

AAPA Port Administration & Legal Issues Seminar

Risk & Exposure Clinic
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Scenario 1

- Port Police officers occasionally work off duty or contract jobs for others:
 - **Question #1 – Is there coverage for the port or its police officers for this type of exposure?**
 - **Question #2 – What kind of coverage would apply and how?**

Answer:

Police Professional and Workers Compensation coverages need to be addressed in this scenario.

Many Police Professional liability policies will exclude “moonlighting” activities, but you must read your policy. In this case, the insured's policy excluded coverage unless “exclusion does not apply to any departmentally approved activities” Thus coverage is afforded if approved by a representative of the port.

Workers Compensation is more of a grey area with no specific exclusion – unless a “designated workplace” exclusion exists. However, the employee may be acting outside their scope of employment and the port would not be responsible for their actions. Review definition of “employee”. Coverage may not exist for “a person whose employment is not in the usual course and scope of the employer’s business”. The responsibility to insure would lie with the entity directing the scope of the employment at the time.

Scenario 2

- Third party entity would like permission to dock a vessel at the port in case of an emergency situation, however, the entity is self insured and does not have the “required” coverage per port contracts:
 - **Question #1 – In the event of a loss, would the port be reimbursed for any property loss?**
 - **Question #2 – How can the port be sure not to assume liability for this type of risk?**

Answer:

If the Port agrees to allow this vessel to use their facilities in the case of an emergency such as an impending hurricane, without the security of insurance coverage as required, they need to secure a legally binding contractual agreement with the vessel owners holding them legally responsible for any property damage – including business interruption of the port – and liability due to damage caused by their vessel.

Scenario 3

- New and large tenant is disputing insurance coverage requirements in standard tenant contract of the port as unavailable or not commercially feasible:
 - **Question #1 – Is property coverages for catastrophic events reasonability available and affordable?**
 - **Question #2 – If not, should changes to the contract effect all required insurance policies?**

Answer:

First and foremost, review dispute with port counsel and your insurance broker

Depending on the type of catastrophe inherent to your area, coverage capacity and cost could very well be an issue. Request documentation from the tenant to substantiate the dispute and have them identify proposed alternatives. In some cases, larger corporations may have more then one location in the same proximity causing more exposure to the requirements of the port lease. In the event a type of coverage may be more difficult to obtain then others, any change to the lease requirements should not effect other required insurance coverage. Suggest any changes to the port's standard lease be on an appeal process at the time the tenant is experiencing difficulties.

Scenario 4

- The Port would like to hire an investment consultant to provide investment consulting services to the committee overseeing the Port's 401k plan:
 - **Question #1 – Can the firm be added as an additional insured on the Port's Fiduciary policy?**
 - **Question #2 – If not, what additional insurance coverage should the port ask the firm to provide?**

Answer:

As long as the consultant serves as a fiduciary to the benefit plans of the Port, the consultant will be covered under the Port's policy (provides coverage for all fiduciaries to the plan). There is usually no additional premium and no endorsement is required to provide this coverage. However, your insurance company should be notified of the additional exposure.

The Port should also required the consultant to have Professional Errors and Omissions coverage with a minimum of \$1,000,000 in limits.

Scenario 5

- Four employees of the port will be visiting with sister ports in Mexico, Venezuela and Costa Rica doing consulting work:
 - **Question #1 – What kinds of coverage should the port consider for these employees?**
 - **Question #2 – What if one of the employees stays in another country for an extended period of time?**

Answer:

Foreign package policies are available with the following coverages:

Foreign General Liability

Foreign Auto Liability

Foreign Worker Compensation – including Repatriation coverage

Domestic policies for General & Auto Liability will be unlikely to respond to suites brought overseas

Foreign Workers Compensation – Needed for overseas more than 90 days

Will need local Auto coverage to comply with local laws if the port owns a vehicle or hires local nationals as employees

Consider Kidnap & Ransom Coverage

Additional Risk Management Questions

- Port loses electrical power for five days. Is there property coverage if the cause of the loss was:
 - a. Non owned real property off premises – Business Income:
 - a. Peril: fire –loss of power likely covered – fixed location
 - b. Peril: wind – loss of power covered if off premises power loss including overhead transmission lines included Port loses electrical power for five days.
- 30% of a Port's revenues are generated by two local tenants. What kind of coverage is needed:
 - a. Contingent Business Interruption coverage can be negotiated with your insurance carrier. Determine possible length of shutdown to tenants and the financial impact.
- Ports Workers Compensation program includes a \$100,000 deductible/retention. Commissioners view this as excessive. How should a deductible/retention be determined?
 - a. Determine how much risk the port can handle financially & emotionally. Self insure the predictable and manageable losses which will lower premiums. Insure for severity not frequency

Questions?

Thank you!

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