

Farm Liability Insurance

A thorough reading of a farm liability insurance policy will likely find the phrase “acts of God.” This phrase is one of myriad ways to describe unexpected consequences or actions. Over the years, many have learned that planning is important but even the best plans do not always succeed in managing risk.

“Many are the plans in a person’s heart, but it is the Lord’s purpose that prevails.”
— Proverbs 19:21 (New International Version)

Purchasing liability insurance is one way to manage risks from “acts of God” and other unintended consequences. Insurance is the most common tool available for reducing risk. Most farmers purchase farm liability insurance to cover expenses from farm accidents. They purchase insurance imagining a dozen things that might go wrong – like the cow that gets on the road and is hit by a car, a visitor who trips and breaks an arm or the tractor that hits and damages the railing along a bridge.

This guide is intended to help a farmer review the farm’s general liability insurance policy to determine if it actually is covering all the actions and consequences that might occur in the course of business.

What is liability insurance?

Insurance is one of several ways to manage risk. Table 1 lists common types of farm insurance. Risk can be understood as the probability of an action resulting in a negative consequence. To actually manage risk, insurance needs to cover the action that may occur as well as the resulting negative consequences. Insurance companies employ rigorous and thorough analysis when considering what risks to insure.

Farmers have started using many new technologies in recent years. New technologies may create new risks, and insurance companies may lag behind when issuing coverage for technological innovations. It can be costly for insurers to accept new risks of emerging technology

before the insurer has sufficient experience and data about the technology.

Various types of insurance cover different actions and consequences. These types of insurance are not mutually exclusive, and it is prudent to carry insurance for any area of risk.

General liability insurance covers the insured person or business when they are legally responsible for damages to others caused by the insured person’s *negligence*. The insurance company providing the liability coverage pays the legal obligations for harm *unintentionally* caused to other people or property by the insured person or business.

General liability insurance often provides for legal defense costs when another person brings a lawsuit alleging harm against the insured person. The cost of defense can include attorneys, discovery, trial preparation, and similar costs. The policy will also normally indemnify, or compensate, the insured against the amount of any judgment obtained. General liability

Table 1. Common types of farm insurance.

Type of insurance	Actions covered	Consequences covered
Property insurance	Accidents during the course of conducting business	Pays the <u>insured</u> for losses
General liability insurance	Accidents during the course of conducting business or on the premises	Pays the injured person (not the insured business) for losses
Workers compensation	Accidents or occupational diseases affecting employees while on the job	Pays employee medical and rehabilitation expenses, provides a subsistence allowance to replace lost wages and compensates for permanent disability according to statutory guidelines

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insurance policies state specific coverages, exclusions and the maximum amount of liability that will be covered while the policy is in force.

Several activities may void a liability insurance claim. First, illegal activities committed intentionally or recklessly may not be covered. This may include damage done while committing a crime. Second, fraud is not covered. Representing a business or product as something it is not may void a liability claim. Third, intentional damage is not covered. Liability insurance specifically covers accidents, defined as “unexpected events or circumstances without deliberate intent.” Finally, misrepresenting or omitting facts on the application can cause loss of liability coverage.

Three requirements must be met when a claim is made on liability insurance. First, did something happen? Second, did damage or injury result from what happened? Third, is the policyholder legally liable for the damages? For example, if a farmer sprayed herbicide (something happened) that drifted onto a neighbor’s field and damaged crops (damage resulted from what happened) and he is liable for negligence (he did not prevent the spray from drifting onto the neighbor’s field), the farmer’s liability insurance may cover liabilities incurred, according to the limitations of the insurance policy. The law deems people liable for accidents occurring due to negligence or strict liability.

Negligence

Negligence occurs when a person has a *duty of care* to another person but breaches that duty in such a way that someone is harmed or something is damaged. A duty of care is a legal obligation to use reasonable care while doing anything that could possibly harm others. For example, a property owner has a duty of care for a person invited onto the owner’s property. Similarly, someone conducting business in a public space or on someone else’s property has a duty to exercise ordinary care for the safety of those.

Property owners have duties of reasonable care to adjoining landowners.

A duty of care can arise from the statutory law (codes) or from the common law (created by courts). Violating the statutory law or regulatory code standard can cause failure to meet the statutory duty of care. This is known as *negligence per se*. A failure to comply with statutes and regulations in farming operations that contributes to personal injury or property loss opens the possibility of a negligence *per se* claim.

Additionally, compliance with codes and regulations may not be enough to avoid a negligence claim based upon a general duty to act reasonably. Common law

establishes a general duty of ordinary and reasonable care for businesses towards their patrons and for property owners to adjoining landowners. In general, landowners are expected to use their property reasonably without unduly interfering with the rights of the owners of contiguous land. This standard of care can be breached if actions taken by a landowner either appropriate adjoining land or substantially deprive an adjoining owner of the reasonable enjoyment of his or her property.

Strict liability

A person may be held to the standard of strict liability if conducting an activity is ultra-hazardous (sometimes referred to as abnormally dangerous, extremely dangerous or inherently dangerous). Strict liability means that the person performing the activity is responsible for damages incurred no matter how much care was taken.

Some farming activities are ultra-hazardous. Using, transporting, storing, or handling of hazardous agricultural chemicals may be ultra-hazardous. The standard of strict liability often is often applied to the aerial application of crop pesticides and other chemicals. Most states use a strict liability rule if damage occurs. A few states claim to require a showing of negligence; however, even in these states, it may be difficult for a farmer to escape liability if damage occurs.

Examples of when strict liability applies on a farm are given in *Agricultural Law and Taxation* (blog); “When Does a Rule of Strict Liability Apply on a Farm,” by Roger McEowen, posted March 14, 2018. In Arkansas, McEowen writes, there is no strict liability; but violation of aerial crop spraying regulations constitutes evidence of negligence and the negligence of crop sprayers can be imputed to landowners because aerial crop spraying is viewed as an inherently dangerous activity.

Is a farm’s liability coverage sufficient?

Every liability insurance policy is a contract between the insurance company and the insured person or business. Most insurance contracts contain details identifying the parties to the insurance contract and their mutual obligations; the substance of the insurance coverage and any exclusions; the timing for important obligations; the location for relevant performance and insured property; and the extent of the insurance coverage and its cost. Not understanding the contract details may result in being insufficiently covered for an accident.

The sections below are intended to raise questions farmers might ask an insurance agent as they think through managing farm risks.

Who is covered?

Liability insurance policies specify whose actions are covered. The policyholder is always included. Legal business entities operating as the business of the policyholder must be listed in the policy. Relatives of the policy holder frequently are covered, but it is wise to confirm this.

Employees are usually covered if the policy notes employee coverage and the application for insurance accurately noted that employees are part of the business. However, many farmworkers are seasonal and short term. Some may be paid on a lump sum, or on a per job or per day basis, and many may work for multiple farms. It is important to understand from a legal and insurance standpoint how these employees will be treated in the event of an incident.

The liability insurance application normally requires listing the number of employees in the business, usually providing groups like “0,” “1-5 employees,” “6-10 employees,” and so on. It is wise to fully disclose the nature of the farming operation and confirm the coverage of all farm employees with the farm insurance agent. For example, a small farm that only had two employees when applying for insurance but grew to seven employees should communicate the growth to the insurance agent.

It is important to be candid with the insurance carrier (1) when first obtaining the policy; (2) when renewing the policy; and (3) any time there is a change in the business that might increase the insurance company’s risk or change the premium charged.

Remember that liability insurance is intended to pay others for the harm done by the insured. It is not intended to pay for the harm done to the insured. Property insurance covers the insured’s property. Worker’s compensation covers the insured’s employees.

What damages are covered by general liability insurance?

General liability insurance covers the damages sustained by others based upon the actions of the insured. It is important to understand specific damages covered by liability insurance.

Common coverage categories include property damage, third party bodily injury and liability for compensatory damages in a personal injury case. The insurance policy states the maximum dollar liability per occurrence and maximum dollar liability for all occurrences of each coverage category. Legal defense costs are often covered in liability insurance. One question for the insurance agent is whether the legal defense costs are considered part of the maximum dollar liability or in addition to the maximum dollar liability.

Farmers are often surprised by things not covered by insurance. Bodily injury to a family member that occurs on the farm may not be covered; bodily injury to a friend visiting the farm might be covered. Fieldwork, such as planting or spraying on your own farm, might be covered; it may not be covered if done for a neighbor as part of a custom farming activity. In most cases, it is possible to purchase an endorsement or a rider to cover activities typically excluded from coverage, as discussed below.

Exclusions

Understanding exclusions in general farm liability insurance can prevent the insured from potentially disastrous surprises. Common exclusions in general farm liability insurance include:

- Farmers market sales
- Agritourism
- Boarding dogs or horses
- Non-farm activities such as snow removal or landscaping
- Custom farm work
- Spraying chemicals on your own farm
- Spraying chemicals under contract for others

Certain liabilities are not covered or have limited coverage in liability insurance policies. As stated above, insurance often lags behind in covering technological advancements or new practices. These advancements or new practices may fall outside the definition of what is covered or be specifically excluded. Consider drones, for example. Many insurance policies exclude coverage based upon incidents involving “aircraft.” Is a drone an aircraft, or does an aircraft require an onboard human pilot?

Another common exclusion is “pollution.” Liability coverage may not include the release of pollutants on the farm property, on another property or during transportation. Pollutants are defined as “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.” Because of the broad definition of pollutant, farmers should discuss with their insurance agent whether they would be covered for activities such as the following:

- Burning pasture land and smoke goes across the road
- Spreading manure (considered a waste or pollutant?) which leaves the field
- Spilling a pesticide (chemical) while filling a sprayer

Because damage from dicamba off-target movement has caused renewed interest in farm liability coverage, it is critical to understand insurance exclusions related to spraying chemicals. Federal and state laws require that anyone spraying a restricted use pesticide (such as

Engenia and XtendiMax) complete special training, certification, or both. Farm liability insurance would likely not cover anyone who sprays a restricted use pesticide without the required training and certification.

Endorsements

Many exclusions mentioned above can be covered by purchasing endorsements. Endorsements are riders to policies that cover special circumstances. A farmer who sprays her own fields should add a spray endorsement if it is noted as an exclusion in the general policy.

A sample endorsement from a Minnesota North Star mutual insurance policy reads:

Property damage liability is provided for sudden and accidental spray drift of agricultural chemicals for up to \$100,000. The farm chemicals must be applied on the insured premises. Application by aircraft is excluded. The \$100,000 is an aggregate limit and is the most we will pay for all property damage in any one policy year.

Farmers who apply agricultural chemicals under contract for others might seek to add an endorsement similar to the following from a Minnesota North Star mutual insurance policy:

Property damage liability is available for sudden and accidental spray drift of agricultural chemicals for up to \$100,000 when an insured is applying agricultural chemicals under contract for others. Application by aircraft is excluded. The \$100,000 is an aggregate limit. The care, custody, and control exclusion applies. There is no coverage provided by this endorsement for the insured's product or work. This coverage is intended for those insureds doing agricultural custom spraying on a limited basis, typically \$25,000 or less in gross receipts.

Farmers who engage in custom farming should confirm the limits of their general policy coverage and purchase a custom farming endorsement, if needed. Farmers engaging in farmers market sales or agritourism will almost certainly need endorsements to cover those activities.

A farm adding endorsements should confirm that the maximum dollar liability limitation for each occurrence and the aggregate limit for all occurrences provide the desired protection for the business.

Umbrella policy

An umbrella policy provides additional liability protection. It is intended either to cover liabilities in excess of the maximum dollar limitations of the general policy or to insure against gaps in basic coverages. Premiums are usually low for the amount of coverage obtained because the umbrella policy is used only after general farm liability limits are met, reducing the

probability of its use. Umbrella policies are useful to protect persons with significant assets that might be endangered by a lawsuit arising from their negligence.

When does general liability coverage apply?

Most farm and business liability policies are sold for one-year periods. Policies can be purchased for shorter periods to cover specific events requiring additional coverage.

The activity that causes damage or injury must occur within the coverage period of the insurance policy. Insurance companies are not responsible to cover actions that occur after the policy has expired. At the same time, general farm liability insurance is not intended to cover pre-existing conditions. An insurance company may audit a business before insuring the business to verify the business does not have an existing condition (e.g. environmental hazard) that the insurer may be expected to cover.

Coverage for damages may extend beyond the coverage period as long as the activity that caused the damage happened during the coverage period. For example, a person injured for hitting a farmer's cow on the public road, while the farm is insured, will have medical expenses covered – even if those expenses occur after the annual liability insurance coverage period ends.

Independent contractors

When a farm hires an independent contractor (custom farming, spraying, trucking), liability insurance can become complicated. Independent contractors are frequently assumed to carry their own liability insurance. The farmer hiring the contractor should request and retain a record, in writing, of the contractor's liability insurance coverage.

In addition to demanding proof of insurance coverage from independent contractors, it is prudent to have a separate contract requiring the independent contractor to indemnify the farmer if there is a problem. What if the independent contractor's coverage has lapsed or is inadequate? For example, assume that Farm "A" hires Independent Contractor "B" for custom spraying. Independent Contractor B produces evidence of insurance coverage. Farm A can and should have a separate contract with Independent Contractor B providing that B will hold harmless and indemnify A if there are legal proceedings initiated based on B's work.

If an independent contractor has an accident while working for a farmer, both liability insurers will be involved in the investigation. Farms often employing independent contractors should ask their insurance professionals how the insurance company would deal with an accident involving an independent contractor.

Where does general liability coverage apply?

General liability covers accidents that occur to persons on the farm due to the farmer's negligence. Accidents occurring during the conduct of farm business but off the farm premises may also be covered. Accidents that occur on roads are normally covered; however, the insurance agent can confirm if a vehicle is considered part of the farm business and covered by farm liability insurance. An automobile might require a specific designation that it is a farm vehicle or that it is covered with mandatory automobile insurance.

How much does the insurance pay?

An insurance policy is a contract. Each side has contractual duties and benefits. The premium is the amount paid by the insured to the insurance company for the agreed coverage. The premium is based upon the amount of coverage desired and the degree of risk. The amount of the coverage will be conspicuously displayed near the beginning of the policy. It will usually be stated in a lump sum involving a large, round number (For example, \$100,000, \$500,000, \$1,000,000, etc.). It is possible to negotiate for more coverage, which will raise the premium. In the event of a legal dispute, the farmer is responsible for any amounts not covered by insurance.

Why carry general liability insurance?

Liability insurance covers accidents. The National Association of Insurance Commissioners defines an accident as "an unexpected event or circumstance without deliberate intent." Negligence on the part of the farmer is the expected cause of the liability.

The definition of "unexpected" can cause coverage to be uncertain. Strict liability doctrine says that if something is ultra-hazardous it cannot be unexpected and therefore is not an accident. During the past two years, dicamba lawsuits have been filed in at least ten states based upon damage to thousands of acres of property. Considering the volume and prominence of these lawsuits, is it really "unexpected" if dicamba injures your neighbor's plants this year?

Summary

This guide was written to encourage farmers to review their farm liability insurance policies to see whether they have the coverage they think they have. Specific problems can arise because of:

- Misunderstanding of what coverage was originally purchased
- Failure to purchase sufficient coverage for the business size and activities
- Significant business activity changes since the policy was last reviewed
- Significant changes in the business size since the policy was last reviewed
- Changes in technology (such as drones or dicamba)