



Knudsen Law Firm  
3800 VerMaas Place  
Lincoln, NE 68502  
Phone: 402-475-7011  
Fax: 402-475-8912  
Web: <http://www.knudsenlaw.com>  
Article by: LeRoy W. Sievers

## **Farmer/Rancher Potential Liability for Roadway Accident**

In a recent Omaha World Herald article, it was reported that a trial was about to begin against a number of Defendants, including a ranch owner. The case involved a multi-vehicle pileup that occurred on Interstate 80 near North Platte. In particular on March 10, 2005 winds topping 50 mph blew dust across the interstate and it was alleged that the blowing dust obstructed the view of drivers on the interstate which resulted in the accident. It was also alleged that the ranch to the north of the interstate was negligent in failing to take reasonable and practical measures to prevent the dust from blowing off the ranch. One defense reported in the article included that the dust was an open and obvious situation, which every driver should have seen and slowed to a safe speed given the driving conditions. Other defenses were also asserted. The case settled during the trial so the relative merits of the various positions of the parties were not tested by a jury or on appeal. The case however highlighted the question of when can a farmer or rancher be liable for the damages resulting from accidents occurring when dust or other things leave the property.

Generally to be held liable for damages from an accident, it must be demonstrated that the Defendant was negligent. Negligence is defined as the failure to do something that a reasonable person, guided by ordinary considerations which regulate human affairs, would do or doing something which a reasonable and prudent person would not do. (Black's Law Dictionary). In the current environment in which no till farming is widespread, blowing debris in the form of crop residue may be more common than in the past. However it may be more reasonable to not till because of all of the benefits resulting from it. Alternatively some farm programs have specific requirements that a cover crop be established and maintained. Thus if a farmer received the benefits of the program but failed to fulfill this requirement and resulting dust caused an accident, liability could potentially be established. Also if a farmer failed to obtain a permit that was required prior to conducting a prescribed burn of a field and the result was a fire that caused harm to others that would not have occurred if the permit had been obtained and followed, then liability might occur.

In Nebraska the largest number of claims actually arises from livestock on roads. I have had personal experience in this situation, having hit a black angus that wandered onto a state highway at night. Nebraska is in the minority of states regarding escaped livestock. The general rule is that if a farmer keeps fences in good repair but livestock escape, the farmer is not liable. Thus in the absence of negligence there is no liability. In Nebraska however, the rule is stricter. In Nebraska, the rule essentially is that negligence is presumed when a farmer's or rancher's

cattle escape and are hit on a highway, that is that in the ordinary course of things such an escape does not happen in the absence of negligence.

Other cases involve water that floods another's property after a farmer obstructs the flow of water in a creek. In Nebraska a person may not obstruct the flow of water in a waterway and is liable for damages caused by such obstruction. Additionally if a person has a dam on their property and if it breaks, then the owner of the dam is liable for resulting damages.

In conclusion, farmers can be liable in the event that cattle, water and potentially other things escape from their property. To avoid owing damages, farmers and ranchers need to take care of fences and follow the law.