



Managing Liability

Legal Liability in Agritourism and Direct Marketing Operations

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Table of Contents

Introduction.....	1	Activities That Raise Coverage Issues.....	9
General Liability Principles.....	1	Introduction.....	9
Agritourism/Premises Liability.....	2	Agritourism.....	9
Trespassers.....	2	Corn Mazes or Hay Mazes.....	9
Children as Trespassers.....	2	Custom Farm Work.....	9
Licensees.....	3	Farmers Markets.....	9
Invitees.....	3	Pick-Your-Own Fruit and Vegetable Operations.....	10
Agritourism Liability Acts.....	3	Horses.....	10
Introduction.....	3	Internet Activities.....	10
State Statutes in Order of Passage.....	3	Pollution.....	10
2004.....	3	Public Contact With Animals.....	10
2006.....	3	Sale of Processed Farm Products or Nonfarm Products.....	10
2008.....	4	Worker Injuries.....	11
2009.....	4	Conclusions.....	11
2010.....	4	Proactive Steps to Minimize Liability.....	11
2011.....	4	Conclusions.....	12
Major Provisions.....	4	Acknowledgements.....	12
Conclusions.....	5	Glossary.....	13
Direct Marketing/Products Liability.....	5	References.....	14
Liability Insurance.....	6	Appendices.....	14
Introduction.....	6	Appendix A: Resources.....	14
Who Is Insured Under the Policy?.....	6	Appendix B: Forms.....	15
The Farmers Comprehensive Personal Liability Policy.....	7	Accident Report.....	16
Introduction.....	7	Checklist of Questions/Observations on Initial Inspection of Accident Scene.....	18
Obligations of the Insurance Company.....	7	Observations/Inquiries of the Injured Person.....	18
Duty to Indemnify.....	7	Inspection Report.....	19
Duty to Defend.....	7	Farm Activity & Insurance*.....	20
Obligations of the Insured.....	8	Liability Assessment Checklist.....	21
Duty to Pay Premiums.....	8		
Duty to Cooperate.....	8		
Duty of Disclosure.....	8		
Exclusions.....	8		
In General.....	8		
Products Liability.....	8		
Policyholder and Family.....	8		
Business Activities Other Than Farming.....	8		

Introduction

Legal liability (or “liability” when used in this booklet) means responsibility under the law for your acts or omissions. Traditional agriculture involves producing crops, raising livestock, and, perhaps, selling products raised on the farm at roadside stands. When agriculture followed the traditional production model, the public was rarely involved and the legal liability of farm operators was mainly limited to employees.

Increasingly, however, farmers are diversifying by participating in more direct marketing activities and agritourism, thereby increasing exposure to risk and liability. Direct marketing indicates direct contact between the producer and consumer. In fact, there is a concerted effort to create personal contact (Hamilton 1999).

In terms of farming, direct marketing requires a transaction between the person producing farm products (food or other) and the end user, without the use of an intermediary (Hamilton 1999; Pugh 2003). Direct farm marketing often includes farm stands, community supported agriculture, pick-your-own operations, farmers markets, and agritourism and “agritainment” (e.g., corn mazes, haunted houses, and hay rides). Community supported agriculture involves the consumer paying the producer a fee (and sometimes agreeing to provide labor) prior to the growing season in exchange for a portion of the harvest.

Adding these activities increases farm profitability but also brings members of the public onto farm property and raises the risk and consequences of accidents. Risk and liability also increase when direct marketing activities occur off the farm, at a farmers market, for example.

This booklet presents an overview of the principles of legal liability related to personal injury or property damage resulting from farm activities, including direct marketing and agritourism. Premises liability (liability of owners and lessees of land) and products liability (liability of sellers of defective products or goods) form the main sources of liability. While premises liability has always been a concern in agriculture, products liability poses an increasing risk of high levels of liability. This discussion omits liability from contracts, environmental laws, and other sources to focus primarily on risks that may be covered by a liability insurance policy.

Several states have adopted agritourism liability acts. These acts purport to change the duty of operators of agritourism operations to persons on the property for agritourism purposes. The discussion of premises liability includes the impact of agritourism liability acts.

The focus then turns to a common way to deal with legal risk — the purchase of liability insurance. Covered activities, exclusions, and special areas of concern are examined.

Finally, this booklet discusses ways to minimize the risk of claims. These proactive tools provide the best means of liability protection. However, even these steps fail to guarantee the elimination of legal liability.

A booklet of this type cannot cover any of these complex topics in any significant detail. Only a broad overview of the subjects is provided. The information provided is not intended to constitute legal advice and should not be considered legal advice.

With respect to liability insurance, insurance is a contract between the insurance company and the insured. Each policy is different and the information provided here is general. The reader should consult with his or her attorney and insurance agent for more details and to apply these concepts to a particular operation.

General Liability Principles

Farmers and agribusinesses face legal liability on several fronts. For example, a farmer who breaches a contract or violates an environmental law may be liable for damages. In the case of environmental laws, criminal liability may also apply.

This booklet focuses mainly upon civil liability for torts and insurance to address this liability. Civil liability refers to private rights and remedies, for example, the responsibility for injuries caused in an automobile accident. In contrast, criminal liability involves punishment for the violation of laws that address offenses to society as a whole. The term “tort” refers to a private or civil wrong other than a breach of contract. For example, if a customer at a farmers market falls and is injured while at the market, a tort may have occurred.

Civil liability results when a farmer acts wrongfully or fails to perform a legal duty and those actions invade another’s legal rights. For a successful civil lawsuit, there must be a duty and a breach of that duty that causes damages to another. Liability may be based on negligent acts, intentional acts, or strict liability. Negligence occurs when a farmer does something that a reasonable person would not do or fails to do something that a reasonable person would do. If a farmer fails to use due care in keeping the public area of a farm market clear by, for example, not periodically clearing and cleaning the floor, the farmer acts negligently. If a customer incurs an injury due to this inaction, the farmer may be liable for the injuries.

Intentional acts involve purposeful conduct, such as hitting someone with your fist. However, the law sometimes imposes liability without regard to fault. Strict liability arises where personal injuries or property damage is caused by these activities, sometimes called “ultra hazardous activities.” These activities include, in certain states, aerial chemical crop spraying, trespass by farm animals, and defective products. A farmer in Virginia conducting blasting activities is strictly li-

able for injuries to another caused by the blasting, regardless of how careful the farmer was in conducting the activity. Most states impose strict liability for products liability.

Note that the liability issues discussed in this booklet may apply to the landlord, the tenant, or both — as well as to other involved parties. This booklet does not cover landlord-tenant issues directly. However, owners and tenants should address liability issues in written leases and with respect to liability insurance.

For example, Local Farmers Market operates on the parking lot of Dr. Healthy. Dr. Healthy rents the lot and building from Lana Landlord. Local, Healthy, and Landlord, as well as vendors at the farmers market, may be liable for any accidents. All of these parties should ensure they are covered by adequate liability insurance.

Finally, this booklet uses the Restatement (Second) of Torts as a source for much of the discussion of liability. Restatements exist for all major areas of the law. In general, the Restatements act as a type of legal encyclopedia, summarizing the law and suggesting improvements to the law. Although the Restatements are not binding on the courts, courts generally give them great weight.

Agritourism/Premises Liability

Introduction

If the business involves bringing members of the public onto the owned or leased property, or even if a trespasser comes onto the property, premises liability becomes an issue. Roadside stands, farmers markets, pick-your-own, agritourism, and any on-site sales activity raise these issues. This portion of the booklet summarizes liability for different classes of persons on the property. For example, if a customer at a pick-your-own event has an accident and is injured, the landowner and/or operator may be liable. If you conduct hayrides and an accident happens, the landowner and/or operator may be liable.

For example, in Virginia, a participant in a corn maze became very ill and filed suit against the producer, claiming that pesticides on the corn stalks caused her illness (Hubbard 2009). In large part because the producer had kept good records, the producer prevailed. In addition, the producer had liability insurance that covered the corn maze activity, so the insurance company hired an attorney to defend the producer and paid the attorneys' fees.

Trespassers

In general, a landlord or tenant has no duty to make the land safe for trespassers. Restatement (Second) of Torts § 333. However, an owner or tenant of land who knows or should

know that trespassers constantly or regularly intrude on a portion of the land must use reasonable care toward the safety of the trespasser. Restatement (Second) of Torts § 334. The landowner or tenant may have a duty to, at a minimum, warn the trespasser of dangers, through signs or other means. Restatement (Second) of Torts §§ 335, 337.

For example, if a producer is located near residential areas, it is likely the producer is on notice that some of the neighbors may trespass onto the property. The landowner and/or operator must warn the potential trespassers of any dangers, such as animals. For example, bulls are particularly dangerous, but urban dwellers may not be aware of this danger.

Signs are a good way to fulfill the duty to warn, but keep in mind that some trespassers may not be able to read or may not be able to read English. Pictures on the signs will strengthen your case. Signs also must be placed so that trespassers are likely to see them. Finally, although signs are generally a good warning, signs alone may not be sufficient to shield the landowner or tenant from liability.

In addition, the producer should fence off ditches or other hazardous conditions from trespassers and otherwise warn the trespassers. Keys should be removed from tractors, and chemicals and other potentially dangerous items should be put in buildings and locked. Keeping chemicals and similar items out of view is a good practice as well.

Children as Trespassers

A special duty exists to children who trespass onto the land. Restatement (Second) of Torts § 339 provides that the owner or tenant is liable for harm to children trespassing on the land if the following conditions are true.

1. They have reason to know that children are likely to trespass.
2. They know or should know that the land condition involves unreasonable risk to the children.
3. The children do not realize the risk involved.
4. The reason for having the dangerous condition and the cost of eliminating the danger are small compared to the risk to the children.
5. The owner or tenant fails to use reasonable care to protect the children or eliminate the danger.

Bodies of water, like ponds, are particularly notorious for their attractiveness to children. Tractors and other machinery also fall into this category. Barriers to prevent the trespassers (including children) from accessing these hazards should be created. The key is that "reasonable care" should be taken to prevent injuries to these trespassers. The law does not require a 10-foot concrete wall around a pond, but the landowner or tenant must take some steps to prevent children from endangering themselves.

Licensees

The term “licensee” describes a person who is on the property of another because the possessor of the property has allowed the licensee to enter, even though the land is not open to the public. Social guests are licensees. Owners and tenants are subject to liability to licensees for physical harm caused to them by a failure to carry on activities with reasonable care for their safety. However, liability attaches only if the possessor should expect that an invitee will not discover or realize the danger, and the invitee does not know or have reason to know of the possessor’s activities and of the risk involved, or that the invitee will fail to protect himself or herself against the danger. Restatement (Second) of Torts §§ 341, 341A. The landowner or tenant again has a duty to warn the licensee, as well as to use reasonable care to make the property safe. Restatement (Second) of Torts § 342.

Invitees

The highest duty is owed to an invitee. An invitee is a person who is encouraged to come onto the land as a member of the public or for the purpose of business dealings with the possessor of the land. Customers coming to the property to purchase produce, participate in agritourism activities, or pick produce in a pick-your-own operation are examples of invitees. An owner or tenant is liable for physical harm caused to his invitees by a condition on the land if (1) they know or should discover the danger and should realize that it involves an unreasonable risk of harm; (2) they should expect that the invitee will not discover or realize the danger, or will fail to protect themselves against it; and, (3) they fail to exercise reasonable care to protect the invitee against the danger. Restatement (Second) of Torts § 343.

If the danger from any activity or condition of the land is known or obvious to the invitee, the possessor of land is not liable for physical harm to the invitee unless “the possessor should anticipate the harm despite such knowledge or obviousness.” Restatement (Second) of Torts § 343A.1 The fact that the invitee, as a member of the public, is entitled to make use of the land or the facilities is a factor indicating that the harm should be anticipated. Restatement (Second) of Torts § 343A.2.

For example, if a storm uproots a tree and leaves a huge hole in the ground, the landowner may be able to expect an invitee to see and recognize the danger of the hole. However, relying on the obviousness of a risk is dangerous for the operator. Steps should still be taken to warn the customer and make the property safe. Liability for physical harm to a child as invitee or licensee is determined by the same standards as liability to a child as trespasser. Restatement (Second) of Torts § 343B.

Anyone whose land is open to the public for business purposes is also potentially liable to members of the public while they are on the land. They are potentially liable for physical harm caused by the accidental, negligent, or intentionally

harmful acts of third persons or animals; the failure of the possessor to exercise reasonable care to discover that such acts are being done or are likely to be done; or the failure to give a warning adequate to enable the visitors to avoid the harm or otherwise to protect them against it. Restatement (Second) of Torts § 344.

The owner/operator of agricultural, direct marketing, and agritourism activities that involve the public coming onto the property must take reasonable care to ensure the premises are safe and the persons coming onto the land are adequately warned of hazards. Barriers should be erected to prevent members of the public from coming into areas of the property that may be hazardous. Keys should be removed from tractors and other equipment. This equipment, as well as chemicals and other possibly hazardous items, should preferably be housed and locked. Avoid contact with animals, even friendly dogs and cats. Not only can animals bite or harm the customers, but having animals around food — particularly where processing is occurring — can be very unsanitary and may cause contamination.

Landowners and tenants may also be liable for injuries caused by wild animals or animals owned by someone else. If, for example, the neighbor’s dog (or a customer’s dog) is on the property and the owner/operator knows or should know of the animal’s presence, the owner/operator may be liable for any injuries caused by the animal.

Similarly, the owner/operator may be liable for acts of third parties on the property. For example, if the landowner or tenant knows or should know that a customer is intoxicated and that customer injures another customer, the owner/tenant may be liable for the injuries.

Agritourism Liability Acts

Introduction

Several states have introduced agritourism liability acts. These acts attempt to reduce the liability of agritourism operations. Seventeen state statutes were located and are listed below in order of passage. Most statutes appear to be modeled from the Kansas Statute. Note that Minnesota has introduced a bill that also appears to be modeled on the Kansas Statute.

State Statutes in Order of Passage

2004

- Kansas Statutes §§ 74-50, 165, et seq.

2006

- North Carolina General Statutes §§ 99E-30, et seq.

2007

- Title 2 Oklahoma Statutes § 5-12 (livestock only)

2008

- Virginia Code §§ 3.2-6400, et seq.
- Utah Code § 78B-4-512 (provides affirmative defense only)
- Louisiana Revised Statutes § 9:2795.5

2009

- Tennessee Code Annotated §§ 43-39-101, et seq.
- Georgia Code Annotated § 51-3-31

2010

- South Dakota Codified Laws § 20-9-14 (amendment of recreational use statute)
- South Carolina Code Annotated §§ 46-53-10 et al.

2011

- North Dakota Century Code §§ 53-13-01, et seq.
- Title 7 Maine Revised Statutes Annotated §§ 251, et seq.
- Indiana Code § 34-31-9
- Arkansas Code §§ 2-11-101, et seq.

2012

- Alabama Statutes § 6-5-347
- Kentucky Revised Statutes Annotated §§ 247.809, et seq.
- Missouri Statutes Annotated § 537.850

Major Provisions

The major provisions of the bills, in general, include definitions, a warning sign requirement, assumption of risk language, and provisions addressing the liability of an operator of an agritourism activity. Definitions usually focus on the terms “agritourism,” “agritourism activity,” “agritourism operator,” and “inherent risks” (Mirus 2009). Agritourism and agritourism activity are particularly difficult to define and the particular state statute should be consulted.

The statutes usually require that a warning sign be posted if an agritourism operator is to avail themselves of the protections of the statute. The sign required under the Virginia statute is typical.

WARNING: Under Virginia law, there is no liability for an injury to or death of a participant in an agritourism activity conducted at this agritourism location if such injury or death results from the inherent risks of the agritourism activity. Inherent risks of agritourism activities include, among others, risks of injury inherent to land, equipment, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this

agritourism activity. (Agritourism Activity Liability 1950, as amended)

These signs are available from the Virginia Farmers Direct Marketing Association (see the Resources section of the Appendix; VDACS 2010). You can make the signs yourself, but you should examine the law closely. One portion of the law requires that the letters on the sign be black and a minimum of 1 inch in height (Agritourism Activity Liability 1950, as amended).

The statutes also generally state that the participant in the agritourism activity has assumed the risk of the activity. The Virginia statute provides that except as provided [in a later section], an agritourism professional is not liable for injury to or death of a participant resulting from the inherent risks of agritourism activities, so long as the warning [required by the statute] is posted as required and [with exceptions] no participant or participant’s representative is authorized to maintain an action against or recover from an agritourism professional for injury, loss, damage, or death of the participant resulting exclusively from any of the inherent risks of agritourism activities; provided that in any action for damages against an agritourism professional for agritourism activity, the agritourism professional shall plead the affirmative defense of assumption of the risk of agritourism activity by the participant. (Agritourism Activity Liability 1950, as amended)

Thus far, the agritourism liability acts appear to insulate operators from liability. However, the acts generally go on to state the conditions under which the operator is liable. The Kansas provisions are fairly generous to agritourism operators and provide liability only for willful and wanton acts of the operator or where the operator “has actual knowledge of a dangerous condition in the land, facilities, or equipment used in the registered agritourism activity or the dangerous propensity of a particular animal used in such activity and does not make such dangerous condition known to the participant and such dangerous condition causes the participant to sustain injuries” (Liability of Operator 2009).

The Virginia and North Carolina provisions, however, appear to restate the common law. The Virginia provision on liability of the operator provides for liability if the agritourism professional does **any one or more** of the following:

1. Commits an act or omission that constitutes negligence or willful or wanton disregard for the safety of the participant and that act or omission proximately causes injury, damage, or death to the participant.
2. Has actual knowledge or reasonably should have known of a dangerous condition on the land or in the facilities or equipment used in the activity or the dangerous propensity of a particular animal used in such activity and does not make the danger known to the participant, and the danger proximately causes injury, damage, or death to the participant.

3. Intentionally injures the participant (Virginia Code 1950, as amended).

An operator can limit exposure to liability in these cases with the use of release forms and contracts. If, for example, school groups are visiting the farm, the operator should have the parents of the participants sign release forms. For a sample release form, see “Youth Volunteer Liability & Media Release,” listed in the Resources section of the Appendix (BK Farmyards 2010). For information on questions to ask before signing direct marketing agreements, see “Before You Sign on the Dotted Line,” also listed in the Resources section of the Appendix (Krueger 2005).

Conclusions

In practice, agritourism liability acts present a doubled-edged sword. On one hand, the language of the posted signs will likely cause participants in agritourism activities to take precautions while engaging in the agritourism activity and to pause before filing a lawsuit against an agritourism operator. The statutes may, therefore, discourage lawsuits against agritourism operators.

On the other hand, the statutes appear to provide little real protection for the agritourism operator. Although one cannot predict how the courts will interpret these statutes, the language of the statutes provides little solace to the operator and certainly will not prevent lawsuits from being filed. Once filed, the statutes likely fail to provide for a quick dismissal of lawsuits. Notwithstanding these realities, many operators may feel that statutes fully protect them and may be lulled into a false sense of security. As one operator at a workshop where the author presented put it, “I thought I was covered.”

The agritourism liability acts should not impact the steps that agritourism operators take to make their operations safe, nor should they encourage the operator to forgo the purchase of adequate liability insurance. The statutes may be an additional piece of protection for the operator but should not be relied on as being foolproof.

Direct Marketing/Products Liability

One form of civil liability is products liability. Products liability law refers to the legal liability for personal injuries and property damage caused by defective products. Either the user of the product or others affected by the use of the product may file suit. For example, Paula Producer sells produce to Greta’s Grocery Store. Greta’s Grocery Store sells some of the produce to Harry Homemaker. Harry Homemaker prepares and serves the food, infected with a pathogen, to his family and friends. Paula is potentially liable to Harry, his family members, and his friends for personal injury and property damage. In addition, potential liability attaches to every enterprise in the chain of supplying a product to market, including

the producer, wholesaler, and retailer — in this case, Greta’s Grocery Store.

In the past, products liability cases in agriculture usually involved the farmer as an injured party. For example, farm workers injured by defective farm machinery and operators harmed by defective feed, medicines, or chemicals have successfully filed suit in various states.

Now, farmers are increasingly the target of products liability lawsuits due to illness or death caused by contaminated agricultural products. Products liability applies to raw produce, baked goods, value-added products, and goods purchased from others for resale. Exposure to liability increases as the amount of processing increases. Something as simple as slicing a cantaloupe in half for sale at a farmers market counts as “processing” and increases your exposure to liability as well as possibly limiting your insurance coverage.

Three factors make products liability an increasing concern to agricultural producers in Virginia and across the country.

1. The number of claims and lawsuits in products liability has grown significantly in recent years.
2. Injured parties increasingly receive large amounts of compensation in these cases, through either court judgments or settlements.
3. The marked increase in the number of Virginia operations that include farm markets and other direct sales of farm products exposes producers to higher risk.

Whether the food products provided are produced on the farm or purchased from suppliers, farmers face liability. Many producers now process and package products for direct sale, further increasing potential liability.

In most states, producers are strictly liable for injuries incurred due to contaminated products sold by them, regardless of fault (strict liability). Delaware, Massachusetts, Michigan, North Carolina, and Virginia appear to be the only exceptions (American Jurisprudence 2d 2010).

In Virginia, two main grounds of products liability exist: negligence and breach of implied warranty. Under either theory, the law deems products defective if unreasonably dangerous because of a defect in assembly or production, unreasonably dangerous in design, or unaccompanied by adequate warnings concerning hazardous properties.

A person wishing to recover under negligence must prove that the producer or seller failed to exercise reasonable care in producing or marketing the product, resulting in an unreasonably dangerous product. If the consumer failed to exercise due care in using the product, contributory negligence exists. In Virginia, unlike almost every other state, contributory negligence prevents the consumer from recovering any amount for personal injury or property damage. For example, assume a

producer sells beef to a consumer and the consumer becomes ill after eating the cooked beef. If the producer shows that the consumer kept the beef out of refrigeration for a long period of time or failed to cook the beef long enough, the consumer was also negligent and cannot recover from the producer for negligence in Virginia.

Consumers may also use warranties to file suit for products liability. A warranty is a representation or statement as to the quality or characteristics of a product. State laws or court opinions impose “implied warranties,” or unspoken statements, in certain situations.

Three types of implied warranties attach to sales of products in Virginia.

1. In any situation, a seller warrants that the product is fit for the ordinary purposes for which it is used.
2. If a seller knows the purpose for which the products will be used, and the buyer relies on the seller’s skill or judgment in selecting or furnishing goods, then the seller impliedly warrants the fitness of the product for the particular purposes intended.
3. Virginia courts hold that sellers warrant the wholesomeness of food products.

Past agricultural implied warranty cases focused on the sale of animals, semen, seeds, and the like. For example, if a farmer sells another farmer a bull to be used for breeding and the bull is not fit for breeding, the buyer may hold the seller liable for breaches of implied warranties of merchantability and fitness for a particular purpose. However, future cases will increasingly address warranties of food or produce purchased by consumers.

Operators that sell food products to consumers should familiarize themselves with the general principles of products liability. As with liability in general, proactive safety measures provide the best protection. Food, meat, or produce containing foreign substances (hair, glass, bones, etc.) or contaminated with bacteria or pathogens subjects the farmer to liability.

This rule holds true even if the food sold was produced or processed by others. For example, if a church sells hamburgers and hot dogs at a stand on the premises of the agritourism operator, the owner/operator of the agritourism operation may be liable if someone becomes ill due to contaminated food products.

A Pennsylvania case involving a school visit provides an illustration (Bloomquist 2001). A large group of school children participated in a petting zoo on the premises and then had lunch. No handwashing stations were in place. The children became ill and the farmer was sued for several million dollars. That case could proceed under the theory that the farmer was negligent in not providing handwashing stations (vital for any agritourism operation) but may also proceed under the theory that the farmer provided the food.

Note also that these rules apply regardless of the size of the operation. A person who produces a small amount of heirloom tomatoes, for example, may be liable if someone who consumes the tomatoes becomes ill due to contamination.

In addition, exemptions from labeling or other laws do not reduce the potential liability of the operator. For example, Virginia law exempts private homes that produce certain candies, jams and jellies, and certain baked goods from the state inspection requirement. The products must also be direct marketed and sold at the home or a farmers market (Food and Drink 1950, as amended). The products must be labeled “NOT FOR RESALE – PROCESSED AND PREPARED WITHOUT STATE INSPECTION.” Neither the exemption from inspection nor the labeling reduces liability for the seller.

Liability Insurance

Introduction

One may address risk in four different ways: avoid it, reduce it, accept it, or transfer it to another party — namely an insurance company. Most businesses choose to transfer at least a portion of the risk to an insurance company. However, insurance companies are not required to accept any risk. The greater the risk, the greater the cost of the policy. Occasionally, a risk is too great even for an insurance company to bear. In these cases, the farmer can best avoid any financial risk of loss by abstaining from that activity altogether.

An insurance policy is a contract between the insurance company and the insured. The purchase of an insurance policy generally serves to shift at least a portion of the financial risk of certain losses to the insurance company. Liability insurance refers to coverage for injury to another person or damage to another person’s property for which you are legally responsible. In today’s business world, virtually every business should be covered by a liability insurance policy. In addition to paying any covered claims up to the limits of liability, liability insurance pays defense costs, including attorneys’ fees, for covered events.

The alternative to purchasing liability insurance is to self-insure for liability losses. Self-insuring involves retaining sufficient cash reserves to pay for the defense of claims and to pay valid claims. Given the cost of litigation and the possibility of judgments in the hundreds of thousands of dollars, most businesses find it more feasible to purchase a liability insurance policy.

Who Is Insured Under the Policy?

Obviously, the person or business that purchases the insurance policy is covered by the provisions of the policy. This person or business is the “named insured.” However, the named

insured or others dealing with the named insured should consider adding additional insureds. An “additional insured” is a party not automatically included on another’s insurance policy who has been named in order to afford them protection (Schafer 2006).

Two situations should spur the policyholder to name additional insureds.

1. If the named insured is a business entity, like a partnership, corporation, or limited liability company, the owners and the spouses of the owners of the business entity should be named as additional insureds. An injured party may well file suit against the business entity and the owner(s). Particularly where the owners personally perform business duties with respect to the operation, the threat of liability is real.
2. Where the named insured deals with other persons or businesses, the other business may require that the named insured add them as an additional insured. For example, a church runs a food stand at an agribusiness operation. Whether the agritourism operator charges the church a fee or not, the operator should require that the church name the agritourism operation as an additional insured on the church’s policy and provide a certificate of insurance to show proof of coverage. If someone becomes ill after eating food at the church booth, a lawsuit will likely name both the church and the agritourism operator.

Another common situation that calls for additional insureds is a farmers market. If a vendor at a market is sued, chances are the market and the landowner will be sued as well. The farmers market should require a certain level of insurance by vendors. If the vendor has no insurance, an injured party will look to the farmers market or landowner for recovery. In addition, the farmers market and landowner should require that they be named as additional insureds and that the vendors provide a certificate of insurance as proof of the amount of coverage and the named insured status.

The Farmers Comprehensive Personal Liability Policy

Introduction

One step in your liability minimization plan involves obtaining adequate liability insurance. Standard homeowners insurance policies do not typically provide coverage for commercial operations such as the sale of produce, cottage food operations, or agritourism activities. A typical homeowners policy contains an exclusion similar to the following:

Liability coverage does not apply to bodily injury or property damage because of or arising out of a business owned or financially controlled by an insured or by a partnership or joint venture of which an insured is a partner or member.

Persons operating businesses from the home may also lose coverage on the structure/contents as a result of a loss resulting from the business (e.g., fire loss). For example, assume that you own a computer that you use in your home business. If a fire destroys the computer, your homeowners policy will not cover the loss of the computer.

The farmers comprehensive personal liability policy (FCPL policy) is another particular form of liability insurance policy. Most farmers use the FCPL policy, and its provisions seek to meet the particular needs of farmers. This section discusses the common provisions of the FCPL policy in Virginia, points out common shortfalls in the policy for farm operations, and suggests steps to ensure that a farmer’s policy protects against applicable risks.

Obligations of the Insurance Company

Duty to Indemnify

The insurance company agrees to pay for bodily injury and property damage arising from covered activities. Policy limits set the boundaries for this liability. For example, if a farmer holds a \$500,000 liability insurance policy and an injured party obtains a \$750,000 judgment against the farmer for a covered activity, the farmer remains personally liable for the \$250,000 excess judgment.

Duty to Defend

The insurance company additionally agrees to defend, at its expense, the insured in a lawsuit brought by a third party relating to a covered risk. The company will choose and pay the attorney. However, the attorney represents the insured, not the insurance company.

Some insurance policies provide that the cost of defending a lawsuit reduces the limits of liability. For example, a farmer has a policy with limits of liability of \$250,000 per occurrence and \$1 million total. The company defends a lawsuit against the farmer at a cost of \$50,000. The farmer now holds coverage for \$200,000 for that particular incident and \$950,000 total.

The company normally holds the right to settle the case on the insured’s behalf. Therefore, even if you wish to go to trial, the insurance company can settle the claim. In cases where the injured party asks for more than the policy’s limits, the company may pay the total limit of liability and not defend the case.

Using the information from the above example, if the injured party sued for \$1 million, the company may pay the injured party \$250,000 and then have no further obligations in the case. If the case is settled for less than the policy limits, then the case is over and the policyholder has nothing else to pay. However, the insurance company may also pay the full amount of policy limits and leave the policyholder, at the policyholder’s expense, to defend against any further recovery.

Obligations of the Insured

Duty to Pay Premiums

The insurance company may be relieved of its duties if the farmer fails to live up to his or her promises. Failure to pay premiums on time results in loss of coverage.

Duty to Cooperate

The insured must promptly notify the company of accidents or incidents that may result in liability claims. Additionally, the insured must cooperate fully in the investigation and defense of the case, including giving statements, appearing at trial, and participating in settlement negotiations. Failure to cooperate results in a loss of coverage for that incident.

Duty of Disclosure

Farmers make certain representations when applying for an insurance policy. For example, the agent, when completing the application for insurance, will ask about the type of operation. If the farmer states on his application that he grows crops on his land and an accident then occurs in the corn maze he operates, failure to disclose the existence of the corn maze may mean the insurance policy does not cover that activity.

Exclusions

In General

*“What the large print giveth,
the fine print taketh away.”*

— Michael Olexa, University of Florida

Perhaps the most important section of the insurance policy — and the part that all farmers and their attorneys should read carefully and understand — is the exclusions section. This section lists activities that the policy will not cover. Some of these excluded activities are discussed in the following section on specific farm activities. What follows lists some general exclusions from coverage but not all exclusions in the standard policy.

Products Liability

Many standard FCPL policies exclude products liability from coverage except for raw agricultural products. Processed products or products obtained from suppliers are not covered, and a commercial endorsement or separate commercial policy should be obtained with products liability coverage. For example, if you sell cantaloupes at a roadside stand on the covered premises, the policy would cover illnesses caused by the cantaloupes. However, if you slice the cantaloupes, you

have “processed” them and the FCPL would generally NOT cover any illnesses caused by consuming the cantaloupes.

Policyholder and Family

Injuries to the policyholder or family members of the policyholder are normally excluded. In addition, if the policyholder damages his or her personal property, coverage does not apply.

Business Activities Other Than Farming

Generally, activities other than farming are not covered. Farming includes producing crops and raising livestock. In addition, roadside stands and farm markets maintained primarily for the sale of the insured’s own farm products fall within the definition of farming.

Any other activities should be discussed with your agent and specially addressed or they are not covered. For these activities, a commercial endorsement or separate commercial policy should be obtained. For example, taking produce grown on the property to a farmers market is generally not covered by the FCPL. Furthermore, agritourism looks less like traditional farming and may not be covered (Hamilton 1999). Farmers markets, agritourism, and any other activity should be discussed with your agent and specifically addressed, or the activity may not be covered.

Activities excluded under the FCPL policy may be covered for an additional charge through the addition of a policy rider or the purchase of an additional policy. Policy riders are amendments to the policy to include additional activities within the coverage. Types of insurance policies or riders include commercial business, incidental farming liability as an addition to a homeowners policy, umbrella or excess liability, products liability, premises liability, employees’ liability and workers’ compensation, and physical damage (Cook 1995; Hamilton 1999; Padgham 2005; Schafer 2006). For definitions of the types of policies and other terms, see the Glossary at the end of this booklet.

Commercial business liability policies are designed to protect those activities connected to the business. Incidental farming liability may be offered from homeowners insurance providers; however, sales are often limited to less than \$5,000 per year (Hamilton 1999). An umbrella policy or extension of coverage protects beyond what is covered in the standard liability contract (Schafer 2006). Products liability protects the producer when a customer is injured while using or consuming the purchased product (Hamilton 1999). Premises liability protects against damages to the public or public property (Cook 1995). Employers’ liability insurance and workers’ compensation protects against injuries to workers (Padgham 2005), and physical damage insurance protects against loss of property (Cook 1995).

Activities That Raise Coverage Issues

Introduction

Whenever your business involves having members of the public on the property, insurers must analyze or review your operation for increased liability concerns. In addition, any activity on the property of others, outside of the property of the farming operation or beyond normal production activity, raises additional concerns. This section lists activities that frequently cause concern with respect to the FCPL policy; however, all activities should be fully disclosed to the insurance agent.

Agritourism

Agritourism is a form of on-farm recreational activity (Hamilton 1999). It is “the act of visiting a working farm or any agricultural, horticultural, or agribusiness operation for the purpose of enjoyment, education, or active involvement in the activities of the farm or operation” (Blacka et al. 2009, 1). Agritourism allows farmers to diversify their business and increase income. Customers visit the farm for horseback rides, corn and hay mazes, petting zoos, pick-your-own operations, haunted houses, bed and breakfasts, and more. Inviting customers onto your property necessarily increases your risk, your responsibility, and, therefore, your liability. You must ensure the safety of visitors.

However, agritourism does not fall under the traditional definition of “agriculture.” Therefore, agritourism may require insurance beyond the FCLP, such as a commercial business policy, umbrella or excess liability, products liability, premises liability, employees’ liability and workers’ compensation, and physical damage. This section addresses risks related to a few specific agritourism activities: horses, corn/hay mazes, public contact with animals, and fruit or vegetable picking by the public.

Corn Mazes or Hay Mazes

Corn mazes and hay mazes invite the public onto the property. Therefore, the farmer must examine each aspect of the operation to ensure safety. In addition, employees should constantly monitor the areas accessible to the public for safety concerns. For example, is the area safe from fires started by discarded cigarettes or other accidents? In addition, hay mazes raise concerns about falling bales. Climbing children exacerbate this concern. Heavy round bales increase the stakes in an accident. An out-of-state accident in a round-bale hay maze resulted in the death of a 12-year-old boy.

Custom Farm Work

Custom farm work for others may not be covered by the FCPL policy, so it may require an additional premium and amendment of the standard agreement. Alternatively, some policies will cover custom farm work where gross receipts for the year do not exceed a certain amount (for example, \$5,000). In this situation, gross receipts from custom work above this amount

may require an additional premium and an amendment to the policy. The premium amount typically varies based on the amount of gross receipts. In any case, working for others off the insured farm site raises questions of additional liability and must be discussed with your agent.

All real estate owned or rented and serving as part of the farm operation should be disclosed to the agent. Accidents occurring outside the real estate disclosed to the agent may not be covered.

Additional discussion proves necessary when chemicals will be applied for others or offsite. Farmers should ensure that details of this activity are discussed with the agent.

Farmers Markets

A farmers market is “a common facility or area where several farmers or growers gather on a regular, recurring basis to sell a variety of fresh fruits and vegetables and other locally grown farm products directly to consumers” (Lakins 2007, 2).

Over the past few years, farmers markets have dramatically increased in number throughout the United States. In fact, farmers markets increased by 17 percent since 2010, for a current total of 7,175 listed markets (Merrigan 2011). This increase in markets also means an increase in risk and potential liability for market organizations and vendors.

The market operator, the landowner, and each of the individual market vendors face risk in a farmers market. They should all carry liability insurance or, at a minimum, be listed as an additional insured on a liability insurance policy. Market operators, landowners, and vendors may be liable for trip-and-fall accidents, contamination and foodborne illness, or accidents with live animals. Ways to mitigate these risks include clean stalls and aisles, clearly marked walkways, safe food handling practices and licenses, and keeping animals caged or away from the market. Although these mitigation strategies significantly reduce risk, all involved parties should still carry liability policies in the event of an accident.

To cover potential accidents, vendors at farmers markets should consider insurance beyond their FCLP. Farm liability policy coverage of farmers market activities depends on whether the definition of farming includes marketing activities (Hamilton 1999). However, marketing activities are rarely covered because they look like a separate business (Hamilton 1999). A commercial business, products liability, or umbrella policy may be more appropriate coverage for market activities.

For example, Campbell Risk Management offers insurance to farmers market vendors (FMC 2010). The liability policy is specific to farmers market locations and does not include on-farm sales. Additionally, the policy covers all products within the normal scope of a farmers market and is available in all states except Alaska and Hawaii.

Market operators should also purchase their own policies and consider additional liability coverage, such as directors and officers insurance, as well as requiring vendors to list the market as an additional insured on vendors' policies. Directors and officers insurance protects directors and officers from personal liability for actions related to the organization they serve. If the actions of directors or officers are within their normal duties, the organization's liability insurance will cover them. However, when their actions are not within the scope of normal duties, directors and officers need directors and officers insurance (O'Brien, Hamilton, and Leudeman 2005).

Pick-Your-Own Fruit and Vegetable Operations

Again, the operator must protect the public by making the accessible areas safe. The FCPL fails to cover pick-your-own operations, but insurers offer relatively affordable coverage in most instances. However, use of ladders or off-ground picking increases the potential liability and makes coverage expensive and difficult to obtain.

Horses

The standard farm policy insures against damages resulting from horse boarding on a small scale. However, liability from horse training, riding schools, trail riding, or horse racing falls outside normal coverage. Persons boarding horses or engaging in horse activities should discuss the exact activities with their agent and discuss obtaining an equine endorsement or a separate equine policy. Coverage for horse activities may result in a relatively high premium. However, obtaining coverage is fairly easy.

Internet Activities

Advertising or selling products on the Internet raises additional liability issues. If you take orders online and accept credit card payments over the Internet, using a third-party payment service (PayPal, for example) limits the liability for stolen credit card numbers and similar activities. However, copyright infringement, invasion of privacy, and other issues may arise (LiabilityInsuranceFacts.com 2010-12). In this situation, use of a cyber liability endorsement or separate cyber liability policy should be explored.

Pollution

Protection from liability and suits relating to pollution issues generally fall outside of the FCPL policy. The policy covers "sudden releases" only. For example, the policy covers the damages for chemicals spilled as the result of a farm-use truck crossing the highway and becoming involved in an accident. However, the policy fails to cover damages from a leaking underground storage tank or from dust or odors that, over time, cause injury to others.

Most insurance carriers offer a separate policy to cover damages from pollution. However, the policy may be expensive and difficult to obtain. Insurers write few farm pollution policies in Virginia.

Public Contact With Animals

Public contact with farm or domestic animals on the farm increases the risk of lawsuits. One commonly thinks of the animal injuring people on the property by biting, kicking, or otherwise. However, another risk involves the public contracting and transmitting diseases from the animal. For example, a school visit to a farm in Pennsylvania where a child went from a petting zoo to lunch without washing his hands resulted in an outbreak of *Escherichia coli* O157:H7 (*E. coli*) and a multimillion-dollar lawsuit (Bloomquist 2001).

Where petting zoos or activity results in human-animal interaction, sanitation stations should be provided and handwashing enforced. Farmers should choose docile animals with little or no risk for aggressive behavior. In addition, people may transmit diseases to farm animals or crops.

Sale of Processed Farm Products or Nonfarm Products

The FCPL policy generally covers production activities and farm markets and roadside stands maintained principally for the sale of products produced on the farm. However, farm markets and roadside stands increasingly sell processed products (e.g., apple cider produced from the orchard's apples) and products from outside suppliers. These activities dramatically increase the chance of a products liability claim. For these activities, a commercial endorsement or separate commercial liability policy may be appropriate.

Third-Party Vendors

Often, agritourism enterprises will allow local churches or nonprofit organizations to sell food or other items at the site of the agritourism enterprise — often without a charge. In addition, the agritourism operation may contract with third parties for similar services or products. In these situations, the agritourism operator should ensure that the third party (regardless of identity) obtains liability insurance in minimum amounts (probably at least \$1 million) and should require the third parties to name the agritourism operator and the landowner (if not the same party) as additional insureds. The operator should require that a certificate of insurance be provided to verify the coverage and additional insured status.

Note: Members of some religions consider the purchase of insurance to be inappropriate and choose to self-insure. In these situations, the owner/operator must make a decision about the risks of allowing operations by a church without an insurance policy.

Worker Injuries

The law exempts some small farm operations from obtaining workers' compensation insurance. For details on the exemption, contact an insurance agent or attorney. Those exempt from workers' compensation receive coverage under the FCPL. However, deaths resulting from farm accidents may involve more than \$1 million in damages. With a \$1 million FCPL policy, farm assets may be subject to judgments in those rare, but tragic, circumstances.

Exempt operators should consider obtaining workers' compensation coverage. Compare the cost of this coverage with the increased protection.

Conclusions

Different types of activities and insurance coverage combine to make obtaining the appropriate insurance coverage an extremely technical and difficult task. Honest and full disclosure to an insurance agent is vital to ensuring that the operation and family have appropriate protection. Get answers to questions in writing to document the discussion if a question arises later.

An attorney should also be consulted to assist in the process. To provide some guidance, Form 4 in Appendix B (Farm Activity & Insurance), developed by Lisa Whitus at the Virginia Farm Bureau, provides an example of activities that an operation engages in and the appropriate insurance coverage for each activity. The author suggests that each operator develop a similar table with the activities of the operation listed in the left-hand column. The operator should then take the table to his or her insurance agent and have the agent assist in filling out the right-hand column with appropriate coverage.

Proactive Steps to Minimize Liability

The best, and least costly, method to reduce exposure to liability is to engage in a proactive safety program to protect employees, customers, and others. These measures include much of what has been discussed in this booklet, like obtaining adequate liability insurance and using release forms.

In addition, operators should use appropriate business entities for their operation. This publication cannot address all of the issues involved in forming business entities. For more information on Virginia business entities, see "Virginia Business Legal Structures," listed in the Resources section of the Appendix (Cook, Matson, and Suter 2011).

Two major points with respect to business entities directly impact legal liability. First, operators often become part of an "accidental partnership." A partnership is a voluntary associa-

tion of two or more persons engaging in a business endeavor. Partnerships should be avoided because each partner is personally liable for the acts of the other partners in the scope of the business.

For example, three farmers combine their crops in a community supported agriculture enterprise. They have no written agreement, but share the profits according to the amount of produce supplied. One of the farmers has an automobile accident when delivering vegetables, and a third party is severely injured. The other two farmers are individually liable for the damages and may lose their personal assets, including their homes. Before engaging in joint activities with other producers, consult an attorney and put the business agreement in writing.

The other major issue involving business entities is the "magic LLC" syndrome. A limited liability company (LLC) is a business entity that gives the owners protection from personal liability and favorable federal income tax treatment. Many people are forming limited liability companies for the liability protection and think the entity protects them totally from liability. This false sense of protection can lead to dire consequences for the producer.

A limited liability company may be appropriate in certain circumstances. However, no business entity provides complete protection from liability. Proactive steps should be taken to minimize liability and adequate liability insurance should be obtained in all circumstances.

The following list sets out general steps that every operation should undertake to minimize exposure to risk from civil liability. The list is not intended to be exhaustive and operators should consult with their attorney, insurance agent, and other advisors to tailor a program to their individual operations.

- Develop a proactive liability assessment program. Watching for possible problems should be part of every employee's job.
- Develop a safety routine for your facility and stick to that routine. Provide checklists for employees to ensure that corridors are clear, hazards are prevented, etc. Make safety a key word every day.
- Use contracts to clarify rights and responsibilities. Contracts with suppliers and customers, where appropriate, can limit liability.
- Use release of liability forms. Note that these forms are often not legally enforceable, but they discourage lawsuits.
- Use safety latches and locks to secure areas not open to the public, remove keys from tractors and other equipment, and keep dangerous items out of reach of the public.
- Keep walkways, aisles, driveways, etc., clean and free and clear of obstacles, snow, ice, etc.

- Post signs (with pictures) to warn customers of potential risks and hazards.
- Set up the facility specifically for the activity.
- Minimize or eliminate contact between animals and customers.
- Use equipment appropriate to the activity.
- Develop the proper, appropriate business entity (limited liability company, sole proprietor, partnership, etc.).
- Never apologize, but treat accident victims kindly, efficiently, and with care. (Apologizing can be seen as an admission of guilt, admissible in court for that purpose.)
- Obtain adequate liability insurance.
- Keep good records and document safety procedures and steps taken to make the operation safe.
- Engage in good agricultural practices (GAP) and good handling practices (GHP).

Conclusions

Agriculture is risky business. Bringing members of the public onto the property increases the risk of accidents. Selling processed food products or products purchased from others increases exposure to products liability, an area of increasing importance in agriculture.

Farms and agribusinesses best protect themselves from liability by engaging in a proactive safety program. Safety must form an important part of the day-to-day business if the farm is to survive. But sometimes accidents happen even in the safest of operations. In that case, the purchase of liability insurance allows the farmer to shift some of the financial risk of loss to an insurance company.

However, the standard farm liability insurance policy contains exclusions and exceptions that can have dire consequences for the farm operation. Always remember to fully disclose all activities and the extent of each activity to the insurance agent. If the farmer fails to disclose the activity, the activity may not be covered by the insurance policy.

Agritourism and agritainment activities offer the promise of profitability to farm operations. These enterprises may be conducted profitably, despite liability concerns. However, safety must always be the primary concern of the operator. Contact an attorney and/or insurance agent BEFORE expanding an operation to include these new activities.

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Glossary

Agritourism liability act – A law passed by a state legislature that attempts to modify the legal duty owed by the operator of an agritourism activity to the customers.

Civil liability – Private rights and remedies; for example, the responsibility for injuries caused in an automobile accident. Civil liability results when a person or entity acts wrongfully or fails to perform a legal duty and those actions invade another's legal rights. Civil liability results when someone breaches a legal duty, causing damages to another.

***Commercial general liability insurance** – A broad commercial policy that covers all liability exposures of a business that are not specifically excluded. Coverage includes products liability, completed operations, premises and operations, and independent contractors.

***Commercial lines** – Products designed for and bought by businesses. Among the major coverages are boiler and machinery, business income, commercial auto, comprehensive general liability, directors and officers liability, fire and allied lines, inland marine, medical malpractice liability, products liability, professional liability, surety and fidelity, and workers' compensation. Most of these commercial coverages can be purchased separately except for business income, which must be added to a fire insurance (property) policy.

Cyber liability – Responsibility under the law for acts and omissions related to the Internet. This risk category includes privacy issues, the infringement of intellectual property, virus transmission, or any other serious trouble that may be passed from first to third parties via the Web (www.insurenewmedia.com/pages/cyberliability.asp).

Directors and officers liability insurance – Directors and officers liability insurance (D&O) covers directors and officers of a company for negligent acts or omissions and for misleading statements that result in suits against the company. There are a variety of D&O coverages. Corporate reimbursement coverage indemnifies directors and officers of the organization. Side-A coverage provides D&O coverage for personal liability when directors and officers are not indemnified by the firm. Entity coverage, for claims made specifically against the company, is also available. D&O policies may be broadened to include coverage for employment practices liability.

Endorsement – A written form attached to an insurance policy that alters the policy's coverage, terms, or conditions. Sometimes called a rider.

Farmers comprehensive personal liability (FCPL) policy – The farmers comprehensive personal liability policy is a particular type of liability insurance policy. Most farmers use the FCPL policy and its provisions seek to meet the particular needs of farmers.

Farmowners policy – The farmowners policy combines liability insurance with insurance to cover property losses. This policy is a comprehensive policy.

***Homeowners insurance policy** – The typical homeowners insurance policy covers the house, garage, and other structures on the property, as well as personal possessions inside the house, such as furniture, appliances, and clothing, against a wide variety of perils, including windstorms, fire, and theft. The extent of the perils covered depends on the type of policy. An all-risk policy offers the broadest coverage. This covers all perils except those specifically excluded in the policy.

Homeowners insurance also covers additional living expenses. Known as "loss of use," this provision in the policy reimburses the policyholder for the extra cost of living elsewhere while the house is being restored after a disaster. The liability portion of the policy covers the homeowner for accidental injuries caused to third parties and/or their property, such as a guest slipping and falling down improperly maintained stairs. Coverage for flood and earthquake damage is excluded and must be purchased separately.

Legal liability – Responsibility under the law for your acts or omissions.

***Products liability insurance** – Protects manufacturers and distributors from exposure to lawsuits by people who have sustained bodily injury or property damage through the use of the product.

Restatement (Second) of Torts – A legal reference or legal encyclopedia that summarizes the law of torts and suggests improvements. Courts are not bound by the reference but generally give it great weight.

***Rider** – An attachment to an insurance policy that alters the policy's coverage or terms.

Special event policy – Insurance policy that provides coverage for an activity of relatively short duration, like a haunted house that will be conducted for a two-week period or a one-week activity at a county fair.

Tort – A private or civil wrong other than a breach of contract.

***Umbrella policy** – Coverage for losses above the limit of an underlying policy or policies, such as homeowners and auto insurance. While it applies to losses over the dollar amount in the underlying policies, terms of coverage are sometimes broader than those of underlying policies.

***Workers' compensation** – Insurance that pays for medical care and physical rehabilitation of injured workers and helps to replace lost wages while they are unable to work. State laws, which vary significantly, govern the amount of benefits paid and other compensation provisions.

**Source: Insurance Information Institute. 2012. "Glossary." Web page. Accessed Nov. 5. www2.iii.org/glossary.*

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Appendices

Appendix A: Resources

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Appendix B: Forms

The following pages contain some sample forms for a farm or agribusiness operation. The forms are examples only and should not be adopted "as is" or without consultation with your attorney and insurance agent.

Form 1: Accident Report

Form 2: Checklist of Questions/Observations

Form 3: Inspection Report

Form 4: Farm Activity & Insurance Checklist

Form 5: Liability Assessment Checklist

Forms 1 and 2 were adopted and modified from the Virginia Farm Bureau and from "Premises Liability Claims: A Guide to Defending Owners" (Ricigliano 2003).

Form 3 was adopted and modified from Ricigliano's book (2003).

Accident Report

Customer information

Name of injured person _____

Address _____ Phone _____

Date of accident ___/___/___ Date accident reported ___/___/___

Time of day, hour of injury _____ AM ___ PM ___

Location of accident _____

Who reported the accident? _____ Phone number _____

Describe fully nature of injury or illness. _____

Was medical attention ___ denied ___ accepted ___ not applicable?

If medical attention accepted, describe: _____

Comments made by injured party: _____

Detailed Description of Accident (describe and list all observations of importance, e.g., broken seat, exposed material, type of substance, high-heeled shoes on injured party, etc.): _____

Name, address, and phone number of hospital, if used: _____

Description of the area of the incident: _____



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Appendix B: Form 1 Accident Report cont.

Was a dangerous condition observed? ___ Yes ___ No

If yes, describe the condition in detail: _____

Photos taken by _____ Date & time taken _____

Can be contacted at _____

Were police or security called? ___ Yes ___ No (If yes, attach a copy of the report.)

Time called _____ Who called? _____

Were police/security on duty at time of incident? ___ Yes ___ No

If police or security were involved, describe nature of involvement: _____

Was an ambulance called? ___ Yes ___ No

Names of ambulance attendants: _____

Witness name _____

Full address _____

Home phone _____ Business phone _____

Is witness an employee? ___ Yes ___ No

Witness's relationship to injured party _____

Comments made by witness (attach statement, if applicable): _____

Manager on duty _____

Accident reported to _____ Title _____

Signature of employee completing report _____

Checklist of Questions/Observations on Initial Inspection of Accident Scene

Observation of the accident location:

Is there a condition present that may have caused the accident?

If so, can it be identified?

Are there any characteristics of the accident area itself that are unique?

- Odor
 - Footprints
 - Sticky
 - Debris
 - Dirty
 - Streaked
- Where is the exact location of the accident?
 - What are the lighting conditions?
 - Is there an exposed, dangerous condition?
 - Were there any witnesses to the accident?
 - Take photographs of the accident scene (include date, time, and identity of photographer).

Observations/Inquiries of the Injured Person

- What is the nature and extent of the person's injury?
- Are his/her clothes wet?
- What type of shoes is he/she wearing?
- Where is the injury located on the body?

- Do there appear to be any broken bones?
- Is there swelling or discoloration?
- Is any part of the person's body bleeding?
- Does the person need immediate medical care?
- Where was the person looking immediately prior to the occurrence?
- Did the injured party see the alleged condition before he/she fell?
- How does the injured person think the accident occurred?

Tips

1. Attend to the victim first and foremost; make sure relief comes quickly.
2. Comfort victim until help arrives.
3. Do not comment regarding fault.
4. Get detailed information concerning the accident (see report form).
5. Report accident to your insurance carrier ASAP.
6. Keep an accident log book on any accident/injuries that occur.
7. Advise all of your employees how to handle accidents and report to management.



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Inspection Report

Area inspected _____ Time _____

Observations (do any obstructions or unsafe conditions exist?): _____

Actions (check when completed and denote time):

____ Mop: Time started _____ Time completed _____

____ Sweep: Time started _____ Time completed _____

____ Additional assistance requested

Identify individuals assisting:

____ Drying agent applied; Type _____

____ Wet floor signs posted; Time _____

____ Area cordoned off; Time _____

____ Area closed; Time _____

Time inspection completed _____



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Farm Activity & Insurance*

Farm Activity List	Insurance Policy List
You have 400 acres, 6 pleasure horses, corn and wheat crops, and various farm animals.	Farmowners policy
You have the above, plus you have decided to stock and sell horse feed and horse care products. You do not repackage or relabel the products.	Commercial general liability policy
You have the above and are now boarding 10 horses for others and giving horseback riding lessons.	Equine liability policy
You have the above plus a Halloween corn maze during the last two weeks of October.	Special event policy or an additional classification on the general liability policy
You have the above and now you have your own website. You advertise your farm, your horse products, horse boarding, horseback riding lessons, and corn maze on the website. You also have a Facebook page to promote the operation.	Cyber liability policy
You think you need additional liability protection.	Commercial umbrella policy

* Developed by Lisa Whitus, Virginia Farm Bureau.



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Liability Assessment Checklist

Issue	Results of Inspection	Date Inspected
Are liability insurance policies up-to-date? Do they have sufficient limits of liability for your operation?		
Have you reviewed your liability insurance policies with your insurance agent and attorney within the past 12 months?		
Have you added any new activities or projects that have not been discussed with your attorney and insurance agent?		
Are the aisles, pathways, and other areas that customers will walk through level, clear of obstructions, and clearly marked?		
Are vehicle pathways clearly marked and separated from walkways?		
Have you posted speed limit signs and other reminders for drivers to be careful and drive slowly?		
Are parking areas level, well-maintained, well-lit, clear of obstructions, and properly drained in case of inclement weather?		
Are sufficient hand-washing stations provided, particularly if food will be served, contact with animals is allowed, or children's play areas are provided?		
Is sufficient drinking water available for hot weather?		
Is appropriate signage in place to guide customers around the site and to prevent customers from entering areas of the site that are off limits?		
Are sufficient numbers of restrooms available?		



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Appendix B: Form 5 Liability Assessment Checklist cont.

Issue	Results of Inspection	Date Inspected
Are keys out of tractors, ATVs, and other vehicles?		
Are pesticides, chemicals, gasoline, and other harmful substances out of sight and locked away?		
Are barriers in place for ponds, water sources, and manure pits?		
Are animals that will be in contact with customers clean and properly vaccinated?		
Is an emergency response plan in place, and are the employees prepared to implement the plan?		
Are all areas of the operation accessible to persons with disabilities?		
If an accident occurs, can you quickly access ice, blankets, and a first aid kit, and can medical care be summoned quickly?		
Have you posted “no smoking” signs and otherwise prohibited smoking?		
Are sufficient numbers of fire extinguishers present?		
If food is being served, have all food safety measures been followed?		
Are you constantly monitoring weather reports for severe weather warnings?		
Are there sufficient areas for customers to take shelter in case of a severe weather event?		
Do you inspect equipment at the beginning of each day and periodically throughout the day? Are inspections documented on checklists initiated by the employee(s) making the inspections?		
Do you inspect the premises at the beginning of each day (e.g., inspect corn mazes for obstructions, etc.) and periodically throughout the day? Are inspections documented on checklists initiated by the employee(s) making the inspections?		



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