Tribal Risk Management 101: The Basics Every In-House Counsel Needs to Know

13th ANNUAL MICHIGAN STATE UNIVERSITY INDIGENOUS LAW CONFERENCE & TRIBAL IN-HOUSE COUNSEL ASSOCIATION LAW CONFERENCE

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Overview of Program

Introduction

Creating a Risk Management Program

- The Players and Their Roles
- Building the Program: The Building Blocks
- Building the Program: Case Studies/In-House Counsel's Perspective

Insurance

- Overview of Insurance Policies Most Tribes (Should) Have
- Navigating the Claims Process

Conclusion

- Final Tips and Takeaways

Introduction

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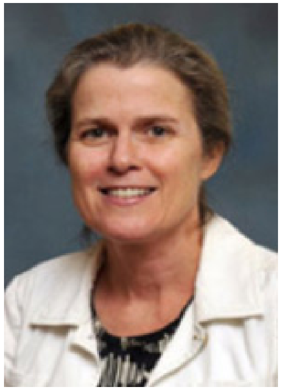

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Creating a Risk Management Program – The Players and Their Roles

Policyholder

- Risk Manager/Business Folks
- In-House Counsel
- Outside Counsel
  - Defense Counsel
  - Coverage Counsel

Insurance Broker or Insurance Agent

- What's the difference?

Insurance Carrier

- Underwriters
- Claims-Handlers

Third-Party Administrator

Creating a Risk Management Program – Building Blocks

<u>Risk Defined</u>

- ISO 31000 “the effect of uncertainty on objectives”

<u>Why Manage Risk?</u>

- Prioritization of Objectives
- Cohesive Plan Across Operating Verticals
- Professional Development of Existing Personnel
- Expertise & Dedication
- Stewardship & Accountability

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Creating a Risk Management Program – Building Blocks (continued)

Managing Risk

- Identify
- Assess
- Treat
- Repeat

Creating a Risk Management Program – Building Blocks (continued)

Architecting Tribal Risk Management

- Establish A Baseline
- Prioritize Objectives
- Create Blueprint
- Invest In Execution

Creating a Risk Management Program – Case Studies

In-House Counsel's Role

- Tribal Law Development
- Participation in Insurance Review
- Claims Processing

Tribal Law & Development

- Tribal Tort Law
- Tribal Occupational Safety and Health Act
- Tribal Food Safety Law
- Tribal Employment Rights Ordinance
- Tribal Workers Compensation Ordinance

Creating a Risk Management Program – Case Studies (continued)

- Insurance Review
  - Participate with Risk Management, Finance, Broker to review insurance needs and the program
  - Sovereign Immunity and Dispute Resolution
  - Interplay between Tribal Law (Damage Caps) and Insurance product
  - Use of In house Counsel for litigated claims
  - Choice of Defense Counsel
- Claims Processing
  - Work with Risk Management Group
  - Litigated Claims
    - Tribal Court v. State Court
    - Oversight or handling by In-house counsel
    - Review of Tribal Law Development

Insurance – First-Party v. Third-Party Insurance

First-Party Insurance	Third-Party Insurance
Protects against direct losses you suffer, including: - Damage to property you own or rent - Extra costs and lost revenues resulting from interruptions to your business as a result of covered property damage	Liability or lawsuit insurance Covers claims asserted by third parties for: (1) bodily injury; (2) property damage; or (3) personal injury Two general duties: - Duty to defend or to reimburse defense costs - Duty to indemnify

Insurance – Overview of Insurance Most Tribes (Should) Have

- General Liability
- Liquor Liability
- Auto Liability & Physical Damage
- Garagekeeper’s Legal & Valet
- Tribal Workers’ Compensation
- Employment Practices Liability
- Tribal Official’s E&O
- Medical Malpractice
- Other E&O
- Fiduciary
- Sexual Misconduct
- Crime
- Property
- Equipment Breakdown
- Cyber
- Pollution

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Filing an Insurance Claim: Immediate Concerns

Collect & review all potentially applicable policies

NOTICE, NOTICE, NOTICE . . .

Calendar & comply with policy deadlines & other conditions

Gather and preserve documents and other evidence

Communicate with your carrier

Attorney-client privilege concerns

Insurance – Property Insurance Claims Nuts and Bolts

Sworn Proof of Loss

Information Gathering
- Formal and informal

Causation Analysis
- Burden of proof
- Experts

Repair/Replace Decisions and Timeline

Loss Valuation
- ACV v. RCV

Get Paid!
- Advances and partial payments

Insurance – Liability Insurance Claims Nuts and Bolts

Occurrence-Based Coverage v. Claims-Made Coverage

Insurance Company Duties

- Duty to defend or to reimburse defense costs
- Duty to indemnify

Selection of Defense Counsel

- Who selects counsel?
- Billing rates

Litigation Management Guidelines

Insurance – Dispute Resolution Considerations

Where Can/Should I File a Dispute Resolution Proceeding?

- Arbitration clauses
- Appraisal clauses
- Choice-of-forum clauses

When Can/Should I File a Dispute Resolution Proceeding?

- “No action” clauses
- Contractual limitations periods

What Law Applies?

- Choice-of-law clauses

Conclusion (Good News -- It's Almost Time for Lunch!)

Final Pointers and Takeaways:

- Broker's Perspective

- In-House Counsel's Perspective

- Outside Counsel's Perspective