

The image shows a spiral-bound notebook with a brown cover and a light brown, textured paper insert. The spiral binding is on the left side. The text is centered on the paper insert.

Update on Litigation Drift Issues

Dennis R. Gardisser
Extension Agricultural Engineer
University of Arkansas Cooperative
Extension Service

Aircraft



My place!



Lessons Learned in Tort Litigation

By

GEFFREY W. ANDERSON

Howell, Dorman, Anderson,
Berg & Smyer, L.L.P.

University Centre I, Suite 110

1300 South University Drive

Fort Worth, Texas 76107

Telephone (817) 334-0059

Facsimile (817) 334-0425

Anderson@hdabs.com



Lessons Learned in Tort Litigation

With

KERRY M. PORTER

Maloney, Bean & Horn, P.C.

102 Decker Court, Suite 200

Irving, Texas 75062

(972) 281-2900

Facsimile (972) 281-2929

Kmp@mbhpc.com



Lessons Learned in Tort Litigation

- I. Introduction
- II. *Hager v. Romines*
- III. Professionalism
- IV. Record Keeping
 - A. What to keep
 - B. Why to keep it
- V. How To Handle Potential Disputes
 - A. Contact Your Insurance Carrier
 - B. Contact Your Personal Attorney
 - C. Contact The Plant Board
 - D. Make Your Own Investigation File
- VI. How Bad Can It Get?
- VII. Questions And Answers

Lessons Learned in Tort Litigation

Flying an airplane is not within the realm of experience of the ordinary, prudent person or juror.

McKinney v. Air Venture Corp., 578 S.W.2d 849, 851 (Tex. Civ. App. – Fort Worth, 1979, writ ref'd n.r.e.)



Lessons Learned in Tort Litigation

Not only is flying an airplane not within the realm of experience of the ordinary, prudent person or juror, applying herbicide and pesticide aerially requires use of specialized equipment and techniques that are not familiar to the ordinary person.

Hager v. Romines, 913 S.W.2d 733, 735 (Tex. App. – Fort Worth 1995) (emphasis added).

Lessons Learned in Tort Litigation

We find that the standard of care in the aerial application of herbicide, as well as the violation of that standard, must be established by expert testimony.

Hager v. Romines, 913 S.W.2d 733, 735 (Tex. App. – Fort Worth 1995) (emphasis added).

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II.

ROMINES V. HAGER

What does it mean to you as an aerial applicator?

- The court will treat you as an expert.
- The jury will expect you to be an expert.
- Therefore, you must conduct all your endeavors in a professional manner.

Lessons Learned in Tort Litigation

III.

PROFESSIONALISM

What to do:

- Attendance at professional meeting
 - Local pilots meetings
 - Pesticide certification meetings
 - Continuing education meetings
 - Allied industry meetings

Why:

Information; certification, mutual respect; better performance; safety.

Lessons Learned in Tort Litigation

III.

PROFESSIONALISM

What to do:

- Membership in professional organizations,
- AAAA
- NAAA
- Local organizations
- Subscription to professional materials

Why:

Information.; certification
mutual respect; better
performance; safety.

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III.

PROFESSIONALISM

What to do:

- Review professional material
 - Agronomy updates
 - NAAA updates
 - Manufacturers updates
 - Pesticide manufacturers updates
 - MSDS sheets
 - Pesticide labels

Why:

Information; better performance; demonstrates a level of care and concentration expected by the jury, the court and the general public; safety

Lessons Learned in Tort Litigation

III.

PROFESSIONALISM

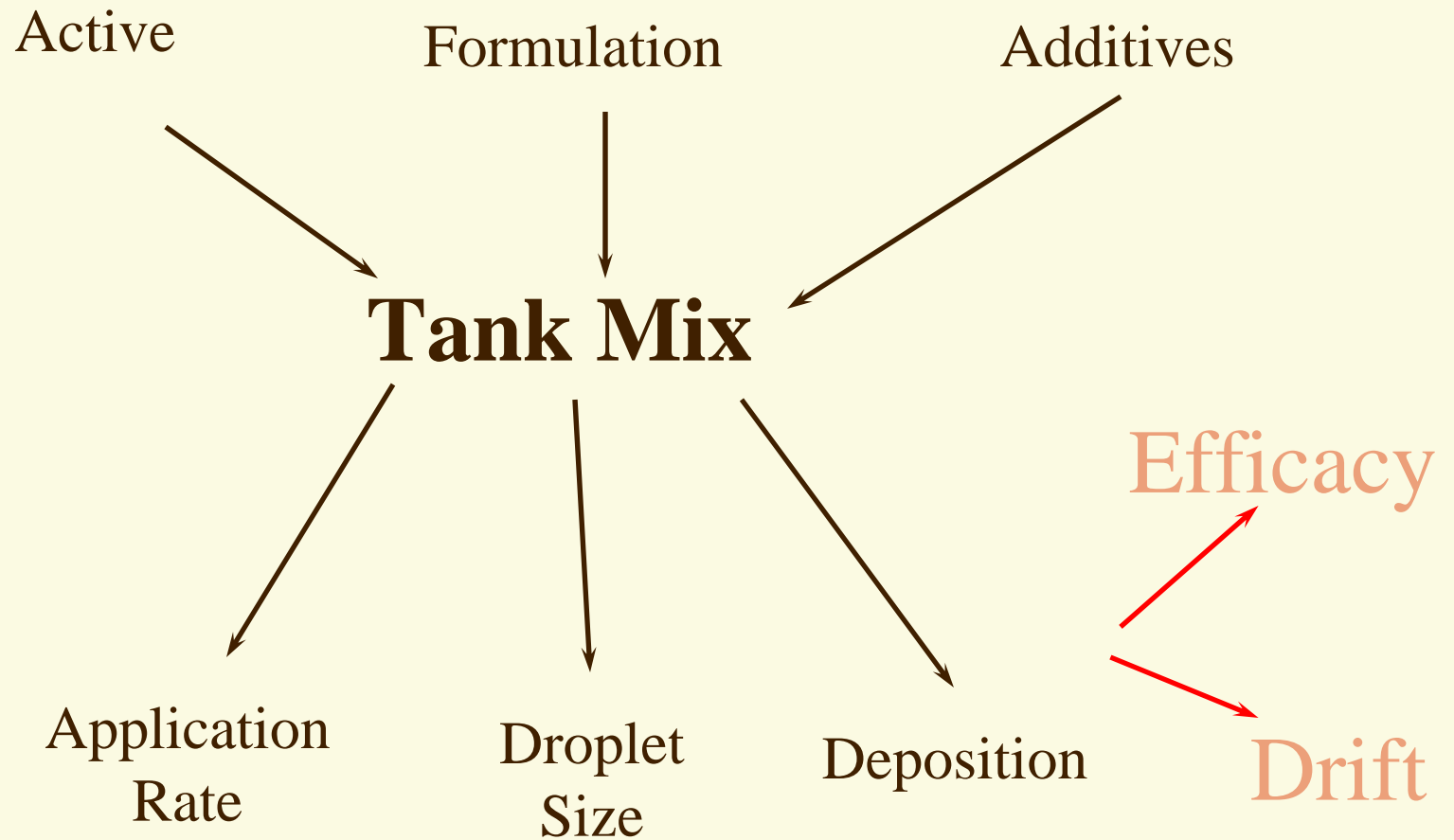
What to do:

- Documentation of Activities
 - Flights
 - Hours spent reviewing materials
 - Attendance at seminars
 - Hours spent reviewing label Information

Why:

To remember what you did; demonstrate your professionalism; keep the important matters on your mind; to develop habits of professionalism.

Material/Chemistry



Weather Monitoring

- Wind Speed (s)
- Wind speed height
- Wind Direction
- Relative Humidity
- Number of records needed?
- Utilize smoke, terrain, water, clouds, leaves or any other visual cue – make a note in spray record



Tip Spray Selection by Drop Size

Very Fine

Fine

Medium

Coarse

Very Coarse



Turbo TeeJet Flat-fan

Tip No.	Pressure in psi								
	15	20	30	40	45	50	60	75	90
Flow Rate in GPM									
TT11001	0.06	0.07	0.09	0.10	0.11	0.11	0.12	0.14	0.15
TT110015	0.09	0.11	0.13	0.15	0.16	0.17	0.18	0.21	0.23
TT11002	0.12	0.14	0.17	0.20	0.21	0.22	0.24	0.27	0.30
TT11003	0.18	0.21	0.26	0.30	0.32	0.34	0.37	0.41	0.45
TT11004	0.24	0.28	0.35	0.40	0.42	0.45	0.49	0.55	0.60
TT11005	0.31	0.35	0.43	0.50	0.53	0.56	0.61	0.68	0.75

Lessons Learned in Tort Litigation

IV.

RECORD KEEPING

A. Question: What do I keep?

Answer: Everything!!

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- License
- Flight records
- Log books
- Pesticide documentation
- MSDS sheets
- Pesticide labels
- Airworthiness directives
- MDR's

Lessons Learned in Tort Litigation

- General manufacture materials
- Notes from conversations with customers
- Notes from conversations with plant board
- CEU information
- Business cards
- Promotional materials

In short, if it is written down – file it and preserve it.

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IV.

RECORD KEEPING

B. Why am I keeping all of this?

- Refresh your memory
- Safety
- Better performance
- Demonstrate care and concern
- Stay ahead of competition
- Defend yourself

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V.

HOW TO HANDLE POTENTIAL DISPUTES

- A. Contact Your Insurance Carrier
- B. Contact Your Personal Attorney
- C. Contact The Plant Board / Dept. of Ag
- D. Make Your Own Investigation File

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INVESTIGATION

A. Immediately Contact Your Insurance Carrier

- To preserve your rights under your policy
- Initiate investigation
- Quickly resolve disputes
- Preserve the facts
 - Statements
 - Personal observations
 - Photos
 - Independent evaluation

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INVESTIGATION

B. Contact Your Personal Attorney

- Protect your rights
- Get advice on
 - Record keeping
 - “In anticipation of litigation” advice
 - Get instructions on your legal rights
 - Get instructions on who to talk to, if anyone
 - Get representation for statements, if so advised

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INVESTIGATION

C. Contact The Plant Board / Dept of Ag

- So that the Plant Board / Dept of Ag may investigate
- Preserve your state licensing requirements
- Preserve your reputation

Develop a relationship with the investigator

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INVESTIGATION

D. Make Your Own Investigation File

- Photographs
- Flyovers
- Independent investigators
- Witness statements
- Phone records
- Application records

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INVESTIGATION

D. Make Your Own Investigation File

- Timing of pesticide purchases
- Pesticide purchase records
- GPS records and disks
- Flagger, mixer and loader identification and statements
- Credit card records
- Check stubs




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INVESTIGATION


D. Make Your Own Investigation File

- Compliance records
- MSDS sheets
- Manufacturers documentation
- Weather records
- Label information
- Identify corroborating witnesses

Non Application Records


-  Document measures are being taken to avoid drift problems
-  Document what would cause a refusal or delay
-  Professionalism

Don't fake it!

 Other records


 History may be a trap


 Fake may be worse than reality

 Know what you are doing and don't make up a story after the fact.


Be careful what you say!

Quotes!

 Seat-of-me-pants.

 Sure – everyone has at one time or another.

 That's not my responsibility – I just fly the aircraft.

 If I'd known that stuff was in there, I would not have ever put it out.

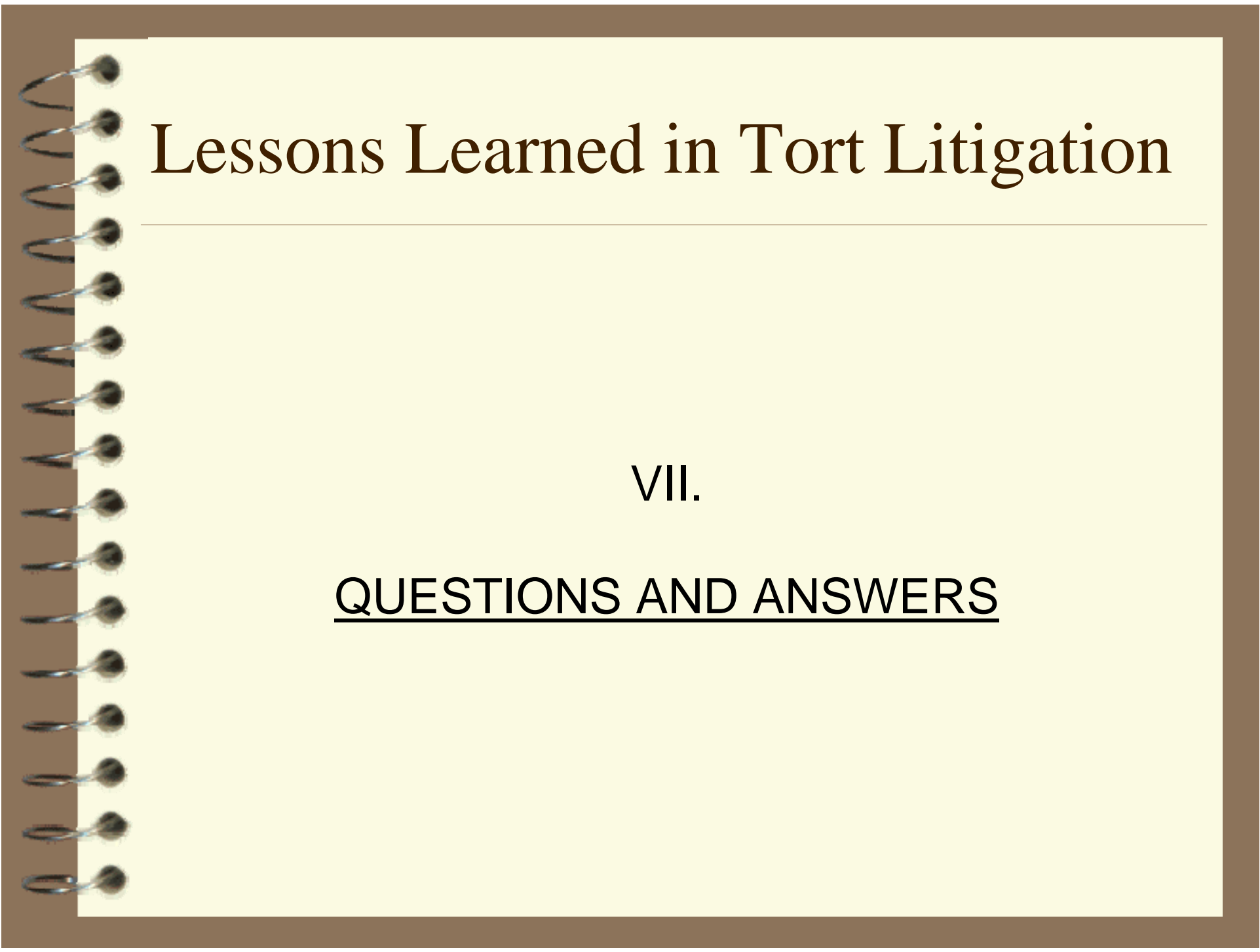
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CASES EXAMPLES

Question: How bad can it get?

Answer: Worse than you imagined.

Consultant: You do have some liability!

A spiral-bound notebook with a brown cover and a cream-colored page. The spiral binding is on the left side. The text is written on the page.

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VII.

QUESTIONS AND ANSWERS

Don't overload your ...!

