



# THE RURAL LANDSCAPE INSTITUTE

A CATALYST FOR FOOD AND AGRICULTURAL INTEGRITY  
IN THE AMERICAN WEST

A Report On:

## THE STATE OF AGRITOURISM LIABILITY INSURANCE IN MONTANA AND THE WEST

Based on Research from:

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## INTRODUCTION

While agritourism presents an excellent opportunity for small-scale ranchers and farmers to diversify their revenue stream and ensure the economic viability of their livelihood, it also presents a certain amount risk. Obtaining adequate liability insurance is a critical component to the success of any agritourism operation; in the unfortunate event that a paying guest on a working farm or ranch is injured, killed, or otherwise seriously harmed, the agritourism operator must have adequate and appropriate coverage to avoid “losing the farm.”

Few companies in the insurance industry are familiar with or seem willing to underwrite agritourism operations, simply because the trend is relatively new and the current demand for such policies rather small. At the same time, operators facilitating much more risky and dangerous activities (rafting outfitters, skydiving outfitters, dude ranches) have access to reasonably-priced policies from a variety of insurance providers. Therefore, familiarizing the insurance industry with the concept of agritourism and aggregating demand for agritourism liability insurance is of paramount importance.

## QUESTIONS

We have explored the agritourism insurance landscape to gain a better understanding of farmers’ and ranchers’ needs vis-à-vis what is currently available. We have spoken with representatives from the U.S. and Montana Farm Bureaus, a half dozen farm and outdoor recreation insurance providers, and academics and professionals in the insurance, agritourism, and agriculture industries. We inquired:

1. What does it take to get an affordable liability insurance program for an association of agritourism suppliers?
  - The insurance industry is currently not very familiar with the concept of agritourism. Because demand for agritourism insurance is still rather low, few companies have the incentive to become familiar with agritourism or write supplemental policies for working farms and ranches. However, as demand grows – and if it aggregates sufficiently – more companies will begin to take notice and rates will become more competitive (as a results of ranchers’ bargaining power).
  - Being proactive pays off in the insurance world. Instead of waiting for potential providers to dictate terms to the rancher, the ranchers themselves must decide what they want and then seek out an insurance company that will write a policy according to these terms. This is another example where the benefits of a marketing cooperative become apparent; bargaining power will again give the ranchers significant leverage to procure a policy that is not only affordable, but also written precisely according to their standards and needs.
  - Currently, only a few states have passed limited liability laws for agritourism providers (see Appendix A). However, passage of limited liability laws provides only a small step in the right direction. Ultimately,

limited liability clauses don't actually make a difference until they are "tested" a few times; that is, one or more cases need to be brought to court and settled, and precedents set, before insurance companies are interested in regularly underwriting agritourism activities.

2. Would it be possible to create an affordable "per event" group policy for agritourism insurance, and include this as one of the benefits of our member-owned marketing cooperative?
  - Country-Adventures, an agritourism offerings website based out of Nebraska, offers its members liability insurance on a per-event basis. We are currently not aware of the cost.
  - Ultimately, "per event" insurance seems to make sense only for very low volume agritourism providers. There is a significant amount of paperwork associated with each event and it soon becomes a hassle for the farmer to remember and complete paperwork for each event. It is our hope that members of our marketing cooperative will each earn significant supplemental revenue from agritourism operations by hosting a steady stream of guests and visitors throughout much of the summer. While we should not entirely dismiss the opportunities that may be associated with per-event insurance, this kind of policy does not seem to fit our current needs.

## MORE QUESTIONS

Sam Anderson, an associate with Colony Insurance Corporation, used our initial research to investigate possible solutions to the problem. Virtually all of results from his efforts reinforce our previous observations, and if anything, also accentuate the difficulty of solving the problem. His conclusions:

- The "ranch stay" or "farm stay" presents a wide range of potentially risky activities that do not neatly fit into homogenous categories, common risk management controls, common insurance rating methodologies. Taken individually, none present the scale that is initially attractive to a company looking to develop some critical mass. For cattle drives, hay rides, gymkhanas, hikes, camping, 4 wheelers, etc., the exposures are exactly the exposures that agricultural insurers have learned to avoid, the hard way.
- We often overlook the obvious: most insurance is purchased because somebody requires it, not because the purchaser wants to buy it. These requirements produce a demand for insurance for even the most hazardous activities...snowmobile rental, fireworks manufacturing, etc. From the insurance company perspective, these can produce some hugely unprofitable results, and thus companies move rapidly in and out of the field. However, insurance is usually available for these activities at *some* price because of the sustained demand, potentially high rates, enterprising agents, and the belief that one company can learn from other companies' mistakes. These dynamics do not yet exist for agritourism insurance even though they are well developed for outfitters, guides, dude ranches, etc.

- Cabins/bunkhouses for rent are, by themselves, not a problem and can be insured through regular lines of insurance for slightly more than the cost of insuring for one's personal use. But this ends when a guest participates in ranch/farm activities.
- Farm/ranch insurance companies change their guidelines and then make exceptions, just like all other insurance companies. For instance, despite a general approach that is very restrictive to "other business pursuits," Farm Bureau has been known to make major exceptions for certain clients. The same is true for Fireman's Fund and Travelers, two other substantial agricultural insurers. But these remain exceptions, and are usually based upon longtime agent/insured relationships. Even without the exceptions, companies are constantly changing and refining their acceptability criteria, so there is no real certainty over time.
- Most insurance programs are designed with the intention of addressing 100% of the insured enterprise. The requirement that this concept has to dovetail with a wide range of other farm/ranch insurances is a complicating factor that makes insurers uncertain about coverage and claims handling. For example, it would be very difficult for one insurer to insure a nightclub but for another to insure only its dance floor. In the event of a claim, the inevitable lack of absolute clarity of circumstances, control and oversight can produce claims handling difficulty.

## ANSWERS?

Given the factors outlined above, the only realistic solution is to provide some sort of group program. One approach might be as follows:

Establish a Risk Purchasing Group (RPG). In 1986 the Federal government passed the Risk Retention Act which, among other things, allowed businesses engaged in similar activities to group together for the purpose of buying insurance that would otherwise be difficult to obtain or unaffordable. This grouping does not require the formal establishment of an association. The Risk Purchasing Group must be filed and approved in the states where the insured businesses are located. Additionally, the legislation provides flexibility for the insurance company to deviate from files, rates, and forms. Although this avenue does not require a formal association, most of the Risk Purchasing Group insurance programs are written for associations whose members have the following characteristics:

- multi-state, perhaps nationwide, membership
- similar or identical businesses
- individuals or small businesses who benefit from the lower cost provided through a group approach
- they usually benefit from other services provided by the association (e.g. web site design, accreditation, advertising assistance, meeting plans, etc).
- insurance needs that require a customized approach.

For an example, PADI, a nationwide association of scuba diving instructors, has successfully captured the majority of their industry with insurance as their lynchpin of member benefits. The annual premium for their liability insurance program exceeds \$7,000,000 and covers over 5,000 members.

The existence of an association clearly provides the avenue to assess the demand and potential participation and to mobilize members to purchase the insurance. In the absence of an association, the “take up rate” of buyers is far more uncertain, and thus it is more difficult to generate interest from an insurance company.

What does it cost? The state by state fees to establish an RPG vary, but one can be formed nationwide for roughly \$25,000. In Montana, Scott Tuxbury (President, Big Sky Underwriters, Missoula, Montana) recently established an RPG for fishing guides and there was no state fee. In summary, the fees are modest.

Will insurers be interested? This is by far the toughest challenge, because even with benefits of an RPG, the risks that insurers avoid still loom. As a partial solution, Bret Van Leeuwen (President, Stratus Insurance, Salt Lake City, Utah) believes that *some* of the lower risk exposures would be eligible for his existing Outdoor Recreation Purchasing Group (ORIP) program that writes a wide range of guides, instructors, camps, excursions, etc. But the horse-related activities would definitely not qualify.

To start an RPG from scratch and generate company interest, \$250,000 is generally recognized as the minimum annual premium. After start up expenses and commissions, this really only provides an offset for minimal loss activity and does not come close to funding a policy limits loss. Given the challenge to develop some critical mass of premium, it is not realistic at this point to attempt to lower the cost even further by requesting a “pay by the visit” approach. Van Leeuwen was quick to add that the diversity of the risks might require a two-tiered approach, and the more hazardous exposures would also require controls, inspections, and guidelines that would have to be verified. So, in summary, there is no getting around the risk aversion, and the only way to overcome it is to lower the cost as much as possible through an RPG, and then determine if the premium potential is enough to attract a company. To put it simply, the more buyers that line up, the more likely of success.

## **NEXT STEPS**

Both Tuxbury and Van Leeuwen see the opportunity here, but also are well aware of the obstacles. As mentioned, Stratus may be able to include some of the exposures in their existing programs. Given that Big Sky Underwriters has a strong regional presence and major involvement in agricultural insurance, and Stratus specializes in the association business, together they have good potential for creating something for agritourism providers. Furthermore, they could help develop a realistic strategy to balance the multi-state costs/opportunity versus a Montana-only, low cost introduction. (See Appendix B for more information on Stratus and Big Sky Underwriters.)

## APPENDIX A: Limited Liability Laws, A State-by-State Perspective (July 2007)

State	Limited liability for agritourism operations?	Status
<i>Rocky Mountain States</i>		
Montana	No	<ul style="list-style-type: none"> <li>• MCA 27-1-727 states that “an equine activity sponsor or an equine professional is not liable for an injury to or the death of a participant engaged in an equine activity resulting from risks inherent in equine activities...”</li> <li>• No other agritourism-related regulations</li> </ul>
Utah	No	<ul style="list-style-type: none"> <li>• HB 424 “Definition of Agritourism” failed to pass the state Senate in early-mid 2007. The bill would have defined agritourism and created affirmable defense for agritourism operators who have a suit brought against them.</li> </ul>
North Dakota	No / Almost	<ul style="list-style-type: none"> <li>• ND Senate Bill 2032 Section 21 mandated the ND Insurance Department to “compile data specifically for tourism liability insurance and make recommendations to the 2007 legislative session” so as to make the state’s laws and the availability of liability insurance more attractive to businesses in the state.</li> <li>• ND Cent Code 53-08-02 states that “an owner of land owes no duty of care to keep the premises safe for entry or use by others” for <i>non-fee</i> recreation use.</li> <li>• ND Cent Code 53-10, “Equine Activity Statute” provides for “certain limitations” on actions against those that sponsor equine activity.</li> </ul>
South Dakota	No	<ul style="list-style-type: none"> <li>• South Dakota passed Law 47-9A-1, which prohibits agriculture as a “corporate or limited liability company purpose.” The law goes on to state that “the legislature of the state of South Dakota recognizes the importance of the family farm to the economic and moral stability of the state, and the Legislature recognizes that the existence of the family farm is threatened by conglomerates in farming.” No mention of agritourism completely, though note that some agritourism guidebooks suggest farmers consider forming INC or LLC to protect against personal liability for agritourism.</li> <li>• SD law 20-9-12 relieves the landowner of the duty to keep land safe for outdoor recreational users, provided the landowner does not charge a fee.</li> </ul>
Wyoming	Yes/Broadly defined	<ul style="list-style-type: none"> <li>• Wyo. Stat 34-19-102 (Recreational Use Act) states that landowners are not responsible for keeping land safe/providing warnings for those who do not pay a charge to use land for recreational activities. Landowner is still responsible for “willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.”</li> <li>• Wyo. Stat. 1-1-121 (Recreational Safety Act) protects those who provide any “sport or recreational activity” for injuries to participants from “inherent risks” regardless of whether a fee is charged. “Sport or recreational activity” is broadly defined, and therefore open to interpretation.</li> </ul>

Colorado	Yes	<ul style="list-style-type: none"> <li>CRS 13-21-122 is an “Ag Immunity Law” that “relieves a landowner for injuries resulting from inherent risks of agricultural recreation activity” regardless of whether a fee is charged. No protection for knowingly using faulty equipment or intentional/willful wanton acts.</li> </ul>
Idaho	No	No mention of anything agritourism-related in laws and statutes.
<i>Other Regions</i>		
North Carolina	Yes	<ul style="list-style-type: none"> <li>In 2005, the NC General Assembly passed HB 329 (now Session Law 2005-236), “An act to limit liability arising from certain agritourism activities.” The law “is intended to discourage lawsuits against agritourism operators by making participants aware of the inherent risks of agritourism activities. By posting the signs, farmers are not insulating themselves from liability. By taking steps to make the farm and its environs and activities safe and fun, the farmer lessens the possibilities of lawsuits.” The specific text for signage is contained within the law.</li> </ul>
Kansas	Yes	<ul style="list-style-type: none"> <li>Kansas Agritourism Promotion Act was passed and signed into law in 7/04. The purpose of the act is to promote growth of the agritourism industry in a 3-fold manner: the creation of a registration process through which the state can assist in the promotion of agritourism operations; limiting liability through signage (specific text included within the law); the creation of a tax credit to help offset the expense of agritourism liability insurance for existing and new operations.</li> </ul>
Nebraska	No	<ul style="list-style-type: none"> <li>Nebraska law exempts landowners from recreational liability where no use fee is charged; landowners may still be liable for injuries associated with paid recreational farm visits.</li> <li>LB1094 would have provided an income tax credit “to offset part of the liability insurance premium for agritourism businesses, but it was killed by the Revenue Committee”</li> </ul>
Kentucky	No	<ul style="list-style-type: none"> <li>HB 654 passed and established an Agricultural and Tourism Development Cabinet to work directly with farmers in developing agritourism programs; \$400,000 in tobacco settlement funds to be used to pay for a full-time coordinator for the office. No mention of limited liability or tax credits for agritourism.</li> </ul>
Florida	No/Maybe	<ul style="list-style-type: none"> <li>HB 1427, passed in May 2007, “authorizes the Department of Agriculture and Consumer Services to assist specified entities in agritourism promotion &amp; marketing initiatives, specifies impact of the agritourism participation on certain land classifications, and requires local governments and agricultural representatives to meet to discuss agritourism.</li> </ul>

## **APPENDIX B: Potential Insurance Resources**

### Scott Tuxbury, President; Big Sky Underwriters, Missoula, Montana

Big Sky Underwriters is a well established and respected Managing General Agent (MGA), one of two in Montana. Representing a wide range of specialty insurance companies including Colony and Lloyds of London, they provide a variety of insurance products to insurance agents who are unable to find adequate insurance for their clients through the “standard market” which the agents directly represent (Hartford, Safeco, Allied, etc.) Thus, the MGAs like Big Sky Underwriters place insurance for risks which may be difficult, hazardous, misunderstood, or underserved. Much of the outdoor recreation insurance is obtained via programs developed through firms such as these. They function as a wholesale intermediary for these accounts dealing with virtually every insurance agent in Montana, Wyoming, and Idaho. In addition, they underwrite a substantial farm/ranch program and also an equine program for Travelers Insurance, so they have a clear view of the agricultural insurance world. Scott also recently completed a Fishing Guide insurance program, forming a Risk Purchasing Group.

### Bret Van Leeuwen, President, Stratus Insurance, Salt Lake City, Utah

Stratus Insurance also functions as an MGA intermediary but focuses 100% on association, program or group business, some of which have national scope. The complexity of multi-state licensing, countersignature, tax remittance, and other compliance requirements present a myriad of challenges that are beyond the scope of most of the firms in this business. Focusing on the needs of existing associations and organizations, Stratus has successfully developed and managed programs for special events, massage therapists, fireplace and chimney installers, outdoor recreation (including rock climbing guides, manufacturers of outdoor equipment, etc.), and federal employees’ legal coverage, to name a few. In short, they are well versed in the association business.