LIABILITY AND FARM LIABILITY INSURANCE

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by

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Today's modern farming practices have greatly benefited farm operators but have also increased their risks of potential liability. The growing use of large equipment and more chemicals have been accompanied by increased risks of bodily injury and property damage.

A loss, no matter if suffered in an economic recession or economic boom, can be a serious detriment to a farmer's financial situation. Risks can be identified and analyzed and insurance used to transfer some types of loss from the insured farm operator to an insurance company, where the cost (through premiums) can be spread over many years, many insureds and a large geographical area.

This report examines potential farm liabilities and discusses some types of liability insurance available to farm operators.

Part 1 - POTENTIAL FARM LIABILITIES

1. Definitions, Legal Obligations, and Damages.

Legal liability is an obligation one is bound in law or justice to perform. A person usually is not held responsible for injuries or damages to others unless he has acted in a negligent or careless manner or has intentionally harmed another. (An exception to this is being liable on strict grounds such as selling a defective product.) Negligent conduct is the failure to act as a reasonably prudent person would have acted in the same situation. A plaintiff, who takes legal action against a defendant, must prove that the defendant had (1) a duty to conform to a standard of conduct that protects others against unreasonable risks; (2) failed to conform to the standard; (3) caused actual loss or damage to the plaintiff or his interests; and, (4) a reasonably close causal connection between the conduct or lack thereof and the injury.

Liability also may be imposed by specific state laws. The law can make the person responsible to the injured party and specify how damages are to be determined.

A person is normally responsible for all damages or injuries caused by his negligent conduct. (But all elements of negligence specified above must be proven.) A judge or jury in a court action will determine whether a person is liable to another for injuries or damages and in what amount. The extent of liability depends on the seriousness of the damage or injury caused by one's conduct rather than by the nature of the conduct itself. So, your liability may be only $500 for a minor automobile collision, but it could be $50,000 or more if a person were seriously injured.

Damages awarded are called nominal, compensatory, or exemplary depending upon the injury suffered. Nominal damages are awarded where no actual loss can be shown but a breach of a duty has occurred.

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Compensatory damages are the amount needed to compensate the person injured for the actual loss (whether or not it could have been anticipated). Exemplary damages are damages awarded in addition to compensatory damages to punish the defendant. In any event, all awards of damages must be reasonable.

Negligent persons must pay the damages or suffer the consequences when a jury finds that they have been negligent and awards damages to the injured party. The consequences can mean that the negligent person's property is seized and sold to satisfy the judgment. The only farm property exempt from seizure and sale is the "homestead," which is limited to 160 acres of land and the farm home. There is also an $80,000 limit on this exemption. A person may be financially ruined by acts which result in injury or damage to another, especially since the average farmer's assets also are his means to earn a livelihood.

2. Liability with Respect to Land.

Ownership or possession (such as acquired through a lease) of farmland may subject the farm operator to many types of potential liability. The liability is based on a failure to perform certain duties which one owes to others. One owes a duty of care to others in two basic categories: to persons or property adjacent to his land, and to persons or property on his land.

A. Persons or Property Next to the Land.

A farm operator must use his land in a reasonable manner that will not cause injury or damage to adjacent land users. Several examples will indicate some farm activities which may result in liability for damages to adjacent land users.

(1) Use of a highly dangerous instrument such as dynamite or similar explosives for ditching or for removal of stumps and rocks may result in liability for damages or injury caused by debris thrown for unexpected distances upon neighboring land. One gasoline dealer was held liable for damages to the adjacent property caused by an explosion.

(2) Carelessly applied pesticides may damage neighboring crops or property for which the farmer may be held liable. Any pesticide that drifts over to the neighboring land and damages crops can result in liability even though the crop spray operator was the careless person rather than the farmer who employed him. The farmer's liability may be based on negligence in hiring an inexperienced crop sprayer. A claimant has 60 days from the occurrence or knowledge of the occurrence of loss to file a verified report of loss with the crop sprayer, the state agriculture commissioner and the person for whom the work was done (if he is not the claimant).

(3) The failure to keep partition fences in good repair may result in liability to a neighboring farm operator. A farmer who is negligent in the maintenance of a partition may be held liable where his neighbor's livestock are injured while escaping over the partition fence.

(4) Farm operators with land adjacent to public highways may be liable for harm caused to motorists by failing to exercise reasonable care. The farm operator must not create obstructions which unreasonably interfere with the use of the
highway or cause unreasonable risks to persons using the highway. A North Dakota statute prohibits placing of physical obstructions within 33 feet of any section line which may include a highway. A violation of this law may be evidence of negligence. One landowner was held liable for the injuries caused to a traveler who fell into an excavation next to a highway. A farmer also may be liable for animals straying onto a highway, such as a flock of geese causing a driver to go into the ditch to avoid them. A farmer also may be liable if a dog, known to chase cars causes an accident while chasing one. Generally, the plaintiff will have to prove that the farmer knew of the animals' previous inclination to do such things and that the farmer failed to take steps to stop them.

(5) A farm operator who sets fire to his grass or stubble field may be liable for damages to neighboring property caused by the spread of the fire. One farmer was held liable for the destruction of pasture land.

(6) Excavations by a farm operator may hold him liable to the adjoining landowner for damages caused by the excavations. A North Dakota law states that "each coterminous owner is entitled to the lateral and adjacent support which his land receives from the adjoining land..." One landowner was held liable for excavations that damaged a neighbor's soil.

B. Persons on the Land.

The farm operator owes the same duty or standard of care to all persons and property next to his land. But this is not true for people who come onto his land. People who come onto a farm operator's land are divided into two groups: entrants and trespassers. The categories affect the liability which the farm operator owes to each.

(1) Entrant--Prior to 1977 North Dakota recognized the common law categories of licensee and invitee. An invitee is a person whom the farm operator invites onto his property for business purposes or for his financial benefit. A licensee is a person lawfully present on the land for his own purpose rather than for the potential business or financial benefit of the farm operator. After a North Dakota Supreme Court decision of that year, the status of the entrant is no longer the controlling factor. Ordinary principles of negligence will govern a landowner's conduct to both a licensee and an invitee.

A farm operator must act as a reasonable man in maintaining his property in a reasonably safe condition in all circumstances, including the likelihood of injury to another, its seriousness, and the burden of avoiding the risk. For example, a farm operator could be held liable if his dog bites an insurance salesperson. The fact that the farmer posted "beware of dog" signs may not avoid liability.

The farm operator must insure himself against any future possible liability because the liability in each case depends on its specific facts. The risk would be too great to place oneself at the mercy of the finder of fact (jury or judge without a jury).

The farm operator has a right to use his property and develop it for his profit and enjoyment. But he must take reasonable measures to prevent injury to those whose presence on his property can reasonably be foreseen where he conducts
dangerous activities or permits dangerous instruments and conditions to exist on his property.

(2) Trespasser—A trespasser is one who is not rightfully on the land of another and enters it without consent of the farm operator. In general, the farm operator owes no duty of care to the trespasser other than to refrain from harming the trespasser in a willful and wanton manner until such time as the trespasser's presence in a place of danger becomes known, which is when the farm operator's duty arises to exercise ordinary care to avoid injuring him. An example of this might be if a hunter was driving across a farm operator's field and the operator knew of his presence but failed to tell him about pits dug for other hunters. The farm operator may be liable if the hunter was injured or his vehicle damaged if it can be shown that the landowner acted in a willful manner.

A trespass can take many forms. Commonly trespass is thought of as physically entering onto the land of another, without permission, (such as walking onto the land). But trespass can include such things as shooting over another's property, an explosion throwing rocks onto another's property, and cattle straying onto another's property. A pesticide drifting onto the property of another can also be considered a trespass.

However, the standard of care is different if the trespasser happens to be a child who, due to his immaturity, may not understand possible dangers. The farm operator has the obligation to exercise care so children are not injured if he is aware that they are trespassing on his land. A farm operator is not under a duty to eliminate every possibility of harm but only to exercise due care as to those risks which he should realize are unreasonably great and threaten serious bodily harm in a way not likely to be appreciated by children whose trespass he could foresee. He may be held liable if children are burned while playing with smoldering ashes, injured from electric fences or explosives, injured from parked automobiles, farm equipment, and from children drowning in a water hole. Where children frequent a farm operator's land and the danger itself can reasonably be eliminated, he may not be able to protect himself from liability by putting up fences or other restraining devices. However, even if it would not be reasonable or economically feasible to eliminate the danger itself, such devices would probably protect the farm from liability.

One 12-year old boy was injured while playing on a scaffold set up by a construction crew to build a house. The construction company was held not liable on the basis that it would be an economic burden to disassemble the scaffold every day after work.

The probability of theft of farm tools and household goods has increased where more farmers either move to town or to a more desirable climate during the winter months. Use of trap devices such as spring or trapguns, for protecting property could result in liability if someone is injured by such devices.

One landowner placed a trap gun in an uninhabited house to supposedly stop the theft of valuable bottles or fruit jars. A trespasser entered the house and was injured from the discharge of the shotgun. The landowner was held liable for the injury and for punitive damages. Here the farm operator was not and could not insure against a claim for the injury because it was an intentional
act. The best alternative is to protect yourself against property loss with insurance, lock your tools away for the winter, and periodically check on the premises.


Farmers can profitably offer many types of recreational facilities, including special facilities for hunters, campers, fishermen, swimmers, and so on. A farm operator offering land for recreational purposes owes various duties to those who come onto his land.

Persons are considered "entrants" if they pay a farm operator a fee for the privilege of using his recreational facilities. Farm operators owe a high degree of care toward entrants.

The 1965 Limiting Liability of Landowners Act encourages landowners to offer their land for recreational purposes by limiting their liability as long as they do not charge a fee for supplying the recreational facility. Under the act, a landowner generally will be liable to a nonpaying recreational user only for a willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity, and not for a negligent failure.

"Entrants" are persons who pay for the privilege of coming onto the land for recreational purposes. The above Act does not shield a landowner from liability to entrants. The landowner is obligated to inspect his property and to discover dangerous conditions for entrants. The farm operator who charges an admission fee may be held liable to an entrant for negligent as well as wilful and malicious acts. The specific duty of care owed an entrant may vary depending on whether the entrant is a hunter, fisherman, camper, or other sportsman.

A. Hunting--A farm operator owes a paying hunter certain duties of care, such as posting warnings as to dangerous conditions on the property, including dangerous animals and abandoned wells. He may be liable for injuries to a hunter caused by another hunter. Liability may be based on his negligence in allowing too many hunters in a given area, or by admitting an intoxicated hunter who subsequently injures another hunter.

B. Fishing--A farm operator should carefully inspect his fishing docks, fishing boats, and other equipment which are used by fishermen to be sure all are in safe condition.

C. Swimming, Ice Skating, and Skiing--A farm operator who charges a fee for the use of a body of water on his property, such as for swimming, has a duty to provide a safe place to swim. He should post signs indicating the depth of the water or rope off a safe swimming area, maintain rescue equipment, and keep the bottom of the lake or pond clear of dangerous objects.

The farm operator should check the thickness of the ice and post warning signs where the ice is too thin if a body of water is used for ice skating. The owner must use reasonable care to make sure his premise are safe and must guard against injury if they are used for skiing.

D. Snowmobiles, Motorbikes, and ATC's--A farm operator who charges a fee for use of his property for a motorcross or snowmobile race or even for casual riding enjoyment may
be liable for injuries arising from hidden dangers, other riders, or negligent repairs. Liability may be based on his negligence in allowing too many riders in a given area, by his admittance of an intoxicated rider, an underage rider, or from failing to warn of a barbed wire fence or abandoned well or basement.

E. Riding Stables--A farm operator also may be liable if he charges for rides and a rider is injured based upon the operator's negligence. Negligence may be based upon his failure to inspect the equipment or for using a horse with a known inclination of throwing people off. An operator should be careful to match the skill of the rider and the spirit of the horse.

F. Limiting Liability--The farm operator may reduce his risk of expensive lawsuits by buying liability insurance. But a farmer can do many things to reduce the chances of injury to those who come onto his property. He can post warning signs of possible dangerous conditions which may injure others. He can even eliminate the danger. But a jury may not consider those precautionary measures as adequate in a subsequent lawsuit. Such uncertainty is one reason why personal liability insurance is a good investment. It must be remembered however that by charging for recreational use, a farmer's business status may change. He may now be considered in the business of recreational services. He probably should carry coverage for this in addition to his farm or personal liability policy. Consult your insurance agent concerning this. Not only may the farm operator be liable but also the landowner can be held liable (if the owner is not the operator). This is based on the theory that the owner had control and could have prevented the dangerous situation.

A farm operator who does not want people hunting on his land must post signs to that effect. However, this may not entirely absolve the operator or owner of all liability.

4. Liabilities of Landlord and Tenant.

A. In Reference to Residential Dwellings.

North Dakota law has placed the burden of repairs upon the landlord. The landlord is required to make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. The landlord and tenant can agree that the tenant is to perform specific repairs or maintenance, but this agreement must be separate from the lease and must be entered into in good faith.

The landlord and tenant may expressly agree that the landlord is under no obligation of care for the benefit of the tenant, and shall not be liable for the consequences of conduct which would otherwise be negligent. There are, however, several limitations on this. First, the bargaining must be free and open—not one sided. Second, the agreement cannot be against the public interest. Third, the agreement cannot exclude extreme forms of negligence, such as, wilful, wanton, reckless or gross. Fourth, the agreement cannot encompass any conduct which constitutes an intentional tort (wrong).

General tort principles then would be applicable to all liability situations involving the landlord and tenant. The law has created a duty of repair upon the landlord. Either the injured tenant or his guest would have to prove that the landlord breached the duty and that the breach caused the injury.
Since this law is relatively new (enacted in 1977) and because North Dakota seems to be taking a new approach on landlord-tenant obligations, there is little case law in this area. Several neighboring states have abandoned the old rule of nonliability for disrepair and are adopting the same philosophy as North Dakota. The new trend is that if a person lawfully on the premises is injured as a result of the landlord's negligence in maintaining the premises, the injured person is entitled to recover from the landlord under general negligence principles.

B. Specific to Agriculturally Related Landlord-Tenant Leases

The landlord at the time of leasing has a general duty to warn the tenant of conditions that he knows or should know will create an unreasonable risk of harm to persons on the premises. A landlord then could be liable to a guest of a farm operator if the guest is injured from a fall on a nonrepaired step.

A landlord who voluntarily agrees to make repairs and does so carelessly could become liable for injuries which may result. One landlord was liable for the wrongful death and destruction of property resulting from fire in a rented mobile home, caused by negligent omissions of the landlord in attempting to light a water heater after the flame had gone out. Even though this was not a contractual obligation upon the landlord to do, he gratuitously agreed to repair and thereby created a duty to make a proper repair.

Examples given of landlord liability emphasize that a landowner can still be held liable for injuries or damages resulting from conditions or activities on his land even though the land is leased. Also, the tenant may be held liable, such as for negligent blasting. But this may not relieve the landlord from liability even though the tenant's liability would be considered primary, for the tenant may be insolvent.

The landlord should carry liability insurance even though the tenant is in possession of the premises. The landlord could be held liable for some negligent omission. Since a lot of North Dakota farmland is owned by people that do not live right within the specific location of the property, insurance is the cheapest protection available to the landlord.


Generally, parents are not responsible for damages or injuries caused by negligent acts of their children merely because they are related. North Dakota law holds the parent and child not liable for acts of each other unless the parent would be liable on the same grounds as he would be for the tort of any other person to whom he directed a wrongful act. A minor is liable civilly for any wrong done by him in the same manner as any other person.

There are exceptions to the general rule. A father permitting his son to use the family automobile or truck in the father's business may be liable for injury due to his son's negligence in its operation. An example would be where the son is driving his father's grain truck. A parent also may be liable on the theory of negligent entrustment, where the parent is negligent in entrusting an automobile to his child knowing there may exist an
unreasonable risk of harm to third parties. The entrustment of a dangerous instrument, such as firearms or dynamite, also may fall under this category.

A parent may be liable if a child under the age of 18, while living with his parents, should destroy another's property (public or private), but this liability is limited to $1,000.


A. Trespassing Animals — A farm operator in North Dakota may be liable for all resulting damages or injuries if his livestock should go through, over or under any lawful fence. The maintenance of sturdy fences is a minimum requirement. Farmers should take all precautionary measures to prevent animals from straying off their property. The farmer may be liable for all damages if his cattle stray onto a neighbor's land and trample the crops. He may be liable when his trespassing hogs have cholera and transmit this to a neighbor's hogs, or when the neighbor's cattle are bred by a trespassing bull, or when he fails to restrain infected sheep.

A farmer's liability for trespassing of animals is very great, and he may be responsible even though he has carefully controlled his animals. This is the case of absolute (strict) liability rather than a liability based upon negligence. If his animals have strayed, he will generally be held absolutely liable for damages caused by his trespassing animals to his neighbor's crops and other property.

Small domestic animals such as dogs and cats are not likely to do serious damage, and here the farmer is not absolutely liable for damages. But if his dog should kill, wound, or chase sheep or other domestic animals or poultry belonging to another person, he may be liable for all damages caused. The damages can include punitive damages for wrongful injury to domestic animals. North Dakota law allows any person to kill a dog, wolf, or coyote either in act of killing, chasing, worrying or damaging any livestock or poultry or under circumstances which show that it has recently been engaged in such activity. The person killing the animal will not be civilly liable to the owner unless he was not justified in the killing. But this statute does not force the owner of the livestock or poultry to kill the dog. In fact, the person killing the animal may be held liable if the facts do not support the killing. One farmer shot a hunting dog because it ran through his herd, and was held liable for killing it.

A farmer is not liable to a motorist upon a public highway within a "grazing area," if he has posted the proper signs at the proper location as required by law. A "grazing area" is any area designated as such by a majority of the board of county commissioners and used primarily for grazing livestock and is enclosed by a fence or other suitable means. The farmer may be held absolutely liable for all damages inflicted to the "property of another" and for the "injuries sustained if the area is not a "grazing area."

A farmer's potential liability for stray animals may be very great, such as where a motorist is killed in a collision with a stray animal. A farmer can protect himself from liability in two ways: by taking all reasonable precautionary measures to prevent his animals from straying and by purchasing liability insurance.
B. Liability Other Than From Trespass--A farmer may be held liable even though his animals have not strayed; for example, if an employee is injured by a farm animal. Generally, the farm operator will be held liable for all injuries or damages inflicted by dangerous animals which he keeps on his land. Dangerous animals are those that are by their nature dangerous, such as lions, mink, wolves, and so on. A farmer also may be liable if his dog or cat attacks and injures an entrant on his land. The injured person may have to show that the farmer knew of the animal's prior history of doing such acts but a recent change in the law in respect to entrants may no longer require this history. This may mean that the farmer may be liable for a dog's first bite. Since liability will be predicated upon each factual situation, one should have liability insurance that does not except from coverage liability resulting from animals.


Ownership and use of an automobile or truck in this modern, motorized agricultural age introduces substantial farm liability. Use of motor vehicles in the farmer's everyday activities involves a possibility of being held responsible for injuries or damages caused by their careless operation. The same rules of legal liability apply to the farmer as to his city neighbor.

All drivers are expected to operate their motor vehicles in a responsible manner and will be held liable for all damages or injuries caused by their negligence. Motor vehicle liability is based on negligent conduct, as are other areas of personal liability.

North Dakota has many laws governing the use of motor vehicles, such as speed limits, right-of-way laws, and traffic signals. A violation of any of these laws is strong "evidence" of negligence. Driving at the posted speed limit may represent negligence when roads are icy or visibility is limited; but this is not automatic negligence.

North Dakota no longer recognizes the general rule that contributory negligence completely bars recovery. The 1973 adoption of comparative negligence by the legislature means that one may be able to recover damages as long as his negligence was not as great as the negligence of other persons involved. An example would be if two motorists, A & B, collide and the jury determines that A was 51 percent at fault and B was 49 percent at fault, so B could collect 51 percent of his damages from A, but A does not collect anything from B because his fault is greater than B's. Comparative negligence is not just limited to automobiles, but includes all areas involving negligence.

A. Injuries to Passengers -- Generally, a motor vehicle driver is held liable for damages and injuries caused by his negligence. North Dakota once recognized an exception to this rule known as the "automobile guest statute." Here the driver was not liable to his non-paying guest (hitchhiker or social guest) unless he was guilty of conduct which consisted of more than mere negligence. However, this statute has been declared unconstitutional. Now, if A gives B, a friend, a ride to town, A no longer has a defense that B was a guest. Negligence in the operation of the motor vehicle will cause A to be held liable for B's injuries.
B. Liability for Acts of Third Persons--The above sections deal with liability of a driver for his own negligent operation of a motor vehicle. Let us examine situations where individuals may be held liable for the negligent driving of another person. This liability is based on his supposed control over the driver at the time of the accident.

(1) Joint enterprise and joint venture--A joint enterprise such as a partnership, occurs when two or more persons using a motor vehicle for a commercial or business purpose have agreed to share profits and losses and have equal authority to control the vehicle. Each individual in a joint enterprise will be held liable for the negligence of the other. If two persons purchase a truck to be used during harvest season, each may be liable for the other's negligent operation of the truck. The liability is based on the premise that both had the right to control the vehicle and each can be held responsible for the actions of the other.

Two or more people in a joint venture agree to travel together to a destination for a common purpose. Two friends on a pleasure trip together or members of the same family on the way to church could be considered a joint venture. Joint enterprise and joint venture could be distinguished as the former being business or financially related and the latter being more pleasure based.

(2) Family purpose doctrine--Ordinarily, one member of a family is not liable for the acts of another merely because of the family relationship. But a person may be liable for damages and injuries caused by the negligent operation of the automobile where he maintains an automobile for the pleasure and convenience of himself and his household. The automobile must be used by a person having general permission to use it, he must be a member of the family and the head of the household must have furnished the vehicle. But the household group is not necessarily confined just to those related to the owner but may include all people who live with the owner for whose convenience the car is maintained and who have general authority to use it, whether they be relatives, friends, or employees. One may be liable for negligence under this doctrine if he owns the vehicle or if he is in control of its use and he has available for his family to use, rather than solely for use within his business. The parent who purchases a car for a son may still be liable for the son's negligent driving although the son technically owns the vehicle. This is based upon the fact that the father may have furnished the means of purchase.

Important considerations in deciding whether the head of household has the furnished vehicle so as to permit him to be held liable under the "family car" doctrine include: who paid for car; who had right to control use of car; intent of parties who bought and sold car; intent of parents and child as to who, between them, was its owner; to whom seller delivered it; who exercised property rights in car from date of its purchase to date of accident; and any other evidence bearing on issue of who is the owner in fact.

The family purpose doctrine applies only when the automobile is operated with consent of the owner or head of household. The driver does not need specific permission of the owner, but only to be included in a general permission given to all
members of the household. The family purpose doctrine is often applied when a minor son or daughter is involved in an accident. The injured party may sue the parent because a minor person usually will not have the financial resources to satisfy a court judgment. But the mere fact that the driver is an adult will not prevent application of the doctrine where he is still a member of the household. So a father could be held liable for the negligent driving of his 25-year old son, if the facts fit the above criteria. Therefore, one should be insured since liability is determined upon each given situation. Also, minor children or other people that will be operating your vehicles on a regular basis should be named in the policy.

(3) Loaned automobiles—Generally when an owner permits a second person to use his car for the second person's individual purposes, the owner will not be held liable. Therefore, if a neighbor borrows the owner's truck to transport grain to the elevator, the owner will not be liable for the neighbor's negligence. But the owner can be held liable if he entrusts the motor vehicle to a person he knows to be incompetent or careless, such as a person who is intoxicated or not licensed. In the event of a collision damaging the truck, the owner's collision coverage, if he has it, may pay the cost to fix the vehicle. The insurer would then have the right to sue the neighbor but the owner's rates may still increase.

(4) Bailied motor vehicles—A person who entrusts a motor vehicle to another may be liable to a third person based upon the premise that the driver is the owner's agent or under his control. Here the owner may be liable for the negligence of the borrower. Generally, the owner will be held liable for the injury of a third person as a result of the operation of the user if the motor vehicle was defective when the owner lent it to the user. But the owner is not ordinarily liable for an injury where the defect arises after its delivery to the user. One tractor owner was held liable for the injuries to a third party as a result of another farmer using the tractor on the highway at night without lights.

C. North Dakota's Motor Vehicle Safety Responsibility Act—This act states that if a motor vehicle driver is involved in an accident resulting in injury to or death of a person or property damage in excess of $400 he must meet certain financial requirements or his driver's license will be revoked by the State Highway Commissioner. A driver meets these state requirements by having an automobile liability insurance policy at the time of the accident with policy limits of at least $25,000 for any one person, at least $50,000 for two or more persons killed or injured in any one accident and at least $10,000 for property damage.

A person who does not have such an insurance policy must either furnish proof of his financial ability to pay damages by depositing a surety bond with the State Highway Commissioner (up to the financial conditions set out above) or by depositing cash with the state treasurer (up to $25,000).

The requirements to security do not apply to the driver of a motor vehicle involved in an accident wherein no injury or damage was caused to the person or property in any one other than such driver or where all claims of the injured party have been settled or where he has been found by a court not to be liable. The failure to meet these requirements within 60 days after the receipt by the commissioner of a report of an accident within the
state requires the commissioner to suspend the driver's license, or if
a nonresident, the privilege of operating a motor vehicle in North
Dakota. A failure to satisfy a judgment against you (within 30 days),
could result in the suspension of your license.

8. Employer's Liability for
   Acts of Employees.

Many farmers employ laborers. The farmer as an employer may be
held responsible for the negligent conduct of his employees which
caused harm to innocent third parties.

An employer may be held liable for the negligent conduct of his
employees only when it occurs within the scope of their employment. If
the employee's scope of employment is broad, the employer's liability
for acts of employees is broad. A farmer may be liable if he calls the
employee to work and the employee is involved in an accident on his way
to work.

An employee is a person who is employed to perform some service for
the employer where the employer retains control or right of control
over the physical details of his work. A farmer who hires a laborer
to drive his tractor retains a right to tell the laborer where and how to
drive the tractor.

The general rule is that employers are not liable for the acts of
independent contractors, but this general rule is subject to many ex-
ceptions.

An independent contractor is not an employee because the farmer who
hires him does not retain control over the details of his work. That
is, carpenters are paid in lump sums, custom harvesters by acre, and
crop spray companies carry out their work as they know how. An employer
may be held liable for negligently selecting a contractor whom the em-
ployer should have known to be incompetent for the job. He may be
liable for physical harm caused by the contractor carrying out orders or
directions negligently given by him. An example could be where the
farmer negligently tells a custom harvester to harvest the wrong
field.

An employer also may be liable where the activity contracted for is
one of inherently or intrinsically dangerous character. The duty rests
upon him who causes the work to be done to see that all necessary pre-
cautions are taken. Crop spraying, the use of dynamite, or electricity may be considered
inherently dangerous activities.

9. Employer's Liability to
   Employees.

The farm employee not covered through workmen's compensation must
prove that his employer's negligence caused his injuries in order for the
employer to be held liable. The employer may have defenses that he
could use to escape liability such as the fellow servant doctrine and
the assumption of ordinary risks rule (both are discussed below).

Farm employees in North Dakota may be covered under workmen's compen-
sation only if the farmer/employer elects to provide such
coverage and the employees elect to accept the coverage. Workmen's
compensation coverage enables employees to recover for injuries sus-
tained on the job regardless of the employer's or employee's negligence.
In other words, the employer is deemed absolutely liable for injuries incurred by an employee acting
within the scope of employment
except for injuries that the employee intentionally inflicts on himself. More on workmen's compensation insurance is provided in the insurance section of this pamphlet.

The following discussion on employer liability to employees applies only to those farm employees who are not covered by workmen's compensation.

A. Duties of an Employer--A farmer's liability to his employees not covered by workmen's compensation is based upon the rules of negligence. An employer may be considered negligent if he has failed to perform any of the following duties which he owes to his employees:

(1) The farmer must provide his employees with safe tools and equipment. He should inspect his equipment regularly because he may be liable for injuries caused by defects of which he knew or which he would have discovered by reasonable inspection.

(2) The employer must provide a safe and suitable place to work.

(3) The farmer must use reasonable care in selecting fellow employees.

(4) The farmer should properly instruct his employees of the dangers connected with the work, including dangerous animals and defective equipment.

"An employer, in all cases, shall indemnify his employee for losses caused by the former's want of ordinary care."

B. Affirmative Defenses of an Employer--Under some conditions an employee may not be able to recover against his employer for his injuries even though the employer has been negligent or has failed to perform one or more of the above duties. The reason is that an employee's recovery may be limited by two defenses his employer can raise in a lawsuit.

(1) Fellow servant rule--Generally an employer is not liable for injuries to an employee caused solely by negligence of a fellow worker. The injured employee would have to proceed against his fellow employee for recovery rather than against his employer.

(2) An assumption of ordinary risks--Generally a farm employee assumes the risks of dangers which are normally incident to the employment and which are sufficiently obvious that he knew or should have known of them. The farm employee does not ordinarily assume the risk of his employer's negligence. He will not be held to assume the risk of dangers which are not known to him or which are not apparent and obvious to persons of his experience or which are not normally incident to his employment.

Although a North Dakota statute provides, in part, for an assumption of risk defense for ordinary risks and although there is some prior case law recognizing the assumption of risk defense for certain farm related employment--the general principle of assumption of risk may have fallen by the wayside. Other jurisdictions have abandoned this affirmative defense. Also, what is an ordinary or obvious risk is a question of fact.

An employee who seeks to recover from his employer must show a failure by the employer to perform one or more of the employer's duties. Then it is the burden of the employer to plead and prove his own defenses.
10. Other Areas of Farm Liability.

A. Liability for Defective Products—Many farm products are used for food (wheat, corn, sunflowers, potatoes, and so on). The law imposes certain obligations upon those who deal in such commodities. An injured person may have a claim against the producer for his injuries, if the food proves to be unfit for human consumption. An example could be if a farmer treats foliage with a broad leaf spray to eradicate a weed problem, then cuts the grass within a few days afterwards for feed for his dairy cattle.

A farmer's liability for the production and marketing of defective products also may fall under the Products Liability Act of 1979.

B. Crop Spraying—Powerful insecticides and other poisons are used on many farms. These substances can prove of great help to the farmer, but their careless use may result in injury and damage to others. A farmer may be held liable for such damages or injuries. The use of airplanes for crop spraying has increased the danger that the spray will drift and damage neighboring crops or property.

C. Harassment of Animals with Motor Vehicles—Any person operating a motorcycle, snowmobile, or other motor vehicle (defined by the Code) who wilfully harasses or frightens any domestic animal will be criminally liable and can be held civilly liable if injury or death results to the animal. Such liability will not only be for the value of the animal but also can include punitive damages.

11. A Final Note on Farm Liability.

Not all areas of potential farm liability have been covered in the above. Modern farming practices are continually changing, so it is impossible to cover all areas of potential liability. This report does indicate, though, that personal liability may arise from almost any activity in which a person engages. The amount of liability arising from a single accident may be very large or very small, but the risk of loss of your business could hinge on one neglected duty.

It also must be noted that the statutory minimum requirements for liability coverage may be (most probably are) wholly inadequate. An increasing cost of living includes rising costs of medical and economic coverage. A farmer who is held liable for an accident may find that the minimum coverage is not enough to compensate for the injury. Therefore, when considering insurance, one should have enough coverage to protect oneself against a possible large claim. Insurance rates are not that much more expensive for the adequate coverages, such as $300,000 or $500,000 coverages for bodily injury per accident.

The following section on insurance will show how risk and uncertainty of personal liability may be greatly reduced or spread over many years through the use of insurance.

Part 2—LIABILITY INSURANCE FOR FARMERS

1. What is Insurance?

Insurance is a contract where an insurer (insurance company) undertakes to indemnify the insured (person purchasing the insurance) against loss, damage, or liability arising from an unknown or contingent event. The insured pays to the insurer a premium. Liability insurance covers loss due to the
negligence, but not loss due to a wilful act, of the insured.

Liability insurance policies generally limit the total liability of the insurance company to a specified sum, which may be much less than the liability incurred by the insured. The insured may have a policy limiting liability to $25,000, while the court judgment against the insured may be over $50,000, in which case the insurance company will still only pay $25,000. So liability insurance may not completely eliminate the loss which the insured incurs, but it reduces the risk of loss.

2. What are the Insurance Coverages and Obligations?

An insurance policy must specify: (1) the parties to the contract; (2) the amount of premium; (3) the property or persons insured; (4) the interest of the insured in the property insured if he is not its absolute owner, (5) the risks insured against; and (6) the period during which the insurance is to continue. The insured must have an insurable interest, if not the contract is void. An insurable interest is every interest in property, or any relation thereto, or liability in respect thereof, such that the insured may be directly responsible for the contemplated peril. This may include an existing interest, a partial or incomplete interest founded on an existing interest, or an expectancy coupled with an existing interest in that out of which the expectancy arises. The measure of an insurable interest is limited to the amount that the insured might be held liable for in personal injury or property damage or for the loss sustained to him.

Both parties, the insurer and insured, are required to give full and fair mutual disclosures to each other. A failure to do so may make the contract voidable. The words of the contract are to be interpreted in their ordinary and popular sense, rather than their strict legal meaning. Promises given are to be interpreted in the sense in which the promisor believed at the time of giving it that the promisee understood it. Any uncertainty is to be interpreted against the party causing it. Generally, standard form contracts are interpreted against the maker. Recently, a court held that a farmer who purchased a farm liability policy in the expectation that all his liabilities would be covered, is so covered under the reasonable expectation doctrine, even if wording in the insurance contract was to the contrary.

3. Why Buy Insurance?

Personal liability arises in many ways. A farmer can be financially ruined by a large personal liability judgment against him which may force him to sell the very tools, equipment and land of his livelihood to pay the judgment. Liability insurance reduces this risk of loss and fear of financial ruin so that the farmer may concentrate on the management of the farm.

Insurance serves to eliminate the uncertain risk of loss. Risk of loss may be either certain or uncertain. A loss is certain when the individual can manage for and plan on that loss. Insurance reduces the effect of a loss where it is uncertain.

Several ways exist to meet the risks involved in farming. First,
the risk may be avoided. This may be impossible to do because most activities carry some risk with them. Second, the risk may be prevented, by removing the dangerous instrumentality or by guarding against the harm. Third, the risk may be assumed.

Risk is usually assumed in farming. Two ways to assume the risk are either by self-insurance or through an insurance company. In theory, if the risks are planned for and accounted for in the farming operation each year, a farmer may be able to carry the burden as his own insurer. But, as a practical matter with the current high costs of machinery, chemicals, fertilizers, etc., coupled with cash flow problems, self-insurance is hard to justify. Also, many risks are hard to calculate. Thus, the farmer will turn to an insurance company to help spread the risk of loss. The insurance company is able to offer coverage to the farmer, by spreading the risk of loss over many farmers. The premiums farmers pay for coverage will pay losses, insurance company operating expenses, and (in theory) a profit for the company.

A farmer can estimate the amount of insurance protection he needs, with help from his insurance agent, by analyzing his financial position to see how much liability he could afford before it begins to hurt farming operations.

This section will discuss the more important liability insurance policies and coverages in each type of policy. But not all types of personal liability can be covered by insurance. This section will not discuss all the liability policies insurance companies are offering, but only those of particular importance to farmers. See your insurance agent for more information on other types of policies as well as additional features on those presented here.

4. Automobile and Truck Liability Insurance

These insurance policies insure a wide variety of potential damages and injuries. It covers damages and injuries due to negligent operation of the motor vehicle by the insured, or any other person operating the vehicle with the consent of the insured. It also covers property damage, medical expenses for various individuals, and personal injuries suffered by the insured or his family. The standard or family automobile policy has these sections: liability protection, personal injury, physical damage, and uninsured motorist protection.

A. Liability Protection -- Liability protection includes injury, death or property damage caused by the insured through the negligent operation of a motor vehicle up to the policy limits. A policy limit specified as 25/50/10 means that the insurance company will pay any liability up to $25,000 for injury or death to one person in a single accident, up to $50,000 for injury policy is dependent upon legal liability for the injury or damage by the person insured by the policy. Normally, the only person insured is the main policyholder. However, most policies have an omnibus or extended coverage clause where the insurance company is liable for any motor vehicle driven by the insured, a member of his immediate family, or anyone with the consent of the insured. This includes the farmer's wife or children, or employees. Normally, the liability extends only to the operation of the car or truck specified in the policy.
North Dakota law provides that no person shall drive a motor vehicle in this state without a valid policy of liability insurance in effect. It further provides that the insurance coverage must be the statutory minimum of 25/50/10 or greater.

The car and truck policy does not cover liability resulting from operation of farm machinery, including operation of farm tractors, on public highways. A special provision can be added to cover such vehicles.

The liability insurance company will usually include a clause of supplementary payments in its policy. This includes an obligation on their behalf to pay for all costs of defending a lawsuit. Costs include appeals, bonds, bail bonds, attorney's fees and the actual loss of earnings by the insured in helping the insurer in the investigation and defense of any claim or suit. This is an important protection for these expenses could be substantial and because it applies where the insured was not negligent.

An insurance company may choose to exclude certain kinds of illegal conduct, such as operation of a car while under the influence of drugs or alcohol. Also, North Dakota specifically says that an insurer is not liable for intentional acts of the insured.

B. Personal Injury Protection-The insurance company is obligated by law to offer personal injury protection (no-fault) basic benefits of $15,000 per person and optional excess benefits of up to $40,000. This "no-fault" protection will pay all reasonable expenses including medical, hospital, or professional nursing services -reasonable expenses, including medical, surgical, x-ray, dental, etc. prosthentic, ambulance, hospital, or professional nursing services or services for remedial treatment and care rendered in a recognized religious healing method. These expenses also include funeral, cremation and burial expenses. The extent of coverage of a liability or death for two or more persons in any one accident, and up to $10,000 for any property damage in one accident. The action, however, must be commenced within two years after the injured person suffers the loss and either knows, or should know, that the loss was caused by the accident, or not later than four years after the accident, whichever is earlier.

C. Physical Damages--This type of coverage is generally divided into comprehensive and collision. Comprehensive coverage includes any damage from causes other than by collision to owned or nonowned automobiles. This includes damages caused by falling objects, fire, theft, hail, water, or colliding with a bird or animal. Collision coverage is for all damages to the automobile caused by automobile collisions in excess of the deductible amount. The deductible amount may range from $50-$250 and may be purchased for either comprehensive or collision coverage. A farmer should contact an insurance agent for advice on the different deductibles. Coverage also can be obtained for such risks as fire, lightning, theft, and for loss caused by fire or lightning to any personal effect, such as clothing, which the insured happens to have in the damaged automobile. These coverages are all optional.

The policy for physical damage does not pay for damages due to wear and tear, freezing, mechanical or electrical breakdown or failure unless such damage results from a theft covered by this policy. The policy also provides for other exclusions which should be examined carefully before purchasing a policy.
D. **Uninsured Motorist Protection**--North Dakota law requires that every motor vehicle liability policy of insurance provides the legal minimum coverage for insured persons against uninsured motor vehicles and hit-and-run motor vehicles. The legal minimum requirements are set forth above in section A. The insurance company pays all sums which the insured would have legally recovered as damages from the owner or operator of an uninsured or hit-and-run automobile because of bodily injury, sickness or disease, including death from the accident. The insurance company makes itself liable up to the specified limits of the policy. This coverage does not pertain to property damage.

North Dakota has an unsatisfied judgment fund which provides the uninsured motorist some protection, but the recovery amount is limited to $10,000. The insurance provision is valuable to a North Dakota driver because his damages for bodily injury may easily exceed the $10,000 limit of the unsatisfied judgment fund. But an injured party may only recover this after he has exhausted the uninsured motorist limits. Uninsured motorist protection is available up to the liability limits of the person's policy.

5. **Farmer's Comprehensive Insurance.**

Many insurance companies offer farmers a comprehensive or complete insurance protection policy for other than automobile coverage in one policy. The policies generally cover most types of damages to the farm dwelling, household and personal goods, farm personal property, outbuildings, and includes comprehensive liability coverage. These policies try to cover hazards peculiar to farmers. The coverages offered by most of the comprehensive farm policies include:

A. **Property Damage**--The insurance company insures against fire and lightning, wind, tornado, hail, explosion, riot, aircraft or vehicle damage, smoke or smudge damage, vandalism, and theft. Almost all of the farmer's property is covered against the listed perils up to the limits of the policy. The insurance company also will pay the farmer for any additional living expenses, such as hotel and cafe, which arise because he cannot live in his farm dwelling after an insured loss. The policy protects farm personal property, such as hogs, sheep, cattle and other livestock; farm implements, tools, and machinery; grain hay, and feed and so on, while they are on the farm. It also provides for their coverage away from the farm except for certain exclusions, such as grain stored in a public granary. The farmer can obtain additional coverage by the payment of a higher premium.

B. **Comprehensive Liability Coverage**--The comprehensive liability policy combines the coverages of comprehensive personal liability, liability for acts of farm animals, employer's liability to employees, medical payments, damages caused by operation of farm equipment, and other features.

(1.) **Liability Coverage**--The policy will generally protect the farmer, his wife, and dependent relatives, and any children under 21 living with the farmer against liability for bodily injury, death or damage to the property of others arising out of farm accidents or family activities. It does not include automobile liability coverage.

It also covers liability for negligence involving, but not limited
to the following: (a) injury or property damage in the farmhouse, (b) on the farm premises, (c) on the farmland, and in other buildings, including away-from-the-premise operations incidental to farming or ranching, (d) injuries to guests on the farm property, (e) injuries to motorists caused by the use of farm machinery or as a direct result of the farmer's livestock. It covers injuries to guests on the farm property. It provides protection against injuries to motorists caused by tractors or farm machinery on a public highway, or injury resulting from the farmer's livestock straying onto the highway.

The policy covers damage to property of others caused by the negligence of the farmer, his family, or his employees. The policy also will extend beyond the farm to cover the farmer and his family for their negligent conduct in their personal activities, such as boating, fishing, and hunting.

The policy also may cover injuries to farm employees while operating the insured's farm machinery, or performing farm duties either at or away from the farm. But it does not cover employees protected under workmen's compensation.

(2.) Animal Collision--The basic coverage will apply to the death of livestock on public highways, with a usual fixed amount, for livestock killed by collision with a motor vehicle not owned or operated by the farmer or an employee. The amount will vary with the type of animal, such as $500 for cattle and horses, $100 for sheep and goats, and $300 for swine, but it will not vary with the individual value of a specific animal. Additional coverage may be purchased for the actual value of the animal killed.

(3.) Medical Coverage--Many farm and ranch insurance policies offer separate medical coverage for farm employees, the farmer, and his family. Medical coverage provides farm employees with medical and dental fees, nursing services, ambulance and hospital bills, and funeral expenses for injury or death caused by an accident on the farmer's premises regardless of the farmer's liability.

Medical and funeral expenses for the farmer and his family are provided if they are injured or killed while engaged in farming operations. Also, medical coverage is given for personal acts of the farmer and his family anywhere if injury or death occurs.

The medical coverage under both the employee and family provision is limited to the amount specified in the policy, which may include $500, $1,000, or $2,000 medical coverage.

Most insurance companies require that family medical coverages be purchased separately, and that each insured person be named. Also, the basic coverages will vary with the company and additional coverages can be purchased to protect the actual loss suffered.

(4.) Miscellaneous Protection--The insurance company obligates itself to defend the farmer and his family should they be sued under the policy. It will pay all costs of defending the lawsuit.

(5.) The Policy Does Not Cover--Most farm and ranch liability policies will not protect the farmer for: business pursuits of the farmer other than farming, unless an additional premium is paid intentional acts of the farmer or his family; any damage to property owned
or used by the farmer; (property insurance is available) and losses arising out of the ownership, maintenance, operation, use, loading or unloading of any aircraft or motor vehicles (except golf carts, possibly snowmobiles, and certain other types of recreational vehicles such as motorbikes and ATC's). There may be a limitation on exclusions in "comprehensive" and "all risk" type policies under the doctrine of reasonable expectation, on the exclusion of liability for crop damages done by an aircraft while crop spraying. Recently, the North Dakota Supreme Court held that if a farmer purchases what he reasonably believes to be, a general farm liability policy and the loss does come within that scope, then the insurer should not be permitted to argue that the wording is otherwise. The case involved two policies issued by the same company with inconsistent exclusions. The court said that an exclusion from normal practices must be specifically brought to the attention of the insured.

(6.) Custom Farming—Most farm and ranch liability policies do not provide protection for custom farming (such as custom combining) unless the insured specifically purchases such coverage. There are exceptions for minimal custom work or for occasional work done in the local vicinity of your farm. Also, it may be covered in the basic policy without an additional charge if it is "incidental to the insured's other farming activities."

6. Owner's-Landlord's-and-Tenant's Policy

This insurance policy is generally available to owners and lessors of land. The policies generally do not cover important areas of farm liability, such as injuries to farm employees, accidental death of farm animals, or accidents caused by animals which are covered by comprehensive farm and ranch policies.

The owner's-landlord's-and-tenant's policy can be particularly important if the farmer is using his land for recreational purposes. The comprehensive farm and ranch policy covers only liability arising from farming activities and does not cover recreational uses of the land, such as public fishing, hunting, swimming, and so on. So, for farmers using their lands for recreational purposes, the owner's-landlord-tenant insurance policy provides valuable protection against potential liability for injuries to hunters, fishermen, and so on who come onto the farmer's land.

7. Workmen's Compensation Insurance.

Workmen's compensation insurance protects employers against injuries to their employees received in the course of their employment. North Dakota workmen's compensation is provided by a state fund under the control of the Workmen's Compensation Bureau. The fund is financed through payment of premiums by employers. All employers of one or more employees comply with the act by paying required premiums. But there are exceptions to this requirement. Workmen's compensation does not apply to agricultural workers. Agricultural workers are generally defined as those who are involved in the tillage or cultivation of the soil or rearing, feeding, and managing livestock.

Agricultural workers may be covered under workmen's compensation if the farmer-employer elects to provide them with coverage by so notifying the Workmen's Compensation
Bureau and by payment of the proper premiums into the compensation fund. This coverage costs more than liability coverage from an insurance company, but it offers an absolute coverage against liability. But the employee may elect not to accept such coverage and may do so by notifying both the Workmen's Compensation Bureau and the employer of such election in writing and before any injury. One reason that an employee may elect not to take this coverage is that his remedy is solely with the Bureau.

A. How It Works--Workmen's Compensation represents a form of strict liability to the employer where he could be liable for injuries to his employees caused by his negligence, by purely accidental means, or by negligence of the employee himself. The employee is compensated by the state fund for injuries or occupational diseases merely by proving that it arose out of or in the course of employment, and he was an employee at the time of the injury.

Employees not covered by workmen's compensation cannot recover from their employer unless they prove that he was negligent. The employer may raise certain defenses which may prevent the recovery (such as fellow servant rule). But all common law or statutory courses of action or defenses are abolished and the employee's recovery is absolute under workmen's compensation.

An employee not covered by workmen's compensation does not have the assurance of an absolute recovery for his injuries, but the amount of his potential recovery is not limited under workmen's compensation. The amount of employee compensation for injuries or disease is determined by state law under workmen's compensation, which may be much less than actual damages.

Where workmen's compensation applies, it is the only remedy the employee has against his employer. He cannot sue his employer but looks only to the state fund for compensation. All employee claims for injuries, occupational diseases or death under workmen's compensation must be filed with the state bureau in North Dakota within one year after injury or two years after death. The Workmen's Compensation Bureau determines the validity of the claim.

B. Compensation--Workmen's compensation attempts to protect the employee against loss of his earning power and the expenses of medical care and rehabilitation. It seeks to provide "sure and certain relief" for the workmen, their families, and dependents, regardless of fault. The amount of compensation paid is governed by law and the extent of the employee's incapacity, or by schedules in the case of certain specified injuries. It depends on whether the injury causes temporary or permanent, total or partial disability. Often it is a certain portion (sometimes two-thirds) of the employee's average weekly wage plus hospital and medical expenses but it can be limited to the average weekly wage in this state. Payment can be based on impairment and compensation can be based on the loss of a member of the body. Death benefits are paid to dependents but death must occur within one year after cessation of the disability and six years after injury. The payment to the spouse can either be made weekly or in a lump sum in either case though the payment is only up until death or remarriage of the spouse. If the spouse takes a lump sum and then remarries, that spouse will have to return a portion of the lump sum as determined by the Bureau. Payment to the spouse and child/children is two-thirds of the weekly wage, not to exceed $105 per week, and until
to exceed $105 per week, and until the children/child reach the age of 18. Burial expenses also are provided for, but must not exceed $2,000.

The Bureau can determine the weekly compensation paid if the employee is partially disabled. The disability must last for at least 5 days, otherwise no remedy is provided. The percentage of permanent impairment will determine the number of weeks the individual will be paid a compensation of $40 per week. For example, a 1 percent impairment entitles him to 5 weeks at $50, 40 percent impairment entitles him to 200 weeks at $40, and 90 percent impairment entitles him to 450 weeks at $40, and so on.

Loss of a member also is based on a weekly payment at $40 per week. The number of weeks paid is determined by what is lost. Loss of a thumb pays $40 for 65 weeks, an eye--$40 for 150 weeks, hearing in one ear--$40 for 50 weeks, both ears -- $40 for 200 weeks and so on.

Therefore, your payment is determined by the extent of the injury and how long the injury affects your work. There are other factors that will affect your compensation, though. Benefits received under Title II of the Social Security Act (42 U.S.C. 423) may reduce benefits received for temporary total or permanent total disability. Benefits also may be reduced if compensation is received through some other state act. Benefits may be reduced if the injury results from some prior injury or disease. Compensation will not be paid if the condition existed prior to the happening of a compensable injury or disability chargeable to such condition.

Workmen's compensation statutes are beyond for the scope of this paper. Therefore, if a farmer is considering coverage under workmen's compensation, he should either contact an attorney or write to the Workmen's Compensation Bureau.

C. Is It For Your Farm Employees?--The farmer must decide whether to elect to cover his employees under workmen's compensation. To do so will relieve him of all personal liability for injuries or death to employees, but it adds the expense of the premium payment. The farmer has at least three alternatives. He can (1) elect to provide workmen's compensation; (2) obtain employer protection under other types of insurance, such as the comprehensive ranch policy; or (3) simply fail to protect himself against such liability. But, because farm accidents and injuries are very common, the last alternative appears to be unwise and uneconomic. Deciding between the comprehensive farm and ranch policy, or workmen's compensation requires the farmer to realize that the farm and ranch policy gives employer protection only up to the stated limits of the policy, whereas workmen's compensation completely covers the potential liability of an employer to his employee. Today with the rising costs of litigation, medical and economic benefits, and the potential to have a very costly judgment held against one, a farmer must carry very adequate coverage. This coverage can, therefore, either take the form of workmen's compensation or a liability insurance policy that ranges between $250,000 and $1,000,000.

8. Some Consumer Tips.

Any farmer involved in an accident or in circumstances which indicate that he could be held liable for the results should not utter any
statements that could incriminate him. He should immediately contact his insurance agent. The insurance company will usually provide legal counsel.

The attorney provided by an insurance company is the attorney for the insured and not an attorney for the company. His first obligation is to the insured. The attorney has a duty to act and bargain in good faith for the insured. In situations where the amount claimed as a result of the negligence of the individual exceeds the limit of the insurance policy, then the insured may want to retain his own counsel to ensure that his interests are protected fully.

Usually most companies will send out an "excess letter" explaining to the insured that the amount claimed against the insured is in excess of the policy limits. At that point the matter is brought to the attention of the insured and then he can make his decision.

The insured should never try to bargain on behalf of the insurance company. A farmer who promises to pay damages to someone may end up paying the damages himself even though the insurance company would ordinarily pay the loss. A farmer should not settle a case on behalf of an insurance company.

Finally, a farmer should compare insurance policies and companies to meet his needs. A checklist should be prepared prior to shopping and all the credits and debits checked against each policy and company. Some things that may be checked are: (1) which autos and machinery are covered, (2) costs of coverages, (3) different levels of deductibles (50-100-500) and cost comparison, (4) incidental coverages, such as attorneys fees, work loss etc., (5) medical and economic coverages, (6) funeral coverages, (7) machinery replacement value versus standard coverage, (8) recreational coverages, i.e., hunters on land--free or for pay, (9) liability limits, (10) coverage for animals. Each individual may have different preferences and considerations, these must be taken into account. For example, a farmer may have been "treated good" by one certain company, agent, or adjustor and this may weigh heavily in his mind. All these factors are to be considered and weight given by the individual preference of the potential insured.