed below, this action is necessary due to the apparent lack of appropriated funds for ante-mortem inspection of horses, as required by Section 3 of the Federal Meat Inspection Act (FMIA). If USDA should fail to provide ante-mortem inspection required by Section 3 of the FMIA, affected establishments would likely be forced out of operation, causing substantial economic damage contrary to the public good.

I. Action Requested

Pursuant to the Administrative Procedure Act¹ and USDA's implementing regulation,² the undersigned Petitioners request that USDA issue an emergency interim final rule, effective as of March 10, 2006, to provide voluntary, "fee-for-service" ante-mortem inspection of horses and transportation-related inspection of equines to slaughter under the Agriculture Marketing Act, as amended, 7 U.S.C. § 1622.

¹ 5 U.S.C. § 553(e).

² 7 C.F.R. § 1.28



IX. Interests of Petitioners

Petitioner Beltex Corporation is a domestic and international exotic meat processor founded in 1976 providing fresh and frozen high-quality products to restaurants, institutions, wholesalers, and retailers. Beltex operates in Fort Worth, Texas, and is located in the industrial Stockyard sector near the Meacham Field Airport. Beltex employs between 80 and 120 people necessary in the day-to-day operations of the plant. This payroll accounts for a multimillion-dollar direct impact on the local economy.

Petitioner Dallas Crown, Inc., in Kaufman, Texas, is a meat packing plant, specializing in the processing of fresh and frozen horsemeat products and was founded in 1981. Products are packaged and shipped according to the demand and the specification of customers. Dallas Crown provides local institutions and foreign importers, wholesalers, supermarkets, butchers, and retailers. Dallas Crown currently employs 46 people necessary in the day-to-day operations of the plant, making it the largest employer in the town.

Petitioner Cavel International, Inc., located in DeKalb, Illinois, processes fresh and frozen horsemeat for export. Cavel has been in operation since 1987. The company also operates under a horsemeat license issued by the Illinois Department of Agriculture. Cavel is a significant employer and contributor of tax revenues in the DeKalb area. The company employs 56 workers from around the region.

III. Legal Background

A. Inspection Under the Federal Meat Inspection Act, the Federal Agriculture Improvement and Reform Act of 1996, and the Agriculture Marketing Act of 1946, As Amended

One of the most distinctive features of the Federal Meat Inspection Act (FMIA) is the requirement for continuous government inspection at establishments that slaughter cattle, sheep,

swine, and equine (hereinafter "livestock") to prevent the inhumane treatment of livestock and the distribution of adulterated meat food products. Specifically, Section 3 of the FMIA requires the Food Safety and Inspection Service (FSIS) to inspect all livestock before slaughter ("ante-mortem inspection") for human food.³ Without ante-mortem inspection, establishments are prohibited from selling the meat food product for human food.⁴

As part of ante-mortem inspections of horses, USDA guidelines issued under Section 903 of the Federal Agriculture Improvement and Reform Act of 1996⁵ governing the commercial transportation of equines to slaughter require USDA inspections at slaughter facilities of such horses and the trucks used to transport them.⁶

The mandatory inspection provisions under the FMIA only apply to livestock. In 1946, Congress amended the Agricultural Marketing Act (AMA) to provide USDA with the authority to furnish voluntary inspection for all agriculture products, including animals, for a fee.⁷ Such inspection services are commonly referred to as "fee-for-service" inspection. Specifically, subsection 203(h) of the AMA provides that the Secretary of Agriculture has authority to:

inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe, including assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered....⁸

³ 21 U.S.C. § 603.

⁴ 21 U.S.C. § 610.

⁵ 7 U.S.C. § 1901 note.

⁶ 9 C.F.R. § 88.5. Although these regulations are issued by the Animal and Plant Health Inspection Service (APHIS), the inspections may be conducted by any authorized USDA employee, including FSIS inspectors. See Final Rule, 66 Fed. Reg. 63,588 at 63,605, col. 1 (Dec. 7, 2001).

⁷ 7 U.S.C. § 1622(h).

⁸ Id.

Pursuant to regulations promulgated under the Act,⁹ FSIS currently provides voluntary inspection of certain exotic animals and rabbits. The inspected and passed meat from such animals is stamped with the FSIS mark of inspection and can be sold interstate and exported.¹⁰

B. Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006

On November 10, 2005, the President signed into law the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, Pub. L. 109-97 ("Appropriations Act").¹¹ Section 794 of the Appropriations Act provides:

Effective 120 days after the date of enactment of this Act, none of the funds made available in this Act may be used to pay the salaries or expenses of personnel to inspect horses under Section 3 of the Federal Meat Inspection Act (21 U.S.C. 603) or under the guidelines issued under section 903 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note; Public Law 104-127).

As noted above, Section 3 of the FMIA requires FSIS to conduct ante-mortem inspection of horses, and the guidelines issued under Section 903 of the Federal Agriculture Improvement and Reform Act of 1996 require inspections relating to the transportation of horses. Thus, as of 120 days after the date of enactment of the Appropriations Act (i.e., March 10, 2006), funds appropriated under this Appropriations Act cannot be used to pay the salaries and expenses of USDA personnel to conduct the required ante-mortem inspections of horses.

Although the Appropriations Act prevents USDA from using funds appropriated under that Act for ante-mortem inspection services, it is important to note what the Appropriations Act does not provide. First and foremost, Section 794 does not amend the FMIA or otherwise alter USDA's

⁹ 9 C.F.R. Parts 350, 352 and 354.

¹⁰ *Id.*

¹¹ H.R. 2744, 109th Cong. (2005)

obligation to provide ante-mortem inspection for horse slaughter. This fact is explicitly acknowledged in the conference report explaining Section 794:

It is the understanding of the conferees that the Department is obliged under existing statutes to provide for the inspection of meat intended for human consumption (domestic and exported).¹²

Thus, notwithstanding the limitation on funds available under the Appropriations Act, FSIS remains obliged by law to provide for ante-mortem inspection of horses intended for human consumption.

Second, the Appropriations Act does not have the broader effect of prohibiting all funds for ante-mortem inspection activities. The plain language of Section 794 only prevents the use of funds appropriated under the Appropriations Act of fiscal year 2006 to pay salaries or expenses of personnel to inspect horses under Section 3 of the FMLA or under the guidelines issued under section 903 of the Federal Agriculture Improvement and Reform Act of 1996, effective 120 days after enactment. Funds otherwise available may be used to fund horse inspection activities, such as user-fees collected by FSIS for meat inspections involving overtime, holidays or exotic animals.¹³ Significantly, Section 794 does not prohibit the payment of salaries and expenses of personnel performing such inspections using these funds or as part of a voluntary, fee-for-service program promulgated pursuant to the authority of the AMA.

IV. Legal Grounds for the Petitioned Action

As noted above, USDA is required by law to conduct ante-mortem inspection of horses before they are slaughtered for human food.¹⁴ Without funds appropriated under the Appropriations Act, USDA must seek other means to provide ante-mortem inspection of horses slaughtered for

¹² H.R. REP. NO. 109-255 at 107 (2005)

¹³ 9 C.F.R. § 391.

human food. If funds are not available through other sources within the Department, USDA may meet its statutory obligation by promulgating a rule providing for voluntary, fee-for-service ante-mortem inspection under the AMA.

As described above, USDA has authority to establish voluntary, fee-for-service inspection of horses pursuant to the AMA.¹⁵ Indeed, USDA has already exercised its authority to establish voluntary, fee-for-service inspection of animals such as reindeer, elk, deer, antelope, water buffalo, bison, and rabbits.¹⁶

V. Good Cause Exists for Expedited Rulemaking

Pursuant to the Administrative Procedures Act,¹⁷ USDA must provide notice and the opportunity to comment upon proposed regulations unless the agency "for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."¹⁸ In the normal course, a substantive regulation is not made effective less than 30 days after its publication except "as otherwise provided by the agency for good cause found and published with the rule."¹⁹ Petitioners respectfully submit that good cause exists for USDA to promulgate and make immediately effective an interim final regulation establishing fee-for-service ante-mortem inspection.

As noted above, USDA has a statutory obligation to provide ante-mortem inspection for horse slaughter. To meet its inspectional duties under Section 3 of the FMIA, USDA must provide for

¹⁵ 21 U.S.C. § 603. The transportation-related inspection of equines is required by USDA regulation, not by statute, 9 C.F.R. § 88.5. If these inspections cannot be funded as outlined in this petition for emergency rulemaking, USDA should not continue to require such inspections.

¹⁶ 7 U.S.C. § 1622(h). This authority also extends to inspections relating to the commercial transportation of equines to slaughter.

¹⁷ 5 U.S.C. §§ 553(b) and (c).

¹⁸ 5 U.S.C. § 553(b)(B).

funding of salaries and expenses of ante-mortem inspectional personnel on or before March 10, 2006. Notice-and-comment proceedings and an effective date not less than 30 days after publication of the petitioned-for regulation is unnecessary. Petitioners, who are the only persons that will be currently affected by the establishment of fee-for-service ante-mortem inspection for horse slaughter, are fully prepared to accept this regulatory change upon publication. Alternatively, USDA may dispense with notice-and-comment insofar as:

General notice of proposed rule making shall be published in the Federal Register, unless persons subject thereto are named and either personally serviced or otherwise have actual notice thereof in accordance with law.³⁰

Petitioners submit that they will accept personal service of a regulation establishing fee-for-service ante-mortem inspection. Therefore, notice-and-comment rulemaking and delayed implementation of a fee-for-service inspectional program are unnecessary.

Completion of a notice-and-comment rulemaking prior to March 10, 2006, is practically impossible. We are unable to find precedent for USDA initiating and completing a notice-and-comment in such a short period of time. Therefore, notice-and-comment rulemaking is both unnecessary and impracticable.

The adverse economic impact of USDA's failure to provide ante-mortem inspection as required by Section 3 of the FMIA would be substantial and contrary to the public interest as defined by statute. Specifically, if USDA fails to provide ante-mortem inspection required by Section 3 of the FMIA, each affected establishment would be prohibited from continuing a large portion of their operations. As a result, petitioners expect that these facilities would be forced to close, with substantial adverse economic affect.

³⁰ 5 U.S.C. § 553(d)(3).

³⁰ 5 U.S.C. § 553(b) (emphasis supplied).

Petitioners estimate that the combined direct economic impact of their affected facilities would exceed \$41,000,000 annually, including:

- Combined payroll, not including state and federal inspectors, exceeds \$11,000,000.
- Petitioners Dallas Crown, Inc., and Beltex Corporation spend \$6 million annually on airfreight services at Dallas-Fort Worth International Airport (DFW). Petitioners' combined use of airfreight services makes them the single largest airfreight customer for DFW. Petitioners exclusively use U.S. carriers for their airfreight needs, with significant airfreight employment and flights attributable to shipment of Petitioners' products.
- Dallas Crown and Beltex's combined overhead expenses of approximately \$27 million, the majority of which is spent in the Dallas-Fort Worth Metroplex.
- Petitioner Cavel International, Inc., spends approximately \$8 million a year to purchase livestock from farmers throughout the Midwest and Western United States. It spends another \$1.4 million each year with local suppliers of goods and services.
- Cavel also pays transportation companies approximately \$1.5 million a year to transport livestock to its facility in DeKalb, Illinois. It spends an additional \$2.5 million a year to ship its finished meat products abroad.
- Petitioners' operations, which focus on the export of products to foreign markets, make a favorable contribution to the U.S. balance of trade. If Petitioners were forced to cease operations and close their facilities, the approximately \$41,000,000 that Petitioners now contribute to their local economies would disappear and constitute a net loss to the U.S. economy.

Though more difficult to quantify, Petitioners' facilities have further benefit to the public good, including:

- Pharmaceutical industries, universities, and other institutions use these facilities for research and training for veterinary and medical studies.
- Zoo animal diets across the country rely heavily upon the products of Petitioners' facilities. Zoos, which are dedicated to animal welfare, attach importance to sourcing their meat-based animal diets from USDA-inspected facilities because of the assurance that stringent animal welfare and food safety requirements are met. Forcing a change in zoo animal diets may adversely affect zoo animal health.
- Petitioners provide a humane and economically beneficial solution for the tens of thousands of horses that must be euthanized each year.

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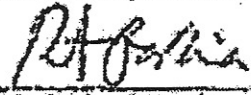
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Therefore, the ordinary timeframes for notice and public comment, as well as for delayed implementation from publication, would be impracticable, unnecessary, and contrary to the public interest. USDA should find and describe in a Federal Register notice good-cause for promulgation and implementation of an interim final rule on an expedited basis.

VI. Conclusion

For the foregoing reasons, petitioners respectfully request that the USDA promulgate on an expedited basis an interim final rule, as of March 10, 2005, to provide for voluntary, "fee-for-service" ante-mortem inspection of horses and transportation-related inspection of horses and the trucks used to transport them under the Agriculture Marketing Act, as amended, 7 U.S.C. § 1622.

Respectfully submitted,


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39:1	41:18	41:20	23:23	24:3	24:5		
43:6	43:14	44:6	24:8	25:17	25:20		
45:2	48:25	49:10	26:9	47:6	49:1		
49:10	49:11	50:4	51:12	53:22	54:9		
50:11	50:14	50:15	yet [2]	17:9	39:3		
51:18	52:9	53:2	<hr/> -Z- <hr/>				
53:5	53:14	54:21	Zarouff [8]	4:17			
56:16	56:18	56:22	4:22	5:1	5:5		
wants [8]	37:20		14:17	14:24	15:12		
38:14	39:13	41:1	18:25				
41:19	52:2	53:22	zero [6]	26:24	30:17		
57:8			31:12	31:18	51:6		
Washington [2]	1:10		52:6				
47:1			zoning [4]	1:6			
week [1]	41:1		33:11	33:14	34:6		
weeks [2]	34:8		<hr/> -[- <hr/>				
54:4			[sic] [1]	5:17			
West [7]	4:20	5:3	<hr/> -^ <hr/>				
6:25	9:18	12:18	^ [1]	32:24			
15:20	18:9						
white [3]	46:4						
46:14	47:4						
whole [1]	49:5						
wholesale [1]	48:15						
wholesaler [1]	47:17						
wholly [1]	8:15						
wish [1]	37:15						
within [3]	25:21						
26:2	52:3						
witness [18]	6:3						
8:17	10:5	22:22					
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28:4	31:9	32:12					
38:4	38:18	38:23					
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words [2]	8:1						
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world [4]	47:6						
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y'all [1]	37:4						
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16:1	16:13	16:17					
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22:13	22:23	24:9					
24:10	24:10	25:3					
28:7	29:10	30:23					
30:25	45:10						



DAVID CARTER
FINANCIAL INVESTIGATIVE SERVICES

1910 ESE Loop 323, No 264
Tyler, Texas 75701
903/216-3097 Fax: 903/566-8772
E-mail: dhcarterfis@att.net

January 24, 2006

Maurice B. Clark, CPA
808 W. Main
Gun Barrel City, TX 75156-5311

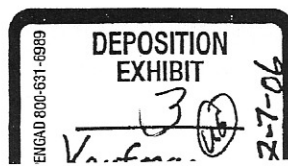
Dear Mr. Clark:

As I stated in our telephone conversation last week, 01-17, I need the complete depreciation schedule for Waldo Inc. for the fiscal years 1996, ending 08-1997, to the present. When we spoke last week, you indicated that you would be able to provide next week. Please let me know what day next week I can pick up the documents.

Sincerely,

D. H. Carter
TCPS Lic. No. A11618

cc: David Dodd,
Kaufman City Attorney

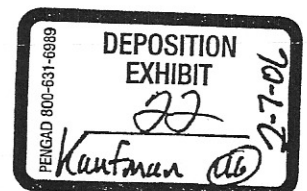


Horse Slaughter: An Unnecessary Evil

*A White Paper Underwritten by
The Estate of Paul Mellon*

Commissioned by: The Thoroughbred Retirement Foundation, Inc.

Authored by: Raymond Goydon & Stephen Kindel
The Fourth Wall Inc. • 270 Biery's Bridge Road
Bethlehem, PA 18017 • (610) 868-5444
info@fourthwallinc.com • www.fourthwallinc.com



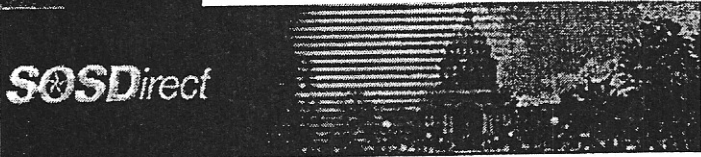
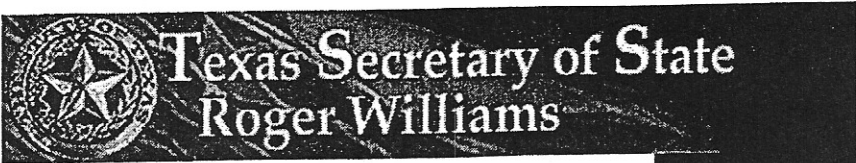
51,000 metric tons of it in 1980. By 2000, that total had dropped nearly 80% to just over 10,000 metric tons, a number which is expected to continue falling in coming years. [See chart previous page.]

The American horse slaughter business in the U.S. (and Canada) is, undoubtedly, in serious trouble. Plagued by a chronic inability to maintain its share, which is now at its lowest point in percentage terms in thirty years, almost totally dependent on a single source of demand that is itself shrinking on an annual basis, and battered by intense negative publicity, it's surprising the business is here at all. In fact, if it weren't for the fact that the American horse slaughter business isn't American, it would likely have collapsed under its own weight long ago. Not American?

That is correct. Although the two remaining slaughterhouses are in Texas and are technically Texas corporations, they are owned by foreign meat concerns. Bel-Tex, the larger of the two, is in Fort Worth, Texas, and is owned by Multimeat, NV, a Belgian company. Dallas Crown, in Kaufman, Texas, less than 80 miles east of the Bel-Tex facility, is owned by Chevideco France, headquartered in Roncq, a suburb of Lille, a city in France close to the Belgian border.

What difference does foreign ownership make? Actually, foreign ownership of a horse slaughterhouse in and of itself is not critical. It's the other businesses that these foreign owners operate that is. Multimeat and Chevideco are meat traders, wholesalers and distributors. Their primary product is beef; horsemeat is a sideline. (The amount of beef and veal consumed in Europe in 2000 and 2001 was ten times greater than the amount of horsemeat consumed, despite widespread concern about bovine spongiform encephalopathy or "mad cow" disease, according to MHR-Viandes). When these companies purchased controlling interests in America's horse slaughterhouses, they were simply engaging in vertical integration, a business strategy that allows a company greater control over its source of supplies and raw materials. For Multimeat and Chevideco, owning an American slaughterhouse means that neither has to bid against other European horsemeat importers, they, in essence, buy from themselves.

Vertical integration also allows marginal independent businesses—those consistently operating at or below breakeven—to continue operating. How so? Vertically integrated



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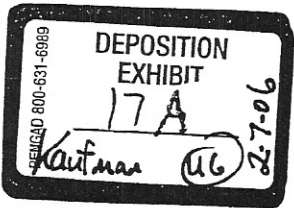
BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 132647900 **Entity Type:** Domestic For-Profit Corporation
Original Date of Filing: September 19, 1994 **Entity Status:** In existence
Formation Date: N/A
Tax ID: 17525607614 **FEIN:**
Duration: Perpetual
Name: DALLAS CROWN, INC.
Address: 2000 W FAIR ST
Kaufman, TX 75142-1868 USA

<u>REGISTERED</u> <u>AGENT</u>	<u>FILING</u> <u>HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED</u> <u>NAMES</u>	<u>ASSOCIATED</u> <u>ENTITIES</u>
Name			Address		Inactive Date
Christopher Soenen			2000 West Fair Kaufman, TX 75142 USA		

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Kaufman County Texas }

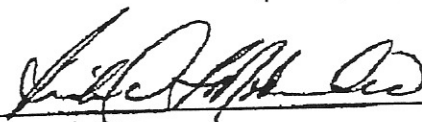
State of Texas }

CERTIFICATION

I, Richard Mohundro, Chief Appraiser of the Kaufman County Appraisal District, certify that the following listing is true and correct information from the certified appraisal rolls for property currently in the name of Waldo Inc.. The property has a legal description of Part of Blk 379 Kaufman Revised and has a geographical identification number of S7030-0398-00. The values are as follows:

Year	Name	Total Value
1982	Kaufman Meat Packers	\$109,443.
1983	Marlboro Packers	\$109,443.
1984	A.H. Hamner etal	\$130,860.
1985	A.H. Hamner etal	\$151,585.
1986	Dallas Crown Packing	\$151,585..
1987	Dallas Crown Packing	\$151,585.
1988	Dallas Crown Packing	\$151,585.
1989	Dallas Crown Packing	\$151,585.
1990	Dallas Crown Packing	\$190,431.
1991	Dallas Crown Packing	\$190,431.
1992	Dallas Crown Packing	\$216,191.
1993	Zarouff Investments	\$216,191.
1994	Zarouff Investments	\$216,191.
1995	Waldo Inc.	\$216,190.
1996	Waldo Inc.	\$216,190.
1997	Waldo Inc.	\$216,190.

2-7-06
Date


signature

