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## Page 1

## **1. Jurisdiction**

Jurisdiction is based on 28 U.S.C. §1331, because it is a civil action arising under the Constitution, laws, or treaties of the United States.

## **2. Background of the Case and Controversy.<sup>2</sup>**

2.1. The issue is whether Texas can and does prohibit commercial activities that involve the purchase, transport, and sale of horsemeat for human consumption. 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 meat product is processed in Texas and is shipped to foreign destinations from Texas. Tabs A and B, ¶s 2.1.

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. Tab A, ¶ 2.2. 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. Tab A, ¶ 2.2.

2.3. The Texas Meat Inspection Law was passed by the Texas 49<sup>th</sup> Legislative Session in 1945. Exhibit 3; 1 Apx. 31. This act delegated to the State Health Officer the authority to regulate the

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<sup>2</sup>This motion and the accompanying Brief and two declarations correspond in outline and numbering, in so far as possible, for ease in cross-referencing. The exhibits are in a four volume appendix, and are referred to by number, and a list appears behind Tab C. References to the Appendix are by volume and page, e.g. 1 Apx. 20. References to the Declarations are to Tabs A and B, then the paragraph.

processing and sale of the edible meat of cattle, calf, sheep, swine, or goat. Its purpose was to "prohibit and prevent the sale of food for human consumption of meat from animals . . . and to provide adequate and uniform regulations for inspection of meat and meat products intended for human consumption." 1 Apx. 32. Section 18 provided that "[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." 1 Apx. 36. The 51<sup>st</sup> Legislature in 1949 passed what is now Chapter 149, and expressly repealed Section 18 of the Act cited above, and, as to horses, replacing it with a more punitive prohibition. Exhibit 1, 1 Apx. 1-3. The original purpose of the Meat Inspection Act was to protect the public from unhealthy or mislabeled meat, but, as to horsemeat, the Legislature apparently concluded that healthy or not, people should not sell horsemeat to others because that was not the kind of meat "normally 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 processing 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. Tab A, ¶ 2.6; Exhibit 10; 1 Apx. 139. In 2001, 11,940 metric tons of processed horsemeat was exported from the United States, worth more than \$41 million. Tab A, ¶ 2.6.; Exhibit 11; 1 Apx. 145.

2.5. In the United States there are only two horsemeat processors, the Plaintiffs, and they process approximately 50,000 horses a year for foreign sales. Tab A, ¶ 2.7. Approximately 90% of the horses they slaughter are purchased from owners in other states, and transported in interstate commerce to the processing plants. Tabs A and B, ¶s 2.7. 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 \$250 to \$700, and are transported to slaughterhouses that are regulated by state and federal agencies. Tabs A and B, ¶s 2.7. Those who purchase horses and transport them to slaughterhouses are subject to extensive federal regulation. Tabs A and B, ¶s 2.7.

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.* Tabs A and B, ¶s 2.7.; Exhibits 12, 13, and 14, 1 Apx. 146-228. The Texas operations are subject to state supervision and regulation under TEX. AGRICULTURE CODE Chapter 148, which requires registration of horses, 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 Agricultural Extension Service and \$3.00 to a designated state agency “for each horse purchased for slaughter.” Exhibit 7; 1 Apx. 128.

2.7. Irreparable injury will occur if Plaintiffs are prosecuted under Chapter 149. Tabs A and B, ¶s 2.9.; Exhibits 20-29, 2 Apx. 434-456. In addition to the sale of horsemeat for human consumption, most parts of the horse carcass can be used for other purposes, including shoes, leather products, pharmaceuticals used in open heart surgery, pet food, fertilizer, and feed for 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 to be sold for human consumption. Here are 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. Exhibit 19;

2 Apx. 373. 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. Exhibit 20; 2 Apx. 434. Members of the Sheriffs' Association of Texas contact the meat processors in their efforts to recover stolen horses. Exhibit 21; 2 Apx. 435. Beltex Corporation has served as coordinator in several USDA funded equine projects with the School of Veterinary Medicine of the University of California, Davis. Exhibit 22; 2 Apx. 436. 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. Exhibit 23; 2 Apx. 437. Horseshoeing 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. Exhibit 24; 2 Apx. 438. 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. Exhibit 25; 2 Apx. 439. 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. Exhibit 26; 2 Apx. 441. 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. Exhibit 27; 2 Apx. 445. 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. Exhibit 28; 2 Apx. 447. The activities described above cannot be supported if the slaughter of meat for human consumption is criminal, and Plaintiffs are prosecuted.

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. Tab A, ¶ 2.10. No legitimate health or safety issues are involved, because the industry is subject to the identical state and federal 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 under Chapter 149.

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. Tab A, ¶ 2.10. 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. Tab A, ¶ 2-10; Exhibit 30; 3 Apx. 457. 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. Tab A, ¶ 2.11.; Exhibit 31; 3 Apx. 462.

### **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 has been served on him. He has appeared and designated counsel. Tab A, ¶ 3.1. 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. Tab A, ¶ 3.2.; Tab B, ¶ 3; Exhibit 32; 3 Apx. 468. 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. Tab A, ¶ 3.1.

3.2. Mr. Bill Conradt is the District Attorney for Kaufman County, Texas, where the Plaintiff,

Dallas Crown, Inc., operates its business. Tab A, ¶ 3.2.; Tab B, ¶ 3. His office is at 100 W. Mulberry St., Kaufman, Texas 75142, where a summons with this Complaint has been 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. Tab A, ¶ 3.2.; Tab B, ¶ 3; Exhibit 33; 3 Apx. 471.

#### **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. In the United States, Beltex sells its product to zoos, and by-products for other non-human-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. Tab A, ¶ 4.1.

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 43 people, had gross sales exceeding \$9,000,000 in 2001, and processed more than 13,500 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. Tab B, ¶ 4.



4.3. Empacadora de Carnes de Frenillo, 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, (Pesos) 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 horsemear for export for human consumption is transported by 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 in containers 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 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 the product is not sold to consumers in Texas, and all of it meets Mexican and United States standards for food intended for safe human consumption. Tab A, ¶ 4.3.

### **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 has been sent to The Office of the Attorney General State

of Texas.

**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 the Complaint has been served on the Secretary of Agriculture, Ann Veneman, the United States Attorney General, John Ashcroft, and United States Attorney for the Northern District of Texas, Jane Boyle.

#### **6. Chapter 149 Was Repealed**

**6.1.** If one contends that Chapter 149 is still a law, an incredible result follows. Plaintiffs' Texas operations are never without federal and state inspectors. A "raid" on the two plants could net five to seven federal and state employees who daily aid and abet Beltex and Dallas Crown in their endeavors to sell horsemeat for human consumption. Truck drivers could be arrested who are delivering horses. American Airlines could be raided and pilots, cargo loaders, and administrative personnel could be arrested while possessing and transporting horsemeat to Europe or Japan, all intended for human consumption. Customs agents of the United States could be arrested in Laredo, Houston, and Dallas-Fort Worth International Airport in possession of horsemeat and as those who are aiding and abetting Plaintiffs in illegal activities. "Aiders" and "abettors" are as "guilty" as Dallas Crown and Beltex. TEX. PENAL CODE § 7.02. If Chapter 149 has not been repealed, then it is unenforceable under federal law, because those charged by Congress with enforcing its laws cannot be criminalized in carrying out their duties by state law. Therefore, if Chapter 149 has not been

expressly repealed, or repealed by implication, it is unenforceable against the Plaintiffs and those who assist them, who are subject to the interstate and foreign commerce statutes of Congress and regulations of the Executive. Chapter 149, being in conflict with federal law, is preempted.

## **7. The Commerce Clause**

**7.1. The Commerce Clause, U.S. Const. art. I, §8, grants Congress the authority to “regulate commerce with foreign nations, and among the several States.” Chapter 149 unconstitutionally conflicts with 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 area in which they can regulate activities affecting interstate and foreign commerce, Chapter 149 does not regulate Plaintiffs’ commercial activities in interstate and foreign commerce – 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. Tab A, ¶s 7.1.-7.5. Plaintiffs cannot transport horsemeat on the interstate highway system in Texas, including Interstate Highways 45, 35, 20, and 10, between Dallas, Houston, Fort Worth, 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. I, §8. Processing, possessing, or transporting healthy and USDA inspected horsemeat intended for human consumption, for a**

commercial purpose, is prohibited. Slaughtering a horse 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 give away healthy horsemeat for human consumption. It is only the possession or transportation of horsemeat intended 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. I, §8. Any local 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. Exhibit 12 (1 Apx. 146); Exhibit 13 (1 Apx. 149); Exhibit 15 (2 Apx. 229); Exhibit 16 (2 Apx. 232); Exhibit 34 (3 Apx. 471A); Exhibit 36 (3 Apx. 491); Exhibit 37 (3 Apx. 493); Exhibit 38 (3 Apx. 495); Exhibit 39 (3 Apx. 571); Exhibit 44 (4 Apx. 706); and Exhibit 45 (4 Apx. 719).

8.2. Purchasing, handling, and the transporting 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.*, Exhibit 12; 1 Apx. 146, preempts the field of transporting horses to slaughterhouses, and delegates to the Department of Agriculture the authority to regulate this field. Tabs A and B, ¶s 8.1.-

8.3. Regulations have been promulgated in 9 C.F.R. §88.1 *et. seq.*, Exhibit 13; 1 Apx. 149, 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. Exhibit 16; 2 Apx. 232.

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 or 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 includes 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 includes "horses, 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 provides specific methods of "in the case of cattle, calves, horses, mules, sheep, swine and other livestock." Exhibit 36; 3 Apx. 491.

8.5. Federal regulations that 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 "livestock" and "meat" are defined to include "horse" or "equines" when also referring to "cattle, sheep, swine, or goats." "Capable for use as human food" references "livestock," and horsemeat is capable of use as human food. The federal regulations contain provisions for inspection of 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 Exhibit 36; 3 Apx. 491.

8.6. In 1921 Congress passed the Packers and Stockyards Act, 7 U.S.C. §181 *et seq.* Exhibit 38; 3 Aprx. 495. 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. I, § 8, cl. 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.” Tab A, ¶ 9.2. Exhibit 39; 3 Apx. 571. 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 CFR § 94.15(a) provides that “[a]ny 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. Exhibit 40; 4 Apx. 595.

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. Tab A, ¶ 9.3.; Exhibit 42; 4 Apx. 658. 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. Tab A, ¶9.2.; Tab B, ¶ 9.1. 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). Tab A, ¶ 9.5; Exhibit 43; 4 Apx. 671. NAFTA was adopted and



implemented by the "North American Free Trade Implementation Act." 19 U.S.C. § 3301 *et seq.* Exhibit 44; 4 Apx. 706. 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 "elimination 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.

#### **10. Relief Requested**

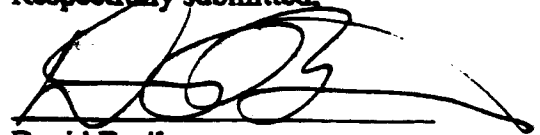
10.1. Plaintiffs are under imminent threat of prosecution by the Defendants. The statute Defendants are relying on is illegal, facially and in application violates the interstate and foreign commerce clauses of the United States Constitution, purports to ban a commercial activity subject to preeminent regulation by United States statutes and executive branch regulations, contravenes treaties and international agreements, and violates the Fifth Amendment and, by any reasonable construction, has been repealed. The threatened prosecutions, if charges are pursued, will cause the Texas Plaintiffs' businesses to be closed. Ultimate success by the Texas Plaintiffs in state courts could take so long that Plaintiffs will be put out of business in the interim. Tab A, ¶ 6.11-3; Tab B, ¶ 6.11-3.

10.2. 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, or that, under state law, Chapter 149 has been repealed.

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

Respectfully submitted,



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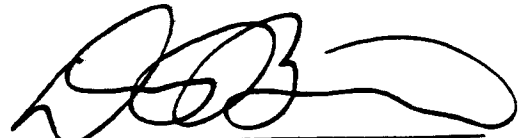
Certificate of Conference

I have conferred with the Attorney of Record for Tim Curry, a defendant, and she will not agree to a temporary injunction. She and I have discussed this motion and how to proceed. She requests a hearing on this motion, to which Plaintiffs have no objection.

  
David Broiles

#### Certificate of Service

A copy of this motion with the attached Declarations and the four volume appendix, brief, and proposed injunction was hand delivered on October 4, 2002, to Ann Diamond and Bill Conratt. Also on October 4, 2002, copies of all documents were sent Federal Express to Jane Boyle (for the Secretary of Agriculture) and to the Texas Attorney General, at the addresses listed in the Complaint.

  
David Broiles



for four years. I have been involved in the food processing business for 25 years, and have worked with the federal regulations and inspectors concerned with processing meat for human consumption.

## **2. Background**

2.1. I know of 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 by truck in Texas, and is shipped to foreign destinations from Texas by airplanes and ships.

2.2. While horsemeat, like beef, poultry, and game has long been consumed in Europe, in Texas the human consumption of horsemeat has never been popular enough to warrant commercial sales. The presence of many horses in the United States and Mexico justifies commercial processing of horsemeat for human consumption abroad, and, therefore, slaughterhouses operate in Texas and Mexico for export of horsemeat for human consumption.

2.3. The first time I became aware of Texas Agriculture Code Chapter 149 was when I received a call from the American Quarterhorse Association in the summer of 2002, informing me of the Attorney General's Opinion, which a professor from West Texas State sent to me. I received a call later that morning from a Dallas Morning News reporter who asked me for a comment. I told her I did not want to comment about something so, she sent me a information on State Representative Goolsby's request for an inquiry. I then received a letter from Mr. Tim Curry's office, to which attorneys for Beltex responded.

2.4. I never thought my work was illegal. I cannot understand how processing horsemeat for sale in other countries could be a crime. The plant is subject to state and federal inspections. As this affidavit is being prepared these government employees are on site at Beltex: (1) Dr. B.V. Swamy,

D.V.M., U.S.D.A., FSIS medical officer, who is here during all operating hours, to inspect horses; (2) Debbie Patterson and Glenn Grones, U.S.D.A. FSIS, slaughter inspectors, (3) Ronnie Ober, a representative from the Texas and Southwestern Cattle Raisers Association who inspects the brands of all horses as required by Texas law to prevent horse theft; and (4) Egypt T. Allen, from Texas Animal Health Commission, who does a blood test for EIA on the horses and submits the samples to Texas A&M University for analysis. These technicians change, and there are several of them. Biweekly, a Bureau of Land Management inspector comes through to check Mustangs' certificates and horses, to determine if it is legal to have them. Dr. Isaac Sterling, U.S.D.A., Agricultural Marketing Service, Microbiologist with the Commodities Scientific Support Division, comes to Beltex from Washington D.C. to make periodic checks of our laboratory, and certifies it as approved by the U.S.D.A. Dr. Larry Lee, D.V.M., from Omaha Nebraska, is a representative of the U.S.D.A. Food Safety & Inspection Service, Technical Service Center, as Branch Chief, Import/Export Coordination, who inspects and certifies Beltex's compliance with requirements for export to the European Union members. Finally, Animal Plant Health Inspection Service (APHIS), inspector Bob Crawford checks the transportation of horses to the plant for compliance with the Transportation of Horses to Slaughter Act.

2.5. With so much government participation presence and inspection, I cannot believe our business operation is illegal.

2.6. Trade publications from the Internet reflect that in 2000, worldwide export of horsemeat from the twelve largest exporting countries was reported to be 131,963 metric tons. (Exhibit 10). The United States is reported to have exported 10,061 metric tons of processed meat, Mexico 2,159. Worldwide processing of horses in 2000 reportedly 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, reports indicate 11,940 metric tons of processed horsemeat was exported from the United States, worth more than \$41 million. (Exhibit 11).

2.7. In the United States there are only two horsemeat processors, both plaintiffs in this lawsuit, who process approximately 50,000 horses a year for foreign sales. Presently, approximately 90% of the horses Beltex slaughters are purchased in other states and transported in interstate commerce to the processing plants in Texas. 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 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 federal regulation under the Commercial Transportation of Equine for Slaughter Act of 1996, 21 U.S.C. § 901 *et seq* (Exhibit 12), and the Code of Federal Regulations § 88.1. (Exhibit 13) In February 2002, the U.S.D.A. delivered to Beltex hundreds of packets containing material for us to provide to transporters. A Notebook, (Exhibit 14), is the guidebook for U.S.D.A.'s Slaughter Horse Transport Program. It includes a videotape. The labels, summary, and a form are included with Exhibit 14.

2.8. Like cattle, the horses are killed using methods required by the Humane Methods of Slaughter Act, 7 U.S.C. §1901, (Exhibit 15), with United States Department of Agriculture (U.S.D.A.) inspectors on site during operating hours. 21 U.S.C. §601 *et. seq.* (Exhibit 16) The procedures followed at Beltex are set by the U.S.D.A. Veterinarian who is on-site, and a copy of U.S.D.A. Veterinarian Procedures, including Title 9, Volume 2, parts 416, 417, and 313 are included in Exhibit 17. The Texas operations are subject to state supervision and regulation under TEX.

AGRICULTURE CODE Ch. 148, which requires, the purchase of only animals sold with a bill of sale, with records kept as prescribed, and with payment of a \$2.00 fee to the Texas Agricultural Extension Service and \$3.00 to a designated state agency "for each horse purchased for slaughter." In fiscal 2001 Beltex paid \$138,190 as required for brand inspection under Chapter 148, Texas Agriculture Code. Also, Beltex makes weekly filings with the County Clerk in Tarrant County, and a copy of that filing for September 30, 2002, is Exhibit 18. Each page is a copy of the Brand Inspector's Report made on ten horses delivered to Beltex that week.

**2.9.** In addition to the sale of horsemeat for human consumption, other parts of the horse carcass can be sold, including 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 affected if the Beltex is not permitted to process horsemeat for human consumption, since that constitutes the main source of sales, which supports these related activities.

**2.9.1.** The Texas Animal Health Commission, an agency of Texas, has a technical representative at the Texas facilities to test for equine disease anytime horses are received. The authority for this is found in the Texas Agriculture Code, Chapters 161 through 168. (Exhibit 19) Specifically, testing surveillance is undertaken for "equine infectious anemia," an incurable disease caused by a virus and spread to animals by biting flies. (Exhibit 20) 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. All horses processed are subject to strict traceability.



2.9.2. Members of the Sheriffs' Association of Texas contact the meat processors in their efforts to recover stolen horses. (Exhibit 21)

2.9.3. Beltex Corporation has served as coordinator in several U.S.D.A. 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. (Exhibit 22)

2.9.4. Texas A&M College of Veterinary Medicine is supplied equine reproductive tracts and feet for instruction to students in examination of abnormalities, nerve block procedures, and reproduction tracts for abnormalities and pregnancy determinations. (Exhibit 23)

2.9.5. Horseshoeing 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. (Exhibit 24)

2.9.6. Central Nebraska Packing, Inc. relies on 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 readily available. Among the customers purchasing horsemeat for their animals are the Dallas Zoo, Fort Worth Zoo, Houston Zoo, Austin Zoo, New York Zoological Society, Siegfried & Roy, Denver Zoo, Miami Zoo, Baltimore Zoo, Ringling Brothers, Indianapolis Zoo, Little Rock Zoo, Oklahoma City Zoo, University of California, and many others. (Exhibit 25)

2.9.7. The Texas and Southwestern Cattle Raisers Association has inspectors at the two Texas 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. (Exhibit 26)

**2.9.8.** Edwards Life Sciences L.L.C. is a producer of products and technologies to treat advanced cardiovascular disease and a leading heart valve company. They say their products are sold in 80 countries, and they use 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. (Exhibit 27)

**2.9.9.** Oklahoma State University has collected mare tracts utilized for teaching reproductive physiology and other equine courses. (Exhibit 28)

**2.9.10.** Numerous vendors would be adversely financially affected if Beltex closed while it sought to establish that its operations are legal. (Exhibit 29)

**2.10.** I have read that on February 13, 2002, a Texas State Representative requested from the Texas Attorney General an opinion about the enforceability of Chapter 149. I have seen letters from March 2002, that 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, urging the Attorney General to uphold Chapter 149. In a March 2002, letter to the Attorney General, 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. (Exhibit 30)

**2.11.** On August 7, 2002, the Attorney General, in Opinion No. JC-0539, stated that Chapter 149 was not preempted by the federal Meat Inspection Act, 21 U.S.C. ch. 12, and that county or criminal district attorneys could investigate and prosecute alleged violations of Chapter 149. (Exhibit 31)

### **3. The Defendants**

3.1. Mr. Tim Curry is the elected District Attorney in Tarrant County, Texas, where Plaintiff Beltex Corporation operates its business. 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. (Exhibit 32) 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. I have read that Mr. Bill Conradt is the District Attorney for Kaufman County, Texas, where the Plaintiff, Dallas Crown, Inc., operates its business. 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. (Exhibit 33)

#### **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 exports meat for human consumption from the United States to Europe and Japan. Beltex has paid hundreds of thousands of dollars in property taxes, and in 2001 paid \$85,156. Beltex pays significant fees to agencies of the State, and in 2001 paid \$138,190 for inspections. 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 have to cease operations in Texas.

4.2. Dallas Crown, Inc. operates a meat processing plant in Kaufman, Texas. Dallas Crown, Inc., a competitor of Beltex, processes meat for human consumption and that product is exported from

the United States.

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 exceeded \$63,000,000 (Pesos), and it slaughtered in excess of 25,000 horses, while paying more than \$1,500,000 (Pesos) in freight charges. Much 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 through United States' customs and meet U.S.D.A. health inspection requirements. It is then delivered into Texas, and title passes to Beltex. The product is transported to the port in Houston for shipping abroad or to Dallas-Fort Worth International 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 international ports and airports located in Texas. Texas Chapter 149 imposes a permanent embargo on its product entering or leaving Texas, subjecting the truck and airline transporters to criminal liability, and will close, under the authority of Texas law alone, the border in Texas that separates Mexico from the United States. The effect of this Texas law is not to protect Texas residents from any unhealthy food product or deceptive activity, because none of the product is sold to consumers in Texas, and all of it meets United States Government standards for food intended for safe human consumption.

#### **5. Department of Agriculture**

The United States of America, through the Department of Agriculture, implements policies of the federal government relating to the sale and distribution of horsemeat for human consumption

in interstate and foreign commerce. American Airlines, Continental Airlines, and Delta Airlines are governed in their routes and services by federal law. (Exhibit 34) Beltex and Dallas Crown rely on three routes out of Texas to Japan and Europe to ship their product. Trucking companies used to transport meat are regulated by federal law. (Exhibit 35)

## **6. The Issue**

**6.1.** Beltex and Dallas Crown are under threat of imminent prosecution by Messes. Curry and Conradt. The threatened prosecutions, if charges are pursued, will probably cause the Texas businesses to be closed. Ultimate success by Beltex and Dallas Crown in the state courts could take so long that they will be put out of business in the interim.

**6.2.** To avoid irreparable injury and loss, Beltex and Dallas Crown seek a federal court declaration that Chapter 149 is not enforceable against them because its application is preempted by federal statutes and regulations, or 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 a temporary injunction enjoining prosecution of Beltex, Dallas Crown, or Empacadora de Carnes under Chapter 149.

## **7. Interstate and Foreign Commerce**

**7.1.** If Chapter 149 is enforceable, Empacadora de Carnes cannot transport horsemeat for export out of Texas. The meat is loaded in sealed containers for transport from Mexico to Europe or Japan by passing into Texas. Empacadora de Carnes would be deprived of two major ports of export. If Chapter 149 is enforceable, Beltex and Dallas Crown cannot transport horsemeat on the interstate highway system in Texas, including Interstate Highways 45, 35, 30, 20, and 10, between Dallas, Houston, Fort Worth, and Nuevo Laredo.

7.3. As I read it, under Chapter 149, processing, possessing, or transporting healthy and U.S.D.A. inspected horsemeat intended for human consumption, for a commercial purpose, is prohibited. Slaughtering a horse 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. I do not see any connection between Chapter 149 and the goal of providing the public safe meat or to deter deceptive practices. These goals are furthered by other Texas law and federal law. Commercially processed horsemeat is as fit for human consumption as beef or pork, because all are U.S.D.A. inspected under similar regulations.

7.4. If it is enforceable, Chapter 149 bans the exportation from any port in Texas of horsemeat intended for human consumption.

7.5. As I understand it, Chapter 149 does not prohibit slaughtering horses for the sale of horsemeat for animal consumption, in pet food, or for zoo food. Beltex or Dallas Crown could give away healthy horsemeat for human consumption. It is only the possession, sale, or transportation of horsemeat intending it to be for sale for human consumption that is prohibited by Chapter 149.

### **8. Federal Statutory and Regulatory Provisions**

8.1. Federal statutory and regulatory provisions regulate Plaintiffs' businesses in processing horsemeat for human consumption.

8.2. The purchase, handling, and transportation of horses to the slaughterhouse is regulated by federal law. As mentioned, the Commercial Transportation of Equine for Slaughter Act of 1996, 21 U.S.C. § *et. seq.*, regulates 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 record keeping requirements for purchases and the humane

procedures for handling horses intended for transportation for slaughter. Carriers transporting horses by trucks in interstate commerce are subject to regulation by the Interstate Commerce Commission.

**8.3.** The Meat Inspection Act regulates the area of commerce to which Chapter 149 purports to apply, and Chapter 433, Texas Health Code, incorporates this act and most regulations. (Exhibit35)

The scope of the Meat Inspection Act is set forth at 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 or 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 includes 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. All of these inspections and procedures are carried out at Beltex. Procedures for the examination of animals before slaughter and humane methods of slaughter, expressly includes "horses, mules, and other equines." 21 U.S.C. § 603. During all operating hours, inspectors from the U.S.D.A. charged with the responsibility of inspecting under this Act and U.S.D.A. Regulations are on-site carrying out inspections. In 2001, Beltex paid \$69,120 to the U.S.D.A. for overtime charges for inspection services. The salary or wages of U.S.D.A. personnel are paid by the government.

**8.4.** Federal agricultural statutes regulate the slaughter animals. 7 U.S.C. §1902 specifically

concerns humane methods of slaughter and provides specific methods of "in the case of cattle, calves, horses, mules, sheep, swine and other livestock." (Exhibit 36)

8.5. Federal regulations regulate the slaughter of animals for human consumption. 9 C.F.R. §301.2 provides a number of definitions relating to the Meat Inspection Act. (Exhibit 35) Both the terms "livestock" and "meat" are defined to include "horse" or "equines" when also referring to "cattle, sheep, swine, or goats." "Capable for use as human food" references "livestock," and horsemeat is capable of use as human food. The federal regulations contain provisions for inspection of 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. I have worked at meat processing plants that process beef, pork, and poultry, and the procedures for all kinds of meat are the same as those applicable to Beltex.

8.6. In 1921 Congress passed the Packers and Stockyards Act, 7 U.S.C. §181 *et seq.* (Exhibit 38) 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.

## **9. Treaties and Trade Agreements**

9.1. Exporting horsemeat is subject to federal laws, regulations, and agreements.

9.2. The United States is 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. (Exhibit 39) The agreement applies to animal products including fresh meat, like 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. (Exhibit 40) 9 CFR § 94.15(a) provides that “[a]ny 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. As a result of agreements between the United States and the European Community, there are reciprocal arrangements by which European Community members accept U.S.D.A. inspections and regulations as qualifying meat for sale in Europe. European inspectors are permitted to, and have inspected the Beltex operation. I do not implement this agreement. I am responsible for seeing that the European Union regulations are implemented, and I have a copy of those regulations. However, confirming compliance is the role of the U.S.D.A.. A copy of the Guidelines For the Production of Fresh Meat Intended for Export to the European Union is market Exhibit 41.

9.3. Empacadora de Carnes imports its horsemeat product that is intended for human consumption into the United States, subject to compliance with U.S.D.A. regulations. It is shipped within the United States to federally approved ports in Houston and at Dallas-Fort Worth International Airport. See 9 C.F.R. §91.1-3 (Exhibit 42).

9.4. The Agreement between the United States and the European Community authorizes the establishment and recognition of health standards and inspection procedures by federal authority in the United States, through agencies of the federal government. Plaintiffs are subject to regulations applicable to the safety and inspection of horsemeat shipped to Europe for human consumption.

9.5. The United States, Mexico, and Canada are parties to the North American Free Trade Agreement (NAFTA). (Exhibit 43) I am told NAFTA was adopted and implemented by the “North American Free Trade Implementation Act.” 19 U.S.C. § 3301 *et seq.* (Exhibit 44) I understand that

NAFTA imposes on the United States the obligation to improve access to markets by "elimination of import barriers to trade between them in agricultural goods," which includes horsemeat. There are no separate regulations that I know of, related to NAFTA. I know that the U.S.D.A. and Mexican inspection agency work together, and accept each countries stamp of approval.

### **10. Texas Provisions**

**10.1.** I am informed there are no Texas regulations for the meat product other than the ones I have described. I am informed the TEXAS HEALTH AND SAFETY CODE. Section 433.033 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.

"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) "Livestock" includes "horses, mules, [and] other equines." We do export our product in boxes and with labels that say "Taste of Texas." We participate with the Texas Secretary of Agriculture to promote agricultural products of the State of Texas. But no safety inspectors are in the plant, this role is for the U.S.D.A..

**10.2.** Section §433.007(a) of the TEXAS HEALTH AND SAFETY CODE provides: "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. As mentioned, 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 or will not be enforced.

### 11. Airlines and Trucks

11.1. Horsemeat that is exported from Texas and Mexico through Houston and Dallas-Fort Worth International Airport travels by truck to the port of embarkation. These trucks are regulated in interstate commerce by the federal government. (Exhibit 37)

11.2. Airlines, like American Airlines and Delta Airlines, which transport most of the Plaintiffs' product, are regulated by the federal government. If Chapter 149 is enforceable, it would prohibit either airline from using a route out of Texas to provide the service of transporting horsemeat in foreign commerce. (Exhibit 46)

Signed under the penalty of perjury on October 3, 2002.

  
Dick Koehler

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.

NO. 4-02CV0804-Y

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.

**DECLARATION OF MANFRED RAMAULT**

The undersigned,, declares under the penalty of perjury, as follows:

**1. Declarant**

1.1. My name is Manfred Ramault. I work in Kaufman, Texas. I make this declaration on personal knowledge. I am competent to make this declaration. Some of the laws or agreements I do not have personal knowledge about, but are laws or agreements that I operate Dallas Crown's business under. The Exhibits separately submitted are copies of all or parts of the documents described in this declaration. I am not an expert about all of them, other than to know how they affect the business I manage, which I describe below.

1.2. I am the General Manager of Dallas Crown, Inc., located in Kaufman, Texas, but have been

for only three weeks. I have obtained information for this declaration from business records of Dallas Crown.

## **2. Background**

2.1. I know of only two processors of horsemeat for human consumption operating in the United States. Both are located in Texas – Beltex Corporation and Dallas Crown, Inc.

2.2. The presence of many horses in the United States and Mexico justifies commercial processing of horsemeat for human consumption abroad, and, therefore, slaughterhouses operate in Texas for export of horsemeat for human consumption.

2.3. The first time I became aware of Texas Agriculture Code Chapter 149 was when I arrived at Dallas Crown, about three weeks ago.

2.4. I do not think my work is illegal. I cannot understand how processing horsemeat for sale in other countries could be a crime. The Dallas Crown plant is subject to state and federal inspections; As this affidavit is being prepared Dr. Darrell Meadows, D.V.M., U.S.D.A., FSIS medical officer, who is here during all operating hours, to inspect horses, is on site at Dallas Crown. Mr. Jack Peavey, a representative from the Texas and Southwestern Cattle Raisers Association who inspects the brands of all horses as required by Texas law to prevent horse theft and Richard Hanson, from Texas Animal Health Commission, who does a blood test for EIA on the horses and submits the samples to Texas A&M University for analysis are in the facility on Tuesdays and Thursdays. A Bureau of Land Management inspector comes on a weekly basis to check Mustangs' certificates and horses, to determine if it is legal to have them. Dr. Isaac Sterling, U.S.D.A., Agricultural Marketing Service, Microbiologist with the Commodities Scientific Support Division, comes to Dallas Crown from Washington D.C. to make periodic checks of our laboratory, and certifies it as approved by the

U.S.D.A. Dr. Jerry Lee, D.V.M., from Omaha Nebraska, is a representative of the U.S.D.A. Food Safety & Inspection Service, Technical Service Center, as Branch Chief, Import/Export Coordination, who inspects and certifies Dallas Crown's compliance with requirements for export to the European Union members. Finally, Leslie Chandler III, an inspector from the U.S.D.A. Animal Plant Health Inspection Service (APHIS) checks the transportation of horses to the plant for compliance with the Transportation of Horses to Slaughter Act.

2.7. Presently, approximately 90% of the horses Dallas Crown slaughters are purchased in other states and transported in interstate commerce to the processing plant in Texas. 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 purchased by commercial horse-buyers at auctions for between \$250 to \$600, and are transported to Dallas Crown's slaughterhouse that is regulated by state and federal agencies. Those who purchase horses and transport them to slaughterhouses are subject to federal regulation under the Commercial Transportation of Equine for Slaughter Act of 1996, and the Code of Federal Regulations. The U.S.D.A. has delivered to Dallas Crown hundreds of packets containing material for us to provide to transporters. A Notebook is the guidebook for U.S.D.A.'s Slaughter Horse Transport Program. It includes a videotape.

2.8. Like cattle, the horses are killed using methods required by the Humane Methods of Slaughter Act, with United States Department of Agriculture (U.S.D.A.) inspectors on site during operating hours. The procedures followed at Dallas Crown are set by the U.S.D.A. Veterinarian who is on-site. The Texas operations are subject to state supervision and regulation under TEX. AGRICULTURE CODE Ch. 148, which requires, the purchase of only animals sold with a bill of sale, with records kept as prescribed, and with payment of a \$2.00 fee to the Texas Agricultural Extension

Service and \$3.00 to a designated state agency "for each horse purchased for slaughter." In fiscal 2001 Dallas Crown paid \$66,300 as required for brand inspection under Chapter 148, Texas Agriculture Code.

2.9. In addition to the sale of horsemeat for human consumption, other parts of the horse carcass can be sold, including shoes, leather products, pharmaceuticals used in open heart surgery, pet food, fertilizer, catfish bait and to feed zoo animals, some of which are endangered species dependent on horsemeat. At Dallas Crown we have a separate line producing packaged animal pet food. Numerous organizations or persons will be affected if the Plaintiffs are not permitted to process horsemeat for human consumption, since that constitutes the main source of sales, which supports these related activities. We supply hides used for drums in Native American ceremonies. Equine Bio-Tech, Inc. uses materials salvaged from horses brought to slaughter for medicinal aids horse join injuries.

### **3. The Defendants**

Mr. Bill Conradt is the District Attorney for Kaufman County, Texas, where the Plaintiff, Dallas Crown, Inc., operates its business. Several weeks ago there was an article in the newspaper in which Mr. Conradt said he was investigating Dallas Crown. Our attorney met with him, and this was confirmed. 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 Plaintiff**

Dallas Crown Inc. is a Texas corporation, operating a meat processing plant in Kaufman, Texas. Dallas Crown has processed horsemeat for human consumption for 8 years, and exports meat for human consumption from the United States to Europe, Mexico, and Japan. Dallas Crown has

paid thousands of dollars in property taxes, and in 2001 paid \$9,186. Dallas Crown pays significant fees to agencies of the State, and in 2001 paid \$66,300 for inspections. Dallas Crown employs 43 people, had gross sales exceeding \$9,200,000 in 2001, and processed more than 13,500 horses that year. If Chapter 149 is enforceable, Dallas Crown will probably have to cease operations in Texas.

### **5. Department of Agriculture**

The United States of America, through the Department of Agriculture, implements policies of the federal government relating to the sale and distribution of horsemeat for human consumption in interstate and foreign commerce. American Airlines, Continental Airlines, and Delta Airlines are governed in their routes and services by federal law. Dallas Crown relies on these routes out of Texas to Japan and Europe to ship its product. Trucking companies used to transport meat are regulated by federal law.

### **6. The Issue**

6.1. Dallas Crown is under threat of imminent prosecution by Mr. Conratt. The threatened prosecution, if charges are pursued, will probably cause Dallas Crown to be closed. Ultimate success by Dallas Crown in the state courts could take so long that it will be put out of business in the interim.

6.2. To avoid irreparable injury and loss, Dallas Crown seeks a federal court declaration that Chapter 149 is not enforceable against it because its application is preempted by federal statutes and regulations, or under state law, Chapter 149 has been repealed.

6.3. To prevent irreparable injury and loss to Dallas Crown until final disposition of this case, it seeks a temporary injunction enjoining prosecution of Dallas Crown under Chapter 149.



## **7. Interstate and Foreign Commerce**

7.1. I do not see any connection between Chapter 149 and the goal of providing the public safe meat or to deter deceptive practices. These goals are furthered by other Texas laws and federal laws. Commercially processed horsemeat is as fit for human consumption as beef or pork, because all are U.S.D.A. inspected under identical regulations.

7.2. If it is enforceable, Chapter 149 bans the exportation from any port in Texas of horsemeat intended for human consumption.

7.3. As I understand it, Chapter 149 does not prohibit slaughtering horses for the sale of horsemeat for animal consumption, in pet food, or for zoo food. Dallas Crown could give away healthy horsemeat for human consumption. It is only the possession, sale, or transportation of horsemeat intending it to be for sale for human consumption that is prohibited by Chapter 149.

## **8. Federal Statutory and Regulatory Provisions**

8.1. Federal statutory and regulatory provisions regulate Plaintiff's business in processing horsemeat for human consumption.

8.2. The purchase, handling, and transportation of horses to the slaughterhouse is regulated by federal law. As mentioned, the Commercial Transportation of Equine for Slaughter Act of 1996, regulates the field of transporting horses to slaughterhouses, and delegates to the Department of Agriculture the authority to regulate this field. Regulations have been promulgated prescribing record keeping requirements for purchases and the humane procedures for handling horses intended for transportation for slaughter. Carriers transporting horses by trucks in interstate commerce are subject to regulation by the Interstate Commerce Commission.

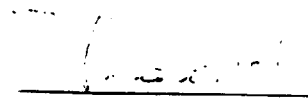
8.3. The Meat Inspection Act regulates the area of commerce to which Chapter 149 purports to apply, and Chapter 433, Texas Health Code, incorporates this act and most regulations. The Act includes provisions regarding examination of animals before slaughtering, humane methods of slaughter, post-mortem examination of carcasses, and inspection of meat food products. All of these inspections and procedures are carried out at Dallas Crown. Procedures for the examination of animals before slaughter and humane methods of slaughter, expressly includes horses, mules, and other equines. During all operating hours, inspectors from the U.S.D.A. charged with the responsibility of inspecting under this Act and U.S.D.A. The salary or wages of U.S.D.A. personnel are paid by the government.

## **9. Treaties and Trade Agreements**

9.1. The United States is 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 agreement applies to animal products including fresh meat, like Equine meat products and red meat (equidae). As a result of agreements between the United States and the European Community, there are reciprocal arrangements by which European Community members accept U.S.D.A. inspections and regulations as qualifying meat for sale in Europe. Confirming compliance is the role of the U.S.D.A..

9.2. The Agreement between the United States and the European Community authorizes the establishment and recognition of health standards and inspection procedures by federal authority in the United States, through agencies of the federal government. Dallas Crown is subject to regulations applicable to the safety and inspection of horsemeat shipped to Europe for human consumption.

Signed under the penalty of perjury on October 3, 2002.

  
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Manfred Ramault

Declaration of Manfred Ramault