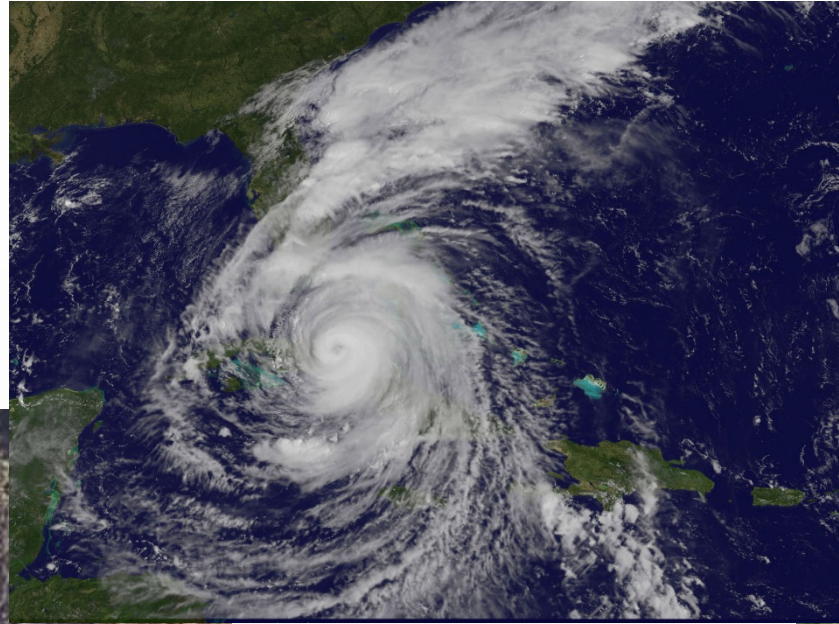


# Have You Got It Covered?



**WILDERNESS RISK  
MANAGEMENT  
CONFERENCE**



Albuquerque, New Mexico  
Oct. 30-Nov. 1, 2019



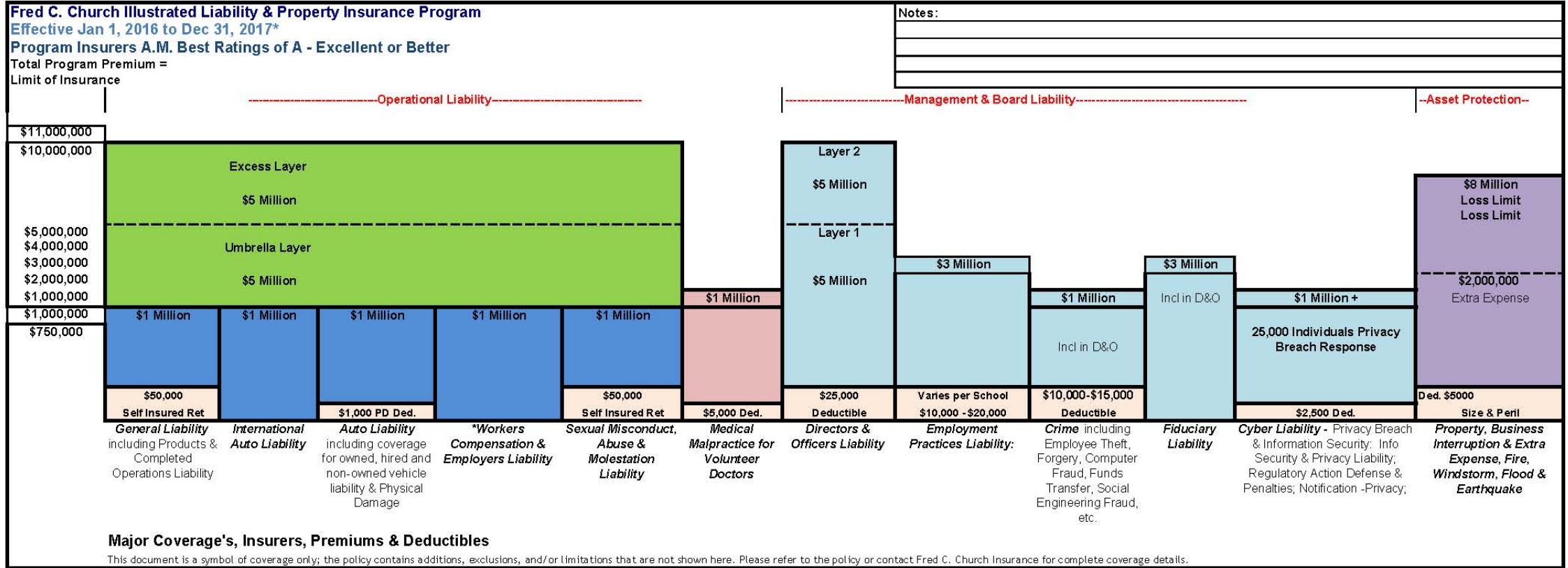
# Who are we, and why are you here?

Sam Daume, Fred C. Church Insurance

Steve Neal, Outward Bound USA

- Insurance 101 – Covering the basics and program design.
- Identify Policy enhancements, endorsements and exclusions that can impact coverage
- Explore scenarios to examine how insurance would work and respond
- Explore operational policies, initiatives and activities that impact claim management and underwriting
- Provide templates, tools and take-aways to assist you in making sure **you've got it covered**

# **Insurance “101” – The Basics**



# Commercial General Liability

- **Covers Bodily Injury, Property Damage, Personal Injury and Medical Payments**
- **Right & Duty to Defend**
- **Additional Insured (as required by contract – executed prior to loss)**
- **Blanket Waiver of Subrogation (prior to loss)**
- **Coverage Territory**
  - **USA only?; Often worldwide coverage only if trip is temporary and suit brought in USA**

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# Commercial General Liability

## Key Exclusions - Restrictions

- Expected/Intended
- Contractual Liability; exception to exclusion BI/PD in “insured contract”
  - Understand contracts with third parties
- Workers Compensation; Employment Liability; Stop Gap Liability
- Pollution
- Aircraft, Auto, Watercraft
  - Understand watercraft exclusions/restrictions/length of boat
- Mobile Equipment (vehicles designed for off roads)
- Malpractice/Professional Liability
  - Add coverage for guides/counselors
  - Understand who is required to be licensed
- Sexual Abuse/Misconduct
- Mental Anguish
- Liquor Liability

# **Umbrella (Excess) Liability**

- **How much is enough?**
  - **Defense & Settlement**
- **In excess/addition to bodily injury & property damage underlying coverages:**
  - **General Liability**
  - **Auto Liability**
  - **Employers Liability**
  - **International Liability**
- **Usually Not:**
  - **Directors & Officers, Employment Practices**
  - **Professional**
  - **Fiduciary, Crime**
  - **Workers Compensation**

# Property

- **All locations / buildings listed? (Statement of Values)**
- **Vacancy / un-occupancy restrictions**
- **Business Interruption / Extra Expense**
  - **Direct physical damage coverage trigger**
- **Flood / Earthquake**
- **Inland Marine**
  - **Miscellaneous equipment away from premises**



# Auto

- Symbol “1” – all vehicles
  - Understand registration requirements – vary by state
- Hired & Non-Owned Auto Insurance
  - Make sure employees understand organization’s Liability and Physical Damage coverage for rental vehicles
    - Buy or not buy coverage from rental agency?
    - Business and personal use concerns
- Employees use of Personal Autos for business
  - Liability – Employee’s Policy Primary; Organization’s Policy Excess
  - Physical Damage – Employee’s Policy Only
- Trailers
  - Liability/Physical damage
  - Size/Weight
- Un and Underinsured Motorist Coverage
- Carrier’s Enhancement Endorsements

# Directors & Officers Liability

- **Covers legal defense costs and settlements for wrongful acts (breach of duty)**
  - Defense costs can be expensive
  - Litigation can be lengthy, emotionally draining and time consuming
  - Reputation issues can be significant
- **Sources of suits**
  - Donors, beneficiaries, members
  - AG, other governmental officials involving anti trust/anti competition, tax issues, misallocation of funds
  - Creditor suits, Breach of contract suits
  - Governance/improper voting
  - Breach of Fiduciary Duty
    - Loyalty, care, state non-profit laws
    - Mismanagement leading to bankruptcy
    - Loss of tax status

# Employment Practices Liability

- **Discrimination, Wrongful Termination, Sexual Harassment, Failure to Supervise, Negligent Hiring/Supervision**
- **In response to Civil Rights Act of 1991 allowing awards for punitive damages for employment discrimination and allowing jury trials**
- **Significant volume of litigation**
  - **EEOC 2018 statistics – 76,418 charges – down 9.3% annual; lowest in ten years**
    - **Retaliation – 39,469 – down 3.9%**
    - **Race discrimination – 24,600 – down 13.7%**
    - **Sex discrimination – 24,655 – down 3.7% (Future impact of #MeToo?)**
    - **Age – 16,911 – down 7.9%**
    - **(most charges involve multiple allegations)**

## **Considerations - D&O and EPL**

- **Duty to Defend policies**
  - Insurance carriers select and control defense and settlement
- **Completing applications**
  - Warranty and Prior Acts coverage/restrictions
- **EPL – Third Party coverage**
- **EPL – Wage & Hour violations (excluded or sub-limited)**
- **Deductibles – usually significant**

# Crime & Social Engineering Fraud

- **Crime**

- White collar crime on uptick
- More than just employee theft
  - Forgery & Alteration
  - Computer Fraud
  - Funds Transfer Fraud
  - Money Orders & Counterfeit Currency
  - Credit Card Fraud
  - Client Coverage (students)
  - Claim Expense (can be expensive – forensics)

- **Social Engineering Fraud/Fraudulent Instruction**

- “human hacking”
- Art of influencing people to disclose information and getting them to act inappropriately
- Excluded from most Crime Policies – need to ask to add
- Training/Awareness

# **Fiduciary Liability**

- **Organizations maintaining employee benefit plans should include**
- **Protects plan fiduciaries against claims alleging:**
  - **breach of duties to plan, its participants and their beneficiaries**
  - **claims out of errors and omissions and administration of plans**
- **Not covered elsewhere:**
  - **Employee Benefit Liability (on CGL) provides protection for administrative errors - does not cover breach of fiduciary duty under ERISA**
  - **Specifically excluded in D&O and EPL**
  - **Crime covers Employee Theft from Plan (as required by ERISA) but not breach of fiduciary duty**

# Cyber/Data Breach

- **Be prepared – create a Breach Response Plan**
- **Insurance Considerations**
  - **Third Party Liability**
    - **Defense costs**
    - **Regulatory defense & penalties**
  - **First Party Coverage**
    - **Data Forensics and legal costs**
    - **Customer notification requirements and costs**
    - **Credit / ID Theft Monitoring services**
    - **Crisis management (PR)**
    - **Cyber Extortion; ransom attacks (+37% in past quarter)**
    - **Social Engineering Fraud/Fraudulent Instruction/Invoice Manipulation**

## **Miscellaneous**

- **Student Accident / Student Medical**
- **Trip Cancellation / Trip Interruption**
- **Tuition Refund**
- **Medical/Security and Evacuation Assistance (International)**



# Scenario 1



- ***Wildfires break out in a region where 4 separate groups (staff and students) are deployed in wilderness areas.***
- ***Local communities along with the regional base camp are ordered by local authorities to evacuate as the wildfires are rapidly spreading and encroaching on the base.***
- ***There are 10 staff and 40 students needing evacuation from the base camp. The 4 groups in the field are not in areas immediately threatened by the wildfires, but the thick smoke throughout the region makes breathing difficult.***
- ***Regional and National news is focused on the fire and the ongoing evacuations.***
- ***The basecamp evacuation goes smoothly, and all staff and students are relocated out of harms- way. The base facilities, including office computers and several fleet vehicles left behind are eventually consumed by the wildfires.***

- ***The 4 groups in the field, while not directly threatened by the fires, find breathing extremely difficult due to the heavy smoke in the air. One asthmatic 16 y/o has a severe reaction to the smoke, staff administer Epinephrine.***
- ***The Epi works for a while but the student's condition soon worsens and he becomes unresponsive and stops breathing. CPR is started.***
- ***Regional rescue services are tied up due to the wildfires and cannot respond immediately.***
- ***CPR is administered for over an hour until it is obvious to those on the scene that the student has expired.***

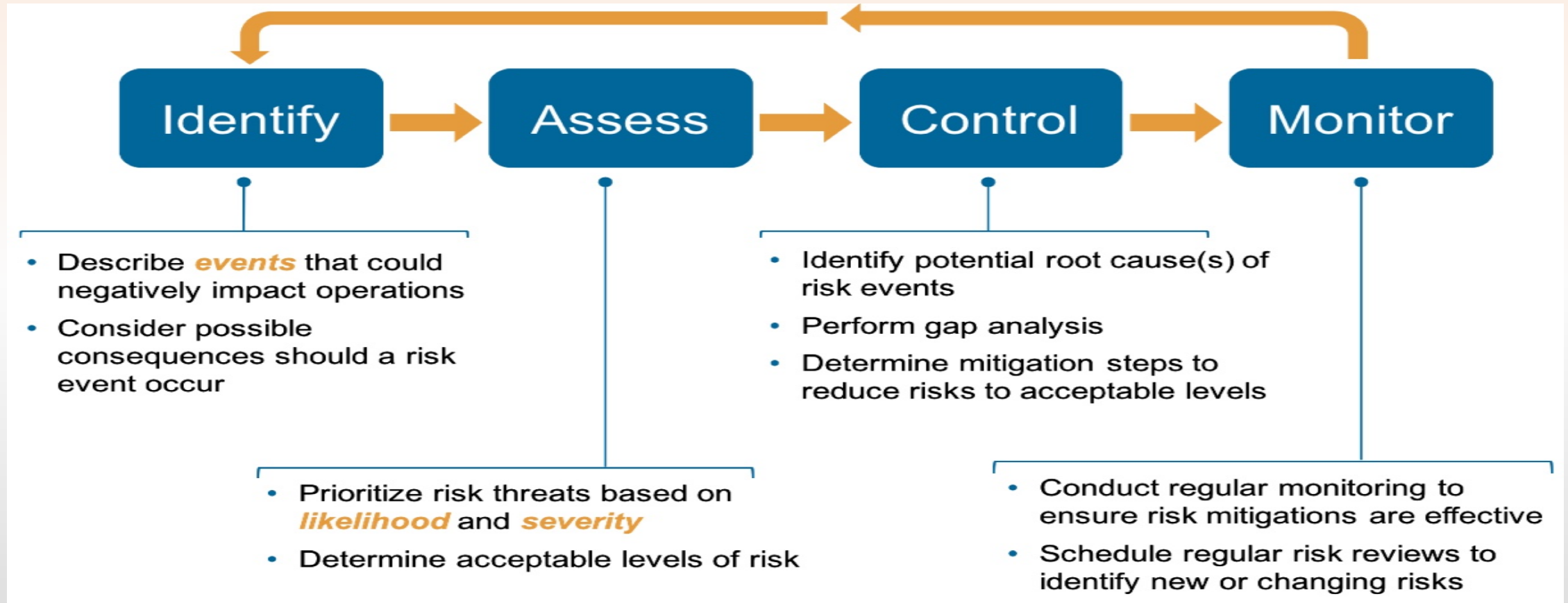
## **Scenario 1 - Considerations**

- ***Looking at this scenario through the lens of your insurance coverage, which policies might come into play?***
- ***Who in your organization is responsible for notification of the various insurance carriers.***
- ***What do you and/or your organization need to do to ensure coverage will trigger and remain in force.***
- ***What others steps should be taken to ensure smooth handling of any future insurance claims or litigation?***

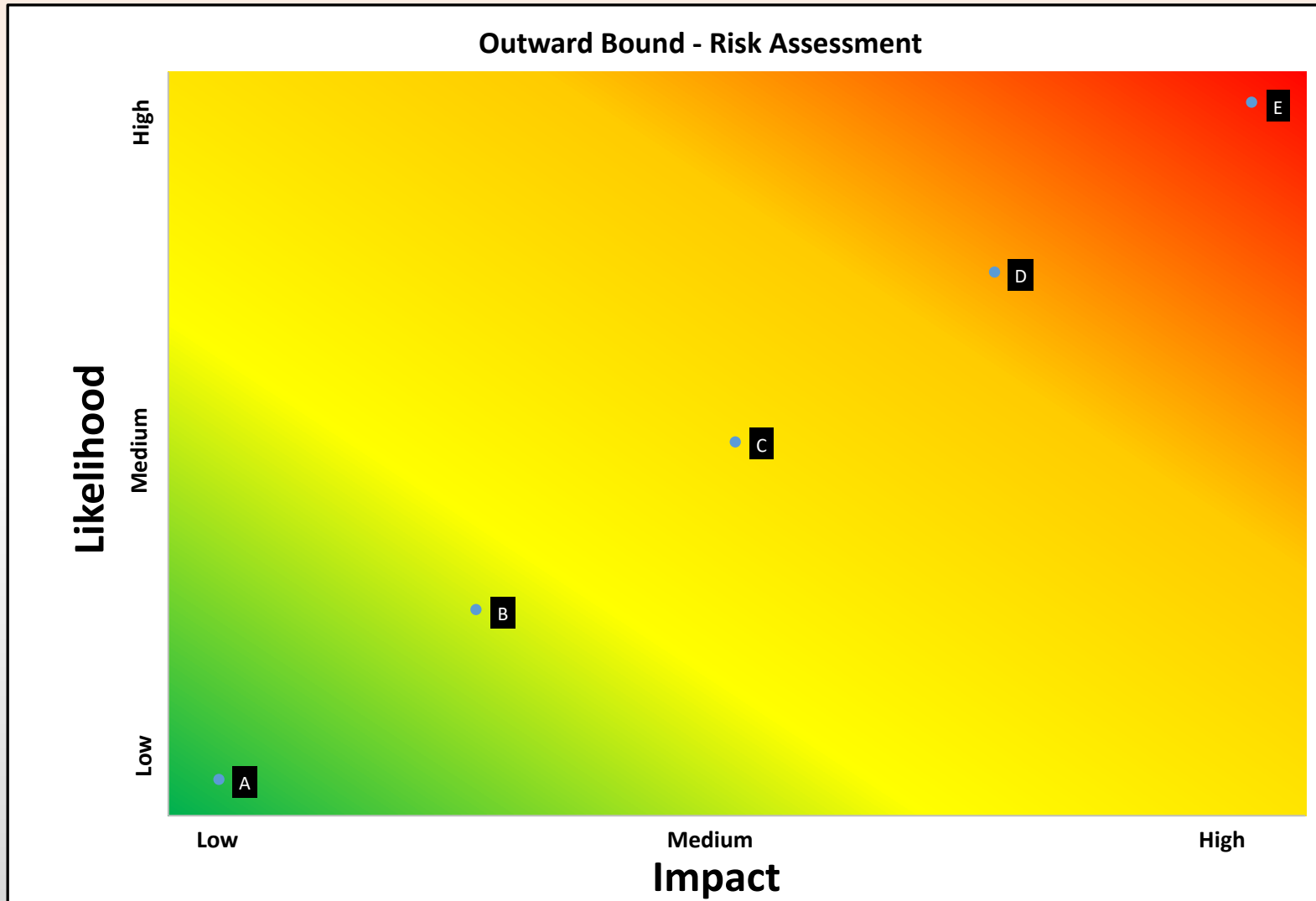
# Crisis Response Coverage

- *What is it*
- *Limits*
- *Coverage Conditions and Exclusions*
- *Notification Requirements*
- *Related Services & Resources*

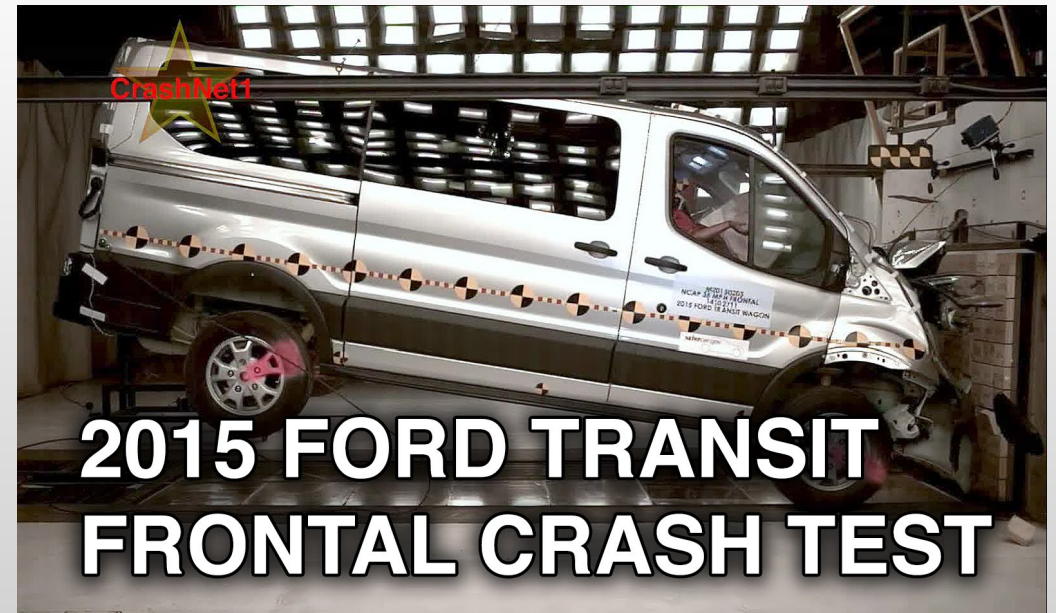
## The Process of Risk Management



# Heat Map – A Risk Assessment Tool



# Fleet Operations





# Transportation and Fleet Safety

- **Driver Credentialing**
  - **Done by organization – not the insurance company**
  - **Disclosure Forms (require disclosure of major accidents/violations during the year)**
  - **Drivers Record Acceptability Matrix**
- **Drivers Training (on-line and in vehicle)**
  - **Similar vehicles, road conditions, backing**
  - **Distracted driving**
- **Accident Investigation**
- **Vehicle Maintenance/Pre-trip checklist**
- **Non-conforming vans**
- **Distracted Driving Policies and enforcement**

# Distracted Driving



## Distracted Driving Policy

***The following activities are prohibited when operating an Outward Bound owned, rented or leased vehicle or when transporting students in a personal vehicle.***

- 1. Any mobile phone or tablet/computer use, either hand-held or hands-free. This includes phone calls, texting, email, internet, or other communication or note-taking tasks. (Electronic navigation devices and smart phone navigation apps may be used in voice prompt mode, but drivers may not change settings or otherwise operate the device while moving.)**
- 2. Wearing headphones to listen to music or any other media.**
- 3. Personal grooming, e.g. combing/brushing hair, applying make-up, changing clothes, etc.**
- 4. Any other distraction that requires the driver to divert attention from the road.**
- 5. Taking a prescription or non-prescription medication that carries a warning against the operation of machinery or in any way impairs the driver's abilities.**
- 6. Consumption of any amount of alcohol within the previous 8 hours.**
- 7. Insufficient rest or when the driver has performed more than 10 total hours of driving in a 24-hour period. Drivers will take at least one 20-minute break for every 3 hours of driving.**

***The following activities are prohibited when operating a personal vehicle (when not transporting students).***

**Conducting OB business on a mobile device. (Electronic navigation devices and smart phone navigation apps may be used in voice prompt mode, but drivers may not change settings or otherwise operate the device while moving.)**

## Scenario 2



- ***Two staff and 10 students are traveling in a 15p van from the airport to base camp where a 21-day backcountry course will begin.***
- ***The group is behind schedule so the driver uses his personal cell phone to call his supervisor and advise they are running late.***
- ***Just as the driver is wrapping up his conversation a bicyclist swerves from the breakdown lane into the travel lane.***
- ***To avoid the cyclist, the van crosses the center line into the opposite lane, and oncoming traffic, continues across all traffic lanes, crashes through a fence and comes to rest to the sound of crushing metal, wedged between two trees.***
- ***Traffic on the road has come to a standstill, and police sirens can be heard approaching.***

## Scenario 2 - Considerations

- ***Name some operational or organizational policies and practices that could help mitigate this type of incident.***
- ***Looking at this scenario through the lens of your insurance coverage, what actions should you take at the scene?***
- ***Who in your organization is responsible for notification of the carrier following vehicle accidents?***
- ***What other steps should be taken to ensure smooth handling of any future insurance claims or litigation?***

# Sexual Misconduct

**Sexual misconduct** is a broad term encompassing any unwelcome behavior of a **sexual** nature that is committed without consent or by force, intimidation, coercion, or manipulation. **Sexual misconduct** can be committed by a person of any gender, and it can occur between people of the same or different gender.

# **Sexual Misconduct**

- **Assault**
- **Harassment**
- **Intimidation**
- **Exploitation**



# **Sexual Misconduct Coverage**

- **Sexual Abuse and Molestation**
- **Commercial General Liability**
- **Employment Practices Liability**

## Scenarios - Sexual Misconduct

- ***On a two week backcountry course for 13-16y/o students, instructors overhear a conversation alleging two students have had sexual contact. When confronted, they admit it happened. One says it was consensual the other claims it forced on her.***
- ***A parent calls to complain after her child (16y/o) returns from her course and confides how her course-mate had misbehaved while on the course. The course-mate allegedly had a sexual relationship with the instructor.***
- ***During an instructor training course a prospective recruit is approached by the lead trainer, who invites the recruit to join her later that evening in her tent. The recruit turns down the offer. The recruit is ultimately not offered a position as an instructor. The recruit files a suit and EEOC claim.***

## **Action Steps**

- **Plan a meeting with your insurance broker, legal counsel and other professionals to review your organization's insurance program coverages with a goal of understanding coverage design and what is and what isn't actually covered.**
- **Build staff training modules to ensure awareness of relevant coverage and specific steps to mitigate exposures.**
- **Develop an annual process to ensure members of your organization understand what needs to be reported and the importance of timely and accurate reporting of insurable incidents.**

# Resources

## WRMC Resource Center

Sam Daume – Fred C. Church:  
[sdaume@fredcchurch.com](mailto:sdaume@fredcchurch.com)

Steve Neal – Outward Bound USA:  
[sneal@outwardbound.org](mailto:sneal@outwardbound.org)