

By Robert J. Prah, CPCU

AN UMBRELLA POLICY FIT FOR A ... FARMER

Does a farm owner really need an umbrella policy?

Although the answer will depend on the farm owner's individual circumstances, the American Association of Insurance Services (AAIS), and several of its affiliated companies, believe that in most cases the answer is a resounding yes. In fact, farmers need an umbrella policy for the same reason individuals and businesses need one—essentially, to obtain protection against large or catastrophic liability claims that can cause severe financial difficulties or bankruptcy.

Thanks to a joint effort by AAIS and American Re-Insurance Company, farmers now have access to a farm umbrella policy, the industry's first standardized form for this purpose. Two policies are available—a farm personal umbrella and a farm commercial umbrella form.

The Farm Umbrella Program protects insurers from the risks of trying to write farm umbrella coverage using modified personal and commercial umbrella forms. Farms present unique and diverse combinations of personal and commercial risks and it is critical that farm umbrellas use the terminology and follow the structure of the underlying farm policies. The Farm Umbrella Program is designed to fit closely with the underlying AAIS farm liability forms, thus avoiding coverage gaps, unintended exposures, and disputes over what is covered.

Development of farm umbrella policy

The Farm Umbrella Program was developed in response to the growing liability exposures facing modern farm owners. The increased exposures are the result of a combination of factors that AAIS regards as compelling reasons for obtaining this coverage.

A principal factor is that as farms consolidate into fewer, larger, more capital-intensive operations, their liabilities and the assets they need to protect have outgrown the coverage offered by standard farmowners, auto and other liability policies. Another factor is that farming can be a dangerous occupation as farm liability claims tend to involve serious, often disfiguring injuries.

In addition, although commercial farms (those earning \$50,000 or more in revenue from agricultural products,



according to the U.S. Census Bureau¹⁾ still tend to be family-owned operations, more of the work is being done by hired farm help, many of whom are not covered by workers compensation insurance. If these workers are seriously injured on the job, the absence of workers compensation insurance often results in their targeting the farm owner as the source of recovery for their injuries.

Farmers face not only exposure to employer's liability claims, but commercial auto (including mobile equipment) exposures have increased as farmers transport equipment and commodities over ever-greater distances. Exposure to bodily injury and pollution claims increase with more use of fertilizers, pesticides, and herbicides, and with growing volumes of animal waste from large livestock confinement operations.

Finally, the litigious nature of American society itself compels farm owners to ensure that they have sufficient liability insurance to protect them against potential lawsuits.

Purpose of an umbrella policy

Traditionally, an umbrella policy functions in three ways to provide insureds with protection against the large or catastrophic liability claim:

1. Excess of limits coverage—It provides coverage for damages and defense costs that exceed the each-occurrence limit of the underlying insurance;
2. Drop down coverage—It applies in situations that are not covered by the underlying policy but not expressly excluded in the umbrella policy, i.e., unanticipated or unforeseen exposures that still come within the scope of the umbrella insuring agreement and are not subject to any umbrella exclusions.

This coverage, referred to as "drop down" coverage, is subject to a self-insured retention (SIR), also referred to as a retained limit, a provision that functions much like a deductible. The insured retains, or is personally responsible for, losses up to this self-insured retention. (The retained limit applies only in this type of situation, but not in cases where the umbrella policy applies in excess of the underlying limits as described in #1 above.)

3. The umbrella policy also applies to claims where the applicable aggregate limit has been exhausted by payment

of claims. For example, there may only be a few thousand dollars left in an underlying policy's aggregate limit when a fairly small claim could occur and exhaust that limit. In such situations, the umbrella policy will pick up where the underlying policy leaves off.

It is important to emphasize, however, that the essential feature or thrust of the AAIS farm umbrella policies is the excess of limits coverage.

A word about drop down coverage

Since the farm umbrella forms are designed to fit closely with the current editions of AAIS underlying farm liability policies, instances where the umbrella "drop down" coverage will apply should be rare. Still, in the event of an unanticipated or highly unusual claim that is not excluded by the umbrella policy, insureds will have the peace of mind of knowing they have coverage under the umbrella policy.

It also is noteworthy that if the underlying policy in effect does not include the latest AAIS farm liability coverage part, or includes a non-AAIS farm liability form, the potential application of the drop down coverage could increase substantially.

Features of Farm Umbrella Program

The Farm Umbrella Program includes the following two forms:

- A Personal Umbrella Liability Coverage Form (Farm) UM 0002—that can be used to add umbrella coverage over an AAIS Personal (Farm) Liability Form (GL-2)

- A Commercial Umbrella Liability Form UM 0610—for adding umbrella coverage over an AAIS Commercial (Farm Premises and Operations) Liability form (GL-610)

(See footnote 1 for an explanation of when to use each form.)

The commercial farm umbrella can be endorsed to add personal umbrella liability coverage for individuals or families that reside on the farm premises. Endorsement UM 0009 is used for this purpose, but it can be used only when the underlying commercial liability policy has been extended by endorsement GL-9 to include coverage for the residential exposures and personal activities of those who reside on the farm.

The Personal Umbrella Liability Coverage responds to occurrences that involve bodily injury or property damage and arise out of the insured premises and the personal activities

SUMMARY OF AAIS FARM UMBRELLA LIABILITY COVERAGES		
Coverage	Per. Umb.	Com. Umb.
Bodily Injury/Property Damage Liability	Y	Y
Medical Payments	N	N
Personal Injury	Y*	Y*
Advertising Injury	N	Y*
Fire Legal Liability	N	N
Employer's Liability, Auto, Recreational Vehicle, Watercraft Liability	**	**
Auto No-Fault, Uninsured Motorists, Underinsured Motorists	N***	N***
Defense Coverage In Addition To Liability Limits	Y	Y

* Only to the extent that personal injury and or advertising injury coverages are provided by the underlying policy.
 ** Only to the extent that these coverages are provided by underlying insurance. These coverages may be provided by any policy.
 *** Where states require that uninsured/underinsured motorists coverage be provided in umbrella policies, appropriate state endorsements are available.

of the insured. In addition, the policy provides coverage for *personal injury* liability when the insured carries this coverage in the underlying policy.

The Commercial Umbrella Liability Coverage responds to occurrences that involve bodily injury or property damage and arise out of farming activities on the insured premises and related operations. Coverage is also provided for *personal/advertising injury* liability, but only to the extent that these coverages are provided by the underlying policy.

Both the personal and commercial umbrella policies cover the insured's liability for damages involving bodily injury and property damage caused by a watercraft or a motor vehicle that is covered by underlying insurance, but only to the extent that coverage applies in the underlying policy and is not otherwise excluded in the applicable farm umbrella form.

Neither umbrella policy includes coverage for automobile no-fault, uninsured motorists, underinsured motorists, or similar coverage. However, uninsured/underinsured motorists coverage is made available by endorsement in those states that have declared that such coverage must be offered in umbrella policies.

As indicated previously, both farm umbrella forms are structured for use with underlying policies that include specific versions of AAIS farm liability forms. However, the underlying auto, employer's liability, recreational vehicle, or watercraft liability coverage may be provided by any

policy. In effect, both farm umbrella forms apply on a "follow-form" basis with respect to these underlying coverages.

Policy limits/underlying insurance—minimum limits

The basic each-occurrence limit for personal and commercial umbrella liability coverage is \$1 million. Higher limits are available.

Commercial umbrella liability coverage is subject to a general aggregate limit and a products/completed work hazard aggregate limit. (Personal umbrella liability coverage is not subject to aggregate limits.)

The recommended minimum limits for underlying insurance are:

- Farm Liability—\$300,000 per occurrence combined single limit
- Comprehensive Personal/Commercial Farm Auto—\$500,000 per occurrence combined single limit or \$500,000 bodily injury per person limit; \$500,000 bodily injury per occurrence limit; and \$100,000 property damage per occurrence limit
 - Heavy trucks (over 35,000 gross vehicle weight), farm tractor trailers, motor homes, or other licensed motor vehicles—refer to company for minimum underlying limits
 - Unlicensed recreational vehicles—\$300,000 per occurrence combined single limit
 - Watercraft—\$300,000 per occurrence combined single limit

For more information about the Farmowners or Farm Umbrella

Programs, contact Robert Schnoll, AAIS marketing manager, at 800/564-AAIS (2247), extension 222. ■

¹ It is important to emphasize that revenue is not a factor in determining which farm liability policy should be written for a particular risk. Many farms with considerably more than \$50,000 in agricultural revenue are written with a farm personal liability policy. It is the category of ownership of the farm, rather than revenue, that determines the appropriate AAIS insurance form to be used. The farm personal liability policy (and, therefore, the farm personal umbrella policy) is appropriate for the traditional family-owned-and-operated farm. The farm commercial liability policy (and the farm commercial umbrella policy) is appropriate for farms owned by corporations or other commercial entities.

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