

Liability for Farm Machinery Travel on Public Roads

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Introduction

Farmers utilize many different types of machinery in conducting various agricultural operations. Farm trucks, tractors, bailers, tillers, combines, choppers, seeders and a multitude of other farm vehicles need to have ready access to the parts of a farm that need to be worked. However, for many farmers, ready access from field to field may only be had by crossing over public roads with large and dangerous farm machinery. It is the point of this essay to provide Pennsylvania farmers with selected examples of road use problems and the liability farmers face when they occur. Please note that a comprehensive publication regarding Pennsylvania motor vehicle law as applied to agricultural vehicles has been written by a former research assistant at the Ag Law Center. The article is titled *PA Motor Vehicle Law as Applied to Agricultural Vehicles* and can be found on-line at <http://www.dsl.psu.edu/aglaw/aglaw.html>, or a copy may be had by contacting the Ag Law Center. Because this article covers the topic quite thoroughly, this essay will focus on more specific liability issues as opposed to repeating any information which has already been covered.

Liability for Vehicle-Farm Machinery Accidents

Although most types of farm machines do not need to be registered as vehicles per se with the Department of Transportation, the operators of those farm machines must be licensed drivers in the state of Pennsylvania. It appears, based upon the case law that was researched for this project, that there is no difference in the allocation of fault and liability between a normal car-car collision and a tractor-car collision. The accident will be assessed on the usual bases of duty, breach of duty, actual harm, cause-in-fact and proximate cause regardless of the fact that one of the vehicles is a farm machine and one a typical car or truck.¹

Non-Reciprocal Risks Leading to Strict Liability

Simply stated, strict liability is liability without fault. In certain situations, such as abnormally dangerous activities or statutory violations, the courts will not assess the case

using normal tort law standards of intent and negligence, but will impose liability unto the plaintiff as a matter of law.

Strict liability might be imposed toward the operation of farm machinery on roadways in three situations:

1. If the operator of the farm machinery violates any laws that govern the use of our public roads.
2. If the operator of the farm machinery is transporting any hazardous materials (i.e. chemicals, fertilizers) that would pose a great risk to the public if they were spilled.
3. If the operator of the farm machinery poses what is termed as a "non-reciprocal risk" toward other drivers on the road.

Points one and two are self-explanatory, but point three is a bit more complicated and based in legal theory. George P. Fletcher, a leading scholar and professor at Columbia Law School, developed a theory of tort recovery that is based upon notions of corrective justice.² Simply stated, Fletcher's theory splits the tort world into two categories, reciprocal and non-reciprocal risk imposition.

Reciprocal risks, which impose no liability at all, are equal risks that two individuals pose toward each other. For example, two Honda Accord drivers approaching each other while traveling down the road pose the same level of potential harm to one another were an accident to happen. However, a farmer driving a large farm machine down the road in the opposite direction of a Honda Accord would pose a non-reciprocal risk toward the Honda. A multi-ton tractor or other piece of farm equipment would clearly devastate an average-sized passenger car while sustaining little damage itself. In other words, the farmer creates a risk to the other driver that is significantly greater than any risks the other driver poses to the farmer, and, in the absence of a good defense, the farmer would be held liable for any resulting harm. Bear in mind that although Fletcher's work has been widely accepted and acclaimed, it is purely scholarly and is not codified into statute or any legal rules that I am aware of. However, his theory developed by analyzing hundreds of leading tort cases from many states and the non-reciprocal risk theory is a clear judicial trend that Fletcher discovered. Courts, and especially juries, are much more likely to find fault on the part of the farmer who was creating the much higher level of risk than the other driver on the road. Fletcher's work validates that in most lawsuits of this nature, the party that imposed the greater level of risk almost always lost the case absent a very solid defense.

A Specific Liability Example — Manure Spill on Road

The above analysis gives some general background on the liability issue of farm machinery use on public roads. In addition to the normal liability concern of causing or being involved in an accident while operating a piece of farm machinery on a public road, the liability concern of transporting farm waste with machinery on public roads is also of concern to many farmers. This section will focus on one particular example of an

accident/situation that may very well result from the use of farm machinery on public roadways.

Each year in this country, farms produce countless tons of raw manure. This manure oftentimes cannot stay on a particular farm and needs to be transported to another location for storage, disposal, or sale as fertilizer. Further, manure may be transported from one part of a particular farm for use or storage on another part of the same farm via a public road. The question then becomes what is the farmer's liability for transporting this manure on the road and what happens if the farmer spills the manure during transport? This issue is controlled by statute in Pennsylvania. Title 35 P.S. § 6018.103-303 can be pieced together in order to arrive at an answer to the above question. Section 103, the definitions section, contains definitions for "agricultural waste" and "residual waste." The definition of agricultural waste includes poultry and livestock manure while residual waste is defined as:

"Any garbage, refuse, other discarded material or other waste including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, mining and **agricultural** operations..."

Because the definition of residual waste includes agricultural operations (i.e. agricultural waste), and the definition of agricultural waste in turn includes manure, § 6018.303, titled, "Transportation of Residual Waste," applies to the transportation of manure and states that:

(b) It shall be unlawful for any person or municipality who transports residual waste to fail to:

1. Use such methods, equipment and facilities as are necessary to transport residual waste in a manner which shall not adversely affect or endanger the environment or the public health, welfare and safety; and
2. Take immediate steps to contain and clean up spills or accidental discharges of such waste, and notify the department, pursuant to department regulations, of all spills or accidental discharges which occur on public highways or public areas or which may enter the waters of the Commonwealth..."

It is obvious that § 6018.303 makes farmers and other transporters of manure personally liable for any accidental (or otherwise) spillage of manure onto a roadway. The main points of the statute are that the transporter has the responsibility to use appropriate methods to transport the manure and to immediately clean up any manure spills. Further, the transporter must notify the Department of Environmental Protection/Resources if a spill has occurred or if there is a chance that any of the spilled manure has either entered or might enter into a stream or waterway.³ The farmer is liable for spilling manure and

not following the stipulations set forth in this statute and can assuredly be fined or worse for failing to transport manure safely and within the letter of the law.

Liability Insurance for Farm Vehicles

The above-mentioned article written by Marel Raub (see footnote 3) makes the point that most agricultural vehicles ("implements of husbandry") are excluded from normal Pennsylvania vehicle registration.⁴ These farm-use vehicles may travel on public roads for short distances between fields with some notable exceptions that might apply in specific situations, such as travel from sunrise to sunset only and travel only during the growing season(s). However, while these statutory exemptions address licensing and registration issues, they do not address, nor exclude, farmers from liability should an accident or a problem occur while a farm machine is being driven on a public road.

As with most questions of farm liability, farmers can look to two places for a solution to any potential problems. The first is of course state and/or federal law. The second is farmer's liability insurance. There is no law, state or federal, that I could find that exempts farmers from liability for causing an accident or a problem while driving a farm machine on a public road. Therefore, the farmer's only recourse in a situation such as this is to turn to his liability insurance coverage. The Farmer's Comprehensive Personal Liability Policy (FCLP) is the standard farmer's liability policy in this country. The policy generally protects farmers, their families, their workers and third parties from personal injury that occurs during the course of a normal farming operation. However, a typical clause or addendum to most FCLP policies contains an exclusion for what the policy refers to as "farm trucks." It states in the policy that, "FARM TRUCKS NOT SUBJECT TO REGISTRATION UNDER THE VEHICLE CODE DO NOT HAVE LIABILITY COVERAGE UNDER THIS POLICY."⁵ As mentioned before, the article prepared by the former research student here at the Ag Law Center discusses how most farm vehicles and machines are in fact exempt from registration under Pennsylvania's vehicle code.⁶ Furthermore, as with many of the key terms in an insurance policy, "farm trucks" is not defined. However, this section was probably included due to the fact that farmers can map routes for farm vehicles in lieu of having to register the vehicle with the Department of Transportation, have the vehicle annually inspected, et cetera. These maps include short routes that the farm vehicles will be used for. For example, the farmer may map a route from his house to his fields. The farm vehicle can be driven on this route, but no further. In addition, typical auto insurance policies will cover smaller size farm trucks and vehicles, but not heavier farm machinery.

Minimum Liability Coverage Required

While it appears that the FCLP policy does not cover accidents caused by or involving all farm vehicles, it does state in the policy that the FCLP can be supplemented with an additional policy that does cover farm machinery more generally. This might lead a farmer to then question whether or not he or she has to buy liability insurance for his or her farm machinery, and if so, how much insurance is enough. These concerns are answered by statute in Pennsylvania.

75 Pa. C.S. § 1302 (part IV) addresses the minimum level of liability insurance coverage that farmers must maintain for farm vehicles. Part IV states that farmers must maintain the amount of insurance coverage as is required to be maintained under Chapter 17's financial responsibility section. The financial responsibility section contains what is known as the, "15/30 rule." This rule states that:

"The ability to respond in damages for liability on account of accidents arising out of the maintenance or use of a motor vehicle in the amount of \$15,000 because of injury to one person in any one accident, \$30,000 because of injury to two or more persons in any one accident and in the amount of \$5,000 because of damage to property of others in any one accident."

What this section means in essence is that a person should either carry insurance with coverage at the minimum level, or must be able to prove, to the satisfaction of the Department of Transportation, that they have ready assets in the above amounts necessary to cover the costs of accident victims up to the above-mentioned dollar figures.

Even though Pennsylvania law does not require farmers to maintain any liability insurance on farm vehicles if they can pay the minimum dollar amounts set forth in the above-quoted statute, it is unwise, to say the least, not to have insurance on farm vehicles and machinery. The chances in this day and age that an accident between a pedestrian or an automobile and a farm machine will only result in 15-30,000 dollars in damages is quite unrealistic. With modern medical expenses, even relatively minor injuries could far exceed these statutory minimums, not to mention any additional suits for punitive damages. While the FCLP policy does not specifically include coverage for farm machinery accidents that occur on public roads, the policy does mention that additional liability insurance coverage can be purchased and added into the FCLP policy that would cover the use of farm machines on public roadways. This supplemental liability coverage is more than well worth the extra premiums for farmers who routinely drive farm machinery on public roads.

In conclusion, there are many legal liability issues that farmers must keep in mind when operating farm machinery on public roadways. This article covers only a small sampling, but farm machinery operators should bear in mind that all machinery operation on roadways carries with it the risk of legal liability for spills, accidents, et cetera. To be as safe as possible from financial devastation should a problem occur, farmers should carry both motor vehicle and farm liability insurance. Further, farmers need to know the coverage that they have, what it means, and the limitations of any particular insurance policy or provision. Finally, farmers need to be aware that even with insurance, they very may well end up owing more money to a plaintiff than their insurance policy covers should they lose a lawsuit in a court of law. Bearing this in mind, the utmost care must always be exercised when operating farm machinery on public roadways.

¹ See *Bahry License*, 1 Pa. D & C 2d 277, (1954). Case is about a farmer who was involved in numerous collisions between his tractor and cars. Court uses typical standards of negligence, fault, ability of farmer to see and read road signs, and general competency to operate a motor vehicle as would be applied to drivers of "normal" vehicles.

See also *Baker v. Hupert*, 194 Pa. Super. 423, (1961). In this case, a farmer was driving his tractor on a state highway in order to get to another field. He took precautions and made his turn across lanes and was struck by an oncoming car. The court assessed the case on the basis of the farmer's contributory negligence but the jury found none. The farmer was absolved of all liability because he took all necessary safety precautions while operating his tractor on the road.

See also *Commonwealth v. Agnew*, 263 Pa. Super. 424, (1979). In this case, a farmer was driving a large piece of farm machinery on an unlit highway at night. A motorist struck the farm machine and both passengers in the car were killed. Court analyzed the level of care exercised by the farmer and noted that he had flashing lights and warning signs on his tractor. Court also noted that farmer made every effort to pull over far enough to let motorists pass safely. Court held that farmer exercised reasonable care and was absolved of all liability for the deaths of the motorists.

² George P. Fletcher, *Fairness and Utility in Tort Theory*, 85 Harv. L. Rev. 537 (1972).

³ Note: The reporting requirement is not clearly defined in § 6018 and is pursuant to Department of Environmental Resources regulations. Reporting may depend upon the size and scope of a particular residual waste spill. Consult the DER Regulations for specific details.

⁴ Marel A. Raub, *Pa Motor Vehicle Law as Applied to Agricultural Vehicles*, Agricultural Law Research and Education Center.

⁵ Farmers Comprehensive Personal Liability Policy. Provided to the Center by the Millville Mutual Insurance Company. P.O. Box 280 Millville, PA 17846. (717) 458-5517.

⁶ See also, *Swartz v. Union Mutual Insurance Company*, 547 Pa. 632, (1997). In this case, the court examined how to determine when a vehicle is considered farm use only and not subject to normal vehicle registration. Also, the case proceeds not under an FCLP policy, but under a homeowner's insurance policy.

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