



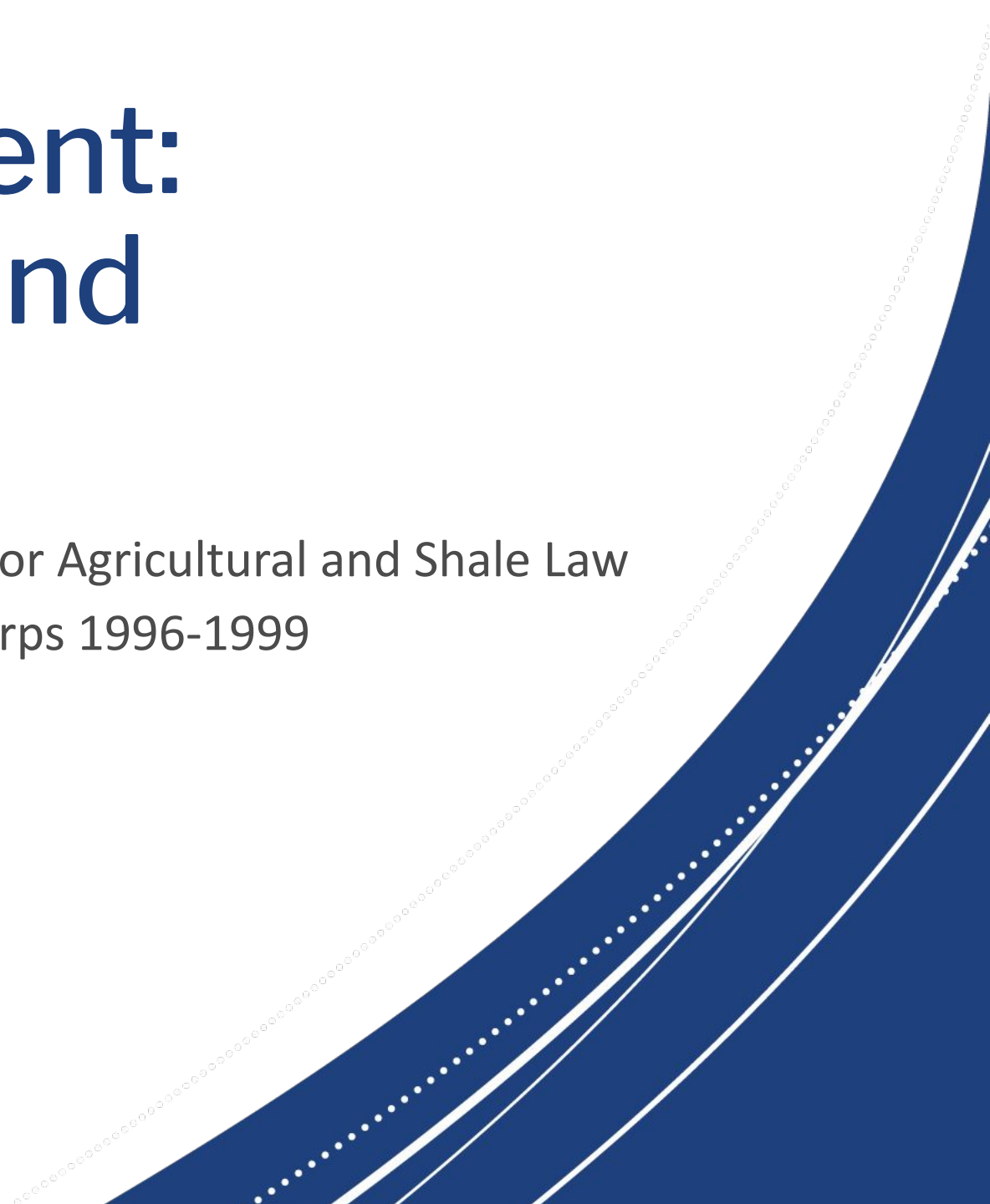
PennState Law

Center for Agricultural
and Shale Law

Risk Management: Legal Liability and Agritourism

Prof. Ross Pifer, Director of the Center for Agricultural and Shale Law
U.S. Army Judge Advocate General's Corps 1996-1999

2021 PA Veteran Farming Conference
February 27, 2021

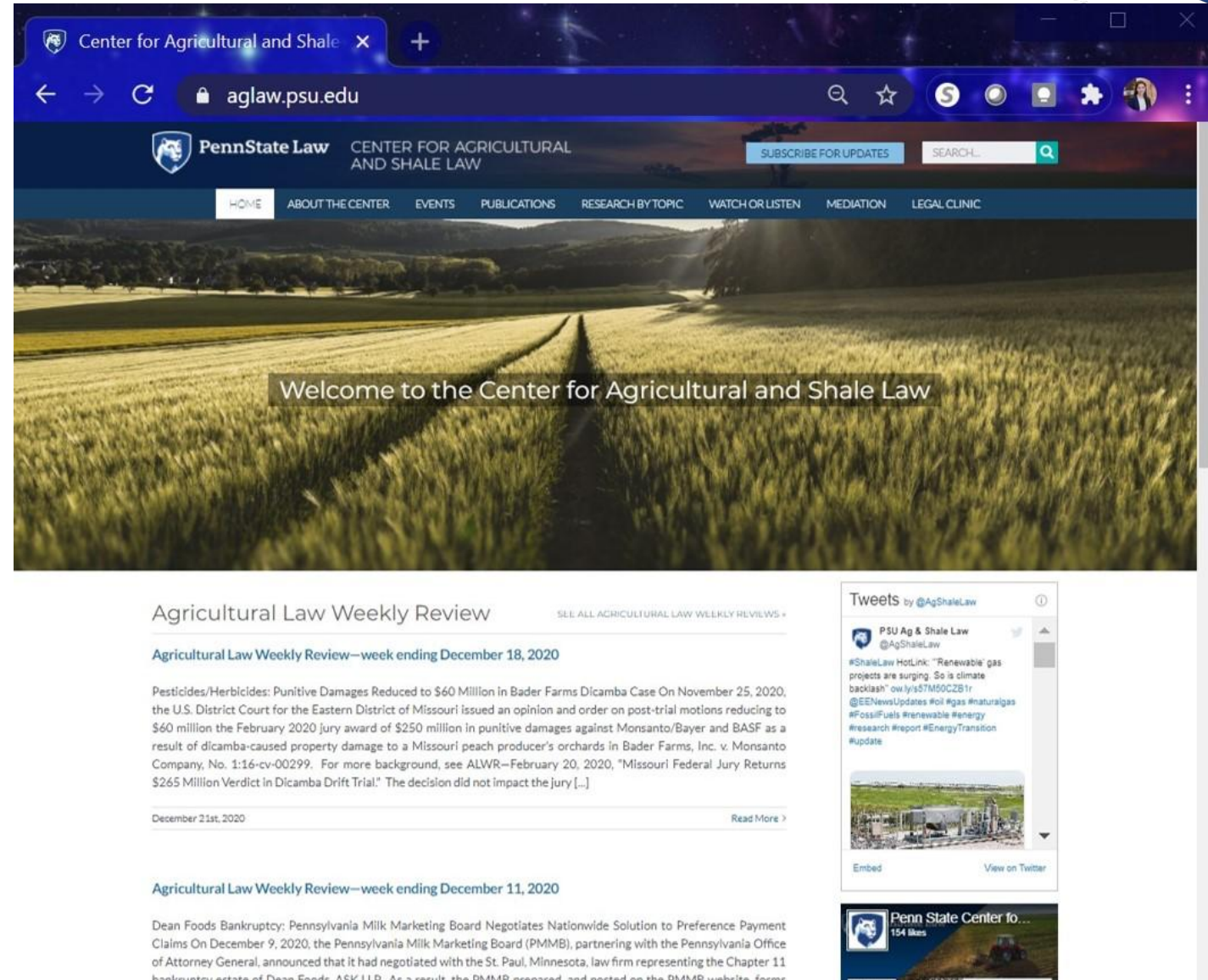




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Agricultural Law Weekly Review

The Agricultural Law Weekly Review provides an update of recent agricultural law developments from local, state, national, and international levels. Subscribe at pennstateaglaw.com.

Agricultural Law Weekly Review—week ending December 18, 2020

Pesticides/Herbicides: Punitive Damages Reduced to \$60 Million in Bader Farms Dicamba Case

On November 25, 2020, the U.S. District Court for the Eastern District of Missouri issued an [opinion and order](#) on post-trial motions reducing to \$60 million the February 2020 jury award of \$250 million in punitive damages against Monsanto/Bayer and BASF as a result of dicamba-caused property damage to a Missouri peach producer's orchards in Bader Farms, Inc. v. Monsanto Company, No. 1:16-cv-00299. For more background, see [ALWR—February 20, 2020](#), "Missouri Federal Jury Returns \$265 Million Verdict in Dicamba [...]"

December 21st, 2020 | Tags: Agricultural Labor, Biotechnology, Invasive Species, Pesticides/Herbicides

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Agricultural Law Weekly Review—week ending December 11, 2020

Dean Foods Bankruptcy: Pennsylvania Milk Marketing Board Negotiates Nationwide Solution to Preference Payment Claims

On December 9, 2020, the Pennsylvania Milk Marketing Board (PMMB), partnering with the Pennsylvania Office of Attorney General, [announced](#) that it had negotiated with the St. Paul, Minnesota, law firm representing the Chapter 11 bankruptcy estate of Dean Foods, ASK LLP. As a result, the PMMB prepared, and posted on the PMMB website, [forms which can be downloaded, completed by producers and milk haulers in any state in the country, and mailed to ASK LLP as soon as possible as a response to the \[...\]](#)

December 15th, 2020 | Tags: Agribusiness, Animal Health, Conservation Programs, Dairy Policy, Food Labeling, Industrial Hemp, International Trade

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Types of Agritourism

- On farm product sales
- Farm stays
- You-Pick (fruits/vegetables)
- Hayrides
- Pumpkin patches
- Corn mazes
- Christmas tree farms
- Wineries
- Barn weddings
- On farm petting zoos
- Goat Yoga



Why Agritourism?

- Farm revenue and diversification
- Capture more of consumer food dollars
- Build relationship between farm and consumer base
- Educate public on farm operations
- Accommodate public desire for affordable family entertainment and “agricultural experiences”





Risk Management: Legal Liability and Agritourism – Overview

- General Liability Principles
- Protections from Liability
 - State Legislation
 - Liability Waivers
 - Entity Formation
- State and Local Regulations



Agritourism - Liability: Risks

- Equipment
- Terrain
- Paths & walkways
- Weather
- Zoonotic diseases
- Animal tendencies
- Driving and parking
- “Attractive nuisances”





Negligence

- Standard
 - The failure to exercise ordinary care such as a reasonably prudent and careful person would exercise under similar circumstances
- Required actions depend upon the duty of care owed to the entrant upon the land



Agritourism - Liability: Duty of Care

- Trespasser – enters or remains on land without consent
 - Duty not to engage in willful, wanton, or reckless conduct that could harm
- Licensees – invited on land for social purposes
 - Duty to warn of known dangers
- Invitee – invited on land for financial benefit of landowner
 - Duty of inspection (must warn of danger, remedy dangerous conditions)
 - Duty to protect



Agritourism - Liability

- Possible application of strict liability (liability without fault) if engaged in abnormally dangerous activities
- Liability for injury caused by animals – owner is liable if:
 - Acts with negligence; or
 - Knows of animal's dangerous propensities



Agritourism – Product Liability

- Possible theories of liability:
 - Negligent conduct
 - Strict liability
 - Breach of warranty



Agritourism – Protections: Liability Statutes

- What does a liability protection statute do?
 - Limit the liability of the agritourism operator
 - Participants "cannot" sue the agritourism operator for injuries sustained from an inherent risk of an activity
 - Ex: In a small animal petting zoo, what would be an inherent risk?



RULWA

- Recreational Use of Land and Water Act
- 68 P.S. §§ 477-1 to 477-8
- In effect since 1966





RULWA

- Limits liability to landowners who make their land and water areas available for public recreational use
- Landowners do **not** owe a duty to keep the premises safe for public recreational users
- Landowners do **not** owe duty to warn of dangerous conditions



RULWA

- Recent Update: Oct. 24, 2018
- Act 98: “An act encouraging landowners to make land and water areas available to the public for recreational purposes by limiting liability in connection therewith, and repealing certain acts”
 - Limits liability
 - **Landowners may accept payment in some situations:**
 - To conserve or maintain land; pay real estate taxes; pay for liability insurance; voluntary contributions; in-kind contributions
 - Expands list of examples of “recreational purpose”
- Duty of Care: Trespasser



PA Equine Activity Immunity Act

- 4 P.S. §§ 601-606
- Also referred to as Pennsylvania Equine Liability Law
- Act 93 or 2005
- Enacted: December 22, 2005
- Effective: February 21, 2006





PA Equine Activity Immunity Act

- Provides immunity from negligence liability for certain entities engaged in equine activities if specific requirements are satisfied:
 - Assumption of risk
 - Signage
- Does not provide immunity from claims presented by children
- One does not assume risk for faulty equipment



PA Equine Activity Immunity Act

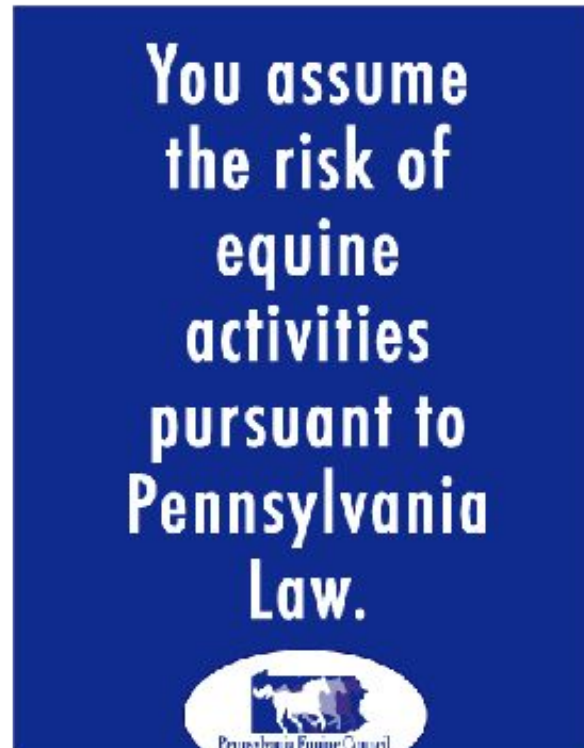
- Signage requirements:
 - Must be conspicuously posted on property
 - In at least 2 locations
 - On signs at least three feet by two feet
 - “You assume the risk of equine activities pursuant to Pennsylvania law”



PA Equine Activity Immunity Act

WARNING

- Signage requirements:





PA Equine Activity Immunity Act



- What are equine activities?
 - Equine training, teaching, riding, instruction, show, fairs, parades, competitions, or performances
 - Clinics, seminars, and demonstrations
 - Boarding
 - Breeding



Agritourism Immunity Legislation

- PA House Bill 1737 – passed both chambers of General Assembly on Nov. 20, 2020
 - Included agritourism immunity provisions originally in House Bill 1348
 - Required warning signs and written agreement
 - Exception for gross negligence
- Vetoed by Governor on Nov. 30, 2020
 - Veto statement referenced concerns about granting immunity for various COVID-19 concerns.
- Reintroduced in 2021 as House Bill 101



Agritourism – Liability Protections

- State Liability Legislation
- Waivers / Releases
- Assumption of Risk
- Entity Formation
- Liability Insurance



Agritourism - Protections: Entity Formation

- Examples:
 - Sole Proprietorship
 - Partnership
 - Corporation
 - LLC
 - Non-profit Corporation



Agritourism - Protections: Entity Formation

- Considerations
 - Liability Protection
 - Tax Treatment
 - Simplicity / Formality
 - Control / Decision-making
 - Intergenerational Transfers/ Transfers Generally



Regulations

- Zoning
- Construction Code
- Product Sales
- Food Safety
- Liquor Laws
- Other





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