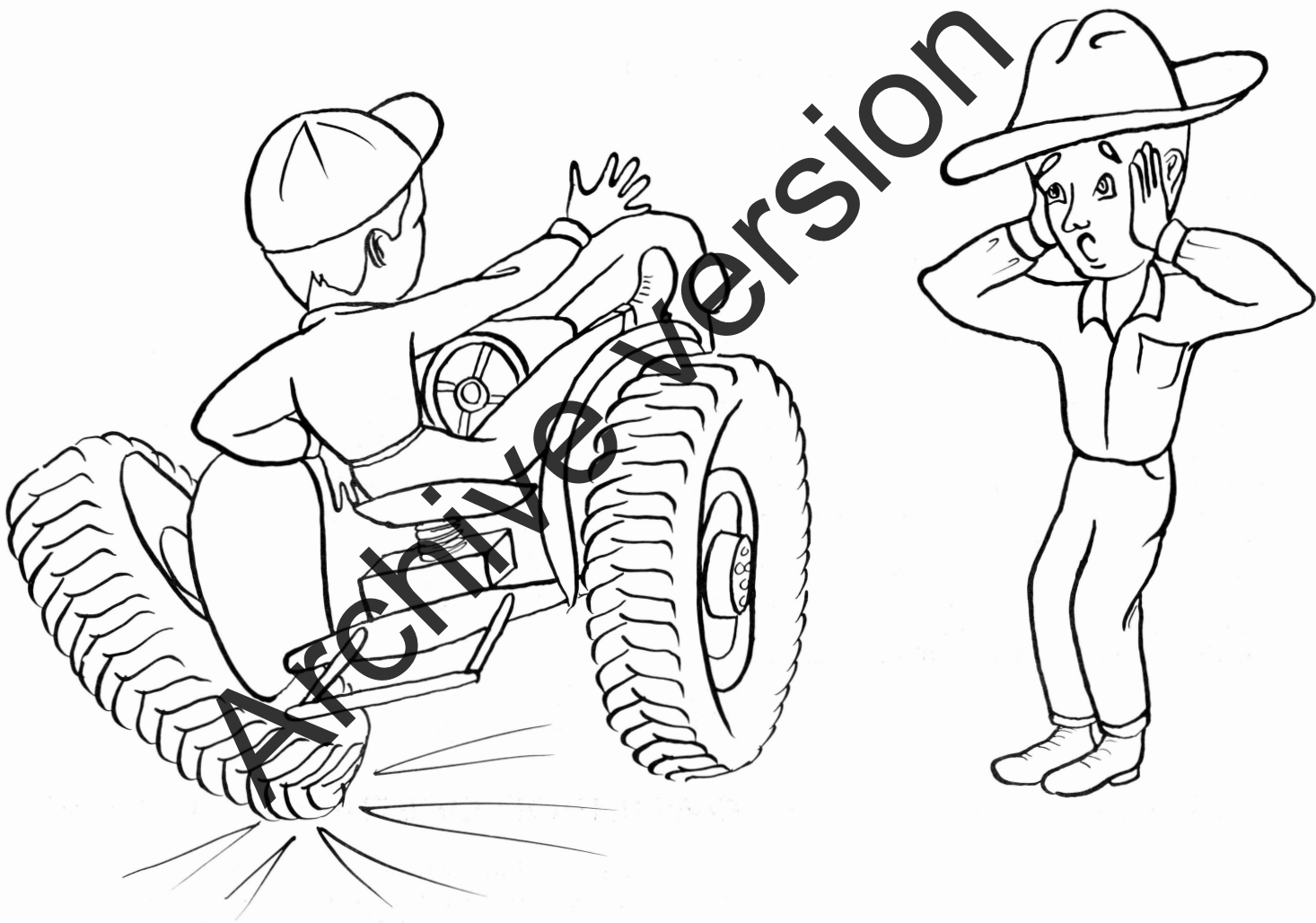


Farmer's

PERSONAL LIABILITY

and INSURANCE



Farmer's Personal Liability and Insurance

by Fred L. Mann*

A side effect of today's expanding size of farm operations is greater liability risk—liability for injury to another person or another person's property. The large judgments being awarded in personal injury and property damage law suits make insurance an indispensable means of protecting against personal liability.

Farmers expose themselves to potential liability, (1) *as owners of land*, (2) *as employers of other people*, (3) *by owning and using livestock and machines*, and (4) *by doing custom work for others*. They are legally responsible for certain kinds of improper conduct that cause personal injury or property damage to others.

The following material is intended to assist farmers in understanding what can be done to minimize liability as much as possible and to protect against liability when it does arise. A knowledge of the nature of protection through personal liability insurance and workmen's compensation insurance is necessary before you can plan adequate protection.

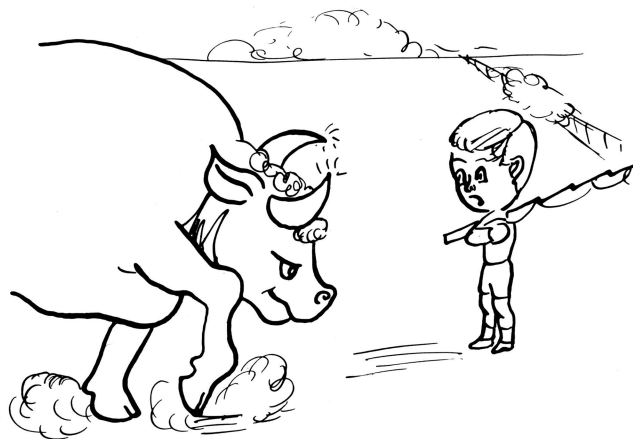
CONDUCT CREATING LIABILITY

Liability can arise as the result of three kinds of conduct (if that conduct harms or unduly creates the risk of harm to the lawful interests of other persons): (1) *intentional*, (2) *negligent*, or (3) *ultrabazardous*. Liability arises if the conduct is improper and if the injured person has not conducted himself in a way that contributed to the harm.

If a person purposely commits an improper act that causes harm, it is *intentional*.

If a person fails to exercise the care he should, he is guilty of *negligent* conduct. This can be the failure to do something that a reasonable man would do under the circumstances, or it can be the doing of something such a person would not do. Careless operation of a farm tractor on the road or a carelessly placed load on a wagon or truck on the road are examples of negligent conduct.

Ultrabazardous conduct is conduct that, even though lawful, is so inherently dangerous that no amount of care can eliminate the risk of harm. Blasting with dynamite, flying an airplane, storing explosives or large quantities of gas, and keeping a mean bull are examples of *ultrabazardous* conduct.



FARMER'S LIABILITY AS OWNER OR OPERATOR OF LAND

The nature and extent of this liability depends upon whether the persons coming on the land are (1) *trespassers*, (2) *gratuitous licensees*, (3) *business visitors*, (4) *children*, or (5) *employees*.

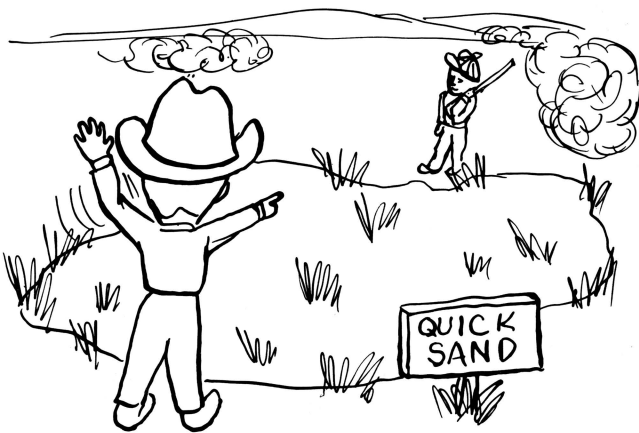
Trespassers. If a person comes on the land without implied or express consent, he is a *trespasser*, and a farmer

usually is liable only for intentional harm. The farmer may use reasonable force under the circumstances to remove the trespasser. Ordinarily it would be improper to use a device such as a spring gun or trap intended to harm an ordinary trespasser. There is usually no liability for injuries to trespassers, such as hunters, on the farm

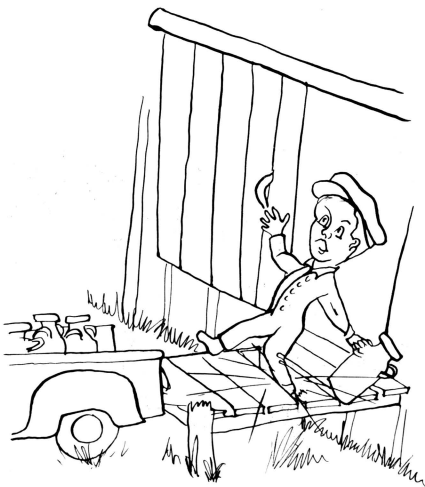
*Department of Agricultural Economic staff member and member of American Bar Association. Acknowledgment is due to American Bar Association members, Howard B. Lang, Jr., Terence Porter, and John H. La Force, II, for their assistance in preparation of this information.

without permission *unless* the farmer *knows* the hunter is there *and* he knows of a dangerous condition on the farm that an alert person would not detect. If this is the case, he has a duty to warn the trespasser of the dangerous condition. A loose bull or an exposed high tension wire are examples of such dangerous conditions.

Gratuitous Licensees. A person on a farm with the farmer's permission but for no benefit to the farmer is a *gratuitous licensee*. A hunter or a camper on a farm *with* permission is an example. The farmer owes no duty to such persons with regard to apparent dangerous conditions. However, he must warn them of any dangerous conditions or activities that they would not discover in the exercise of ordinary care if he wishes to avoid liability for injuries resulting from such dangerous conditions or activities.



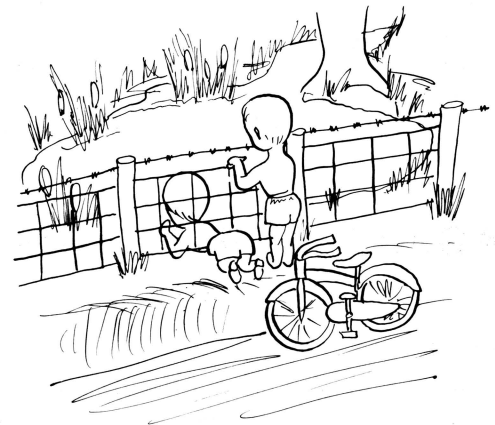
Business Visitors. A *business visitor* is anyone on the premises with the express or implied permission of the



farmer *and* who is there for their mutual benefit. Persons delivering supplies, salesmen, repairmen, prospective buyers, independent contractors and their employees, and the mailman are examples of business visitors. A farmer owes a business visitor the duty to make the premises safe and to warn him of dangerous conditions and activities. This includes conditions the farmer himself doesn't know about but could have discovered by inspection in the exercise of ordinary care. A farmer's liability extends to the activities of and conditions caused by his employees while doing work on the farm.

Children. The law recognizes that young children may be unable to appreciate peril or dangerous conditions, and that often they may be attracted by a condition that is potentially dangerous (called an *attractive nuisance*). If a farmer has a condition on his property that may reasonably be expected to attract children and to be a source of danger to them, he must exercise reasonable care to protect them against the dangers of the attraction. This is true even though the children may come on the property without permission. If the children recognize the danger, or if they are not attracted onto the land by the condition, and children ordinarily would not be expected to go upon the land in the area where the condition exists, the farmer probably will not be held liable.

An unfenced or poorly fenced pond, visible from a public road, may be an *attractive nuisance*. The United



States Supreme Court has said that an old chemical pit, unprotected and containing a weak solution of acid, located in the woods some distance from a well-traveled highway in an area where people were known to stop for roadside picnics, was an attractive nuisance.

Employees. Liability for injuries to employees is similar to that for business visitors. A farmer must provide safe working conditions for employees and must warn them of dangerous conditions and activities. This includes conditions that the farmer doesn't know about but could have discovered by inspection in the exercise of ordinary care.

LIABILITY OF FARMER FOR ACTS OF OTHERS

A farmer may be liable for wrongful acts of others either on or off his property. Liability varies depending on the relation between the farmer and the person committing the act. The farmer may be liable for acts of (1) *his employees*, (2) *his independent contractor*, or (3) *his agent*.

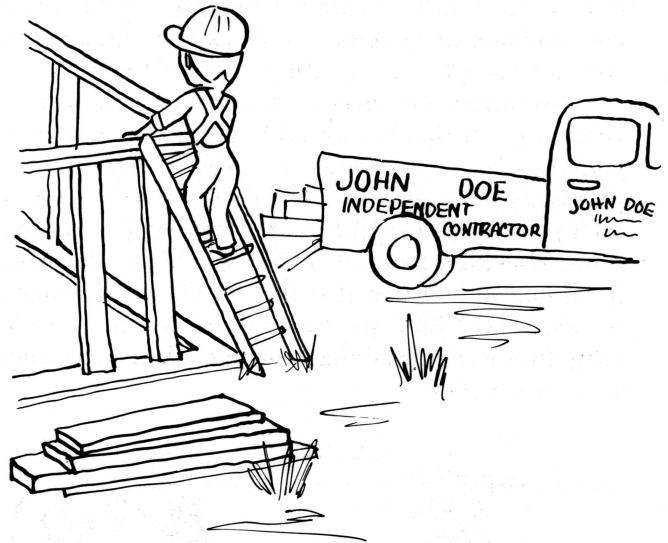
Employee

If a farmer has the right to direct and control the details and means by which someone he hires carries on his work, that person is an *employee*. Farmers are responsible for the wrongs committed by employees who are acting within the scope of their employment. If an act causing injury is in connection with the duties of employment, the farmer will be liable even though he may expressly forbid that particular act.

Independent Contractor

An *independent contractor* is one who contracts to do a piece of work according to his own methods and who has the right of control as to the mode of doing the work. The person for whom he does the work has the right of control only over the result. A custom operator is an example of an independent contractor.

Generally, farmers are not liable for harm by an independent contractor who is acting within the scope of the contract. The farmer may be held liable, however, if he is negligent—for example, if he negligently furnishes faulty plans or specifications to the contractor, or if he hires a known incompetent independent contractor, or if a tenant or business visitor is injured through some fault of the contractor. This is true if the independent contractor



creates a dangerous condition on the farmer's property and the farmer could have found out about it and corrected it if he had inspected the premises.

Agent

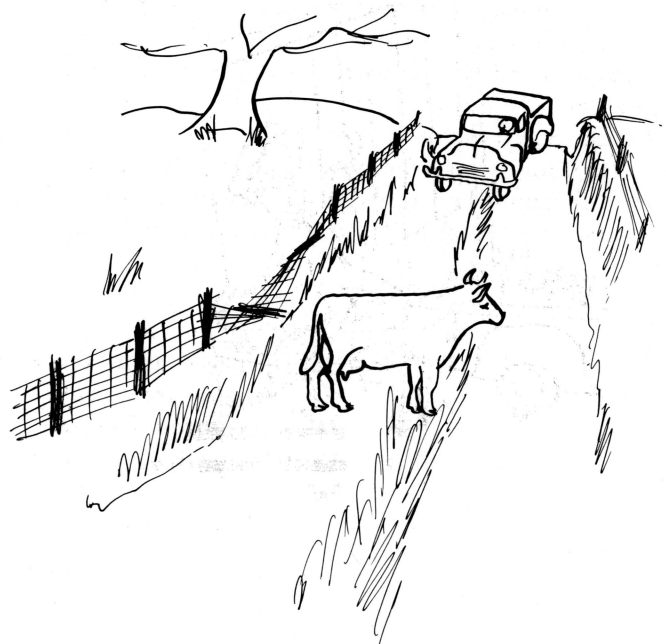
An *agent* is someone authorized to transact some business or manage some affair for another. For example, a farm manager is the agent of the landowner or farm operator for whom he works. A farmer is liable for wrongs committed by agents only if the wrongful act was necessary in fulfilling the terms of the agency or was carried out at his express direction.

LIABILITY FOR INJURY OR DAMAGE CAUSED BY ANIMALS

Livestock

The liability of owners of livestock depends on the law in force in the area. A few counties and a few townships within other counties still have a *free range law*. In these areas, landowners are required to fence out livestock. It must be shown that trespassing animals entered property through a legally sufficient fence before their owner is liable for any damage they cause.

Most counties and townships have passed the *optional stock law* which presents a much different situation. It requires owners to *fence in* their animals. Thus in many instances the owners of animals are liable for all damages done by the animals while they are at large. For example, an owner of a registered cow herd has **been** allowed to recover damages when his neighbor's mongrel bull broke into the pasture and bred several of his registered cows.



When animals being driven on a public road stray onto adjoining land the owner is not liable for damages if he was using reasonable care in driving them. Also, if animals escape through a part of a division fence *not maintained* by their owner, he is not usually liable for resulting damages.

The law makes the owner of a known vicious domestic animal absolutely liable for any injury done by it to any one who is exercising ordinary care in a place where he has a right to be. The same is true of an owner of wild animals in captivity. But, if a person provokes a known vicious animal or if he is an unknown trespasser, he cannot hold the owner liable.

To recover for injuries suffered as a result of a collision with an animal on a public highway, the injured party must show that the owner of the animal unlawfully permitted it to run at large. If the animal's owner can establish that the animal was on the highway without fault or negligence on his part, he cannot be held liable. This means that the owner of the animal must show that it did not escape because of poor fences, or because of some negligent act on his part, such as inadvertently leaving a gate open. He must also show that he did not have time to find out that the animal was loose, or if he did know, that he did not have time to get the animal back in.

Dogs

A dog (or cat) need not be confined. It usually is not considered a trespasser when on another's property. But a state law provides that if a dog is found chasing, wounding, or killing sheep or other domestic animals, or if a dog is found under circumstances indicating that it has recently been doing such acts, the dog may be killed immediately so long as it is not killed while in an enclosure of its owner. An owner of animals maimed or killed by a dog can recover for the loss from the dog's owner. The owner of a dog that has killed or maimed another's animals must kill the dog or be liable for \$1 a day for every day he allows the dog to live. If animals are maimed or killed by more than one dog, the owner of the injured animals may recover damages from one or all of the dog owners.

If a dog is not committing any acts as described above, it cannot be harmed even though on another's property. If a person kills or injures a dog and cannot

show justification, he is liable to the dog owner for its value and any other damage or expense caused to the dog's owner.

A statute first enacted in 1921 has provided since 1939 that a county may elect to adopt a dog tax. To bring the measure to a vote, a petition requesting an election, signed by at least 100 householders, must be presented to the county court. An election is held with a majority vote required for approval. The tax is one dollar for males and spayed females and three dollars for all other dogs. The tax money is paid into a "County Dog License Fund."

If dogs injure or kill sheep or other domestic livestock or poultry the owner of the stock may apply with-



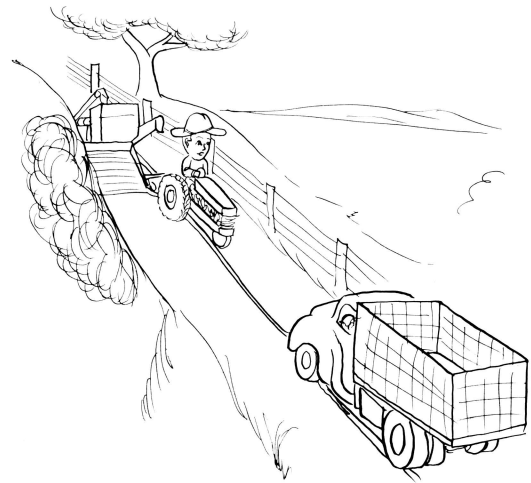
in 10 days to county clerk to receive from the County Dog License Fund the market value of the animals injured or killed. The application must be sworn to by the owner of the animals and by two other unrelated landowners in the county. Between March 1 and March 15 of each year, the county court passes on all applications and pays those it approves. If the County Dog License Fund does not contain enough money to pay all claims in full, each applicant will receive his proportionate share.

A dog owner must kill or immunize his dog if it is rabid or has been exposed to a rabid dog. A failure to kill or impound and immunize a dog exposed to a rabid dog is a misdemeanor. Wilfull poisoning of a dog or other domestic animal by anyone is a misdemeanor punishable by fine and imprisonment.

NOTE: The law, coverages and rates specified in this circular were applicable at the date of publication. They may change from time to time and rates and coverages may vary from company to company. Those contained herein should be used only as a general guide.

LIABILITY REGARDING FARM MACHINERY ON PUBLIC ROADS

Farm tractors, trailers, and other powered machinery may lawfully be moved on the highway if done in a reasonable and prudent manner. If regulations providing for lights, warning flags, etc., are complied with, the operator of such machinery is liable only for ordinary consequences of negligent conduct. Violation of any of the highway laws is usually *negligence per se*; that is, the operator will be responsible for any harm resulting from the violation, except to the extent that there was contributory negligence by another party.



INSURANCE AGAINST LIABILITY

From the preceding discussion, it is apparent that you may have difficulty in determining your liability and at times may not be able to avoid liability. However, you can insure yourself against the liabilities described through *liability insurance*. In certain instances, it may be necessary under the law to carry *workmen's compensation insurance* for employees; in other cases, you may want such insurance, since it provides payments for injuries to employees regardless of fault.

Personal Liability Insurance

Farmers' *personal and comprehensive liability insurance* typically covers:

1. Personal liability for bodily injury and property damage, including defense of lawsuits claiming liability (does not include injury or damage caused intentionally by or at the direction of the insured).
2. Physical damage to property of others caused by the insured and for which he is legally liable.
3. Medical payments for expenses incurred within one year from the date of the accident if the person injured was (a) on the premises with the permission of the insured, or (b) elsewhere, if the injury:
 - (1) arises out of the premises or the condition of access areas immediately adjoining (such as lanes and alleys);
 - (2) is caused by the activities of the insured or any employee working on the farm or at the residence in the course of his employment;



(3) is incurred by an insured employee working on the farm or at the residence and arises in the course of and out of his employment;

(4) is caused by an animal owned by or in the care of the insured.

4. Loss by death of animals owned by the insured resulting from collision between the animal and a vehicle not owned or operated by the insured or his employee, while the animal is walking on a public highway.

Personal liability for bodily injury as described in 1 above and medical payments as described in 3 above usually apply to a farm or residence employee only if the accident from which the injury occurs does not arise out of and in the course of his employment, unless the employee is specially insured and an additional premium is paid. A policy may also specifically include coverage for medical payments for injuries suffered by the insured or members of his family.

The term "insured" usually includes:

1. the farmer;
2. his wife and the relatives of either who are residents of his household;
3. any other person under 21 and in the care of the insured;

4. any person having possession of animals or watercraft of the farmer with his permission [only for coverages under 1 and 3(a) above];
5. any employee engaged by the farmer with respect to tractors, trailers, and self-propelled motor and animal drawn farm implements. An employee is otherwise usually insured only when expressly declared to be so.

Most policies do *not* include the following:

1. liability resulting from the ownership or operation of any automobile or truck. (Crawlers, farm-type tractors and other motor vehicles not subject to registration and designed for use principally off public roads are included in most policies.)
2. watercraft over a certain size, while away from the premises.
3. aircraft.
4. certain other general exclusions such as injuries from war, rebellion, etc.

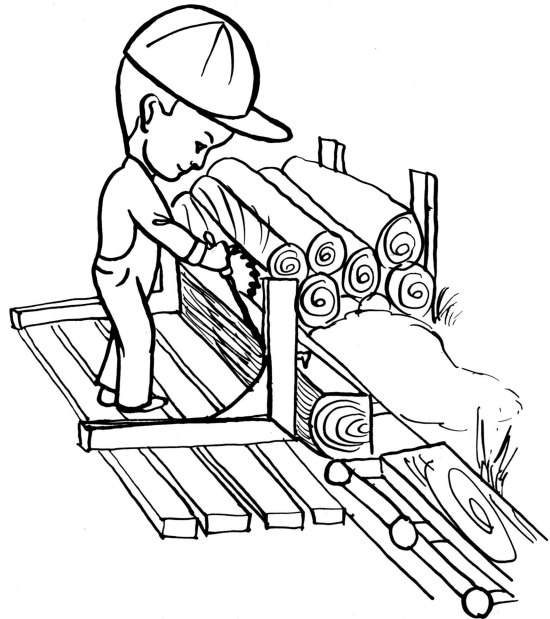
Workmen's Compensation Insurance.

As already mentioned, farmers usually are not required to carry this insurance. Missouri law provides that *workmen's compensation insurance* will pay compensation and expenses of medical attention for personal injuries or death of an employee by accident arising out of and in the course of his employment, according to a payment schedule specified in the law, *regardless of fault*. Workmen's compensation insurance *does not* cover injuries to persons other than employees. Thus, workmen's compensation insurance does not replace liability insurance. Rather it is a companion of liability insurance and is an incentive or fringe benefit for employees. Workmen's compensation insurance is primarily designed for the benefit of employees and is not intended chiefly as a protection for the employer.

A farmer may voluntarily elect to come under the workmen's compensation law if he employs persons performing only *farm* labor, but he is not required to do so. However, if he regularly employs more than 10 persons performing work *other than farm labor* and not otherwise exempted (as domestic servants, someone employed for less than 5½ consecutive work days, and certain others), he automatically comes under the law and *must* carry workmen's compensation insurance unless he is approved by the Workmen's Compensation Commission as a self-insured or elects to reject the law. The same is true if the farmer is engaged in an occupation determined by the Workmen's Compensation Commission to be hazardous to employees, regardless of the number of persons employed. If such an employer rejects the law, he is strictly liable for injuries to employees even though the employee or a fellow-employee negligently caused the injury.

Farm labor means the performance of work usually incident to the operation of a farm. An employee regularly employed to do farm work who does some other work incident to the farm operation, such as carpentry work on the farm, is not taken out of the classification of farm labor. However, if someone is employed by a farmer to do only carpentry work, even though on a farm, he is not classified as farm labor. If someone is employed in a dual capacity, working part of the time at nonfarm work, he is classed as farm labor while doing farm work and otherwise when performing other work. For example, a man employed as a service station attendant, but who does farm work for his employer part of the time, is classed as farm labor only while performing the farm work.

Hazardous occupation means some occupation that carries with it inherent dangers not found in connection with ordinary work. Farming *is not considered* to be a hazardous occupation in and of itself, though farm tractors and machinery are used. But, it has been held that where a farmer operates a sawmill, a hired man employed at the mill may be employed in a hazardous occupation.



To summarize, a farmer employing only farm labor does not automatically come under the workmen's compensation law but he *may elect* to do so. If a farmer has someone employed in work that is classified as a hazardous occupation by the Workmen's Compensation Commission, regardless of the number of his employees he comes under the law. If he has more than 10 regular employees who are not classified as farm labor or as one of the other exempt classes, he is in the same situation, even though he does not employ them in a hazardous occupation.

INSURANCE TERMS AND RATES

Liability Insurance

A typical farmer's personal and comprehensive liability insurance policy usually is issued for from one to three years in Missouri. If it is issued for more than one year, the premium is payable in annual installments and normally drops 20 per cent after the first year. Minimum coverage usually is \$10,000 liability and \$500 medical payments. But because the Missouri law allows recovery of death benefits up to \$25,000, that is usually the minimum desirable liability coverage. Rates are generally based on acreage, sets of farm buildings, amount of custom work done, number of family members, and number of employees covered.

Present annual first-year rates in Missouri may vary from company to company, but usually will be comparable to the following:

1. Farm premises and personal liability coverage up to \$25,000:
 - a. Basic unit (includes one set of farm buildings and 160 acres, custom farming up to \$750 receipts, and includes medical pay for exchange of work with neighbors, as well as incidental children's business pursuits)\$19.20
 - b. Farms rented to others (each) 6.00
 - c. Additional acreage above 160 (total all acreage):

160- 240	\$1.80
240- 320	3.24
320- 400	4.68
400- 480	5.88
480- 560	7.08
560- 640	8.04
640-2560	8.04 plus
	\$0.60 per 100 acres over 640 acres
 - d. Additional custom farming receipts in excess of \$750 (per \$100 receipts)\$0.60
 - e. Additional sets of farm buildings including a residence (per set)\$6.00
 - f. Boats (includes \$500 medical) 6.00
2. Medical payments coverage up to \$500:
 - a. Farmer and male family members (each)\$12.00
 - b. All other family members (each) ... 9.00
3. Employer's Liability (minimum premium of \$12.00):
 - a. Occasional employees (this charge made on every policy providing employer's liability):

0-320 acres	\$9.00
over 320 acres	12.00

- b. Full time employees, i.e., those who work over 180 days per year (each)\$19.20
4. Animal collision up to \$300 per animal:

1-320 acres	\$2.00
over 320 acres	3.00

Examples:

1. John Jones owns and operates a 320 acre farm, and owns a 160 acre farm which he rents to his neighbor. He hires seasonal help to put in and harvest his crops. For \$25,000 personal liability coverage and \$500 medical payments for insured, his first year premium is approximately \$57.00 and is charged as follows:

Farm premises and personal liability ..	\$19.20
Farm rented to neighbor	6.00
Harvest time employee	12.00
Additional acreage over 160 acres	5.88
Animal collision (\$300 per animal)	2.00
Medical payments for named insured ...	12.00
First year total premium	\$57.08
Second year premium	45.66
Third year premium	45.66

2. Jack Johnson owns and operates a 600 acre farm with one full time employee and some part time help. The cost of a \$25,000 policy, including \$500 medical payments:

Farm premises and personal liability ..	\$19.20
Additional acreage over 160 acres	8.04
Animal Collision	3.00
One full time employee	19.20
One part time employee	12.00
Medical payments for named insured ...	12.00
First year total premium	\$73.44
Second and Third year premium	
(each)	58.75

Workmen's Compensation Insurance.

Workmen's compensation insurance premiums are calculated at a rate per \$100 of wages paid. For instance, in our second example, Jack Johnson would pay \$6.17 for each \$100 of wages paid for each full time employee. If wages were \$250 per month, the annual premium would be \$185.10. The rates for farm employees are considerably higher than for most other occupations.

Remember: Workmen's compensation insurance *does not* cover personal liability and property damage in general. It covers only the personal injury or death of an employee by accident while engaged in his employment. It is not a substitute for liability insurance. It can be a valuable companion to it.

If you do not now have liability insurance, it would be a good idea to review your needs and discuss them with your insurance agent.



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