

Farm Truck Accidents:

Considering Your Liability
Management Options



Farm Truck Accidents:

Considering Your Liability Management Options

Fred Whitford

Coordinator, Purdue Pesticide Programs

Donya Lester

Executive Secretary, Purdue Ag Alumni Association and Farm Wife

David Gunter

Attorney, Dean Mead

Jim Schrier

Attorney, Reiling Teder & Schrier

Jim Taflinger

Insurance Consultant

Mike Templeton

President, Surface Transportation Consultant

Kevin Leigh Smith

Editor, Purdue Agricultural Communication

The Unexpected and Unwanted Call	4
Necessities and Sources of Liability	6
Practice Personal Responsibility and Due Diligence	12
<i>Due Diligence and Drivers</i>	15
<i>Due Diligence and Equipment</i>	19
Buy Insurance to Protect Against Catastrophic Accidents ..	26
Structure Your Farm to Survive a Catastrophic	
Traffic Accident	38
Breaking Down the Myths of Corporations	44
Seek Advice From An Attorney	48
Conclusion	52
Acknowledgments	54
Disclaimer	54
Find Out More	55



The Unexpected and Unwanted Call

*This car failed to stop
at an intersection.
The tractor ran over
the car and killed
its driver.*



Traffic accidents are unfortunate for everyone involved. While some accidents can be prevented, others are unavoidable.

While many of these accidents are, fortunately, ordinary “fender benders,” we occasionally hear about horrible traffic accidents. These severe events often begin with an unexpected and unwanted phone call.

The person on the end of the line may say, “Your truck was involved in a serious accident at the intersection of 24 and 48. The truck ran through a stop sign at the intersection and hit a car on the driver’s side. The emergency rescue people are still trying to extract the driver from the car, but it doesn’t appear that he will survive. The passenger in the car has been airlifted to the hospital. Your driver is shaken, but does not appear to be injured.”

All other matters will become insignificant as you realize that your truck and driver may have caused a death.

Even if the driver of the other car failed to stop at the intersection and your truck driver is not primarily at fault, legal proceedings may last for several years. You might still be sued for being partially at fault for the accident (the other party may claim your driver was speeding or intoxicated, or that the truck was poorly maintained). If you and the attorneys are unable to reach a settlement, you may even have to go through a trial in front of a judge and jury who will decide your legal fate.

This publication discusses a number of measures you can take to reduce your over-the-road liabilities that may result from accidents involving trucks, tractors, and agricultural implements. It will explain the importance of:

- Properly and regularly maintaining your vehicles and equipment
- Knowing your employees’ driving history
- Understanding your insurance policy
- Protecting your personal assets by creating a limited liability corporation or irrevocable trust



Necessities and Sources of Liability



Many growers rely on their own fleets of trucks and trailers to move animal, grain, fruit, and vegetable products into channels of trade. In addition to transporting farm products, growers may also use their equipment to:

- Transport farm inputs such as fertilizers, seed, chemicals, and fuel from distribution points back to the farm
- Pull heavy equipment such as planters, sprayers, and spreaders between farms
- Move water, fuel, and fertilizer from on-the-farm storage to production fields
- Operate commercial businesses to supplement their agricultural operations

The same trucks, trailers, and tractors that many growers depend upon to earn their livings carry with them serious potential liabilities when they are involved in accidents. There are many reasons why accidents between farm equipment and the public have become more serious.



More Vehicles, More Miles

Many growers today own and operate many more trucks than they did in the past. Furthermore, those trucks are traveling farther to get higher prices for their farm products; they are picking up new and used equipment, farm inputs, and other supplies from points that may be out-of-state; and they are traveling farther to get farm equipment repaired. This increased travel increases the odds of an accident.



Growers place many trucks, trailers, and tractors on roads to move products and supplies to their farms and fields.

Larger and Heavier Farm Equipment

Modern farm equipment is extremely large and heavy. The extreme difference in weight between a farm truck loaded with grain and a passenger car can result in tremendous damage to the car when they collide. Even slow-moving farm machinery with unforgiving frames being pulled by a tractor can literally rip open a car on contact.



Large farm equipment can make safe driving a challenge for both the farm driver and the public.

Drive Safely



A longtime insurance agent urges you to think about what you're doing and don't have the accident!

On narrow country roads, farm equipment often needs to stop and let an oncoming vehicle proceed. This does not mean the driver should pull over and keep moving.

There have been many claims against vehicle drivers who have done this, and then rolled the vehicle over. Also, think about the weight of your vehicle before crossing old farm bridges. Many of these bridges are in such disrepair that they are not safe to cross on a bicycle. Or, you might think that because you have crossed the bridge for 40 years on your Farmall tractor that you can cross it now with a heavy spray rig.



Farm Drivers on Congested State Highways

Today's highways are more congested than ever. Farm truck drivers must employ a different set of driving skills when they are negotiating congested traffic at highway speeds than they use when driving on rural county roads.

Employee Turnover and "Unknown" Employees

At many farms, high employee turnover seems to be leading to a carousel of drivers who are being placed behind the wheel. Growers who own large farming operations are often surprised when they count the number of different drivers employed even in a single year.

Growers frequently used to hire friends or relatives as full- and part-time employees. These employees were usually familiar with farming, were more experienced at operating tractors, and felt comfortable driving farm trucks and trailers.

Like most small business owners, growers today are increasingly hiring employees they do not already know. Prospective employees may respond to newspaper advertisements and be hired after only a short interview at the farm. These employees often lack experience handling farm equipment and trucks. Their inexperience increases the probability that highway accidents will occur.

Longer Hours

Growers also compete against the clock to complete planting, harvesting, and other field operations in a timely manner. The more acres you farm, the more stress you and your employees face. Drivers become weary as seven-day workweeks stretch out for extended periods.

Fatigue from 16-hour workdays and distractions from cell phones and other in-cab equipment may cause lapses that translate into serious mistakes. With their thoughts and attentions elsewhere, drivers may fail to stop at intersections they have successfully negotiated hundreds of times before.



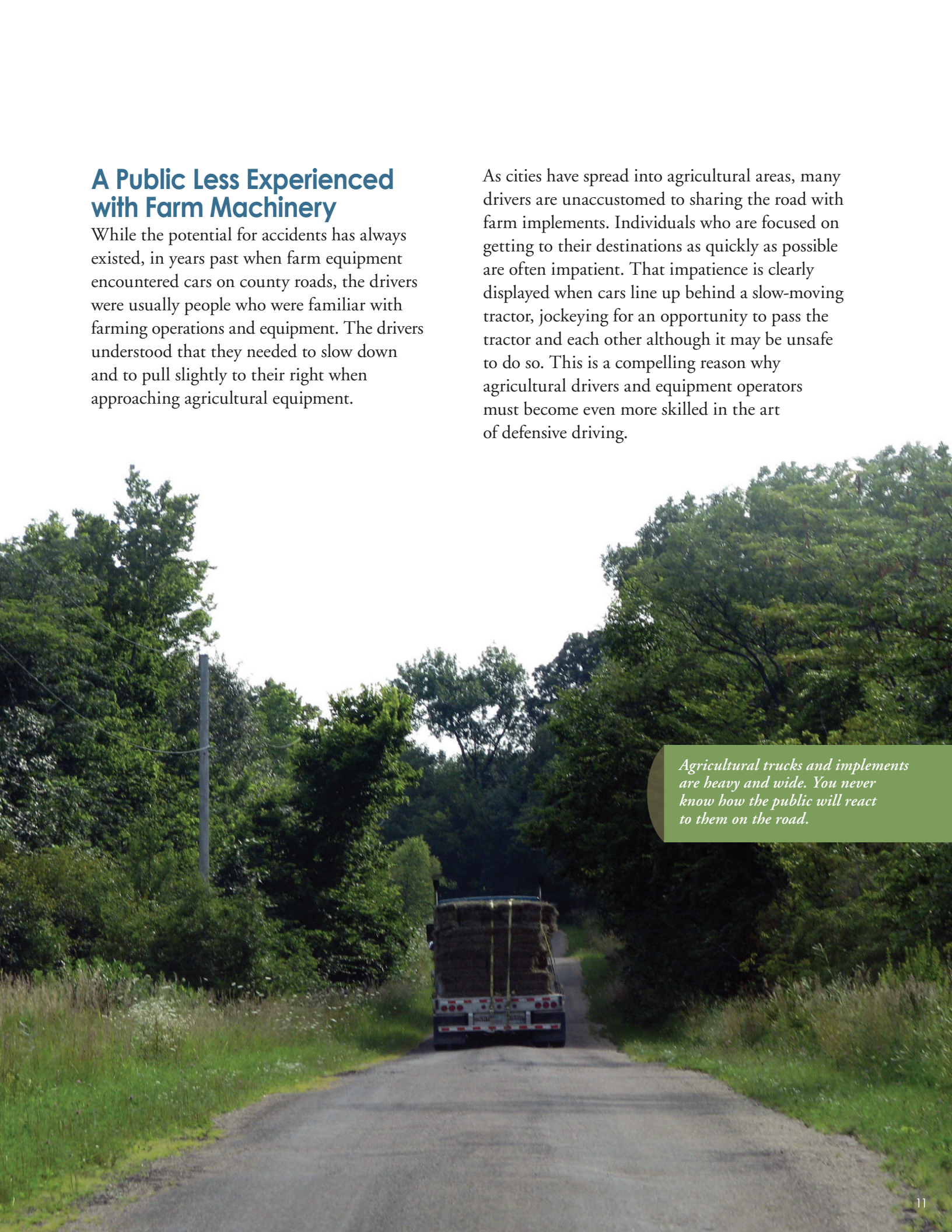
While your drivers may cross the same intersections and railroad tracks hundreds of times without problems, it just takes one lapse in judgment to lead to a serious accident.



A Public Less Experienced with Farm Machinery

While the potential for accidents has always existed, in years past when farm equipment encountered cars on county roads, the drivers were usually people who were familiar with farming operations and equipment. The drivers understood that they needed to slow down and to pull slightly to their right when approaching agricultural equipment.

As cities have spread into agricultural areas, many drivers are unaccustomed to sharing the road with farm implements. Individuals who are focused on getting to their destinations as quickly as possible are often impatient. That impatience is clearly displayed when cars line up behind a slow-moving tractor, jockeying for an opportunity to pass the tractor and each other although it may be unsafe to do so. This is a compelling reason why agricultural drivers and equipment operators must become even more skilled in the art of defensive driving.

A photograph of a narrow, paved road winding through a lush green forest. In the distance, a large white agricultural truck is driving away from the viewer, carrying a load of hay bales secured with yellow straps. The road is flanked by tall grass and dense trees, creating a sense of being in a rural or agricultural area.

Agricultural trucks and implements are heavy and wide. You never know how the public will react to them on the road.

Practice Personal Responsibility and Due Diligence



No grower wants to pick up the phone to hear that one of his or her trucks was involved in an accident.

One grower recently summarized the general feeling of the agricultural community: “I don’t know how you deal with thinking that something you’ve done has contributed to serious physical harm to another human being. What if a piece of equipment that we owned malfunctioned and caused a problem for someone? What if we had an employee in a vehicle we owned that wasn’t in good repair and the employee was seriously hurt or killed because of that? All of the legal wrangling aside, you never get over those things.”

These are sobering, but honest remarks.

Consider the following story about an elderly man who was killed when a farm truck slammed into the rear of his car. The family sued the grower for the man’s death. Hear the grower’s side of the story and think about the lessons you can learn from this experience.



*The driver of this pickup
ran a stop sign and drove
into the combine’s feeder.
The driver of the vehicle
was lucky to survive.*

In the last week of July, my son and I were at the county fair. We had two employees hauling beans to the elevator. One of our trucks had rear-ended the car. The truck's hood and bumper were damaged, and the car's trunk was pushed up.

My son and I went to the scene. By the time we arrived, they had already extracted the 70-year-old man and his wife from the vehicle and taken them to the hospital. At that point, they were still alive. My driver was not injured at all.

The local police called the Indiana Commercial Vehicle Enforcement Division to help with the accident. The officer came and inspected our truck along with all of the papers. We were totally legal, and everything was within specifications. They did not ask our driver to take a blood alcohol or drug test. It was our driver who received a ticket for failure to maintain control of the vehicle.

This happened on a Thursday. The driver of the car died the following Sunday. On that very day we got calls from the man's family wanting to know why our employee had not been arrested and put in jail.

The family of the victim sued our corporation as the owner of the truck, the corporation that owned the land, and us personally. Part of the land was in the corporation, part was owned by me, and part was owned by my son. There were 620 acres in the land corporation. Our lawyers were able to get us dismissed from the lawsuit, because it was the corporation that owned the truck.

Six months after the accident, the driver was asked to write out everything that happened on the day of the accident. The plaintiff's lawyer wanted all of the maintenance and inspection records for all of our trucks, including the one involved in the accident.

The attorneys went back and forth for months. The lawsuit was settled out of court for \$500,000. I guess it could have been substantially more. And if the settlement had exceeded our insurance limits, we would have had to take out a mortgage to pay the difference.

Since the accident, we've changed a few things in our operation. We have our trucks inspected by somebody else. My recommendation to your readers is to not inspect the trucks yourself.

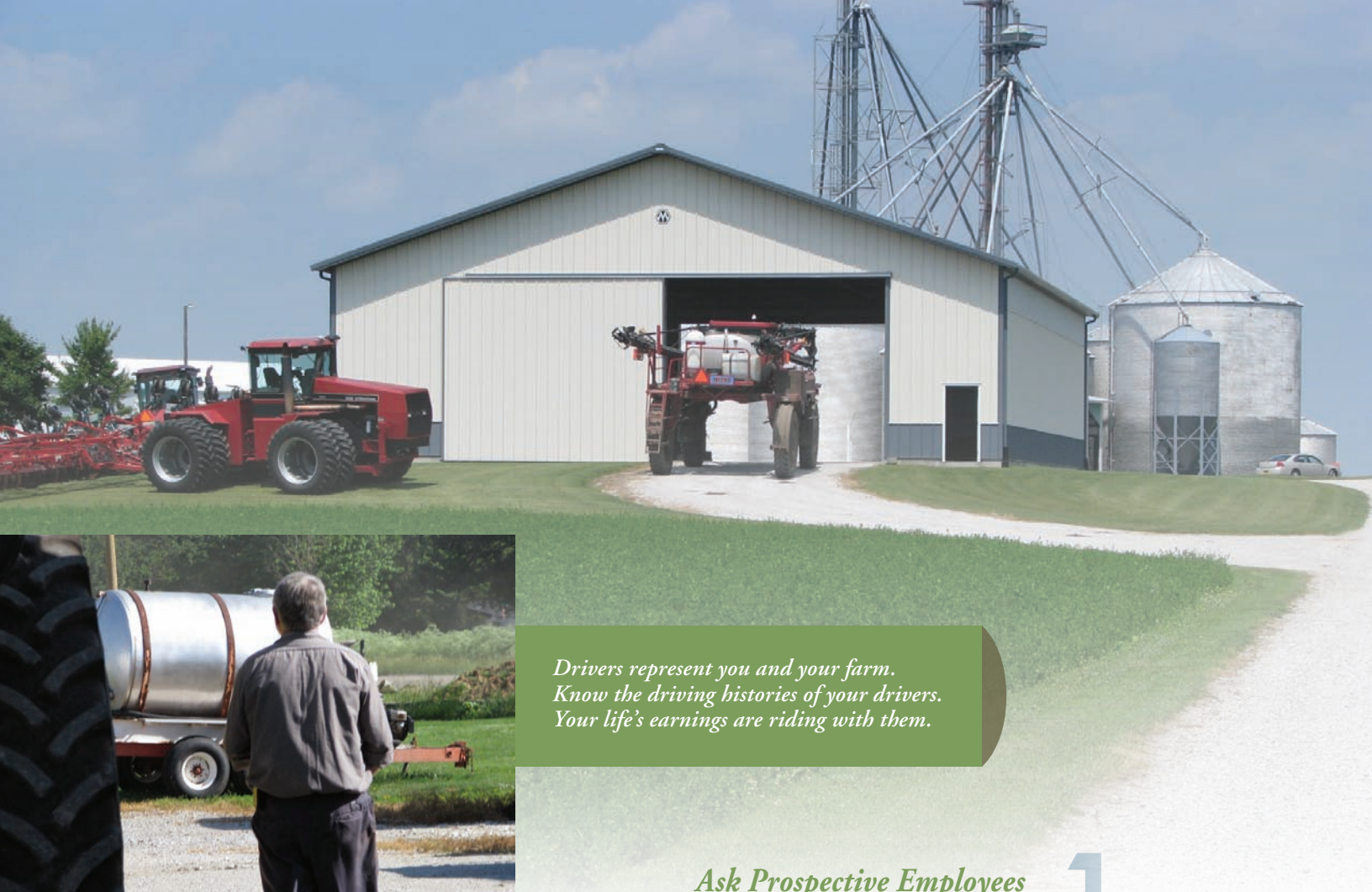
The moral of our story is simple: treat your trucks as one of the most dangerous things on your farm. Be certain that all paperwork, insurance, and drivers are up-to-date. My driver did not have any prior speeding tickets. He was a good guy who made a mistake. It's a bad deal, and we felt we owed the people something. I was not against that payment because we were at fault.

It's important to remember that some people use attorneys and courts as their first option, not a last resort. Whether or not the growers or their drivers are at fault, it is very important after a serious accident to be able to prove in a legal proceeding that you have a selection process for drivers, obtain background checks, maintain vehicles, and follow transportation regulations.

In legal circles, taking such steps may be known as exercising "reasonable care and due diligence." A grower who exercises reasonable care or due diligence takes every opportunity to act responsibly when moving trucks, trailers, and tractors on highways.

Being able to demonstrate reasonable care and due diligence will be especially important in the event you find yourself in a lawsuit after your driver or equipment is involved in an accident. By taking these steps, your attorney will be able to argue to a jury that you made a good faith effort to do everything correctly and that you did what any reasonable agribusinessperson could have done.

However, exercising due diligence or reasonable care is about more than simply making a better legal case for yourself. It's about making every reasonable attempt to ensure that the farm equipment and drivers you place on the highway don't hurt others.



*Drivers represent you and your farm.
Know the driving histories of your drivers.
Your life's earnings are riding with them.*

Due Diligence and Drivers

The drivers you employ are an extension of you. Whatever the drivers do in your trucks makes you at least partially responsible. With this in mind, would you ever want to put a driver who has several arrests for driving under the influence into a truck that you own? What about a driver who has a prior history of accidents, speeding tickets, or a lengthy arrest record? How would you ever learn that a long-term driver of yours has become a drug addict?

You should make a concerted effort to learn more about your drivers than they might otherwise want you to know. Researching the backgrounds of your drivers will increase the probability that you are putting someone behind the wheel who will represent you well while conducting your business.

Here are at least six steps you can take to exercise reasonable care and due diligence with your drivers.

Ask Prospective Employees for Information

1

Many growers say, "I know every employee who works for me before I hire them." This is often a way of saying that having employees fill out a job application is a waste of time.

While saying, "I've known Joe all of my life," may seem appropriate, you usually have no real evidence to support that your conclusion. Furthermore, you seldom know any person as well as you think you do.

Requiring potential employees to describe themselves on a questionnaire is an important first step in evaluating what skills and liabilities they may bring to your farming operation. A previous Purdue Pesticide Programs publication — *The Hiring Process: Recruiting, Interviewing, and Selecting the Best Employees* (Purdue Extension publication PPP-69) — will help you develop and customize an employment application for your farm. Copies are available from the Purdue Extension Education Store, www.the-education-store.com.

You should ask all prospective employees the following questions as a first step in deciding whether you are willing to be responsible for their actions while they drive your trucks and equipment:

- Has your driver's license been suspended, revoked, or modified in the last five years?
- Have you ever been convicted of a felony (including court-martial proceedings)? If yes, list the date, charge, place, court, and action taken.
- Have you pled guilty to, or been convicted of, any traffic-related offenses within the last five years?
- Do you have a valid driver's license? What is your driver's license number?
- Do you have a valid CDL? What is your CDL number?
- List all states in which you have been issued a driver's license in the past.
- Do you authorize (name of grower or corporation) to verify information provided on your employment application through a thorough check of criminal records and bureau of motor vehicle records?
- Do you understand that you may be required to submit to a pre-employment test for drugs and/or alcohol as permitted by law?
- Do you understand that falsification of your application for employment or failure to provide information requested may be cause for your denial or termination of employment with (name of farm or corporation)?

Obviously the answers to these questions are useful for evaluating potential employees. Failing to learn the answers to these questions might place your business at risk.

Review the Driver's License Record

2

It is of critical importance that you check any applicant's driving history up front, rather than try to explain any negative history after an accident. Ask your insurance company to run driver's license reports on all new employees before you hire them. Also, ask your insurer to perform a periodic review for all of your farm employees. These driving record audits should list accidents, speeding tickets, DUIs, and other driving infractions. This information is critical for evaluating any driver — one that you are thinking of hiring, or one who has been on the payroll for years.

After an accident is not the time to find out that your driver has a history of substance abuse. Always find out about your drivers before they go out on the road for you.



Insurance companies can refuse to insure any driver whom they regard as too risky. Insurance companies use driving records to ascertain the risks each driver poses to the insurance company. You should follow the lead and advice of your insurance company. In some cases, that might mean you should ask an employee to resign based on recent arrests for driving under the influence or other serious offenses.

A reasonable person in a jury would think that if an insurance company says a driver can be covered by the farm insurance policy, then that person is a good driver. Taking your insurance company's advice falls into the category of "due diligence" and can be helpful when these issues arise.



Spending a few minutes calling references may mean the difference between hiring a potential employee or not.

Ask References for Opinions

3

You should always call the references a prospective employee provides and verify what the applicant stated at the interview and on the questionnaire. In addition, you should become familiar with the applicant's personal attributes.

When you call a reference, ask questions like this: "I understand that Joe Smith used to work for you. I want to hire Joe to be a driver on my farm. What kind of driver was he?"

However, don't get upset if references are unwilling to do anything more than verify an applicant's employment dates, due to possible claims by their former employee.

Some references will answer the questions you pose, allowing you to assess whether the prospective employee is responsible and reliable. In some cases, references will tell you that they would rehire the applicant in a minute. But you also might learn that the applicant is subject to angry outbursts, aggressive driving, is intolerant of others, doesn't follow the rules, or abuses medications. It is much better to discover these problems now (during the interview process) than later when a problem employee is already representing you and your business.



Require DOT Physicals 4

U.S. Department of Transportation physicals let you know that the person who will be transporting your property is medically fit to do so. Since these physicals are required every two years, drivers are examined frequently.

DOT physicals may reveal critical information including whether your employees:

- Are taking any medications that could impair their driving performance
- Have diabetes
- Have high blood pressure
- Have poor eyesight
- Experience sleep management problems that lead to drowsiness
- Have neurological or physiological problems

Establish a No Drugs, No Alcohol Policy 5

You will face serious legal consequences if you knowingly give the keys to your trucks to bad drivers or to drivers impaired by drugs or alcohol. In the event of an accident, you will likely face legal arguments that you were negligent in entrusting your vehicles to them — a legal concept known as “negligent entrustment.”

It is extremely important that you know if your employees are using drugs or alcohol. Employing someone who abuses alcohol or takes illegal drugs poses perhaps the greatest risk that growers face when putting equipment on the road. There is virtually no viable defense for drivers who are intoxicated or under the influence of drugs (even prescription drugs) and who are involved in accidents as a direct result of these impairments. If an accident causes death, dismemberment, or disfigurement, the potential liability can be staggering.

You should consider contracting with third-party businesses to perform random drug and alcohol tests on all your drivers throughout the year. Your employees’ names can be placed in a registry with hundreds to thousands of other drivers. The organization responsible for the program will then randomly pull names from all of the enrolled drivers. Those selected must immediately report for testing.

The best policy for your operation is simply one of “zero tolerance” for drugs and alcohol. The policy should be published and made available to all employees by posting it in common gathering places (such as break rooms). You also should back up the zero tolerance policy by taking action in case of any positive drug or alcohol test.

Good communication of, and strict adherence to, such a policy will go a long way toward demonstrating due diligence and a commitment to having safe, unimpaired drivers on the road.

More information about communicating with employees is covered in the Purdue Pesticide Programs publication, *Company Bulletin Boards: Communicating Policies, Procedures, and Practices* (Purdue Extension publication PPP-55), available from the Purdue Extension Education Store, www.the-education-store.com.

Demonstrate Driver Competency 6

While growers are often exempt from commercial driver’s license (CDL) requirements, you should still look for drivers with this qualification. When drivers hold a CDL, it means they have passed a number of state-administered tests, including a skills test. Hiring drivers with CDLs, especially when such a license is not required, is a good way to demonstrate that you are committed to safety and will help establish the competency of your drivers.

Be Considerate

Due Diligence and Equipment

This grower's comments about establishing due diligence with equipment is a great model for any operation:

Our goal is to be meticulous with equipment inspections. This is for the protection of our employees and the protection of everybody we meet on the road.

I don't want anything that we are responsible for to be the cause of any vehicle accident. If I am riding beside a truck on the road, I want to know that the brakes and tires are good and there is not a rusted tie rod underneath, or something that's going to come loose and cause a problem. I suspect that others around me want those same assurances.

Inspections should not be viewed as an imposition. I look at them as the responsibility of everybody who puts a vehicle on the road. My automobile should be safe on the road, and all the more, anything that is bigger and can potentially cause more damage should be scrutinized more closely.

Another legal concept that is important to understand is "negligence per se." Negligence per se may arise when you fail to abide by a safety regulation and that failure directly injures a claimant. The law may deem you to be automatically negligent with little or no opportunity to escape liability to the claimant. The only issue may be how much you are going to pay for the accident, not whether you will pay.

Here are five steps you can take to exercise due diligence with your equipment and reduce your legal risks.

Being considerate is more than just words to this longtime insurance agent:

In the 15 years I've been in the insurance business, empathy, for many reasons, escapes us. We don't secure a load, we run a railroad crossing signal, or we start down a 30-foot wide country road with a 28-foot load.

For a second, or a minute, or an hour we don't care if the neighbor's wife might be coming down the road with her kids, or the railroad engineer might get killed, or a 500-round bale falls off our wagon in front of a stranger. Later, we will.



Conduct Annual DOT Truck and Trailer Inspections

STEP 1

All DOT-regulated trucks and trailers must be inspected annually. Mechanically-inclined growers may be able to do their own maintenance inspections by carefully following the DOT checklist. Some growers may regard the DOT checklist to be a rather easy form to fill out: find a pencil, fill it out in a few minutes, file the paperwork, and the inspection is done for another year. However, careful consideration of the growers' stories in this publication should give real pause to those of you who only do such paper inspections.



The Indiana Commercial Vehicle Enforcement Division will investigate accidents and, where appropriate, inspect vehicles and trailers to determine whether they were properly maintained.



Growers can be found criminally negligent for falsifying inspection forms and repair logs or who fail to perform an inspection at all. In the event of an accident, these false reports definitely will be used against the grower for *knowingly* putting a truck on the road without actually having completed a thorough inspection. There is nothing wrong with performing your own inspections *so long as the inspection is legitimately conducted*.

However, because inspections are seen as a major source of liability, many growers are taking a different approach to inspections and repairs.

For instance, some growers choose to do their own inspections and repairs at the farm shop, but get a second opinion by taking their trucks to a garage for official DOT inspections. Others have commercial garages perform DOT inspections on half of their trucks and trailers one year, and the other half the following year. Finally, some growers hire professional mechanics to do all DOT inspections and repairs.

After you decide who will perform your inspections and repairs, you are also responsible for setting up a good recordkeeping system. Make sure that all annual inspection reports and repairs are filed for each truck and trailer. Keep the records for as long as you own the equipment. In any lawsuit arising after a serious accident, the attorneys for both sides are likely to request your maintenance and inspection records, with one side hoping to prove the vehicles were well maintained, and the other hoping to show the contrary.

Even if an accident is not your driver's fault, a plaintiff's attorney may suggest to the jury that the accident could have been prevented if the equipment had been better inspected and maintained. While the police officer might indicate that the plaintiff ran through a stop sign, the plaintiff's lawyer will likely try to show that your driver was partially responsible.

For example, the attorney might say, "You have no proof that the brakes were inspected during

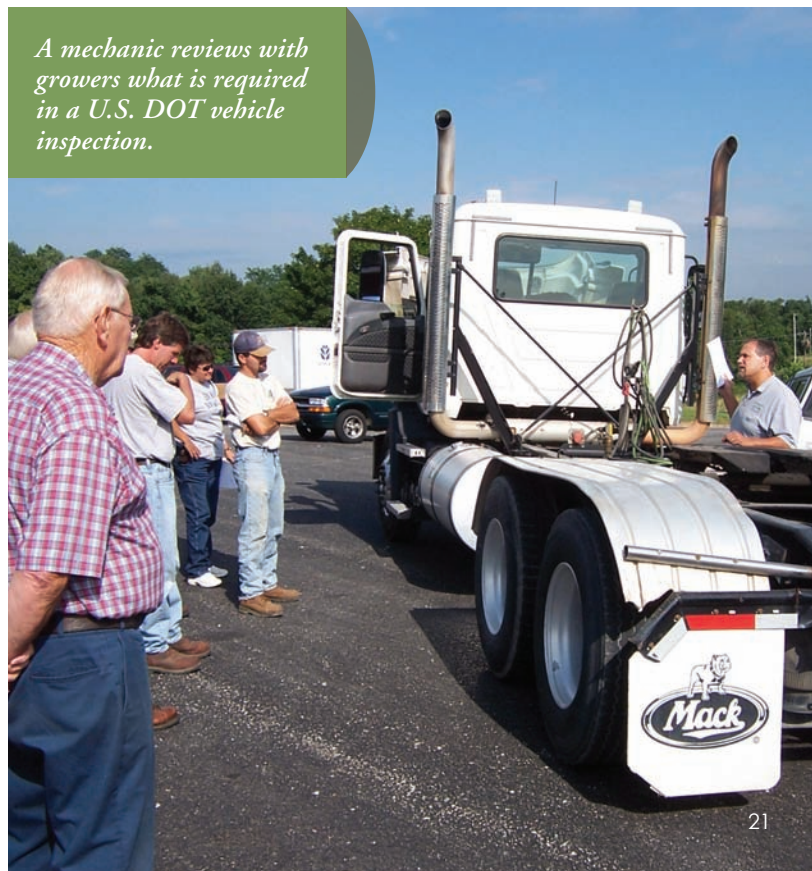
the past three years. They failed. It's your fault, because you should have kept up on that. How do we know what you wrote down as being inspected was actually and truthfully inspected? Didn't you have a motive to get your inspections performed quickly and cheaply?"

Certainly, asking a third party to perform thorough inspections can provide your attorney with evidence to fight back with signed documents created and executed by professional mechanics. If all or some of your equipment is inspected by your local garage each year, your attorney's argument could be much stronger.

For example, "We look at brakes and the other mechanical parts of the truck each year. Our documents indicate that the inspections were made by qualified mechanics and when something needed repairs, they were done in a timely fashion by qualified technicians. In this accident, it was the brake line that broke. It was in good shape at the last inspection, and its failure was something that my client could not have foreseen."

Lawyers call this the "foreseeability defense."

A mechanic reviews with growers what is required in a U.S. DOT vehicle inspection.



Place “Slow-moving” Signs on All Equipment

STEP 2

The familiar reflective triangle is intended to warn drivers that they are approaching slow-moving agricultural implements. While these signs are a simple safety precaution, growers too often fail to:

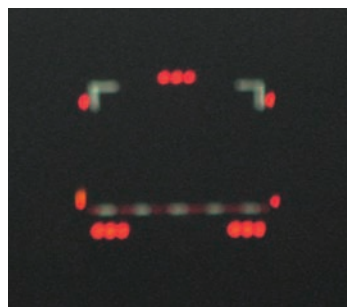
- Place signs on newer equipment
- Realize that a slow-moving sign on a tractor may be blocked by the implement it is pulling
- Make sure signs have not fallen off
- Replace faded and broken signs

Two Purdue Pesticide Programs publications provide more information about transportation regulations that apply to growers: *Carrying Farm Products and Supplies on Public Roads* (Purdue Extension publication PPP-68) and *Transporting Farm Equipment* (PPP-83) are both available from the Purdue Extension Education Store, www.the-education-store.com.



Slow-moving vehicle signs warn other drivers on the road. Not having such signs could pose a legal risk in the event of an accident.





It isn't always enough just to mark the bottom of a trailer with reflective tape. Notice how much more visible the vehicle is that has reflective tape on all sides.

Apply Reflective Tape to Equipment

STEP 3

Reflective tape is one of the wisest investments that you can make to reduce transportation accidents. The following statements from a grower demonstrate why reflective tape is such an important safety element when putting vehicles and implements on the highway.

I can go outside with a flashlight at night and if my trailer with reflective tape is half-a-mile away, I catch it with my flashlight. It makes an incredible difference in the visibility of a vehicle.

I put tape on the outside edges of my equipment so everybody knows just how wide this equipment is as they approach it. When they can't see the marker arm sticking out over the edge, they might clip it if they try to pass or meet you. That is so important, and in the dawn and dusk hours, when they can't see what's really out there, I think the reflective tape is as important as the slow-moving sign.

Mount Lights, Flashers, and Turn Signals

STEP 4

It is true that many tractors and trailers used on roads were not required to have lights, flashers, or turn signals when they were built. However, the lack of these warning devices poses a serious hazard and possible threat when the tractor and the equipment are used between dusk and dawn.

You can add portable lights, flashers, and turn signals to your equipment for relatively little cost. Another option is to follow tractors and implements with a truck using its flashers as a warning to others. The trailing vehicle can use turn signals at the appropriate time, giving ample warning to vehicles following the truck.

Dusk and dawn are challenging times for drivers to approach slow-moving vehicles from behind. Add lights, flashers, reflectors, and slow-moving vehicle signs to increase the chances that drivers will see you.



Secure Loads

STEP 5

We have all experienced anxious moments while driving when we've seen cargo leaning precariously on a trailer, pesticide containers bouncing up and down in the bed of a truck, a disengaged load binder bouncing off the pavement, a 500-gallon water tank shifting to one side, a bale of hay bouncing on the road, or a commercial lawn mower rolling back and forth in the bed of the truck.

Imagine your cargo spilling onto the road. Vehicles on both sides of the road instinctively swerve toward the shoulder. Others cross the centerline into the path of oncoming traffic. Imagine someone running over your spilled cargo, having a blowout and losing control of the vehicle. Imagine a horrible accident — all because you failed to properly secure your load.

Losing cargo on the road is very serious business. Falling cargo can directly or indirectly injure people and destroy personal property. There may even be environmental impacts if a fallen chemical contaminates surface water; and if your insurance does not cover the cost of remediation, you can incur significant out-of-pocket expenses for cleanup and restoration.

Properly loading, positioning, and securing cargo on a truck or trailer will prevent accidents in transit. It is also imperative that you always select the right tie-downs for the job and use them correctly.

Securing the Load: A Guide to Safe and Legal Transportation of Cargo and Equipment (Purdue Extension publication PPP-75) describes how to properly secure loads so they don't fall off. A poster (PPP-76) and pocket guide (PPP-84) also are available from the Purdue Extension Education Store, www.the-education-store.com.

*Even for short distances,
it's important to secure
all loads before driving.*





Many serious highway accidents are caused by securing loads to the unsafe areas or by using worn out straps, chains, and binders.



Securing loads properly will prevent accidents and protect your business.

Buy Insurance to Protect Against Catastrophic Accidents



*Trucks, trailers,
tractors, and other
implements pose
significant liabilities.
Get the best advice
possible by making
sure your insurance
representative is well
aware of your operations.*

You should view insurance as one of the best bargains in your farm budget. Most agents will give you excellent advice on the kinds of coverage available, but it is very important to find an agent who understands your risk tolerance.

Your agent is a valuable partner in your farming operation. The longer you keep that agent, the more experienced he or she becomes with what you do, the type of equipment you operate on and off the farm, and the liability exposures faced by your farm.

Select What You Want in Your Policy

An insurance company needs information about your operation to estimate how great its liability will be if it insures your farm. This information tells the company how to price its product. The information your insurance agent collects is reviewed by an underwriter, who then decides what the risk will be to the company offering

the coverage. After viewing the farm's operations and the risks it poses, the insurance company will offer the grower coverage for a particular cost. It's then up to the grower to make decisions based on an insurance agent's advice.

After reviewing your insurance options, you can evaluate the cost of those options. You can drop certain coverage or increase particular deductibles to lower premiums. How much coverage you drop or which deductibles you increase depends on how much risk you are willing to accept.

Make Sure Your Agent Is Your Adviser

Your farm operation changes from year to year. As it changes, so do your insurance needs. This is why sitting down with your agent needs to involve more than going to an office to sign papers, drink coffee, and talk about the high school basketball team. Likewise, you should not simply pay the premium statement you receive in the mail





without discussing your current policy with your agent first.

Share information about your entire operation with your agent. Don't hold back. Make sure to update your agent after you purchase different equipment or make major changes in your operation. Get your agent's best advice, discuss all of the possible insurance options, then make the best decisions for you and your farm regarding additional (or reduced) coverage and policy limits.

Provide Full Disclosure

You are required to fully disclose and honestly answer the questions your insurance agent asks. Being honest on your application will help avoid surprises when you file a claim. It is far easier to address coverage issues under the policy when there are no pending claims than it will be to argue about such coverage after an accident.

Share Your Financial History

There is a fine line between having too little and too much insurance. Carry too much and you waste money. Carry too little and you may not have enough coverage to pay for a catastrophic truck accident.

In order to assess how much coverage is too much or too little, your insurance agent needs to understand not only your risk exposures, but also your financial ability to shoulder those risks.

The agent needs to know whether you would have sufficient resources to replace a \$150,000 tractor trailer. If you are financially able to replace expensive equipment, perhaps you don't need as much insurance, or you can increase your deductibles.



On the other hand, if a \$150,000 loss would put you in a serious bind, then insurance coverage is a necessity. You and your agent need to understand what kind of risks you can self-insure versus those risks you need to insure through coverage. This is called “risk sharing.” The insurance company collects a premium for a certain amount of coverage, and the policy holder agrees to pay for losses not covered by the policy. You can choose to share the risks of property and liability losses, but you need to fully understand the consequences of the risk sharing level you elect.

Cover More Than Your Assets

Some growers think they have enough coverage when their insurance limits match their net worth. However, coverage based on net worth can be misleading and provide a false sense of security, especially where liability coverage is concerned.

The better question to ask is, “Is there a real possibility that I could lose a lawsuit in which the amount of insurance that covers my net worth is not enough to cover the judgment?”

Say you have \$2 million dollars of liability coverage, which roughly covers your net worth. One of your vehicles is involved in an accident that causes the death of a child. The jury awards the child’s parents \$5 million. Your insurance company would only be responsible for covering the first \$2 million, while you would be responsible for the remaining \$3 million. That could bankrupt your business.



The driver of this sprayer drove through a stop sign and collided with a truck.





Understand Liability Limits

Liability insurance is intended to prevent the loss of assets such as homes, land, or equipment in the event your operations cause the loss of another's property or life. One constructive way to view insurance is to understand that the insurance company is going to step in on your behalf in the event of an accident. They will help defend you against false claims, and they will pay for losses attributed to you. This is why you pay a premium to the insurance company.

However, the amount they will pay on your behalf is not unlimited. Your premium is a contract with the insurance company. In exchange for the premium payment, the insurance company agrees to pay up to the maximum coverage of the policy if a judgment is rendered against you.

You must make an important decision as to where to set those limits. To do that, you need to consider your financial position and the risks to others your operations pose.

Declare an Accurate Travel Radius

Insurance companies understand that they are assuming additional risk (greater chances of an accident) when trucks travel farther from the farm. The travel radius you declare for your vehicles influences the policy premium. You will typically be asked whether you travel a radius between 0-50 miles, 0-200 miles, or more than 200 miles during the year.

In the event of a claim, the insurance company may look at the limitations in the policy to determine whether your vehicle was operating within the travel radius declared on the policy.

For example, you tell your insurance agent that your vehicles stay within a 50-mile radius of the farm. You have an accident and file a claim. The claims adjuster investigates and shows that the accident occurred well outside of the 50-mile



Discuss all aspects of your insurance policy with your agent to make sure you know what will be covered in case of an accident caused by an uninsured or underinsured driver.

radius. If that's the case, you might receive a terse letter saying, "We regret that there is no coverage for this accident."

In other words, you're on your own. This is why you should at least get a price for the radius with the greatest miles to determine if you can afford it. Whatever the cost, be sure the travel radius of your policy covers the area where you know you will be traveling.

Automatically Cover All Employees

You can hire an employee in the morning and by the end of the day, that employee may be driving your truck or tractor. Would that employee be covered if he or she were involved in a traffic accident on the first day?

Even naming every individual who works for you (either part-time or full-time) may not be sufficient. Will the list really include every person who might drive your equipment? Will you be covered if someone not on the list is driving your equipment?

These are important questions to ask your agent. The best coverage covers "all employees or agents," named or not.

Increase the Uninsured Limits

Collision damage coverage will reimburse growers for vehicles lost in an accident. According to the terms of the policy, the insurance company will pay the current market value for the particular make and model of the vehicle.

This means if the vehicle is a total loss the grower will have an out-of-pocket loss (his deductible) between what the insurance company will pay for the value of truck and the replacement cost of the truck that is purchased to replace it. Even if a truck or trailer (usually written as separate coverage) can be found at a similar cost, the grower will still have a deductible to pay.

But what happens if you are involved in an accident that was caused by someone else? The answer is that the other driver's insurance is responsible for paying the medical bills (as well as lost wages and other expenses) for your driver. But what if the other driver doesn't have insurance or carries only state minimums? The question for your insurance agent should be, "Do I have sufficient coverage?"



The following real-life situation demonstrates why growers have to be concerned about motorists driving without insurance.

I was getting ready to harvest when we received the call from our semi-truck driver. He told me that a woman and her daughter were in a car that ran a stop sign and that he slammed into her. Fortunately, I knew our driver was in good enough shape to be calling. He told me the daughter and mother seemed to have only minor injuries. At that point, the only thing I was concerned about was that everyone involved in the accident was not severely injured.

I immediately went to the accident site to see what I needed to do. On the way, I called our insurance agent. Our wrecked truck and trailer were still there when I arrived. I could tell the truck and trailer were a complete loss. All of the injured had already been moved to the hospital for evaluation.

I had to give all kinds of information to the police working the scene. They inspected the truck and reviewed our paperwork. That particular truck had just had new brakes put on. We had gotten it

back from the shop the night before. We were able to tell the officers that. They could see that the truck and trailer had good tires on them, and everything appeared to be in good mechanical condition.

The woman driving the car was determined to be at fault, however she was driving without insurance. The driver of the car was ticketed for failing to yield the right-of-way and failing to have insurance. Our driver was not at fault. But at that point, the legal system was finished with the other driver. Our only recovery was through insurance.

I had collision coverage to cover the value of the truck and trailer less my deductible. We had made many upgrades to the truck and trailer. Our trailer company was able to provide information to our insurance carrier about all of the upgrades. Without their paperwork, many of those upgrades couldn't have been determined at the time of the wreck. With all of our records, I was able to show to the insurance adjuster that the truck and trailer were worth more than a comparable make and model, and they covered us at the current value of our equipment, up to the actual cash value of the truck.



If our insurance policy provided uninsured motorist property damage coverage we would have been able to save our collision deductible.

We had out-of-pocket costs, though, because of the depreciated value of the truck and trailer. We could not buy a truck or trailer for what our insurance paid us. They paid us full value of the vehicle that was damaged, but we were not running new trucks in our operation. We did buy a semi rig the weekend following the accident. We also had insurance coverage to pay for renting a grain trailer. Within a week we were back up and running with a truck on the road, and a trailer we rented for the rest of the fall harvest season. Our new trailer arrived after harvest, and we were back in business, out only our deductible and the difference in the market value of our equipment and the cost of replacements.

The fact is that the farm driver in this example was not at fault, but the repercussions from such an accident are often more than what a grower could have imagined or predicted. It is important to understand that some policies only cover bodily

injury under the uninsured and underinsured coverage. Under these policies, an endorsement has to be written to include uninsured motorist property damage (UMPD) at an additional cost.

Carrying the proper insurance coverage might avert a financial disaster. You will need to price the cost of adding UMPD coverage and compare that to the cost of your deductible for collision coverage. Because the grower in the above example carried this coverage, his insurance carrier acted to recover what they could from the uninsured driver including reimbursement of the deductible he had to pay.

What would your insurance policy cover if the other driver is not insured?



Know the Drop Down Limits

It is common practice for growers to loan equipment to their neighbors. When a grower is involved in an accident with borrowed equipment, whose insurer pays for repairs and liability claims? The answer to this question is covered by an insurance policy's "drop down limits." Who or what is covered depends on the language in an individual policy. It used to be more common that insurance followed the vehicle — the vehicle insurance was primary. Today, it is more common that insurance for the driver is primary.

The following example demonstrates why it is important to know all the details about your coverage before you loan any equipment.

I loan my trucks and trailers to other growers, and in turn, I borrow their planting and harvesting equipment during spring and fall. It's been a common practice for as long as I can remember. I have a \$1 million policy for my operation.

I did not realize that as soon as I let another farmer borrow my trucks and trailers something called "drop down limits" apply if he is involved in an accident. What this means is that my policy might only cover the first \$25,000 of damages, leaving me to cover the rest of the cost. Since learning about drop down limits, I have since increased these limits. I have peace-of-mind knowing that if somebody needs to borrow my vehicle and has an accident, I'm covered.

Obviously, it might seem easier not to loan my truck or other equipment to another grower, but it's not that simple. If I don't share with them, then I'm no longer valuable to them. This means that I have to buy the equipment that I borrow from them, which is something I don't feel that I can financially justify based on the way we operate.



Always make sure your new equipment is insured before you take it off the dealer's lot.

Cover New Equipment at the Time of Purchase

Call your insurance agent whenever you buy a new or used truck, trailer, tractor, or other piece of equipment that will be used to transport farm property on the highway. When the papers are signed and money has changed hands, whatever you purchased belongs to you. Call your agent immediately to ensure that you're your policy covers the equipment before you place it on the road.



Beware of Hauling Products Commercially

Farm policies are traditionally priced much lower than business policies. Know what your policy allows and limits when it comes to using your trucks and trailers for commercial purposes. Some farm policies offer a limited amount of coverage for business activities. Other policies do not allow farm trucks to be used for commercial purposes.

Although your farm policy allows you to make a specific amount of money hauling commercially, it means you will lose your DOT farmer exemptions. If an accident were to occur, the plaintiff's lawyer could argue that you lacked all the licenses required by commercial drivers.

Requirements for commercial hauling are covered in the Purdue Pesticide Programs publication *DOT Rules for the Road* (Purdue Extension publication PPP-65), available from the Purdue Extension Education Store, www.the-education-store.com.

Ask to Be an Additional Named Insured

You should ask any contractor you hire to name you as an "additional named insured." Being an additional named insured means you are entitled to all the rights and benefits that the policy offers the contractor.

One grower remarked, "All of my third-party drivers named our corporation as an additional insured on their policy. That means I will be covered and protected under their insurance policies in the event that there is an accident."

Always be sure to ask for a copy of the policy that lists you as an additional named insured and keep that with your records.



Remember: farm plates are for farm vehicles and not for commercial hauling.



Consider Getting Pollution Coverage

Most insurance policies have what are known as “pollution exclusion clauses.” These clauses basically say that the policy will not pay for cleaning up pesticides, fertilizers, or other chemicals spilled as the result of a traffic accident.

It is critical to consult with your insurance company and legal counsel for definitions of exactly what their general and specialized policies cover, as well as the coverage limits.

For instance, pollution coverage is of very limited help if it covers only a fraction of the cleanup cost following an incident. Most roadside spills cost around \$50,000 to clean up, but if there are other factors involved, cleanup costs can increase greatly.

It also is important to determine the conditions under which the insurance company will pay for contamination cleanup. Realize, too, that fuel is considered a hazardous material and, if spilled during an accident, can result in significant clean-up costs.

More information about spills is covered in the Purdue Pesticide Programs publication, *Fleet Vehicle Management* (Purdue Extension publication PPP-58), available from the Purdue Extension Education Store, www.the-education-store.com.



Accidents that spill fertilizers, pesticides, and other materials can be expensive to clean. Consult your insurance agent to see if your policy includes cleaning up after a spill.

Spend Your Money on an Umbrella Policy

In Indiana, there are no limits on how much can be recovered in accidents involving a grower's truck running into another vehicle. Plaintiffs can seek any amount they believe will compensate them for their injuries.

Imagine that your truck is involved in a catastrophic accident in which the driver of the other car is so severely injured that she will require round-the-clock nursing assistance for the rest of her life. The other driver is a 35-year-old single mother with three young children. As a college-educated executive, she earned more than \$100,000 a year at the time she was injured.

In such a case, it would not be unusual for the settlement to run into the millions of dollars, considering she still had 30-40 years of earnings left, will have long-term medical bills that need to be paid, and must provide care and support for her children, including college tuition.

These multi-million dollar recoveries can quickly exceed the farm policy's baseline insurance. That's why attorneys recommend that, in addition to farm insurance policies, growers purchase umbrella coverage to deal with catastrophic accidents like this.

You might ask why you need to spend more money for more insurance. The honest answer is that you cannot afford to be without this safety net. Umbrella policies are good values for the increased limits they provide. In their operations, growers are exposed to so many different risks that umbrella policies are essential components to protecting their farming operations.

It used to be that a \$1 million to \$2 million umbrella policy was considered adequate. Over time, juries have awarded larger compensation verdicts. Umbrella policies written for \$3 million to \$5 million are becoming more common in the agricultural community. Always consult your insurance agent and attorney for advice.

Make sure your insurance covers any accidents that you are found at fault for the death of another or where extensive environmental damage occurs.



Read the Policy

Insurance is an important business tool. It can replace a building lost to fire, pay for injuries from an traffic accident, or defend the insured in court. But insurance is more than just paying an annual premium to an agent and putting the paperwork in a safe place. While we know insurance is important, few read their policies.

It's true that an insurance policy is tedious reading, but making an effort to understand what is (and what is not) covered is important. After you suffer a loss, it will be too late to make any changes. Even if you don't personally read your policy, at least develop a list of questions you want your insurance agent or attorney to answer.

More information about insurance is available in the Purdue Pesticide Programs publication, *The Insurance Policy: Protecting Your Business By Understanding Your Policy* (Purdue Extension publication PPP-49), available from the Purdue Extension Education Store, www.the-education-store.com.

Structure Your Farm To Survive a Catastrophic Traffic Accident

You've done everything to get your trucks, tractors, and equipment in the best working condition possible. You feel comfortable with the drivers you placed in your trucks and tractors. And you've done your best to comply with state and federal transportation regulations.

These steps are part of your contingency planning.

Contingency planning also means you should think about what would happen if one of your

trucks were involved in an accident. To account for that possibility, you've made important adjustments to your insurance policy to cover for unforeseen farm truck and equipment accidents. But to maximize your protection, you also may need to consider how you structure your business.

The following story reveals why you may want to consider establishing a corporation as part of your risk management plan.



Unfortunately, serious accidents can occur. Consider creating a corporation as one way of managing your risk.

I was harvesting when I got the call from a friend in the volunteer fire department who was called to the accident. A drunk driver crossed the median and hit the truck carrying my grain. The truck was owned by a commercial trucking company and I had leased the trailer.

When the drunk driver hit the truck, the truck's front axle broke. The truck flipped on its side and landed on another car that was in the next lane heading in the same direction. When the truck rolled over, so did the trailer, spilling the grain. A family of four that was in the second car were all killed.

I received the details piecemeal through the trucking company involved in the accident. I learned most of the details as the evening wore on. The truck driver was uninjured. He walked away. As bad as it was, I thought, I had nothing to do with it, since it wasn't my truck. Or, so I thought.

The following day I went to the accident site. I saw skid marks and my grain still laying in the side of the ditch. I could kind of make out what had happened by looking at the skid marks.

The trucking company, their driver, and the owner of the trailer we leased were included in the lawsuit. I was surprised when our farm corporation also was named in the suit, but was pleased that we were not personally named in the suit.

My mistake was that I signed a lease agreement with the trailer company indemnifying them. The trailer lease I signed said they were not responsible for any accidents involving their leased trailer.

This was the first year the trailer company had implemented this paperwork. I looked at the lease, and it looked relatively standard in my mind. For years we had leased trailers verbally. The owner of the trailer wanted a written lease agreement and I assumed he had his reasons. I did not question it. I did not have an attorney examine the lease. When I signed those papers, I became completely responsible.



The suit has been going on for two years. There seems to be no settlement in sight, and we are getting close to a trial within the next year. The plaintiffs are asking for \$10 million in compensation for all of the parties involved in the accident. That's more than the insurance I was carrying at the time.

Our operating corporation has no land in it. I had set up another corporation with just the land, so it includes no vehicles. The operating corporation has all of the trucks, trailers and all rolling stock in it. There is little equity in the operating corporation. We did this so that if the corporation had to file bankruptcy then it could, without jeopardizing our land holdings.

All we can do at this point is let the lawyers work out the details as part of a settlement. If they can't work it out, then we will have a court to settle our differences.

Creating a farm corporation to deal with the risk posed by highway accidents may be an important part of contingency planning and of managing transportation risks. What would have happened if this grower had not incorporated part of the farm? More than likely, his personal assets would have been drawn into the lawsuit. This is why managing liabilities and protecting your personal assets may include forming a corporation.

Here is one grower's reason why at least talking with an attorney about forming a corporation is a good idea.

I wanted to protect my personal assets such as my home and savings. I look to the business structure as a means of doing just that. Why spend the money doing so?

Let's say one of my employees comes to work and decides to text message his girlfriend while he is driving one of our trucks. I really don't want my home and land that's been in the family for generations to be resting on the back of an employee. I don't want the decisions an employee makes affecting whether I get to keep my home and my family's land.

When considering a corporation, here are a few factors to consider.

Identify the Assets You Deem Important

Creating a farm corporation or other business structure is not a new concept. Farm corporations have long played important roles in estate and business planning, enterprise accounting, and tax issues. However, the liability exposure involved with a serious highway accident is another factor to consider when establishing a farm corporation.

You need to consider what assets could be lost if a judgment is entered against you because of a traffic accident, and then consider a business structure that will sufficiently protect your assets so the farm can continue operating after such a loss.

Growers often say, "I don't have that much to lose. I don't have a retirement plan, my savings are limited, so let them have it all!"

It's true that many growers' net worth is in their land rather than a 401(k) retirement plan. But your land is not a savings account like a retirement plan is to others. While the land has value, it is also an income-generating asset. If your land is sold to help pay for an accident, then you lose the asset that generates your income. It's a lose-lose situation to simultaneously lose income and land that could produce future income.

You also have significant investments in farming equipment, including trucks, tractors, combines, grain bins, and buildings. Those investments are viewed as value that can be sold to offset a legal judgment against you. Once again, these pieces of equipment are important in generating income for you.

So as you determine what's valuable to you, you need to pay particular attention to protecting the assets that are responsible for generating your future income.

Understand Corporate and Personal Liability

A corporation is a "person" under the law, responsible for any liabilities and other obligations. As a person, a corporation is responsible for any debts it incurs, including liabilities that originate from lawsuits.

Everybody's farm is different, so each corporation is structured somewhat differently. This is why getting advice from an attorney who knows (or takes the time to know) your operation is critical to make sure that the corporation is protecting what you believe is important.



Make sure your attorney takes the time to thoroughly understand your farm operations.

Consider how farming operations may be divided into the three types of corporations described below. Each corporation distributes trucks, equipment, buildings, land, and other personal assets in a different way based on liability concerns.

Trucking Corporation

Some growers have decided their biggest risk is the trucks that haul farm products to the market and bring inputs back to the farm. The following grower details why he took action to segregate his truck operation into a separate corporation.

We identified the biggest risk to our business as our trucks. We've set them apart in a separate, limited liability company (LLC), so if something happens with the greatest risk we have, we have the fewest assets possible at risk. In other words, we took the things that posed the greatest risk and put them in the smallest unit that we could.

We kept farm and personal assets separated from the risk of our trucks. The LLC will, however, bear the full brunt of any judgment against it.

More growers are forming their own trucking corporations for just their own vehicles. All semi trucks and trailers, even pickup trucks used in the farm operation for transportation, can be listed as assets of the trucking corporation. Farm machinery, as a rule, is not part of this corporation. Any losses and liability exposure of employees working for the trucking operation would be limited to the assets of that enterprise.

Farm Operating Corporation

You can form a farm operating corporation that includes all of the farm's planting and harvesting equipment and labor. This can operate in the same way that all of your trucking business operates as a trucking corporation.

Some growers choose to run two corporations — one truck and the other farm — alongside their personal assets. The trucks and farming equipment could all have been put into one corporation, but some growers decide to keep the trucks completely separate from the farm equipment because they do not want to lose the combine and other farm equipment in the event of a truck wreck.

All of the assets in any corporation are at risk of being sold to pay for any legal settlements or judgments against that corporation. Dividing assets into corporations based on type and degree of risk is the strategy these growers implement to minimize their risk exposure.

To further protect real estate assets, land is not included in farm operating corporations. Farm operating corporations lease the land from the growers, their families, or other properties just like any other lease arrangement. When the farm corporation needs to transfer grain or take water and chemicals to the field, it pays the truck corporation for any hauling services just as they would any third party. The trucking corporation can invoice the farm corporation, just as any business would invoice for services.

Land Holding Corporation

You can place all land and buildings into a separate corporation. This land corporation rents back to the farm operating corporation the same way as any landlord does. Growers become landlords to their farm operating corporation through the land holding corporation.

Personal Assets

After dividing your farming operations assets into different corporations, you may want to consider protecting yourself further by placing some of your personal assets into a trust.

In some cases, growers may be personally liable for damages resulting from an accident. For example, if a grower drives the straight truck of the trucking corporation or the planter from the farm corporation, that grower may be found to be personally liable in case of an accident. In such a case, some of the grower's personal assets risk being sold or transferred in execution of a judgment.

In the event of a legal claim, a corporation's assets (including insurance) could be attached to satisfy a judgment. But so might the grower's stocks, bonds, and CDs. Under certain circumstances, a trust may provide you with some personal liability protection.

A trust is a separate entity, which is comparable to a corporation in that it can hold property and conduct business. An irrevocable trust means once you put assets into that trust, you can't change it. In essence, you no longer own these assets, but you can still use them during the course of your life. At death, the trust's beneficiaries will get those assets. It would take an extraordinary situation and court order to get assets out of an irrevocable trust to pay creditors.

Conversely, revocable trusts and wills offer little or no protection against creditors. They are not effective until the day you die. Your interest in a revocable trust could still be attached to a lawsuit. An attorney would be consulted to determine strategies for structuring personal assets to minimize loss as a result of a personal judgment.

Indiana statutes protect real property, such as land or a home, when acquired by husband and wife from the creditors of a single spouse. In most cases, such property is presumed to be held by both spouses under a legal term known as "tenancy by the entirety." By its nature, such property is immune from seizure for the satisfaction of the individual debts of either the husband or wife. Therefore, real estate co-owned by husband and wife cannot be "split" to satisfy a judgment against only one of them.

This legal defense is only for real property. In addition, this will only be effective as long as husband and wife are still married or living. A divorce or the death of one spouse can lead to the judgment being properly executed years after the court case is settled.

Breaking Down the Myths of Corporations



*The driver who is found
at fault for an accident
can be held personally
liable in legal disputes.
This is true for both
employees and owners.*

There are many myths that seem to anchor themselves to corporations. Here are seven common ones.

Myth 1. Corporations Absolve Personal Liability

Growers don't want their employees to create problems that affect the growers' home, land, and personal well-being. Acting as the owner of the company, you hire and pay drivers and equipment operators through the farm corporation.

As a general rule, if an employee is driving the corporation truck and has an accident, the corporation's assets and the driver's personal assets can be attached (sold to pay) as part of any judgment. The grower, in most cases, is not personally liable for an employed driver's actions beyond the boundaries of the grower's corporation that employed the driver.

However, and this is an important legal point, a grower who causes a trucking accident is not absolved of personal liability. For example, let's

say the grower-owner is the one driving a truck involved in an accident. Whether the driver was a grower-owner or the grower's employee, the corporation's assets can be attached in a lawsuit.

But when the grower-owner is also the driver, then the grower can be held personally responsible for any role in causing the accident — just like the employee driver. The bottom line is that corporations cannot fully insulate a grower from personal liability when the grower is at fault.

Myth 2. Sole Proprietorships and Partnerships Protect You From Personal Loss

Some farmers run their operations as sole proprietorships. A sole proprietorship offers no liability protection whatsoever. A sole proprietorship generally refers to how you are taxed. If you conduct business as a sole proprietorship, your personal assets could be used to satisfy a judgment stemming from a lawsuit against you.

Before entering into any partnership, know your liabilities.





A partnership is a legally recognized business entity that files a tax return in that capacity. General partners are usually jointly and separately liable for the debts and liabilities of other partners acting within the scope of the partnership.

A partnership can actually be worse than having no trust or business entity at all. Let's say you are farming with your two sons and set up a partnership. If one of your sons is driving a truck owned by the partnership and runs over someone, you and the rest of the partners can be jointly and separately responsible.

Myth 3. Corporations Don't Require Different Ways of Operating

If your goal is to protect personal assets through a corporate structure, then you will likely have to change the way you conduct your business.

Assume that you create a trucking corporation. To provide true protection, the trucking corporation must have a separate checking account and pay all of its obligations, including salaries. If you have employees who work on the farm and who also drive road vehicles, they need to report hours separately for each operation. You also should issue separate paychecks from each corporation.

Why is this necessary? If a driver has an accident, the first two questions asked are: "Who owns the truck?" and "Who does the driver work for?"

The answers to these questions will be determined by documentation: the truck's title determines its owner, and the driver's paycheck determines who he or she works for.

If you title your trucks to a separate corporation, but continue to pay drivers from a farm or other account, you have really done little to protect yourself from damage claims arising from truck accidents. The bottom line is that managing a corporation means making major changes in your operations.

Vehicle maintenance, fuel, insurance, and licensing are also obvious expenses for this corporation, and should be paid from the corporation account. It is important to have all invoices made out to the trucking corporation, as documentation will show whether a corporation really exists as a separate legal entity. There have to be clear lines that separate the trucking firm and other corporations or personal property. Any connection between corporations and personal assets may void any protection a corporation could offer.

It is also important to adhere to all corporate formalities, such as holding annual meetings, keeping minutes up-to-date, using separate letterhead, establishing separate offices, and so on. Failing to do these things may allow the plaintiff's attorney to "pierce" the corporate veil and go after your personal assets.

Myth 4. Forming Corporations Means Losing Homestead Exemptions

As long as you are a shareholder, partner, or member of the entity that owns your principal place of residence, you can still claim homestead exemption for that property.

Recent legislation revised the statutory homestead deduction to allow property owned by a corporation, LLC, or partnership to qualify.

You can still claim a homestead exemption for your primary residence if you are a shareholder, partner, or member of the entity that owns it.

The revised Indiana Code 6-1.1-12-27(k) defines “homestead” to include property that satisfies each of the following requirements:

- The property is located in Indiana and consists of a dwelling and the real estate (not exceeding one acre) that immediately surrounds that dwelling
- The property is the individual’s principal place of residence
- The property is owned by an entity not described in subsection (a)(2)(B) — that is, the property is not owned by an individual or trust
- The individual residing on the property is a shareholder, partner, or member of the entity that owns the property
- The property was eligible for the standard deduction under this section on March 1, 2009

Myth 5. Corporations Mean Losing DOT Farm Exemptions

In this example, the corporation is for individual farm business purposes only. You are still a farmer, using farm equipment, hiring farm employees, and hauling your own farm products. You are still a farmer even if you have set up a corporation or two.

In general, vehicles controlled and operated by a farmer and transporting farm products or farm supplies are exempt from DOT jurisdiction (49 U.S.C. 13506(a)(4)). Regulations define a “farmer” as “any person who operates a farm” (49 CFR 390.5). In federal legislation, a “person” includes corporations as well as individuals (1 U.S.C. 1). Once you transport goods for compensation, you are no longer considered to be a “farm vehicle driver” under DOT regulations 49 CFR 390.5.



When planning your business, make sure to protect your spouse and your joint assets.

Myth 6. Creditors May Collect Half of My Property

Assets are subject to being taken by creditors based on how they are owned. If a husband and wife own real estate as previously discussed as “tenancy by the entirety,” then creditors of either of the husband or wife cannot attach or sell any of the real estate.

Any other commonly owned assets are presumed to be owned equally between the husband and wife. Creditors can attach and sell one half interest in those assets. For example, one half of a combine or one half of the grain in a bin could be attached by a creditor. Other assets such as banking accounts, personal property, stocks, bonds, CDs, and so on, are considered to be owned as the assets are titled. Hence, if it’s titled to the husband and wife, then it is presumed that each owns one half.

Other than the special class of assets designated as “tenancy by the entirety,” the simple status of husband and wife does not generally protect your assets. One may argue that general personal property — equipment, livestock, grain, etc. — which really does not have a document evidencing title, is presumed to be owned 50/50 by husband and wife. However, in today’s world, where one spouse may have a career off the farm that argument may be hard to make.

Myth 7. Personal Shares in a Corporation Are Protected

Most growers involved in a corporation own a percentage of the corporation that operates or owns their business. Shares of the corporation could be subject to attachment to satisfy a judgment.

The best way to protect your shares is to make sure the insurance that protects you and your corporation is high enough to meet any claims.

Seek Advice From an Attorney



*Make sure you work with a lawyer
who understands what makes you different
from your neighbors.*

Farm businesses are complex, and to manage them appropriately, you should employ appropriate legal counsel just like you employ accountants and physicians. There are a myriad of facts you must disclose to your attorney so he or she can determine whether forming a corporation makes sense for your operation.

If you are thinking about forming a corporation, make sure your attorney knows:

- How you're set up in terms of the relationships you have with family members
- What business activities you're engaged in
- How the property is owned
- What assets — farm and nonfarm — are owned by you, your spouse, and partners
- What succession plans are in place
- What the terms of your will are
- How family trusts are set up
- What property and other assets you want to protect
- What risks you see as important

Providing this information to your attorney will help you set up a corporation that protects against specific risks, while taking into account estate and tax planning. The complexity of today's farming environment means competent legal counsel is essential.

You hear different companies on radio and television claiming that you can create your own corporation by filling out a few forms and paying much less to them than going to an attorney for advice. If all you want to do is file a few papers and your operation is not very complex, then this may work. But if your goals include structuring a business for the best tax advantage and asset protection, then you should consult with an attorney. It will be money well spent.

Competent advice from an attorney is critically important in protecting you from personal liabilities stemming from a traffic accident involving your farm equipment. You want to sit down with a knowledgeable attorney who will give you competent legal advice.



*Following sound legal advice
from an attorney can help protect
you from personal liabilities
in case of an accident.*

The words of this grower say much about the need for an attorney when reviewing operations that deal with corporations.

I know how to farm and raise a crop. I don't know state and federal laws that deal with business structures; my attorney does.

Some business structures might not protect me from risk the way that I want to be protected. My attorney can give me guidance. We do not skimp on legal advice and don't mind paying for our attorney's time on things like this. I would much rather pay for it now than pay him to unravel a mess that was created after an accident. It's always cheaper to pay up front for the few hours it takes to set it up right than to try and solve the problem after I get involved in a trucking or equipment accident.

Don't forget your accountant. An accountant who knows you or is familiar with your operation also can review what the attorney suggests from a tax perspective. Accountants are valuable because they help create, manage, and summarize multiple business activities to ensure they are, in fact, separate entities.

A final business plan should incorporate advice from your attorney and from your accountant to make certain all of your goals are being met. Outside of setting up your business structure, you should consider seeking the advice of an attorney under the three situations described below.

Signing Waivers or Contracts

Never sign a contract without having a lawyer review it. You could be signing a release, which means whatever happens, the company you are dealing with is no longer liable to you for damages or legal expenses.

Any time you sign a lease, you also need to have an attorney look at it to understand the full ramifications of the waiver. Contracts





should be negotiated so both parties share risks together. However, whatever level of risk is assumed, liability insurance becomes a crucial consideration.

Developing an Indemnification Clause

Some growers are starting to place indemnification clauses in contracts they sign with third-party drivers, and are requiring all third-party contractors to sign contracts before hauling grain or livestock for them.

Such a contract says that once the third-party driver leaves the field or farm, it is the driver's sole responsibility to move the grower's crop safely to the point of sale. A lawyer can help develop such a contract.

Reviewing Whether Someone Is an Employee or Contractor

Make sure third-party contractors operate independently and cannot be characterized as your employee. Many growers have the false assumption that if they complete a form 1099 and call a person working for them an independent contractor, they're in fine shape.

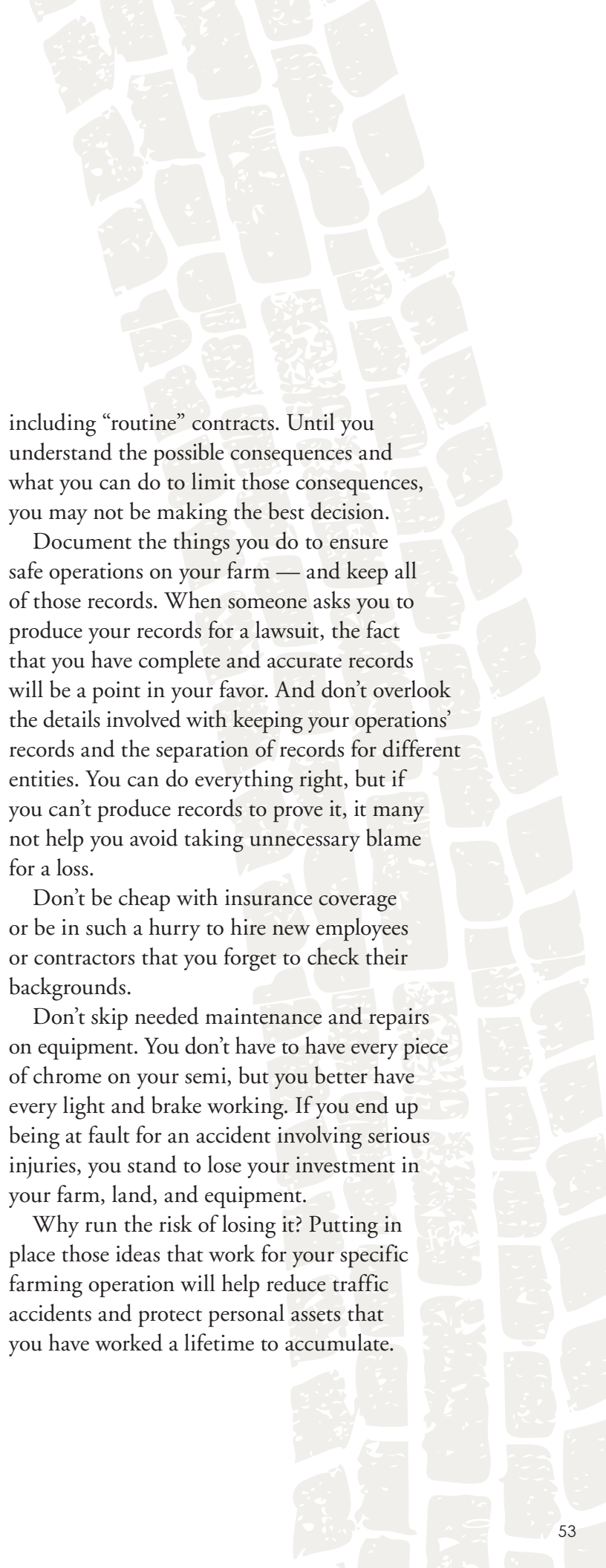
The Internal Revenue Service and courts look beyond the 1099 to determine whether someone is an employee or an independent contractor based on the specific facts of the case. Of the many factors the courts consider, one of the main considerations is the extent of control which, according to the parties' agreement, the grower may exercise over the details of the work performed by the independent contractor.

Let's say a third party owned the semi and you owned the trailer. If you are directing the semi owner's work methods and details of his performance, he might be considered an employee of your company. You need an attorney to help you evaluate your business relationships with all parties you consider to be independent contractors.

Conclusion

While the initial shock of traffic accidents may fade with time, memories of what happened will not be forgotten.





Growers operate businesses that require serious and credible investments. Farming is no longer something you can quickly start back up if you lose everything in a lawsuit. If everything went away tomorrow, you couldn't start from scratch as a previous generation might have. Growers have to be mindful of how farming, and the risks farmers face, are different now than in years past.

You assume tremendous risks when you place your trucks and farm equipment on any highway. Work with your insurance agent to review your policy in light of how you actually operate. If you have one semi and employee hauling on county roads from the farm to a local elevator, you may not need the same amount of insurance as a grower who runs many trucks down the interstate and hauls long distances to pick up equipment, fuel, and fertilizer inputs. Each operation has different risks.

Growers are probably the most legally underrepresented group of businesspeople. They just don't want to get attorneys involved in anything. And yet, growers probably need legal advice more than most other businesspeople.

You should sit down with an attorney to discuss the tax and liability issues to decide whether setting up business entities or trusts make sense. Also, make sure you routinely consult legal counsel for all legal issues —

including “routine” contracts. Until you understand the possible consequences and what you can do to limit those consequences, you may not be making the best decision.

Document the things you do to ensure safe operations on your farm — and keep all of those records. When someone asks you to produce your records for a lawsuit, the fact that you have complete and accurate records will be a point in your favor. And don't overlook the details involved with keeping your operations' records and the separation of records for different entities. You can do everything right, but if you can't produce records to prove it, it may not help you avoid taking unnecessary blame for a loss.

Don't be cheap with insurance coverage or be in such a hurry to hire new employees or contractors that you forget to check their backgrounds.

Don't skip needed maintenance and repairs on equipment. You don't have to have every piece of chrome on your semi, but you better have every light and brake working. If you end up being at fault for an accident involving serious injuries, you stand to lose your investment in your farm, land, and equipment.

Why run the risk of losing it? Putting in place those ideas that work for your specific farming operation will help reduce traffic accidents and protect personal assets that you have worked a lifetime to accumulate.

Acknowledgements

Thanks to Dawn Minns for graphic design. Thanks to Jonathon Dendekker for the photos on pages 12, 13, and 52. Thanks to Michael Heinz, *Lafayette Journal and Courier*, for the accident photos on pages 20, 32, 33, and 40. Thanks also to those who offered constructive comments during the development of this publication:

Paul Baute

Grammer Industries

Mathew Blackburn

Law Clerk, Indiana Farm Bureau

Chuck Calvert

Calvert Insurance

Tony Etchison

Indiana Farm Bureau

Jim Flanders

Grower

Bill Gelfius

Gelfius Farms

Kip Landwehr

Winfield Solutions

Steve Pritchard

Daseke Insurance Agency

Herbert Ringel

Grower

Justin Schneider

Attorney, Indiana Farm Bureau

Mark Thornburg

Attorney, Indiana Farm Bureau

A special thanks to the Indiana Agricultural Law Foundation for partially funding this publication.



"Defending our growing industry"

The Indiana Agricultural Law Foundation, Inc. is a 501(c)(3) charitable organization dedicated to supporting legal issues affecting agriculture. For more information, call (317) 692-7840. All written inquiries can be mailed to: Indiana Agricultural Law Foundation, Inc., 225 South East St., P.O. Box 1290, Indianapolis, IN 46206-1290.

This publication is intended for educational purposes only. The authors' views have not been approved by any government agency or business. The publication is distributed with the understanding that the authors are not engaged in rendering legal or other professional advice, and that the information contained herein should not be regarded or relied upon as a substitute for professional consultation. The use of information contained herein constitutes an agreement to hold the authors harmless for liability, damage, or expense incurred as a result of reference to or reliance upon the information provided. Mention of a proprietary product or service does not constitute an endorsement by the authors or their employers. Descriptions of specific situations are included only as hypothetical case studies to assist readers of this publication, and are not intended to represent any actual person, business entity or situation.





Find Out More

Purdue Pesticide Programs offer a number of publications on related topics to help you manage your farm operations better.

All publications are available from the Purdue Extension Education Store:

www.the-education-store.com
(888) EXT-INFO (496-4636)

- *The Hiring Process: Recruiting, Interviewing, and Selecting the Best Employees* (PPP-69). Get help developing and customizing employment applications.
- *Carrying Farm Products and Supplies on Public Roads* (PPP-68). Learn more about transportation regulations that affect growers.
- *Transporting Farm Equipment* (PPP-83). Know the rules and right ways to transport equipment on highways.
- *Securing the Load: A Guide to Safe and Legal Transportation of Cargo and Equipment* (PPP-75). Make sure loads don't fall off your vehicles.
- *Hold it Down!* Poster (PPP-76). Hang this poster in the shop for employees who need to secure loads.
- *Hold it Down!* Pocket Guide (PPP-84). This pocket guide offers quick tips to employees who need to secure loads.
- *DOT Rules for the Road* (PPP-65). Know the rules for commercial hauling.
- *Fleet Vehicle Management* (PPP-58). Learn more about what to do after a spill.
- *The Insurance Policy: Protecting Your Business By Understanding Your Policy* (PPP-49). Learn more about insuring your business.
- *Company Bulletin Boards: Communicating Policies, Procedures, and Practices* (PPP-55). Communicate effectively with employees.



PURDUE AGRICULTURE

New 2/11

It is the policy of the Purdue University Cooperative Extension Service that all persons have equal opportunity and access to its educational programs, services, activities, and facilities without regard to race, religion, color, sex, age, national origin or ancestry, marital status, parental status, sexual orientation, disability or status as a veteran. Purdue University is an Affirmative Action institution. This material may be available in alternative formats.



PPP-91

Purdue Extension
Knowledge to Go
1-888-EXT-INFO

Order or download materials from
Purdue Extension • The Education Store
www.the-education-store.com