

Liability Management for Fruit and Vegetable Producers

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Risk Management Model

- Risk Identification
- Risk Evaluation
- Risk Treatment
- Selection and Implementation
- Program Monitoring

Risk Identification - Types of Risks

- Property damage (casualty & theft)
- Loss of income (business interruption)
- Human resources
 - Employee injury & illness
 - Key employee
- Legal liability

Risk Identification - Types of Risks: Sources of Liability

- Contractual liability
- Intellectual property/proprietary rights
- Tort law
- Regulatory liability

Risk Evaluation

- Low-Severity, Low-Frequency, retain
- Low-Severity, High-Frequency, retain
- High-Severity, Low-Frequency, transfer
- High-Severity, High-Frequency, avoid or transfer

Risk Treatment (Control)

- Contingency planning
- Compliance
- Incident reporting
- Risk financing
 - Retention
 - Transfer

Selection and Implementation

- Selection and implementation of specific control and financing techniques or each risk

Program Monitoring

- Performance standards
- Measure actual practices against standards
- Take corrective action

Sources of Liability

- Contractual liability
- Intellectual property/proprietary rights
- Basic common law tort concepts
- Statutory (regulatory) liability

Contractual liability

- Contractual relationship (privity)
- Contractual limitations on damages
 - Waivers

Contractual liability (continued)

- Goods versus services
- Food & animals defined as goods
- Warranties
 - Express
 - Implied

Implied warranties

- Merchantability
- Fitness for a particular purpose

Intellectual property/proprietary rights

- Patents
- Trademarks/Service marks
- Copyrights
- Trade secrets
 - Customer lists
- Violations/loss of rights

Intellectual property/proprietary rights (continued)

- Employment agreements
 - Nondisclosure
 - Non-compete
 - Time limited
 - Geographical limited
 - Type of business (not overbroad)
- Publicity
 - Environmental protection
 - Employees

Tort Definition

- A civil wrong
- A wrong for which the courts provide redress in a civil action

Types of Torts

- Strict
- Intentional
- Negligent

Strict Liability Torts

- Liability without fault
- Ultrahazardous activity
- Duty to make safe
- Products liability

Intentional Torts

- Intent
- Punitive damages available
 - Unrelated to actual damages
 - Actual damages need not exist
 - Also available for quasi-intentional torts
 - Gross negligence/reckless disregard

Negligent Torts

- Duty
- Breach of duty
- Proximate cause
- Actual damages

Tort (continued)

- Defenses to negligence
 - Contributory negligence
- Statutory modification
 - Horses/Agritourism
- Liability waivers

Tort (continued)

- Impact of business entity
 - Sole proprietorship
 - Partnership
 - Limited liability company
 - Corporation
- Formalities

Duty Owed to Entrants on Agricultural Land

- Trespasser
- Licensee
- Invitee

Duty to Trespasser

- Slight - may not maliciously injure
- Reasonable force to eject; never deadly force
- Excused by necessity
- Special rule for children

Duty to Licensee

- Warn of dangerous conditions, animals, and hunters (if entrant is another hunter)
- NC - same duty as for invitee

Duty to Invitee

- Make premises safe
- Warn of conditions that cannot be made safe

Products Liability

- Defective design/manufacture
- Strict liability or negligence
 - Strict liability not available in N.C.

Products Liability (continued)

- Express warranties
 - Subject to negotiation
 - Interpretation
 - Usage of the trade
 - Course of dealing

Products Liability (continued)

- Implied warranty of merchantability
 - Generally acceptable to trade
 - Must be expressly disclaimed

Products Liability (continued)

- Implied warranty of fitness for a particular purpose
 - Communicated directly
 - Implied by circumstances

Statutory Liability

- Administrative (civil)
- Criminal
- Private right of action

Liability for Acts of Independent Contractor

- Vicarious liability
 - Question of state law
 - General test: Was the activity inherently dangerous?
 - Distinguish from strict liability test.
 - IC must be negligent

Burden of proof

- Civil
 - Preponderance of the evidence
- Criminal
 - Beyond a reasonable doubt

What Is Insurance?

- **Pooling of Risk**
- **Provider Types**
 - **Risk Pools**
 - **Mutual Insurance Companies**
 - **Stock (for profit) Insurance Companies**

TERMS

- **Premium**
- **Policy**
- **Agent/Broker**
- **Actuary**
- **Underwriter**
- **Reinsurer**
- **Claim**

Components of a Premium

- **Cost of the risk**
- **Administrative costs**
- **Profit/return of premium**

Insurance Needs

- **Disability**
- **Health**
- **Life, owner & key employees**
- **Property/Casualty**
- **Liability**
- **Motor vehicle**
- **Business interruption**

Motor Vehicle Issues

- Automobiles/vehicles
 - Use of personal vehicle for business
 - Business use rider/endorsement
 - Authorized drivers
 - Authorized passengers
 - Pulled vehicles
 - Ownership
 - Insurance coverage

Policy Issues

- Read it!
- Exclusions
- Riders
- Ask questions

Other Issues

- Prompt notice of potential claims
- Share insurance information on a need to know basis
- Coverage level
 - Defense
- Deductible

NC Department of Insurance Services

- MAP (919) 733-9811
 - Assistance finding insurance
 - Regularly licensed companies
 - Surplus lines
- Unauthorized insurance
 - 1-800-546-5664 Consumer services
 - (919) 733-7487 Agent services

Conclusion

- Develop comprehensive approach
- Provide/take adequate training
- Balance risks and benefits
- Review insurance policies carefully