Crop Dusting – Liability Issues and Contract Implications

Roger McEowen (roger.mceowen@washburn.edu) – Washburn University School of Law
July 2025
Agricultural Law and Taxation Blog, by Roger McEowen: https://lawprofessors.typepad.com/agriculturallaw/
Used with permission from the Law Professor Blog Network

Overview

A recent decision by the U.S. Court of Appeals for the Fourth Circuit involving the crash of a crop duster provides some key insight as to how risk should be allocated in agricultural aviation contracts, particularly in the context of aerial pesticide application. It also speaks as to how best practices should be shaped, and how tort law applies in crop dusting situations where multiple parties are involved.

Risk allocation and tort principles in agricultural aviation contracts – it's the topic of today's post.

Recent Case

In *Kritter v. Mooring, No. 24-1158, 2025 U.S. App. LEXIS 17194 (4th Cir. Jul. 8, 2025), vacating and remanding, 138 F.4th 141 (4th Cir. 2025),* an experienced crop-duster flew a helicopter over land owned by Rayborn (leased by Daw Farms), hired via Nutrien and consultant Elmore, to apply pesticide. A low-hanging steel "dove wire" (a decoy wire used to attract doves) spanned the field. Despite a prior pilot reporting a near miss, neither the landowner nor consultant warned Kritter. While crop dusting, Kritter's helicopter struck the wire and crashed, killing him. Kritter's estate sued the farm owners, Nutrien, and Elmore for negligence. The trial court granted summary judgment for the defendants, concluding they owed no duty and that Kritter was contributorily negligent.

The appellate court held that summary judgment was improper because multiple factual issues remained. Specifically, under North Carolina law, issues of foreseeability and duty are usually for the jury. The appellate court concluded that a jury could find that Rayborn and Daw Farms should have foreseen the hazard posed to a low-flying pilot and thus had a duty to warn or remove it. Similarly, Nutrien and Elmore, via "undertaking liability," may owe a duty to exercise reasonable care as crop consultants, especially since Kritter explicitly asked about hazards. On the issue of contributory negligence, whether the wire was "open and obvious," and whether Kritter had the opportunity to avoid it, was not to be resolved as a matter of law. Instead, a jury is to make that determination based on expert evidence.

On the claim that Kritter was an independent contractor and, thus, neither the farm owner nor the tenant could be held responsible for his death, the appellate court disagreed. The court pointed out that the defendants' argument that the wire was incidental to the pilot's work, and thus relieved them of a duty to warn was incorrect because the pilot did not control the parcel or the wire, and it was unrelated to the crop dusting. Accordingly, the farm and the tenant could not avoid liability on an independent contractor theory. The appellate court concluded that in aviation-related torts under North Carolina law, duty, foreseeability, and contributory negligence are fact-intensive inquiries for

juries and are not subjects for summary disposition, especially when the task involves invitees on a property and specialized consultants.

Implications

Several key lessons can be drawn from the appellate court's opinion. The appellate court clearly noted that the duty to warn in crop dusting situations can extend to landowners and consultants. The appellate court held that landowners (e.g., Daw Farms), agricultural consultants (e.g., Elmore), and crop input suppliers (e.g., Nutrien) may owe a duty to warn aerial applicators about hidden hazards on the property—like a steel wire across a field, even when the pilot is an independent contractor. Also, the appellate court emphasized that it is foreseeable that low-flying aircraft could collide with fixed hazards. This created a jury issue about whether the defendants had a legal obligation to warn the pilot of known dangers. The defendants also claimed that the pilot was contributorily negligent, but the court said that issue was not resolvable on summary judgment, reinforcing that courts are reluctant to absolve parties of duty when factual disputes remain.

Note: 45 states are "comparative fault" states, meaning multiple parties can share liability based on percentages. This makes clear duty allocation and disclosures especially critical. After *Kritter*, even third parties (consultants, suppliers) may be liable for silent or careless actions. Of these, about 12-13 states have "pure" comparative negligence, allowing a plaintiff to recover damages even if they are largely at fault, with their recovery reduced proportionally. The remaining 32-33 states use "modified" comparative negligence, which typically bars recovery if the plaintiff's fault reaches or exceeds a certain percentage (either 50% or 51%, depending on the state). South Dakota has a unique "slight/gross" comparative negligence rule.

Allocating Risk in Aviation Contracts

Based on the court's opinion and common sense, consider the following as a guide for a good agricultural aviation risk allocation checklist:

- Pre-application

- Conduct a hazard survey either by visual inspection or via a drone flyover.
- The landowner or farm operator (tenant) should prepare a written hazard disclosure
- The landowner or tenant should prepare a site map and provide it to the pilot showing all potential obstructions (e.g., wires, poles, fences, towers, etc.).
- The landowner or tenant should mark or flag all low-level flight hazards.
- A communication plan should be established that specifies who to contact about field conditions or last-minute changes.
- A consultant or retailer should provide a safety confirmation by "signing off" on field readiness.
- Prepare a written contract containing basic clauses addressing hazard responsibility, an indemnity clause for undisclosed hazards, a clause requiring insurance for all parties, a clause providing for limitation of liability for the pilot, and a clause detailing pilot inquiries regarding obstacle and any responses.

Note: A clause should be included specifying that the applicator acknowledges inherent risks of aerial work. However, this assumption does not extend to hidden or undisclosed hazards outside the scope of what an experienced applicator could reasonably detect. Such a clause should be carefully tailored to align with a particular state's comparative fault framework. *See, e.g., Kan. Stat. Ann. §60-258a*

Details on clause language. A hazard disclosure clause requires the landowner, lessee or agent to affirmatively disclose all known and reasonably discoverable hazards, such as wires, towers, irrigation equipment, etc. The clause should also include mapping or marking obligations for hard-to-see obstructions. An indemnification provision requires landowners or consultants to indemnify the applicator for injury or property damage resulting from undisclosed or concealed hazards. As for a waiver and assumption of risk clause, applicators may assume some risk inherent to the job, but this case shows courts won't automatically assign full responsibility to pilots, especially for non-obvious dangers. Contracts between applicators and ag retailers or consultants should clarify whether the consultant is responsible for field prep or safety, as well as what representations were made regarding field conditions. Ensure aviation policies are coordinated with landowners' and contractors' general liability policies, to cover shared or disputed liabilities.

- Post-application
- Establish a protocol for reporting any incidents on a timely basis. For example, in Kansas a two-year statute of limitations applies for personal injury.
- Establish a plan for preserving evidence if damage or injury occurs
- Maintain records of of communications, site conditions, and prior warnings

Conclusion

Kritter v. Mooring sends a clear signal - liability for agricultural aviation accidents involving hidden obstacles may be shared, and cannot be contractually or procedurally offloaded without clear, written terms and proactive safety measures.

By explicitly allocating duties and liabilities related to hazard identification and warning, parties can reduce ambiguity—and litigation exposure.