



**MARINE TERMINAL
MANAGEMENT TRAINING
PROGRAM**

**AAPA –Long Beach
September 16, 2015
2:00 p.m. – 3:00 p.m.**

Insurance Trends and Loss Mitigation Strategies



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Disclaimer

The views expressed by the participants in this program are not those of the participants' employers, their clients, or any other organization. The opinions expressed do not constitute legal advice, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

INTRODUCTION

- Loss Mitigation v. Loss Prevention
- Best Practices and Landmines to avoid

TODAY'S PRESENTATION

Loss Mitigation thru Risk Transfer

- Insurance (yours and others)
- Indemnity Agreements
- Contractual Agreements

Mitigating Loss thru Litigation Management

Best Practices Summary

LOSS MITIGATION

First step is identifying and quantifying the loss.

Example:

- Cyber Breach
- Business Interruption
- Employment Litigation
- Patent Litigation

LOSS MITIGATION AND IDENTIFYING THE LOSS

CYBER BREACH

Cyber Losses (First Party)

Network Damage

Loss of Data

Business Interruption

Customer Notification

Credit Monitoring

Public Relations

Cyber Extortion Payments

Cyber Liabilities (Third Party)

Data/Privacy Breach Lawsuits

Media Liability Lawsuits

Card Brand Liabilities

Regulatory Investigations by

Government Regulators

What's My Exposure?

- Calculating reliable exposure figures for data breaches has proven very difficult.
- Most common-quoted figure for the cost of a data breach is approximately \$200/record from the 2014 Cost of Data Breach Study conducted by the Ponemon Institute.

LOSS MITIGATION

IDENTIFYING THE LOSS

Business Interruption

- Lost Business Income
- Extra Expense
- What about Lost Market Position

Employment Litigation

- Exposure not always quantifiable (morale; precedent)
- Primary exposure not always damages to former employee (his/her attorneys fees).
- What about your fees?
- Your distractions?

LOSS MITIGATION PATENT LITIGATION

- Stakes are high
- Do you gamble on all or nothing?
- Or do you do a Licensing Agreement

LOSS MITIGATION TRANSFERRING THE RISK THROUGH INSURANCE

- Insurance is Risk Transfer through contract: Insurance Policy
- Devil is in the details

INSURANCE PUBLIC COMPANIES BUY

Third Party Liability Policies:

- Commercial General Liability
- Directors' & Officers' Liability (D & O)
- Errors & Omissions (E & O)

First Party Indemnity Policies:

- Crime
- Property

DEVIL IS IN THE DETAILS

Insuring agreement defines risk being transferred

Coverage Grant:

1. “All sums”
2. The insured is “legally liable to pay”
3. Due to “bodily injury” and “property damage”
4. Caused by an “occurrence”

DEVIL IS IN THE DETAILS

Limited by Definitions and Exclusions

Example:

- Pollution Exclusion (CGL Policy)
- Insured v. Insured Exclusion (D & O Policy)
- Notice within Policy Period (E & O)

LOSS MITIGATION DEVIL IS IN THE DETAILS

Policy limits: Do they cover the actual loss

- e.g. D & O Litigation

Defending the lawsuit

- Cost of defense within the limits?

e.g. E & O Litigation
D & O Litigation

LOSS MITIGATION DEVIL IS IN THE DETAILS

Choice of Counsel

- Does the insurance company decide
- Is policyholder entitled to independent counsel
- If reimbursement policy what about rates

LOSS MITIGATION DEVIL IS IN THE DETAILS

Controlling the Defense

- Company and Insurance Company interests collide
(e.g. The Fire Case)
(e.g. Construction Defect: Luxury condos)

LOSS MITIGATION INDEMNITY PROVISIONS

- Indemnity as Insurance
- Scope of indemnity needs to be defined and limited
- What is effect on insurance?
 - Is it other insurance?

LOSS MITIGATION INSURANCE

Using someone else's insurance to mitigate loss

- Thru additional insured endorsement
- Thru offensive use of insurance (when collectability in doubt)

LOSS MITIGATION INSURANCE

Using someone else's insurance

- Need internal controls and protocols essential
- Certificate of insurance alone not enough
- Whose policy is primary?
(e.g. Monorail example)

LOSS MITIGATION LITIGATION MANAGEMENT

Need carefully defined and understood litigation goals

- What is biggest risk?
- Damages Attorney Fees? Market Share?
- Choice of Counsel is Critical
- Must know and understand your business, your business plan and your outline
- Must be able to develop and follow a plan to achieve goal
- Must be able to identify and quantify risk
- Must be able to commit to deliverables, stay on budget and react swiftly to make changes

LOSS MITIGATION LITIGATION MANAGEMENT

- Early case assessment
- Regular status reports
- Update re milestones, deliverables, budget, and progress towards litigation goals
- Use project plan format to manage the case
- ROI consistently evaluated

LOSS MITIGATION LITIGATION MANAGEMENT ISSUES

- Over pleading
- Over discovery
- Personal attacks
- Mediation
- Arbitration

LOSS MITIGATION LITIGATION MANAGEMENT ISSUES

Designing litigation to meet client's needs

- Reducing cost—through technology e.g. depositions
- Alternative Litigation Paths (referral proceeding) expedited Summary Judgment

Alternative Fee Agreements

- Incentivize law firms to be more efficient, move faster and be more profitable

LOSS MITIGATION LITIGATION MANAGEMENT ISSUES

ISSUE

Identifying Risk

Insurance as Risk Transfer

All risks covered?

Gaps?

Choice of Counsel

Counsel rates

Adequate limits

Exclusions

Additional Insured Endorsement

BEST PRACTICE

Broker and Insurance Coverage
Lawyer

Broker and Insurance Lawyer

LOSS MITIGATION LITIGATION MANAGEMENT ISSUES

ISSUE

Notice and Renewal

Indemnity

Litigation Management

BEST PRACTICE

Use technology broker, insurance lawyer, risk management

Legal counsel re scope

Insurance lawyer re interplay with insurance

Require attorney to understand business model and culture

Require early case assessment; project management and skin in the game

Thank You

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