

# Business/Product Liability & Insurance

Food-Based Businesses  
Virginia Agriculture & Food  
Entrepreneurship Program

April 6, 2009

Charlottesville, Virginia

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*"His cows get loose and run right through the fast food parking lots, and Daddy gets calls from the mini-malls when they're downwind from his hogs. When his tractor backs up traffic, the reception ain't too warm. The city's growing around him, but Daddy won't sell the farm."*

Montgomery Gentry, Daddy Won't Sell the Farm (Columbia 1999).

# Overview

- Top ten ways to cover your ASSETS
- Liability Acts
- Children and Urban Encroachment
- Products Liability
- Conclusions

# Anatomy of a Law Suit

- Duty
- Breach
- Causation
- Damages

# Top Ten Ways to Cover Your ASSETS

## 1. Business Entity

- Choose an appropriate business entity
- Tax Considerations
- Liability Considerations
- KISS- Keep It Simple Stupid

# Types of Entities

- Sole Proprietorship
- Partnership
  - General
  - Limited
- Corporation
  - C
  - S
- Limited Liability Company

## 2. Liability Insurance

- Obtain a adequate liability insurance
- How much is enough?
- What is covered?
- Attorneys' fees?

## 3. Develop a safety routine

- Develop a safety routine for your facility and adhere to that routine
- Safety as part of every employee's job (written job description?)
- Standard operating procedure for safety checks
- Standard operating procedure for what to do when accidents happen

## 4. Use Contracts and Liability Releases

- Use WRITTEN contracts prepared by an attorney- pay me now or pay me later
- Get written releases- legal effect?
- Releases particularly important under the Equine Activities Liability Act

## 5. Use Safety Latches, Locks, etc.

- Use safety latches and locks to secure paddocks, stalls, and barn
- Take keys out of tractors, etc.
- If you don't want the public in certain areas, keep them out

## 6. Keep walkways, aisles, etc. Clear

- Keep walkways, aisles, and driveways free of obstacles, snow, and ice
- Part of the standard operating procedure should include regular checks of these areas

# 7. Signs

- Post signs warning visitors of potential risks and hazards
- Pictures are best- not everyone can read English, or read at all
- Signs alone don't do it

## 8. Set up your facility for your activity

- Use appropriate equipment, etc.
- Keep equipment maintained
- Don't use jerry-rigged equipment intended for other uses

## 9. Minimize Contact between People and Animals

- Minimize contact between people and animals (including dogs and cats)
- Hand-washing stations where needed

# 10. Conduct Periodic Safety Audits

- An ounce of prevention is worth a pound of cure (translate that to \$\$\$)
- What hazards are within your operation?
- Insurance agent, extension agents, others can help

# Liability Acts

- Recreational Use Statute, Equine Activities Liability Act, Cave Liability Act, Agritourism Activities Liability Act
- Arguably ineffective
- Do NOT count on them!

# Children and Urban Encroachment

- If you are close to townhouses, housing developments, etc. or know that kids will be around, be careful!
- Ponds, streams, waterways
- Tractors with keys, etc.
- Attractive nuisance!

# Products Liability

- The legal liability for personal injuries and property damage caused by defective products
- Either the user of the product or others affected by the use of the product may file suit
- In addition, potential liability attaches to every enterprise in the chain of supplying a product to market, including the producer, wholesaler and retailer
- The legal liability for personal injuries and property damage caused by defective products Tractors with keys, etc.

# Products Liability

- The majority of states impose strict liability in tort (liability without fault)
- Other grounds include negligence and breach of implied warranty
- Some states have strict warranty liability as well
- States not using strict liability rely on negligence and implied warranty

# Virginia Products Liability

- Does not impose strict liability The majority of states impose strict liability in tort (liability without fault)
- Negligence is the grounds of liability

# Concerns about Products Liability

- The number of claims and lawsuits in products liability generally has grown significantly in recent years
- Injured parties increasingly receive large amounts of compensation in these cases, through either court judgments or settlements
- Farm markets and other direct sales of farm products exposes producers to higher risk, whether the food products provided are produced on the farm or are purchased from suppliers
- Processing and packaging products for direct sale further increases potential liability

# Conclusions

- Be proactive
- Get adequate liability insurance
- Be proactive