

WHAT YOU NEED TO KNOW WHEN APPLYING FOR OR RENEWING INSURANCE

A sophisticated practical guide to the legal and risk management considerations involved in assessing insurance needs, selecting an insurance agent, and obtaining insurance proposals for outdoor recreation, or outdoor education and social service organizations

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What You Will Know After Taking This Class

1. Understand what insurance is, the insurance industry lingo and who you will speak to at an insurance company
2. Know the basic insurance coverage available and understand the purpose of some commonly misunderstood coverage
3. Know how to find an insurance agent/broker/consultant and what questions to ask them
4. Know How to Analyze and Assess Your Exposure to Loss
5. Know how to prepare an effective insurance submission based upon your analysis

Three Tangible Action Items

1. Assess my organization's insurance needs based upon an analysis of exposure to loss
2. Organize my organization's insurance underwriting information for use in highly effective renewal or new insurance submissions
3. Contact my attorney, accountant and/or insurance agent/broker/consultant about any previously uninsured exposures discovered through my risk analysis

WHAT IS AN INSURANCE COMPANY?

- An insurance company charges a premium based upon actuarial projections and the law of large numbers that will enable it to pay future claims to its policyholders in accordance with the terms of an insurance contract between the policyholder and the insurance company.
- Insurance is not similar to gambling in that it is based upon certainty predicted by statistics, the law of large numbers and the insurance contract and protects against risk of loss by transferring risk from the policyholder to the insurance company – gambling is risky!

What is an Insurance Company? (Cont.)

- **Insurance Companies:** Divided into two broad classes: **admitted** and **non-admitted** (lesser degree of regulation)
- **Admitted** insurers are audited by the state and must maintain a healthy level of policyholder surplus to pay their claims
- **Admitted** insurers in almost all states pay a tax into the fund for insolvent insurers that pays claims in the rare case of insurance companies that have gone into liquidation (e.g. Colorado Western).
- **Admitted** insurers must use rates and policy forms that are approved for use by state regulators who also are charged with protecting insurance consumers

The Insurance Company Side

- **Wholesaler:** An insurance broker who sells insurance to other insurance brokers, often through excess and surplus lines markets
- **State Department of Insurance:** State agency chartered to regulate the insurance industry and protect consumers of insurance
- **Non-admitted Insurer:** In terms of the degree of regulation by the state, insurance companies are separated into two major categories, admitted insurers that are under the direct supervision of the state regulators, and non-admitted insurers that are not

Some Considerations for Using Non-admitted Insurers

- **Non-admitted** insurers do not have to file their forms and rates with state regulators, so easier to create policy forms and rates for outdoor recreation risks
- Many healthy insurance groups have member companies that are admitted companies, and others that are **non-admitted** depending on their underwriting goals
- **Non-admitted** insurers do not pay a tax into the guarantee fund for insolvent insurers in most states, so policyholders are not eligible for these funds in the event of insurer insolvency
- Due to the lesser degree of state regulation, policyholders would have less recourse through the state in the event of a dispute with the **non-admitted** insurance company.
- **Non-admitted** insurers are not audited by the state, but file their financials for the privilege of operating as licensed non-admitted insurers

Who Will You Speak to at an Insurance Company?

- **Insurance Company Loss Control Engineers/Inspection Service Representatives:** They will contact you to set up an inspection and review your operations and loss control procedures, usually in person, sometimes over the phone
- **Insurance Company Auditors:** Primarily for policies where premium is adjusted after the policy expires. Sometimes they audit in person at your office, sometimes you will send a “voluntary” report of exposure requested by the audit department.
- **Claims Representatives:** Sometimes you will speak to an inside adjustor at the insurance company office, sometimes a field adjustor.
- **Third Party Contractors:** Insurance company sometimes hires a third party for these functions –
- **NEVER call an insurance underwriter directly!** Always work through your insurance agent or broker!

Wilderness Risk Management Consultants

- **Risk Management Consultant:** A business consultant specializing in outdoors organizations
- **Audits:** A risk management consultant can audit your operations to determine how you can improve risk management, then recommend a plan of action to implement their recommendations
- **Insurance Company Loss Control Recommendations:** Insurance company loss control engineers or inspection services sometimes come up with risk management recommendations. An independent **Risk Management Consultant** you hire can represent you and come up with the most cost effective implementation of the recommendations or represent you in deciding which recommendations must be implemented

Outdoors Insurance Mechanisms in the Marketplace

- **Risk Purchasing Group Manager:** *Risk Purchasing Groups* Enabled under the Risk Retention Act of 1986 to help doctors find affordable malpractice coverage through the power of large groups of similar risks Examples of outdoors RPGs are WOGA, K&K and Veracity.
- Unregulated for the most part and policy is regulated as any other insurance company for the purposes of the insurance laws and regulation.
- A **Risk Purchasing Group Underwriter** is contracted with the insurance company to underwrite policies, and the program is administered by a **Risk Purchasing Group Manager**, who often administers several *master policies* within a single *risk purchasing group*

Outdoors Insurance Mechanisms (Cont.)

- **Risk Retention Group:** Also enabled by the Risk Retention Act of 1986, and similar in purpose to Risk Purchasing Groups
- They act like insurance companies for their members and take in premiums/pay out claims with the policyholder money. Examples of Risk Retention Groups would be Evergreen Insurance or Association for Nonprofits in Insurance.
- They sometimes hire an insurance company to front for them by providing the policy forms and services
- They are managed by a Risk Retention Group Manager
- Note: Some Risk Retention Groups have entered runoff in the past 10 years, so careful research selection is required, best done through an insurance professional.

Working With Insurance Professionals



What Do These Terms Mean?

- **Agent:** A representative of one or many insurance companies
- **Broker:** Can be an agent of the insurance companies or of the policyholder – generally larger/more sophisticated than an agent
- **Managing General Agent:** Contracts to manage underwriting for all agents or brokers doing business with an insurance company – they represent the insurance company
- **Insurance Consultant:** An insurance expert who will perform the work of selecting an insurance agent or insurance program and will send it out for bids. Insurance consultants will also provide other insurance administrative services
- **Surplus Lines Broker:** A broker licensed to deal with non-admitted markets – required to know financial health of insurers

What to Look For in an Insurance Professional

- What is the role of your agent, broker or insurance consultant?
- Access to competitive and appropriate insurance markets
- Experience and expertise within your operating plan and activities
- Above board, good communication and honest
- Detail oriented
- Good preparation

Where To Find An Insurance Professional

- Friends who are insurance agents or brokers with experience or expertise insuring outdoor recreation or outdoor education risks
- Associations that receive feedback from their members on various brokers & agents
- Speak to friendly competitors in the business or leaders you know in the industry to see who they are using and whether they are happy with the service provided
- Dedicated insurance specialists familiar with insuring your outdoor operations
- Considerations for size of agency/brokerage firm or its outdoor activity division
- Internet search – must assess experience and expertise

How Open Should I Be About Past Problems/Current Finances/Insurance?

- **Always be open about your past insurance premium history, claim history, insurers and insurance companies.**
- It may seem counterintuitive to some, but this will work to your advantage.
- On balance, you will gain the confidence of the insurance company underwriter, who is trying to obtain the best pricing and broadest coverage for your agent
- Mention any issues you have had with your past insurance programs or companies, and past agents/brokers/risk managers
- Always be truthful about past exposure (gross receipts, participant days, etc.) and also include separate projections for the coming year, if changes are expected.
- When obtaining insurance for a new operation, ***always use the low end of your user day and revenue projections!*** This is subject to economic and weather conditions, catastrophic events, competition and issues with business partnerships or leases.

What Questions Should I Ask An Insurance Professional?

- Will you be representing us, or are you representing an insurance company or program as underwriting manager or managing general agent?
- Do you disclose your remuneration (commission) from the insurance company?
- Are you qualified to work with us and are you interested in representing us?
- How do you envision our insurance program for the coming year?

More Detailed Follow Up Questions

- Do you think we need to add or remove any coverage from our existing program, or revise any of our limits of liability?
- Which insurance programs or insurance companies would be a good fit for our operations?
- Which insurance company or companies will you be sending the submission to? Why?
- Do you have a sense of what the cost and coverage alternatives may be
- If your first choice does not work, what are the alternatives?

OK, I'm Ready to Have you Help Us!

- What do you need to obtain an insurance quotation?
- What is your experience with or knowledge of the insurance companies we are applying to?
- What is the A./M. Best's financial strength rating of the companies we are applying to?
- ***If you feel it is important to send your submission to more than one broker or agent for a competitive quotation, make sure you know the insurance markets and control where each broker/agent is sending your submission!***
- ***Insurance companies will not release different quotations to several agents – and may refuse to release one if they receive submissions from more than one agent!***

Brief Overview of Insurance Coverage for Outdoor Organizations

- **Liability Insurance**
- **Workers' Compensation Insurance**
- **Commercial Automobile Insurance**
- **Umbrella or Excess Liability Insurance**
- **Foreign Package and Tour Operator Insurance**
- **Crime Insurance & Surety Bonds**
- **Property Insurance**
- **Employee Benefits**

Liability Insurance

- Commercial General Liability Insurance
 - Standard Commercial General Liability Policies
 - Abuse & Molestation Coverage
 - Contractual Liability
 - Additional Insureds
 - Reputational Risk/Crisis Management Coverage



Coverage Excluded By A Commercial General Liability Policy and Commonly Found on a Separate Policy

- Directors & Officers Liability Policy
- Employment Practices Liability
- Professional Errors & Omissions Liability
- CyberRisk Coverage
- **NOTE: Essentially the same persons and entities are covered by these policies and by a Commercial General Liability Policy, but each policy covers claims arising out of discretely different types of allegations.**

Commercial Automobile Insurance

- **Non-owned Automobile Liability**
 - For employee use of personal vehicles in business
- **Hired/Borrowed Automobile Liability**
 - For Rentals or Borrowed Vehicles
 - Can be extended to cover damage to vehicles
- **Commercial Automobile Coverage on Owned or Leased Vehicles**
 - Pay Attention to Commercial Automobile Policy Coverage “Symbols”

Miscellaneous Coverages

- **AD&D/ Accident Medical Expense Policies**
- **Emergency evacuation/rescue insurance**
- **Kidnap & Ransom Insurance**
- **Client-purchased travel insurance (e.g. Travelguard)**



Workers' Compensation

- State law governs
- Both W-2 Employees and 1099 staff may be subject to law and charged for by insurance carrier
- If unsure of coverage or classification determination by insurance carrier, have your insurance broker/agent/consultant contact the state workers' compensation board or appropriate rating board (that is their job!)



Umbrella Liability & Excess Liability

- Increases your limits of liability per occurrence and aggregate
- Excess Automobile coverage does not contain an aggregate
- Rarely increases or enhances your coverage
- Often less expensive through your primary insurer



Foreign Coverage

- Foreign Package Policies
- Tour Operator Liability Policies
- Kidnap & Ransom Insurance
- Foreign Voluntary Compensation & Employers' Liability
- Group Accident/Medical Expense Policies

Crime Insurance

- Employee Dishonesty & Depositor Forgery
- Theft of Money & Securities
- Computer Theft
- Surety Bonds:
 - License Bonds
 - Bid/Performance/Payment Bonds



Property Insurance

- Business Personal Property
- Real Property
- Property in Course of Renovation or Construction



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Inland Marine Insurance

- Moveable equipment (e.g. boats, tents, bicycles, radios)
- Computer or other electronic equipment
- Portable climbing walls and trailers
- Communication towers & other “instrumentalities of communication”
- Bridges & other “instrumentalities of transportation”



Employee Benefits

- Statutory Coverage (e.g. Statutory Disability Insurance)
- Group Health Insurance
- Group Disability Insurance
- Group Travel Accident Insurance
- Evacuation/Rescue Insurance



HOW TO ANALYZE AND ASSESS YOUR EXPOSURE TO INSURABLE RISK



Preparation for Discussion of Your Insurance Needs With Others

- Financials
 - Obtain your latest available financials
 - If nonprofit, you may work from your most recent Form 990



Relevant Information From Financials

- Include a projection for the coming year
 - The gross receipts broken down by activity (discussed later)
 - Projected user days broken down by activity (discussed later)
 - Schedule of real and personal property/assets from balance sheet
 - Identify property that may be insurable and you wish to insure
 - Remember that small items (e.g. kayaks) may be easily replaceable, if lost, but not if many are stolen or lost in a fire while stored in one place
 - Look at your cash flow and resources when arriving at a deductible
 - Don't forget about time element coverage that occurs after a loss – look at your cash flow and earnings over time and how affected by a claim
 - If you have rental vehicle costs, look at cost of insurance from rental agency vs. adding hired auto coverage

Relevant Information From Financials (Continued)

- If you use staff paid on 1099s, are they declared as payroll on your workers' compensation policy?
- If you use staff paid on 1099s, are you/they covered on your Liability Policies?
- Identify all contractors paid and whether you have certificates of insurance from them for appropriate coverage

Relevant Information From Financials (Continued)

- Identify all mortgagees/lenders and make sure you have included their interest as required by mortgage/lease
- Identify all leases of premises and review insurance requirements for compliance
- Identify any sources of income from joint ventures or event sponsorships

Preparation for Discussion of Your Insurance Needs With Others (Cont.)

- Additional Documentation for Workers' Compensation
 - Most recent policy declarations
 - Copy of most recent experience modification or retrospective rating
 - Copy of most recent policy audit adjustment
 - Most recent quarterly Form 941

Preparation for Discussion of Your Insurance Needs With Others (Cont.)

- Hard copy loss runs
 - Request hard copy loss history from all insurers for past 5 years
 - Include a narrative for all claims with detailed description
 - Be prepared to explain what you have done to prevent a recurrence
 - Obtain current updated status for all significant open claims
 - If new entity with no prior insurance experience, insurers will often accept a “no loss letter”
- NOTE: If renewing with same insurer, good idea to request loss runs for your records and to ask for status update on significant open claims

Preparation For Discussion of Your Insurance Needs With Others (Continued)

- Significant Prior Claims History
 - If you have brought in a risk management consultant, include a copy of their initial report, your response and their final report
 - Detail steps taken to prevent a recurrence of the claim
 - If notice of non-renewal issued by insurance carrier, ask insurance broker/agent/consultant to find out whether insurer willing to renew with increase based on operational changes implemented
 - You may have to obtain competitive proposals from your insurance broker/agent/consultant

Risks Involving Challenge Courses

- Include a recent inspection report by a qualified vendor
- If no recent report available, indicate date to be performed and name of firm to perform inspection
- Consult your insurance broker/agent/consultant and attorney when planning a challenge course or zip line that will be facilitated by a third party



Copy of All Contracts

- Consult your attorney when reviewing contracts
- Your contracts are an important tool for the insurance underwriter in understanding how you operate
- The wording in contracts can affect the insurance company's exposure to loss after a claim

Insurance broker/agent/consultant Review of Draft and Final Contracts

- When applying for insurance, let your insurance broker/agent/consultant know about all contracts
- Always have your insurance broker/agent/consultant review a contract *from an insurance standpoint* **before** you sign it to avoid problems afterwards.
- When sending a contract to your insurance broker/agent/consultant for review, send the **entire contract or permit**, not just the part entitled “Insurance”
- Your insurance broker/agent is normally not billing you when reviewing a contract, so please give them appropriate time for analysis and recommendations, if any

Insurance Considerations in Contract Negotiation

- Some contracts may require negotiation between the insurer and the party you are entering into a contract with.
- Your insurance broker/agent/consultant is experienced negotiating insurance requirements
- Your insurance broker/agent/consultant is trained to understand the legal meaning of language in the insurance contract, so you and your attorney should listen carefully to their input
- However, only your attorney is qualified to recommend the language used in the final contract.

Considerations for Participant Agreements

- Some insurance programs will insist you use their participant agreement verbatim
- Others supply a template with wording they ask you to incorporate into your agreement
- Some only require that you use a participant agreement, as long as it has been reviewed/approved by an attorney
- Almost all will allow you to use an Assumption of Risk Form (minus the release of liability and without mention of negligence) only when operating under government permits that require it. Supply a copy of your Assumption of Risk Form to the underwriter, along with a copy of the permit, **for each permit that requires it.**

Considerations for Participant Agreements (Continued)

- **Always** have a qualified attorney versed in outdoor recreation law review your participant agreement before use (e.g. the attorneys presenting at the WRMC!)
- If possible, use an attorney familiar with the laws of the state(s) where you operate
- **Avoid** attorneys you know who do not have experience with outdoor recreation law! You will often end up with a participant agreement that works in commercial transactions, but not for outdoor recreation activities.
- **Do Not** use a template from an insurance underwriter or the internet without first having it reviewed by a qualified attorney!

Typical Types of Contracts Entered Into by Outdoors Organizations

- Participant Agreements/Medical Information Release
- Land Managers
- Business Partners
- Employees
- Clients
- Landlords
- Destination Management Companies
- Ground Transportation Suppliers
- Contracted Guides & Outfitters
- Vendors of Services
- Sponsors
- Associations or Certification & Standards Organizations

Independent Contractors & Joint Ventures

- The term *Independent contractors* is often used very loosely to refer to *persons paid on a 1099* – be careful when using this term with an insurance professional! It has significant insurance implications for liability and workers' compensation insurance
- *Persons you direct and control in their work for you may sometimes be considered an employee, even when you pay them on a 1099 – ask an attorney, accountant and insurance professional!*
- ***Outdoor recreation liability Insurance generally cannot be shared with business partners or independent contractors!***
- **Insurance is underwritten for your organization – no other**
- ***Very few insurers are willing to add coverage for your independent contractors or friendly operators who need insurance for a short period of time – ask your insurance agent!***

Obtaining Proper Insurance From Subcontractors

- Ask your insurance agent/broker/consultant to give you a list of insurance requirements for subcontractors.
- They should have a punch list that they can adapt to any client who works with subcontractors
- When obtaining certificates of insurance from contractors, always have them reviewed by your insurance agent/broker/consultant before accepting them!
- We see **many** inadequate or sloppy certificates of insurance that potentially expose your organization to liability

Wording When Requesting Certificates of Insurance To Protect Your Staff & Board

- When adding your organization as additional insured, make sure you include the ***business entity or entities, its directors, officers, members if an LLC, volunteers, committee members if nonprofit, and employees***. Adding “agents” is a gray area, and depends on the relationship and circumstances. Consult your agent/broker/consultant and attorney regarding this.
- Make sure that the certificate of insurance specifically refers to the activities guided by the contractor, location and dates (if for a specific event or trip)
- Make sure the certificate of insurance refers to automobile insurance, umbrella liability insurance, accident insurance and workers’ compensation insurance, where applicable

Beware: Insurance Follows Contract!

- Certificates of insurance generally follow the insurance requirements of a contract, so read any contract carefully before entering into an agreement, and have it reviewed by your insurance agent/broker/consultant from an insurance standpoint **before** you sign it!
- Many insurance underwriters will insist that you include a hold harmless (release) and indemnification clause in all contracts to protect your interest

Staff Paid on a 1099

- Employment relationships with staff paid on a 1099 are complicated! Consult your attorney, accountant and insurance agent/broker/consultant before you make a decision on how to structure your staff, and how to handle workers' state compensation laws
- It is important to note that **1099 relationships are subject to tax law, workers' compensation law, and the insurance company's underwriting guidelines and policy form, as well as the requirements of your business partners and land managers.** This is a complex area of the law with many gray areas.
- Send any employment contracts for 1099 workers to your insurance broker/agent/consultant for review. It may have liability insurance implications.

Land Use Permits

- Send the entire permit to your insurance broker/agent/consultant for a review from an insurance standpoint so they can comply with the insurance requirements and advise you of any coverage gaps
- Some permit administrators will ask for a copy of your entire policy when they first grant a permit. This is normal procedure and you should have your insurance broker/agent/consultant comply with their request.
- Some permit administrators will ask for a copy of the policy endorsement adding the land manager to your policy, which may require lead time for issuance by the insurance company

Permit Sharing

- Permit sharing is a complex subject. You should consult your land manager, attorney and insurance broker/agent/consultant before entering into any agreement. They should be able to advise you on how best to structure your arrangement and what to require of your guest organization. Considerations often include both liability and workers' compensation issues.
- Your insurance broker/agent/consultant should be a partner in negotiating permits or concession agreements. They will know what the insurance company will accept from an underwriting standpoint or can often work with the underwriter to negotiate a common ground with the permittor, or replace insurance coverage in another insurance company that can accommodate the requirements.

Considerations for Facilities Ownership

- For those owning or leasing a facility, pay careful attention when entering into contracts for facility rental, festival vendors or sponsorship, maintenance of premises, renovation or new construction
- As noted previously, ask your insurance broker/agent/consultant to provide a punch list of insurance requirements you can use for each situation. Make sure you include insurance required by landlords/land managers
- When sponsoring a festival or event, use a vendor contract for all vendors
- A vendor agreement should be required of both non-profit organizations and for-profit organizations
- Ask your insurance broker/agent/consultant and attorney to help you come up with a workable vendor agreement and insurance requirement for vendors

Festivals and Races

- You may need a separate policy or an endorsement for a festival, race, or other special event. ***Ask your insurance broker while you are planning the event!***
- If the festival is held on land you lease or rent, make sure the insurance requirements or your lease or rental agreement flow to your requirements for those renting your facility or vendors at the festival or event.
- Make sure renters provide evidence of liquor legal liability coverage if alcohol will be served
- Have your attorney review all vendor contracts for **insurance and hold harmless/indemnification provisions**

Miscellaneous Items To Watch

- When running fundraisers or events, make sure all caterers or servers of alcohol name you on their insurance, caters for bodily injury, property damage, property damage legal liability and products liability and bartenders for liquor legal liability.
- For trail organizations or land trusts, monitored easements should take a highly discounted rate, but are charged for in the premium
- For trail organizations, associations with a mountaineering section cannot be insulated – you must include coverage for it in your master liability policy or in a separate specified activity general liability policy

Considerations For Foreign Trips

- Are your staff accompanying trip? Liability could be covered on policy covering domestic operations, ask your agent/broker!
- *Participant Liability Coverage – Watch for Exclusions!*
- Foreign Voluntary Workers' Compensation/Employers' Liability
- Foreign Non-owned/Hired Automobile Liability
 - Selection of carrier risk & hired/borrowed auto physical damage
- Certificates of insurance naming your organization on ground transportation provider policy
- Destination Management Companies or Business Partners
 - Local availability of insurance
 - Contracts
 - Due diligence in selecting DMCs
 - Certificates of insurance naming your organization on DMC's policy

How Do Insurance Underwriters Use Your Risk Management Plan?

- Insurance companies need a handle on quantifying exposure to a claim
- May not make sense to you, but makes sense to actuaries
 - user days
 - camper days
 - gross receipts
 - number of horses
 - acreage of conservation lands or easements
 - cost of construction work
 - area of offices or buildings
 - number of faculty

How Do Insurance Underwriters Use Your Risk Management Plan (continued)

- Ross Cloutier and Matrix of Risk Mgmt Credits & Debits
- Survey of Activities & Operations
- Criteria for employees for each activity
- Medical and Professional Certifications
- Rates determined for each discretely different activity
- For some activities (e.g. paddling) different rates within each for the level of risk (e.g. class of water paddled)
- Work with a qualified **risk management consultant** when developing a risk management plan to maximize credits



Outdoors Insurance Trends 2013

- Liability Rates have increased an average of 3-10% in 2013 in most insurance programs
- The increases accelerated toward the end of the summer
- It appears that the trend may ease up in 2014, but too early to tell
- With the “hard” market, certain coverage on more unusual outdoor activities has been more difficult to obtain through standard channels
- Insurance companies have been culling accounts with significant claim history
- Many workers’ compensation insurers have stopped insuring risks with large volunteer exposure, like trail associations –available through assigned risk plans

Outdoor Insurance Trends (Continued)

- Insurance companies are less willing to write small master policies in risk purchasing groups for outdoor activity
- Insurance carriers are somewhat more likely to force policyholders to purchase separate coverage elsewhere for activities that fall outside their underwriting “appetite”
- Some insurance companies will send non-renewal notice due to claims history, but will eventually renew with significant increases of 25% or higher

