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INSURANCE TRENDS AND LOSS MITIGATION STRATEGIES

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Disclaimer

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INSURANCE TRENDS AND LOSS MITIGATION STRATEGIES

Using the ACC Value Challenge and the Balanced Scorecard Approach in Insurance Recovery:

- The ACC Value Challenge is an initiative to reconnect the value and the cost of legal services.
- The ACC Value Challenge is based on the concept that law departments can use management practices that enhance the value of legal service spending, and that law firms can reduce their costs to corporate clients and still maintain strong profitability. The ACC Value Challenge promotes the adoption of management practices that allow all participants to achieve their key objectives.

ACC VALUE CHALLENGE ISSUES

- Aligning Relationships
- Value-based Fee Structures- i.e. not based exclusively on the “billable hours”
- Staffing and Training Practices
- Budgeting
- Project Management
- Process Improvement
- Use of Technology
- Data Management
- Knowledge Management
- Change Management

BALANCED SCORECARD

A balanced scorecard is a management process that:

- Aligns corporate strategy with strategy in operational and tactical units.
- Focuses the organization on objectives that enable the strategy to be implemented.
- Facilitates communications within organizations.
- Is the “process of processes” that oversees other management tools.

BALANCED SCORECARD AS APPLIED TO LEGAL SERVICES

- Assess the organization's needs and wants
- Formulate Strategy
- Communicate Strategy
- Formulate the Budget
- Develop the Operating Plan
- Execute Strategy
- Measure Performance

WHY ACC VALUE CHALLENGE WHY BALANCED SCORECARD

In the past ten years, costs to U.S. Companies went up 20%...except legal costs, which went up 75%.

Legal expenditures constituted .4% of GDP in 1978...and rose to 1.8% of GDP by 2003.

...also, “the disconnect.”

WHY ACC VALUE CHALLENGE? WHY BALANCED SCORECARD?

Response to surveys shows the following:

- 79% of clients' requested discounts.
- 71% say firms aren't responding to client business needs.
- 69% moved more work in-house.
- 55% reduced outside counsel spend (5% average reduction for 2010).
- 41% used fixed fees.

APPLICATION OF ACC VALUE CHALLENGE AND BALANCED SCORECARD APPROVAL TO RECOVERY OF LOSSES

- Due to environmental issues.
- Business interruption losses.

ENVIRONMENTAL LOSSES

Organization/Client Desires

Recover out of pocket costs for investigation and remediation of environmental problems.

Recover out of pocket costs from 3rd party claims.

Formulate Strategy

Use existing insurance policies
Acquire environmental policies (where appropriate).

ENVIRONMENTAL LOSSES USING BALANCED SCORECARD AND ACC VALUE CHALLENGE

Communicate Strategy

Develop recovery plan and budget and present to decision makers:

- Governing Boards
- CEOs
- CFOs
- GC
- Risk Management

Execute Strategy

Using operating plan with milestones and regular reporting.

Measure Performance

ROI: Recovery exceeds costs by agreed upon measure (3x; 4x, etc.).

OPERATING PLAN FOR ENVIRONMENTAL LOSSES

- Old insurance policies may cover today's problem:
 - Liability Insurance Policies (General, Umbrella, EIL, etc.).
 - Additional Insured Under Other Entity's Insurance Program.
- The policies in effect when the property damage occurred may provide coverage for liabilities imposed today.

OPERATING PLAN FOR ENVIRONMENTAL LOSSES

Potential Benefits:

- Defense pays defense of 3rd party claims.
- Also, may pay for investigation.
- Indemnity (pays settlements, judgments and clean-up costs).

Project Management for Operating Plan for Recovery of Environmental Losses

TASK:

Locate client's insurance policies

- In client's location
- With client's insurance broker
- With client's accountants
- With client's outside counsel
- With 3rd parties (Government, vendors; contractors)

ASSIGNED TO:

Paralegals/Junior Associates
with Insurance Archeology
experience

Project Management for Operating Plan for Recovery of Environmental Losses

TASK:

Develop litigation strategy as back-up. Choice of law provisions, ADR issues.

Proving Occurrence policy period.

ASSIGNED TO:

Senior Counsel, management team, broker, and experts

Experts, senior counsel, client and in house team

Project Management for Operating Plan for Environmental Losses

TASK:

Value claim

Discuss/Negotiate Settlement

Cost benefit of litigation

ASSIGNED TO:

Senior counsel, management team and experts

Senior Counsel, and management team

Senior Counsel, and management team

BUSINESS INTERRUPTION INSURANCE

- Business Interruption (Business Income) Insurance Part of Property Insurance (First Party Policy).
- Property Insurance Policies obligate insurance company to pay benefits for losses to policy holder's own property or profits.

BUSINESS INTERRUPTION INSURANCE

- Typical language for business income loss:

“We will pay for the actual loss of Business income you sustain due to the necessary suspension of your “operations” during the “period of restoration.” The suspension must be caused by direct physical loss of or damage to property....The loss or damage must be caused by or result from a Covered Cause of Loss.”

BUSINESS INTERRUPTION INSURANCE

- Business Income May be Defined to Include:
 - Net Income (net profit or loss before taxes).
 - That would have been earned or incurred.
 - Continuing normal operating expenses including payroll.

BUSINESS INTERRUPTION INSURANCE

□ Types of Coverage

“Business-interruption insurance” includes a number of coverages, including the following:

- **Business Income Coverage**. Designed to replace income that would otherwise have been earned by the business had no loss occurred. Business income is generally defined as the net profit or loss before taxes, plus continuing normal operating expenses, including payroll. This insurance definition contrasts with the accounting definition of net profit (or loss), which is the net profit after taxes.

BUSINESS INTERRUPTION INSURANCE

❑ Types of Coverage

- **Extra Expense Coverage**. Designed to pay for necessary expenses incurred during the period of restoration of the property because of the loss or damage to property at its original location, or at a temporary replacement location. Extra expense coverage may also include expenses that minimize the time your business is unable to operate or those costs necessary to repair or replace damaged property or valuable papers and records.

BUSINESS INTERRUPTION INSURANCE

□ Types of Coverage

- **Contingent Business Interruption Coverage**. Designed as an extension of coverage to cover loss of income incurred due to a property loss at key supplier or customer location.
- **Civil Authority Coverage**. Covers loss of business income and extra expense for a short time due to government's denial of access to property, due to a covered loss at a location owned by others. A waiting period may apply.

BUSINESS INTERRUPTION INSURANCE

□ Types of Coverage

- **Ingress/Egress Coverage**. Coverage may be provided for loss of business income and extra expense when you cannot gain access to your property for a reason other than government action.
- **Miscellaneous Related Coverages**. May include dust and debris removal coverage, event-cancellation coverage, valuable-papers coverage, and service-interruption coverage.

BUSINESS INTERRUPTION INSURANCE OPERATING PLAN/PROJECT MANAGEMENT

- ❑ SUBMIT THE CLAIM PURSUANT TO POLICY TERMS

TASK:

- Submit Proof of Loss
- Document Loss

ASSIGNED TO:

Financial Expert (Outside CPA or Company CPA), CFO and Coverage Attorney

Financial Expert, CFO, Coverage Attorney

BUSINESS INTERRUPTION INSURANCE PROJECT MANAGEMENT

TASK:

- Proof of Loss Checklist
- Policy Notice Provisions
- Policy Definitions
- Policy Exclusions
- Coverages
 - Contingent Business
 - Civil Authority
 - Ingress/Egress
 - Debris
 - Event Cancellation

ASSIGNED TO:

Associate Attorney
Associate Attorney
Associate Attorney
Associate Attorney
Associate Attorney
Associate Attorney
Associate Attorney
Associate Attorney
Associate Attorney

BUSINESS INTERRUPTION INSURANCE PROJECT MANAGEMENT

☐ Checklist

TASK:

- Coverages Continued
 - Valuable Papers
 - Service Interruption
 - Leader Property
- Investigative Reports (Internal)
- Investigative Reports (External: Civil Authorities)
- Photographs
- Employee Interviews
- Tax Returns (3 years)
- Income Statements (Loss year + 3 Years)

ASSIGNED TO:

Company and
Coverage Attorney

Company and
Coverage Attorney

Company and
Coverage Attorney

Company

Paralegal

Paralegal

Coverage Attorney

Company CPA

Company CPA

BUSINESS INTERRUPTION INSURANCE PROJECT MANAGEMENT

Checklist

TASK:

ASSIGNED TO:

- | | |
|--|-------------|
| ○ Balance Sheet (Loss Year + 3 Years) | CFO/Company |
| ○ Cash Flow Statements (Loss Year + 3 Years) | CFO/Company |
| ○ Any other revenue documentation | CFO/Company |
| ○ Budget Projections | CFO/Company |
| ○ Strategic Plans | CFO/Company |
| ○ Marketing Plans | CFO/Company |
| ○ Financial Forecasts | CFO/Company |
| ○ Expected Cost of Sales | CFO/Company |

CONCLUSION

Using the principles of ACC Value Challenge and Balanced Scorecard provides the following:

- Project management to mitigate loss through recovery from insurance
- Achieve client goals
- Provides certainty for cost of recovery plan
- Provides tools for objective measurement of plan
- Addresses the concern about cost of legal services and ROI
- Builds trust between client and their legal counsel



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