



812 Best Practices for Managing a Risk Insurance Program

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Faculty Biographies

Arleigh V. Closser

Arleigh V. Closser is an assistant general counsel at General Dynamics Information Technology (GDIT) in Fairfax, Virginia. His responsibilities include assisting the General Dynamics Corporation's ("GD's") risk management department with various day-to-day risk management issues. Mr. Closser also provides counseling in various legal areas to certain businesses within GDIT, including government contracts, employment, commercial leases, intellectual property, and litigation issues.

Prior to the acquisition by GD of Anteon International Corporation, Mr. Closser assisted in the administration of Anteon's risk insurance program, including handling the periodic negotiation and renewal of various risk policies. Mr. Closser also worked as an associate in the Government Contracts Department at McKenna & Cuneo, LLC.

Mr. Closser currently serves as chair of the government contractors forum of ACC's Washington Metropolitan (WMACCA) Chapter.

Mr. Closser received his A.B. from Princeton University, and graduated from George Washington University's National Law Center.

Larry Nishnick

Larry W. Nishnick is the vice president legal affairs of Continuous Computing Corporation in San Diego. In this position, he leads global legal operations, has managed acquisitions of overseas technology companies, and has been instrumental in raising venture capital funding. Mr. Nishnick oversees international employment matters for approximately 400 employees throughout the company's worldwide operations in North America, Europe, China, India, Korea, and Japan.

Previously he was associate counsel at Cooley Godward LLP in the firm's securities and general counsel department serving as outside counsel to a broad range of technology clients ranging from start-up companies to well-established public companies. In this role, was also responsible for mergers and acquisitions-related negotiations, private and public capital-raising transactions, and other corporate-related matters.

Mr. Nishnick holds a B.A. from Washington & Jefferson College and a J.D. from the University of San Diego School of Law.

A. Peter Prinsen

Peter Prinsen is vice president and general counsel at The Graham Company, a commercial insurance broker and consultant headquartered in Philadelphia. He also works with The Graham Company's claims services department to maximize insurance coverage, aggressively handle claims, ensure accurate reserves and advise its insured's on coverage and claims matters.

Prior to joining The Graham Company, Mr. Prinsen practiced insurance coverage and defense litigation in the Philadelphia office of Duane, Morris.

He is actively involved in and serves on the board of SquashSmarts, a program that combines academic tutoring, squash instruction and monitoring of urban youth.

Mr. Prinsen graduated with honors at Penn State University, and Villanova Law School. He has received numerous awards in trial advocacy, including the International Academy of Trial Lawyers Award and the Lewis F. Powell Award for Excellence in Trial Advocacy.



Parties Involved in the Risk Management Process

- You – The Insured
 - From providing updated underwriting information through the pre-renewal meeting with your Broker, you should be involved and informed.
- Your Insurance Broker
 - The Broker's job is to manage timeframes and expectations, and to deliver outcomes and good coverage with financially capable insurers at a good price.



Parties Involved in the Risk Management Process – Continued

- The Insurance Company
 - The insurance company assumes the risk in the transaction. You pay premium now and the insurer pays losses later. The insurance company operates through underwriters, claims representatives and loss control representatives.
- Third Party Administrators
 - Some insurers allow you to “unbundle” the claims services from the payment of losses. A Third Party Administrator (TPA) would then adjust the claims for you.



Broker Selection

• Two Approaches:

• Beauty Contest

- You interview prospective brokers, evaluate their services/pricing and your needs, and select a broker to represent you in the insurance marketplace.
- **Benefits:** Ease of dealing with one broker in the underwriting process.
 - Highlights broker compensation issue
 - Insurance marketplace prefers single broker concept over multiple brokers representing an insured.
- **Downsides:** Competition may yield better pricing



Broker Selection – Continued

• Broker Competition

- You identify three or so brokers who are acceptable to you and assign insurance markets to them. Three proposals are presented.
- **Benefits:** Competition may yield best price
- **Downside:** Difficult to assess strengths/weaknesses of three different brokers/programs
 - Market assignments are imperfect (broker with best insurer relationship may not be assigned that insurer).



Performance Based Compensation

- Brokers are compensated based on performance & achieving milestones
- If milestones not achieved, % of compensation at risk
- Examples of Metrics
 - Meeting an agreed to timeline established for pre-renewal meetings, receiving quotes and binding coverage
 - Obtaining a minimum number of quotes
 - Maintaining members of the Broker team from year-to-year
 - Delivering the insurance binders timely after coverage selected



Broker Services

- In addition to the placement of the insurance, your insurance broker may provide:
 - Loss control services
 - Claims management services
 - Contract review (including sample insurance and indemnification language)



Broker Services - Continued

- Assist with establishing an Employee Screening Program
 - Substance abuse testing
 - Criminal background checks
 - Motor vehicle reports
 - Employee reference verification
 - Education/Professional credentials verification
- Review/Projection of workers' compensation modification factors
- Insurance reviews of acquisitions/divestitures
- Training



Coverage Analysis

- Understand your Insurance Coverages!
- Rely upon your broker to:
 - Identify your exposure to loss
 - Confirm what coverage is in place to cover those exposures
 - Identify what coverage is not in place to cover those exposures
 - Explain relationship between deductibles, sublimits, retentions, etc. and pricing
 - Explain the relationship between breadth of coverage and pricing



Renewal Process

- Pre-renewal meeting is critical
 - Usually at least 90 days prior to renewal
 - Address:
 - Go to markets or roll over
 - If marketing, identify markets
 - Discuss additional coverages, vendor/counsel selection, coverage terms, limits sought
 - Discuss expected pricing



Renewal Process - Continued

- Provide renewal information as soon as possible after requested
 - Marketing/Renewal process cannot begin without renewal information (expected payroll, sales, acquisition/divestiture activity, financials, updated property and vehicle schedules, etc.)



Renewal Process - Continued

- Information Collection
 - Timing of information collection:
 - ✦ a) for insurance applications and questions from interested carriers/underwriters;
 - ✦ b) audit requests for auditable policies
 - e.g., Workers Compensation (domestic and Defense Base Act).



Renewal Process - Continued

- Develop methodology for pulling together data from different departments and databases and consolidating such data in one report & establish deadlines
 - Example: an application for commercial “property” will require that you submit a “statement of values” for all leased or owned property. To successfully gather the required data, you likely will have to interface with several departments such as: a) Finance and Accounting (depreciation schedules); b) Facilities (current list of leased or owned facilities); c) Purchasing (list of leased and owned equipment with assigned locations); and d) Contracts (for contractually required property insurance for third party owned property).



Renewal Process - Continued

- Identify gaps in data early on and develop work-around strategies
 - use of estimates when hard data is unavailable.
 - Example: time spent “on ship” by workers for determining how much Longshore and Harbor Workers' Compensation Program workers comp. coverage is needed.
 - If necessary, form a team and rectify the situation
 - Example: database of employees has no workers compensation code assigned to each employee
 - » Fix: for application – assign codes to employees, and establish process for assignment of codes when new employees are hired.



Renewal Process - Continued

- Background:
 - Understand that the pricing for Workers' Compensation insurance is based on a system of classifying different workplace exposures into a system of codes, each one with a rate commensurate with the risk associated with that workplace exposure.
 - Bottom Line: reduce premium costs by avoiding misclassification of employees (e.g., an employee in the Facilities department who should have been classified as a clerical worker but is misclassified as performing building maintenance)



Renewal Process - Continued

- Example of Workers Compensation Audit information request:
 - ⌘ Provide payroll during time frame covered by the policy (e.g., 1.1.2005 to 1.1.2006) broken down by Workers Compensation Classification and State
 - ⌘ Please show Gross payroll per class and state and
 - ⌘ Please list officers, their title, state and wages separately.
 - ⌘ Please list exclusions separately:
 - Overtime (No overtime deduction in PA, DE, NV or UT)
 - Severance Pay
 - Third Party Sick Pay
 - Section 125 Benefits in California Only
 - Relocation Bonus
 - Auto Allowances
 - Stock Options
 - Nevada is limited to 36,000 per year per person
 - Vacation Pay in Oregon
 - Employees in "monopoly" jurisdictions that require you to procure workers compensation insurance exclusively from a state or territory fund: North Dakota, Ohio, Puerto Rico, the U.S. Virgin Islands, Washington, West Virginia, or Wyoming
 - Employees working overseas pursuant to certain government contracts (prime or subcontracts) who will be covered by a separate Defense Base Act policy.

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Renewal Process - Continued

- Reference:
 - ⌘ Workers Compensation Insurance
 - Most states use the National Council on Compensation Insurance (NCCI) classification regime for workers compensation insurance: see www.ncci.com.
 - Webpage for U.S. Dept. of Labor's Division of Longshore and Harbor Workers' Compensation Program: <http://www.dol.gov/esa/owcp/dlhwc/lstable.htm>.
 - Webpage for U.S. Dept. of Labor's Division Defense Base Act Page within the Longshore and Harbor Workers' Compensation Program: <http://www.dol.gov/esa/owcp/dlhwc/lbdba.htm>
 - ⌘ General
 - Risk Insurance Management Society, Inc.: <http://www.rims.org/>

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Renewal Process - Continued

- For companies with multiple subsidiaries, consider using a third party “web portal” to simplify information gathering process.
 - Example: www.exigis.net
 - Procedure: this web tool permits company’s risk manager to assign tasks, send our reminders, and consolidate information inputs from multiple sources.
 - Data providers must certify to accuracy of data provided.



Renewal Process - Continued

- Broker develops underwriting submission
 - Ask to see it!
 - Make sure you are favorably presented to the market
- Interested carriers request additional information/schedule loss control visits
 - Put your best foot forward!



Renewal Process - Continued

- Meeting with carrier's underwriters may or may not be advisable
 - Depends on line of coverage
 - Depends on whether underwriter has favorable/unfavorable view from outset
- Quotations obtained
- Brokers negotiate with carriers



Renewal Process - Continued

- Renewal proposal
 - Insist that it be in person
 - Insist that a detailed written proposal be delivered explaining the coverage/quotes and providing recommendations.
- Carrier Selection/Implementation



Relationships with Underwriters

- What do Underwriters do?
 - Underwriters identify and calculate the risk of loss from policyholders, establish appropriate premium rates, and write policies that cover this risk.
 - ⊖ If an underwriter under or overestimates a particular risk, he/she will either assess too much or not enough premium.



Relationships with Underwriters – Continued

- Consider face-to-face meetings early on in the renewal process with current or prospective underwriters.
 - Goal of meetings:
 - ⊖ Explain your company's business
 - Dispel misconceptions that an underwriter may have about your company's business
 - ⊖ Forge personal relationship with the underwriter



Relationships with Underwriters – Continued

- Periodically meet or confer with underwriters during the policy year
 - Report any issues that you may have with how the carrier is administering your policy
 - e.g. – WC Investigators proposing to record interviews with employees on WC claim based on allegation of stress induced by gender discrimination



Loss Control

- Features of a loss control program:
 - Auto-Policy
 - Establish system to check DMV records for all drivers of company vehicles, or sales personnel who spend a lot of time driving “on the job.”
 - Require drivers of heavy equipment or trucks to periodically attend appropriate training courses



Loss Control - Continued

- Features of a loss control program:
 - Workers Compensation
 - Appoint company "Safety Officer," even if your company consists solely of office workers
 - Important to have company-wide safety policy to spell out certain OSHA requirements (e.g., 29 C.F.R. 1904.39's requirement to report employee death or multiple hospitalizations to OSHA Area Office)



Loss Control - Continued

- Features of a loss control program:
 - Workers Compensation:
 - Loss Prevention vs. Loss Control
 - Former = elimination of work place hazards, management of hazardous materials, proper use of equipment, and employee safety training.
 - Latter = minimizing adverse physical and financial effects of accidents
 - » claims management, accident investigation, return to work, emergency response plans, and medical management



Loss Control - Continued

- Features of a loss control program:
 - Additional Workers Compensation Loss Prevention Strategies:
 - Obtain CEO/executive sponsorship of program
 - Tie safety performance of employees to incentive compensation of supervisors.
 - Ensure that WC claims are coded to a specific business unit so that claims costs flow to that unit and are not spread evenly across the company.
 - Impose disciplinary action against safety violators.



Loss Control - Continued

- Utilize loss control services available from your insurance broker.
 - Request that a loss control consultant visit a loss-prone site to make loss prevention recommendations.
 - Implement the recommendations.



Loss Control - Continued

- Reference:
 - **National Institute for Occupational Safety and Health**
www.cdc.gov/niosh.
 - **Occupational Safety and Health Administration**
www.osha.gov.
 - **National Safety Council** <http://www.nsc.org/>.
 - **List of state OSHA organizations:**
<http://www.osha.gov/fso/osp/index.html>.
 - **CDC's web page devoted to workplace safety and health:**
<http://www.cdc.gov/node.do/id/0900f3ec8000ec09>.



Claims Management

- Insurance carrier claims departments require oversight. Your broker should be able to provide that oversight for you to:
 - Negotiate claims handling procedures
 - Prior notification of settlements/reserve increases
 - Dedicated claims persons
 - Approved vendors/attorneys
 - Address insurance coverage issues
 - Manage the claims process
 - Monitor/Manage reserves
 - Ensure effective communication



Day-to-Day Management

- Designate personnel to manage risk
 - Combination of Facilities, Operations, HR, Legal, Finance
 - Different areas of coverage need oversight from different departments
 - D&O v. EPL v. P&C v. WC
 - Members should be familiar with policy terms
 - Should be limited number of parties managing actual claims
 - Helpful to have Claims Manager
- Most of inside counsel decisions are based on risk management.
 - Managing Risk Insurance is just a subset of our everyday roles & responsibilities