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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III. Professionalism
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V. How To Handle Potential Disputes
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VI. How Bad Can It Get?
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:            Why:

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

  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
• AAAA performance; safety.
• NAAA
• Local organizations
• Subscription to professional materials
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<table>
<thead>
<tr>
<th>What to do:</th>
<th>Why:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review professional material</td>
<td>Information; better performance;</td>
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<tr>
<td>Agronomy updates</td>
<td>demonstrates</td>
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<td>NAAA updates</td>
<td>a level of care and</td>
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<td>Manufacturers updates</td>
<td>concentration expected</td>
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<tr>
<td>Pesticide manufacturers updates</td>
<td>by the jury, the court and</td>
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<tr>
<td>MSDS sheets</td>
<td>the general public; safety</td>
</tr>
<tr>
<td>Pesticide labels</td>
<td></td>
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</tbody>
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III.

**PROFESSIONALISM**
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III.

PROFESSIONALISM

What to do:                       Why:
• Documentation of Activities      To remember what you did; demonstrate your
• Flights                          professionalism; keep
• Hours spent reviewing materials  the important matters
• Attendance at seminars          on your mind; to
• Hours spent reviewing label      develop habits of
   Information                      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

<table>
<thead>
<tr>
<th>Tip No.</th>
<th>Flow Rate in GPM</th>
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<tr>
<td>TT11001</td>
<td>0.06 0.07 0.09 0.10 0.11 0.11 0.12 0.14 0.15</td>
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<tr>
<td>TT110015</td>
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<td>TT11003</td>
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<td>TT11004</td>
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</tr>
<tr>
<td>TT11005</td>
<td>0.31 0.35 0.43 0.50 0.53 0.56 0.61 0.68 0.75</td>
</tr>
</tbody>
</table>

Pressure in psi: 15, 20, 30, 40, 45, 50, 60, 75, 90
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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
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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.
Cases Examples

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 …!