

Handling Agriculture-Related Legal Issues

**2016 West Texas Agricultural Chemicals
Institute Annual Conference**

September 13, 2016

Handling Ag Related Legal Issues

- **Collections and Statutory Ag Liens**
- **USDA and Farm Program Issues**
 - **FSA Program Benefit Denials**
 - **Section 11019(D) – 2014 Farm Bill**
 - **Appeals**
- **Spray Drift Claims**
- **Property Rights**



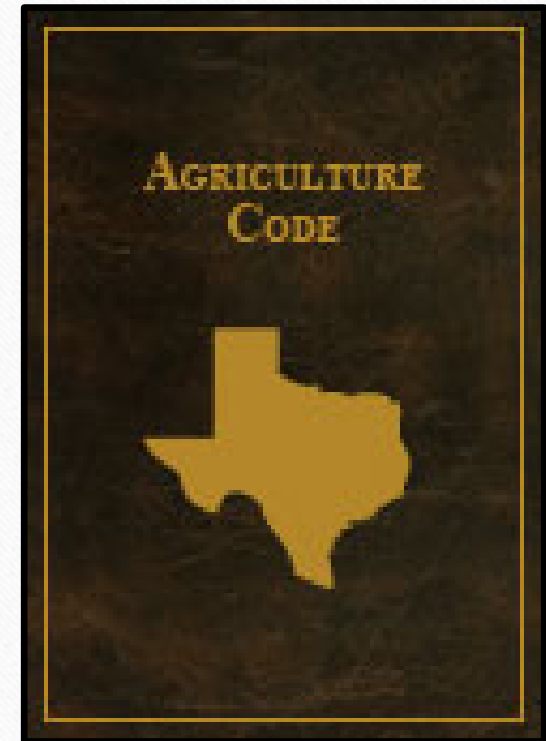
Collections and Statutory Ag Liens

- **In The News:**
 - **Falling crop prices weigh on land values**
 - **Lackluster Farm Economy Could Impact Lenders**
 - **Cotton prices struggle as new round of weakness sets in**
 - **Cost Cutting for 2016: Budgeting for \$4 Corn and \$9.25 Soybeans**
 - **Projected 2016 Crop Returns: Continuing Need to Adjust to Lower Returns**



Collections and Statutory Ag Liens

- **Chemical and Seed Statutory Liens**
 - Chapter 128 – Texas Ag Code
 - Potential Lien Holder: Ag Chemical Salesmen
 - Lien Attaches to Crop Proceeds (that were “produced with chemicals, seed, or labor”)
 - Pre-Sale Notice Required
 - Specific statutory language
 - Past Due Notice Required
 - Specific statutory language; 10 days to select an option
 - File Notice of Claim of Lien with Texas Secretary of State
 - Include Affidavit from Owner/Manager
 - Send Copy of Lien Filing to Debtor



USDA and Farm Program Issues

- **FSA – Farm Bill Farm Program Payments**
 - 2014 Farm Bill Issues
 - Election Sign Up + Annual Contract Sign Up
- **FSA – Special Program Administration**
 - E.g., Cotton Ginning Cost Share Program
- **RMA – Crop Insurance Issues**
 - Approved Practices
 - 1 policy per county
 - Timely Premium Payment



USDA and Farm Program Issues

- Section 11019(D) – 2014 Farm Bill
 - Request to Reconsider
 - When does this come up?
 - But, I've already paid.
 - What they don't tell you
 - Don't wait



USDA and Farm Program Issues

Appeal Forums:

- County Committee – Request to Reconsider
- County Committee – Appeal
- State Committee – Reconsider
- State Committee – Appeal
- NAD Appeal
 - NAD Administrative Law Judge
 - NAD Director Review
- Mediation
- Federal District Court Lawsuit



Spray Drift Claims

Basic Legal Claims

- Negligence: Failure to act as a reasonable person would
 - Strict liability: For certain “ultra hazardous activities” liability is imposed anytime someone is injured, regardless of facts
 - Trespass: Physical invasion on the property of another
 - Nuisance: Interference with another’s use and enjoyment of his property.
- Each requires different proof, considerations, and is subject to different defenses.



Spray Drift Claims

Landowner Considerations

- Written Lease
- Control of Actions on Property
 - *Johnson County Sheriff's Posse, Inc. v. Endsley*, 926 S.W.2d 284 (Tex. 1996).
- How does the Right to Farm Act fit in?
 - Nuisance and Trespass Claims
 - *Ebler v LVDVD, L.C.*, 319 S.W.3d 817 (Tex. App. – El Paso 2010, no pet).
 - Substantially Unchanged; More than 1 Year



Spray Drift Claims

Independent Contractor Implications

- General Rule: You are liable for the acts of your employees in the scope of their employment, but you are not liable for the acts of an independent contractor.
- Exception: Employer may also be liable for work of independent contractor if the work is “inherently dangerous” and contractor was negligent
- Texas Cases: Aerial spraying of chemical defoliants and herbicides has the potential to be inherently dangerous



Property Rights

- **Power Line Routing**
- **Condemnation**
- **Premises Liability and Agri-Tourism**
- **Leases**
 - Farm
 - Grazing
 - Hunting
- **Minerals**
- **“Surface Minerals”**
- **Solar Leasing**
- **Water Rights**
 - Surface Water Issues
 - Ground Water Issues



Aerial Spraying and Drones

- New Small UAS Regulation
- New Tower marking requirements for 50' – 200' towers
- New FAA database for 50' – 200' towers.



Thank You

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