Judge Orders Concealment of 'Pink Slime' Data

RYAN J. FOLEY, Associated Press

IOWA CITY, Iowa (AP) — A judge has blocked Iowa State University from releasing documents about food safety research conducted for the beef-processing company that makes the product dubbed "pink slime" by critics.

District Judge Dale Ruigh ruled last month that releasing the records would damage Beef Products, Inc. by revealing information about its proprietary food-processing techniques. Releasing them also would eliminate revenue that Iowa State laboratories receive from companies, who would go elsewhere for testing if they feared results were public records, he said.

"I think it's in the best interest of the companies that do business in Iowa, the general public, and the university," said attorney John Bickel, who represented BPI.

BPI, based in Dakota Dunes, S.D., filed legal action to block the release of records in 2010 after they were requested by Marler Clark, a Seattle law firm that specializes in food safety. The New York Times later sought the documents.

BPI calls its signature product lean finely textured beef. It is made using a process in which trimmings left after a cow is butchered are heated, lean meat is separated from fat and ammonia is applied to kill bacteria. The product, widely used in ground hamburger, faced a nationwide backlash last year after media reports depicted it as unsavory, causing retailers and schools to stop using it and BPI to close plants in Iowa, Texas and Kansas. The company has filed a $1.2 billion defamation lawsuit against ABC News and scientists who criticized the product.

The research at issue was conducted by Iowa State microbiologist James Dickson, who was hired by BPI as a food safety consultant in 2002. Dickson defended the company during last year's uproar, saying his research has found that its ammonia process makes the product safer by killing bacteria that causes food-borne illness. Dickson's research has long been cited by the company and its supporters.

The Iowa Attorney General's Office, which represented the university, argued that releasing the records would not be in the public interest because "they do not affect public policy and do not offer insight as to how government is doing its job." The release would deter companies and farmers from paying ISU for testing, its lawyer argued.

The office has learned that the requesters no longer seek the records and doesn't expect an appeal, spokesman Geoff Greenwood said Wednesday.

Attorney Bill Marler said he was skeptical of BPI's claims about Dickson's research and wanted to learn more when his firm sought the records in 2010, including emails between Dickson and BPI and documents such as reports and test results

related to his consulting.

Iowa State gathered 1,650 documents in response but declined to release them after BPI filed a petition for an injunction. BPI argued that the records were exempt from Iowa's public records law because they involved trade secrets, and that Dickson was acting as a private consultant, not a public employee. Its petition said Dickson performed testing on different pathogens to study "the integrity of existing BPI patented processes" and alternatives.

Ruigh ruled that BPI operated in an "extraordinarily competitive" business, saying its rivals had been aggressive in seeking information about its exclusive food-processing methods. Some tried to hire Dickson, who had signed nondisclosure agreements with BPI.

The documents from Iowa State's Food Safety Research Laboratory would divulge "confidential information about BPI's food-processing methods and its development of new methods," as would related e-mail exchanges, Ruigh wrote.

Ruigh said more than 100 Iowa State groups charge the private sector for lab services, and they produce "significant revenue" for the university while providing educational opportunities for students.

Releasing the records "could lead to a significant reduction in the use of ISU's laboratory services by the private sector and thereby jeopardize the financial viability of the laboratories," he wrote.

Marler said he would not fight the ruling, acknowledging the records may detail BPI's "secret formula" for using ammonia. Marler, who is defending two scientists named in BPI's defamation lawsuit, said he believes the records will have to be released during discovery in that case.

"Now that the litigation is basically about whether the product is good, bad or indifferent, all that data is fair game," he said. "They can't hide anything."

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