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The SAVVY FARMER'S GUIDE TO CROP INSURANCE DISPUTES

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Introduction

Fighting denied or disputed crop insurance claims is complex and requires a thorough understanding of agriculture and crop insurance company practices.

Agricultural producers are heavily dependent on the weather. Drought and storms can damage both crops and other agricultural products. Additionally, storms producing high winds, tornadoes, and hail can severely damage outbuildings and farming equipment.

Producers often purchase agricultural insurance in order to reduce their financial exposure in the event of a natural disaster. When they suffer damages to their farm, livestock, or crops, agricultural insurance is there to protect them from severe loss.

Crop insurance is an important risk management tool for producers throughout the United States. This is not likely to change and an expanded crop insurance program may replace many of the traditional "safety net" farm programs. In fact, crop insurance has become an integral part of the modern farm operation for producers.

Crop insurance has emerged as a mainstay of farm risk management and farm legislation. Once a loss occurs, producers may have difficulty navigating the claims process, especially given some of the complexities associated with crop insurance policies. In fact, the basic provisions included in most crop insurance policies place significant responsibility on producers who suffer covered losses.

The availability of a crop insurance "bad faith" remedy is a critical issue for our nation's agricultural producers. This book provides an explanation of the issues surrounding crop insurance and "bad faith" liability. Our Agricultural Law Practice Group represents producers fighting denied or disputed crop insurance claims. We look forward to serving your needs and helping you solve your crop insurance claims.

CHAPTER 1

A BRIEF HISTORY OF CROP INSURANCE

"Cultivators of the earth are the most valuable citizens. They are the most vigorous, the most independent, the most virtuous, and they are tied to their country and wedded to its liberty and interests by the most lasting bands."

President Thomas Jefferson

In 1938, Congress passed the Agricultural Adjustment Act (AAA) to implement the first federally-sponsored insurance program of crop insurance for America's farmers. Significantly, the AAA created the Federal Crop Insurance Corporation (FCIC) to perform the task of providing crop insurance to farmers. Since 1938, many American farmers have avoided catastrophic losses in droughts and inclement weather by obtaining crop insurance, either directly through the FCIC or through private insurance companies that sell and service policies that are reinsured by the FCIC.

In 1980, Congress passed the Federal Crop Insurance Act (FCIA) and expanded the federal crop insurance program. Through the FCIA, Congress permitted private insurers to provide crop insurance policies alongside the FCIC. As a result, the number of farmers participating in the program greatly expanded after a series of droughts that affected the agricultural industry in the late 1980s and early 1990s.

From 1988 to 1998, the total amount of farmland insured under the federal crop insurance program grew to approximately 180 million acres. In 1996, Congress created the Risk Management Agency (RMA) to administer FCIC programs because of the growth in the crop insurance program. Today, crop insurance is available for many farmers to protect against the most catastrophic agricultural losses.

Crop insurance has emerged as a "mainstay" of farm risk management and farm legislation. Producers have increased their reliance on crop insurance as a tool in their risk management portfolio. As a result, America's producers must be prepared to address the potential legal issues that arise in the American production agricultural system, which relies increasingly on crop insurance.

CHAPTER 2

THE ABCs OF CROP INSURANCE

What Is Crop Insurance?

The federal government has entered into a partnership with private insurers to offer crop insurance on an equal-opportunity basis to agricultural producers nationwide. Approved Insurance Providers (AIP) use independent licensed agents to market this insurance. Every year, AIPs enter into a contract called the Standard Reinsurance Agreement (SRA) with the Federal Crop Insurance Corporation (FCIC) to administer the crop insurance program by marketing, underwriting, and adjusting claims for crop insurance policies.

What Does A Crop Insurance Agent Do?

Agents are involved in the sale and service of crop insurance. The program includes multiple plans of coverage for over 100 crops or commodities. The agent receives a commission, outlined in an annual contract between the agent and the insurance company. In return, the agent provides product and premium information to the producer and collects information from the producer as required by the policy.

Policy information often varies by crop, from state to state, and sometimes from county to county. Therefore, the policy is made up of many parts. A lot of the information changes from year-to-year, and sometimes month-to-month. An agent is responsible for understanding the crops and plans in their specific region.

Why Do Producers Buy Crop Insurance?

The crop insurance company or AIP agrees to protect the producer against losses which occur during the crop year. Losses must be due to things which are unavoidable or beyond the producer's control such as drought, freeze, hail, and disease. Some policies offer coverage due to adverse weather events such as the inability to plant due to excess moisture or losses due to the quality of the crop.

In most cases, the insurance covers loss of yield or revenue exceeding a deductible amount. Producers can experience a loss of revenue due to low production and/or changes in the market price. The types of coverage available vary by crop and county due to the differences in each crop.

CHAPTER 3

WHAT ARE THE DIFFERENT KINDS OF CROP INSURANCE PLANS?

Buying a crop insurance plan is a risk management tool available to agricultural producers. Producers should consider how a policy will work in partnership with their other risk management strategies. There are two primary types of crop insurance plans available to producers in the United States – Crop-Hail and Multiple Peril Crop Insurance (MPCI).

Crop-Hail

Crop-Hail policies are not part of the federal crop insurance program and are provided directly to producers by private insurers. Many producers purchase Crop-Hail coverage because hail has the unique ability to totally destroy a significant part of a planted field while leaving the rest undamaged. In areas of the country where hail is a frequent event, producers often purchase a Crop-Hail policy to protect high-yielding crops.

Multiple Peril Crop Insurance (MPCI)

MPCI policies must be purchased before planting and cover loss of crop yields from all types of natural causes including drought, excessive moisture, freeze, and disease. Newer coverage options combine yield protection and price protection to guard producers against potential loss in revenue, whether due to low yields or changes in market price.

Under the federal crop insurance program's unique public-private partnership, there are approximately fifteen private companies authorized by the USDA's Risk Management Agency (RMA) to write MPCI policies. The service delivery side of the program – writing and reinsuring the policies, marketing, adjusting and processing claims, training and record-keeping, etc. – is handled by each private company. The program is overseen and regulated by the RMA which also sets the rates that can be charged and determines which crops can be insured in different parts of the country.

The federal government also subsidizes the producer-paid premiums to reduce the cost to producers. In addition, it provides reimbursement to the private insurance companies to offset operating and administrative costs that would otherwise be paid by producers as part of their premium.

Some of the different types of MPCI plans include:

Actual Production History (APH)

The APH plan of insurance is the oldest federal crop insurance plan available. It provides the producer protection against a loss of production (or how much the crop produces) due to nearly all unavoidable, naturally occurring events. This plan guarantees the producer a yield based on the actual production history of his crops, which is why it is called the APH plan.

The guarantee is calculated by multiplying the average yield by coverage level elected for the producer's share of the crop. An indemnity (or loss payment) may be due if the production is less than the guaranteed amount.

The pricing for most crops insured under the APH plan is established by RMA – these prices are called price elections. Many perennial crops (crops that are not planted every year) such as apples, peaches, and grapes fall under the APH plan, and also those crops that do not have revenue coverage available. Some grain crops such as oats, rye, flax and buckwheat are also covered under the APH plan.

Actual Revenue History (ARH)

The ARH is based on the producer's revenue history for the crop that is insured. The guarantee amount is calculated based on the producer's production and revenue history. A loss occurs when the revenue to count for the current year falls below the producer's guaranteed revenue.

Adjusted Gross Revenue (AGR) and AGR-Lite

AGR and AGR-Lite policies insure revenue of the entire farm rather than an individual crop by guaranteeing a percentage of average gross farm revenue, including a small amount of livestock revenue. The policies use information from a producer's Schedule F tax forms, and current year expected farm revenue, to calculate policy revenue guarantee.

Yield Protection (YP)

The YP plan is very similar to the APH plan but is only available on crops that are eligible for Revenue Protection. The YP plan provides protection against a loss of production.

The YP plan works the same as the APH plan but instead of using a price election established by RMA, the price is established according to the applicable board of trade/exchange as defined in the policy document called the Commodity Exchange Price Provisions (CEPP). The price used is called the Projected Price. The Projected Price is used to calculate the guarantee, premium and loss payments.

The guarantee is established by multiplying the average yield by the coverage level and by the Projected Price, and an indemnity may be due when the value of the production to count is less than the yield protection guarantee plan.

Revenue Protection (RP)

The RP plan provides protection against a loss of revenue caused by price increase or decrease, loss of production, or a combination of both. It is available for the same crops where YP coverage is available.

The RP plan uses the Commodity Exchange Price Provisions to establish the pricing, however, it is a little different from the YP plan as it uses two different price discovery periods. The projected price is determined in the same manner as YP and is used to calculate the premium, replant, and Prevented Planting payments. The harvest price is released near harvest time. This price is used to calculate an indemnity.

The revenue protection guarantee is established by: (Average Yield) x (Coverage Level) x (Insured's Share Percentage) x (Projected Price).

An indemnity may be due when the calculated revenue (producer's production x harvest price) is less than the revenue protection guarantee for the crop acreage.

Revenue Protection With Harvest Price Exclusion (RP-HPE)

The RP-HPE plan is similar to the (RP) plan, however it provides coverage against loss of revenue caused by price decrease, low yields, or a combination of both – the price increase is not covered because the guarantee is not adjusted up by the harvest price for this plan.

The projected price is used to determine the revenue guarantee, the premium, and any replant or prevented planting payment. The harvest price is only used to value the production to count in a production or revenue loss. It is not used to recalculate the guarantee if there is an increase.

The producer does not receive the benefit of price movement with the RP-HPE plan.

Dollar Plans of Insurance

Dollar Plans of Insurance are available for some commodities. Dollar Plans of Insurance are usually insured in dollar per acre or some other measurement applicable to the crop. The maximum dollar amount per acre or other measurement is established and published by RMA. The producer chooses a percentage of the maximum dollar amount to establish the guarantee. A loss occurs when the dollar to count per acre falls below the dollar amount of insurance.

CHAPTER 4

SIX FREQUENTLY ASKED QUESTIONS ABOUT CROP INSURANCE

The crop insurance program is now one of the centerpieces of the nation's agricultural safety net.

Here are six of the most frequently asked questions about crop insurance.

FAQ #1 – What is crop insurance?

Crop insurance in America can trace it roots all the way back to 1880, when private insurance companies first sold policies to protect farmers against the effects of hail storms. These Crop-Hail policies are still sold today by crop insurance companies and are regulated by individual state insurance departments. In 2017, producers spent $956 million on Crop-Hail insurance to protect $36 billion worth of crops.

In addition, producers may also purchase Federal Crop Insurance (also known as Multi-Peril Crop Insurance), a risk management tool that protects against the loss of crops due to natural disasters such as drought, freezes, floods, fire, insects, disease and wildlife, or the loss of revenue due to a decline in price. This form of crop insurance is federally supported and regulated and is sold and serviced by private-sector crop insurance companies and agents.

FAQ #2 – How is crop insurance different from other types of insurance?

All insurance, from auto to life, health, and crop insurance works best when it expands the number of people it covers – a concept known as the "risk pool." This means that the greater the participation, the more widely risk can be spread. And by spreading the chance of loss among a diverse group of insureds, premiums become more affordable for everyone involved. Also, participants in all forms of insurance must pay premiums and shoulder deductibles. This gives the insured some ownership of their own protection and prevents participants from engaging in risky behavior.

In this sense, crop insurance works like other forms of insurance. However, the parallels are not perfect because agriculture is a unique business that suffers unique losses. Unlike other insurance, agricultural losses tend to be geographically targeted and severe.

For example, there is little chance that every car in a city will be simultaneously totaled or that every person in a state will need medical help at the same time. But a single flood, storm, hail, or drought can cause a catastrophic loss for every farming operation in a county or region, which makes it more difficult to insure.

Therefore, the United States has a crop insurance system based on a public-private partnership between private insurance providers and the USDA. Under this arrangement, companies that sell crop insurance must sell a policy to any eligible producer at the premium rate set in advance by the federal government. In addition, insurance companies cannot refuse to provide protection, raise the premium rate, or impose special underwriting standards on any individual eligible producer, regardless of risk.

FAQ #4 – How does the federal government encourage crop insurance participation?

Congress created and provides funding for the modern-day crop insurance system through the Federal Crop Insurance Corporation (FCIC) as a way to help producers manage the risks of natural disasters and market fluctuations. The activities of FCIC are carried out by the Risk Management Agency (RMA) of USDA. Lawmakers intended for the system to largely replace the need for ad hoc disaster legislation, thereby helping to shelter taxpayers from the full costs of agricultural disasters and avoiding the need to enact new disaster assistance following every major catastrophic event.

To this end, FCIC/RMA sets program standards, approves new products, sets premium rates, and discounts producer premiums. The federal government further makes crop insurance affordable for producers by offsetting a portion of the delivery costs that would otherwise be built into the premium. Finally, the federal government reinsures crop insurance providers and shares in the underwriting gains and losses of the program.

FAQ #5 – What is the Standard Reinsurance Agreement (SRA)?

The Standard Reinsurance Agreement (SRA) is the formal contract between the federal government (USDA/RMA) and private sector insurance providers (AIPs). It contains the details of the partnership that makes crop insurance unique.

The SRA spells out expense payments and risk-sharing by the government, including the terms under which the government provides reinsurance on eligible crop insurance contracts sold or reinsured by insurance companies. Clearly, the SRA plays an important role in determining program costs. The SRA, however, does not affect policy premiums paid by producers, which are based on the RMA's estimates of risk and on premium discounts set by law.

FAQ #6 – What Are Administrative & Operating (A&O) Payments?

Whenever a customer writes a premium check for auto, health, or home insurance, part of that payment is allocated to the cost of servicing the policy. In other words, insurance companies include an expense load in the premium for each policy beyond anticipated losses to offset overhead costs, such as staff salaries, agent commissions, adjusting losses, employee training, computer systems, customer support, office space, marketing, etc. This also includes a profit component for the insurer.

Unlike other types of insurance, however, crop insurance policies are not loaded for expenses. Why? Because Congress wanted to make policies more affordable so producers would purchase protection with their own money and leave taxpayers less vulnerable to agricultural risk and ad hoc disaster payments.

Of course, private sector insurance companies cannot afford to deliver and service over one million policies for free. Insurers still have overhead costs that they need to recoup, even if these costs are not included in the premium. As a result, the government pays a portion of the delivery costs to insurance companies on producers' behalf. This is known as an Administrative and Operating (A&O) payment.

CHAPTER 5

THE EIGHT MOST COMMON CROP INSURANCE MISTAKES THAT COST PRODUCERS MONEY

Mistake #1 – Under-Reporting Planted Acreage Per Unit

Production to count for an insured crop is derived from all planted acreage for that crop per unit, whether you reported all of the acres in that unit or not. Therefore, if you under-report your acres, your yield will be artificially inflated and you will receive a lower indemnity payment.

Mistake #2 – Over-Reporting Planted Acreage Per Unit

If you have over reported your acres, your production to count will be derived from all planted acreage for that crop per unit. The acreage will be reduced to the correct number of acres. Your indemnity will be slightly less due to the reduction in your total guarantee (not your per acre guarantee) and you will be refunded any overpayment of premium.

Mistake #3 – Failing To Report All Farm Serial Numbers (FSNs) Planted To The Insured Crop

If you fail to report all of the Farm Serial Numbers (FSNs) planted to the insured crop, the unreported FSNs will not have coverage. This oversight generally seems to occur with added land, but many times occurs because the producer fails to insert the planted acreage figure under the farm number on their acreage reporting form. The indemnity payment will be reduced.

Mistake #4 – Failing To Report The Production For All Farm Serial Numbers (FSNs)

If you do not report all of your FSNs, with production information, on or before the production reporting date, the production cannot be added at acreage reporting time. The unit without production will be assigned a yield based on the variable T-Yield procedure. This yield is generally lower than the grower's actual yields. The yield guarantee will be reduced and any indemnity payment will be less.

Mistake #5 – Failing To Elect "New Producer" Status

If you are a new producer and fail to elect "New Producer Status" on or before the production reporting date for the insured crop, the yield on the crop will be assigned using the variable T-Yield method (a percentage of the county T-Yield) instead of more favorable method of using 100% of the county T-Yield. The Yield guarantee will be reduced and any indemnity payment will be lower.

Mistake #6 – Failing To Indicate "Added Land" On Your Acreage Report

If you fail to indicate "Added Land" on your acreage report for new farms, the yield will be calculated using the variable T-Yield method instead of more favorable methods. The yield guarantee will be reduced and any indemnity payment will be lower.

Mistake #7 – Harvesting The Crop In A Manner Other Than Insured

If you are harvesting the insured crop in a manner other than intended, without informing the crop insurance carrier, you may have a problem. For example, the producer has insured his corn as grain, but harvests the corn as silage. If there is no actual harvested grain for the adjuster to measure, the crop must be field appraised for grain content before harvested. The adjuster cannot appraise the grain content of harvested corn silage and the production to count will be assessed at the full guarantee.

Mistake #8 – Destroying The Insured Crop Without The Company's Approval

Production for a crop that is destroyed before the claim adjustment is made may be assessed at the full production guarantee and no indemnity will be paid.

CHAPTER 6

FIVE TIPS EVERY PRODUCER SHOULD KNOW ABOUT CROP INSURANCE DISPUTES AND "BAD FAITH"

Fighting denied or disputed crop insurance claims is complex and requires a thorough understanding of agriculture and crop insurance company practices. Agricultural producers often purchase insurance in order to reduce their financial exposure in the event of a natural disaster. When they suffer a loss, the insurance is there to protect them.

Crop insurance "bad faith" is an important legal remedy that protects agricultural producers. Here are five tips that every agricultural producer should know about crop insurance disputes and "bad faith."

Tip # 1 – What Are The Most Common Crop Insurance Disputes?

An insurance company's wrongful interpretation of the insurance policy

An insurance company's erroneous application of the insurance policy to the producer's situation

A denied claim based on an allegation that the producer did not follow "good farming practices"

An insurance company's "lowball" adjustment of the claim

A wrongful termination of coverage (based on an alleged non-payment of premium, misrepresentation, or other grounds)

A claim that the insurance company has overpaid a claim and wants some of its money back

A wrongful calculation of the premium charged for obtaining coverage

Tip # 2 – What Is A Crop Insurance Company's Duty To A Producer?

A crop insurance company owes a producer a duty to act in "good faith and fair dealing" in every insurance contract. This means that when an insurance company sells protection to their policyholders it is done with the idea that the insurance company's performance will be immediate. When a policyholder is not fairly compensated for his loss, a breach of the company's promise occurs.

Tip #3 – How Does An Insurance Company Need To Manage A Producer's Crop Insurance Claim?

The insurance company must treat the producer's interests with equal consideration as it does its own interests

The adjuster must help the producer with the claim

The insurance company must promptly and thoroughly investigate the claim

The insurance company must fairly investigate the claim

If payment is warranted, the insurance company must promptly pay the claim

The insurance company cannot be recklessly indifferent to facts or proof submitted by the producer

If a claim is denied, the insurance company must promptly explain the reasons to the producer

The insurance company must disclose all significant facts to the producer

The insurance company cannot deny a producer's claim based on speculation

Tip # 4 – What Is Insurance "Bad Faith"?

Insurance "bad faith" enables a producer to be protected if an insurance company acts with reckless or intentional disregard for the producer's rights. From a legal standpoint, insurance "bad faith" is based on the legal principle that there is an implied covenant of good faith and fair dealing in every insurance contract. A claim for "bad faith" is a tort action and is entirely separate from the contractual claim for insurance policy limits.

Tip #5 – How Does A Producer Show Insurance "Bad Faith"?

"Bad faith" is an intentional tort and typically occurs when an insurance company consciously engages in wrongdoing during its processing or paying of policy benefits to a producer. In most states, a two-part test is used to prove insurance "bad faith" – (1) the absence of a reasonable basis for the insurance company's denial of policy benefits (or failure to comply with a duty under the insurance contract) and (2) the insurance company's knowledge or reckless disregard of the lack of a reasonable basis for its denial of policy benefits.

CHAPTER 7

AN EXAMPLE OF CROP INSURANCE "BAD FAITH"

Under certain circumstances, crop insurance "bad faith" is a possible remedy for producers whose claims are unreasonably denied or reduced. Recently, the courts have examined crop insurance "bad faith" liability in cases where the adjusting or settlement of claims is performed with an intentional or reckless disregard of a producer's rights. Here is an example of a recent crop insurance "bad faith" case.

Jones Insurance Services (Jones Insurance) issued a crop-hail insurance policy to Farmer Smith. The policy provided coverage during the 2016 crop year for direct loss due to hail and certain other specified perils. Farmer Smith sustained a significant hail loss on September 5, 2016, and reported that loss to Jones Insurance.

Although the loss occurred in early September, Farmer Smith had still not heard from Jones Insurance by mid-October. As a result, Farmer Smith requested and obtained approval from Jones Insurance to harvest his crops and leave check strips for adjustment. Because the loss potentially involved more than 5,000 acres, Jones Insurance assembled a five-person team to adjust the loss.

The team of adjusters did not arrive at Farmer Smith's farm until October 16, 2016, more than a month after receiving notice of the loss, during which time harvest had occurred and unstable weather conditions persisted in South Dakota. In fact, according to Farmer Smith, weather conditions were cold and windy on the two days that the adjusters were in the fields counting check strips, and the adjusters spent a considerable amount of time in the barn and in their trucks, trying to warm up.

Nonetheless, the adjusters supposedly completed their counts using the check strips that had been left in the fields and reported that sufficient check strips were left in each field to complete the adjustment process. According to their survey sheets, the adjusters determined that over 3,500 acres of soybeans had payable hail losses. Based on the crop-hail loss-adjustment procedures, the adjusters found losses ranging from 2.3% to 71.4%.

Farmer Smith did not agree with the adjusters' calculations and refused to sign the proof of loss. On November 30, 2016, despite Farmer Smith's disagreement and without his approval, Jones Insurance issued payment for the amount it had determined was payable for Farmer Smith's losses: $401,123 for the loss, less a premium credit of $201,541, for a net payment of $199,582. A check in that amount was delivered to Farmer Smith's residence on December 6, 2016.

On February 5, 2017, Farmer Smith brought a lawsuit alleging that Jones Insurance breached its contract and acted in "bad faith." The jury found in Farmer Smith's favor and returned a verdict of $67,000 in actual damages and $300,000 in punitive damages against Jones Insurance.

CHAPTER 8

WHY SHOULD I HIRE A CROP INSURANCE LAWYER?

First of all, you can be absolutely guaranteed that your crop insurance company has lawyers and adjusters on its side from day one. Most crop insurance companies have adjusters prepared to work for them at a moment's notice, and they have lawyers in-house or law firms that are experienced in defending crop insurance claims. You may not even realize it, but from the moment a producer suffers a loss, you can be sure that your crop insurance provider has contacted its adjusters and lawyers.

Second, you cannot hire just any lawyer for these types of cases. Simply put, 99% of lawyers are not qualified to work on cases involving crop insurance disputes. By hiring a lawyer with no experience in these type of disputes, you aren't helping protect your rights at all, and in fact, you may be damaging your legal rights. We have seen it time and time again. A hard-working producer suffers a crop loss. He trusts his crop insurance provider to help him, only to find out weeks or months later that this is not the case. Or even worse, the producer hires the wrong lawyer and suffers a huge loss.

Who you hire as your lawyer may be the most important decision you make. It can be the difference between a small settlement and a large settlement, between a timely settlement or one that drags on for years, between receiving what you are legally entitled or collecting nothing at all.

A question you should ask every lawyer you interview is, "What makes you different from all of the other law firms out there?"

At our law firm, we believe that what sets us apart from other law firms is our practical knowledge and experience with crop insurance issues. We publish articles, books, news items, and other expert analysis on crop insurance claims. From helping you find the agriculture and insurance specialists you need, to using cutting-edge technology to tell your story. From dedicating the time and resources necessary to win your case, to helping you figure out how to move forward with your operation after your case is completed.

CHAPTER 9

GLOSSARY OF COMMON CROP INSURANCE TERMS

As you read about crop insurance you may sometimes wonder "What do these terms mean"? This glossary should help you understand a few of the more common terms used.

A

Acreage Report – The acreage report shows the crops you have planted, acreage prevented from planting, what share you have in the crop, where the crop is located, how many acres you planted, the dates you planted, and what insurance unit they are located on. The acreage report is the basis for determining the amount of insurance provided and the premium charged.

Actual Production History (APH) – APH is the most common plan of insurance under the Multiple Peril Crop Insurance umbrella. It is the basis for determining a producer's guarantee under either multi-peril crop insurance or revenue insurance policies. The APH is calculated as a 4- to 10-year simple average of your actual yield on the insured land. If you do not have records of actual yields, a "transitional yield" based on average yields in your county is commonly used.

Actuarial Soundness – This is an insurance term that describes a situation where indemnities paid, on average, are equal to total premiums collected.

Agricultural Risk Protection Act of 2000 (ARPA) – This law provided $8.2 billion for insurance premium subsidies and $5.2 billion for market loss assistance payments for producers. Among its other impacts, ARPA also modified the crop insurance premium subsidy structure, authorized pilot programs for new forms of insurance, expanded insurance fraud detection and enforcement, and dropped the area yield loss trigger in the NAP program.

Adjusted Gross Revenue (AGR) Lite – AGR-Lite is whole farm revenue insurance that covers almost all of the commodities produced on a farm. It is an individualized producer insurance based on individual producer yields, quality, and marketing history that equals gross income.

B

Bad Faith – Insurance "bad faith" is based on the legal principle that there is an implied covenant of good faith and fair dealing in every insurance contract. A claim for "bad faith" is a tort action and is entirely separate from the contractual claim for insurance policy limits.

Basic Unit – A basic unit is an insurance unit as determined first by crop, then by the producer's share in the crop. All of the crop's acreage in the county in which the producer has a 100% share is in the same basic unit. Crop acreage shared with each different landlord/tenant is in a separate basic unit.

Buy-Up Coverage – This refers to crop insurance coverage that exceeds the CAT (catastrophic) level. Coverage is available up to 75% of your expected yield or expected revenue (which is yield times price). In some areas, coverage up to 85% is available for some crops. The producer pays part of the premium, but government premium subsidy rates are now over 50% for most levels of coverage.

C

CAT Coverage – CAT is short for "catastrophic" and refers to crop insurance coverage at the lowest, or catastrophic level.

Crop Revenue Coverage (CRC) – CRC is the most widely available revenue protection policy. This policy guarantees an amount of revenue (based on your actual production history (APH) x commodity price).

Crop Revenue Insurance (CRI) – CRI pays indemnities based on gross revenue shortfalls instead of just yield or price shortfalls. Some types of CRI include Revenue Protection (RP), Revenue Protection with Harvest Price Exclusion (RP-HPE), Revenue Assurance (RA) and Income Protection (IP). These programs are subsidized and reinsured by the USDA's Risk Management Agency (RMA).

Commodity Exchange Price Provision (CEPP) – A part of the Common Crop Insurance Policy used for all crops for which revenue protection is available. It is a document which contains the information necessary to derive protected price and the harvest price for the insured crop.

Crop Yield Insurance (CYI) – CYI pays indemnities to producers when yields fall below the producer's insured average yield due to most natural causes. CYI is subsidized by the USDA's Risk Management Agency (RMA).

D

Disaster Payments – Disaster payments are direct payments to producers on an emergency basis when crop yields are abnormally low due to adverse growing conditions. During the 1970s, there was a "standing" disaster payments program, with payments made without declaration of a disaster area. Regular payments ceased after 1981, but since then an ad hoc disaster payments have been specifically approved by the U.S. Congress on a number of occasions.

Dollar Plan of Insurance (DPI) – The DPI lets a producer select one of several dollar amounts of insurance per acre prior to planting.

E

Enterprise Unit – An Enterprise Unit is a single unit consisting of all of the producer's insurable acreage for the insured crop in the county – regardless of share, location, FSA Farm Serial Number assignment (FSN), or practice. An Enterprise Unit structure will combine all of a producer's basic or optional units.

F

Forward Contract – This is an agreement between two parties that calls for delivery of, and payment for, a specified quality and quantity of a commodity (such as a particular crop) at a specified future date. The price may be agreed upon in advance or determined by formula at the time of delivery or other point in time.

Forward Pricing – This is when you agree on a price or a pricing formula for a commodity that will be delivered at a later date. "Forward pricing" is used broadly to refer to both hedging with futures options and forward contracting.

Futures Contract – This is an agreement to buy or sell a commodity of a standardized amount and quality during a specific month in the future, under terms established by the futures exchange, and at a price established in the trading pit at the commodity futures exchange.

Futures Option Contract – This is a contract that gives the holder the right, though not the obligation, to buy or sell a futures contract at a specific price within a specified period of time, regardless of the market price of the futures contract when the option is exercised. Options provide protection against adverse price movements.

G

Group Risk Income Protection (GRIP) – GRIP is based on the experience of the county rather than on individual farms, so APH is not required for this program. A GRIP policy includes coverage against potential loss of revenue resulting from a significant reduction in your county's yield or the commodity price of a specific crop.

Group Risk Plan (GRP) – Like GRIP, GRP coverage is based on the experience of the county rather than on individual farms, so APH is not required for this program. GRP protects you in the event that your county's average per-acre yield or payment falls below your trigger yield.

Guarantee – A guarantee is a promise of payment. In this context, a guarantee is the amount of money you will be paid in the event of a loss, according to the terms of your crop insurance contract.

H

Harvest Price – The Harvest Price is determined in accordance with the Commodity Exchange Price Provisions and is used to value production to count under revenue protection.

Hedging – Hedging uses futures or options contracts to reduce the risk of adverse price changes prior to an anticipated cash sale or purchase of a commodity.

I

Indemnity – The indemnity is the money you receive for qualifying losses paid under an insurance policy. The indemnity compensates for losses that exceed the deductible, up to the level of the insurance guarantee.

Insurable Yield – An "insurable yield" is the maximum yield that is insured under a policy. It is usually expressed in percentage and the insurance company will review past production of the area to determine the potential yield.

Insurance Unit – In general terms, an "insurance unit" is the insured acreage of the crop in the county for which an individual protection amount is provided and from which any harvested and/or appraised "production to count" stands alone to be compared to the protection amount in order to determine any indemnity that may be due.

L

Liquidity – Liquidity refers to your ability to generate cash quickly and efficiently in order to meet financial obligations. Liquidity can be enhanced by holding cash, stored commodities, or other assets that can be converted to cash on short notice without incurring a major loss.

Loan Deficiency Payments (LDPs) – These payments protect producers of several major commodities against revenue losses due to low prices.

Loss Adjuster – A loss adjuster is the person sent by the insurance company to review the extent of damages or losses as contained in the claim filed by the producer.

M

Marketing Contract – A marketing contract is a contract between you and a processor or handler that establishes a marketing outlet and a price (or a formula for determining the price) for a commodity before harvest or before the commodity is ready to be marketed.

Multiple Peril Crop Insurance (MPCI) – MPCI was established in the 1930s to cover yield losses from most natural causes. MPCI operated on a somewhat limited basis up through the early 1980s when a private/public partnership was established. At that point, insurance availability was greatly expanded and premium subsidies increased in hopes of replacing the disaster payment program.

N

New Producer – A new producer is categorized as a producer who has not produced the insured crop in the county, has produced the insured crop in the county for only one or two crop years, or has produced the insured crop in the county for only one or two crop years but the entity type has changed.

Non-Insured Crop Disaster Assistance Program (NAP) – Crop insurance is not available for all commodities. NAP provides financial assistance to producers of many of these commodities if they experience a qualifying yield loss.

O

Optional Units – Optional units are a further division of basic units. Just as the name implies, further dividing basic units into optional units is optional for the producer. Crop acreage that would be otherwise be one basic unit may be divided into optional units if the acreage of the insured crop is located in separate legally identifiable FSA Farm Serial Numbers or the acreage is comprised of practices (i.e. irrigated, non-irrigated or organic).

P

Premium – The amount of money you pay for risk protection. Option buyers pay a premium to option sellers for options contracts. Similarly, the person who buys an insurance policy pays a premium in order to obtain coverage.

Prevented Planting (PP) – Prevented planting is the failure to plant the insured crop with proper equipment by the final planting date designated in the Common Crop Insurance Policy for the insured crop in the county or by the end of the late planting period. The producer must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

Production Contract – A production contract is an agreement between you and a processor that usually details the production inputs supplied by both you and the processor, the quality and quantity of a particular commodity that is to be delivered, and compensation that you will be paid. In return for giving up control over decision making you are often compensated with a price premium or lower market risk.

R

Reinsurance – A method of transferring some of an insurer's risk to other parties. In the case of federal crop insurance, USDA's Risk Management Agency shares the risk of loss with private insurance companies that deliver policies to producers. Private reinsurance also exists. In this case, a private reinsurer assumes responsibility for a share of the risk, in return for a share of the premiums.

Risk – Uncertainty about outcomes that are not equally desirable. Risk is an important aspect of the farming business. The uncertainties of weather, yields, prices, government policies, global markets, and other factors can cause wide swings in farm income. Risk management involves choosing among alternatives that reduce the financial effects of such uncertainties.

S

Subsidy – A subsidy is money given by the government to help producers function.

T

Tax Identification Number – As a condition for participation in the Federal Crop Insurance Program, the federal government requires Tax Identification Numbers (TINs) on the insured entity and ALL persons comprising the insured entity. The primary use of the TIN is to correctly identify the named insured and any others with an interest of 10% or more in the named farming operation.

Trigger Yield – Under GRP, producers receive payments any time the actual county yield drops below the trigger yield that the producer chooses. The trigger yield can be 90, 85, 80, 75, or 70 percent of the expected county yield, which is based on the county's yield history since 1962. Expected county yields are adjusted for upward trends.

Y

Yield – The yield is the amount of something, especially a crop, produced by cultivation or labor.

Yield Floor – The yield floor is a percentage of the applicable "T-Yield" based on the number of years of records the producer has provided for the crop and county.

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Our Agricultural Law Practice Group represents farmers and ranchers across the Midwest in crop insurance disputes against insurance companies. Fighting denied or disputed crop insurance claims is complex and requires a thorough understanding of agriculture and insurance company practices.

About The Author

Scott Swier is the Founder and Managing Member of Swier Law Firm. He also leads the law firm's Education Law Practice Group and Business Litigation Practice Group.

Scott is a recognized authority in state and federal legal matters. While serving in private legal practice and the South Dakota Attorney General's Office, he has represented individuals, businesses, and government entities before state and federal trial courts, state and federal appellate courts, and state and federal regulatory agencies.

As Assistant Attorney General, Scott served as counsel for the State of South Dakota in many high-profile cases and his clients included the Governor's Office, the Attorney General's Office, the Secretary of State's Office, the Department of Education, the Department of Revenue and Regulation, the Department of the Environment and Natural Resources, and the South Dakota Commission on Gaming. Scott is also well-versed in the South Dakota legislative process, having coordinated legislative initiatives on behalf of the Attorney General's Office.

Scott earned his Bachelor of Arts degree, magna cum laude, from Mount Marty College in Yankton. He earned his Juris Doctor from the University of South Dakota School of Law where he served on the Board of Editors for the South Dakota Law Review.

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