

# Agribusiness Alert: Read Your Insurance Policy: Your Custom Feeding Arrangement May Not Be Covered

January 8, 2013

Livestock owners frequently enter into custom feeding arrangements with contract growers to feed their livestock to market weights. A large percentage of hogs are now finished by contract finishers, and most poultry is raised by contract growers. The terms of these contracts have been the subject of regulatory action, legislation, and litigation over the past several years. However, a recent decision of the 8th Circuit Court of Appeals points out another critical issue for contract growers, livestock owners, and their lenders.

*In Grinnell Mutual Reinsurance Co. v. Schwieger*, a cattle owner sued the operator of a cattle feed lot located in Southern Minnesota due to unusual death losses of the cattle located in the feed lot. The feed lot operator submitted the claim to its insurance company. The insurance company denied coverage for the cattle losses, pointing to an exclusion contained in the policy for damage to property in the "care, custody, or control" of the feed lot operator. The insurance company also brought a separate declaratory judgment action seeking a determination of its rights under the policy in light of this exclusion.

The cattle owner and feed lot operator contended that a "Custom Feeding Endorsement" purchased by the feedlot operator for additional premium provided coverage for the death losses. That endorsement provided that if "the bodily injury or property damage arises from the activities of care or raising of livestock or poultry by any insured person for any other person or organization in accordance with a written or oral agreement..." the policy would provide coverage. The feedlot operator contended that it purchased the custom feeding endorsement specifically to cover the risks associated with the custom feeding of the livestock of other parties, including death losses.

However, this endorsement was expressly limited to a policy exclusion related to custom farming operations. It did not refer to the "care, custody, or control" provisions of the policy cited by the insurance company. In addition, the endorsement specifically provided that all other terms of the policy would apply. As a result, the insurance company argued that the care, custody, or control provisions of the policy remained effective since the custom feeding endorsement only superseded the custom farming exclusion.

The United States District Court agreed with the feedlot operator and livestock owner and ruled that the claims of the cattle owner were covered by the policy. The insurance company appealed.

The Court of Appeals agreed with the insurance company, finding that the policy provisions were not inconsistent since the custom feeding endorsement applied to only the custom farming exclusion contained in the policy. None of the other policy exclusions was affected by the endorsement. In reaching its decision, the Court of Appeals relied upon a decision of the Minnesota Court of Appeals in which the state court reached a similar conclusion. The court did not, however, discuss a decision of the Iowa Court of Appeals which found a virtually identical insurance policy ambiguous. The Iowa court ruled in favor of the contract grower. That decision is, however, currently on appeal to the Iowa Supreme Court.

As a result of the Schwieger case, livestock and poultry growers should be mindful of the following potential problems:

1. All contract growers should carefully review their general liability policies to determine if they contain the typical care, custody, and control exclusion as well as the custom farming exclusion. If they do, growers should recognize they are probably not adequately covered for livestock losses which may be sustained in connection with their custom feeding operations.
2. In order to obtain such coverage, the grower should obtain a custom feeding endorsement which specifically addresses both exclusions. The endorsement should expressly override both exclusions contained in the policy so as to avoid the issues addressed in the case.
3. Although not addressed in the case, many custom feeding contracts shift legal liability from one party to another through risk of loss, indemnification, or other provisions. Some standard liability policies contain exclusions from coverage which also exclude losses incurred as a result of these contractual agreements. Contract growers should carefully review their policies to evaluate these exclusions as well.

Livestock owners and lenders should also be concerned about the coverage issues addressed in the Schwieger case. Livestock owners that have custom feeding agreements with contract growers should be mindful of these insurance coverage issues since they likely assume their growers have appropriate coverage for any losses that may be incurred. Since many contract growers may not have sufficient assets to cover uninsured losses, any limits on insurance coverage for the grower may mean the livestock owner will bear the ultimate economic loss in the case of significant death losses. And lenders which provide financing to either contract growers (for facilities) or livestock owners (for the livestock, feed, and other operating expenses) should assess the extent of coverage available for losses which may be sustained. If the grower's insurance provides no coverage, both lenders may be at risk.

*This article is provided for general informational purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult a lawyer concerning any specific legal questions you may have.*