

LITIGATION 101: It's Not Like TV

By: Liza C. Moore

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Manage Your Farm's Legal Liability

I. Civil Litigation 101

II. Risk Management Issues

“An ounce of prevention
is worth a pound of cure.”

I. Civil Litigation 101

Step 1: Contact Your Attorney

If you are thinking about suing someone, or someone has sued you, contact your attorney as soon as possible.

***This Segment Discusses Only Civil Litigation, Not Criminal.**

I. Civil Litigation 101

Litigation involves:

- Time
- Expense
- Uncertainty

I. Civil Litigation 101

Forum Issues

- Arbitration v. Litigation
- State Court v. Federal Court
- Different Types of State Courts
 - Specialty Courts (Example: Business Court)

Every Court in Every State Has Different, Detailed Rules that Must Be Followed.

I. Civil Litigation 101

1. Complaint
2. First Responsive Pleading
3. Scheduling Order
4. Discovery
5. Motions
6. Alternative Dispute Resolution
7. Trial
8. Appeal

Not an Exclusive List!

1. Complaint

- Pre-Suit Investigation
- Proper Parties & Correct Legal Theories
- Jurisdiction
- Venue
- Claims or Counts—Sufficiently Plead
- Jury Trial

2. First Responsive Pleading

- Answer the Complaint
- Admit or Deny Each Allegation
- Affirmative Defenses
 - Plead It or Waive It
- Motion to Dismiss in Lieu of Answer

3. Scheduling Order

- Court Rules and Statutes of Limitations Set Many Deadlines for Litigation
 - These Cannot Be Changed!
- Judges Set Additional, Case- Specific Deadlines
 - Sometimes Scheduling Order Dates Can Be Changed, But Don't Count on It

Meeting Deadlines is Crucial In Every Stage of Litigation.

4. Discovery

- Interrogatories
- Requests to Admit
- Requests to Produce
 - Litigation Hold Procedures and Evidence Spoliation
 - Electronic Documents
- Depositions
- Motions to Compel

5. Motions

Motions Can Sometimes Resolve a Case Without Trial

- Motions to Dismiss
- Motions for Summary Disposition or Summary Judgment
- Legal Research and Briefs
- Time to Respond
- Oral Argument

6. Alternative Dispute Resolution

- Case Evaluation and other State-Specific Alternative Dispute Resolution Methods
- Mediation
- Settlement
- ADR Timing

Control and Finality

7. Trial

- Very Few Cases Go to Trial
- Motions in *Limine*
- Jury Trial v. Bench Trial
- Jury Selection
- Opening and Closing Arguments
- Examination of Witnesses
- Admission of Evidence & Evidence Rules

8. Appeals

- Appeals after Motions
- Appeals after Trial
- Appeals by Leave v. Appeals by Right
- Legal Research and Appellate Briefs
- Oral Argument
- Trial Lawyers v. Appellate Lawyers

II. Risk Management Issues

1. Adequate Insurance
2. Smart Contracting
3. Good Farmland Leases
4. Liability Release Agreements
5. Employment Issues
6. Safety
7. Regulatory Compliance
8. Business Planning
9. Succession Planning
10. Getting & Using Expert Help You Need

Not an Exclusive List!

1. Adequate Insurance

- Different Activities Require Different Insurance
- Understand Coverage Options and the Coverage You Have
- Know Claim Deadlines
- Consider Whether the Entities You Do Business With Have Adequate Insurance
- Spend Time Discussing Your Insurance Needs with an Agent You Trust

2. Smart Contracting

- Use Written Contracts
- Understand Contract Terms
- Use Contract Clauses that Help Protect You
- Know the Parties You Contract With
- Get Legal Advice Before You Sign a Contract

3. Good Farmland Leases

- Use a Written Farmland Lease
- Be Specific about the Lease's Termination and Renewal
- Take Long-term Improvements Into Account
- Identify the Land Clearly in the Lease
- Comply with Your State's Laws

4. Liability Release Agreements

- Consider Whether You Should Have Invitees to Your Business Sign a Release
 - Example: Stables and Equine Activities
- Language Must Be Carefully Drafted
- State-Specific Laws Govern Release Agreements' Content and Strength

5. Employment Issues

- Employee Handbooks
- Employee v. Independent Contractor
- Proper Insurance Coverage
- Legal Compliance

6. Safety

- **Have a Plan**
 - For example, do your truck drivers know what to do and who to call if they have an accident?
- **Be Sure You and Your Employees Know How to Safely Operate Equipment**
- **Keep Equipment and Facilities in Safe Working Order**
- **Legal Compliance**

7. Regulatory Compliance

- Farm Bill Programs
- Right-to-Farm Act
- Zoning
- Clean Water Act & Environmental Issues
- Food Safety Modernization Act & Food Laws
- Pesticide Regulations
- Transportation Laws
- And more Local, State, & Federal Laws. . . .

8. Business Planning

- Business Entity Selection
- Risk Management
- Tax Planning
- Farm Management Assistance

9. Succession Planning

“Failing to Plan Is Planning to Fail.”

- Family Relationships
- Tax Savings
- Maximize Productivity
- Peace of Mind

10. Getting & Using the Expert Help You Need

Don't Go Alone!

- Trusted Advisors Help You Maximize Your Business
- Use Accountants and Attorneys that Understand Agriculture and Your Business
- Farm Managers and Consultants Can Help You Identify and Solve Problems

Bottom Line

- Get Good Expert Help—And Use Their Advice
- Arm Yourself with Attorneys, Accountants, Insurance Agents, Farm Managers/Consultants that Understand Agriculture, You, and Your Business

“A Stitch In Time Saves Nine.”

Contact Information

Liza C. Moore **Michigan Licensed*

313 S. Washington Square

Lansing, MI 48933

Direct Line: (517) 371-8281

Fax: (517) 371-8200

lmoore@fosterswift.com

www.fosterswift.com

See Foster Swift's Agricultural Law Update

Thank you!

Thank you very much for inviting me to be a part of the 2015 Great Lakes Crop Summit!

Thank you for your work to feed the world!

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