Livestock producers who feed hogs or other livestock owned by someone else under contract in the producer’s buildings have unique insurance concerns to consider in addition to property casualty coverage for buildings and other facilities, liability coverage for accidental injuries and property damage and worker’s compensation. Of particular concern to contract feeders are:

- liability coverage for death of livestock being fed under contract
- environmental liability, including nuisance lawsuits
- liability assumed under the contract

One of the most unfortunate accidents for hog producers is when hogs fed under contract die from ventilation system failure in the contract feeder’s buildings. Sometimes the death loss is due to something that the feeder failed to do correctly (for example, failing to properly ventilate the building when agitating the pit for manure application). When this happens, the contract feeder may incorrectly assume there is insurance coverage under the liability insurance policy. However, unless the feeder has specific coverage for this situation, the contract feeder is often surprised that there is no coverage because of what is called the “care, custody or control exclusion.” This exclusion means that there is no liability coverage for loss of property (hogs in this case) owned by someone else but in the care, custody or control of the insured. The basic premise of the “care, custody or control exclusion” is that there is only liability insurance coverage when the person who caused the loss of property owned by someone else is not in control of that property when the loss occurs.

In 2013, the Iowa Supreme Court overruled two earlier court decisions and denied a contract feeder liability insurance coverage for his losses for nursery pigs that died in his building due to suffocation during manure pumping. In the case, Boelman v. Grinnell Mutual, the Supreme Court denied insurance coverage even though Boelman had purchased a “custom feeding endorsement” to his farm liability policy. The most troubling aspect of this case is that the Boelmans were aware that they would not have coverage under their standard policy and purchased a custom feeding endorsement that they understood would cover the hogs they were contract feeding under their “care, custody and control.” However, the Supreme Court found that the endorsement did not provide coverage for pig death losses. Rather, the Court ruled the Boelmans only had liability protection for third party losses. For example, the Supreme Court said, “if their custom farming operation caused an explosion, damaging a third person’s car parked on the Boelman’s property” the policy with the endorsement would have provided coverage. While many disagree with the Supreme Court’s analysis, it is the final decision and sets legal precedent for contract feeding insurance in Iowa. Accordingly, there are a number of important issues, listed at the end of this fact sheet that producers must consider in reviewing their feeding contracts and insurance coverage. Before getting to those points, there are two other insurance issues for contract feeders that were not a part of the Supreme Court’s decision but are nonetheless important to consider.
Liability coverage for contract fed livestock losses and nuisance lawsuits - the “pollution exclusion.”

Most standard farm liability policies exclude coverage for injury or property damage from situations described in policies as pollution. Pollution is often defined as any solid, liquid, gaseous or thermal contaminant, including smoke, vapor, soot, fumes, odor and waste. This is the exclusion in farm liability policies that often prevents producers from having coverage for odor nuisance lawsuits. As with other exclusions in standard farm liability policies, there are insurance policy endorsements that provide coverage for so-called pollution events and livestock producers who are concerned about nuisance and other environmental risk should evaluate this coverage.

In addition to nuisance lawsuits, the pollution exclusion may also result in no coverage for livestock death loss. In one case, the insurance company relied on the pollution exclusion to deny coverage to a contract feeder who had purchased “care, custody and control” coverage. Market hogs died from asphyxiation when the manure pits were pumped. The company denied coverage because the hogs’ death was due to pollutants and the pollution exclusion in the policy precluded coverage, according to the company’s analysis.

Liability coverage for contract liability.

Some feeding contracts shift legal liability from one party to the other through risk of loss, indemnification, hold harmless, or other similar clauses that make a contract feeder liable for something the feeder would not otherwise have responsibility. In these cases, many standard liability policies exclude coverage for these losses that the insured would not have been liable for if they hadn’t signed the contract. Contract feeders need to carefully review their contracts regarding contract liability and more importantly, have their insurance company review the contract and give them a determination as to coverage.

This factsheet is intended to provide background information. As with any legal issue, producers should get individual legal advice.
Practical points in analyzing contract feeding insurance risk.

Unfortunately, the contract feeders in the cases noted in this fact sheet did not get the coverage they needed. But contract feeders should not shy away from getting coverage. Pig death losses from ventilation system failure can be a staggering economic loss and there are good policies available that provide liability coverage for those losses. In analyzing insurance coverage, producers should:

- **Make sure a policy and contract feeding endorsement covers what it is supposed to**.
  - Producers and their advisors must read and understand the policy. Better yet, get written assurance from the insurance company that hog ventilation system failure losses are covered.
  - Make sure an endorsement for contract feeding overrides any general policy exclusion for damage or loss to property (hogs) in the care of the contract feeder.
  - More specifically, make sure all potential causes of hog injury or death loss (for example, asphyxiation, hyperthermia and hypothermia from manure pit gases) are covered and not excluded under a policy exclusion. The best approach is to make sure the terms asphyxiation, hyperthermia, hypothermia and suffocation are listed under coverages.

  This is an example of insurance policy language that has been found by an insurance company to provide coverage for pig death loss due to ventilation system failure:

  "We will pay those sums that the insured becomes legally obligated to pay as damages due to physical injury to a ‘Covered Animal’ caused by ‘specified causes of loss.’

  Covered Animal means the animal(s) owned by others which are listed and described in the Schedule.

  Specified Causes of Loss means the following: fire; lightning; explosion; smoke; vandalism; sinkhole collapse; electrocution; falling objects; suffocation; and weight of ice, snow or sleet.”

  (The purpose of providing this example coverage is to give an example of coverage that has been honored by a company. Producers should not rely on this example by itself in determining individual coverage. Review, analysis and coverage determinations for each contract feeder’s individual situation must be done.)

- **Make sure losses other than hogs fed under contract are covered**. Under the Supreme Court’s ruling, the contract feeder would not have had coverage for third-party losses without the endorsement. Contract feeders who do not have a custom feeding endorsement should at a minimum review their liability policy to make sure they have protection for claims by anyone who might get hurt in or near their hog barns.

- **Get coverage even though the owner of the pigs has coverage**. Producers who own the pigs being contract fed may have insurance coverage for pig death losses from ventilation system failure. Some contract feeders wrongly assume that if the pig owner has suffocation insurance coverage, they don’t need liability coverage under a custom feeding endorsement. It is critical to understand that if the contract feeder is responsible for pig losses, the pig owner’s insurance company may cover the loss but then demand reimbursement from the contract feeder for the loss. Without their own insurance coverage, the contract feeder could be forced to pay the pig owner’s insurance company.

- **Carefully review and understand contract feeding agreements**. Some feeding contracts require the feeder to have insurance coverage for pig losses. Contract feeders may mistakenly view this as requiring them to insure the owner’s pigs. Rather, pig losses are a potential liability for the feeder and insurance can protect against those losses and avoid a dispute and lawsuit.