

# Liability Insurance for Dairy Operations

Gary Skogberg

The Co-operators, 140 - 6700 Macleod Trail SE, Calgary AB T2H 0L3  
Email: [gary\\_skogberg@cooperators.ca](mailto:gary_skogberg@cooperators.ca)

## ■ Take Home Messages

- ▶ There are many unforeseen risks on a dairy operation that could give rise to liability claims against the operation.
- ▶ Liability claims and the associated legal fees can be crippling to farm operations of any size. Adequate liability coverage could be the difference between the continued operation of a farm and its bankruptcy.
- ▶ Liability insurance protects the farm against claims or allegations by third parties that the farm's negligence has caused harm to them or their property.
- ▶ It provides coverage against claims arising from the personal actions of the farm operator, spouse and children living in their household, and employees while working on the farm.
- ▶ Every company's standard insurance policy is different, but they generally provide coverage for damage resulting from personal actions, the farm operation, and the farm's products.
- ▶ Many additional coverages may be purchased, so farmers should speak to a trusted insurance advisor who is familiar with dairy operations to make sure all options have been considered.
- ▶ When a claim is covered, the insurance company must defend the farm against civil actions and assumes the right to negotiate and agree to settlements.
- ▶ Farms that branch out into other business activities or that have visits from other people or groups face increased liability exposures they should protect themselves against.

## ■ Introduction

Today's farm business is complex and diversified in ways that it has not been in the past. Farms are branching out into new activities, which bring with them

new opportunities and new risks. No longer as isolated from the public as they once were, today's farms have more need for comprehensive liability protection than ever before.

Liability insurance protects the farm operation against claims or allegations by "third parties" that the business has caused harm to them or their property due to the farm's negligence. A "third party" is anyone outside the contract between the farm operation and the insurance company. Claims of this sort are on the rise in Canada, and every business needs to protect itself against them. Liability claims sometimes involve the unforeseen or unknown.

Serious liability claims can involve complex legal issues, including costly legal bills and lengthy court proceedings. The insurance company provides the lawyers and legal expertise. A liability policy pays for the legal costs related to claims. These costs are paid over and above the liability limits of the policy.

Farms present a unique challenge for insurance, which covers both the farm operation and the farm dwellings. Farm liability insurance generally provides coverage to the farm operator, spouse and children living in their household, and employees while working for the farm. A liability policy binds the insurance company to defend the insured farm against civil actions and assumes the right to make negotiations and settlements it deems expedient.

## ■ Standard Coverages in Farm Insurance Policies

Farm insurance policies differ from one company to another, but they generally include personal liability, farm operations liability, and farm products liability, as well as tenants legal liability, non-owned auto liability, and contingent employers' liability. These coverages are described below.

### ■ Personal Liability

Most farms include a farm residence, or "dwelling." Farm liability insures the personal actions of the farm owner and family members against claims arising from that residence. For example, if someone visiting a residence on a farm for personal reasons slips and falls injuring himself or herself, the farmer could be held liable under what is known as Occupiers Liability if he or she was negligent in maintaining the residential property. Negligence could include failing to properly clear snow and ice in the winter, not repairing broken stairs, and so on. The homeowner/farmer has an obligation to maintain the premises in safe condition for people who visit the premises.

## ■ Farm Operations Liability

Farm liability insures against the legal liability arising from normal farming operations. It insures people who come onto the farm who are not members of the farmers' family or employed in the operation of the farm. Following are some examples of exposures that might exist for dairy farmers. Some of the examples are real; some examples are a spin off of actual losses.

- ▶ The trucker who collects the milk from a farm is injured when he slips on ice that should have been cleared before the truck's arrival. He sustains severe multiple fractures in his leg, spends several weeks in hospital, goes through several months of therapy and is no longer able to earn a living as a truck driver due to the severity of the break. He sues the farm for the injuries sustained, including lost wages for time off work, uninsured medical expenses, pain and suffering and for future earnings he will not earn as a truck driver. He is 30 years of age and could have earned a living driving trucks for another 35 years. The farm could be liable for hundreds of thousands of dollars plus the legal costs.
- ▶ A primary school class visits a farm to learn how a dairy operation runs. One of the visiting children is kicked in the head by a cow, or falls from a hayride the farmer has kindly arranged, and sustains severe brain damage. The child ends up in a vegetative state requiring years of expensive future medical care. The child's family sues the farm for pain and suffering, current and future medical expenses, as well as huge legal expenses and court costs.
- ▶ A cow or horse escapes from a farm property through an open gate or broken fence and wanders onto the road. A school bus full of children strikes the animal causing the bus to crash. One child is killed and several are severely injured, requiring lengthy and expensive hospital care. The cost to defend the claim and pay for the injuries and legal fees could bankrupt the average farmer. The farm liability policy will protect the farmer for this type of claim.
- ▶ Many farms operate bed and breakfast businesses to earn some extra cash. If a guest is injured by farm equipment or is kicked by a cow, he or she could sue for their injuries.
- ▶ A diseased animal could be accidentally exposed to a neighbour's livestock, or could be taken to a county fair where it infects a number of animals resulting in large property damage claims against the farmer. The farm policy will protect the farmer against any resulting lawsuits.
- ▶ Farm machinery – tractors, trailers, bailers, swathers and combines – occasionally must be moved to an adjacent field or to a neighbour's place. A family enjoying an afternoon drive and not familiar with the country road crashes into the equipment causing serious injuries. Farm equipment that

is not licensed and becomes involved in an accident on a country road or highway is not insured by an auto policy but it is covered by a farm liability policy.

None of these scenarios could have reasonably been foreseen, and each could be so costly as to jeopardize the future of many farm operations. Liability protection could be the difference between the continued operation of a farm and bankruptcy.

## ■ **Farm Products Liability**

Products liability insures against claims for bodily injury or property damage to third parties arising out of an insured farm's products. Examples of the types of claims that could, and do arise are:

- Diseased animals sold to a feed lot or to another farm could cause other animals to become sick. The farm liability policy would defend claims arising from these types of problems.
- Years ago a chemical known as DES was prescribed to pregnant women to help prevent morning sickness. The same chemical was fed to cattle to increase weight. The drug was linked to cancer of the uterus in the first generation female children of the women who took the drug. The drug company who produced it paid millions of dollars in claims to the affected women. Feed given to a herd often contains drugs, antibiotics or vitamins. It is possible that what we believe today to be safe drugs and vitamins could be found to be harmful in the future, in the same manner that DES was. A class action suit would no doubt be commenced on behalf of the injured people, possibly implicating the dairy farmers who used the enhanced feed, with the statement of claim stating that they should have known the drug was unsafe. The farm liability policy should provide protection against what would certainly be an expensive and lengthy legal action.

## ■ **Tenants Legal Liability**

Tenants legal liability coverage protects the farmer against claims related to damage to rented property. For example, a farmer may rent a residence or space in a neighbour's outbuilding to store a tractor. If that property is damaged by fire caused by a short circuit in the tractor's electrical system, the tenant's legal liability coverage will provide compensation for the damage to the rented property.

## ■ **Non-Owned Automobile Liability**

As the name implies, non-owned auto liability coverage covers third party liability claims for bodily injury or property damage arising from the use or operation of a vehicle that is not owned by the insured farm. Farmers who rent or lease vehicles should carry this coverage.

## ■ **Additional Coverages**

The coverages listed above are generally provided by various companies' standard farm insurance policies. But consideration should be given to additional risks any particular farm operation presents. The following are some of the additional coverages that may be purchased for an additional premium.

## ■ **Employers Liability**

In most provinces dairy farmers have the option of insuring their employees under provincial workers' compensation (WCB). The benefits of insuring employees under WCB are:

- ▶ all employees are covered;
- ▶ it is "no fault" coverage, which means it is not necessary to prove fault for claims for injury;
- ▶ benefits are immediate;
- ▶ WCB pays for medical care expenses and provides rehabilitation; and
- ▶ in the event of a fatality, WCB pays funeral expenses and survivor benefits to eligible dependents.

If a farmer decides to opt out of the provincial government's workers' compensation system, Employers' Liability coverage is available to insure farm employees for claims arising from injuries to the employees deemed to be the result of a farmer's negligence. Employers' Liability is not as broad as WCB coverage, nor are payments made as quickly.

## ■ **Employee's Voluntary Compensation**

Some policies provide limited "weekly indemnity" benefits as an extension to Employers' Liability to pay for a portion of an injured employee's wages. Coverage may also provide accidental loss of life benefits, and temporary or

permanent disability benefits.

## ■ **Limited Pollution Liability Insurance**

Some farm liability policies provide insurance for bodily injury, as well as property damage and clean-up costs arising from “pollution incidents,” which are defined as unexpected and unintentional discharges of pollutants. This provides liability coverage if the farmer causes environmental damage to third party property, or injury to others resulting from the release of a pollutant. Dairy farms use Slurry Tanks or Lagoons to collect waste produced by cows. If the Slurry tank bursts or leaks, or if a Lagoon leaks, the waste could seep into the ground and ultimately into the water table contaminating the water supply for surrounding neighbours. The liability policy could insure the cost to clean up the contamination and possible legal action that might arise from the resulting pollution.

The policy can be extended to include “on-site clean up costs” the insured farm incurs to clean up the pollution spilled on its own property.

## ■ **Other Liability Exposures**

Farm liability policies may limit or restrict coverage for certain exposures. Every policy is different, so it is very important to review the details and verify that the coverages and limits are fully understood. If there are any uncertainties, the agent or broker should be contacted to clarify the details and ensure the insured farm has the desired coverages.

## ■ **Spray Drift Liability from Application of Pesticides**

Many farmers spray pesticides or other chemicals on their crops. Farm liability policies may offer insurance for liability claims arising from the application of pesticides or chemicals that are released or escape from the farmer’s property and damage others’ property or animals. Damage to the farmer’s own property is not insured against this peril. Most policies exclude coverage for damage resulting from the application of pesticides by aircraft.

## ■ **Custom Farming**

“Custom farming” is defined for insurance purposes as the use of farm machinery or equipment away from the farmer’s premises, for example when farming is being performed for others. As farmers are well aware, their

equipment is very expensive to buy and operate. Many farmers share equipment to harvest their own and neighbouring crops, or do harvesting for other farmers. Liability claims can arise if others are injured or property is damaged during the operation of farm equipment. Most farm policies insure liability arising from custom farming, but coverage may be limited based on several thousand dollars of receipts derived from the custom farming. Typical farm policies in Canada insure custom farming up to \$2,000 in annual gross receipts. The coverage might also be restricted to losses that occur within Canada. An agent or broker should be contacted to determine whether policies can be extended for an additional premium to insure larger operations or to include U.S. operations.

## ■ **Business Pursuits**

It is important to be aware that farm liability policies are generally restricted to the business of farming. Farmers who engage in business pursuits beyond their normal farming activities should check their policy and contact their agent or broker to arrange separate, additional insurance related to those additional activities. For example, some farmers clear their neighbours' snow in winter for a small fee. Any liability claims arising from this activity would not be insured by the farm liability policy. Operating a bed & breakfast from the farm is not considered normal farming activities and may require separate insurance.

## ■ **Oil and Gas Wells on the Farm**

It is not uncommon for western farmers to have oil or gas wells on their property. Farmers may be contracted to clear snow in winter, cut grass in summer or take readings from equipment. The farm liability policy will not cover these activities, which are outside the scope of normal farming activity. Oil and gas companies are responsible for any claims arising from the wells or pipelines on a farmer's property.

## ■ **Watercraft**

Most farm liability policies insure liability arising from the ownership or operation of small watercraft. The policy should be checked for details; if the farm liability policy does not insure the watercraft, this coverage should be purchased separately.

## ■ Motorized Vehicles and Recreational Vehicles

Farm liability policies may cover liability arising from the operation of small unlicensed motor vehicles or recreational vehicles such as snowmobiles, ATV's and dirt bikes. It is important to note that the liability will not apply to passengers carried on or riding on these vehicles. Therefore, if the farm owner or a family member drives one of these vehicles and is carrying a passenger there is no liability coverage for the passenger if they are injured during the operation of that vehicle. Furthermore, if the vehicle drives onto a public road or highway, the farm liability policy will not apply. Licensed vehicles must be insured on an auto insurance policy. Policies should be checked for details.

## ■ Auto Liability

Automobile liability insurance is an important consideration. Auto policies only insure licensed vehicles such as family vehicles, farm trucks, possibly tractors and as mentioned above, motorized recreational vehicles such as ATV's and snowmobiles if they are used to carry passengers or if they are used on public roads. Farmers operate a wide variety of equipment beyond these vehicles, including tractors, combines, swathers, and bailers to name a few. As mentioned previously, vehicles or equipment that are not required to be licensed or insured by a motor vehicle policy can be insured under a farm liability policy to protect against liability claims resulting from their use.

## ■ Umbrella Liability

Often farmers will want to increase the limits to which they are insured under standard liability policies. Umbrella liability coverage can be purchased for this purpose. Umbrella policies usually require the primary farm and auto policies to have limits of \$1,000,000 or \$2,000,000. Umbrella limits are commonly up to \$5,000,000 or higher for larger operations.

## ■ Limits

It is difficult to advise what adequate liability limits are because of the unpredictability of incidents and ensuing legal proceedings. Most farms will never be involved in a liability claim, but every one faces the potential for an unforeseen accident resulting in claims well beyond the operation's financial capacity.

The larger the farm operation, the more potential exists for large claims, so

large farms should consider carrying higher liability limits. Limits of \$2,000,000 are common, and it is possible to purchase \$5,000,000 limits or more for relatively little additional cost.

Every farmer should talk to a trusted insurance advisor who understands dairy farm operations to make sure their family, investments and livelihood are properly protected.

## ■ References

[http://www.cooperators.ca/en/farm/5\\_1\\_0.html](http://www.cooperators.ca/en/farm/5_1_0.html))

<http://www.ibc.ca>

Fact Sheet: Farm Business Insurance" Ontario Ministry of Agriculture, Food and Rural Affairs, 2000.

<http://www.omafra.gov.on.ca/english/busdev/facts/00-041.htm>



**BMO**  **Bank of Montreal**