

PACA Trust Enforcement and Defense

Our attorneys represent growers, growers' agents, sellers, and buyers nationwide in PACA trust enforcement and defense matters.

The Perishable Agricultural Commodities Act (PACA) is a federal law that establishes the regulatory regime for the fruit and vegetable industry in the United States. Under PACA, Congress created a trust that ensures fruit and vegetable sellers, growers and growers' agents will receive payment from their customers, even if their customers go into bankruptcy or face collection action from their other creditors. As the U.S. Department of Agriculture (USDA) explains:

“When a supplier sells produce to a buyer, the supplier becomes eligible to participate in the trust. The PACA trust provisions require that buyers maintain a statutory trust on fruits and vegetables received but not yet paid for. In the case of a business failure or bankruptcy, the debtor's trust assets are not available for general distribution to other creditors until all valid trust claims have been satisfied. Because of this, suppliers that file for trust protection have a far greater chance of recovering money owed them when a buyer goes out of business.”

While the PACA trust provides important protections for produce suppliers, enforcement of these protections as a trust beneficiary can present a number of challenges. Purchasers who need to defend against PACA trust claims and pay third-party creditors can face challenges as well. Kaufman Dolowich provides representation for companies on both sides of PACA trust disputes, and our attorneys can handle matters before the USDA's PACA Division, the Fruit and Vegetable Dispute Resolution Corporation (DRC) and the courts.

About the PACA Income Protection Trust for U.S. and International Produce Suppliers

Protection under the PACA trust is not automatic. In order to secure protection as a trust beneficiary, a produce supplier must: (i) sell more than 2,000 pounds of produce on a daily basis, (ii) obtain a statutory license under PACA, (iii) specify appropriate payment terms, and (iv) include the following working in their invoices (or other billing statements):

“The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.”

Growers and growers' agents are eligible for PACA trust protection as well, and both domestic and international suppliers are eligible for protection. However, international suppliers are not eligible to receive a PACA license, so these entities must rely on providing adequate notice in order to establish their rights under the statute.

PACA is a self-help statute. Just as protection under the statute is not automatic, trust beneficiaries must take affirmative measures to secure payment under the trust. Additionally, if trust beneficiaries do not act quickly to obtain an order freezing their customers' assets following non-payment, it is possible that they could lose their ability to collect under the trust.

When companies take appropriate legal action to preserve their ability to collect under PACA, they can seek payment from their customers' assets that fall within the PACA trust. The PACA trust covers multiple different types of assets held by trust buyers, including:

- Produce
- Proceeds from produce resales
- Receivables from produce resales
- Assets acquired with proceeds from produce resales
- Products made with fruits and vegetables

Importantly, PACA trust beneficiaries are not limited to seeking collection from the produce that they sold to the buyer (and related proceeds, receivables and other assets). All qualifying assets fall within the PACA trust, and beneficiaries can seek to collect from trust

assets regardless of the assets' original source.

Dispute Resolution Methods for PACA Trust Enforcement and Defense

There are three primary means of resolving disputes involving claims for payment under the PACA trust. These are: (i) filing a reparation complaint with the PACA Division, (ii) filing a claim with the DRC, and (iii) filing a lawsuit in court.

1. Reparations Claims Filed with the PACA Division

The USDA's PACA Division, also simply referred to as PACA, provides a forum for resolving disputes involving efforts to collect under the PACA trust. Companies can file informal claims themselves, they can initiate mediation proceedings or they can hire legal counsel to file a formal complaint. While trust beneficiaries are not required to hire legal counsel in order to file an informal reparations complaint or request mediation, due to the complexity of the issues involved and the potential for a very short timeframe for freezing available assets, hiring legal counsel is generally recommended.

Under PACA, mediation is entirely voluntary—neither sellers nor buyers are required to participate in mediation as a precursor to pursuing other legal remedies. However, when both parties consent to mediation before the PACA Division, this will often provide an efficient means for securing a resolution.

2. Filing a Claim with the DRC

The DRC is a non-profit organization that provides a settlement, mediation and arbitration forum for its members. As explained on the DRCs' website, "[m]embers worldwide subscribe to a common set of trading standards and member responsibilities that promote the fair and ethical trade of produce entering the North American marketplace." In arbitration, hearings are held automatically for claims exceeding \$50,000; and, for claims between \$15,000 and \$50,000, hearings are held at the request of either party.

3. Filing a Lawsuit in Court

In appropriate cases, PACA beneficiaries can also seek relief through the courts. PACA trust litigation can involve a number of complex issues, and buyers will often have a number of defenses available (just as they would in PACA Division or DRC dispute resolution proceedings). When pursuing PACA trust litigation or facing a PACA lawsuit, it is vital to have experienced legal counsel, and our attorneys are available to advise and represent domestic and foreign companies in PACA litigation nationwide.

Regardless of the nature, current status, and forum of the dispute, if your company is facing the prospect of legal action under PACA, the litigation attorneys at Kaufman Dolowich can help. To discuss your case in confidence, contact us today.