

Gone with the wind - a crop dusting case study

by Gayle Bryant | Insurance Risk & Professional Dec-Jan 2012

In a landmark Supreme Court judgment, a Queensland cotton farmer was awarded \$470,000 in damages as a result of aerial spray drift from farms located more than 20 kilometres away.



The farmer's cotton crop produced less cotton and was of much poorer quality than usual. To find out why, they employed a loss assessor to investigate the situation. The process was a long and exhaustive one. Ken Bullen, the senior loss adjuster of Cerno's Agricultural division, was initially instructed in February 2006 and the liability judgment came in June 2010, with the proportionate liability decision in March 2011 and final costs awarded in August 2011. When the judgment was announced, the judge stressed that the decision was based largely on the results of Bullen's investigative work.

Bullen says he was able to put many pieces of a complicated jigsaw together to ascertain what the problem was and where it came from. "I tested a number of initial theories, including lack of nutrition in the plants, but they were discounted early," Bullen says. "Because of my agricultural background I felt it was a chemical that caused the problem and testing showed I was correct."

Bullen says the basis of his investigation included physical observations, assessments and residue analysis. He also conducted modelling of spray-drift probability, assessed crop agronomic parameters and yield potentials.

"My reports involved detailed analysis of data, which related to a number of issues including the development of symptoms, crop agronomy, plant mapping, crop yields and residue sampling," Bullen says.

Those reports also include 27 maps that showed the location of the properties, rainfall gauges, residue sample sites and plant assessment locations. There were six graphs setting out comparison yields over a three-year period, as well as comparisons of rainfall and soil moisture. Photographs of the crop damage compared to undamaged crops were also included to produce a graphic visualisation for the conclusions reached.

"One of the issues was finding out where the pesticide came from," Bullen says. "It could have come from an extensive area. We needed to rule out a lot of factors and possible sources of damage."

Over a number of days, the source was tracked to two properties that were in excess of 20 kilometres away, which tests showed contained significant amounts of the pesticides. Bullen queried the owners about their spraying and they confirmed they had employed a crop-duster pilot to spray herbicides on their farms.

"The spraying was carried out under ridiculous conditions," Bullen says. "If the owners knew then what they now know they wouldn't have applied the pesticide. The rate applied was beyond the recommended label rate and there were 35km/h winds on the day they sprayed. There was also excessive crop oil added to the mix, which increases the longevity of the pesticide in the air."

While the owners admitted liability early on and paid compensation, lawyers for the other defendants – the pilot of the crop duster and the company that employed him – fought the case to the end. Specifically, they believed the distance of 20 kilometres was too far away for them to be blamed for the damage.

The judgment is a landmark decision within the industry as it is subject to proportional liability, where everyone involved is potentially liable in proportion to his or her contribution to the crop damage. This aspect of the claim and the awarding of costs finally concluded after the appeal period in August 2011.

Bullen says he has no doubt he assisted in winning the case due to his expertise, which was recognised in the judgment.

One man can make a difference

The case highlights the variety of situations in which a loss assessor can become involved. Here, Bullen was employed directly by the owners of the affected crop as most farmers are not insured against aerial spray drift to their own crop. Bullen says most of his clients are usually insurers, agribusiness, and producers.

Cerno is the largest loss assessor in Australia, with more than 500 staff and seven areas of expertise including agriculture, liability, financial risk, marine, construction and engineering, major loss and investigations.

The merger of Freemans with MYI in 2009, later to become Cerno in 2011, created opportunities for staff and prospective employees to embark on career paths in areas of chosen specialisation. Bullen has a Bachelor of agriculture science and a postgraduate certificate in rural science. He says he initially worked as an agronomist and agrochemist but in 1995 saw an opportunity in the loss-assessing field.

"I saw that I could add value to what was available in this sector," Bullen says. "Historically, loss assessing has been carried out by generalists with little specialist knowledge. They could be sent out to assess damages to machinery one day and the next to assess cyclone damage to properties."

Bullen believes there will be more specialists entering all areas of insurance, not just loss assessing.

"Traditionally, loss assessors came from all backgrounds," Bullen says. "But companies did not use their background to their advantage. Assessing was more geographically based and if someone had experience in one field, then unless it was needed in the area in which they were located, it wasn't used to full capacity."

Cerno assessors are now increasingly appointed according to their skills rather than geography. Bullen says that the agricultural division alone has about 140 assessors, of which more than 40 have agricultural qualifications and all have significant practical industry experience in their chosen fields of expertise.

"I try to recruit personnel with agricultural qualifications and we then train them in the loss assessing," he says. "Traditionally it was the opposite."

Bullen predicts that there will be more career opportunities in the loss-assessing sector for YPs from all disciplines. "The insurance industry has been going through rationalisation, which will create opportunities for young people. The skills they bring into the insurance and loss assessing sectors will be reflected in remuneration by adding value to the claims assessment, mitigation and management process."

He says that, as a result of loss assessing industry rationalisation, a vacuum is being created that will provide more opportunities to enter the industry. He advises those thinking of doing so to develop a skillset first and then look at loss assessing as a career move.

"There are good opportunities in all areas here," Bullen says. "It is an excellent industry and will only grow. I believe loss assessing, and the value we add to the claims process and outcome, is entering a new era and I'm excited about the opportunities that this presents for professionals of all disciplines, the industry and our clients."