

Sun, Sand and Alabama Agriculture: Alabama Agribusiness Council Hosts Annual Meeting

*The Alabama Agribusiness Council is the **ONLY** organization in the state that brings **ALL** agriculture interest together.*

Our Mission: To advocate, enhance, and promote agribusiness in Alabama as the collective voice.

Our Purpose: Our primary purpose is to work with groups and organizations to effectively promote and enhance the business of agriculture and forestry in Alabama.

We represent: The broadest base of agricultural interest in Alabama. Membership is open to individuals, trade associations and companies ranging from 1-500+ employees who share a common interest in positively enhancing agriculture and agribusiness in Alabama.

The Alabama Agribusiness Council held their Annual Meeting at the Perdido Beach Resort in Orange Beach, June 25-27. The meeting kicked off Sunday evening with the Welcome to the Beach Reception where attendees and families enjoyed the opportunity to meet new friends and reconnect with old ones as they enjoyed delicious hors d'oeuvres overlooking the beautiful Gulf of Mexico. The reception was a great way to start the Annual Meeting.

Monday morning's business session started with the election of a 2017-2018 Council President and Board of Directors. Jason Davis with the Alabama Power Company will serve as President. Tricia Roberts with the Alabama Turfgrass Association was recognized for her service as the 2016-2017 President. Sam Givhan, Givhan Land and Cattle Company and Dr. Billy Powell, Alabama Cattlemen's Association, were also honored for their nearly 30 years of dedicated service.

A special presentation was made to Cecil Medders who was honored with the Heritage Award. This award is presented to an individual who has supported the growth and success of the Council. Medders was a charter member of AAC and was instrumental in its founding in 1989. Medders also served as Council President from 2000-2001. He is a 1973 Auburn University graduate and served in several capacities with the Alabama Power Company until his retirement. Medders expressed a desire to see the AAC continue the success that it has experienced over the last 28 years.



AAC Executive Director Leigha Cauthen presents Rep. Donnie Chesteen with the AAC Legislator of the Year Award



AAC Executive Director Leigha Cauthen presents Cecil Medders with the AAC Heritage Award

Following our business session, Ag Commissioner John McMillan gave an update on the Department of Agriculture and Industries, Alabama agriculture and the repercussions of recent rainfall. Following Commissioner McMillan, John Gilliland with Akin, Gump, gave an update from Washington D.C. Gilliland spoke on national issues such as the restructuring of the North American Free Trade Agreement (NAFTA) and the upcoming midterm elections. Terry Barr, CoBank, concluded Monday's sessions by discussing global uncertainties facing Alabama agriculture. Barr painted a positive picture for the future of Alabama agriculture by examining market reports and making future projections.

Continued on page 2



AAC Foundation Awards \$5,000 in Scholarships

The Alabama Agribusiness Council Foundation recently selected five students pursuing a degree in



agriculture or a field closely related to agriculture, to each received a \$1000 scholarship for their education. The scholarship program was created to pro-

motivate the future of agriculture by financially supporting students working towards a career in an agriculture related industry. All of the students awarded scholarships exceeded these qualifications and represented a diverse area of study with varying future career aspirations. Through this scholarship, AACF will continue to support future students in their efforts to pursue a career in agriculture.

The five recipients are:

- Ronald Beck, III, Auburn University, Veterinary Medicine
- Austin Brown, Auburn University, Agronomy
- Abigail Foose, Auburn University, Pre-Veterinary Medicine - Animal Science
- Becky Hawkins, Auburn University, Agribusiness & Economics
- Bryan Holmes, Auburn University, Biosystems Engineering

Please consider supporting the AAC Foundation by making a tax-deductible contribution. For more information contact Executive Director Leigha Cauthen at lcauthen@alagribusiness.org, or by mailing a donation to the Alabama Agribusiness Council Foundation at P.O. Box 3612, Montgomery, AL. 36109.

AAC WELCOMES NEW MEMBERS:

- Tony Cofer
- Charles Grant
- John McMillan
- Nicole Jones Development
- David Williams

join now!

Join Online!

www.alagribusiness.org

AAC Host Annual Meeting, continued

Monday evening attendees, along with their families, had the opportunity to enjoy a Beachside Reception and dinner. The dinner included fresh gulf seafood, delicious gumbo and homemade key lime pie. As the evening progressed, attendees enjoyed a beautiful gulf sunset and fabulous weather on the beachside deck.



Tuesday morning AAC honored Representative Donnie Chesteen with the Alabama Agribusiness Council Legislator of the Year Award. Representative Chesteen has been an advocate for agriculture since his election in 2010 and serves as vice-chair of the Agriculture and Forestry Committee. During the 2017 legislative session, Chesteen sponsored a bill that will increase tax credits for the installation of irrigation equipment. The Senate companion bill has since been signed into law by Governor Kay Ivey.

Following Chesteen's presentation, Dr. Paul Patterson, Dean of the Auburn University College of Agriculture, shared comments on the expansion of the Charles C. Miller, Jr. Poultry Research & Education Center, new construction projects on Ag Hill and student involvement on campus. Next, Dr. Rudy Pacumbaba, from the Alabama Cooperative Extension System, talked about GMO myths and urban legends. Dr. Pacumbaba urged attendees to use this information on GMOs to start conversations with those not involved in agriculture. Kent Stanford from the Alabama Cooperative Extension System then spoke about diversification opportunities for Alabama agriculture. Stanford said Alabama has a unique chance to attract agricultural industry from around the country. Ted Clem, Alabama Department of Commerce, wrapped up the program by sharing various agricultural economic development opportunities throughout the state. Clem reviewed the impact that agriculture has on Alabama's economy and shared that expanding that impact is a priority in the Accelerate Alabama 2.0 campaign.

-Taylor Evans, AAC Intern

The Rights of Fruit and Vegetable Producers to Timely, and Preferential, Payment Under the Perishable Agricultural Commodities Act

By Matt Fridy

Farmers and producers of fresh fruits and vegetables have a powerful tool when seeking payment for their produce. A little-known federal law, the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a, *et seq.* (“PACA”), was enacted by Congress in 1930 “to suppress unfair and fraudulent practices in the marketing of perishable agricultural commodities in interstate and foreign commerce.” PACA was designed primarily for the protection of producers of perishable agricultural products, most of whom must entrust their products to a buyer or commission merchant who may be thousands of miles away, and depend for their payment on fair dealing.



As originally enacted, PACA imposed an obligation on buyers of produce to make full payment promptly and imposed penalties for non-payment. By the 1980s, however, Congress determined that this obligation was not sufficient to protect the rights of producers to payment. Indeed, by 1983, the USDA estimated that an additional 10% was added to the consumer’s purchase price of fruits and vegetables to make up the losses due to nonpayment for produce. Because Congress intended for PACA to remedy the abnormal risk of losses resulting from buyers of fruits and vegetables who failed to pay, or paid slowly, for their purchases, Congress amended PACA in 1984 by adding a trust provision, known as the “PACA trust.”

The 1984 PACA trust amendment creates a trust in favor of produce sellers who sell their produce on credit. Put simply, when a company purchases produce on credit from a producer, it must hold that produce in trust for the payment of its debt to the producer. Likewise, if the company sells the produce, it must hold the proceeds from that sale in trust for the payment of its debt to the producer. Under PACA trust principles, the company that purchases fresh produce on credit becomes a trustee of the PACA trust and is required to maintain sufficient assets to pay its PACA trust beneficiaries (the unpaid producers) as their invoices become due. Failure of the trustee to maintain sufficient trust assets to pay that indebtedness is unlawful under PACA. In fact, while unpaid PACA trust beneficiaries remain, **any** use of PACA trust assets other than to pay those beneficiaries, even for ordinary business expenses, is a violation of PACA. Thus, the PACA trust provides farmers and other producers a right to recover against the purchasers superior to all other creditors, including secured creditors.

One of the primary benefits of the PACA trust for unpaid produce suppliers is that PACA subjects a non-paying company’s principals to personal liability. Indeed, although an unpaid supplier first looks to the purchasing company for payment, if the company’s assets are insufficient to satisfy the debt, the supplier can seek payment from the company’s owners, shareholders, and directors individually, because, like the company, they are treated as fiduciaries charged with maintaining the assets of the PACA trust.

The other primary benefit of the PACA trust is that assets contained in the trust are not included in the estate of a non-paying company that files for bankruptcy. Thus, if a produce distributor that files for bankruptcy has unpaid invoices to produce sellers of \$1,000,000, and it has \$1,000,000 in assets subject to the PACA trust, all of those assets would be used to pay the debts to the unpaid produce sellers and could not be used to pay other creditors, even creditors with secured claims. In effect, PACA creates a “super-priority” for the payment of debts to unpaid produce suppliers who have preserved their rights in the PACA trust. *(Continued on Back Cover)*

Matt Fridy is a member of the Birmingham law firm of Wallace, Jordan, Ratliff & Brandt, LLC, and practices in its litigation, appellate, agricultural and food law, and constitutional and election law sections.

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AAC 2017-2018

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*For More Information visit:
www.alagribusiness.org*

**AAC 24th Annual Golf Tournament
Thursday, October 5
Wynlakes Golf & Country Club
Montgomery**



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PACA, continued

To preserve its right to assets in a PACA trust, PACA requires a farmer or other produce supplier to provide a written notice of intent to preserve the trust on its bill-Act-- for farmers and other producers of fresh fruits and vegetables to ensure they are paid in full in a timely manner. And, taking advantage of this tool is simple and easily accomplished through ordinary billing practices. Resources regarding PACA are available on the USDA's website at <https://www.ams.usda.gov/rules-regulations/paca>. However, PACA trust-30 days by written agree-ment. protections are lost if the