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COOPERATIVE MUTUAL INSURANCE COMPANY
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Comparing General and Professional Liability

BY TEAGUE LOTTMAN, Agronomist/Adjuster
with BOB JENSEN, Vice President of Underwriting

S

uppose a farmer comes into your agronomy office and asks you what to spray on a corn crop for sunflower control. You make a recommendation, and then the farmer buys the chemicals elsewhere and applies them himself.

Let's say he applies it exactly as you recommended and ends up damaging his corn. Then he files a claim against you.

Are you covered under your general liability coverage? No.

Let's use the same example but add a different twist. This time you sell the chemical and/or apply it for the farmer.

Are you covered under your general liability coverage? Yes.

general and professional liability.

As defined in your policy, general liability coverage covers an insured's liability stemming from exposures on the insured's premises or from the more concrete and physical actions of the insured's operations. Liability stemming from the insured's products and completed operations can also be included in the general liability area.

The general liability insuring agreement promises to pay on behalf of the insured all sums that the insured shall become legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence. This means general liability covers the second example, because you sold or applied the chemicals.

Professional liability (or as we like to call it "errors and omissions insurance") was designed for professional service suppliers like accountants, architects, engineers, and—in your case—agronomists. Errors and omissions insurance would cover the first example.

Basically, this insurance agreement provides for the payment on behalf of the

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Understand the difference



Before you pick up the phone and call us, let me explain the difference between the two examples. I'll show you how they relate to

MISSION STATEMENT:

To build an independent, profitable, policyholder-driven insurance company providing superior service and innovative products.

Comparing Liability

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insured of all sums that an insured becomes legally obligated to pay as damages because of injury arising out of malpractice, error, or mistake of the insured, or of a person for whose acts or omissions the insured is legally responsible in conducting his or her profession.

Make sure you are covered

Based on these examples, do you have the right coverages in place for your business?

Bob Jensen, CMIC's vice president of underwriting, tells me that very few of our insureds have purchased the errors and omissions coverage. If your agronomy department is providing a scouting service and/or soil testing and is making recommendations, you need this coverage. Bob adds that livestock or feed consultants should consider this coverage too.

The coverage provides \$1 million for each occurrence/\$1 million aggregate limit. The deductible is a \$1,000 per claim. The rate for this coverage is calculated at \$4.20 per \$1,000 receipts with a minimum charge of \$250.

Bob believes that if you provide services like the ones listed above, this is very affordable coverage you shouldn't be without.

For more information, contact your salesman or agent. You can also call us direct, and we'll make sure you have the right coverages for your business. ■

Have You Obtained Your Requalifier Identification Number?

BY BRIAN TRAVIS, Loss Control Representative



When requalifying DOT cylinders, propane plant employees often use external visual inspection. Be aware that there are some changes on the way.

Effective Oct. 1, 2003, only facilities that hold a valid Requalifier Identification Number (RIN) will be permitted to requalify cylinders by the external visual inspection. By applying for the RIN, a co-op is stating it will requalify cylinders in accordance with Compressed Gas Association (CGA) Pamphlets C-6, Standards for Visual Inspection of Steel Compressed Gas Cylinders.

Sign up

Obtaining a RIN doesn't cost the cooperative anything, because there is no fee assessed with the application.

To obtain a RIN, co-ops must submit an application to the Department of Transportation registering the co-op's facility as one that requalifies cylinders by the visual inspection method.

The facility manager must sign the application, certifying that the facility will operate in compliance with the

applicable hazardous materials regulations.

If the co-op has multiple facilities where cylinder requalification by visual inspection is performed, each facility must have its own unique RIN. So it's necessary to submit a separate application for each facility.

Waiting for approval

Once an application has been submitted, the approval process is supposed to take two to four weeks, depending on the number of applications a co-op submits.

However, it has been reported to take up to two months for applications to be approved. Once a RIN has been approved for a facility, it is valid for five years before it needs to be renewed.

After a propane facility has received its RIN, employees must mark each cylinder that is requalified with the RIN in accordance with 49 CFR 180.123.

October will be here before we know it, so don't delay in obtaining your RIN. ■



A. M. Best Rating Changes

BY WADE MULARI, *President and CEO*

A. M. Best is lowering **Cooperative Mutual Insurance Company's** rating from B++ to B+, a one-level reduction.

They cite our premium growth as the primary reason. This created a higher ratio of net premium to surplus.

Our new rating remains in the "secure" category of ratings, the highest group of ratings given by A. M. Best. Our reinsurance partners are all rated "A" or better too, so there's no cause for concern. We remain financially strong and are able to meet all of our claims obligations.

As you know, many of our competitors have withdrawn from the agribusiness market during the past several years. This left many cooperatives in our operating territory without insurance.

Using new underwriting guidelines to assure high quality accounts, your company sought to help as many of these cooperatives as we could by providing insurance for them in these difficult times. The resulting growth is what led to the downgrade by A. M. Best.

Gains from underwriting

Let me highlight some of the positives achieved by your

company in 2002. We finished the year with a combined ratio (losses and expenses compared to premium) of 93.9%, compared to the industry average of 107.2%.

Our ratio of losses and loss adjusting expenses was 69.3%, compared to the industry average of 81.1%. We had a gain from underwriting, while the industry as a whole suffered a loss from underwriting.

Our surplus increased by 1.5%, compared to a decline of 1.5% for the insurance industry as a whole.

We will address A. M. Best's concerns about the relationship of net premium to surplus. And we expect to continue the positive results described above.

We want to thank you for your support and the hard work you have done to control or eliminate losses. Without your efforts, we couldn't have achieved the outstanding results we enjoyed in 2002. With your future support, we will continue to achieve profitable results and add to the surplus.

If you have any questions, please feel free to contact me at 800-642-8572. I would be happy to address any other concerns you may have. ■

Grain Facilities Standard Reduces Injuries by Half

OSHA has completed a review of its Grain Handling Facilities Standard (29 CFR 1910.272) and has concluded that it should remain in effect without major changes.

The review "demonstrates that the Standard has reduced injuries 55% and deaths 70% from grain explosions and reduced deaths from grain suffocations by 44%," OSHA said. On average, the Standard has prevented 9.4 deaths per year, OSHA noted.

OSHA also concluded that the standard does not impose a significant economic impact on small businesses and that public commenters agree that the standard should remain in effect. OSHA will issue several clarifications and will consider several possible improvements, but no major changes.

(Details of the review were published in the March 14 edition of the Federal Register and are available through our Web site at www.coopmutual.com.)

Standard addresses hazards

The Grain Handling Facilities Standard contains requirements for the control of grain dust fires and explosions and certain other safety hazards associated with grain handling facilities. It applies in addition to all other relevant provisions of part 1910 (or part 1917 at marine terminals).

The Standard applies to the following types of grain handling facilities: grain elevators, feed mills, flour mills, rice mills, dust palletizing plants, dry corn mills, soybean flaking operations, and the dry grinding operations of soybeans.

It contains provisions that address safety hazards including fires; explosions; toxic substance and oxygen deficiencies from entry into bins, silos, or tanks; release of hazardous energy from equipment; and engulfment of grain in bins, silos, or tanks.

The review focused on two endpoints for its risk reduction analyses: 1) injuries and fatalities from grain dust explosions and 2) suffocations that result when a worker is engulfed or crushed by grain.

The major sectors affected by the Grain Handling Facilities Standard are grain elevators and grain mills. USDA estimated that in 1999 there were approximately 10,000 off-farm grain elevators with a storage capacity of 8 billion bushels.

Census Bureau data estimated that in 1996 there were approximately 92,000 grain elevators and 68,000 grain mill employees in the sectors impacted by the Standard. They worked in approximately 5,200 grain-elevator firms and 1,500 grain-mill firms. ■

Can Not Spraying Become an Insurance Claim?



BY TEAGUE LOTTMAN
Agronomist/Adjuster

It's hard to believe, but each year we receive several agronomy claims when a field doesn't get sprayed or when it is sprayed too late.

In the typical scenario, the farmer waits until he has a disaster on his hands before he comes in to request his field to be sprayed. He needs it sprayed right now, but you're so busy it may take a week or more before you can get there.

In the meantime, it rains or it is too windy to spray, and one week turns into two weeks. By this time, the weeds are too tall to control. Still, you spray it anyway (which is more than likely off label) to try to help the farmer out. Sometimes you just don't get the field sprayed.

Now comes the hard part. Are you liable for the farmer's damages?

Understanding liability definitions

This question can be very difficult for us—and even for a court of law—to answer. First, let's tackle what it means

to be liable.

The best way to define this is to use the term negligence. Insurance liability coverage pays the damages when our insured is negligent. Negligence is defined as the failure to exercise the degree of care that a reasonable prudent person in a similar situation would exercise to avoid harming others. One of the elements of negligence is a legal duty owed to the plaintiff to use due care.

In the case above, you have to look at whether we have a duty, and one way of determining this is whether we have a contract between our insured and the farmer. If so, did our insured breach that contract?

As you may know, to have a contract you must have an offer, consideration, and acceptance. If one of any of those three is missing, then you don't have a contract.

Here's where it gets tricky. If you were late spraying a field or did not spray it at all, then legally you are not liable. Nonperformance does not create liability, there is no contract.

Protect yourself

There is one exception to this, and that's a failure to perform a promise. This is where our insureds can get themselves in trouble.

When you promise that you can get the field sprayed right away or will kill all the weeds, then you may have increased your liability. It's very important to never make promises when it comes to spraying crops. There are so many variables you can't control.

When you schedule an application, it's best to be upfront with your farmers. Make sure they understand that you can't guarantee when you can get their fields sprayed, nor do you guarantee weed control or yield.

For more information, visit us online at www.coopmutual.com. ■

CMIC WELCOMES DEBRA HAMAN, CLAIMS PROCESSOR

We would like to introduce our new claims processor, Debra Haman.

Debra has worked for different businesses and brings a lot of experience to CMIC. Debra is from the Florence area and comes to us from Omaha.



She is married and has a grown son and one granddaughter. In her spare time she enjoys fishing, bowling, and golfing with her husband.

Welcome, Debra!



CMIC's Annual Meeting Draws Large Crowd

Cooperative Mutual Insurance Company had a very successful annual meeting this year.

The event was held March 14 at the Embassy Suites in Omaha. Approximately 300 people participated, and we had the best attendance at our business meeting we've ever had.

We were pleased to report that CMIC enjoyed a profitable year. Our customers did a great job with safety and loss control, plus we had no devastating weather-related claims. We look forward to another strong year in 2003. ■



CMIC's Wade Mulari welcomed guests to the annual meeting, and this year's entertainment was a big hit.



How to Handle Third-Party Liability Claims



BY KURT SCHAECHER
Claims Adjuster

If you injure someone else or damage their property and are held legally responsible, third-party legal liability coverage pays their claims on your behalf, up to the specified limit.

If you are confronted with a third-party claim, there's a proactive approach that may help reduce your liability or even prove no liability against your company. Follow these steps:

- 1. Ask questions.** As adjusters, this is where we get familiar with the claim. We contact our insureds to find out as much information as possible. If a customer falls down outside of your convenience store and is injured, we may ask, "Was the customer carrying anything that may have obstructed her view? Was she wearing high heels or tennis shoes? Was there ice on the pavement where she fell?" All of these details may impact the claim.
- 2. View the scene.** Going to the place of the accident and viewing the site is a great way to investigate details of the accident. For example, an auto accident at an intersection offers many different details that may prove liability to either driver. Was the intersection controlled or uncontrolled? How long were the skid marks? Question

the drivers themselves. What time of day did the accident happen? Was the sun impairing either driver? Everything has an impact.

- 3. Understand product liability.** Product liability is used to describe situations in which a person or property is injured or damaged in some way due to a defective product or service. Product liability means that the supplier, manufacturer, retailer, or other provider of a product or service may be liable for any injury or damage caused by the product or service. As a co-op, there are many situations involving product liability. Farmers use nurse tanks owned by the co-op. The co-ops spray customers' fields using floaters. Co-ops deliver fuel oil to customers' houses for heating.

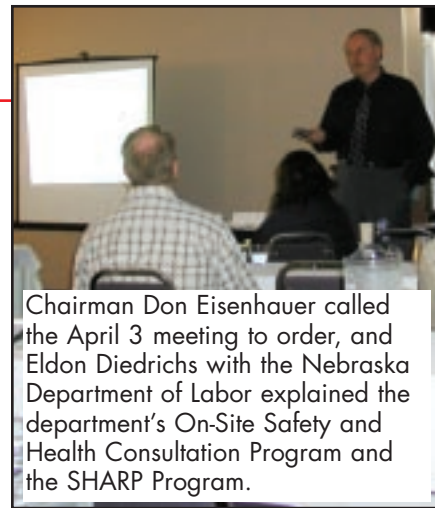
Mitigate your losses

Remember, the best way to tackle a third party claim is to find out as much information as possible in the shortest amount of time.

Make sure your employees are aware of the surroundings and the parties involved. If they are ever involved in a claim, they only have a short time to recall exactly what happened. They should be able to explain that information to the adjuster. They should be able to remember who was involved, how the problem happened, and why it happened.

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Ag Cooperative Safety Directors Learn About SHARP Program



Chairman Don Eisenhower called the April 3 meeting to order, and Eldon Diedrichs with the Nebraska Department of Labor explained the department's On-Site Safety and Health Consultation Program and the SHARP Program.

The Ag Cooperative Safety Directors of Nebraska held their regularly scheduled meeting on April 3 at the Mid-Town Holiday Inn in Grand Island.

Chairman **Don Eisenhower** called the meeting to order at 11 a.m. The group discussed a fee structure for sponsors. **Rick Smithpeter** and **Jerry White** volunteered to draft an application that could be used for sponsors who want to apply.

The members said they didn't want their organization to be a place where vendors tried to sell their products, but they did want an opportunity to use the expertise that many vendors could provide. Rick and Jerry will have an application for the members to review at their next meeting.

Beware of suspicious phone calls

Bud Ready, safety compliance coordinator with **Central Farmers Cooperative** of O'Neill, spoke to the group about suspicious phone calls that his cooperative has been receiving.

Bud urged the group to pay attention to who is calling for chemicals. Also beware of callers wanting to "verify" your address. Employees need to use scrutiny when giving information to people over the phone.

Make sure employees know who they are talking with. If they are unsure about giving the caller the information they are asking for, they should transfer the call to management personnel.

Understanding dispositions

Jerry White with Compliance Advisory Services mentioned that we may want to have someone talk to the group about dispositions.

Safety directors will almost certainly be called upon to give dispositions concerning major accidents or events at their cooperative. Knowing what to expect during a disposition would be helpful.

Pelc named communications officer

Members also discussed the need for the group to have a communications officer. This person would be responsible for communicating any pertinent items to the members, including items coming from the chairman. The group appointed Phil Pelc to this position.

Phil Pelc, **Harlan Schafer**, and **Kyle Broesder** will come up with some ideas for a logo for the association. They will present three or more ideas at the next meeting, and the members will decide on what to use.

Learning about the SHARP Program

After lunch, **Eldon Diedrichs** with the Nebraska Department of Labor explained the department's On-Site Safety and Health Consultation Program and the SHARP Program.

Both of these programs are offered to help employers assure a healthy, safe workplace for employees. The services are free and can go a long way in making businesses safer for their employees.

The SHARP program requires the participant to undergo a complete safety and health survey. Any hazards identified must be corrected, and they must have an effective written program.

Aurora Cooperative is one of five grain facilities in the nation to receive the SHARP designation. Harlan Schafer, vice president of production and operations for Aurora Co-op, has endorsed this program.

Our next meeting is scheduled for July 10 at 11 a.m. at the Mid-Town Holiday Inn in Grand Island. The training topics will be announced later. ■

Third-Party Claims

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Employees should also consider:

- What fault did we contribute to this claim?
- What fault did another party contribute to this claim?

Many cases that go to court can be won or lost on the

details of the initial investigation. An investigation can never be too thorough.

You, as an insured, can mitigate your losses by having your employees be proactive with their claims. Your business may be rewarded with lower premiums, and this ultimately affects your bottom line.

For more information, visit **CMIC** online at www.coopmutual.com. ■

Pay Attention to Updated Transportation Regulations



BY TERRY LIVELY
Loss Control Representative

There are some safety issues you need to be aware of from the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA), and the new Department of Homeland Security.

The DOT will be conducting follow-up visits to Hazardous Material Carriers. The DOT wants to provide more information about hazardous materials and see if any of the recommendations made after Sept. 11, 2001, are being completed. The department plans on conducting about 200 visits in 2003 and about 500 visits in 2004.

The DOT has listed its primary targets as carriers of high-risk products. The FMCSA has determined the following hazardous materials can be used as possible weapons and has listed these as high-risk materials:

Material	Quantity
• Corrosive liquids (e.g. hydrochloric acid)	Bulk*
• Explosives	Any quantity
• Flammable liquids (e.g. gasoline)	Bulk
• Flammable gases (e.g. propane)	Bulk
• Flammable solids	Bulk
• Hazardous waste and substances	Bulk
• Infectious substances (e.g. anthrax)	Any quantity
• Non-flammable gases (e.g. anhydrous ammonia)	Bulk
• Organic peroxides	Bulk
• Oxidizers (e.g. oxygen generators)	Any quantity
• Pesticides	Bulk
• Poisonous gases (e.g. chlorine)	Any quantity
• Poisonous liquids	Any quantity
• Radioactive materials	Any quantity

*Bulk quantity for this list is any packages with a capacity over 119 gallons.

Follow transport requirements

Also, the Department of Research and Special Programs Administration has established new requirements designed to enhance the security of hazardous materials transported in commerce.

The following requirements are additions to 49 CFR Part 172 and were published March 25, 2003:

Shippers and carriers of certain highly hazardous materials must develop and implement specific security plans

along with assuring that their employee training includes specific security components.

The security plan must include an assessment of possible transportation security risks for shipments of the hazardous materials listed in 49 CFR 172.800 and the appropriate measures to address the assessed risks.

At a minimum, the security plan must include the following elements:

1. *Personnel security.* Measures to confirm information provided by job applicants hired for positions that involve access to handling of the hazardous materials covered by the security plan.
2. *Unauthorized access.* Measures to address the assessed risk that unauthorized persons may gain access to the hazardous materials.
3. *En route security.* Measures to address the assessed security risks of the shipments of the hazardous materials from origin to the destination.

The security plan and security awareness training for all employees must be completed and documented by Dec. 22, 2003.

The security plan must include a written list of the specifics and the way your company will deal with the risks.

DOT regulates cargo

The DOT is enforcing the new cargo securement regulations. This will apply to any container being hauled in a pickup truck or trailer to a tractor-trailer.

This new regulation requires at least two tie-down devices for any cargo shipment. It includes some specifics for flat steel, coils, and products that shift easily. As this new regulation is written now, it doesn't have an exemption for agriculture.

The new requirements state that all tie-down straps must be rated for one and a half times the total weight they are restraining or the segment of the load they are restraining.

This will also transfer to items that are nailed, bolted, or otherwise permanently attached as cargo to a trailer. ■



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www.coopmutual.com.



Whose Tank Is It?

BY KYLE BROESDER
Loss Control Representative

I recently came across a new problem that more and more of our agronomy departments may have to deal with.

When I visited a cooperative in South Dakota, I noticed they were having problems at their anhydrous ammonia riser. A farmer had towed in two tanks to be filled. The co-op filled the first tank, but the employee could not get the liquid line disconnected. The nurse tank's liquid valve would not shut.

The problem didn't arise because the cooperative missed this nurse tank on their maintenance schedule. On the contrary, this cooperative takes pride in maintaining all of its equipment and facilities. The co-op simply didn't own this tank and wasn't responsible for the maintenance. The farmer acquired his nurse tanks on a local equipment auction.

In the past few years, more and more cooperatives and independents are getting out of the anhydrous ammonia business due to stricter regulations, higher maintenance costs, and lower margins. This equipment is being purchased by other companies and by local farmers who feel it would benefit them to have their own tanks.

Fortunately, in this case, the cooperative was able to bleed off the product in the farmer's nurse tank, but look at the costs. Several employees were tied up in trying to solve the problem. One side of the riser was blocked from use for a while, and this limits productivity.

Who handles the liability?

Imagine some of the costs that could come from privately

owned nurse tanks that are improperly maintained.



You see first-hand how farmers take care of your company nurse tanks, such as wheels breaking off, tank roll-over accidents, cracked welds, etc.

Can we assume farmers will maintain their nurse tanks? Does the farmer know what liability exposure he has if cooperative employees were injured due to the improper maintenance of his nurse tank? Is your company willing to assume that privately held tanks are safe to fill? Who assumes this liability?

We can safely assume that your cooperative has certain incurred duties under current state and federal regulations. By filling the tank, the cooperative deems the tank fit for product. This can't be accomplished unless your co-op is asking if the farmer has performed specific nurse tank maintenance. The employee would certainly have to document this.

Finding solutions

Your cooperative may draft a hold-harmless agreement for the patron to sign that says the farmer assumes the liability for the product he holds in his container.

Your cooperative may just decide to make it policy not to fill any unowned nurse tanks to distance the co-op from any liability.

What is your agronomy department doing? If you have any questions or comments, please call me at 402-690-9089, or visit us online at www.coopmutual.com. ■

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INSIDE:

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