

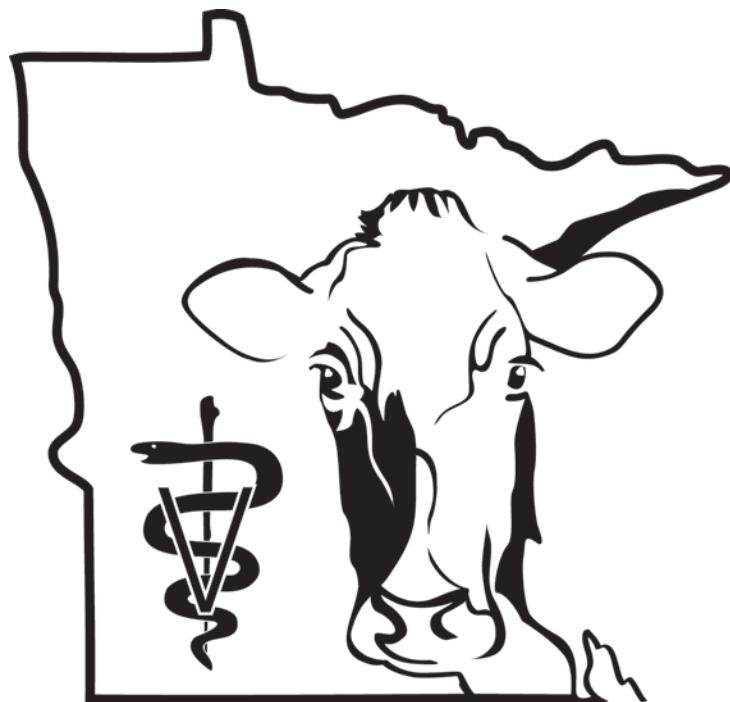
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Buyers Beware !

*True stories about the consequences of not protecting yourself
from buying replacement cattle with Johne's disease.*

Adapted from Hoard's Dairyman, March 10, 1994

*Some of the facts have been altered slightly
to protect the identity of the persons involved.*

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The young couple just starting in dairying. After years of saving their money a young Wisconsin couple decided to purchase a herd of registered Holsteins. They couldn't afford to purchase a farm, so they leased the farm on which the herd was raised and only bought the 46 cows and 32 heifers. A few months later, some of the cows developed diarrhea. Initially, cows that did not respond to treatment were simply sent to slaughter. The problem persisted and finally one of the cows with diarrhea was sent to a diagnostic laboratory to be necropsied. The report from the laboratory was the first time this couple had heard of Johne's disease. On advise from a University researcher, they had a blood test done on the remainder of the herd and discovered that the herd had a very significant *Mycobacterium paratuberculosis* (the cause of Johne's disease) infection rate, roughly 25% of the adults. They asked the seller of the herd for compensation.

The sale of the herd occurred after the Wisconsin Implied Warranty Law went into effect (see Hoard's Dairyman article February 25, 1992). There was no written statement on the bill of sale that the cows were not warranted free of Johne's disease. The law is very explicit and the liability seems clear. Litigation is in process but in the mean time, the young couple was evicted from the farm by the farm owner/seller of the herd and they have taken up jobs in the city. The herd was sold at auction for a fraction of their original price paid by the young couple.

The son who wanted to a show quality cow. This story begins on a family farm in Wisconsin milking 150 head of cows, many of which are registered Holsteins. The herd had been closed for many years. One of the sons who plans to continue dairying decided he wanted to invest in a show quality cow. So, he purchased a cow which I will call Effie (fictitious name) with good pedigree from a neighbor for \$5,000 in the summer of 1991 (one month after the Implied Warranty Law took effect). Effie was taken to several shows and did reasonably well. In the Fall of 1991 she had a bull calf. The calf was sold to another neighbor. Effie had a second calf in 1992 which died. After calving she developed diarrhea, went down in milk production and started losing weight. Johne's disease was not suspected at first because of the quality of the herd she came from and the fact it had never experienced Johne's disease. Eventually outside help was sought by the herd veterinarian and Effie was tested for Johne's disease. She was found positive both on a blood test and on fecal culture. She was killed and necropsied to verify the diagnosis and found to have very advanced disease.

Effie lived on the farm for over a year and a half before she was killed. She calved twice in the maternity pens on the farm and because she was not suspected to have any disease problems the pens

were not disinfected. So, she likely exposed calves and other cows on the farm to *M. paratuberculosis*. To assess if the farm had any evidence of the infection prior to purchase of Effie, all adult cattle in the herd 20 months and older were blood tested. The result was 100% negative, therefore, before buying Effie the herd was almost certainly Johne's disease-free. Now the owners must continue testing the entire herd annually to see if any of the replacements reared on the farm became infected by exposure to manure from Effie. There was also serious concerns about Effie's bull calf sold to a neighbor. The family did the responsible thing and offered to buy back the bull to avoid any possibility it might be *M. paratuberculosis* infected and so infect that farm. It will never be known if the bull calf was infected because it died from an accidental leg injury before it could be tested.

As in the first story, this Johne's disease cow was sold after the Implied Warranty Law went into effect and no statements were on the bill of sale regarding Johne's disease. Who is liable for the financial losses seems clear, but for how much the seller of Effie is liable for remains undecided. Needless to say the seller and buyer of Effie are not on friendly terms any longer.

The Wisconsin herd trying to improve genetics by purchase of superior cows. In late 1992 a breeder of registered Holsteins in Wisconsin bought a cow from a Canadian breeder for roughly \$18,000. Two months later the cow dropped dramatically in milk production and had loose manure. She was taken to a university veterinary hospital to determine the cause of the problem. Within a couple days the diagnosis of Johne's disease was made and the owner elected to have the cow necropsied at the veterinary school. The necropsy confirmed the diagnosis.

The sale of the animal was well after the Implied Warranty Law took effect, but there is some question as to exactly where the transaction took place. In Wisconsin, the Implied Warranty Law governs all cattle sales, but Canada it does not. Regardless, the owner has lost his \$18,000 and exposed his herd for a short time to Johne's disease.

Dairyman awarded \$3,291,000 after purchase of cattle from a herd with Johne's. February, 1996 a court in Alice, Texas awarded a small dairy farmer \$3.3 million in a law suit concerning sale of animals with Johne's disease. The seller dispersed 1800 head of cattle of which a small dairy farmer bought 65. The herd was known to have Johne's disease but no mention was made of this fact at the time of the sale. Three million dollars of the award was punitive damages.

On going stories. Situations like those described above continue to be repeated, though most cattle sellers are now aware of the Implied Warranty Law. This month a registered herd of dairy cattle is being dispersed (breed withheld intentionally). The herd has an excellent reputation for high quality cows and the owners are very reputable. Unfortunately, rather than test the herd for Johne's disease to demonstrate that the herd is Johne's disease-free, the owners have elected to do the same as other sellers and state on the sale catalog that the animals are not warranted free of Johne's disease. This is a common practice in Wisconsin today and not illogical from the seller's point of view. So far, most buyers are not offering premiums for Johne's-free cattle and testing for Johne's disease seems to raise suspicions among buyers.

Two breeders I know plan to attend this sale and purchase herd replacements. Both of these breeders have experienced the cost and frustration of combating Johne's disease. One of the potential buyers introduced Johne's disease to his herd by buying top quality heifers in the early 1970's. After discovering that these animals had Johne's disease in 1978 he stopped all sale of breeding stock, stopped buying herd replacements, and has successfully fought to control the infection. Today the herd is 100% fecal culture negative, but the cost of controlling Johne's disease and the lost revenues from sale of breeding stock has been enormous.

Veterinarians are sometimes included in law suits concerning sale of diseased animals. A case concerning a veterinarian and Johne's disease is in progress in Minnesota. A legal brief on potential liability of veterinarians was published in the journal of the American Veterinary Medical Association, January 1, 1995, pages 36-37.

What can be done. Wisconsin has been very progressive in trying to control Johne's disease. It is the only state to pass a law exempting Johne's disease test results from the state's open records law, and the only state to have a law explicitly placing the liability for sale of cattle infected with *M. paratuberculosis* on the sellers. This Implied Warranty Law is the best buyer's protection system I am aware of regarding Johne's disease. Still, it only works if buyers use it.

The past two decades of research on Johne's disease have produced several new laboratory tests for Johne's disease including three commercially licensed diagnostic kits. These tests are capable of detecting *M. paratuberculosis*-infected cattle before they show signs of the disease. By using these tests properly, cattle buyers can significantly reduce their risks of buying infected cattle. But, they must ask for, or insist on, having cattle or herds tested before they buy (see Hoard's Dairyman, September 19, 1992, page 619).

Most people realize there are many risks in buying cattle. However, certain risks are tolerable and others are not. For Johne's disease, the consequences of buying an infected animal go way beyond the value of the individual heifer or cow. Subclinically infected animals can live in a herd and spread the infection for years before the problem is recognized. Once the infection has spread in a herd it can take years and years to eliminate it (if it can be eliminated at all). Buying cattle may be like playing a game of chance, but I think buying cattle from herd without first seeing Johne's disease test results on the herd is more like playing Russian roulette than like playing the state lottery. You can lose in a big way.

From the buyer's point of view it only logical to buy cattle from herds tested for Johne's disease. The statement written on so many Wisconsin sale catalogs today: "*These animals are sold with no warranty they are free from Johne's disease*", should not be acceptable to the wise and cautious buyer. Buyers should more strongly voice their objection to this pat phrase and demand evidence that the animals they are investing in will not be the source of a chronic, economically devastating infectious disease for their herd. Buyers beware!