Update on Litigation
Drift Issues

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Aircraft
My place!
Lessons Learned in Tort Litigation

By

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Lessons Learned in Tort Litigation

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Lessons Learned in Tort Litigation

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II. *Hager v. Romines*
III. Professionalism
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   B. Why to keep it
V. How To Handle Potential Disputes
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VII. Questions And Answers
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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.)
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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.**

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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.

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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.
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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.
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III.

PROFESSIONALISM

What to do: Why:

• Membership in professional organizations, Information.; certification
  mutual respect; better performance; safety.
• AAAA
• NAAA
• Local organizations
• Subscription to professional materials
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III.

PROFESSIONALISM

What to do: Why:

- Review professional material Information; better performance;
- Agronomy updates demonstrates a level of care and
- NAAA updates concentration expected
- Manufacturers updates by the jury, the court and
- Pesticide manufacturers updates the general public; safety
- MSDS sheets
- Pesticide labels
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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

Tank Mix

- Active
- Formulation
- Additives

- Application Rate
- Droplet Size
- Deposition

Efficacy

Drift
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

Turbo TeeJet Flat-fan

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<th>Tip No.</th>
<th>Flow Rate in GPM</th>
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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
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- 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
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.
Question: How bad can it get?

Answer: Worse than you imagined.

Consultant: You do have some liability!
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VII.

QUESTIONS AND ANSWERS
Don’t overload your ...!