

Farm Liability Insurance

Ken Bolton, Philip Harris,
and Shannon Mirus



Insurance is only one,
but perhaps the most
common, tool in your risk
management arsenal.



Nearly all farmers have a farm liability insurance policy that covers their financial liability from most farm accidents. They may also have liability coverage for specific activities such as custom farming or agritourism. Vehicle insurance covers liability arising from vehicle accidents. In addition, farmers may have an “umbrella” insurance policy that serves three main functions: provides high excess coverage over primary underlying liability policies, may provide broader coverage than the primary policies, and automatically replaces coverage provided by underlying policies when they are reduced or exhausted by losses.¹

Liability policies often include a duty to defend clause, which covers the cost of an attorney to defend you in court for covered claims. So, if you have a farm liability policy, vehicle insurance, insurance for specific activities, and an umbrella policy, you’re protected, right? Perhaps, but the devil is in the details! Every insurance policy is a legal contract and every insurance policy is subject to its stated exclusions and limitations.

This paper discusses risk management and the protection provided by the liability coverage in these policies.

Risk management

Insurance is only one, but perhaps the most common, tool in your risk management arsenal. Liability insurance can help you manage liability to others for damage caused by your negligence. Farm property insurance covers damages to or loss of your property when others are not liable for that damage or loss. Examples include damage from fire, weather conditions (e.g., wind or hail), or theft. Some risks typically not covered by insurance include price fluctuations, production losses, governmental regulation, and other market risks. Interpersonal risks like divorce, intergenerational transfer of the business, and breakup of a partnership or corporation are not covered by insurance. Your level of financial and emotional tolerance determines how much risk exposure you are willing to accept, and the latter, in turn, dictates how much insurance coverage you want for insurable risks.

When you buy insurance, you transfer some of your risk to the insurance company. The insurance company (insurer) assumes a limited dollar amount of your risk in exchange for the premium you pay. It is important to note that insurance coverage for damage to your property does not depend on you being at fault. If you are properly insured, the coverage covers the cost to repair or replace damaged property less the deductible you choose. By contrast, the insurance company is obligated to pay under the liability coverage only if you are legally responsible for the damages to others caused by your negligence.



Liability coverage

Liability coverage has two purposes. The first is to make payments on your behalf to an injured party. The second is to defend you against lawsuits brought by a third party alleging liability within the scope of the policy's coverage. The extent of your protection is limited by:

- requirements that you pay the premiums, notify the insurance company when accidents occur, and cooperate with the insurance company
- specific coverage exclusions
- the period of time covered by the policy
- dollar limits on the amount that will be paid for each occurrence causing liability as well as the total that will be paid for all acts causing liability during the period covered by the policy.²

The insurance company's obligation to defend you ends after it has paid the limit of its coverage.

Example

The liability limit on Farmer Smith's basic liability policy is \$500,000 and the limit on his umbrella policy is \$1,000,000. Farmer Smith caused an accident and the injured person is claiming \$1,750,000 of damages. If Farmer Smith's insurance company agrees to pay the injured person its \$500,000 limit on the basic liability policy and the \$1,000,000 limit on the umbrella policy, it is not obligated to defend Farmer Smith in the injured person's suit for the additional \$250,000.

For the insurer to be obligated to pay, three requirements must be met:

- There is an occurrence (something happened).
- Damage or injury resulted from the occurrence.
- The insured is legally liable for the damages.

Accidents in the absence of any of the above do not qualify for liability insurance coverage.

Negligence and strict liability are the two most common legal doctrines used to find the insured liable for the damages.

Negligence

In order to recover damages for negligence, an injured person must establish all of the following:

- that the insured had a duty of care (see glossary, p. 9) to the injured party
- that the insured breached that duty of care
- that the breach of the duty caused the damages
- the amount of the damages

An insured has a duty of care to another person only if there is some connection between them that creates a responsibility for the insured to look out for the safety of the injured person.

Example

A landowner has no duty to keep his or her property safe for adult trespassers on the property. Consequently, if an adult trespasser was injured when he tripped over an old fence that is hidden in tall grass, the landowner is not likely to be held liable because the landowner had no duty to warn the trespasser of that danger. Because the landowner is not liable, the landowner's liability insurer is not obligated to pay for the trespasser's damages.

To determine whether there has been a breach of a duty of care, an insured's conduct is judged against the standard of ordinary care. Ordinary care is the duty to act reasonably. The insured's actions in the situation that gave rise to the occurrence are compared with that of a reasonable person. If a reasonable person exercising ordinary care would have acted differently in the same situation, then the insured may be negligent. Ignorance, honest mistakes, and physical defects of the injured person do not relieve policyholders from their responsibility to the injured person.



Comparative negligence

Under Wisconsin's modified comparative negligence law (Wisconsin Statute § 895.045), the insured's responsibility for the damage is compared with the responsibility of the injured person. If the injured person is more responsible for causing the damage than the insured, then the injured person cannot collect damages from the insured person. If the injured person is partially responsible, but is less responsible than the insured, then the injured party can recover damages from the insured, but those damages are reduced by the injured party's share of responsibility.

Example

Andy and Betty were involved in a car crash and Betty sued Andy for \$1,000 of damages to Betty's car. If the jury finds that Betty is 60% responsible for the crash and Andy is 40% responsible, Betty cannot recover anything from Andy. If the jury finds that Betty is 40% responsible and Andy is 60% responsible, Betty can recover \$600 (\$1,000 x 60%) from Andy.

Assumption of risk

Individuals who voluntarily engage in activities that involve obvious risks may be treated as having assumed the associated risk. Consequently, they may not be able to recover damages from an insured. If you decide to run with the bulls in downtown Midwest City, Wisconsin, and as a result are gored by a bull, you may be unsuccessful in suing the city for damages resulting from your injuries. Each person in society is expected to exercise a reasonable degree of caution.

Strict liability: Dangerous activities

Some activities are so dangerous that a person who participates is held liable for the damages no matter how much care is used in carrying out the activity. This is called *strict liability* (see glossary, p. 10), and the individuals are strictly liable for any injury that occurs from the activity without any comparison of their actions to that of a reasonable person in a similar situation.

Strict liability applies only to activities that are abnormally dangerous. Factors that determine whether an activity is abnormally dangerous include:

- the likelihood of harm to another person
- the gravity of the harm
- whether reasonable care can reduce the risk of harm
- whether the activity is common
- whether the activity is appropriate for the location
- the value of the activity to the community

Courts have found various activities to be abnormally dangerous, including blasting, spraying pesticides, and keeping wild animals. Wisconsin statutes apply strict liability to owners of stallions that are more than one year old, bulls that are more than six months old, and boars, rams, and billy goats that are more than four months old.

To recover under strict liability, the injured person must prove the insured's activity caused the damage and the amount of the damages.

Example

Sally's two-year-old bull escaped and ran through John's ginseng patch. If John can prove the bull caused damages and the amount of those damages, he can collect from Sally under strict liability. John does not have to prove that Sally breached a duty of reasonable care.

Insured individuals

Liability insurance policies cover only the liabilities of insured individuals and therefore usually include a detailed definition of the *insured*. The policyholder is included in the insured, and all legal entities such as partnerships, corporations, and LLCs operating as the farm owner must be listed for coverage to apply.

For liability coverage and medical expense coverage to the public, the definition of insured often includes domestic and farm employees and a person or organization legally responsible for the policyholder's animals or watercraft. Typically, relatives of the policyholder who live with the policyholder are included. Other people under the age of 21 who are in the care of the policyholder or relatives who live with the policyholder may also be included.

Damage to property belonging to others and medical expenses of others may be covered whether the damage is the fault of the policyholder, a resident relative, an employee, or a person or organization that is legally responsible for the policyholder's animals or watercraft. Check your policy closely so that you know who is included within the term insured.

Policy exclusions may exclude coverage to some individuals that are included in the definition of insured. For example, bodily injury liability to resident relatives is often excluded from the policy. That means injuries caused by the policyholder to the policyholder's child are *not* covered, but injuries caused to a guest by the policyholder's child *are* covered.

➔ Example

A foster child trampled by a fresh cow while moving a newborn calf from a maternity pen is excluded from liability coverage under the resident relatives provision because the child is under age 21 and is in the care of the policyholder. However, if a visiting niece was injured after being instructed to retrieve the calf, her injuries are covered.

Exclusions

The exclusions in most liability policies limit the insurer's obligation to pay for damages. Read your policy and consult with your insurance agent and attorney to make sure the liabilities for which you purchased the policy are included. The following are some of the most common exclusions:

Motor vehicles: Most basic liability policies exclude coverage of motor vehicles because they are covered by a separate policy.

Aircraft: Most liability policies do not cover damages that result from the use of aircraft, unless a separate premium is paid for that coverage.

Custom farming: Most liability policies exclude damages occurring in the course of custom farm work for others unless the policyholder pays for separate coverage for those activities.

Other business pursuits: Most liability policies exclude damages that occur in the course of a business pursuit other than the farming business. Other business pursuits include any trade, profession, or occupation other than farming and roadside stands off the farm premise maintained principally for the sale of the insured's produce.

Courts have used a two-pronged test to determine whether the activity is a business other than farming:

1. The operator has a profit motive in a business unassociated with the farm business (e.g., a five-day-per-week welding business out of the farm shop).
2. There is continuity in the activity, which means the activity is on-going and is more than an occasional or one-time activity.

If the landowner's activity satisfies both tests, it is a business separate and apart from farming.²

Off the farm premises: Most liability policies exclude damages that occur off of the farm premises unless they are a result of a condition that is on the property.

The insured's coverage is typically extended only to property listed in the policy declaration. There is no requirement that injury occurs on the insured location. As a general rule, injury or property damage that occurs away from the insured's property is not covered. However, coverage is usually provided on the "ways adjoining and adjacent to" the insured premises. Some courts have decided that the "ways" must touch or abut the insured premises where the incident occurs.³

However, employees' negligent actions that occur in the course of employment off the premises are usually covered.

➔ Example

Injuries to the resident son of the policyholder who used the policyholder's skidsteer loader in his weekend landscaping business and pinched his foot between the boom and the machine are not covered because of two exclusions. The policy specifically excludes coverage for bodily injury to a resident relative and for activities other than farming.

➔ Example

A farmer sold hay to a purchaser who loaded and removed the hay from the farm by himself, stopped along the road to check his load, and was injured by bales falling on him. The purchaser is excluded from coverage by the producer's liability insurance because the occurrence was off the farm premises and did not result from an occurrence on the farm. The insured had relinquished possession of the hay to the buyer and the accident occurred away from the premises owned, rented, or controlled by the insured.³

➔ Example

A farmer sold hay to a person who removed the hay from the farm in a hay wagon owned and loaded by the farmer and his employees. The purchaser stopped along the road to check his load and was injured by bales falling on him. The injured buyer can collect from the farmer for his injuries if he can prove that the accident occurred as a result of conditions on the farm (e.g., the employees were careless in loading the wagon or equipment defects that caused the accident were due to lack of maintenance of the wagon), and that the negligence took place on the premises of the insured.³

Pollutants: Most liability policies contain an absolute pollution exclusion. With such exclusion, the policy coverage does not apply to:

1. bodily injury or property damage arising out of the actual, alleged, or threatened discharge, dispersal, or escape of pollutants
 - a. at or from premises you own, rent, or occupy
 - b. at or from any site or location used by you or others for the handling, storage, disposal, processing, or treatment of waste
 - c. which are at any time transported, handled, stored, disposed of, or processed as waste by or for you or any person or organization for whom you may be legally responsible

- d. at or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations
 - i. if the pollutants are brought on or to the site or location in connection with such operations
 - ii. if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants.²
2. any loss, cost, or expense arising out of any governmental direction or request that you test for, monitor, clean up, remove, contain, detoxify, or neutralize pollutants.⁴

Pollution includes the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials, irritants, contaminants, or other pollutants into air or onto the land, atmosphere, or any water course or body of water. Waste includes material to be recycled, reconditioned, or reclaimed.²

➔ Example

Manure dropped from Sally's manure spreader as she hauled manure down a public road. The accumulated manure spillage contaminated a neighbor's sweet corn crop and the neighbor sued Sally for damages. Sally's liability policy may not cover the damages because of the pollution exclusion.

Pollution is covered in most farm liability policies only if the insured buys optional supplemental insurance for limited coverage when these materials "are used or intended for use in the 'normal and usual' farming and agricultural operations" and the discharge of the pollutants is "sudden and accidental."

➔ Example

Ima Cropper stores both fertilizer and pesticides on her cash crop farm. One day, one of Ima's employees clipped the side of the liquid fertilizer storage tank with the bucket of a skidsteer loader, rupturing the tank and spilling the contents. Some of the fertilizer ran across the property line onto Ima Cropper's neighbor's soybean field, killing two acres of crop.

Ima may be liable for the damage, but because she did not purchase optional supplemental insurance it is unlikely that her insurance policy covers the damages.

Example

Philip P. Hogg, a Wisconsin swine producer, built a Natural Resources Conservation Service designed and county licensed/inspected manure storage structure. He keeps detailed monthly records of manure levels in storage as well as amounts removed, and he also records when and where the manure is applied to crop land. During the spring of 2008 during historically high levels of rainfall, Mr. Hogg's pit overflowed during the night and spilled hog manure into the county road ditch.

When Mr. Hogg purchased his farm liability policy he paid extra for optional supplemental insurance for damage caused by his manure storage structure. Because the overflow was a "sudden and accidental" occurrence, the supplemental insurance covers the county's claim for damages to the road ditch.

Medical coverage: Most liability policies exclude coverage for bodily injury to resident relatives (relatives who live with the policyholder).

Employer liability coverage: Accidental injuries to farm employees resulting from the policyholder's negligence is also excluded unless specifically purchased.

The following section expands on the concepts of policy exclusions, definitions, and specific applications of liability insurance law. Also addressed are risks associated with fence law, livestock running at large, trespass, nuisance, and emergency assistance.

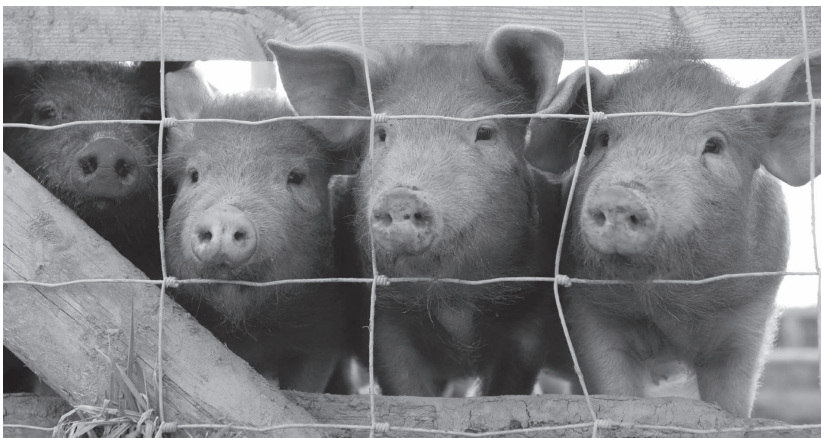
Legal issues affecting liability

Fence law, nuisance, the Good Samaritan Law, the users of the land, and an employer's responsibility for employees affect farmers' liability for damages and therefore their need for liability insurance.

Fence law

Owners of livestock generally must use reasonable care to keep their livestock from escaping and causing damage. If they fail to use reasonable care, they may be liable for damage caused by the livestock under negligence rules. Owners of some animals, such as bulls, stallions, bucks, and boars are liable for damages they cause when they escape no matter how much care is used to keep them enclosed because keeping them is an "ultra hazardous activity" and the owners are subject to strict liability rules.

Chapter 90 of the Wisconsin statutes imposes an additional duty on landowners to maintain their share of the fence between their property and the adjoining property. This duty affects the liability of the livestock owner. If a landowner does not maintain a legal fence as defined in the statutes, the livestock owner is not liable for damages caused by livestock escaping through the delinquent fence. The livestock owner (and not the adjoining landowner) is still liable for damages caused by escaped animals to anyone other than the adjoining landowner. Therefore, owners of livestock should make sure their neighbors maintain their share of the fence between their properties. If a landowner refuses to maintain his or her share of a line fence, Wisconsin statutes allow the town board to add the cost of maintaining it to the landowner's property taxes.



Example

Andrew's beef cows escape through Barbara's share of the fence between their properties. Barbara's fence did not meet the legal standards required by Wisconsin statutes. Barbara cannot collect compensation from Andrew for any damage his cows caused on Barbara's land. If the cows ran across Barbara's land and onto Carl's land, Andrew is likely to be liable for the damage to Carl's land because Andrew did not use reasonable care to keep his cows fenced in. He should have either repaired Barbara's share of the line fence or asked the town board to repair it and assess the cost to Barbara.

Nuisance

A nuisance is an action that reduces another person's use or enjoyment of his or her property. Nuisances may be either public or private. In some situations liability may be imposed under strict liability rules, even though there is neither intent to harm nor negligence.⁵

Example

John lights his motorcycle dirt track for nighttime racing with floodlights directed toward the ground. Harry operates an outdoor, drive-in theater next door to the racetrack. The illumination of Harry's theater by John's lights is equivalent to the full moon. Although this level of illumination is harmless to anyone making normal use of Harry's land, it so seriously interferes with movie-viewing that Harry loses customers.

Harry cannot recover his losses from John in an action for private nuisance because the lights do not create a significant harm for anyone making normal use of the property. It does not matter which business was established first.

In nuisance cases, it typically does not matter which party was using the property first. However, right-to-farm laws change nuisance laws in some situations and may protect farmers from nuisance claims. In this instance, a farming operation that was in place before the complainant's conflicting use began may be protected. This usually occurs in urban sprawl situations when subdivisions are built near farmland.

Wisconsin's right-to-farm legislation (Wisconsin Statute § 823.08) prevents a court from finding an agricultural practice to be a nuisance if these two conditions are met:

1. The agricultural practice began before the plaintiff's conflicting use began.
2. The agricultural practice does not substantially threaten public health or safety.

If an agricultural practice is found to be a nuisance, the statute limits the restrictions and regulations that the court can impose on the farmer. If the agricultural practice is found not to be a nuisance, the plaintiff must pay the farmer's litigation expenses.

Example

Joe Q. Dairyman, on occasion, harvests haylage after midnight next to Sally Rural Resident's house, interfering with Sally's normal sleep patterns. Sally cannot recover damages from John because under the Wisconsin Right-to-Farm Law harvest operations are considered, "usual" and "customary" farm management activities.

Example

Joe Q. Dairyman uses dynamite to blast tree stumps from the ground after cleaning fence lines. Joe, the proverbial night owl, prefers to consummate his blasting activities during the midnight milking shift because he is up and about checking on his milkers and cows anyway. The blasting interferes with Sally's normal sleep patterns. Joe is not protected by Wisconsin's right-to-farm legislation because his actions are not "usual" and "customary" farm management activities.

Good Samaritan Law

The Good Samaritan Law shields those who intend to help others in trouble and need emergency assistance. The law protects people who act to assist or limit damages in emergency situations. Under the emergency assistance doctrine, an instinctive reaction with the intent to render aid cannot be considered negligent.

Users of land

It isn't unusual for farmers to have people on their land, both invited and uninvited. The farmer's legal liability varies depending on the definition of the land user. Liability rests on the person who controls the land, which can be the owner or renter. For example, the cash renter is responsible for the rented ground for the time period specified in the lease. In the absence of a stated time period, the renter controls the land during the normal growing season, which includes seedbed preparation and harvest.



Renters are liable for their own negligence; for insurance purposes, while renting or leasing, renters assume the identity of landowners. If the landowner maintains some control over certain assets like a barn or a grain bin, then the owner is liable for occurrences to those things.

Example

S.R. (Semi-Retired) Farmer rented out his row crop land to Neighborly Jones but retained use of the farmstead house and buildings, including the old dairy barn and all hay ground.

S.R. runs a cash hay business harvesting, storing, and selling hay out of the barn mow during the winter. S.R. sold hay to H. B. Horse Owner who entered the mow and loaded her own pickup with hay as needed. One Saturday while removing hay from the mow, H.B. fell through a hole in the mow floor she had just uncovered by removing a bale of hay and broke her leg.

H.B. may be able to collect from S.R.'s liability insurance but is not likely to be successful against Neighborly Jones because the farm buildings were under S.R.'s control.

Generally speaking, owners only have to guard against conditions they know are present but that the user does not know is present. However, even to trespassers, the farmer owes a duty to refrain from committing willful, malicious, or reckless injury.³ The landowner has more responsibility for users who have permission to be on the property. The amount of responsibility increases as the landowner's benefit from the presence of the user increases. A landowner has some responsibility for the safety of social guests, a greater duty to users who are on the property for business purposes, and the highest duty if the property is open to the public to conduct business.

Example

Joe Farmer built an open manure pit on his farm. He did not inform his guests of the pit, fence it off, or provide signage indicating the danger. Upon realizing that his guests were in danger of falling into the pit, he did nothing to prevent it. Joe is likely to be liable for any injuries suffered by the guests because he created an unreasonable risk (an open manure pit) and did not exercise reasonable care (did not inform his guests and did not fence or provide signage of the danger) to prevent the injury.

To encourage landowners to allow recreational uses of their property, many states, including Wisconsin, enacted recreational use statutes to limit landowner liability to persons who come onto the property with the owner's permission to engage in a recreational activity.² Wisconsin Statutes §§ 895.52 and 895.525 protect private landowners if they receive \$2,000 or less per year in payment for the use of their property. In addition to the \$2,000 of payments, a landowner can receive gifts of wild animals or any other product resulting from the recreational activity, payments of up to \$5 per person per day for permission to gather any product of nature on the property, and payments from the government or a nonprofit organization and still be protected by the statute. If landowners exceed the \$2,000 limit, they can be held liable for negligence or failure to warn of hidden dangers.

If, as a part of a fee arrangement, landowners also provide all-terrain vehicles, fishing boats, or fire arms to their visitors, a higher level of care may also be required to prevent careless operation of the equipment. Allowing their use by incompetent, unfit, or risky operators may open the owner to a claim of negligence. Landowners need additional insurance coverage beyond the standard liability insurance policy for protection from claims arising from these activities.

Employees

A farmer may be liable for and to his employees. As an employer, a farmer may be held responsible for the negligent acts of his employees. The farmer-employer is also responsible for providing his employees with a safe work environment. This includes properly instructing employees about the dangers inherent in their work.

Supplemental coverage

Most farm liability policies cover only liability that occurs in the ordinary course of a farming business. Liability from other activities are often omitted or excluded from the policy. Many excluded activities can be insured by purchasing specific supplements to the policy. It is important to tell your insurance agent about all your activities so that he or she can offer optional supplemental insurance for the activities that are not covered by the farm liability policy.

Agritourism

Optional liability coverage is required for the public's participation in on-farm activities for which a fee is charged, such as corn mazes, haunted tours, hayrides, and pumpkin hunts.

Culture labs

The operation of on-farm bacteria culture laboratories, whether on milk or other bodily fluids, represents a liability risk typical farm liability insurance policies do not cover. Optional supplemental coverage may be available for these activities.

Custom farm work

Some liability policies provide for limited coverage while performing custom work. Depending on the level of income from custom work, the policyholder may need to purchase optional additional coverage.

Direct market roadside stands

Roadside stands on the farm premise for the purpose of selling farm produce are typically covered under basic farm liability policies.

Members of the household

Most liability insurance policies do not cover bodily injury or property damage liability claims experienced by members of the insured's household.

Milk contamination

On rare occasions milk is contaminated by drugs such as antibiotics or by other foreign matter before leaving the farm bulk tank or tanker truck. Some optional coverage protects the insured from liability that may result from the insured's contaminated milk being mixed with other milk.

Pick-your-own customers

Coverage of liability for injuries to pick-your-own customers is usually not included in basic liability insurance. If customers pick their own produce on your premises, you should consider coverage for liability from public harvesting of produce.

Product liability

Typical farm liability policies do not cover damage from product defects if the insured is a produce processor. Product liability can also arise when the farmer's product is sold to others to freeze, pack, or process, when food is consumed on-site, or when farm produce is consumed off-site.

Glossary

*Note: Insurance policy definitions may vary by insurance company.

Accident: An event that occurs by chance that is neither expected nor intended from the standpoint of the insured.²

Duty of care: A legal obligation imposed on an individual requiring that they adhere to a standard of reasonable care while performing any acts that foreseeably could harm others. It is the first element that must be established to proceed with an action in negligence.

Farming: An older definition of farming included “all acts and products involved with tillage of the soil and agricultural husbandry.” A more contemporary definition used in some farm liability insurance policies includes the following:

- growing and marketing of field crops, fruits, mushrooms, nuts, vegetables, greenhouse or nursery stock, or sod
- raising or keeping bees, fur-bearing animals, livestock (except custom feedlots), poultry, or worms
- conducting aquaculture (cultivation of water’s natural products)

Insurance companies may set various limits on farm size to define whether it is a farm or a commercial business. According to the Wisconsin Insurance Commissioner, farming is not defined by statute, so it is up to the individual insurance company to define. The way the insurance company chooses to define farming involves issues of contract law and insurance law.

Standard farm liability policies usually *exclude* a farm from coverage if:

- its principle purpose is to supply commodities used by the insured for processing or manufacturing for sale to others (Liability insurance on a farm or commercial facility does not cover those who bring produce to the facility.)
- its principle purpose is to operate freezing or dehydrating plants or poultry processing facilities
- its farm dwellings have more than four families (This refers to rental facilities as opposed to family dwellings associated with the farm business.)
- its farm dwellings are used for business purposes other than permitted incidental occupancies (those occupying a residence).² An incidental occupancy includes part-time business pursuits such as a beauty shop, Tupperware business, or piano lessons. On-going business activities would be excluded.

Injury: Bodily injury, financial loss (including damage to property), mental anguish or injury, shock, fright, humiliation, false arrest, invasion of privacy, or discrimination.

Liability: In a financial sense, it refers to debts and other financial obligations. In insurance law, liability often is used to refer to blameworthiness that is used to apportion responsibility for repairing damage.

Liabile: Being legally involved in or responsible for the occurrence or being blameworthy and legally obligated to compensate for the injury. Being liable for the injury of another is usually the result of negligence.

Negligence: Failure to use the care that a reasonable person is expected to exercise by the community.

Occurrence: An accident, including continuous or repeated exposure to conditions that result in bodily injury or property damage that is not expected or intended by the insured. Under this definition, intentional acts, such as using an end loader to push the milk inspector’s car into a manure pit, are not protected by liability insurance.

Ordinary care: The care that a reasonable person would exercise under the circumstances.

Reasonable care: The degree of care a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. The duty to act responsibly.⁴

Strict liability: A set of rules that determines liability of an individual who is engaged in an activity that is so dangerous that the individual is liable for damages to others no matter how much care is used in carrying out the activity. Individuals are strictly liable for any injury that occurs from the activity without any comparison of their actions to that of a reasonable person in a similar situation.

Umbrella liability insurance: A special policy that serves three main functions:

1. provides high excess coverage over primary or underlying liability policies
2. may provide broader coverage than the primary policies
3. automatically replaces coverage provided by underlying policies when they are reduced or exhausted by losses¹

Conclusion

Many farm owners and managers assume a farm liability insurance policy, other liability policies, and an umbrella insurance policy cover them for all liabilities that may arise. This paper attempts to clarify this misunderstanding and highlight the main benefits, options, and limits on policy coverage. Based on this information, you can review your present coverage and determine if you have sufficient risk protection.

This overview of liability insurance coverage is not all-inclusive. Like many other legal aspects of business, a cursory understanding of this issue is usually just enough to be dangerous. We recommend that all farmers review their risk management tools at least annually and consult with an insurance consultant or an attorney experienced in insurance law, in addition to their insurance agent, at least once every five years. Get a second opinion.

Unfortunately, many commonly held beliefs about liability insurance coverage are less than accurate. After a disaster hits, it is too late to buy insurance that covers the loss. Don't assume you're covered; you may not be.

End notes

1. "Umbrella Liability Insurance Coverage," ISP Insurance, accessed 2004, www.ispinsurance.com/umbrella_liability_insurance.htm.
2. J.D. Copeland, "The Farmer's Comprehensive Liability Policy," *The Arkansas Lawyer* 26 (1992): 44-48.
3. J. D. Copeland, "Analysis of the Farmer's Comprehensive Liability Policy," *Indiana Law Review* 24 (1991): 1451-1488.
4. *Black's Law Dictionary*, <http://blackslawdictionary.com/>.
5. H. F. Lusk, et al. *Business Law Principles and Cases*. (New York: Richard D. Irwin, 1974), 23.

The authors wish to thank Attorney Mark Bromley, Don Gerndt of Rural Insurance, Tom Schaefer, CPCU, ARM, CIC, of the Richgels Schaefer Agency, Inc., Attorney Jennifer Fiser, and Harrison Pittman, Director of the National Agricultural Law Center for review of and for the invaluable guidance provided in the writing of this paper.



Copyright © 2011 by the Board of Regents of the University of Wisconsin System doing business as the division of Cooperative Extension of the University of Wisconsin-Extension. All rights reserved. Send copyright inquiries to: Cooperative Extension Publishing, 432 N. Lake St., Rm. 227, Madison, WI 53706, pubs@uwex.edu.

Authors: Ken Bolton, UW-Extension Center for Dairy Profitability; Philip Harris, UW-Extension Agricultural Law Specialist; Shannon Mirus, Staff Attorney, The National Agricultural Law Center. For more information, contact Shannon Mirus at smirus@uark.edu or www.nationalaglawcenter.org. Cooperative Extension publications are subject to peer review.

University of Wisconsin-Extension, Cooperative Extension, in cooperation with the U.S. Department of Agriculture and Wisconsin counties, publishes this information to further the purpose of the May 8 and June 30, 1914, Acts of Congress. An EEO/AA employer, the University of Wisconsin-Extension, Cooperative Extension provides equal opportunities in employment and programming, including Title IX and ADA requirements. If you need this information in an alternative format, contact Equal Opportunity and Diversity Programs, University of Wisconsin-Extension, 432 N. Lake St., Rm. 501, Madison, WI 53706, diversity@uwex.edu, phone: (608) 262-0277, fax: (608) 262-8404, TTY: 711 Wisconsin Relay.

This publication is available from your county UW-Extension office (www.uwex.edu/ces/cty) or from Cooperative Extension Publishing. To order, call toll-free: 1-877-947-7827 (WIS-PUBS) or visit our website: learningstore.uwex.edu.