

Reducing Liability Through Strategic Risk Management Practices

During downtimes, a quick overview of insurance policies can help thwart trouble.

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Recent developments in the insurance industry, including pressures on carriers and the change in the broker relationship, make managing risk through insurance a complex issue. Recent losses due to natural disasters and other industry reverses have resulted in a tough market – both in terms of underwriting and claims handling.

The Businesses need to be aware of coverage restrictions, including the expansion of exclusions and other revisions in policy terms. They must also be aware of carrier's claims handling policies. This information is becoming increasingly critical, as policyholders are finding that their insurers are taking a harder line when it comes to paying claims.

Injury to persons or property are the usual risks managed through the purchase of insurance. Traditionally, first party policies (such as fire insurance) and general liability insurance were acquired for this purpose. First party coverage insures the company for loss or damage to property arising out of an occurrence. General liability insurance policies will normally provide the policyholder with defense and indemnity to claims brought by third parties against the owner for property damage or bodily injury as a result of an occurrence.

There are many types of claims that can be brought against a company as a result of the management's decisions that are typically not covered under a general liability policy. The types of risk claims that managers should address and likely are not covered under their general liability policies include

- Business interruption;
- Workplace violence;
- Terrorism;
- Sexual harassment, employee discipline, and termination;
- Losses caused by outside consultants or contractors; and
- Environmental claims including mold and silica, construction defects, and professional errors and omissions (by architects, engineers, accountants, attorneys – whether in- house or outside consultants).

Managers should consider either commercial liability insurance or umbrella or excess policies for their portfolios. **Commercial liability insurance** should be acquired for the facility and by all contractors and consultants who provide services to the facility. Coverage should apply on a primary, non-contributing basis in relation to any other insurance or self-insurance (primary or excess) available to the facility.

Coverage should not be limited to the vicarious liability of the supervisory role of any additional insured. There should be no cross liability exclusion and no contractor

limitation endorsement. Depending on a number of factors (including cost, scope of operations, risk assessment, etc.) the policy should not have a board pollution exclusion. In addition, the policy should not exclude claims arising out of employment-related practices.

Any **umbrella or excess liability insurance** over primary insurance provided to meet primary limits should offer coverage for bodily injury, personal injury, and property damage. Coverage should be broad and should include a drop down provision for liability not covered by primary policies but covered by the umbrella or excess policy. Coverage should be provided with defense costs payable in addition to policy limits. Coverage should have starting and ending dates concurrent with the underlying coverage.

Errors and omissions insurance should be considered covering liability for errors and omissions in the construction, operation, and management of the facility.

Worker's compensation liability coverage should provide worker's compensation statutory benefits as required by law. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation with respect to the company and the company's employees, officers, agents and consultants, Employers' liability coverage provided by such insurance can be scheduled under any primary or umbrella policy (previously described) to meet general liability insurance requirements.

Terrorism insurance is available, but any proposed policy should be carefully scrutinized by legal counsel who practices in the insurance coverage. This same admonition applies to workplace violence policies.

Environmental insurance products are now offered to cover some associated risks. Careful scrutiny of policy terms is necessary. Terms should be analyzed against the company's present and near future business operations.

Loss of business or business interruption as a result of an occurrence can be obtained through several of the aforementioned policies or as a separate policy. This type of coverage can be crucial to cover the company's losses in the event of a shutdown of the facility due to an accident that may have occurred on some other premises but yet causes business disruption.

All outsourcing agreements with consultants and contractors must have board indemnity agreements and specific insurance requirements that the contractor must meet as a condition to the agreement, The manager must require the contractor to provide the company not only with certificates of insurance evidencing that the insurance is bound, but also that the company is an additional insured under the policies. Furthermore, the manager must require that the policies themselves be produced, analyzed by legal counsel, and approved. The single greatest error made in the outsourcing of services is the failure to document the insurance requirements for the outside consultant/ contractor, and, in follow-up, that the policies acceptable to the company are, in fact, bound and in place. This failure results in countless new and expensive litigation every year.