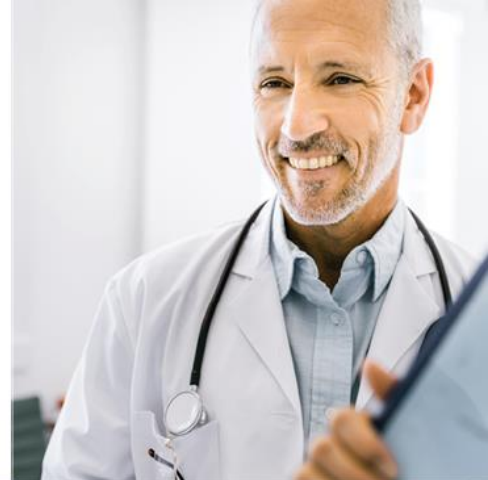


# DICAMBA LIABILITY

Jim Brunker, CPCU, CIC, AIC  
Partner, M3 Insurance

January 11, 2018



FREEDOM  
TO MOVE  
FORWARD



# WHAT WE KNOW

- 2,708 known drift cases under investigation by various state departments of Agriculture around US
- No known claims of *yield damage* to applied customers
- Direct Actions
- Dealers / retailers also have potential product liability exposure
- Applicators have low product liability exposure
- No one immune

FREEDOM TO MOVE FORWARD

# KNOWN DRIFT LITIGATION

## Direct Actions

- Ader Farms, Inc and Bill Bader v. Monsanto
  - Peach Tree Farm in Southeastern Missouri alleging \$1.5 million in damages to 7,000 peach trees
  - Could be bell weather case
  - Primary product liability legal issue in this and most cases
    - Farmers alleging damage didn't purchase dicamba and apply to their own fields
  - Hence no contractual relationship with Monsanto or BASF

FREEDOM TO MOVE FORWARD



# KNOWN DRIFT LITIGATION

## “Landers Plus Nine”

- Initiated by Steven Landers v. Monsanto by same plaintiff law firm
- Included farmers from Nine other states (Alabama, Arkansas, Illinois, Kentucky, Minnesota, Mississippi, North Carolina, Tennessee & Texas)
- Alleges damages to specialty and row crops

FREEDOM TO MOVE FORWARD



# KNOWN DRIFT LITIGATION

## Bruce Farms v. Monsanto and BASF

- 6 Eastern Arkansas farmers
- Substantially same allegations
- Bruce alleges Dicamba can't be applied safely during in-season agriculture – period
- Plaintiffs allege volatility knowledge prior to 2016 and even 2015; seek test results

FREEDOM TO MOVE FORWARD



# DISCOVERY& DEFENSE BEGINS

## Public statement to Farm Journal

- *Scott Partridge, VP Global Strategy, Monsanto*

*Partridge says Monsanto has recorded “wonderful results” for almost 99% of Xtendimax applications in 2017. According to Partridge, Monsanto has investigated over 1,000 cases of off-target movement reported directly by growers or applicators: “They told us that across the farm belt, the label wasn’t followed correctly in 77% of instances with off-target movement. In Iowa, for example, 90% of the instances involving off-target Dicamba movement, as reported to us by those who applied it, had a primary cause of improper buffer, wrong nozzles or wrong boom height. Again, 99% of our customers had no off-target movement and **77% of those cases with off-target movement were a function of not following the label.**”*

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# AG CHEM APPLICATOR INSURANCE

## Overview

- Typical minimum limit is \$1 million per occurrence
- Option to increase annual aggregate or endorse to umbrella for higher limits
- Subject to a deductible / typically \$1,000 - \$2,500
- ISO Herbicide, Pesticide or Fertilizer Applicator Coverage form CG 128 0413 most common
- Defense costs included in limit

FREEDOM TO MOVE FORWARD



# AG CHEM APPLICATORS INSURANCE

## – ISO Form - Key Exclusions

- A. No coverage if applied by aircraft unless endorsement purchased to include aerial
- B. No coverage for liability arising for failure to apply, or to timely apply
- C. No Coverage for intentional violation of any law, or manufacturers label requirements
- D. No coverage for intentional use or recommendation to use in any way other than as specified by the manufacturer

FREEDOM TO MOVE FORWARD





# AG CHEM APPLICATORS INSURANCE

## Fun Facts

- Claims must be reported by you to your insurance provider within 30 days after you receive actual knowledge of loss or damage – most claims denied are for this reason
- Fines from DATCP / EPA are not covered damages
- Less coverage disputes with insurer than with alleged property owner over value of damages & causation

FREEDOM TO MOVE FORWARD



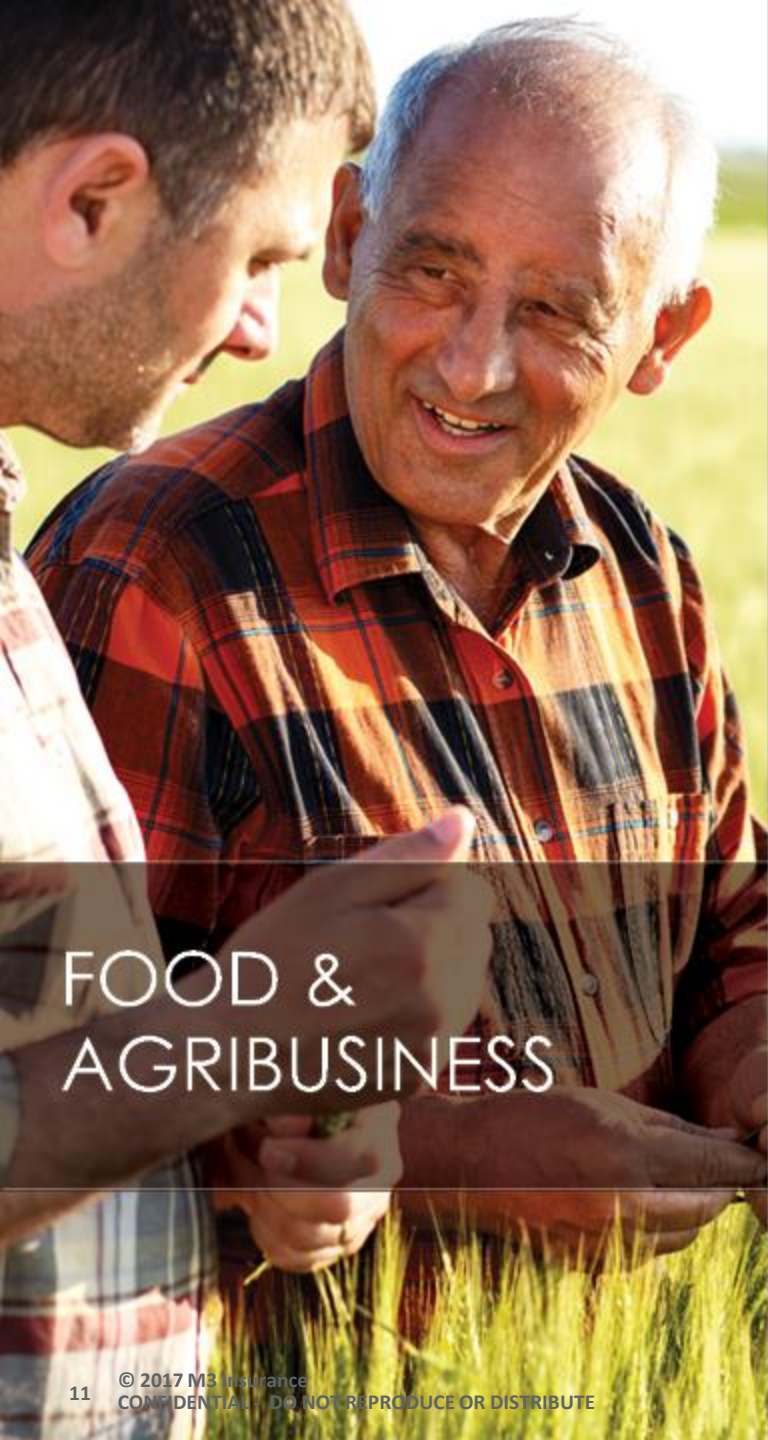
# WISCONSIN CONSIDERATIONS

## Little to no insurance underwriting effect for 2018

- Only 4 of 2,708 state investigations are WI
- Unsettled litigation / too new
- 2017 first year DATCP initiated Dicamba tolerant soybean monitoring
- Strong UW Extension and state resources versus some southern US states
- WI good “insurance state”

FREEDOM TO MOVE FORWARD





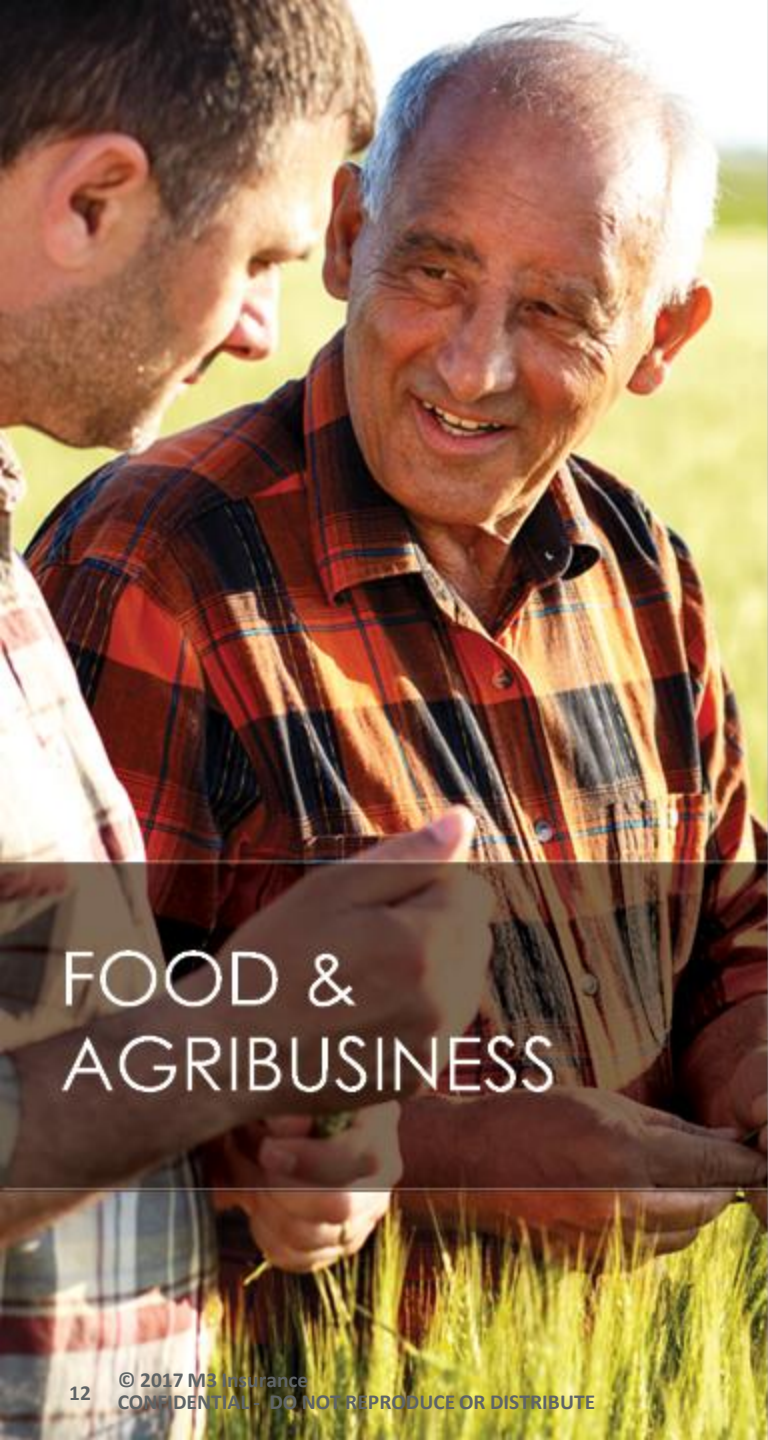
## FOOD & AGRIBUSINESS

# SUMMARY

- Report claims in 30 days of knowledge
- Document, document, document
- Accidental versus Intentional
  - Accidental misapplication is covered
  - Intentional misapplication is not covered

FREEDOM TO MOVE FORWARD





FOOD &  
AGRIBUSINESS

# CLAIM ISSUE?

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**Office: 608.288.2835**

**[www.m3ins.com](http://www.m3ins.com)**

FREEDOM TO MOVE FORWARD





# WHO WE ARE



FOUNDED IN  
**1968**

OVER  
**94%**  
CLIENT  
RETENTION  
RATE



**5**  
WISCONSIN  
OFFICES

LARGEST  
AGENCY IN WI

**30**  
EMPLOYEE  
SHAREHOLDERS

OVER  
**\$1B**  
IN PLACED  
PREMIUM  
ANNUALLY



MORE THAN  
**260**  
EMPLOYEES

CONSISTENTLY  
RANKED A TOP

**100**  
BROKER IN  
AMERICA\*



BEST-IN-CLASS  
RESOURCES  
DEPLOYED  
LOCALLY

FREEDOM TO MOVE FORWARD

