Demystifying Farmers Market Risk and Being a Smart Insurance Shopper
Moderator: Jeff Cole

Jeff Cole

- Executive Director of the Federation of Massachusetts Farmers Markets
What makes farmers markets unique

Farmers

Consumers

Communities
Why Insurance?

- As farmers markets continue to grow in popularity, it becomes very important that they protect themselves from risk exposure.

- Without an insurance policy, vendors, market managers, and market sponsors are vulnerable to losing what they’ve worked so hard to nurture.
What are the risks?

Below are a few examples of the risks that farmers markets are exposed to:

• Food
• Market accidents
• Automotive accidents
• Board and management decisions
Why Does Insurance Matter?

• Liability for any market incident can easily be placed upon vendors, market managers, and even directors and officers of a market sponsor organization.

• Multiple parties can easily become involved in nearly any type of claim.

• Even if innocent of any wrongdoing, proving so still requires significant legal fees, which appropriate insurance policies will cover.
Avoid Emotional Decisions

Take the time **you** need to do your research.

It's best to pay more for a policy that provides adequate coverage, than to buy a cheaper policy that does not protect you from the risks you are exposed to while at market.
How: Review the Policy

Ask the agent questions—at least one, but often 3 or more whys!

Not all policies are the same.

Remember, some policies will provide adequate coverage, others will not.

Some insurance companies may not understand your exposure, or wish to provide the coverage that you need. If that is the case, find another insurance company to work with.
Presenters

Peter Kochenburger

- Executive Director of the Insurance Law Center,
  Director of Graduate Programs, and Associate Clinical Professor of Law at the University of Connecticut.
Melissa Kauffman
• Commercial Account Manager at Jester Insurance Services specializing in programs for non-profit organizations including social service agencies, museums, and historical societies.
Legal Aspects of Insurance

State laws vary on what you can be held legally responsible for.

Insurance companies are regulated by the states and not the federal government.

Every state has its own Insurance Department.

The National Association of Insurance Commissioners has links to every Department.

(www.naic.org)
Tort

A civil wrong arising from an act or failure to act, independently of any contract, for which an action for personal injury or property damages may be brought

Injuries that might occur at a farmers market:

- Unsecured tent blows away striking someone
- Misplaced basket causes someone to trip
- Sharp edge on a table results in a scrape
- Food poisoning
- Accidents in the parking area
Legal Aspects of Insurance

How does an insurance policy protect a market? A Vendor?

What are the differences between general liability and product liability?

Your Homeowners policy may not protect you from claims arising from the operation of a farmers market.
Legal Aspects of Insurance

Liability Insurance provides two major types of protections or benefits:

- Funds to pay settlements or verdicts (your insurance “limits”)
- Legal Fees. The insurance company will hire and pay for lawyers to defend its policyholders.
Insurance Can Cover Legal Fees

If a claim is brought against you, you will need to hire a lawyer to defend you. Even if you are not liable for the injury, legal fees and other costs can be extremely high.

Case Study: Years ago, a MA woman scraped her leg on a produce basket at a farmers market. The scrape required no medical attention, but the woman filed a claim against the market seeking $25,000 in damages. The MA market had an insurance policy that covered the claim and the cost of defense.

Moral of the story? You do not want to pay $25,000 out of pocket. Get an insurance policy.
Legal Costs

Even frivolous cases that are dismissed, still have legal fees, and sometimes it is worth paying a few thousand dollars to get out of a claim.

You will be responsible for paying those legal fees if you either do not have an insurance policy, or your insurance policy does not cover the type of claim that is being brought against you.

Remember, that if you do have liability insurance that covers a claim, your insurer will usually select the attorney to defend you and decide whether to settle or pay the claim.
Market Liability and Product Liability

Market Liability
• Typically covers claims that occur at market. The most common examples being an injury, such as a trip and fall, that occurs at the farmers market.

Product Liability
• Typically covers claims related to vendor’s products. The most common example may be food poisoning from eating food sold at market.

Farmers markets usually need insurance for both these risks and should confirm coverage with their agent or insurer.
Product Liability

Does a market need product liability insurance if their vendors all have product liability coverage?

Is the market liable for the vendors?
Liability and Negligence Theory

Claims may be brought against the market related to the negligence of the vendor, market manager, and/or other people involved in market.

Examples include:

- Improperly setting up tents
- Not vetting farmers properly
- Unsafe parking arrangements

Farmers markets can be sued even if the act causing the injury may have been caused by another party.
Ways to Protect Yourself “Hold Harmless Agreements”

- These types of agreements require another party to pay your costs in defending a claim that resulted from the negligence of the part “holding you harmless.”
- Often called “indemnification” agreements

Example
- A food vendor agrees to indemnify a farmers market if it is sued for food poisoning resulting from that vendor’s produce.
Ways to Protect Yourself Being Added as an “Additional Insured”

- An “Additional Insured” is a person or organization that enjoys the benefits of being insured under an insurance policy purchased by another entity.
- Requiring a party to have its own insurance and naming the Farmers Market as an additional insured can help ensure that a party agreeing to “indemnify” you (hold you harmless) will actually have the financial resources to live up to these obligations.
- Example: A farmers market is named an additional insured on a vendor’s liability policy
Protecting Others

- A farmers market may itself be asked by another party, such as the landowner where the market is held, to “indemnify” or hold that party “harmless.”
- Before agreeing to do so you need to check with your insurance agent or insurer in advance to make sure your insurance policy can cover these risks, or if there is an additional fee (premium) to do so.
Captive vs. Independent Agent

Captive Agent
  - An insurance agent who can only quote from the one insurance company he or she works for.

Independent Agent
  - An insurance agent who can quote from multiple companies.
What Does ‘Exposure’ Mean?

Exposure indicates all of the possible outcomes that could occur that would result in a claim being filed.

Examples at a farmers market include:

- Trip and fall
- Product being sold
- Potentially dangerous booth set ups (tents that could fall over, baskets with exposed wires, etc.)
Bodily Injury and Property Damage

Bodily Injury and Property Damage are two common types of claims that are brought against farmers markets.

Adequate coverage should protect from both of these types of claims.

Claims against the directors and officers of a farmers market (even those who are unpaid) are usually not covered by these policies, but by Directors’ and Officers’ insurance. This topic will be covered in a separate webinar on April 5th.
The Non-Profit Myth

Many people believe that the non-profits that sponsor farmers markets are unlikely to be sued just because they’re doing good things and are good people.

Don't believe it.

Non-profits can be sued, and even if the claim has no merit, it can be very expensive to cover legal fees without insurance.
Comparing Policies

What are you looking for in a policy?

Understand the exposure at your farmers market.

Search for a policy that adequately covers that exposure.

Example:

Do you use tents, but the policy does not cover "temporary structures?"
Be Honest When Shopping

There is the tendency to underreport the number of special events, customers, and other exposure factors in the hopes of then paying a smaller premium.

Inaccurate information might mean your insurance policy will not apply to certain claims when the risks were not adequately disclosed.

If inaccurate information is given on purpose to reduce the premiums the claim could possibly be denied due to fraud.
Underwriting Factors

Underwriters take into account a number of factors when determining rates.

- How many people shop at the market?
- How many days is your market operational?
- What types of products are sold at market?
- What are the average sales at a regularly-held market?
Contract Copies

If you are starting to work with a particular insurance company, try to get a copy of an insurance policy they have used for other farmers markets. Your agent can help you with this request.

It's imperative that you make sure the policy you are purchasing, will provide the coverage you need.
Coverage Limits

Per Occurrence Limit
- This limit covers the maximum amount of money the insurance company will pay to cover one occurrence.

- $1 million is a common per occurrence limit for farmers markets.

Annual Aggregate Limit
- This limit covers the maximum amount of money the insurance company will pay over the course of the policy period.

- $2 million is a common aggregate limit for farmers markets.
Timeline

When purchasing an insurance policy, it is best to start shopping for the policy 45 days before the policy is actually needed.

Budgeting enough time for yourself to shop for insurance will go a long way to making sure that you have adequate coverage for your market.
Q&A

We will now spend the rest of the webinar accepting questions from the audience.

Additional Resources
• Introduction to Insurance Tip Sheet
  • [Link](http://farmersmarketcoalition.org/resources/index2.php?option=com_resource&task=show_file&id=6214)
• Farmers Market Manager FAQs on Insurance: [Link](www.farmersmarketcoalition.org/managerfaq)
• Nonprofit Risk Management Center [Link](http://www.nonprofitrisk.org/)
Upcoming Insurance Webinars

- Producer Liability: Understanding & Communicating Vendors’ Risks & Insurance Needs (Feb. 14, 1 pm ET)
- Making the Most of Your Market Insurance Policy & Minimizing Liability Risk (March 8, 1 pm ET)
- Protecting Board Members & Learning the Nitty Gritty of Statewide Insurance Programs (April 5, 1 pm ET)

Members will receive registration information as each webinar opens up in the coming weeks.
Farmers markets are good for everyone.

Join us to make them even better!

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