

TRUCK VS. STOCK. WHO PAYS THE BILL?



TruckSure By Trevor Toohill

Ever had the misfortune to have collided with wandering stock?

Not a good experience for the animal that's for sure, but equally the cost to transport operators is pretty drastic. Consider; loss of use for time off the road, salvage time and costs, injuries, insurance excess, and loss of no claims bonus – just to mention a few of the expenses and inconveniences. Generally from a cause not in your control!

Back in the early 1970's when I was a rookie insurance area manager I was attending a stock sale in the King Country. I had just been given the job and along with it a brand new Austin 1300 with all the bells and whistles of the time. The boss threw the keys at me this particular morning and off I went up the Paraparas to Raetihi. I think there were about 34 miles on the clock when I left the office.

Reaching about the half way point at Fields Track a very large old ewe decided that my shiny green new car was a pretty good target and for no apparent reason known to me, leaped off the top of an embankment right on to the left mudguard and bonnet. No time to brake or take any evasive action – one minute clear roadway and the next a sheep beside me in the passenger's seat navigating my rallying efforts to avoid passing trees, fences and finally – the river!

That little 10 second adrenalin rush had a pretty profound outcome. The sheep paid the ultimate price. I missed my appointments and a bunch of new business.

Salvage took the best part of the day.

Repairs – nearly a write-off and took about a month to get back on the road.

My boss was 'disturbed', to put it mildly – although at least I was allowed to use his bright red Holden Belmont for my future forays into the rural backblocks. No more encounters with suicidal animals so just maybe sheep are not colour blind after all!

On today's values this little encounter would have been at least a \$30,000 loss. Who paid the bill?

Heart racing at about 180 beats and wondering what the hell had just happened I was not thinking to ask the sheep who let her out to wander, and even if she had a tag I would not have thought to check it. Big mistake – because even 40 years ago farmers were, and are still, responsible for damage to property, and even criminal liability, caused by their negligence with stock wandering on public roadways. All that I had to do was to determine ownership.

Efforts to determine ownership and establish liability are highly rewarding and would have resulted in the farmer's liability insurance policy being the source of funds to reimburse all expenses. So in my case my insurer paid the price of the repairs and my employer suffered the additional costs of policy excess and no claim bonus loss. No recovery!

How does this little story have any bearing on you as a transport operator?

Claims numbers for trucks having encounters with wandering stock are on the increase and certain areas in New Zealand show greater numbers of incidences than others. It is fairly clear that deteriorating boundary fencing, perhaps a flow-on from recessionary times, is the greatest factor.

I don't want to have a shot at our farming community but this problem has been around for years and generally carelessness and lack of maintenance have pretty much gone on unchecked for decades.

A couple of Acts of Parliament and various amendments along with local area by-laws are strong tools available for Truckies to assist in getting a recovery if you have the misfortune to run in to cattle or sheep whilst negotiating our challenging rural roading network.

Wandering stock – the law;

This liability is subject to some specific laws which deal with wandering stock.

The Impounding Act 1955 sets out the law relating to how and when wandering

stock can be impounded. A tool used very effectively by rural councils.

Animals Law Reform Act 1989 and amendments. Stock owners are liable for any damage caused by their stock wandering onto the road if the presence of the stock on the road is due to the owner's negligence, that is, where the owner has not taken reasonable care to prevent stock wandering, or to warn road users of the likely presence of stock.

The relevant considerations under the legislation are:

- the common practice in the area with regard to fencing and other measures taken to stop animals straying onto the road (such as cattle stops), and
- any measures taken to warn users of that road of the likely presence of animals on the road.

Crimes Act 1961, s145. - Criminal liability

An owner of stock can face criminal prosecution if he or she fails to take adequate steps to secure stock knowing that it will endanger the life, safety or health of the public if the stock escapes.

So, you have the tools, but why should you use them?

A bent chassis, wrecked suspension and the cab nearly a write-off can easily set your insurance company back with costs up to \$100,000. That is what you pay your insurance premium for – right? Yes that is right but you still have to cope with your truck off the road and you have excess and adverse claims history to now budget into your expenses.

Keep a camera in the cab, grab the animal's identity tags, attempt to establish ownership on the spot and if you can, try to see how the animal got on to the roadway.

Is it worth the effort? What is your driver's hourly pay compared to the cost of your excess and lost claims bonus? No contest.





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